Federal Register

11–22–10 Monday
Vol. 75 No. 224 Nov. 22, 2010

Pages 71005–71324

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.federalregister.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register**, *www.gpoaccess.gov/nara,* available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via e-mail at *gpoaccess@gpo.gov.* The Support Team is available between 7:00 a.m. and 9:00 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Printing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 75 FR 12345.

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

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**

General online information **202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, December 7, 2010
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

Contents

Federal Register

Vol. 75, No. 224

Monday, November 22, 2010

Advisory Council on Historic Preservation
See Historic Preservation, Advisory Council

Agency for Toxic Substances and Disease Registry
NOTICES
Availability of Draft Toxicological Profiles, 71132

Agriculture Department
See Forest Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 71067–71068

Air Force Department
NOTICES
Privacy Act; Systems of Records, 71090–71094

Army Department
NOTICES
Privacy Act; Systems of Records, 71081–71083

Centers for Medicare & Medicaid Services
PROPOSED RULES
Medicare Program:
Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs for Contract Year 2012, 71190–71292
Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs for Contract Year 2012; Correction, 71064

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Projects of National Significance; Family Support 360, 71131–71132

Coast Guard
RULES
Drawbridge Operation Regulations:
Bayou Liberty, St. Tammany Parish, Slidell, LA, 71017–71018
PROPOSED RULES
Drawbridge Operation Regulations:
Bayou Liberty, Mile 2.0, St. Tammany Parish, Slidell, LA, 71061–71064

Commerce Department
See Foreign-Trade Zones Board
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office

Comptroller of the Currency
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 71187

Defense Department
See Air Force Department
See Army Department
See Navy Department
NOTICES
Determination on Use of Cooperative Threat Reduction Funds in Pakistan and Afghanistan; etc.; Fiscal Year 2004, 71079–71080
Meetings:
Department of Defense Wage Committee, 71080–71081
Privacy Act; Systems of Records, 71081

Delaware River Basin Commission
NOTICES
Meetings, 71094–71095

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 71095–71097

Employee Benefits Security Administration
NOTICES
Technical Correction and Clarification for Prohibited Transaction Exemption (PTE):
PNC Financial Services Group, Inc., 71151–71152

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Air Quality Designations for the 2008 Lead (Pb) National Ambient Air Quality Standards, 71033–71044
Approval and Promulgation of Implementation Plans:
Georgia; Prevention of Significant Deterioration and Nonattainment New Source Review Rules, 71018–71023
Approval and Promulgation of State Implementation Plan Revisions:
North Dakota; Interstate Transport of Pollution for the 1997 PM2.5 and 8-hour Ozone NAAQS, etc., 71023–71029
Approval and Promulgation of State Implementation Plans:
Colorado; Interstate Transport of Pollution Revisions for the 1997 8-hour Ozone NAAQS, etc., 71029–71033
PROPOSED RULES
Approval and Promulgation of Implementation Plans:
California; 2007 South Coast State Implementation Plan for 1997 Fine Particulate Matter Standards, etc., 71294–71316
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Safer Detergent Stewardship Initiative Program, 71123–71125
Proposed Consent Decree, Clean Air Act Citizen Suit, 71125–71127
Waiver of Buy American Requirement of the American Recovery and Reinvestment Act of 2009:
Utah Division of Water Quality, 71127–71129

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
PROPOSED RULES
Proposed Revisions of Class E Airspace:
Barrow, AK, 71046–71047
NOTICES
Meetings:
Joint RTCA Special Committee 213; EUROCAE WG–79, Enhanced Flight Vision Systems/Synthetic Vision Systems, 71183
RTCA Program Management Committee, 71182
RTCA Special Committee 206; EUROCAE WG 76 Plenary, AIS and MET Data Link Services, 71183–71184
Petitions for Exemption; Summaries of Petitions Received, 71185–71186

Federal Communications Commission
RULES
Radio Broadcasting Services:
Onekama, MI, 71044–71045
PROPOSED RULES
Allocation and Designation of Spectrum for Fixed-Satellite Services:
37.5–38.5 GHz, 40.5–41.5 GHz and 48.2–50.2 GHz Frequency Bands, 71064–71066
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 71129

Federal Deposit Insurance Corporation
NOTICES
Updated Listing of Financial Institutions in Liquidations, 71129–71130

Federal Emergency Management Agency
NOTICES
Meetings:
National Flood Insurance Program Reform Effort; Correction, 71136–71137

Federal Energy Regulatory Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 71097–71101
Applications:
Deer Creek Hydro, LLC, 71106
Hampshire Paper Co., 71103–71104
Jones Canyon Hydro, LLC, 71102–71103
Lock Hydro Friends Fund XXXV, FFP Missouri 7, LLC, Dashields Hydro, LLC, 71104–71105
Monroe Gas Storage Co., LLC, 71101
San Jose Water Co., 71106–71107
Transcontinental Gas Pipe Line Corp., 71105–71106
Upper Peninsula Power Company; UP Hydro, 71107–71108
White Mountain Hydroelectric Corp., 71102
Wisconsin Public Service Corp., 71108–71109
Combined Filings, 71109–71122
Environmental Site Reviews:
Erie Boulevard Hydropower LP, 71122
Filings:
City of Vernon, CA, 71122
Requests Under Blanket Authorization:
Transcontinental Gas Pipe Line Company, LLC, 71122–71123
Staff Attendances:
FERC/NARUC Collaborative on Smart Response, 71123

Federal Financial Institutions Examination Council
RULES
Description of Office, Procedures, and Public Information, 71012–71016

Federal Highway Administration
NOTICES
Environmental Impact Statements; Availability, etc.:
Harrison and Stone Counties, Mississippi; Rescinding, 71180
San Diego County, CA, 71179–71180

Federal Railroad Administration
NOTICES
Petitions for Waivers of Compliance:
Union Pacific Railroad Co., 71186

Federal Reserve System
NOTICES
Changes in Bank Control:
Acquisitions of Shares of a Bank or Bank Holding Company, 71130
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 71130
Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies Engaged in Permissible Nonbanking Activities, 71130–71131

Federal Transit Administration
NOTICES
Limitation on Claims against Proposed Public Transportation Projects, 71181–71182

Food and Drug Administration
RULES
Intramammary Dosage Form New Animal Drugs:
Cloxacillin Benzathine, 71016–71017
NOTICES
Industry Guidance; Availability:
The Safety of Imported Traditional Pottery Intended for Use With Food, etc., 71133
Withdrawal of Approval of New Drug Applications:
Hoffmann–La Roche Inc., 71135

Foreign-Trade Zones Board
NOTICES
Adopted Adjustments to Alternative Site Framework, 71069–71070
Site Renumbering:
Foreign-Trade Zone 29; Louisville, KY, 71079

Forest Service
NOTICES
Meetings:
Big Horn County Resource Advisory Committee, 71069
Eleven Point Resource Advisory Committee, 71068–71069

Geological Survey
NOTICES
Meetings:
National Geospatial Advisory Committee, 71141

Health and Human Services Department
See Agency for Toxic Substances and Disease Registry
See Centers for Medicare & Medicaid Services
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health

Historic Preservation, Advisory Council
NOTICES
Meetings:
Advisory Council on Historic Preservation, 71135–71136

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency

Housing and Urban Development Department
NOTICES
Funding Awards:
HOPE VI Revitalization Grant Program for 2009 Fiscal Year, 71137

Indian Affairs Bureau
NOTICES
Land Acquisitions:
Navajo Nation, Arizona, 71138–71139
Puyallup Tribe of Washington, 71139–71141
Suquamish Indian Tribe, Washington, 71141

Industry and Security Bureau
NOTICES
Meetings:
Regulations and Procedures Technical Advisory Committee, 71075
Orders Temporarily Denying Export Privileges:
Anvik Technologies Sdn. Bhd. a/k/a Anvik Technologies; Babak Jafarpour a/k/a Bob Jefferson, 71075–71078

Interior Department
See Geological Survey
See Indian Affairs Bureau
See Land Management Bureau
See National Park Service
See Reclamation Bureau
RULES
Implementation of OMB Guidance on Drug-Free Workplace Requirements, 71007–71012
NOTICES
Vendor Outreach Workshop for Women Owned Small Businesses in the National Capitol Region, 71137–71138

Internal Revenue Service
NOTICES
Meetings:
Electronic Tax Administration Advisory Committee, 71188

International Trade Administration
NOTICES
Antidumping Duty Orders and Amended Final Determinations of Sales at Less than Fair Value:
Seamless Refined Copper Pipe and Tube from Mexico and People's Republic of China, 71070–71072
Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review:
Certain Circular Welded Non–Alloy Steel Pipe from Mexico, 71072–71075
Partial Rescission of Countervailing Duty Administrative Review:
Citric Acid and Certain Citrate Salts from Peoples Republic of China, 71078–71079

International Trade Commission
NOTICES
Determinations:
Seamless Refined Copper Pipe and Tube from China and Mexico, 71146
Terminations of Investigations:
Certain Machine Vision Software, Machine Vision Systems; et al., 71146–71147

Justice Department
See National Institute of Corrections
See Parole Commission

Labor Department
See Employee Benefits Security Administration

Land Management Bureau
NOTICES
Meetings:
Western Montana Resource Advisory Council, 71141–71142
Realty Actions:
Direct Sale of Public Land in Blaine County, ID, 71143–71144
Record of Decision:
Solar Millennium, LLC, Amargosa Farm Road Solar Energy Project, 71144–71145

National Highway Traffic Safety Administration
NOTICES
Petitions for Exemption from the Vehicle Theft Prevention Standard:
BMW of North America, LLC, 71184–71185

National Institute of Corrections
NOTICES
Solicitation for Cooperative Agreements:
Production of Seven Live Satellite/Internet Broadcasts, 71148–71151

National Institutes of Health
NOTICES
Meetings:
Center for Scientific Review, 71134–71135
National Cancer Institute, 71134
National Institute of General Medical Sciences, 71134
National Institute of Mental Health, 71133

National Oceanic and Atmospheric Administration
RULES
Fisheries of the Exclusive Economic Zone Off Alaska:
Pacific Cod in the Western Regulatory Area of the Gulf of Alaska, 71045

National Park Service
NOTICES
National Register of Historic Places:
Pending Nominations and Related Actions, 71142–71143
Pending Relocation of Listed Property, 71142

Navy Department
NOTICES
Privacy Act; Systems of Records, 71083–71090

Nuclear Regulatory Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 71152

Exemptions:
Southern California Edision San Onofre Nuclear Generating Station Unit 2 and Unit 3, 71152–71154
Meetings:
ACRS Subcommittee on Reliability and PRA, 71154
Request for Action Under 10 CFR 2.206, 71154–71155

Parole Commission
NOTICES
Record of Vote of Meeting Closure, 71147

Patent and Trademark Office
NOTICES
Extension of the Patent Application Backlog Reduction Stimulus Plan, 71072

Postal Service
NOTICES
Market Test of Experimental Products:
Alternative Postage Payment Method for Greeting Cards, 71155

Presidential Documents
PROCLAMATIONS
Special Observances:
American Education Week (Proc. 8602), 71005–71006
EXECUTIVE ORDERS
Faith-Based and Neighborhood Organizations; Principles and Policymaking Criteria for Partnerships (EO 13559), 71317–71323

Reclamation Bureau
NOTICES
San Joaquin River Restoration Program:
Reach 4B, Eastside Bypass and Mariposa Bypass Channel and Structural Improvements Project, Merced County, CA, 71145–71146

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 71155
Self-Regulatory Organizations; Proposed Rule Changes:
BATS Exchange, Inc., 71168–71170
Financial Industry Regulatory Authority, Inc., 71164–71168
NASDAQ OMX BX, Inc., 71163–71164
NASDAQ OMX PHLX LLC, 71155–71158
NYSE Arca, Inc., 71158–71163

Social Security Administration
NOTICES
Social Security Disability Program Projects:
Benefit Offset National Demonstration, 71171–71177

Susquehanna River Basin Commission
NOTICES
Projects Approved for Consumptive Uses of Water, 71177–71179

Thrift Supervision Office
NOTICES
Approvals of Conversion Applications:
Atlantic Coast Financial Corporation, Waycross, GA, 71187
Wolverine Bank, Midland, MI, 71187–71188

Toxic Substances and Disease Registry Agency
See Agency for Toxic Substances and Disease Registry

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
See Federal Transit Administration
See National Highway Traffic Safety Administration

Treasury Department
See Comptroller of the Currency
See Internal Revenue Service
See Thrift Supervision Office
PROPOSED RULES
Federal Benefit Payments under Certain District of Columbia Retirement Plans, 71047–71061

Separate Parts In This Issue

Part II
Health and Human Services Department, Centers for Medicare & Medicaid Services, 71190–71292

Part III
Environmental Protection Agency, 71294–71316

Part IV
Presidential Documents, 71317–71323

Reader Aids

Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

2 CFR
1401 71007

3 CFR
Proclamations:
8602 71005
Executive Orders:
13279 (amended by 13559) 71319
13559 71319

12 CFR
1101 71012

14 CFR
Proposed Rules:
71 71046

21 CFR
526 71016

31 CFR
Proposed Rules:
29 71047

33 CFR
117 71017
Proposed Rules:
117 71061

40 CFR
52 (3 documents) 71018, 71023, 71029
81 71033
Proposed Rules:
52 71294

42 CFR
Proposed Rules:
417 (2 documents) 71064, 71190
422 (2 documents) 71064, 71190
423 (2 documents) 71064, 71190

43 CFR
43 71007

47 CFR
73 71044
Proposed Rules:
25 71064

50 CFR
679 71045

Federal Register
Vol. 75, No. 224
Monday, November 22, 2010

Presidential Documents

Title 3—

The President

Proclamation 8602 of November 16, 2010

American Education Week, 2010

By the President of the United States of America

A Proclamation

Education is essential to our success as both a people and a Nation. During American Education Week, we rededicate ourselves to providing a complete and competitive education for every student, from cradle through career.

In an increasingly interconnected world, our leadership and prosperity depend on the standard and quality of education that we establish for our students. In order to maintain our Nation's role as the world's engine of discovery and innovation, my Administration is committed to ensuring that America has the best-educated citizenry in the world.

To foster the next generation of great American leaders, we must continue to invest in education at all levels, work with States and districts to improve our educational system, and encourage reforms that ensure the development of our students and teachers. We have also set a goal of once again having the highest proportion of college graduates of any country across the globe by the year 2020.

Educators and school employees must also strive to provide our students with the tools needed to access a fulfilling and prosperous future. Students are able to reach for their dreams when teachers, parents, and communities support their efforts and insist upon excellence.

Education has always been central to ensuring opportunity, and to instilling in all our citizens the defining American values of freedom, equality, and respect for one another. Our Nation's schools can give students the tools, skills, and knowledge to participate fully in our democracy, and to succeed in college, career, and life. This week, let us reaffirm the importance of education and recognize that we all share in the responsibility to educate our students.

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 14 through November 20, 2010, as American Education Week. I call upon all Americans to observe this week by supporting their local schools through appropriate activities, events, and programs designed to help create opportunities for every school and student in America.

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

[FR Doc. 2010–29516
Filed 11–19–10; 8:45 am]
Billing code 3195–W1–P

Rules and Regulations

Federal Register

Vol. 75, No. 224

Monday, November 22, 2010

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 INTERIOR

Office of the Secretary

2 CFR Part 1401

43 CFR Part 43

RIN 1093–AA12

Department of the Interior Implementation of OMB Guidance on Drug-Free Workplace Requirements (Financial Assistance)

AGENCY: Office of the Secretary, Interior.

ACTION: Final rule with request for comments.

SUMMARY: The Department of the Interior (DOI) is removing its regulation implementing the government-wide common rule on drug-free workplace requirements for financial assistance and issuing a new regulation to adopt the Office of Management and Budget (OMB) guidance. This regulatory action implements the OMB's initiative to streamline and consolidate into one title of the Code of Federal Regulations all Federal regulations on drug-free workplace requirements for financial assistance. These changes constitute an administrative simplification that will make no substantive change in DOI policy or procedures for drug-free workplace.

DATES: This final rule is effective on January 21, 2011 without further action. Submit comments by December 22, 2010 on any unintended changes this action makes in Department of the Interior policies and procedures for drug-free workplace. All comments on unintended changes will be considered and, if warranted, DOI will revise the rule.

ADDRESSES: You may submit comments, on the rulemaking through the Federal eRulemaking Portal at *http://www.regulations.gov.* Please use the Regulation Identifier Number (RIN) 1093–AA12 in your message. Follow the instructions on the Web site for submitting comments.

FOR FURTHER INFORMATION CONTACT: Anita Hairston, Financial Assistance Program Manager, Department of the Interior, Office of Acquisition and Property Management, telephone (202) 208–3433, fax (202) 219–4244, or e-mail *anita_hairston@ios.doi.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Drug-Free Workplace Act of 1988 [Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701, *et seq.*] was enacted as a part of omnibus drug legislation on November 18, 1988. Federal agencies issued an interim final common rule to implement the act as it applied to grants [53 FR 4946, January 31, 1989]. The rule was a subpart of the government-wide common rule on nonprocurement suspension and debarment. The agencies issued a final common rule after consideration of public comments [55 FR 21681, May 25, 1990].

The agencies proposed an update to the drug-free workplace common rule in 2002 [67 FR 3266, January 23, 2002] and finalized it in 2003 [68 FR 66534, November 26, 2003]. The updated common rule was redrafted in plain language and adopted as a separate part, independent from the common rule on nonprocurement suspension and debarment. Based on an amendment to the drug-free workplace requirements in 41 U.S.C. 702 [Pub. L. 105–85, Div. A, Title VIII, Sec. 809, Nov. 18, 1997, 111 Stat. 1838], the update also allowed multiple enforcement options from which agencies could select, rather than requiring use of a certification in all cases.

When it established Title 2 of the CFR as the new central location for OMB guidance and agency implementing regulations concerning grants and cooperative agreements [69 FR 26276, May 11, 2004], OMB announced its intention to replace common rules with OMB guidance that agencies could adopt in brief regulations. OMB began that process by proposing [70 FR 51863, August 31, 2005] and finalizing [71 FR 66431, November 15, 2006] government-wide guidance on non-procurement suspension and debarment in 2 CFR part 180.

As the next step in that process, OMB proposed [73 FR 55776, September 26, 2008] and finalized [74 FR 28149, June 15, 2009] government-wide guidance with policies and procedures to implement drug-free workplace requirements for financial assistance. The guidance requires each agency to replace the common rule on drug-free workplace requirements that the agency previously issued in its own CFR title with a brief regulation in 2 CFR adopting the government-wide policies and procedures. One advantage of this approach is that it reduces the total volume of drug-free workplace regulations. A second advantage is that it collocates OMB's guidance and all of the agencies' implementing regulations in 2 CFR.

The Current Regulatory Actions

As the OMB guidance requires, DOI is taking two regulatory actions. First, we are removing the drug-free workplace common rule from 43 CFR part 43. Second, to replace the common rule, we are issuing a brief regulation in 2 CFR, Subtitle B, Chapter XIV, part 1401 to adopt the government-wide policies and procedures in the OMB guidance.

Invitation To Comment

Taken together, these regulatory actions are solely an administrative simplification and are not intended to make any substantive change in policies or procedures. In soliciting comments on these actions, we therefore are not seeking to revisit substantive issues that were resolved during the development of the final common rule in 2003. We are inviting comments specifically on any unintended changes in substantive content that the new part in 2 CFR would make relative to the DOI common rule at 43 CFR part 43.

Administrative Procedure Act

Under the Administrative Procedure Act, 5 U.S.C. 553, agencies generally propose a regulation and offer interested parties the opportunity to comment before it becomes effective. However, as described in the "Background" section of this preamble, the policies and procedures in this regulation have been proposed for comment two times—one time by Federal agencies as a common rule in 2002 and a second time by OMB as guidance in 2008—and adopted each time after resolution of the comments received.

This direct final rule is solely an administrative simplification that would make no substantive change in the DOI policy or procedures for drug-free workplace. We therefore believe that the rule is noncontroversial and do not expect to receive adverse comments, although we are inviting comments on any unintended substantive change this rule makes.

Accordingly, we find that the solicitation of public comments on this direct final rule is unnecessary and that "good cause" exists under 5 U.S.C. 553(b)(B). This rule will be effective on January 21, 2011 without further action, unless we receive adverse comment by December 22, 2010. If any comment on unintended changes is received, it will be considered and, if warranted, we will publish a timely revision of the rule.

Executive Order 12866

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This rule does not raise novel legal or policy issues.

Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

DOI certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Does not represent a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Act of 1995 (Sec. 202, Pub. L. 104–4)

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act, 2 U.S.C. 1531 *et seq.,* is not required.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required.

Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35)

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83–I is not required.

Federalism (Executive Order 13132)

This proposed regulatory action does not have Federalism implications, as set forth in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

List of Subjects

2 CFR Part 1401

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

43 CFR Part 43

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Pamela Haze,

Acting Assistant Secretary for Policy, Management and Budget.

■ Accordingly, for the reasons set forth in the preamble, and under the authority of 5 U.S.C. 301, the Department of the Interior amends 2 CFR, Subtitle B, Chapter XIV, part 1401, and 43 CFR part 43 as follows:

TITLE 2—GRANTS AND AGREEMENTS

■ 1. In Subtitle B, Chapter XIV, add new part 1401 to read as follows:

PART 1401—REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Sec.

Subpart A—Purpose and Coverage

1401.100 What does this part do?
1401.105 Does this part apply to me?
1401.110 What policies and procedures must I follow?
1401.115 Are any of my Federal assistance awards exempt from this part?
1401.120 Does this part affect the Federal contracts that I receive?

Subpart B—Definitions

1401.205 Award.
1401.210 Controlled substance.
1401.215 Conviction.
1401.220 Cooperative agreement.
1401.225 Criminal drug statue.
1401.230 Debarment.
1401.235 Drug-free workplace.
1401.240 Employee.
1401.245 Federal agency or agency.
1401.250 Grant.
1401.255 Individual.
1401.260 Recipient.
1401.265 State.
1401.270 Suspension.

Subpart C—Requirements for Recipients Other Than Individuals

1401.300 What must I do to comply with this part?
1401.305 What must I include in my drug-free workplace statement?
1401.310 To whom must I distribute my drug-free workplace statement?
1401.315 What must I include in my drug-free awareness program?
1401.320 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
1401.325 What actions must I take concerning employees who are convicted of drug violations in the workplace?
1401.330 How and when must I identify workplaces?
1401.335 Whom in the DOI does a recipient other than an individual notify about a criminal drug conviction?

Subpart D—Requirements for Recipients Who Are Individuals

1401.400 What must I do to comply with this part if I am an individual recipient?
1401.401 Whom in the DOI does a recipient who is an individual notify about a criminal drug conviction?

Subpart E—Responsibilities of Department of the Interior Awarding Officials

1401.500 What are my responsibilities as a DOI awarding official?

Subpart F—Violations of this Part and Consequences

1401.600 How are violations of this part determined for recipients other than individuals?

1401.605 How are violations of this part determined for recipients who are individuals?
1401.610 What actions will the Federal Government take against a recipient determined to have violated this part?
1401.615 Are there any exceptions to those actions?

Authority: 5 U.S.C. 301; 31 U.S.C. 6101 note, 7501; 41 U.S.C. 252a; 41 U.S.C. 701–707.

Subpart A—Purpose and Coverage

§ 1401.100 What does this part do?

This part requires that the award and administration of the DOI grants and cooperative agreements comply with Office of Management and Budget (OMB) guidance implementing the portion of the Drug-Free Workplace Act of 1988, 41 U.S.C. 701–707, as amended (hereinafter, "the Act") that applies to grants. It thereby—

(a) Gives regulatory effect to the OMB guidance (Subparts A through F of 2 CFR Part 182) for DOI's grants and cooperative agreements; and

(b) Establishes DOI policies and procedures for compliance with the Act that are the same as those of other Federal agencies, in conformance with the requirement in 41 U.S.C. 705 for government-wide implementing regulations.

§ 1401.105 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in Subparts A through F of 2 CFR part 182 apply if you are—

(a) A recipient of an assistance award from the Department of the Interior; or

(b) The Department of the Interior awarding official.

The following table (will be incorporated into 2 CFR part 182) shows the subparts that apply to you:

If you are	*See* subparts
(1) A recipient who is not an individual.	A, C and F.
(2) A recipient who is an individual.	A, D and F.
(3) A Department of the Interior awarding official.	A, E and F.

§ 1401.110 What policies and procedures must I follow?

(a) *General.* You must follow the policies and procedures specified in applicable sections of the OMB guidance in Subparts A through F of 2 CFR part 182, as implemented by this part.

(b) In implementing OMB guidance in 2 CFR part 182, this part supplements four sections of the guidance, as shown in the following table. For each of those sections, you must follow the policies and procedures set forth in the OMB guidance, as supplemented by this part.

Section of OMB guidance	Section in this part where supplemented	What the supplementation clarifies
(1) 2 CFR 182.225(a)	§ 1401.335	Whom in the DOI a recipient other than an individual must notify if an employee is convicted for a violation of a criminal drug statute in the workplace.
(2) 2 CFR 182.300(b)	§ 1401.401	Whom in the DOI a recipient who is an individual must notify if he or she is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity.
(3) 2 CFR 182.500	§ 1401.600	Who in the DOI is authorized to determine that a recipient other than an individual is in violation of the requirements of 2 CFR Part 182, as implemented by this part.
(4) 2 CFR 182.505	§ 1401.605	Who in the DOI is authorized to determine that a recipient who is an individual is in violation of the requirements of 2 CFR Part 182, as implemented by this part.

(c) *Sections of the OMB guidance that this part does not supplement.* For any section of OMB guidance in Subparts A through F of 2 CFR Part 182 that is not listed in paragraph (b) of this section, DOI policies and procedures are the same as those in the OMB guidance.

§ 1401.115 Are any of my Federal assistance awards exempt from this part?

This part does not apply to any award if the Director, Office of Acquisition and Property Management (PAM), determines that the application of this part would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government.

§ 1401.120 Does this part affect the Federal contracts that I receive?

It will affect future contract awards indirectly if you are debarred or suspended for a violation of the requirements of this part, as described in § 1401.610(c). However, this part does not directly apply to procurement contracts. The portion of the Drug-Free Workplace Act of 1988 that applies to Federal procurement contracts is carried out through the Federal Acquisition Regulation in 48 CFR part 23, subpart 23.5.

Subpart F—Definitions

§ 1401.205 Award.

Award means an award of financial assistance by DOI or other Federal agency directly to a recipient.

(a) The term award includes:

(1) A Federal grant or cooperative agreement, in the form of money or property in lieu of money.

(2) A block grant or a grant in an entitlement program, whether or not the grant is exempted from coverage under the Departmental rules at 43 CFR part 12, subpart C, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."

(b) The term award does not include:

(1) Technical assistance that provides services instead of money.

(2) Loans.

(3) Loan guarantees.

(4) Interest subsidies.

(5) Insurance.

(6) Direct appropriations.

(7) Veterans' benefits to individuals (*i.e.,* any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States).

§ 1401.210 Controlled substance.

Controlled substance means any controlled substance identified in schedules I through V of the Controlled Substances Act, 21 U.S.C. 812, and as further defined by regulations at 21 CFR 1308.11 through 1308.15.

§ 1401.215 Conviction.

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

§ 1401.220 Cooperative agreement.

Cooperative agreement means an award of financial assistance that, consistent with 31 U.S.C. 6305, is used to enter into the same kind of relationship as a grant (*see* definition of

grant in section 1401.250), except that substantial involvement is expected between the Federal agency and the recipient when carrying out the activity contemplated by the award. The term does not include cooperative research and development agreements as defined in 15 U.S.C. 3710a.

§ 1401.225 Criminal drug statute.

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance.

§ 1401.230 Debarment.

Debarment means an action taken by a Federal agency to prohibit a recipient from participating in Federal Government procurement contracts and covered non-procurement transactions. A recipient so prohibited is debarred, in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and 2 CFR part 180.

§ 1401.235 Drug-free workplace.

Drug-free workplace means a site for the performance of work done in connection with a specific award at which employees of the recipient are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

§ 1401.240 Employee.

(a) *Employee* means the employee of a recipient directly engaged in the performance of work under the award, including—

(1) All direct charge employees;

(2) All indirect charge employees, unless their impact or involvement in the performance of work under the award is insignificant to the performance of the award; and

(3) Temporary personnel and consultants who are directly engaged in the performance of work under the award and who are on the recipient's payroll.

(b) This definition does not include workers not on the payroll of the recipient (*e.g.,* volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the payroll; or employees of sub-recipients or subcontractors in covered workplaces).

§ 1401.245 Federal agency or agency.

Federal agency or *agency* means any United States executive department, military department, government corporation, government controlled corporation, any other establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency.

§ 1401.250 Grant.

Grant means an award of financial assistance that, consistent with 31 U.S.C. 6304, is used to enter into a relationship whereby—

(a) The principal purpose of which is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by a law of the United States, rather than to acquire property or services for the Federal Government's direct benefit or use; and

(b) In which substantial involvement is not expected between the Federal agency and the recipient when carrying out the activity contemplated by the award.

§ 1401.255 Individual.

Individual means a natural person.

§ 1401.260 Recipient.

Recipient means any individual, corporation, partnership, association, unit of government (except a Federal agency) or legal entity, however organized, that receives an award directly from a Federal agency.

§ 1401.265 State.

State means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

§ 1401.270 Suspension.

Suspension means an action taken by a Federal agency that immediately prohibits a recipient from participating in Federal Government procurement contracts and covered non-procurement transactions for a temporary period, pending completion of an investigation and any judicial or administrative proceedings that may ensue. A recipient so prohibited is suspended, in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and 2 CFR part 180. Suspension of a recipient is a distinct and separate action from suspension of an award or suspension of payments under an award.

Subpart C—Requirements for Recipients Other Than Individuals

§ 1401.300 What must I do to comply with this part?

There are two general requirements if you are a recipient other than an individual.

(a) First, you must make a good faith effort, on a continuing basis, to maintain a drug-free workplace. You must agree to do so as a condition for receiving any award covered by this part. The specific measures that you must take in this regard are described in more detail in subsequent sections of this subpart. Briefly, those measures are to—

(1) Publish a drug-free workplace statement and establish a drug-free awareness program for your employees; and

(2) Take actions concerning employees who are convicted of violating drug statutes in the workplace.

(b) Second, you must identify all known workplaces under your Federal awards.

§ 1401.305 What must I include in my drug-free workplace statement?

You must publish a statement that—

(a) Tells your employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in your workplace;

(b) Specifies the actions that you will take against employees for violating that prohibition; and

(c) Lets each employee know that, as a condition of employment under any award, he or she:

(1) Will abide by the terms of the statement; and

(2) Must notify you in writing if he or she is convicted for a violation of a criminal drug statute occurring in the workplace and must do so no more than five calendar days after the conviction.

§ 1401.310 To whom must I distribute my drug-free workplace statement?

You must require that a copy of the statement described in § 1401.305 be given to each employee who will be engaged in the performance of any Federal award.

§ 1401.315 What must I include in my drug-free awareness program?

You must establish an ongoing drug-free awareness program to inform employees about—

(a) The dangers of drug abuse in the workplace;

(b) Your policy of maintaining a drug-free workplace;

(c) Any available drug counseling, rehabilitation, and employee assistance programs; and

(d) The penalties that you may impose upon them for drug abuse violations occurring in the workplace.

§ 1401.320 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?

If you are a new recipient that does not already have a policy statement as described in § 1401.305 and an ongoing

awareness program as described in § 1401.315, you must publish the statement and establish the program by the time given in the following table:

If . . .	then you . . .
(a) The performance period of the award is less than 30 days	must have the policy statement and program in place as soon as possible, but before the date on which performance is expected to be completed.
(b) The performance period of the award is 30 days or more	must have the policy statement and program in place within 30 days after award.
(c) You believe there are extraordinary circumstances that will require more than 30 days for you to publish the policy statement and establish the awareness program.	may ask the Department of the Interior awarding official to give you more time to do so. The amount of additional time, if any, to be given is at the discretion of the awarding official.

§ 1401.325 What actions must I take concerning employees who are convicted of drug violations in the workplace?

There are two actions you must take if an employee is convicted of a drug violation in the workplace:

(a) First, you must notify Federal agencies if an employee who is engaged in the performance of an award informs you about a conviction, as required by § 1401.305(c)(2), or you otherwise learn of the conviction. Your notification to the Federal agencies must—

(1) Be in writing;

(2) Include the employee's position title;

(3) Include the identification number(s) of each affected award;

(4) Be sent within ten calendar days after you learn of the conviction; and

(5) Be sent to every Federal agency on whose award the convicted employee was working. It must be sent to every awarding official or his or her official designee, unless the Federal agency has specified a central point for the receipt of the notices.

(b) Second, within 30 calendar days of learning about an employee's conviction, you must either—

(1) Take appropriate personnel action against the employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, 29 U.S.C. 794, as amended; or

(2) Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for these purposes by a Federal, State or local health, law enforcement, or other appropriate agency.

§ 1401.330 How and when must I identify workplaces?

(a) You must identify all known workplaces under each DOI award. A failure to do so is a violation of your drug-free workplace requirements. You may identify the workplaces—

(1) To the DOI official that is making the award, either at the time of application or upon award; or

(2) In documents that you keep on file in your offices during the performance of the award, in which case you must make the information available for inspection upon request by DOI officials or their designated representatives.

(b) Your workplace identification for an award must include the actual address of buildings (or parts of buildings) or other sites where work under the award takes place. Categorical descriptions may be used (*e.g.,* all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

(c) If you identified workplaces to the DOI awarding official at the time of application or award, as described in paragraph (a)(1) of this section, and any workplace that you identified changes during the performance of the award, you must inform the DOI awarding official.

§ 1401.335 Whom in the DOI does a recipient other than an individual notify about a criminal drug conviction?

The DOI is not designating a central location for the receipt of these reports. Therefore you shall provide this report to every grant officer, or other designee within a bureau or office of the Department on whose grant activity the convicted employee was working.

Subpart D—Requirements for Recipients Who Are Individuals

§ 1401.400 What must I do to comply with this part if I am an individual recipient?

As a condition of receiving a DOI award, if you are an individual recipient, you must agree that—

(a) You will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity related to the award; and

(b) If you are convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity, you will report the conviction:

(1) In writing.

(2) Within 10 calendar days of the conviction.

(3) To the Department of the Interior awarding official or other designee for each award that you currently have, unless § 1401.401 or the award document designates a central point for the receipt of the notices. When notice is made to a central point, it must include the identification number(s) of each affected award.

§ 1401.401 Whom in the DOI does a recipient who is an individual notify about a criminal drug conviction?

The DOI is not designating a central location for the receipt of these reports. Therefore you shall provide this report to every grant officer, or other designee within a bureau or office of the Department on whose grant activity the convicted employee was working.

Subpart E—Responsibilities of DOI Awarding Officials

§ 1401.500 What are my responsibilities as a DOI awarding official?

To obtain a recipient's agreement to comply with applicable requirements in the OMB guidance at 2 CFR part 182, you must include the following term or condition in the award:

Drug-free workplace. You, as the recipient, must comply with drug-free workplace requirements in subpart B (or subpart C, if the recipient is an individual) of part 1401, which adopts the government-wide implementation of 2 CFR part 182; sections 5152–5158 of the Drug-Free Workplace Act of 1988, Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701–707.

Subpart F—Violations of this Part and Consequences

§ 1401.600 How are violations of this part determined for recipients other than individuals?

A recipient other than an individual is in violation of the requirements of this part if the Director, PAM determines, in writing, that—

(a) The recipient has violated the requirements of subpart B of this part; or

(b) The number of convictions of the recipient's employees for violating criminal drug statutes in the workplace is large enough to indicate that the recipient has failed to make a good faith effort to provide a drug-free workplace.

§ 1401.605 How are violations of this part determined for recipients who are individuals?

An individual recipient is in violation of the requirements of this part if the Director, PAM determines, in writing, that—

(a) The recipient has violated the requirements of subpart C of this part; or

(b) The recipient is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity.

§ 1401.610 What actions will the Federal Government take against a recipient determined to have violated this part?

If a recipient is determined to have violated this part, as described in § 1401.600 or § 1401.605, DOI may take one or more of the following actions—

(a) Suspension of payments under the award;

(b) Suspension or termination of the award; and

(c) Suspension or debarment of the recipient under 2 CFR part 180, for a period not to exceed five years.

§ 1401.615 Are there any exceptions to those actions?

The Secretary of the Interior may waive with respect to a particular award, in writing, a suspension of payments under an award, suspension or termination of an award, or suspension or debarment of a recipient if the Secretary of the Interior determines that such a waiver would be in the public interest. This exception authority cannot be delegated to any other official.

TITLE 43—PUBLIC LANDS

■ 2. In title 43, remove part 43.

[FR Doc. 2010–29371 Filed 11–19–10; 8:45 am]

BILLING CODE 4310–RK–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

12 CFR Part 1101

[FFIEC–2010–0002]

Description of Office, Procedures, and Public Information

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Final rule.

SUMMARY: The Federal Financial Institutions Examination Council (Council or FFIEC), on behalf of its members, is amending its Freedom of Information Act (FOIA) regulations. Among other things, this final rule revises the procedures to be used by members of the public in requesting records maintained by the Council, the time limits in which the Council must make a determination on disclosure in response to a request for records, and the time period in which a requester has the right to administratively appeal any adverse determination made on a request for records, and provides procedures to be used to request expedited processing of FOIA requests.

DATES: Effective November 22, 2010.

FOR FURTHER INFORMATION CONTACT: Paul Sanford, Executive Secretary, Federal Financial Institutions Examination Council, via telephone: (703) 516–5590, or via e-mail: *PaSanford@FDIC.gov.*

SUPPLEMENTARY INFORMATION: The Council is publishing a final rule revising its regulations implementing the FOIA. On September 3, 2010, the Council published for comment a notice of proposed rulemaking (NPRM) in the **Federal Register** that proposed revisions to the Council's regulations at 12 CFR part 1101, implementing the FOIA, 5 U.S.C. 552, as amended. 75 FR 54052, September 3, 2010. Interested persons were afforded an opportunity to participate in the rulemaking process through submission of written comments on the NPRM. The Council received no public comments. The Council has reviewed the proposed regulations and adopts them in this final rule.

I. Background

The Council makes a number of substantive and technical changes to its regulations implementing the FOIA (5 U.S.C. 552, as amended) that fall within two general categories. First, the Council modifies its existing regulations to reflect the amendments to the FOIA contained in the Electronic Freedom of Information Act Amendments of 1996, Public Law 104–231, 110 Stat. 3048, and the OPEN Government Act, Public Law 110–175, 121 Stat. 2524. The Electronic Freedom of Information Act Amendments increased the FOIA's basic time limit for agency responses to FOIA requests, and provided for expedited processing of FOIA requests under certain conditions, among other procedural revisions. The OPEN Government Act also amended various FOIA administrative procedures, such as when an agency may toll the statutory time for responding to FOIA requests, and how to indicate exemptions authorizing deletion of materials under the FOIA on a responsive record.

Second, the Council revises its regulations to further clarify its policies and procedures relating to the processing of FOIA requests and the administration of its FOIA operations.

II. Section-by-Section Analysis

In 12 CFR 1101.3(e), the Council revises the paragraph by providing the current address of the Council's offices.

In 12 CFR 1101.4(a), the Council revises the paragraph by providing the current address of the Council's offices and clarifying that Council policies and interpretations may be withheld from disclosure under exemptions to the FOIA.

In 12 CFR 1101.4(b), the Council revises the wording of the section heading.

In 12 CFR 1101.4(b)(1), the Council revises the wording of the paragraph to explain that Council records that are not published in the **Federal Register** or available for inspection and copying at the Council's offices are available to the public upon request, except to the extent that such records are exempt from disclosure under the FOIA.

In 12 CFR 1101.4(b)(1)(i), the Council capitalizes the word "Order" when referring to an Executive Order.

In 12 CFR 1101.4(b)(1)(v), the Council adds language to protect from disclosure records of deliberations and meetings of the Council, its committees, and staff, that are not subject to the Government in the Sunshine Act, 5 U.S.C. 552b.

In 12 CFR 1101.4(b)(1)(vii), the Council revises the paragraph by substituting a reference to the statutory citation for Exemption 7 of the FOIA, 5 U.S.C. 552(b)(7), for the list of the specific substantive provisions of the exemption in the existing regulation. In addition, the term "state or federal" has been inserted to clarify that records of state financial regulatory agencies in the possession of the Council are exempt from disclosure under Exemption 7, as are the records of federal regulatory agencies.

In 12 CFR 101.4(b)(1)(viii), the Council revises the paragraph by eliminating a listing of the types of financial institutions covered by Exemption 8 of the FOIA, 5 U.S.C. 552(b)(8), and inserting the term "state or federal" to clarify that records of state financial regulatory agencies in the possession of the Council are exempt from disclosure under Exemption 8.

In 12 CFR 1101.4(b)(2), the Council revises the heading to reflect current FOIA terminology concerning discretionary releases of exempt information.

In 12 CFR 1101.4(b)(3)(i), the Council revises the paragraph to provide the current address of the Council's offices, to allow the submission of FOIA requests by facsimile and e-mail, and to require that requests reasonably describe the records sought.

In 12 CFR 1101.4(b)(3)(ii) the Council revises the paragraph to specify the information that a request must contain in order to be considered a "proper FOIA request" (*i.e.,* a request to which a response is required). In addition, the Council revises the paragraph to require a requester to identify whether the information sought by a FOIA request is requested for commercial use, and whether the requester is an educational or noncommercial scientific institution, or news media representative, and to address the payment of fees.

In 12 CFR 1101.4(b)(3)(iii), the Council modifies the language of the paragraph to clarify that the Council need not accept or process a defective FOIA request, and to provide that such a request may be returned to the requester specifying the deficiency.

In 12 CFR 1101.4(b)(3)(iv), the Council adds a procedure to request the expedited treatment of FOIA requests. A requester seeking to have the processing of a request expedited must show a compelling need for expedited processing.

In 12 CFR 1101.4(b)(3)(v), the Council revises its procedures to increase the time limit in which the Council must respond to a FOIA request from 10 working days to 20 working days in accordance with the Electronic Freedom of Information Act Amendments, and to clarify what information the Council's response to a FOIA request must contain.

In 12 CFR 1101.4(b)(3)(vi), the Council revises the paragraph to shorten the time period in which an administrative appeal of a denied request may be brought from 35 calendar days to 10 working days, to provide for the filing of administrative appeals by facsimile, and to update the mailing address of the Council.

In 12 CFR 1101.4(b)(3)(vii), the Council revises the paragraph to clarify that the time in which the Council has to respond to an appeal runs from the actual receipt of the appeal by the Executive Secretary of the Council.

In 12 CFR 1101.4(b)(4)(i), the Council designates the existing paragraph, 12 CFR 1101.4(b)(4), as paragraph 1101.4(b)(4)(i), and makes a minor grammatical change to the language of the paragraph.

The Council adds 12 CFR 1101.4(b)(4)(ii), which provides that if the responsive records are to be delivered to the requester, they will be mailed to the requester unless the Executive Secretary of the Council determines that it is appropriate to send the records by some other means.

The Council adds 12 CFR 1101.4(b)(4)(iii), which indicates that the Council will provide a copy of a responsive record in the format requested by the requester if the record is "readily reproducible" in that format.

The Council adds 12 CFR 1101.4(b)(4)(iv) to permit records to be provided electronically, and to provide that if the information is subject to the Privacy Act, 5 U.S.C. 552a, it will not be sent electronically unless "reasonable security measures" can be established.

In 12 CFR 1101.4(b)(5)(i)(C), the Council revises the definition of the term "Duplication" to provide examples of the forms of document reproduction that may be used by the Council.

In 12 CFR 1101.4(b)(5)(i)(D), the Council makes a minor change to the wording of the paragraph replacing the character "§" with the word "section".

In 12 CFR 1101.4(b)(5)(i)(E), the Council adds a provision to allow the Executive Secretary of the Council to consider the use to which the requester will put the records, and to seek additional information on the use, if necessary, in order to determine whether a particular FOIA request is a "commercial use request".

In 12 CFR 1101.4(b)(5)(i)(G), the Council makes a minor change to the wording of the paragraph replacing the character "§" with the word "section".

In 12 CFR 1101.4(b)(5)(i)(H), the Council revises its definition of "Representative of the news media" to reflect the definition provided in the OPEN Government Act, 5 U.S.C 552(a)(4)(A)(ii).

In 12 CFR 1101.4(b)(5)(ii)(C)(2), the Council adds computer disks to the list of examples indicating the types of materials for which a requester will be charged a fee.

In 12 CFR 1101.4(b)(5)(ii)(F), the Council revises the paragraph to provide examples of "special services" for which additional fees may be charged.

In 12 CFR 1101.4(b)(5)(ii)(H), the Council revises the procedures for requesting a waiver or reduction of fees. The revisions include eliminating the list of factors to be considered by the Council in determining whether the public interest requirement is met, requiring a requester to state a justification for a waiver or reduction of fees, and providing a right to administratively appeal the denial of a request for a waiver or reduction of fees.

In 12 CFR 101.4(b)(5)(iii)(A), the Council makes a minor grammatical change to the language of the paragraph.

In 12 CFR 101.4(b)(5)(iv), the Council makes a minor change to the statutory citation contained in the paragraph.

In 12 CFR 1101.4(b)(5)(vii)(B), the Council makes a minor change to the wording of the paragraph replacing the character "§" with the word "section".

In 12 CFR 1101.4(b)(5)(vii)(C), the Council revises the paragraph by replacing the character "§" with the word "section," and by increasing the limit stated in the parenthetical phrase to 20 working days in accordance with subsection (a)(6) of the FOIA, 5 U.S.C. 552(a)(6).

In 12 CFR 1101.4(b)(6), the Council revises the paragraph to provide that referral or consultation with another agency is appropriate whenever the requested record originated with, or incorporates the information of, another state or federal agency.

III. Analysis of Comments Received

The Council received no comments on the proposed rules.

IV. Regulatory Analysis and Procedure

A. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) (RFA), the Council certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The final rule addresses only the procedures to be followed to request records of the Council. Small entities, like any other individual or entity, may request information from the Council pursuant to the FOIA that has not been generally made available to the public. Under the FOIA, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processed for certain categories of requesters. The Council's fee structure is in accordance with Department of Justice and Office of Management and Budget (OMB) guidelines, and is based upon the category of requester. Thus, fees assessed by the Council are nominal and will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA.

B. Paperwork Reduction Act

The Council has determined that the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* does not apply because these rules do not contain any information collection requirements that require the approval of the OMB.

C. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The Council has determined that the final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

D. Small Business Regulatory Enforcement Fairness Act

OMB has determined that the rule is not a "major rule" within the meaning of the relevant sections of the Small Business Regulatory Enforcement Act of 1996 (SBREFA) (5 U.S.C. 801 *et seq.*). As required by SBREFA, the Council will file the appropriate reports with Congress and the General Accounting Office so that the rule may be reviewed.

E. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Council received no comment on plain language. Nevertheless, the Council has sought to present the final rule in a simple, comprehensible, and straightforward manner.

Lists of Subjects in 12 CFR Part 1101

Freedom of information, FOIA exemptions, Schedule of fees, Waivers or reductions of fees.

■ For the reasons set forth in the preamble, the Council amends 12 CFR part 1101 as follows:

PART 1101—DESCRIPTION OF OFFICE, PROCEDURE, PUBLIC INFORMATION

■ 1. The authority citation for part 1101 continues to read as follows:

Authority: 5 U.S.C. 552; 12 U.S.C. 3307.

■ 2. Section 1101.3 is amended by revising paragraph (e) to read as follows:

§ 1101.3 Organization and methods of operation.

* * * * *

(e) *Council address.* Council offices are located at 3501 Fairfax Drive, Room B–7081a, Arlington, VA, 22226–3550.

■ 3. Section 1101.4 is amended:

■ a. By revising paragraph (a);

■ b. By revising the heading for paragraph (b) and paragraphs (b)(1) introductory text, (b)(1)(i), (v), (vii), and (viii);

■ c. By revising paragraphs (b)(2), (3), and (4);

■ d. By revising paragraphs (b)(5)(i)(C), (D), (E), (G), and (H) and (b)(5)(ii)(C)(*2*), (F), and (H); and

■ e. By revising paragraphs (b)(5)(iii)(A), (b)(5)(iv), (b)(5)(vii)(B), (C), and (b)(6).

The revisions read as follows:

§ 1101.4 Disclosure of information, policies, and records.

(a) *Statements of policy published in the Federal Register or available for public inspection and copying; indices.* Under 5 U.S.C. 552(a)(1), the Council publishes general rules, policies and interpretations in the **Federal Register.** Under 5 U.S.C. 552(a)(2), policies and interpretations adopted by the Council, including instructions to Council staff affecting members of the public, and an index to the same, are available for public inspection and copying at the office of the Executive Secretary of the Council, 3501 Fairfax Drive, Room B–7081a, Arlington, VA, 22226–3550, during regular business hours. Policies and interpretations of the Council may be withheld from disclosure under the principles stated in paragraph (b)(1) of this section.

(b) *Other records of the Council available to the public upon request; procedures*—(1) *General rule and exemptions.* Under 5 U.S.C. 552(a)(3), all other records of the Council are available to the public upon request, except to the extent exempted from disclosure as provided in this paragraph (b). Except as specifically authorized by the Council, the following records, and portions thereof, are not available to the public: (i) A record, or portion thereof, which is specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and which is, in fact, properly classified pursuant to such Executive Order.

* * * * *

(v) An intra-agency or interagency memorandum or letter that would not be routinely available by law to a private party in litigation, including, but not limited to, memoranda, reports, and other documents prepared by the personnel of the Council or its constituent agencies, and records of deliberations of the Council and discussions of meetings of the Council, any Council Committee, or Council staff, that are not subject to 5 U.S.C. 552b (the Government in the Sunshine Act).

* * * * *

(vii) Records or information compiled for law enforcement purposes, to the extent permitted under 5 U.S.C. 552(b)(7), including records relating to a proceeding by a financial institution's state or federal regulatory agency for the issuance of a cease-and-desist order, or order of suspension or removal, or assessment of a civil money penalty and the granting, withholding, or revocation of any approval, permission, or authority. (viii) A record, or portion thereof, containing, relating to, or derived from an examination, operating, or condition report prepared by, or on behalf of, or for the use of any state or federal agency directly or indirectly responsible for the regulation or supervision of financial institutions.

* * * * *

(2) *Discretionary release of exempt information.* Notwithstanding the applicability of an exemption, the Council or the Council's designee may elect, under the circumstances of a particular request, to disclose all or a portion of any requested record where permitted by law. Such disclosure has no precedential significance.

(3) *Procedure for records request*—(i) *Initial request.* Requests for records shall be submitted in writing to the Executive Secretary of the Council:

(A) By sending a letter to: FFIEC, Attn: Executive Secretary, 3501 Fairfax Drive, Room B–7081a, Arlington, VA 22226–3550. Both the mailing envelope and the request should be marked "Freedom of Information Request," "FOIA Request," or the like; or

(B) By facsimile clearly marked "Freedom of Information Act Request," "FOIA Request," or the like to the Executive Secretary at (703) 562–6446; or

(C) By e-mail to the address provided on the FFIEC's World Wide Web page, found at: *http://www.ffiec.gov.* Requests must reasonably describe the records sought.

(ii) *Contents of request.* All requests should contain the following information:

(A) The name and mailing address of the requester, an electronic mail address, if available, and the telephone number at which the requester may be reached during normal business hours;

(B) A statement as to whether the information is intended for commercial use, and whether the requester is an educational or noncommercial scientific institution, or news media representative;

(C) A statement agreeing to pay all applicable fees, or a statement identifying any desired fee limitation, or a request for a waiver or reduction of fees that satisfies paragraph (b)(5)(ii)(H) of this section.

(iii) *Defective requests.* The Council need not accept or process a request that does not reasonably describe the records requested or that does not otherwise comply with the requirements of this section. The Executive Secretary may return a defective request specifying the deficiency. The requester may submit a corrected request, which will be treated as an initial request.

(iv) *Expedited processing.* (A) Where a person requesting expedited access to records has demonstrated a compelling need for the records, or where the Executive Secretary has determined to expedite the response, the Executive Secretary shall process the request as soon as practicable. To show a compelling need for expedited processing, the requester shall provide a statement demonstrating that:

(*1*) Failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(*2*) The requester is primarily engaged in information dissemination as a main professional occupation or activity, and there is urgency to inform the public of the government activity involved in the request.

(B) The requester's statement must be certified to be true and correct to the best of the person's knowledge and belief and explain in detail the basis for requesting expedited processing.

(C) The formality of the certification required to obtain expedited treatment may be waived by the Executive Secretary as a matter of administrative discretion.

(v) *Response to initial requests.* (A) Except where the Executive Secretary has determined to expedite the processing of a request, the Executive Secretary will respond by mail or electronic mail to all properly submitted initial requests within 20 working days of receipt. The time for response may be extended up to 10 additional working days, as provided in 5 U.S.C. 552(a)(6)(B), or for other periods by agreement between the requester and the Executive Secretary.

(B) In response to a request that reasonably describes the records sought and otherwise satisfies the requirements of this section, a search shall be conducted of records in existence and maintained by the Council on the date of receipt of the request, and a review made of any responsive information located. The Executive Secretary shall notify the requester of:

(*1*) The Executive Secretary's determination of the response to the request;

(*2*) The reasons for the determination;

(*3*) If the response is a denial of an initial request or if any information is withheld, the Executive Secretary will advise the requester in writing:

(*i*) If the denial is in part or in whole;

(*ii*) The name and title of each person responsible for the denial (when other than the person signing the notification);

(*iii*) The exemptions relied on for the denial; and

(*iv*) The right of the requester to appeal the denial to the Chairman of the Council within 10 working days following the date of issuance of the notification, as specified in paragraph (b)(3)(vi) of this section.

(vi) *Appeals of responses to initial requests.* If a request is denied in whole or in part, the requester may appeal in writing, within 10 working days of the date of issuance of a denial determination. Appeals shall be submitted to the Chairman of the Council: (A) By sending a letter to: FFIEC, Attn: Executive Secretary, 3501 Fairfax Drive, Room B–7081a, Arlington, VA, 22226–3550. Both the mailing envelope and the request should be marked "Freedom of Information Act Appeal," "FOIA Appeal," or the like; or (B) By facsimile clearly marked "Freedom of Information Act Appeal," "FOIA Appeal," or the like to the Executive Secretary at (703) 562–6446. Appeals should refer to the date and tracking number of the original request and the date of the Council's initial ruling. Appeals should include an explanation of the basis for the appeal.

(vii) *Council response to appeals.* The Chairman of the Council, or another member designated by the Chairman, will respond to all properly submitted appeals within 20 working days of actual receipt of the appeal by the Executive Secretary. The time for response may be extended up to 10 additional working days, as provided in 5 U.S.C. 552(a)(6)(B), or for other periods by agreement between the requester and the Chairman or the Chairman's designee.

(4) *Procedure for access to records if request is granted.* (i) When a request for access to records is granted, in whole or in part, a copy of the records to be disclosed will be promptly delivered to the requester or made available for inspection, whichever was requested. Inspection of records, or duplication and delivery of copies of records will be arranged so as not to interfere with their use by the Council and other users of the records.

(ii) When delivery to the requester is to be made, copies of requested records shall be sent to the requester by regular U.S. mail to the address indicated in the request, unless the Executive Secretary deems it appropriate to send the documents by another means.

(iii) The Council shall provide a copy of the record in any form or format requested if the record is readily reproducible by the Council in that form or format, but the Council need not provide more than one copy of any record to a requester.

(iv) By arrangement with the requester, the Executive Secretary may elect to send the responsive records electronically if a substantial portion of the records is in electronic format. If the information requested is subject to disclosure under the Privacy Act of 1974, 5 U.S.C. 552a, it will not be sent by electronic means unless reasonable security measures can be established.

(5) * * *

(i) * * *

(C) *Duplication* means the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microfilm, audiovisual records, or machine readable records (*e.g.*, magnetic tape or computer disk).

(D) *Review* means the process of examining documents located in response to a request that is for a commercial use (*see* paragraph (b)(5)(i)(E) of this section) to determine whether any portion of any document located is permitted to be withheld and processing such documents for disclosure.

(E) *Commercial use request* means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a request falls within this category, the Executive Secretary will determine the use to which a requester will put the records requested and seek additional information as the Executive Secretary deems necessary.

* * * * *

(G) *Noncommercial scientific institution* means an institution that is not operated on a "commercial" basis as that term is referenced in paragraph (b)(5)(i)(E) of this section, and which is operated solely for the purposes of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(H) *Representative of the news media* means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a

distinct work, and distributes that work to an audience. In this clause, the term "news" means information that is about current events or that would be of current interest to the public. Examples of news-media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of "news") who make their products available for purchase by or subscription by or free distribution to the general public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; the Council may also consider the past publication record of the requester in making such a determination.

* * * * *

(ii) * * *

(C) * * *

(*2*) The fee for documents generated by computer is the hourly rate for the computer operator (at GS 7, step 5, plus 16 percent for benefits if clerical staff, and GS 13, step 5, plus 16 percent for benefits if professional staff) plus the cost of materials (computer paper, tapes, disks, labels, etc.).

* * * * *

(F) *Other services.* Complying with requests for special services such as certifying records as true copies or mailing records by express mail is entirely at the discretion of the Council. The Council will recover the full costs of providing such services to the extent it elects to provide them.

* * * * *

(H) *Waiving or reducing fees.* As part of the initial request for records, a requester may ask that the Council waive or reduce fees if disclosure of the records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Council and is not primarily in the commercial interest of the requester. The initial request for records must also state the justification for a waiver or reduction of fees. Determinations as to a waiver or reduction of fees will be made by the Executive Secretary of the Council and the requester will be notified in writing of his/her determination. A determination not to grant a request for a waiver or reduction of fees under this paragraph may be appealed to the Chairman of the Council pursuant to the procedure set forth in paragraph (b)(3)(vi) of this section.

(iii) *Categories of requesters.* (A) Commercial use requesters. The Council will assess fees for commercial use requesters sufficient to recover the full direct costs of searching for, reviewing for release, the duplicating the records sought.

* * * * *

(iv) *Interest on unpaid fees.* The Council may begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the bill was sent. Interest will be at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of the billing.

* * * * *

(vii) * * *

(B) A requester has previously failed to pay a fee charged in a timely fashion. The Council may require the requester to pay the full amount owed plus any applicable interest as provided in paragraph (b)(5)(iv) of this section or demonstrate that he/she has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before the Council begins to process a new request or a pending request from that requester.

(C) When the Council acts under paragraph (b)(5)(vii) (A) or (B) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (*i.e.,* 20 working days from receipt of initial requests, plus permissible extensions of these time limits) will begin only after the Council has received the fee payments described.

(6) *Records of another agency.* If a requested record originated with or incorporates the information of another state or federal agency or department, upon receipt of a request for the record the Council will promptly inform the requester of this circumstance and immediately shall forward the request to the originating agency or department either for processing in accordance with the latter's regulations or for guidance with respect to disposition.

Dated at Arlington, Virginia, November 16, 2010.

Federal Financial Institutions Examination Council.

Paul Sanford,

Executive Secretary.

[FR Doc. 2010–29282 Filed 11–19–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 526

[Docket No. FDA–2010–N–0002]

Intramammary Dosage Form New Animal Drugs; Cloxacillin Benzathine

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplementary new animal drug application (NADA) filed by Boehringer Ingelheim Vetmedica, Inc. The supplement provides for minor revisions to labeling.

DATES: This rule is effective November 22, 2010.

FOR FURTHER INFORMATION CONTACT: Cindy L. Burnsteel, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8341, e-mail: *cindy.burnsteel@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Boehringer Ingelheim Vetmedica, Inc., 2621 North Belt Highway, St. Joseph, MO 64506–2002 has filed a supplement to NADA 55–058 for DRY-CLOX (cloxacillin benzathine) Intramammary Infusion for dry dairy cattle. The supplemental NADA provides for various minor revisions to labeling. The supplemental application is approved as of October 21, 2010, and the regulations in § 526.464a (21 CFR 526.464a) are amended to reflect the approval.

In addition, FDA has noticed that certain portions of § 526.464a were inadvertently removed when the regulations were amended to reflect a change of sponsorship (75 FR 10165, March 5, 2010). At this time, the regulations are being amended to reflect fully the approved conditions of use of this new animal drug product. This change is being made to improve the accuracy of the animal drug regulations.

Approval of this supplemental NADA did not require review of additional safety or effectiveness data or information. Therefore, a freedom of information summary is not required. The Agency has determined under 21 CFR 25.33 that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment

nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 526

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 526 is amended as follows:

PART 526—INTRAMAMMARY DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 526 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Revise the heading for part 526 to read as set forth above.

■ 3. In § 526.464a, revise paragraph (c) to read as follows:

§ 526.464a Cloxacillin benzathine.

* * * * *

(c) *Sponsor.* See No. 000010 in § 510.600(c) of this chapter for use in dairy cows.

(1) *Amount.* Administer aseptically into each quarter immediately after last milking.

(2) *Indications for use.* For the treatment of mastitis caused by *Staphylococcus aureus* and *Streptococcus agalactiae* including penicillin resistant strains in dairy cows during the dry period.

(3) *Limitations.* For use in dry cows only. Not to be used within 30 days of calving. Animals infused with this product must not be slaughtered for food use for 30 days after the latest infusion. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: November 16, 2010.

Elizabeth Rettie,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 2010–29326 Filed 11–19–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2010–0972]

Drawbridge Operation Regulations; Bayou Liberty, St. Tammany Parish, Slidell, LA

AGENCY: Coast Guard, DHS.

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

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the S433 bridge over Bayou Liberty, mile 2.0, St. Tammany Parish, Slidell, LA. This deviation will test a change to the drawbridge operation schedule to determine whether a permanent change to the schedule is needed. It will allow the bridge to remain unmanned during most of the day by requiring a two-hour notice for an opening of the draw. This deviation will be in conjunction with a Notice of Proposed Rulemaking to make this deviation permanent.

DATES: This deviation is effective from December 7, 2010 through January 6, 2011.

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

ADDRESSES: You may submit comments identified by docket number USCG–2010–0972 using any one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.
- *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Jim Wetherington; Bridge Administration Branch, Eighth Coast Guard District, telephone 504–671–2128, e-mail *james.r.wetherington@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

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

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2010–0972), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (*http://www.regulations.gov*), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2010–0972," click "Search," and then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2010–0972" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

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

Public Meeting

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

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact Jim Wetherington at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Basis and Purpose

The subject bridge is the S443 Swing Bridge across the Bayou Liberty at mile 2.0, in St. Tammany Parish. The vertical clearance is 7.59 feet (2.31m) above the 2% flowline, elevation 2.5 feet (0.76m) NAVD 1988.

Presently, under 33 CFR 117.469, the draw of the S433 Bridge, mile 2.0, at Slidell, shall open on signal, except that between 7 p.m. and 7 a.m., the draw shall open on signal if at least two hours notice is given.

The owner requests a test to allow the public to experience the new schedule and determine if the two hour advance notice is sufficient. The current regulation has been in effect since 2008; however, the bridge for which the regulation was in place (a pontoon bridge) no longer exists. With the completion of the new bridge (a swing bridge) in April 2010, there has been an average of less than one opening per month, which is down from an average of 70 per month in previous years. Currently the land traffic outpaces marine traffic but most all traffic is local and marine traffic is recreational. Vessels will be able to pass under the bridge during the deviation and therefore no alternate routes are recommended at this time.

This request is in conjunction with a Notice of Proposed Rulemaking to make the test deviation schedule changes permanent.

This deviation is effective from December 7, 2010 through January 6, 2011.

Vessel counts were collected and analyzed by the owner and reflect a marked reduction in the number of required openings since the completion of the new bridge and removal of the old one. The expected impact on navigation during the test period will be minimal based on the increase in vertical clearance. The test deviation will allow the bridge to remain unmanned during most of the day by requiring a two-hour notice for an opening of the draw.

Coordination will be through Public Notice and Local Notice to Mariners upon date of publication in the **Federal Register**.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period.

This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 26, 2010.

David M. Frank,

Bridge Administrator.

[FR Doc. 2010–29299 Filed 11–19–10; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2006–0649–201059; FRL–9229–5]

Approval and Promulgation of Implementation Plans; Georgia; Prevention of Significant Deterioration and Nonattainment New Source Review Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve portions of the revisions to the Georgia State Implementation Plan (SIP) submitted by the State of Georgia in three submittals dated October 31, 2006, March 5, 2007, and August 22, 2007. The revisions modify Georgia's Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) permitting rules in the SIP to address changes to the federal New Source Review (NSR) regulations, which were promulgated by EPA on December 31, 2002, and reconsidered with minor changes on November 7, 2003 (collectively, these two final actions are referred to as the "2002 NSR Reform Rules"). EPA proposed to approve these revisions on September 4, 2008; one comment letter was received. EPA's response to comments is included in this notice.

DATES: This rule will be effective December 22, 2010.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2006–0649. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Kelly Fortin, Air Permits Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303. Telephone number: (404) 562–9117; e-mail address: *fortin.kelly@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, references

to "EPA," "we," "us," or "our," are intended to mean the U.S. Environmental Protection Agency. The supplementary information is arranged as follows:

I. What action is EPA taking?
II. What is the background for EPA's action?
III. Response to Comments
IV. Final Action
V. Statutory and Executive Order Reviews

I. What action is EPA taking?

EPA is now taking action, consistent with section 110(k)(3) of the Clean Air Act (CAA or Act), to approve portions of SIP submittals made by the State of Georgia, through the Georgia Environmental Protection Division (EPD), on October 31, 2006, March 5, 2007, and August 22, 2007. These SIP submittals consist of changes to the Georgia Rules for Air Quality Control, Chapter 391–3–1. Specifically, the October 31, 2006, revisions included changes to Rules 391–3–1–.02(7) "Prevention of Significant Deterioration of Air Quality" and 391–3–1–.03(8)(c) "Permit Requirements" related to NNSR. The March 5, 2007, submittal included changes to Rules 391–3–1–.02(7) "Prevention of Significant Deterioration of Air Quality," and 391–3–1–.03(13)(c) "Emission Reduction Credits." Finally, the August 22, 2007, submittal included changes to Rules 391–3–1–.02(7) "Prevention of Significant Deterioration of Air Quality," and 391–3–1–.03(8) "Permit Requirements."

EPA approved most of the non-NSR Reform portions of the submittals (rules 391–3–1–.01(llll), 391–3–1–.02(2)(jjj), 391–3–1–.02(6)(a)4, 391–3–1–.02(12), and 391–3–1–.03(6)(b)) in a previous action (74 FR 62249, November 27, 2009). EPA has not yet acted on rule 391–3–1–.02(2)(ooo). In addition, EPA is not acting on revisions to rules 391–3–1–.02(8)b, and 391–3–1–.03(9), because these rules are not part of the federally-approved SIP. EPA disapproved a portion of the March 5, 2007, submittal, subparagraph 391–3–1–.03(13)(c), related to "Emissions Reduction Credits," in a previous action (73 FR 79653, December 30, 2008).

II. What is the background for EPA's action?

On December 31, 2002 (67 FR 80186), EPA published final rule changes to 40 Code of Federal Regulations (CFR) parts 51 and 52, regarding the CAA's PSD and NNSR programs. On November 7, 2003 (68 FR 63021), EPA published a notice of final action on the reconsideration of the December 31, 2002, final rule changes. The December 31, 2002, and the November 7, 2003, final actions are collectively referred to as the "2002 NSR Reform Rules." For additional information on the 2002 NSR Reform Rules, see 67 FR 80186 (December 31, 2002). For information on the subsequent revisions to these rules, see *http://www.epa.gov/nsr.*

On October 31, 2006, March 5, 2007, and August 22, 2007, EPD submitted revisions to EPA for the purpose of including the revised State NSR permitting rules in the SIP. Copies of Georgia's revised NSR rules, as well as the State's Technical Support Document, can be obtained from the Docket, as discussed in the **ADDRESSES** section above.

On September 4, 2008 (73 FR 51606), EPA proposed to approve portions of the above-summarized SIP submittals as they pertain to Georgia's NSR program, with the exception of the revision to subparagraph 391–3–1–.03(13)(c), related to "Emissions Reduction Credits," which EPA proposed to disapprove.[1] In response to requests for an extension of the public comment period, EPA extended the public comment period on that proposal through November 6, 2008 (73 FR 58084). One comment letter was received and it contained adverse comments. EPA's response to this comment letter is below in section III, Response to Comments. EPA's analysis of the State's NSR reform SIP submittals is contained in the September 4, 2008, Notice of Proposed Rulemaking (NPR). The NPR, the comment letter, and additional information regarding this action may be obtained from the Docket, as discussed in the **ADDRESSES** section above.

III. Response to Comments

EPA received one comment letter from the National Resource Defense Council (NRDC) on the September 4, 2008, NPR; this letter included adverse comments. NRDC primarily commented on the requirements of the federal NSR rules, not Georgia's application of the federal requirements in its own rules. Notably, NRDC participated in litigation challenging EPA's 2002 promulgation of the NSR Reform Rules, where similar arguments were made by NRDC and dismissed by the DC Circuit Court. *New York* v. *EPA,* 413 F.3d 3 (DC Cir. 2005). NRDC's comments, including exhibits, do not raise any specific concerns with Georgia's rules, but rather, reiterate arguments made by NRDC to the DC Circuit regarding Sections 110(l) and 193 of the CAA.[2]

While NRDC's comments provide citations to five portions of the Georgia rules, the comments make no attempt to specifically explain or demonstrate how those identified provisions are inconsistent with either Section 110(l) or Section 193 of the CAA. Furthermore, NRDC provides no evidence supporting its allegations that approval of the specific provisions would result in a violation of the CAA or otherwise be "arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law." NRDC Comments at 2.

The NRDC comments include a list of 31 exhibits which the comment letter incorporates by reference into the comments. NRDC Comments at 1. The 31 exhibits appear to all be related to the DC Circuit Court case *New York* v. *EPA,* and were either submitted to that Court for review, or are relevant to that adjudication. To the extent that these exhibits were provided to the DC Circuit, those issues were previously resolved by the Court and/or already responded to by EPA in its responsive court papers. Any other documents included in the 31 exhibits that were not provided to the DC Circuit Court do not provide EPA with any comments specific to the Georgia rules at issue.

Despite the lack of Georgia-specific discussion in NRDC's letter, EPA has responded to the few comments that appear related to the September 4, 2008, NPR to approve portions of Georgia's SIP submittals pertaining to EPA's 2002 NSR Reform Rules.

Summary of Comments Regarding Section 110(l)—NRDC Comments at 1–6

NRDC stated that finalizing the EPA rulemaking proposal at issue here would violate section 110(l) of the Act. As support for its conclusion, NRDC asserted that "[t]he 2002 NSR Reform Rule provisions that were not vacated by the DC Circuit in *New York* v. *EPA* [citation omitted] allow previously-prohibited emissions-increases to occur." NRDC Comments at 3. Further, that "Georgia nevertheless made no

[1] EPA took final action to disapprove the revision to subparagraph 391–3–1–.03(13)(c), related to "Emissions Reduction Credits," in a previous action (73 FR 79653, December 30, 2008).

[2] NRDC notes that, "[t]he 2002 rule provisions considered by the DC Circuit in *New York* v. *EPA* were EPA regulations, not state ones. The court thus had no occasion to decide whether EPA could approve any state's versions of any of the 2002 rule provisions consistently with section 110(l) of the Act." NRDC Comments at 3. The Georgia rules at issue here track the federally approved rules, as upheld by the DC Circuit (which NRDC admits—NRDC Comments at 4) and NRDC supported all its comments with information related to the challenge of EPA's 2002 NSR Reform Rules. NRDC provided no Georgia-specific support for its comments.

'demonstration that the emissions that are allowed by its revised rule but are prohibited by the current SIP would not interfere with attainment or other applicable requirements.' " As a result, NRDC stated that, "it cannot be said of Georgia's plan that it 'will cause no degradation of air quality.' " NRDC Comments at 5. NRDC also stated that EPA has not made any findings that Georgia's rule will not cause degradation of air quality or interfere with any applicable requirements concerning attainment and reasonable further progress, or any other applicable requirements of the CAA. NRDC Comments at 5.

EPA Response to Section 110(l) Comments

EPA's 2002 NSR Reform Rules were upheld by the DC Circuit Court which reviewed them, with the exception of the pollution control project and clean unit provisions (and the remanded matters). The three significant changes in NSR Reform that were upheld by the DC Circuit were (1) Plantwide applicability limits (PALs), (2) the 2-in-10 baseline, and (3) the actual-to-projected actual emission test. The Supplemental Environmental Analysis of the Impact of the 2002 Final NSR Improvement Rules (November 21, 2002) (Supplemental Analysis) discussed each of these three changes individually, and addresses some of the issues raised by NRDC.

With regard to PALs, the Supplemental Analysis explained, "[t]he EPA expects that the adoption of PAL provisions will result in a net environmental benefit. Our experience to date is that the emissions caps found in PAL-type permits result in real emissions reductions, as well as other benefits." Supplemental Analysis at 6. EPA further explained that,

> Although it is impossible to predict how many and which sources will take PALs, and what actual reductions those sources will achieve for what pollutants, we believe that, on a nationwide basis, PALs are certain to lead to tens of thousands of tons of reductions of volatile organic compounds from source categories where frequent operational changes are made, where these changes are time-sensitive, and where there are opportunities for economical air pollution control measures. These reductions occur because of the incentives that the PAL creates to control existing and new units in order to provide room under the cap to make necessary operational changes over the life of the PAL.

Supplemental Analysis at 7. The Supplemental Analysis, and particularly Appendix B, provided additional details regarding EPA's analysis of PALs and anticipated associated emissions decreases.

With regard to the 2-in-10 baseline, EPA concluded that, "[t]he EPA believes that the environmental impact from the change in baseline EPA is now finalizing will not result in any significant change in benefits derived from the NSR program." Supplemental Analysis at 13. This is mainly because "the number of sources receiving different baselines likely represents a very small fraction of the overall NSR permit universe, excludes new sources and coal fired power plants, and because the baseline may shift in either direction, we conclude that any overall consequences would be negligible." Supplemental Analysis at 14. Additional information regarding the 2-in-10 baseline changes is available in the Supplemental Analysis, Appendix F.

With regard to the actual-to-projected actual test, EPA concluded, "we believe that the environmental impacts of the switch to the actual-to-projected actual test are likely to be environmentally beneficial. However, as with the change to the baseline, we believe the vast majority of sources, including new sources, new units, electric utility steam generating units, and units that actually increase emissions as a result of a change, will be unaffected by this change. Thus, the overall impacts of the NSR changes are likely to be environmentally beneficial, but only to a small extent." Supplemental Analysis at 14 (see also Supplemental Analysis Appendix G).

For more information on the 2002 NSR Reform Rules, and its supporting technical documents, see, *http://www.epa.gov/nsr/actions.html#2002* (last visited November 2, 2010).

Section 110(l) of the CAA states, in relevant part, that "[t]he Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress * * * or any other applicable requirement of this chapter." CAA, 42 U.S.C. 7410(l). In "Approval and Promulgation of Implementation Plans; New Source Review; State of Nevada, Clark County Department of Air Quality and Environmental Management," 69 FR 54006 (September 7, 2004), EPA stated that Section 110(l) does not preclude SIP relaxations. Rather, EPA stated that Section 110(l) only requires that the "relaxations not interfere with specified requirements of the Act including requirements for attainment and reasonable further progress," and that, therefore, a state can relax its SIP provisions if it is able to show that it can attain or maintain the National Ambient Air Quality Standards (NAAQS) and meet any applicable reasonable further progress goals or other specific requirements. 69 FR at 54011–12.

Georgia's Proposed NSR reform rules track the federal NSR Reform Rules, with enhancements, as described in Georgia's submittal. EPA evaluated Georgia's rules consistent with its evaluation of the federal rules, and determined that Georgia's rules were equivalent to or more stringent than the 2002 NSR Reform Rules. Overall, as summarized above, EPA expects that changes in air quality as a result of implementing Georgia's rules will be consistent with EPA's position on the federal NSR Reform Rules—that there will be somewhere between neutral and providing a modest contribution to reasonable further progress between the NSR Reform and pre-Reform provisions. EPA's analysis for the environmental impacts of the three components of the NSR Reform rules (discussed earlier) is informative of how Georgia's adoption of NSR Reform (based on the federal rules) will affect emissions. EPA has no reason to believe that the environmental impacts will be different from those discussed in the Supplemental Analysis for the NSR Reform rules, and thus, approval of Georgia's SIP revision would not be contrary to Section 110(l) of the CAA.

NRDC cites to five general portions of Georgia's rules as provisions that would violate Section 110(l). These provisions are: Administrative Code of Georgia (ACG) 391–3–1–.02(7)(a), (7)(b)15, and (7)(b)(21) (from Georgia's PSD rules); and 391–3–1–.03(8)(c) and (8)(g) (from Georgia's NNSR rules). NRDC Comments at 2. NRDC provides no evidence supporting its contention that these specific provisions violate Section 110(l). The first provision noted by NRDC, 391–3–1–.02(7)(a), represents general requirements regarding Georgia's PSD program, which do include some changes per the SIP revision at issue. Nonetheless, without further specificity, it is not clear why or how NRDC believes this provision is a violation of Section 110(l). In addition, NRDC has provided no Georgia-specific documentation that indicates that EPA's analysis and conclusions regarding the impact of NSR Reform, in the Supplemental Analysis, is not applicable to Georgia's rules, which are equivalent to or more stringent than the federal rules.

In evaluating Georgia's SIP submissions, EPA compared Georgia's rules with the existing federal rules and determined that Georgia's rules were

equivalent to or more stringent than the NSR reform (federal) rules. EPA also considered Georgia's approximately thirty enhancements to the federal NSR Reform provisions, including specific anti-backsliding provisions. This comparison was discussed in the proposal to approve Georgia's SIP revision. Georgia's anti-backsliding provisions are discussed in their SIP submittal and included in EPA's docket. EPA also considered Georgia's numerous responses to comments, included as part of the submittals, wherein Georgia discussed the two-year stakeholder process, as well as answered questions as to why it was including anti-backsliding provisions and discussed the NSR Reform changes in relation to their air quality program. Georgia determined that "the NAAQS, PSD increment, RFP demonstration and visibility will be protected if these SIP revisions are approved and implemented." See Technical Support for SIP Submittal dated August 4, 2007. Finally, EPA also considered the Supplemental Analysis in reviewing Georgia's submittal and NRDC's comments. EPA concluded that approval of Georgia's SIP revision would not be contrary to Section 110(l) of the CAA. Absent more explicit information demonstrating that Georgia's plan for implementation of a specific provision of its rules would interfere with any applicable requirement of the CAA and thus should be disapproved under Section 110(l), Georgia's Technical Support and the Supplemental Analysis support approval. As a result, there is no basis to determine that approval of Georgia's rules would violate Section 110(l).

Summary of Comments Regarding Section 193 of the CAA—NRDC Comments at 7–10

NRDC states that NSR is a "control requirement" and thus the requirements of Section 193 apply to the NSR rules at issue in the Georgia SIP revision. NRDC Comments at 7. NRDC further alleges that Georgia's revisions "ensure that emissions will not be reduced as much as under the pre-existing rules. In fact, the modifications allow emissions to increase in Georgia's nonattainment areas." NRDC Comments at 9. Finally, NRDC states that "because section 193 lies within part D," "if EPA approves Georgia's revised plan, that action will additionally exceed the agency's authority under section 110(k)(3) and violate section 100(l)." (Note, the last citation to 100(l) appears to be a typo and should read 110(l).) NRDC Comments at 10.

EPA Response to Section 193 Related Comments

The response to the Section 193 issues raised by NRDC involves many of the same elements of the response above, to the Section 110(l) comments, which is also incorporated by reference here.

Section 193 states, in relevant part, that "[n]o control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before November 15, 1990, in any area which is a nonattainment area for any air pollutant may be modified after November 15, 1990, in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant."

Assuming for purposes of this discussion that Section 193 does apply to the instant action, as was discussed earlier in this notice, EPA has previously determined and explained in the Supplemental Analysis, that implementation of the 2002 NSR Reform Rule provisions still in effect (that is, those not vacated by the DC Circuit) are expected to have at least a neutral environmental benefit. In addition, Georgia's rules include several differences from the federal rule that are likely to result in greater environmental protection. These provisions include, among others: (1) Adjusting the PAL limits downward upon renewal if average actual emissions are less than 80 percent of the PAL limit; (2) anti-backsliding provisions included in the major source baseline date to ensure that baseline dates established prior to the effective date of the rule changes remain in effect; (3) additional requirements related to the definition of projected actual emissions intended to result in more accurate estimates of emissions increases; (4) provisions that make the "demand growth" exclusion optional, and require additional recordkeeping to ensure the rules are implemented properly; (5) a requirement that baseline actual emissions not be based on a period for which there is inadequate information; (6) a requirement to adjust baseline actual emissions for new applicable requirements; (7) provisions that require submission of an application prior to construction for all major and minor sources; (8) requirements that the "reasonable possibility" recordkeeping reporting requirements are triggered whenever a minor source permit is required. Therefore, even if Section 193 did apply to this action, EPA does not agree with commenter's assertions that the SIP submissions approved in this action raise a Section 193 concern.

In addition, the core of NRDC's argument seems to revolve around the DC Circuit Court decision in *South Coast Air Quality Management District* v. *EPA,* 472 F.3d 882 (DC Cir. 2006) (finding that NSR associated with the 1-hour ozone standard included control requirements). At issue in *South Coast* was EPA's determination regarding the revocation of the entire 1-hour ozone program (and corresponding SIP elements), including all the 1-hour nonattainment NSR elements, and whether such elements would continue to be required as part of SIPs implementing the new (at that time) 8-hour ozone standard. The facts in the *South Coast* case are distinguishable from the instant matter where the Georgia SIP is merely being updated to include changes to the Federal NSR program. EPA is not removing the entirety of Georgia's NNSR program from the SIP as it pertains to a particular NAAQS. Rather, EPA is simply approving Georgia's SIP revision that implements rules equivalent to or more stringent than the federal rules; and as discussed earlier in this notice, EPA developed a Supplemental Analysis to support adoption of the federal rules. The Georgia SIP will continue to operate with the full suite of NSR related elements, including a comprehensive minor source program, and the restrictive 'de-minimus rule,' which requires sources to aggregate 5-year emissions increases and offset emissions increases greater than 25 tons.

IV. Final Action

EPA is taking final action to approve portions of three revisions to the Georgia SIP submitted by the State of Georgia on October 31, 2006, March 5, 2007, and August 22, 2007, which address changes to Georgia's PSD and NNSR programs.

V. Statutory and Executive Order Reviews

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under

Executive Order 12866 (58 FR 51735, October 4, 1993);

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

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

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

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

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

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

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 21, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: November 12, 2010.

Gwendolyn Keyes-Fleming,

Regional Administrator, Region 4.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart L—Georgia

■ 2. In § 52.570(c) the table is amended by revising the entries for "391–3–1–.02(7)" and "391–3–1–.03" to read as follows:

§ 52.570 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED GEORGIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
391–3–1–.02(7)	Prevention of Significant Deterioration of Air Quality (PSD).	7/25/2007	11/22/2010 [Insert citation of publication].	This rule contains NO_X as a precursor to ozone for PSD and NSR.
*	*	*	*	*
391–3–1–.03	Permits	7/25/2007	11/22/2010 [Insert citation of publication].	Changes specifically to (8)—Permit Requirements.
*	*	*	*	*

* * * * *

[FR Doc. 2010–29246 Filed 11–19–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2009–0557; FRL–9229–1]

Approval and Promulgation of State Implementation Plan Revisions; State of North Dakota; Interstate Transport of Pollution for the 1997 $PM_{2.5}$ and 8-Hour Ozone NAAQS: "Interference With Maintenance" Requirement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is partially approving the State Implementation Plan revisions submitted by the State of North Dakota on April 6, 2009. Specifically, EPA is approving the portions of the "Interstate Transport of Air Pollution" revisions addressing the "interference with maintenance" requirement of Clean Air Act (CAA) section 110(a)(2)(D)(i) for the 1997 $PM_{2.5}$ and 8-hour ozone National Ambient Air Quality Standards (NAAQS). The "interference with maintenance" requirement of section 110(a)(2)(D)(i) prohibits a state's emissions from interfering with maintenance of the NAAQS by any other state. This action is being taken under section 110 of the CAA.

DATES: *Effective Date:* This final rule is effective December 22, 2010.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2009–0557. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov,* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Domenico Mastrangelo, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6416, *mastrangelo.domenico@epa.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

(iv) The words *State* or *North Dakota* mean the State of North Dakota, unless the context indicates otherwise.

Table of Contents

I . Background
II . Response to Comments
III. Final Action
IV. Statutory and Executive Order Review

I. Background

On July 18, 1997, EPA promulgated new standards for 8-hour ozone and fine particulate matter ($PM_{2.5}$). This action is being taken in response to the July 18, 1997 revision to the 8-hour ozone NAAQS, and $PM_{2.5}$ NAAQS. This action does not address the requirements for the 2006 24- hour $PM_{2.5}$ NAAQS, or the 2008 8-hour ozone NAAQS; those standards will be addressed in a later action.

Section 110(a)(1) of the CAA requires states to submit SIPs to address a new or revised NAAQS within 3 years after promulgation of such standards, or within such shorter period as EPA may prescribe. Section 110(a)(2) lists the elements that such new SIPs must address, as applicable, including section 110(a)(2)(D)(i) which pertains to interstate transport of certain emissions. Section 110(a)(2)(D)(i) of the CAA requires that a state's SIP must contain adequate provisions prohibiting any source or other type of emissions activity within the state from emitting any air pollutant in amounts which will: (1) Contribute significantly to nonattainment of the NAAQS in any other state; (2) interfere with maintenance of the NAAQS by any other state; (3) interfere with any other state's required measures to prevent significant deterioration of air quality; or (4) interfere with any other state's required measures to protect visibility.

On April 6, 2009 the State of North Dakota submitted a SIP addressing the section 110(a)(2)(D)(i) four requirements, noted above, for the 1997 8-hour ozone NAAQS and for the 1997 annual and 24-hour $PM_{2.5}$ NAAQS. The state based its submittal on EPA's 2006 Guidance discussed below. As noted earlier, in this rulemaking EPA is addressing the requirement that pertains to preventing sources in the State from emitting pollutants in amounts which will interfere with the maintenance of the 1997 ozone and $PM_{2.5}$ NAAQS by any other state.

On August 15, 2006, EPA issued its "Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards" (2006 Guidance) for SIP submissions that states should use to address the requirements of section 110(a)(2)(D)(i). EPA developed this guidance to make recommendations to states for making submissions to meet the requirements of section 110(a)(2)(D)(i) for the 1997 ozone NAAQS and 1997 $PM_{2.5}$ NAAQS.

In a **Federal Register** action dated September 17, 2010, EPA proposed approval of the North Dakota Interstate Transport SIP portions addressing the interference with maintenance requirement of section 110(a)(2)(D)(i). EPA concluded in its proposed action that the various factual and technical considerations supported a determination that emissions from North Dakota do not interfere with maintenance by any states with areas at risk for maintenance of the 1997 8-hour ozone NAAQS or for maintenance of the 1997 annual and 24-hour $PM_{2.5}$ NAAQS.

EPA did not receive comments that persuade the Agency that there is such interference with maintenance for the 1997 ozone or $PM_{2.5}$ NAAQS and thus in today's final action EPA is making a final regulatory determination that North Dakota's sources do not interfere with maintenance of the 1997 8-hour ozone NAAQS, and the 1997 $PM_{2.5}$ NAAQS in any other state.

II. Response to Comments

EPA received one letter dated October 18, 2010 with comments from the WildEarth Guardians (WG) environmental organization. The WG letter includes three separate comments identifiable under sections A., B., and C., and is accessible online at regulations.gov under Docket No. EPA–R08–OAR–2009–0057. Later in this section EPA responds to the significant

comments made by the commenter. WG clarifies in its introductory remarks on the letter's first page that its comments are directed to both the Colorado and the North Dakota Federal Register proposed rule actions of September 17, 2010 (75 FR 56935 and 75 FR 56928) because "EPA's rationale for approving both SIPs is the same." EPA will consider WG's comments, as appropriate, equally applicable to the referenced EPA proposed rule actions for the Colorado and the North Dakota interstate transport SIPs. For clarity, however, in this action EPA will address WG's comments as if they were directed only to the proposed rule action for North Dakota (75 FR 56928).[1]

Comment No. 1—In its comments under section A., "Maintenance is Inappropriately Defined," WG states that EPA's definition of interference with maintenance, and by implication the identification of maintenance receptors, appeared to be "inappropriately conflated with the definition of nonattainment." It argues that the definition of maintenance appeared to be tied to nonattainment, asserting that "unless an area has violated or is in violation of the NAAQS, the agency will not consider whether * * * North Dakota [is] interfering with that area's ability to maintain compliance with the NAAQS." For this reason, WG argues EPA did not give independent meaning to the interfere with maintenance prong of section 110(a)(2)(D)(i)(I).

EPA Response—The methodology EPA used to identify maintenance receptors gives independent meaning to the term "interfere with maintenance" and establishes a process to identify projected attainment receptors that, based on the historic variability of air quality at that site (which may be due to variability in emissions and/or meteorology), may have difficulty maintaining the standard. As explained in greater detail below, the commenter's objection to EPA's approach appears to be based on the misconception that the methodology EPA used to identify maintenance sites was dependent on base year NAAQS violations.

The definition of maintenance used by EPA is consistent with the direction given to EPA by the Court of Appeals for the DC Circuit in *North Carolina* v. *EPA,* 531 F.3d 896 (DC Cir. 2008).[2] In that case, the court analyzed the definition of "interfere with maintenance" used in the Clean Air Interstate Rule (CAIR). The court found that the definition EPA used "gave no independent significance to the 'interfere with maintenance' prong of section 110(a)(2)(D)(i) to separately identify upwind sources interfering with downwind maintenance."[3] It further reasoned that "[u]nder EPA's reading of the statute, a state can never 'interfere with maintenance' unless EPA determines that at one point it 'contribute[d] significantly to nonattainment'."[4] Based on this analysis, the court found the definition unlawful, holding that "[b]ecause EPA describes CAIR as a complete remedy to a section 110(a)(2)(D)(i)(I) violation and does not give independent significance to the "interfere with maintenance" language to identify upwind states that interfere with downwind maintenance, it unlawfully nullifies that aspect of the statute and provides no protection for downwind areas that, despite EPA's predictions, still find themselves struggling to meet NAAQS due to upwind interference in 2010."[5]

The approach used by EPA in its September 17, 2010 proposal to assess whether emissions from sources in North Dakota interfere with maintenance of the NAAQS in any other state takes into account the flaws identified by the court, by giving independent meaning to the section 110(a)(2)(D)(i) "interference with maintenance" requirement. Our September 17, 2010 proposed action relies on a process established by EPA's August 2, 2010 Transport Rule Proposal to identify any specific receptors in downwind states that, even though they are projected to be in attainment and thus would not be nonattainment receptors, may have difficulty maintaining the NAAQS in question. These receptors are referred to as maintenance receptors.

The commenter's statement that EPA's designation of maintenance receptors is "firmly hitched to a finding that the maximum design value based on a single three-year period between 2003 and 2007 is in excess of the NAAQS" appears to be based on a misunderstanding of the methodology used by EPA to identify maintenance receptors. EPA's methodology did not, as the commenter appears to assume, require a site to have a design value above the NAAQS for one of the three base periods (2003–2005, 2004–2006, 2005–2007) to be considered a maintenance site. The methodology is based on an analysis of the future year average and future year maximum design values.[6] It does not depend on the whether the base year design values exceed the NAAQS. The Transport Rule Proposal explained that EPA used the average concentrations of the three design values for three base periods noted above to determine the 2012 average design value at monitoring sites. Monitoring sites with projected average design values above the NAAQS would be in nonattainment, while those with projected average design values below the NAAQS would be in attainment in 2012. To identify among the attainment monitoring sites those at risk for maintenance of the NAAQS, EPA also projected to 2012 each of the three design values for the base periods noted above. If the maximum of the three was above the NAAQS, then monitoring site was identified as at risk for maintenance of the NAAQS, or as a "maintenance receptor."[7] The maximum design value referenced in this sentence is the maximum future design value calculated using each of the three base design value periods separately. Whether or not one of the three base period design values exceeded the NAAQS was not a factor considered in determining whether a site was a maintenance receptor.

To better understand this concept, it is useful to compare the methodologies used in the Transport Rule proposal (75 FR 45210, Aug. 2, 2010) to identify nonattainment and maintenance receptors. In the Transport Rule proposal, base period (2003–2007) ambient data were projected to the future (using model outputs) to identify both nonattainment and maintenance receptors. In both cases, receptors were identified by projected future design values; however, because more conservative data were used for the maintenance analysis, this analysis could identify receptors that were projected by the nonattainment analysis to be in attainment; yet might have difficulty attaining the standard due to historic variability of air quality at that site. To identify future nonattainment

[1] Similarly, in our response to the same WG comments in our action finalizing the proposed rule action of September 17, 2010 for the Colorado "interference with maintenance" requirement we address WG's comments as if they were directed to the proposed rule action for Colorado (75 FR 56935).

[2] As EPA noted in the proposal, the term "interfere with maintenance" is not defined in the CAA. As such, the term is ambiguous and EPA's interpretation of that term in this action is both reasonable and consistent with the text and the overall goals of the CAA. By this approach, EPA is giving independent meaning to the term and supporting that interpretation with technical analysis to apply it to the facts in this action.

[3] 531 F.3d at 910.

[4] *Id.*

[5] *Id.* at 910–11.

[6] The process that defines the monitors at risk for maintenance was summarized in the September 17, 2010 proposed rule action for the North Dakota Interstate Transport SIP (75 FR 56928).

[7] 75 FR 45210, at 45246.

sites we calculated the future year design values by projecting the 5-year weighted average design value for each site. Only if this future year design value exceeded the NAAQS was the site considered to be a nonattainment receptor. However, to identify projected maintenance sites we used a different methodology that took into account historic variability in air quality at each receptor. For this approach we calculated the maximum future year design value by processing each of the three base design value periods (2003–2005, 2004–2006, and 2005–2007) separately. The highest of the three future values is the maximum design value, which is used to determine maintenance receptors.

In this way, EPA's analysis identifies those areas that are projected to be attainment, but may have difficulty maintaining attainment of the standard, for example in a year with particularly severe meteorology (weather that is conducive to ozone and/or particulate formation). In other words, this analysis does exactly what the D.C. Circuit directed EPA to do in *North Carolina.* It gives independent meaning to the "interfere with maintenance" prong of 110(a)(2)(D)(i) and provides protection to any areas that, although they are predicted to attain the standard (and thus upwind sources could not be found to significantly contribute to nonattainment in that area) may have difficulty maintaining the standard.[8]

EPA used this same approach to identify any potential maintenance receptors for purposes of evaluating North Dakota's SIP submission. For the reasons explained above, this approach is both reasonable and consistent with the direction given to EPA by the DC Circuit in *North Carolina.*

Comment No. 2—In its comments under section B., "Even Under EPA's Definition of Maintenance, Maintenance Receptors are not Consistently Defined," WG cited a variety of information suggesting that that receptors in the Denver Metropolitan Area/North Front Range (DMA/NFR) area should also be considered for maintenance purposes under 110(a)(2)(D)(i) in this action. The commenter points out that EPA itself has stated, "Data for 2005–2007 and 2006–2008 reflect violations of the 8-hour ozone NAAQS at the Rocky Flats North monitor (values of [0.085] and 0.086 ppm, respectively)." The commenter also argued that modeling prepared in conjunction with Colorado's DMA/NFR attainment demonstration shows that by 2010, the three-year design value is only projected to be lowered to 0.084 parts per million, barely in compliance with the NAAQS, and that certain portions of the DMA/NFR area of Colorado would violate the 1997 ozone NAAQS in 2010 at grid cells west of Fort Collins. The commenter referenced several documents that are part of the Colorado's DMA/NFR 8-hour Ozone Attainment Demonstration in support of its arguments. The commenter cited the report's language that indicated that the modeling projection of a value above the 1997 8-hour standard to the west of Fort Collins is not "implausible" and explaining, "In the case of the Denver ozone modeling, higher ozone concentrations are estimated west of Fort Collins than at the locations of the two monitors in Fort Collins on some days and this does not appear to be an error in the modeling system."[9] Finally, the commenter argued that EPA's failure to consider the DMA/NFR area as a receptor for evaluating interference with maintenance in this action reflects the very problem that the D.C. Circuit warned could result without giving independent meaning to the term "interfere with maintenance."[10]

EPA's Response—EPA disagrees with WG's argument that EPA has inappropriately identified the correct monitors for maintenance receptors. As discussed in greater detail in the previous response to comment no. 1, EPA has selected a method that identifies maintenance receptors separately from nonattainment receptors and gives an independent meaning to the interfere with maintenance prong of section 110(a)(2)(D)(i). EPA has consistently applied this method to all potential receptors in States potentially impacted by North Dakota's emissions including those in the DMA/NFR area.

The commenter's argument EPA did not consistently identify maintenance receptors is premised on the same fundamental misunderstanding discussed in response to comment no. 1—that EPA's identification of nonattainment receptors was based on current or past NAAQS violations. As explained above, this is not correct. EPA did not base its identification of maintenance receptors on an analysis of whether air quality at those receptors exceeded the NAAQS in the base years. The methodology EPA used to identify maintenance areas takes into account historic variability of emissions at specific monitoring sites to analyze whether or not monitoring sites projected to be in attainment in 2012 will nonetheless remain at risk of slipping into nonattainment in that year. The commenter provided a number of modeling or monitoring analyses for 2010 or earlier. As we have addressed in responses elsewhere in this notice, EPA continues to believe 2012 is the appropriate year for this analysis. Thus, modeling or monitoring data for other years is not directly relevant to this rulemaking. Nonetheless, below we address the commenter's specific assertions about the monitoring and modeling.

The commenter asserts that monitoring data for 2005–07 and 2006–08 for the Rocky Flats North monitor reflect violations of the 8-hour NAAQS and therefore EPA should consider this Rocky Flats North monitor as a "maintenance receptor." The commenter further cites to modeling prepared in conjunction with Colorado's DMA/NFR attainment demonstration to support its assertion that EPA has applied inconsistently its definition of interference with maintenance. The modeling data referenced by the commenter, however, only identifies monitors that, in the commenter's view, are at risk of being in nonattainment or having maintenance problems in 2010. The monitoring data cited indicates high ozone levels in the past. The underlying issue raised is thus substantively the same as that raised in comment no. 3 below which argues that EPA's analysis is faulty because it identifies receptors likely to have difficulty maintaining the standard in 2012 and not at the present or in the past. EPA's response to comment no. 3 below, illustrates how its approach, based on modeling analyses that identify receptors at risk for maintenance in the year 2012, is appropriate and consistent with the D.C. Circuit decision in *North Carolina* v. *EPA.*

EPA's method is based on model projection values that take into account multi-year variability in ozone data at specific monitors. For identification of maintenance receptors, EPA utilized the monitoring data from the 2003–2007

[8] *Id.* at 45246.

[9] The commenter referenced the Colorado Department of Public Health and Environment's "2010 Ozone Attainment Demonstration Modeling for the Denver 8-hour Ozone State Implementation Plan Control Strategy" and the Environ modeling report "Final 2010 Ozone Attainment Demonstration Modeling for the Denver 8-hour Ozone State Implementation Plan."

[10] This comment also expresses concern about the Wasatch Front and Uinta County areas in Utah, the Phoenix area of Arizona, portions of western Wyoming, and Juan County in New Mexico as at risk for maintenance for the 1997 8-hour ozone NAAQS. According to WG, the proposed EPA's September 17, 2010 proposed rule assessment of the Colorado's emissions impacts on maintenance of the NAAQS by other states should have included the evaluation of Colorado emissions on the areas noted above. We respond to that portion of this comment in the final rulemaking for the Colorado interstate transport SIP submitted June 18, 2009.

period to calculate 2012 future year modeling design value projections. The 2003–07 period includes three Design Value (DV) periods (2003–2005, 2004–2006, and 2005–2007). The 2012 future year DVs were calculated by multiplying a 3-year DV (base year) by the ratio of the Future Year average of the daily 8-hour ozone maximums around a monitor over the Base Year average of the daily 8-hour ozone maximums around a monitor. This calculation was performed for each of the three 3-year DVs (2003–2005, 2004–2006, and 2005–2007). This approach yielded three different projected 2012 design values and thus, tests for variability in meteorology. If any of the three 2012 projections was above the 1997 ozone standard, then the receptor would be considered a maintenance receptor. None of the 2012 projections for the DMA/NFR area was above the standard so the area was not considered a maintenance area. This approach was the same as the approach used for every potential receptor evaluated. It is worth noting that EPA's analysis included the 2005–2007 data for the Rocky Flats monitor (which is one of the highest monitored DVs in recent years for this monitor) that the commenter raised as a concern and pursuant to its methodology as previously described EPA's analysis determined that the Rocky Flats monitor would not be a maintenance receptor in 2012.

Further, EPA disagrees with commenter's conclusion that the modeling performed for the DMA/NFR attainment demonstration with the 2010 model projections establishes that any of the areas identified will have maintenance problems for the 1997 8-hour ozone NAAQS. We disagree with WG's conclusion that the DMA/NFR area monitors should be identified as "maintenance receptors" in large part because it bases its conclusion on projections for 2010 instead of 2012. This modeling used projections for 2010 not 2012, which as explained above and in response to comment no. 3 below is not the correct year for comparison, given the approach EPA has developed for determining maintenance receptors. EPA's analysis of maintenance receptors, which is based on the approach developed in the Transport Rule Proposal to be consistent with the D.C. Circuit's opinion in *North Carolina* v. *EPA* and uses projections for 2012, did not identify any maintenance receptors in the DMA/NFR area. This conclusion is consistent with evidence suggesting emissions are likely to trend downward (for example, with two more years of fleet turnover, this modeling would likely have projected lower levels of ozone in 2012) and preliminary monitoring data for 2010, which indicates that the DMA/NFR area is meeting the 1997 ozone standard. Further, EPA has reviewed Colorado's attainment demonstration for the DMA/NFR area and proposed that the combination of the modeling and Weight of Evidence analyses demonstrates that Denver will be in attainment in 2010.[11]

In addition, the commenter's concern that an area west of Fort Collins, might exceed 84 ppb in 2010 is based on exceedance values in the Colorado modeling analysis from a special analysis, called the Unmonitored Area Analysis (UAA), that is recommended for model grid cells that are not analyzed in the monitor based attainment demonstration because they are not located near a monitor. EPA does not believe that the UAA establishes that this area should be considered a maintenance receptor area for the purposes of 110(a)(2)(D)(i).

First, the UAA analysis is for 2010, which as noted above is not the correct analysis year. Second, EPA guidance indicates that NAAQS violations in the UAA should be handled on a case by case basis.[12] The guidance stresses that due to the lack of measured data, the examination of ozone concentrations as part of the unmonitored area analysis is more uncertain than the monitor based attainment test. This is true even in situations such as this where, as the commenter points out; no known errors were identified by the contractor in the modeling analysis. As a result, the UAA results are recommended to be treated as a separate test from the monitor based attainment test with less weight put on the conclusions of the UAA analysis. EPA's attainment demonstration guidance indicates, "While it is expected that States will implement additional emission controls to eliminate predicted violations of the monitor based test, the same requirements may not be appropriate in unmonitored areas." [13] The guidance recommends that it may be appropriate to deploy additional monitors in an area where the unmonitored analysis indicates a potential future year violation.

To address the concerns raised by the UAA, Colorado installed an additional ozone monitor in the area West of Fort Collins to determine whether the model predicted ozone concentrations are, in fact, valid. The special purpose monitor, located in Rist Canyon, began operation on May 14, 2009. The Rist Canyon monitoring station has collected data for two ozone seasons (approximately 16 months) since it began operating and the fourth highest daily maximum 8-hour average ozone concentration reading is 69 ppb for May through December of 2009 and 72 ppb for January through August 2010.[14]

Therefore, EPA does not believe the modeling performed for the State of Colorado's Denver/NFR area SIP can support the conclusion that this area should be considered a maintenance receptor area for the purposes of 110(a)(2)(D)(i). The methodology developed to identify maintenance receptors for the purpose of analyzing interference with maintenance with respect to the 1997 ozone and $PM_{2.5}$ NAAQS relies on base period monitoring data to identify monitor locations that are projected to have maintenance problems in 2012. The methodology does not identify receptors based on modeling data alone. While the monitor has not operated long enough to account for variability in ozone levels, the newly installed monitor in the relevant area is reading well below the standard and this fact further confirms that the modeling results and the UAA results do not support the conclusion that receptors in the DMA/NFR area should be considered maintenance receptors for the purpose of CAA section 110(a)(2)(D)(i).

In conclusion, EPA disagrees with the commenter. We have used a fully consistent approach in identifying areas that may have difficulty in maintaining attainment of the NAAQS. It is these areas that we have further evaluated to see if North Dakota's emissions would interfere with maintenance of the NAAQS.

Comment No. 3—In its comment under section C., "EPA has not Assessed New Mexico's [sic] Interference with

[11] EPA's "Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze," EPA–454/B–07–002, April 2007. Also, 75 FR 42346 (July 21, 2010) [EPA–R08–OAR–2010–0285; FRL–9177–2], Proposed Rule, "Approval and Promulgation of Air Quality Implementation Plans; Colorado; Attainment Demonstration for the 1997 8-Hour Ozone Standard, and Approval of Related Revisions"; at 42346–61.

[12] *Id.*

[13] *Id.* at 32.

[14] The Rist Canyon monitoring station uses a Federal Equivalent Method (FEM) and follows the quality assurance requirements of 40 CFR Part 58 Appendix A. Ozone data collected at this monitoring station is eligible for comparison to the ozone NAAQS after the monitor has operated for more than 24 months per 40 CFR 58.30(c). Design values, however, are based on the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration (*see* 40 CFR part 50, Appendix D).

Maintenance in the Present," WG asserts that EPA's analysis ignores whether North Dakota is, at the present, interfering with maintenance of the 1997 8-hour ozone NAAQS, and the 1997 $PM_{2.5}$ NAAQS, in other States. It argues EPA erred by considering only whether emissions from North Dakota will interfere with maintenance in areas that by 2012 would be considered "maintenance receptors."

WG argues that this approach is inconsistent with the approach taken to determine whether New Mexico significantly contributes to nonattainment in other States (citing 75 FR 33174–33190) and that this alleged inconsistent application "raises serious concerns that EPA is again simply finding excuses to avoid requiring North Dakota to do its part to limit air pollution that adversely affects neighboring states, including Colorado." They agree that "EPA should ensure that North Dakota does not interfere with maintenance or contribute significantly to nonattainment in other states in the future" but argue that "the agency's duties under Section 110(a)(2)(D)(i)(I) apply both in the present and the future. EPA's approach is flawed, WG concludes, because EPA identifies maintenance areas likely to exist by 2012 and does not identify maintenance areas that currently exist. WG also asserts that EPA's approach ignores whether North Dakota is presently interfering with maintenance of the 1997 8-hour ozone NAAQS in downwind states.[15]

EPA Response—EPA disagrees with the commenter concerning the evaluation of significant contribution versus interference with maintenance. Section 110(a)(2)(D)(i)(I) of the Clean Air Act requires that a state SIP "contain adequate provisions prohibiting * * * any source or other type of emission activities within the state from emitting any air pollutants in amount which will contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to any [ ] national primary or secondary ambient air quality standard."

In determining the appropriate year to analyze to determine whether emissions from North Dakota will interfere with maintenance by any other State, EPA used an approach upheld by the DC Circuit in *North Carolina* v. *EPA.* In that case, the Court examined EPA's definition of "will" in "will contribute significantly." The placement of the word "will" at the end of section 110(a)(2)(D)(i) clarifies that it applies to all of the provisions that follow—both those in 110(a)(2)(D)(i)(I) and those in 110(a)(2)(D)(i)(II). Thus the DC Circuit's discussion of the meaning of the word "will" in "will significantly contribute" also applies to the meaning of the word will in "will * * * interfere with maintenance."

In *North Carolina* v. *EPA,* the DC Circuit rejected North Carolina's argument that EPA erred in limiting its analysis of downwind areas by excluding areas that were currently monitored nonattainment but projected to be in attainment at a future date. Like WG argues here, North Carolina had argued that EPA was obligated to analyze the significant contribution of states that were contributing to areas of North Carolina that were in nonattainment at the time the rule was promulgated even though those areas were projected to come into attainment by the year selected for the future base case analysis. In rejecting this argument, the DC Circuit explained that the approach used by EPA was identical to the one used previously in the NO_X SIP Call and that "because 'will' can mean either certainty or indicate the future tense," EPA's approach was reasonable. In other words, the court approved EPA's approach that entailed the evaluation of interstate transport impacts at a future date in time.

Contrary to the assertions of the commenter, EPA believes that evaluation of interference with maintenance using a future date is the most appropriate approach for that requirement. As explained in the proposed action, the court decision affecting the CAIR rule required EPA to reevaluate its approach to the interfere with maintenance requirement of section 110(a)(2)(D) and to develop a new approach to give that requirement separate meaning. In doing so, EPA has developed an approach that necessarily requires a number of years of data, and an analysis that evaluates where there may be difficulties with maintaining attainment at a specific point in time, in this instance 2012. In the prior action cited by WG, EPA's evaluation of whether emissions would significantly contribute to nonattainment in other states was based on the data available at the time of that evaluation and before EPA had developed its approach for evaluating interference with maintenance. It is reasonable and appropriate for EPA to use, in this rulemaking, the current approach to identifying maintenance receptors for purposes of section 110(a)(2)(D)(i) that EPA developed to be consistent with the direction given to EPA in *North Carolina* v. *EPA.*

Finally, we note that comments on the validity or reasonableness of the approach to determining significant contribution are not directly relevant to this rulemaking. This rulemaking addresses only the "interfere with maintenance" requirement of section 110(a)(2)(D)(i). EPA published a prior proposal (75 FR 16026) and final rule (75 FR 31290) analyzing the North Dakota SIP submission for the "significant contribution" prong of section 110(a)(2)(D)(i).

III. Final Action

The Environmental Protection Agency is approving portions of the Interstate Transport of Air Pollution SIP submitted by the State of North Dakota on April 6, 2009. Specifically, in this action EPA is approving the language in Section 7.8.1, subsection B., "Nonattainment and Maintenance Area Impact," that specifically addresses element (2) of section 110(a)(2)(D)(i), the requirement that the SIP contain adequate provisions prohibiting emissions from North Dakota from interfering with maintenance of the NAAQS by any other state. EPA has concluded that the evidence evaluated by EPA establishes that emissions from North Dakota sources do not interfere with maintenance of the 1997 8-hour ozone or the 1997 $PM_{2.5}$ NAAQS in any other state. Therefore, the State's SIP does not need to include additional substantive controls to reduce emissions for purposes of section 110(a)(2)(D)(i)(I) for these NAAQS.

IV. Statutory and Executive Order Review

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

[15] Before addressing the substantive issues raised in this comment, we would like to clarify that we presume that the reference to New Mexico in the comment's title is a clerical error, and that the commenter intended to refer to either Colorado or North Dakota.

of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

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

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

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

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

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

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 21, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: November 10, 2010.

James B. Martin,

Regional Administrator, Region 8.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart JJ—North Dakota

■ 2. Section 52.1820 is amended in the table in paragraph (e) by revising the entry in "(1)" and adding entry "(22)" in numerical order to read as follows:

§ 52.1820 Identification of plan.

* * * * *

(e) * * *

Name of nonregulatory SIP provision	Applicable geographic or non-attainment area	State submittal date/ adopted date	EPA approval date and citation [3]	Explanations
(1) Implementation Plan for the Control of Air Pollution for the State of North Dakota.	Statewide	Submitted: 1/24/72; Adopted: 1/24/72.	5/31/72, 37 FR 10842.	Excluding subsequent revisions, as follows: Chapters 1, 2, 6, 7, 9, 11, and 12; Sections 2.11, 3.7, 6.8, 6.10, 6.11, 6.13, 7.7, and 8.3; subsections 7.8.1.B., 7.8.1.D., and 8.3.1. Revisions to these non-regulatory provisions have subsequently been approved. *See* below.
Chapters ..... 1. Introduction. 2. Legal Authority. 3. Control Strategy. 4. Compliance Schedule. 5. Prevention of Air Pollution Emergency Episodes. 7. Review of New Sources and Modifications. 8. Source Surveillance. 9. Resources. 10. Inter-governmental Cooperation. 11. Rules and Regulations. With subsequent revisions to the chapters as follows:	.....	Clarification submitted: 6/14/73; 2/19/74; 6/26/74; 11/21/74; 4/23/75.	With all clarifications: 3/2/76; 41 FR 8956.	

Name of nonregulatory SIP provision	Applicable geographic or non-attainment area	State submittal date/ adopted date	EPA approval date and citation [3]	Explanations
* *	*	*	*	* *
(22) Section 7.8, Interstate Transport of Air Pollution (only portion of 7.8.1.B.).	Statewide	Submitted: 4/09/09; Adopted: 4/01/09.	11/22/10 [insert FR page number where document begins].	Includes portions of Subsection 7.8.1.B., "Nonattainment and Maintenance Area Impact," that specifically address the "interference with maintenance" requirement of CAA Section 110(a)(2)(D)(i).

[3] In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular pro

[FR Doc. 2010–29244 Filed 11–19–10; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2007–1035; FRL–9229–2]

Approval and Promulgation of State Implementation Plans; State of Colorado; Interstate Transport of Pollution Revisions for the 1997 8-Hour Ozone NAAQS: "Interference With Maintenance" Requirement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is partially approving State Implementation Plan (SIP) revisions submitted by the State of Colorado on June 18, 2009. Specifically, EPA is approving the portions of the "State of Colorado Implementation Plan to Meet the Requirements of Clean Air Act (CAA) Section 110(a)(2)(D)(i)(I)—Interstate Transport Regarding the 1997 8-Hour Ozone Standard" addressing the "interference with maintenance" requirement of section 110(a)(2)(D)(i)(I) for the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS) by any other state. The "interference with maintenance" requirement of section 110(a)(2)(D)(i)(I) prohibits a state's emissions from interfering with maintenance of the NAAQS by any other state. This action is being taken under section 110 of the CAA.

DATES: *Effective Date:* This final rule is effective December 22, 2010.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2007–1035. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov*, or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Domenico Mastrangelo, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6416, *mastrangelo.domenico@epa.gov*.

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

(iv) The words *Colorado* and *State* mean the State of Colorado.

Table of Contents

I . Background
II. Response to Comments
III. Final Action
IV. Statutory and Executive Order Review

I. Background

On July 18, 1997, EPA promulgated new standards for 8-hour ozone and fine particulate matter ($PM_{2.5}$). This action is being taken in response to the July 18, 1997 revision to the 8-hour ozone NAAQS. This action does not address the requirements for the 1997 $PM_{2.5}$ NAAQS, the 2006 $PM_{2.5}$ NAAQS, or the 2008 8-hour ozone NAAQS; those standards will be addressed in a later action.

Section 110(a)(1) of the CAA requires states to submit SIPs to address a new or revised NAAQS within 3 years after promulgation of such standards, or within such shorter period as EPA may prescribe. Section 110(a)(2) lists the elements that such new SIPs must address, as applicable, including section 110(a)(2)(D)(i) which pertains to interstate transport of certain emissions. Section 110(a)(2)(D)(i) of the CAA requires that a state's SIP must contain adequate provisions prohibiting any source or other type of emissions activity within the state from emitting any air pollutant in amounts which will: (1) Contribute significantly to nonattainment of the NAAQS in any other state; (2) interfere with maintenance of the NAAQS by any other state; (3) interfere with any other state's required measures to prevent significant deterioration of air quality; or (4) interfere with any other state's required measures to protect visibility.

On June 18, 2009 the State of Colorado submitted a SIP addressing the section 110(a)(2)(D)(i)(I) requirements (1) and (2), noted above, for the 1997 8-hour ozone NAAQS. The state based its submittal on EPA's 2006 Guidance discussed below. As noted earlier, in this rulemaking EPA is addressing the requirement that pertains to preventing sources in the State from emitting pollutants in amounts which will interfere with the maintenance of the 1997 8-hour ozone NAAQS by any other state.

On August 15, 2006, EPA issued its "Guidance for State Implementation Plan (SIP) Submission to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards" (2006 Guidance) for SIP submissions that states should use to

address the requirements of section 110(a)(2)(D)(i). EPA developed this guidance to make recommendations to states for making submissions to meet the requirements of section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS and 1997 $PM_{2.5}$ NAAQS.

In a **Federal Register** action dated September 17, 2010, EPA proposed approval of the Colorado Interstate Transport SIP portions addressing the interference with maintenance requirement of section 110(a)(2)(D)(i)(I). EPA concluded in its proposed action that the various factual and technical considerations supported a determination that emissions from Colorado do not interfere with maintenance by any states with areas at risk for maintenance of the 1997 8-hour ozone NAAQS. EPA did not receive comments that persuade the Agency that there is such interference, and thus in today's final action EPA is making a final regulatory determination that Colorado emissions sources do not interfere with maintenance of the 1997 8-hour ozone NAAQS in any other state.

II. Response to Comments

EPA received one letter dated October 18, 2010 with comments from the WildEarth Guardians (WG) environmental organization. The WG letter includes three separate comments under sections A., B., and C., and is accessible online at regulations.gov under Docket No. EPA–R08–OAR–2007–1035. Later in this section EPA responds to the significant comments made by the commenter. WG clarifies in its introductory remarks on the letter's first page that its comments are directed to both the Colorado and the North Dakota Federal Register proposed rule actions of September 17, 2010 (75 FR 56935 and 75 FR 56928) because "EPA's rationale for approving both SIPs is the same." EPA will consider WG's comments, as appropriate, equally applicable to the referenced EPA proposed rule actions. For clarity, however, in this action EPA will address WG's comments as if they were directed only to the proposed rule action for Colorado (75 FR 56935).[1]

Comment No. 1—In its comments under section A., "Maintenance is Inappropriately Defined," WG states that EPA's definition of interference with maintenance, and by implication the identification of maintenance receptors, appeared to be "inappropriately conflated with the definition of nonattainment." It argues that the definition of maintenance appeared to be tied to nonattainment, asserting that "unless an area has violated or is in violation of the NAAQS, the agency will not consider whether * * * Colorado [is] interfering with that area's ability to maintain compliance with the NAAQS." For this reason, WG argues EPA did not give independent meaning to the interfere with maintenance prong of section 110(a)(2)(D)(i)(I).

EPA Response—The methodology EPA used to identify maintenance receptors gives independent meaning to the term "interfere with maintenance" and establishes a process to identify projected attainment receptors that, based on the historic variability of air quality at that site (which may be due to variability in emissions and/or meteorology), may have difficulty maintaining the standard. As explained in greater detail below, the commenter's objection to EPA's approach appears to be based on the misconception that the methodology EPA used to identify maintenance sites was dependent on base year NAAQS violations.

The definition of maintenance used by EPA is consistent with the direction given to EPA by the Court of Appeals for the D.C. Circuit in *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008).[2] In that case, the court analyzed the definition of "interfere with maintenance" used in the Clean Air Interstate Rule (CAIR) rule. The court found that the definition EPA used "gave no independent significance to the 'interfere with maintenance' prong of section 110(a)(2)(D)(i)(I) to separately identify upwind sources interfering with downwind maintenance."[3] It further reasoned that "[u]nder EPA's reading of the statute, a state can never 'interfere with maintenance' unless EPA determines that at one point it 'contribute[d] significantly to nonattainment'."[4] Based on this analysis, the court found the definition unlawful, holding that "[b]ecause EPA describes CAIR as a complete remedy to a section 110(a)(2)(D)(i)(I) violation and does not give independent significance to the 'interfere with maintenance' language to identify upwind states that interfere with downwind maintenance, it unlawfully nullifies that aspect of the statute and provides no protection for downwind areas that, despite EPA's predictions, still find themselves struggling to meet NAAQS due to upwind interference in 2010."[5]

The approach used by EPA in its September 17, 2010 proposal to assess whether emissions from sources in Colorado interfere with maintenance of the NAAQS in any other state takes into account the flaws identified by the court, by giving independent meaning to the section 110(a)(2)(D)(i) "interference with maintenance" requirement. Our September 17, 2010 proposed action relies on a process established by EPA's August 2, 2010 Transport Rule Proposal to identify any specific receptors in downwind states that, even though they are projected to be in attainment and thus would not be nonattainment receptors, may have difficulty maintaining the NAAQS in question. These receptors are referred to as maintenance receptors.

The commenter's statement that EPA's designation of maintenance receptors is "firmly hitched to a finding that the maximum design value based on a single three-year period between 2003 and 2007 is in excess of the NAAQS" appears to be based on a misunderstanding of the methodology used by EPA to identify maintenance receptors. EPA's methodology did not, as the commenter appears to assume, require a site to have a design value above the NAAQS for one of the three base periods (2003–2005, 2004–2006, 2005–2007) to be considered a maintenance site. The methodology is based on an analysis of the future year average and future year maximum design values.[6] It does not depend on the whether the base year design values exceed the NAAQS. The Transport Rule Proposal explained that EPA used the average concentrations of the three design values for the three base periods noted above to determine the 2012 average design value at monitoring sites. Monitoring sites with projected average design values above the NAAQS would be in nonattainment, while those with projected average design values below the NAAQS would be in attainment in 2012. To identify among the attainment monitoring sites those at risk for maintenance of the NAAQS, EPA also projected to 2012 each of the three design values for the base periods noted

[1] Similarly, in our response to the same WG comments in our action finalizing the proposed rule action of September 17, 2010 for the North Dakota "interference with maintenance" requirement, we address WG's comments as if they were directed to the proposed rule action for North Dakota (75 FR 56928).

[2] As EPA noted in the proposal, the term "interfere with maintenance" is not defined in the CAA. As such, the term is ambiguous and EPA's interpretation of that term in this action is both reasonable and consistent with the text and the overall goals of the CAA. By this approach, EPA is giving independent meaning to the term and supporting that interpretation with technical analysis to apply it to the facts in this action.

[3] 531 F.3d at 910.

[4] Id.

[5] Id. at 910–11.

[6] The process that defines the monitors at risk for maintenance was summarized in the September 17, 2010 proposed rule action for the Colorado Interstate Transport SIP (75 FR 56938).

above. If the maximum of the three was above the NAAQS, then monitoring site was identified as at risk for maintenance of the NAAQS, or as a "maintenance receptor." [7] The maximum design value referenced in this sentence is the maximum future design value calculated using each of the three base design value periods separately. Whether or not one of the three base period design values exceeded the NAAQS was not a factor considered in determining whether a site was a maintenance receptor.

To better understand this concept, it is useful to compare the methodologies used in the Transport Rule proposal (75 FR 5210, Aug. 2, 2010) to identify nonattainment and maintenance receptors. In the Transport Rule proposal, base period (2003–2007) ambient data were projected to the future (using model outputs) to identify both nonattainment and maintenance receptors. In both cases, receptors were identified by projected future design values; however, because more conservative data were used for the maintenance analysis, this analysis could identify receptors that were projected by the nonattainment analysis to be in attainment; yet might have difficulty attaining the standard due to historic variability of air quality at that site. To identify future nonattainment sites we calculated the future year design values by projecting the 5-year weighted average design value for each site. Only if this future year design value exceeded the NAAQS was the site considered to be a nonattainment receptor. However, to identify projected maintenance sites we used a different methodology that took into account historic variability in air quality at each receptor. For this approach we calculated the maximum future year design value by processing each of the three base design value periods (2003–2005, 2004–2006, and 2005–2007) separately. The highest of the three future values is the maximum design value, which is used to determine maintenance receptors.

In this way, EPA's analysis identifies those areas that are projected to be attainment, but may have difficulty maintaining attainment of the standard, for example in a year with particularly severe meteorology (weather that is conducive to ozone and/or particulate formation). In other words, this analysis does exactly what the DC Circuit directed EPA to do in *North Carolina.* It gives independent meaning to the "interfere with maintenance" prong of 110(a)(2)(D)(i) and provides protection to any areas that, although they are predicted to attain the standard (and thus upwind sources could not be found to significantly contribute to nonattainment in that area) may have difficulty maintaining the standard.[8]

EPA used this same approach to identify any potential maintenance receptors for purposes of evaluating Colorado's SIP submission. For the reasons explained above, this approach is both reasonable and consistent with the direction given to EPA by the DC Circuit in *North Carolina.*

Comment No. 2—In its comments under section B., "Even Under EPA's Definition of Maintenance, Maintenance Receptors are not Consistently Defined," WG argues that EPA's approach to evaluating interference with maintenance is inappropriate because it did not take into account current high ambient concentrations in certain places. The commenter thus contends that EPA's identification of maintenance receptors is inconsistently applied. The commenter identifies several areas that it believes should have been considered as at risk for maintenance for the 1997 8-hour ozone NAAQS. WG specifies the Wasatch Front and Uintah County in Utah, the Phoenix area in Arizona, portions of western Wyoming, and San Juan County in New Mexico, as areas appropriate for an assessment of whether emissions from Colorado interfere with their difficulty (in the commenter's view) in maintaining the 1997 8-hour ozone NAAQS.[9]

EPA Response—EPA shares the commenter's concern about areas presently affected by elevated ozone concentrations, but disagrees with the commenter's assertion that the September 17, 2010, proposed rule action for the Colorado SIP "overlooked areas impacted by Colorado that are projected to barely attain the 1997 ozone NAAQS." First, the underlying issue raised in this comment is substantively the same as that raised in comment no. 3 below, which argues that EPA's analysis is faulty because it identifies receptors likely to have difficulty maintaining the standard in 2012 and not at the present time. EPA's response to comment no. 3 below illustrates how its approach, based on modeling analyses that identify receptors at risk for maintenance in the year 2012, is appropriate and consistent with the D.C. Circuit decision in *North Carolina* v. *EPA.*

Second, EPA has developed in the Transport Rule Proposal of August 2, 2010 an approach that necessarily requires years of data, and an analysis that evaluates where there may be difficulties with maintaining attainment at a specific point in time (in this instance 2012) to evaluate whether there is interference with maintenance to meet the statutory requirement of section 110(a)(2)(D)(i).[10] To assist in the evaluation of whether states' emissions interfere with maintenance of the NAAQS in western states, EPA has developed, independent of the Transport Rule Proposal, a modeling analysis using an approach similar to the Transport Rule Proposal for the identification of monitors at risk for maintenance of the NAAQS within a modeling domain that includes the western states. The analysis is presented in the August 23, 2010 memo, "Documentation of Future Year Ozone and Annual $PM_{2.5}$ Design Values for Western States" (Western States Design Values).[11] Because none of the areas of concern to the commenter was identified by EPA as a maintenance receptor through that analysis,[12] it was appropriate for the September 17, 2010 proposed rule not to assess whether emissions from Colorado sources impact the areas noted by the commenter, such as Uintah County and Wasatch Front in Utah, the Phoenix area in Arizona, portions of western Wyoming, and San Juan County in New Mexico. In short, based on EPA's analysis, none of the areas named by the commenter is appropriate for consideration as a maintenance receptor at this time.

EPA also notes that, except for Uintah County, the commenter provides no specific facts—such as the location of monitoring receptors, ozone concentrations, or time span during which high ozone concentrations were monitored—to support its arguments concerning these areas. Thus, WG has not identified any reasons that EPA

[7] 75 FR 45210, at 45246.

[8] Id. at 45246.

[9] This comment also argues about the Denver Metropolitan Area/North Front Range (DMA/NFR) area as at risk for maintenance for the 1997 8-hour ozone NAAQS. We are examining this part of the comment within EPA's final rulemaking action for the North Dakota Interstate Transport SIP, since the issue of the DMA/NFR area as at risk for maintenance does not affect our September 17, 2010 proposed rule assessment of whether Colorado's emissions interfere with maintenance of the NAAQS by any other states.

[10] 75 FR 45210.

[11] A memorandum in the docket for this action provides the information EPA used in order to identify monitors that are receptors for evaluation of interference with maintenance for certain states in the western United States. See, Memorandum from Brian Timin of EPA's Office of Air Quality Planning and Standards, Air Quality Modeling Group entitled "Documentation of Future Year Ozone and Annual $PM_{2.5}$ Design Values for Western States," under "Memorandum to Docket EPA–R08–OAR–2007–1035," EPA, August 23, 2010.

[12] Design Values for Western States, EPA (August 23, 2010).

should consider these areas as maintenance receptors, making it difficult for EPA to address properly WG's concerns about interference with maintenance in the Wasatch Front, the Phoenix area in Arizona, portions of western Wyoming, or San Juan County in New Mexico. As for the commenter's reference to Uintah County, where in February 2010 monitors in Ouray and Red Wash registered ozone concentrations above 120 ppb, EPA notes that the two monitors were installed as recently as July 2009, and therefore their data does not provide the historical variability background that is an essential component for the identification of maintenance receptors.[13] EPA is concerned about the ambient levels of ozone in this area, but at present EPA does not have the necessary years of data to evaluate whether this area is appropriate for use as a maintenance receptor for the 1997 8-hour ozone NAAQS in accordance with the Agency's approach to this requirement.[14]

Comment No. 3—In its comment under section C., "EPA has not Assessed New Mexico's [sic] Interference with Maintenance in the Present," WG asserts that EPA's analysis ignores whether Colorado is, at the present, interfering with maintenance in other States. It argues EPA erred by considering only whether emissions from Colorado will interfere with maintenance of the 1997 8-hour ozone NAAQS in areas that would be considered "maintenance receptors" as of 2012.

WG argues that this approach is inconsistent with the approach taken in a previous action regarding significant contribution to nonattainment in other states (citing 75 FR 33174–90). The commenter agrees that "EPA should ensure that Colorado does not interfere with maintenance or contribute significantly to nonattainment in other states in the future" but argues that "the agency's duties under Section 110(a)(2)(D)(i)(I) apply both in the present and the future." EPA's approach is flawed, WG concludes, because EPA identifies maintenance areas likely to exist by 2012 and does not identify interference with maintenance that currently exists. WG also asserts that EPA's approach ignores whether Colorado is presently interfering with maintenance of the 1997 8-hour ozone NAAQS in downwind states.[15]

EPA Response—EPA disagrees with the commenter concerning the evaluation of significant contribution versus interference with maintenance. Section 110(a)(2)(D)(i)(I) of the Clean Air Act requires that a state SIP "contain adequate provisions prohibiting * * * any source or other type of emission activities within the state from emitting any air pollutants in amount which will contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to any [ ] national primary or secondary ambient air quality standard."

In determining the appropriate year to analyze to determine whether emissions from Colorado will interfere with maintenance by any other state, EPA used an approach upheld by the DC Circuit in *North Carolina* v. *EPA.* In that case, the Court examined EPA's definition of "will" in "will contribute significantly." The placement of the word "will" at the end of section 110(a)(2)(D)(i) clarifies that it applies to all of the provisions that follow—both those in 110(a)(2)(D)(i)(I) and those in 110(a)(2)(D)(i)(II). Thus the DC Circuit's discussion of the meaning of the word "will" in "will significantly contribute" also applies to the meaning of the word will in "will * * * interfere with maintenance."

In *North Carolina* v. *EPA,* the DC Circuit rejected North Carolina's argument that EPA erred in limiting its analysis of downwind areas by excluding areas that were currently monitored nonattainment but projected to be in attainment at a future date. Like WG argues here, North Carolina had argued that EPA was obligated to analyze the significant contribution of states that were contributing to areas of North Carolina that were in nonattainment at the time the rule was promulgated even though those areas were projected to come into attainment by the year selected for the future base case analysis. In rejecting this argument, the DC Circuit explained that the approach used by EPA was identical to the one used previously in the NO_X SIP Call and that "because 'will' can mean either certainty or indicate the future tense," EPA's approach was reasonable. In other words, the court approved EPA's approach that entailed the evaluation of interstate transport impacts at a future date in time.

Contrary to the assertions of the commenter, EPA believes that evaluation of interference with maintenance using a future date is the most appropriate approach for that requirement. As explained in the proposed action, the court decision affecting the CAIR rule required EPA to reevaluate its approach to the interfere with maintenance requirement of section 110(a)(2)(D) and to develop a new approach to give that requirement separate meaning. In doing so, EPA has developed an approach that necessarily requires a number of years of data, and an analysis that evaluates where there may be difficulties with maintaining attainment at a specific point in time, in this instance 2012. In the prior action cited by WG, EPA's evaluation of whether emissions would significantly contribute to nonattainment in other states was based on the data available at the time of that evaluation and before EPA had developed its approach for evaluating interference with maintenance. It is reasonable and appropriate for EPA to use, in this rulemaking, the current approach to identifying maintenance receptors for purposes of section 110(a)(2)(D)(i) that EPA developed to be consistent with the direction given to EPA in *North Carolina* v. *EPA.*

Finally, we note that comments on the validity or reasonableness of the approach to determining significant contribution in prior actions are not directly relevant to this rulemaking. This rulemaking addresses only the "interfere with maintenance" requirement of section 110(a)(2)(D)(i). EPA published a prior proposal (75 FR 16032) and final rule (75 FR 31306) analyzing the Colorado SIP submission for the "significant contribution" prong of section 110(a)(2)(D)(i).

III. Final Action

EPA is partially approving the Interstate Transport SIP submitted by the State of Colorado on June 18, 2009. Specifically, in this action EPA is approving the portions of that SIP submission that address the requirement of Section 110(a)(2)(D)(i)(I) that emissions from sources in that State do not "interfere with maintenance" of the 1997 8-hour ozone NAAQS by any other state. EPA has concluded that the State's submission, and additional evidence evaluated by EPA, establish that

[13] See above, in EPA Response to Comment No. 1, the methodology used for the identification of maintenance monitors in the August 2, 2010 Transport Rule Proposal, and the August 23, 2010 Western States Design Values memo. The monitor in Ouray is identified as Site ID number 49–047–2003, and in Red Wash as Site ID number 49–047–2002.

[14] EPA notes that the installation and operation expenses for the Ouray and Red Wash monitoring stations referenced above were funded by several companies because of court orders resulting from litigation initiated by EPA, affected states and tribes. See, for example, the Consent Decree signed by Kerr-McGee Corporation and EPA on May 8, and May 16, 2007, lodged May 17, 2007, and entered by the court on March 26, 2008.

[15] Before addressing the substantive issues raised in this comment, we would like to clarify that we presume that the reference to New Mexico in the comment's title is a clerical error, and that the commenter intended to refer to either Colorado or North Dakota.

emissions from Colorado sources do not have such an impact on other states for purposes of the 1997 8-hour ozone NAAQS. Therefore, the State's SIP does not need to include additional substantive controls to reduce emissions for purposes of section 110(a)(2)(D)(i)(I) for these NAAQS. In a **Federal Register** action of June 3, 2010 EPA approved those portions of the Interstate Transport SIP submitted by the State of Colorado on June 18, 2009 addressing the requirement of Section 110(a)(2)(D)(i)(I) that emissions from sources in that State do not "significantly contribute" to violations of the 1997 8-hour ozone NAAQS in any other state.

IV. Statutory and Executive Order Review

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 21, 2011. 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, Volatile organic compounds.

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

Dated: November 9, 2010.

Carol Rushin,

Acting Regional Administrator, Region 8.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart G—Colorado

■ 2. Section 52.352 is revised to read as follows:

§ 52.352 Interstate transport.

Addition to the Colorado State Implementation Plan of the Colorado Interstate Transport SIP regarding the 1997 8-Hour Ozone Standard for the "significant contribution" and the "interfere with maintenance" requirements, as adopted by the Colorado Air Quality Control Commission on December 30, 2008, State effective January 30, 2009, and submitted by the Governor's designee on June 18, 2009.

[FR Doc. 2010–29245 Filed 11–19–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–HQ–OAR–2009–0443; FRL–9230–4]

RIN–2060–AP78

Air Quality Designations for the 2008 Lead (Pb) National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes air quality designations for certain areas in the United States for the 2008 lead (Pb) National Ambient Air Quality Standards (NAAQS). Based on air quality monitoring data, EPA is issuing this rule to identify areas that do not meet the 2008 Pb NAAQS and areas that contribute to Pb air pollution in a nearby area that does not meet the Pb NAAQS. EPA is deferring designation for all other areas of the United States, including Indian country, pending collection and review of additional data from recently deployed Pb monitors. The Clean Air Act (CAA) requires areas designated nonattainment by this rule to undertake certain planning and pollution control activities to attain the standards as quickly as reasonably possible.

DATES: *Effective Date:* The effective date of this rule is December 31, 2010.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2009–0443. All documents in the docket are listed in the index at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in the docket or in hard copy at the Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Office of Air and Radiation Docket and Information Center is (202) 566–1742.

In addition, EPA has established a Web site for this rulemaking at: *http://www.epa.gov/leaddesignations/2008standards/index.html.* The Web site includes EPA's final state and tribal designations, as well as state initial recommendation letters, EPA modification letters, technical support documents, responses to comments and other related technical information.

FOR FURTHER INFORMATION CONTACT: Rhonda Wright, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–04, Research Triangle Park, NC 27711, phone number (919) 541–1087 or by e-mail at: *wright.rhonda@epa.gov;* or Tom Rosendahl, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–04, Research Triangle Park, NC 27711, phone number (919) 541–5314 or by e-mail at: *rosendahl.tom@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regional Office Contacts

Region I—Robert McConnell (617) 918–1046,

Region II—Mazeeda Khan (212) 637–3715,

Region III—Melissa Linden (215) 814–2096,

Region IV—Lynorae Benjamin (404) 562–9040,

Region V—Andy Chang (312) 886–0258,

Region VI—Emad Shahin (214) 665–6717,

Region VII—Stephanie Doolan (913) 551–7719,

Region VIII—Kevin Leone (303) 312–6227,

Region IX—Ginger Vagenas (415) 972–3964,

Region X—Steve Body (206) 553–0782.

The public may inspect the rule and state-specific technical support information at the following locations:

Regional offices	States
Dave Conroy, Chief, Air Programs Branch, EPA New England, 1 Congress Street, Suite 1100, Boston, MA 02114–2023, (617) 918–1661.	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.
Raymond Werner, Chief, Air Programs Branch, EPA Region II, 290 Broadway, 25th Floor, New York, NY 10007–1866, (212) 637–3706.	New Jersey, New York, Puerto Rico, and Virgin Islands.
Cristina Fernandez, Branch Chief, Air Quality Planning Branch, EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2187, (215) 814–2178.	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia.
Richard A. Schutt, Chief, Air Planning Branch, EPA Region IV, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., 12th Floor, Atlanta, GA 30303, (404) 562–9033.	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.
Jay Bortzer, Chief, Air Programs Branch, EPA Region V, 77 West Jackson Street, Chicago, IL 60604, (312) 886–1430.	Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.
Guy Donaldson, Chief, Air Planning Section, EPA Region VI, 1445 Ross Avenue, Dallas, TX 75202, (214) 665–7242.	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.
Joshua A. Tapp, Chief, Air Programs Branch, EPA Region VII, 901 North 5th Street, Kansas City, KS 66101–2907, (913) 551–7606.	Iowa, Kansas, Missouri, and Nebraska.
Monica Morales, Leader, Air Quality Planning Unit, EPA Region VIII, U.S. EPA Region VIII, 1595 Wynkoop Street, Denver, CO 80202–1129, (303) 312–6936.	Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.
Lisa Hanf, Air Planning Office, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3854.	American Samoa, Arizona, California, Guam, Hawaii, Nevada, and Northern Mariana Islands.
Mahbubul Islam, Manager, State and Tribal Air Programs, EPA Region X, Office of Air, Waste, and Toxics, Mail Code OAQ–107, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–6985.	Alaska, Idaho, Oregon, and Washington.

Table of Contents

The following is an outline of the Preamble.

I. Preamble Glossary of Terms and Acronyms
II. What is the purpose of this document?
III. What is lead?
IV. What are the health and welfare concerns addressed by the Pb standards?
V. What are the CAA requirements for air quality designations and what action has EPA taken to meet these requirements?
VI. What guidance did EPA issue and how did EPA apply the statutory requirements and applicable guidance to determine area designations and boundaries?
VII. What air quality data has EPA used?
VIII. How do designations affect Indian country?
IX. Where can I find information forming the basis for this rule and exchanges between EPA, states, and tribes related to this rule?
X. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act (NTTAA)
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act

L. Judicial Review

I. Preamble Glossary of Terms and Acronyms

The following are abbreviations of terms used in the preamble.

APA Administrative Procedure Act
AQS Air Quality System
CAA Clean Air Act
CBI Confidential Business Information
CFR Code of Federal Regulations
D.C. District of Columbia
EO Executive Order
EPA Environmental Protection Agency
FR **Federal Register**
FRM Federal Reference Method
IQ Intelligence Quotient
NAAQS National Ambient Air Quality Standards
NTTAA National Technology Transfer and Advancement Act
OMB Office of Management and Budget
Pb Lead
PM Particulate Matter
RFA Regulatory Flexibility Act
RIA Regulatory Impact Analysis
SBA Small Business Administration
SIP State Implementation Plan
UMRA Unfunded Mandate Reform Act of 1995
TAR Tribal Authority Rule
TSD Technical Support Document
TSP Total Suspended Particulate
TPY Tons Per Year
U.S. United States
VCS Voluntary Consensus Standards

II. What is the purpose of this document?

The purpose of this action is to announce and promulgate designations and boundaries for areas of the country not meeting the 2008 Pb NAAQS based on available information, in accordance with the requirements of the CAA. The list of areas being designated nonattainment in each state, and the boundaries of each area, appear in the table at the end of this final rule. EPA has been working closely with the states involved in these designations and several steps have been taken to announce that this rule is available. EPA has posted the notice on several EPA Web sites and provided a copy of the rule to those states with nonattainment areas.

This notice identifies the 16 areas being designated as nonattainment areas for the 2008 Pb NAAQS. The basis for designating these areas as "nonattainment" is monitored air quality data from calendar years 2007–2009 indicating a violation of the NAAQS. For these areas being designated nonattainment, states must develop a State Implementation Plan (SIP) that meets the requirements of section 172(c) and 191 of the CAA and provides for attainment of the NAAQS as expeditiously as practicable, but no later than December 31, 2015. These SIPs must be submitted to EPA within eighteen months of the effective date of these designations, i.e., by June 30, 2012.[1]

III. What is lead?

Lead (Pb) is a metal found naturally in the environment and present in some manufactured products. The major sources of Pb air emissions were historically motor vehicles (such as cars and trucks) and industrial sources. Motor vehicle emissions of Pb have been dramatically reduced with the phase-out of leaded gasoline, but Pb is still used as an additive in general aviation gasoline used in piston-engine aircraft and remains a trace contaminant in other fuels. Larger industrial sources of Pb emissions currently include metals processing, particularly primary and secondary Pb smelters. Lead is also emitted from sources such as: Iron and steel foundries; primary and secondary copper smelters; industrial, commercial, and institutional boilers; waste incinerators; glass manufacturing; and cement manufacturing.

IV. What are the health and welfare concerns addressed by the Pb standards?

Lead is generally emitted in the form of particles, which can end up being deposited in water, soil and dust. People may be exposed to Pb by inhaling it, or by ingesting lead-contaminated food, water, soil, or dust. Once in the body, Pb is quickly absorbed into the bloodstream and can result in a broad range of adverse health effects. These include damage to the central nervous system, cardiovascular function, kidneys, immune system, and red blood cells. Children are particularly vulnerable to Pb exposure, in part because they are more likely to ingest Pb and in part because their still-developing bodies are more sensitive to the effects of Pb. Urban children are also of particular risk if the mother is exposed to lead. The harmful effects to children's developing nervous systems (including their brains) arising from Pb exposure may include IQ loss, poor academic achievement, long-term learning disabilities, and an increased risk of delinquent behavior.

Lead is persistent in the environment and accumulates in soils and sediments through deposition from air sources, direct discharge of waste streams to water bodies, mining, and erosion. Ecosystems near some longstanding point sources of Pb demonstrate a wide range of adverse effects including losses in biodiversity, changes in community composition, decreased growth and reproductive rates in plants and animals, and neurological effects in vertebrates.

V. What are the CAA requirements for air quality designations and what action has EPA taken to meet these requirements?

After the promulgation of a new or revised NAAQS, EPA is required to designate areas as nonattainment, attainment, or unclassifiable, pursuant to section 107(d)(1) of the CAA. The Administrator signed a final rule revising the Pb NAAQS on October 15, 2008, which was published in the **Federal Register** on November 12, 2008, and became effective January 12, 2009. Based on the Administrator's review of the scientific evidence, including numerous studies published since the last review of the Pb NAAQS, and taking into consideration the comments expressed by the Clean Air Scientific Advisory Committee and the public, the Administrator revised the standard from a level of 1.5 $\mu g/m^3$ to a level of 0.15 $\mu g/m^3$. In addition, the Administrator changed the averaging time and form to a rolling 3-month average evaluated over a 3-year period. The rule also established new requirements for Pb monitoring networks, including the requirement that new Pb monitors be located in close proximity to the largest Pb emissions sources by January 1, 2010.

The process for designating areas following promulgation of a new or revised NAAQS is contained in section 107(d) of the CAA. The CAA requires EPA to complete the initial area designation process within 2 years of promulgating a new or revised NAAQS. However, if the Administrator has insufficient information to make these designations within that time frame, EPA has the authority to extend the designation process by up to one additional year. In light of the new monitoring network which is generating additional information that could be used to support additional designations in the upcoming year, EPA intends to complete the initial area designations for Pb in two rounds. In this rule, EPA is completing the first round by designating as "nonattainment" any area that is violating the 2008 Pb NAAQS based on 2007–2009 air quality data from the pre-2010 monitoring network. For all other areas, EPA is extending the deadline for designations by up to 1 year so that data from the newly deployed monitors can be considered in

[1] In addition, as discussed in the proposed and final Pb NAAQS rules, all states are required to submit SIPs pursuant to section 110(a)(1) ("infrastructure SIPs") within 3 years of promulgation of the new standard.

making appropriate designation decisions. EPA intends to complete the second round of area designations for the Pb NAAQS no later than October 15, 2011.

By not later than 1 year after the promulgation of a new or revised NAAQS, each state Governor is required to recommend air quality designations, including the appropriate boundaries for areas, to EPA. EPA reviews those state recommendations and is authorized to make any modifications the Administrator deems necessary. The statute does not define the term "necessary," but EPA interprets this to authorize the Administrator to modify designations that did not meet the statutory requirements or were otherwise inconsistent with the facts or analysis deemed appropriate by EPA. If EPA is considering modifications to a state's initial recommendation, EPA is required to notify the state of any such intended modifications to its recommendation not less than 120 days prior to EPA's promulgation of the final designation. If the state does not agree with EPA's modification, it then has an opportunity to respond to EPA and to demonstrate why it believes the modification proposed by EPA is inappropriate, as contemplated by section 107(d)(1)(B)(ii). Even if a state fails to provide any recommendation for an area, in whole or in part, EPA still must promulgate a designation that the Administrator deems appropriate, pursuant to section 107(d)(1)(B)(ii).

Section 107(d)(1)(A)(i) of the CAA defines a nonattainment area as any area that does not meet an ambient air quality standard or that is contributing to ambient air quality in a nearby area that does not meet the standard. If an area meets either prong of this definition, then EPA is obligated to designate the area as "nonattainment." Section 107(d)(1)(A)(iii) provides that any area that EPA cannot designate on the basis of available information as meeting or not meeting the standards should be designated as "unclassifiable."

EPA believes that section 107(d) provides the Agency with discretion to determine how best to interpret the terms in the definition of a nonattainment area (e.g., "contributes to" and "nearby") for a new or revised NAAQS, given considerations such as the nature of a specific pollutant, the types of sources that may contribute to violations, the form of the standards for the pollutant, and other relevant information. In particular, EPA believes that the statute does not require the Agency to establish bright line tests or thresholds for what constitutes contribution or nearby for purposes of designations.[2]

Similarly, EPA believes that the statute permits EPA to evaluate the appropriate application of the term "area" to include geographic areas based upon full or partial county boundaries, and contiguous or non-contiguous areas, as may be appropriate for a particular NAAQS. For example, section 107(d)(1)(B)(ii) explicitly provides that EPA can make modifications to designation recommendations for an area "or portions thereof," and under section 107(d)(1)(B)(iv), a designation remains in effect for an area "or portion thereof" until EPA redesignates it.

Designation activities for federally-recognized tribes are covered under the authority of section 301(d) of the CAA. This provision of the CAA authorizes EPA to treat eligible tribes in a similar manner as states. Pursuant to section 301(d)(2), we promulgated regulations, known as the Tribal Authority Rule (TAR), on February 12, 1999. 63 FR 7254, codified at 40 CFR 49 (1999). That rule specifies those provisions of the CAA for which it is appropriate to treat tribes in a similar manner as states. Under the TAR, tribes may choose to develop and implement their own CAA programs, but are not required to do so. The TAR also establishes procedures and criteria by which tribes may request from EPA a determination of eligibility for such treatment. The designations process contained in section 107(d) of the CAA is included among those provisions determined to be appropriate by EPA for treatment of tribes in the same manner as states. Under the TAR, tribes generally are not subject to the same submission schedules imposed by the CAA on states. As authorized by the TAR, tribes may seek eligibility to submit designation recommendations to EPA. In addition, CAA section 301(d)(4) gives EPA discretionary authority, in cases where it determines that treatment of tribes as identical to states is "inappropriate or administratively infeasible," to provide for direct administration by regulation to achieve the appropriate purpose.

To date, one tribe has applied under the TAR for eligibility to submit its own recommendations under section 107(d). Nonetheless, EPA invited all tribes to submit recommendations concerning designations for the 2008 Pb NAAQS. EPA worked with the tribes that requested an opportunity to submit designation recommendations. Tribes were provided an opportunity to submit their own recommendations and supporting documentation and could also comment on state recommendations and EPA modifications.

Designation recommendations and supporting documentation were submitted by most states and a few tribes to EPA by October 15, 2009. After receiving recommendations from states and tribes, and after reviewing and evaluating each recommendation, EPA provided a response to the states and tribes on June 15, 2010. In these letter responses, we indicated whether EPA intended to make modifications to the initial state or tribal recommendations and explained EPA's reasons for making any such modifications. EPA requested that states and tribes respond to any proposed EPA modifications by August 16, 2010. We received comments from some states suggesting changes to EPA's proposed modifications and providing additional information. EPA evaluated these comments, and all of the timely supporting technical information provided. As a result, some of the final designations reflect further modifications to the initial state and tribal recommendations. The state and tribal letters, including the initial recommendations, and EPA's June 2010 responses to those letters, including any modifications, and the subsequent state and tribal comment letters are in the docket for this action.

Although not required by section 107(d) of the CAA, EPA also provided an opportunity for members of the public to comment on EPA's June 2010 response letters. In order to gather additional information for EPA to consider before making final designations, EPA published a notice on July 8, 2010 (75 FR 39254) which invited the public to comment on EPA's intended designations. In that notice, EPA provided the opportunity to all interested parties other than states and tribes to submit comments by August 16, 2010. State and tribal initial recommendations and EPA's responses, including modifications, were posted on a publically accessible Web Site (*http://www.epa.gov/leaddesignations/2008standards/index.html*). Timely comments from the public and EPA's responses to significant comments are in the docket for this action.

VI. What guidance did EPA issue and how did EPA apply the statutory requirements and applicable guidance to determine area designations and boundaries?

In the notice of proposed rulemaking for the revised Pb NAAQS (73 FR 29184), EPA issued proposed guidance on its approach to implementing the

[2] This view was confirmed in *Catawba County* v. *EPA,* 571 F.3d 20 (D.C. Cir. 2009).

standard, including its approach to initial area designations. EPA solicited comment on that guidance and, in the notice of final rulemaking (73 FR 66964), adopted guidance concerning how to determine the boundaries for nonattainment areas for the Pb NAAQS.[3] In that guidance EPA recommended that monitoring data from the three most recent calendar years be used to identify a violation of the Pb NAAQS. This is appropriate because the form of the Pb NAAQS is calculated over 36 consecutive valid 3-month site means (specifically for a 3 calendar year period and the 2 previous months).[4] EPA is basing these final designations on monitored Pb concentrations from Federal Reference Method (FRM) monitors from calendar years 2007–2009. EPA notes that data from 2006–2008 were the most recent data available to states when states made their recommendations to EPA. Accordingly, although the determination of whether an area violates the standard was based on 2007–2009 data, EPA considered state recommendations and data from 2006–2008 as appropriate in determining boundaries for nonattainment areas.

In the guidance, EPA stated that the perimeter of a county containing a violating monitor would be the initial presumptive boundary for nonattainment areas, but also stated that the state, tribe and/or EPA could conduct additional area specific analyses that could justify establishing either a larger or smaller area. EPA indicated that the following factors should be considered in an analysis of whether to exclude portions of a county and whether to include additional nearby areas outside the county as part of the designated nonattainment area: (1) Emissions in areas potentially included versus excluded from the nonattainment area; (2) Air quality in potentially included versus excluded areas; (3) Population density and degree of urbanization including commercial development in included versus excluded areas; (4) Expected growth (including extent, pattern and rate of growth); (5) Meteorology (weather/transport patterns); (6) Geography/topography (mountain ranges or other air basin boundaries); (7) Jurisdictional boundaries (e.g., counties, air districts, reservations, etc.); and (8) Level of control of emission sources. EPA further indicated that we would consider information provided by the state resulting from one or more of the following techniques: (1) Qualitative analysis; (2) spatial interpolation of air quality monitoring data; or (3) air quality simulation by dispersion modeling.

EPA received comments on the proposed guidance suggesting that violations of the Pb NAAQS were likely to occur in close proximity to stationary sources of Pb. In response, EPA indicated that it agreed that Pb emissions do not generally transport over long distances (e.g., as compared to fine particulate matter), and that in situations where a single source, rather than multiple sources, is causing a NAAQS violation, EPA believes that a state may well be able to use area-specific analyses to determine whether a nonattainment area that is smaller than the county boundary is appropriate.

EPA found that states did use the factors and the variety of techniques identified by EPA in making recommendations for nonattainment areas smaller than the county. In recommending boundaries, EPA and states began with monitors that recorded a violation of the 2008 Pb NAAQS. As provided in Appendix R to 40 CFR part 50, all valid Pb-TSP data and all valid Pb-PM_{10} data measured by a FRM or equivalent method submitted to EPA's Air Quality System (AQS), or otherwise available to EPA, and meeting the requirements of 40 CFR part 58, including Appendices A, C, and E are used in design value calculations.[5] In some cases, states requested unclassifiable designations for areas around monitors with a design value exceeding the standard. EPA does not believe such a designation would be consistent with the requirements of the CAA when we have valid data supporting a designation of nonattainment.

For areas with a violating monitor, the designated nonattainment area must encompass the entire area that does not meet, and any nearby area that contributes to ambient air quality in the area that does not meet, the 2008 Pb NAAQS. Given the sources and characteristics of Pb emissions, states and EPA generally found factors such as emissions, air quality and meteorology to be particularly relevant in determining appropriate boundaries, while factors such as population density and expected growth were not as relevant for the 2008 Pb NAAQS, and thus did not play a significant role in determining boundaries. In some cases, states made a judgment that it was important to follow jurisdictional boundaries, particularly where jurisdictional boundaries smaller than a county exist. In other cases, states chose to rely primarily on air dispersion modeling to determine the recommended boundaries for nonattainment areas. In each case, EPA reviewed the state recommendations and, for the most part, EPA has accepted the state's recommendations; however, where EPA felt that changes were necessary to a state's initial recommendation, we conveyed those issues to the state and have worked with the state to revise the boundaries.

VII. What air quality data has EPA used?

The final Pb designations contained in this action are based upon air quality monitoring data from calendar years 2007–2009. Some stakeholders have requested that EPA delay designations, or designate areas unclassifiable, by not considering all relevant data (e.g., excluding 2007 or 2008 data) in making designation decisions. As discussed previously, the form of the standard requires comparison of monitoring values from 36 three-month rolling averages (i.e., 3 years, plus 2 preceding months). Thus, a violation will have generally occurred if any of the 36 three-month average concentrations of either Pb-TSP or Pb-PM_{10} exceeds the level of the NAAQS, and a finding of compliance will require that all 36 three-month averages of Pb-TSP be at or below the level of the NAAQS.[6] Moreover, pursuant to the CAA, EPA is making designations as expeditiously as practicable. Accordingly, where sufficient data from 2007–2009 are available to support a nonattainment designation, EPA does not have discretion to postpone designations or to exclude certain years from consideration in considering whether monitored data results in a violation of the Pb NAAQS pursuant to 40 CFR 50.16. Section 107(d) requires EPA to designate areas as nonattainment if sufficient data exist to support such a designation. EPA can only delay designations for up to one extra year if we do not have sufficient data to make

[3] *See also,* "Area Designations for the Revised Lead National Ambient Air Quality Standards," memorandum to Regional Administrators, Regions I–X, from William Harnett, dated August 21, 2009.

[4] For convenience, this notice refers to the period of 3 calendar years and the 2 previous months simply as 3 calendar years. Thus, monitoring for "calendar years 2007–2009" includes data from November 2006 through December 2009.

[5] A design value is the air quality value that is compared to the NAAQS to determine compliance. For the Pb NAAQS, the design value is the highest 3-month site mean of daily Pb concentrations over 36 consecutive 3-month means for 3 calendar years.

[6] For additional details on how to determine when the 2008 Pb NAAQS have been met, *see* 40 CFR part 50, Appendix R.

a designation within the prescribed 2-year period.

VIII. How do designations affect Indian country?

All counties, partial counties or Air Quality Control Regions listed in the table at the end of this document are designated as indicated. For the first round of Pb designations, EPA is only designating nonattainment areas. There are no areas in Indian country being designated nonattainment at this time.

IX. Where can I find information forming the basis for this rule and exchanges between EPA, states, and tribes related to this rule?

Information providing the basis for this action and related decisions are provided in the technical support documents (TSDs), response to comments document, and other information in the docket. The TSDs, applicable EPA guidance memoranda, copies of correspondence regarding this process between EPA and the states, tribes, and other parties, and EPA's responses to comments, are available for review at the EPA Docket Center listed above in the addresses section of this document and on our designation Web site at *http://www.epa.gov/leaddesignations/2008standards/index.html.* State specific information is available from the EPA Regional Offices.

X. Statutory and Executive Order Reviews

Upon promulgation of a new or revised NAAQS, the CAA requires EPA to designate areas as attaining or not attaining the NAAQS. The CAA then specifies requirements for areas based on whether such areas are attaining or not attaining the NAAQS. In this final rule, EPA assigns designations to areas as required.

A. Executive Order 12866: Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). This rule responds to the requirement to promulgate air quality designations after promulgation of a NAAQS. This requirement is prescribed in the CAA section 107 of title 1. The present final rule does not establish any new information collection.

C. Regulatory Flexibility Act

This final rule is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. This rule is not subject to notice-and-comment requirements under the APA or any other statute because the rule is not subject to the APA and is subject to CAA section 107(d)(2)(B), which does not require that the Agency issue a notice of proposed rulemaking before issuing this rule.

D. Unfunded Mandates Reform Act

This action contains no federal mandate under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. The action imposes no enforceable duty on any state, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. It does not create any additional requirements beyond those of the CAA and Pb NAAQS (40 CFR 50.16); therefore, no UMRA analysis is needed. This rule establishes nonattainment designations for certain areas of the country for the Pb NAAQS. The CAA requires states to develop plans, including control measures, based on the designations for areas within the state.

One mandate that may apply as a consequence of this action to all designated nonattainment areas is the requirement under CAA section 176(c) and associated regulations to demonstrate general conformity of federal actions to SIPs. These rules apply to federal agencies making conformity determinations. The EPA concludes that such conformity determinations will not cost $100 million or more in the aggregate.

The EPA believes that any new controls imposed as a result of this action will not cost in the aggregate $100 million or more annually. Thus, this federal action will not impose mandates that will require expenditures of $100 million or more in the aggregate in any one year.

Nonetheless, EPA carried out consultation with government entities affected by this rule, including states, tribal governments, and local air pollution control agencies.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications. "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, or the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The CAA establishes the process whereby states take primary responsibility in developing plans to meet the Pb NAAQS. This rule will not modify the relationship of the states and EPA for purposes of developing programs to implement the Pb NAAQS. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 2, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have Tribal implications." This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rule concerns the designation of areas as attainment and nonattainment for the Pb NAAQS. The CAA provides for states and eligible tribes to develop plans to regulate emissions of air pollutants within their areas based on their designations. The TAR provides tribes the opportunity to apply for eligibility to develop and implement CAA programs such as

programs to attain and maintain the Pb NAAQS, but it leaves to the discretion of the tribe the decision of whether to apply to develop these programs and which programs, or appropriate elements of a program, the tribe will seek to adopt. This rule does not have a substantial direct effect on one or more Indian tribes. It does not create any additional requirements beyond those of the Pb NAAQS (40 CFR section 50.16). This rule establishes the designation for certain areas of the country for the Pb NAAQS but no areas in Indian country are being designated under this rule. Additionally, no tribe has implemented a CAA program to attain the Pb NAAQS at this time. Furthermore, this rule does not affect the relationship or distribution of power and responsibilities between the federal government and Indian tribes. The CAA and the TAR establish the relationship of the federal government and tribes in developing plans to attain the NAAQS, and this rule does nothing to modify that relationship. Because this rule does not have tribal implications, Executive Order 13175 does not apply.

Although Executive Order 13175 does not apply to this rule, EPA communicated with tribal leaders and environmental staff regarding the designations process. EPA also sent individualized letters to all federally recognized tribes to explain the designation process for the 2008 Pb NAAQS, to provide the EPA designations guidance, and to offer consultation with EPA. EPA provided further information to tribes through presentations at the National Tribal Forum and through participation in National Tribal Air Association conference calls. EPA also sent individualized letters to all federally recognized tribes that submitted recommendations to EPA about EPA's intended designations for the Pb standards and offered tribal leaders the opportunity for consultation. These communications provided opportunities for tribes to voice concerns to EPA about the general designations process for the Pb NAAQS, as well as concerns specific to a tribe, and informed EPA about key tribal concerns regarding designations as the rule was under development.

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

The action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866. However, the protection offered by the Pb NAAQS may be especially important for children because neurological effects in children are among if not the most sensitive health endpoints for Pb exposure. Because children are considered a sensitive population, in setting the Pb NAAQS we carefully evaluated the environmental health effects of exposure to Pb pollution among children. These effects and the size of the population affected are summarized in the EPA's 2006 Air Quality Criteria Document for Pb and in the proposed and final Pb NAAQS rules. (*http://www.epa.gov/airquality/lead/fr/20081112.pdf)*

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

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA of 1995, Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This action does not involve technical standards. Therefore, EPA did not consider the use of any VCS.

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

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the U.S.

The EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on any population, including minority or low-income populations.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the U.S. The 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 U.S. 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). This rule will be effective December 31, 2010.

L. Judicial Review

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final actions by EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit: (i) When the agency action consists of "nationally applicable regulations promulgated, or final actions taken, by the Administrator," or (ii) when such action is locally or regionally applicable, if "such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination."

This rule designating areas for the 2008 Pb NAAQS is "nationally applicable" within the meaning of section 307(b)(1). This rule establishes designations for areas across the U.S. for the 2008 Pb NAAQS. At the core of this rulemaking is EPA's interpretation of the definition of nonattainment under section 107(d)(1) of the CAA, and its application of that interpretation to areas across the country.

For the same reasons, the Administrator also is determining that the final designations are of nationwide scope and effect for the purposes of section 307(b)(1). This is particularly appropriate because, in the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator's determination that an action is of "nationwide scope or effect" would be appropriate for any action that has a scope or effect beyond a single judicial circuit. H.R. Rep. No. 95–294 at 323, 324, *reprinted* in 1977

U.S.C.C.A.N. 1402–03. Here, the scope and effect of this rulemaking extends to numerous judicial circuits since the designations apply to areas across the country. In these circumstances, section 307(b)(1) and its legislative history calls for the Administrator to find the rule to be of "nationwide scope or effect" and for venue to be in the DC Circuit.

Thus, any petitions for review of final designations must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the **Federal Register**.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: November 16, 2010.

Lisa P. Jackson,

Administrator.

■ For the reasons set forth in the preamble, 40 CFR Part 81, is amended as follows:

PART 81—DESIGNATIONS OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 1. The authority citation for part 81 continues to read as follows:

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

Subpart C—Section 107 Attainment Status Designations

■ 2. Section 81.301 is amended by revising the table for "Alabama—Lead" to read as follows:

§ 81.301 Alabama.

* * * * *

ALABAMA—LEAD

Designated area	Designation for the 1978 NAAQS [a]		Designation for the 2008 NAAQS	
	Date [1]	Type	Date [2]	Type
Troy, AL:				
Pike County (part)		Attainment		Nonattainment.
Area is bounded by a 0.8 mile radius from a center point at latitude 31.78627106 North and longitude 85.97862228 West, which fully includes the Sanders Lead Facility.				

[a] Includes Indian country located in each county or area, except as otherwise specified.
[1] This date is 90 days after March 7, 1995, unless otherwise noted.
[2] This date is December 31, 2010, unless otherwise noted.

* * * * *

■ 3. Section 81.305 is amended by adding the table for "California—Lead" at the end of the section to read as follows:

§ 81.305 California.

* * * * *

CALIFORNIA—LEAD

Designation area	Designation for the 1978 NAAQS [a]		Designation for the 2008 NAAQS	
	Date [1]	Type	Date [2]	Type
Los Angeles County—South Coast Air Basin, CA:				
Los Angeles County (part)		Unclassifiable/Attainment		Nonattainment.
That portion of Los Angeles County which lies south and west of line described as follows:				
Beginning at the Los Angeles-San Bernardino County boundary and running west along the Township line common to Township 3 North and Township 2 North, San Bernardino Base and Meridian;				
then North along the range line common to Range 8 West and Range 9 West;				
then west along the Township line common to Township 4 North and Township 3 North;.				
then north along the range line common to Range 12 West and Range 13 West to the southeast corner of Section 12, Township 5 North and Range 13 West;				
then west along the south boundaries of Sections 12, 11, 10, 9, 8, and 7, Township 5 North and Range 13 West to the boundary of the Angeles National Forest which is collinear with the range line common to Range 13 West and Range 14 West;				

CALIFORNIA—LEAD—Continued

Designation area	Designation for the 1978 NAAQS [a]		Designation for the 2008 NAAQS	
	Date [1]	Type	Date [2]	Type
then north and west along the Angeles National Forest boundary to the point of intersection with the Township line common to Township 7 North and Township 6 North (point is at the northwest corner of Section 4 in Township 6 North and Range 14 West); then west along the Township line common to Township 7 North and Township 6 North; then north along the range line common to Range 15 West and Range 16 West to the southeast corner of Section 13, Township 7 North and Range 16 West; then along the south boundaries of Sections 13, 14, 15, 16, 17 and 18, Township 7 North and Range 16 West; then north along the range line common to Range 16 West and Range 17 West to the north boundary of the Angeles National Forest (collinear with the Township line common to Township 8 North and Township 7 North); then west and north along the Angeles National Forest boundary to the point of intersection with the south boundary of the Rancho La Liebre Land Grant; then west and north along this land grant boundary to the Los Angeles-Kern County boundary.				

[a] Includes Indian country located in each county or area, except as otherwise specified.
[1] This date is 90 days after November 6, 1991, unless otherwise noted.
[2] This date is December 31, 2010, unless otherwise noted.

■ 4. Section 81.310 is amended by revising the table for "Florida—Lead" to read as follows:

§ 81.310 Florida.

* * * * *

FLORIDA—LEAD

Designated area	Designation for the 1978 NAAQS [a]		Designation for the 2008 NAAQS	
	Date [1]	Type	Date [2]	Type
Tampa, FL: Hillsborough County (part)	.....	Unclassifiable/Not Designated.	.....	Nonattainment.
Area is bounded by a 1.5 km radius centered at UTM coordinates 364104 meters, 3093830 meters N, Zone 17, which surrounds the EnviroFocus Technologies Facility.				

[a] Includes Indian country located in each county or area, except as otherwise specified.
[1] This date is 90 days after November 6, 1991, unless otherwise noted.
[2] This date is December 31, 2010, unless otherwise noted.

* * * * *

■ 5. Section 81.314 is amended by adding the table for "Illinois—Lead" to the end of the section to read as follows:

§ 81.314 Illinois.

* * * * *

ILLINOIS—LEAD

Designated area	Designation for the 1978 NAAQS [a]		Designation for the 2008 NAAQS	
	Date [1]	Type	Date [2]	Type
Granite City, IL: Madison County (part) ..... Area is bounded by Granite City Township and Venice Township.	.....	Unclassifiable/Attainment	.....	Nonattainment.

[a] Includes Indian country located in each county or area, except as otherwise specified.
[1] This date is 90 days after November 6, 1991, unless otherwise noted.
[2] This date is December 31, 2010, unless otherwise noted.

■ 6. Section 81.315 is amended by revising the table for "Indiana—Lead" to read as follows:

§ 81.315 Indiana.

* * * * *

INDIANA—LEAD

Designated area	Designation for the 1978 NAAQS [a]		Designation for the 2008 NAAQS	
	Date [1]	Type	Date [2]	Type
Muncie, IN: Delaware County (part). A portion of the City of Muncie, Indiana bounded to the North by West 26th Street/Hines Road, to the east by Cowan Road, to the south by West Fuson Road, and to West by a line running south from the eastern edge of Victory Temple's driveway to South Hoyt Avenue and then along South Hoyt Avenue.	.....	Not Designated	.....	Nonattainment.

[a] Includes Indian country located in each county or area, except as otherwise specified.
[1] This date is 90 days after November 6, 1991, unless otherwise noted.
[2] This date is December 31, 2010, unless otherwise noted.

* * * * *

■ 7. Section 81.324 is amended by revising the table for "Minnesota—Lead" to read as follows:

§ 81.324 Minnesota.

* * * * *

MINNESOTA—LEAD

Designation area	Designation for the 1978 NAAQS [a]		Designation for the 2008 NAAQS	
	Date [1]	Type	Date [2]	Type
Eagan, MN: Dakota County (part) ..... Portions of Dakotacounty that are bounded by: Lone Oak Rd. (County Rd. 26) to the north, County Rd. 63 to the east, Wescott Rd. to the south, and Lexington Ave. (County Rd. 43) to the west	.....	Attainment	.....	Nonattainment.

[a] Includes Indian country located in each county or area, except as otherwise specified.
[1] This date is 90 days after December 19, 1994, unless otherwise noted.
[2] This date is December 31, 2010, unless otherwise noted.

* * * * *

■ 8. Section 81.326 is amended by revising the table for "Missouri—Lead" to read as follows:

§ 81.326 Missouri.

* * * * *

MISSOURI—LEAD

Designation area	Designation for the 1978 NAAQS [a]		Designation for the 2008 NAAQS	
	Date [1]	Type	Date [2]	Type
Iron, MO: Dent County (part)	.....	Unclassifiable/Attainment	.....	Nonattainment.

MISSOURI—LEAD—Continued

Designation area	Designation for the 1978 NAAQS [a]		Designation for the 2008 NAAQS	
	Date [1]	Type	Date [2]	Type
Sections 4, 9, 16, 21, 28, 33 of T34N, R2W..				
Iron County (part)		Unclassifiable/Attainment		Nonattainment.
Sections 6–7, 18–19, 30–32 of T34N, R1W and Sections 1–3, 10–15, 22–27, 34–36 of T34N, R2W.				Nonattainment.
Reynolds County (part)		Unclassifiable/Attainment		Nonattainment.
Sections 5–7 of T33N, R1W and Sections 1–3, 10–12 of T33N, R2W.				
Jefferson County, MO:				
Jefferson County (part) Within city limits of Herculaneum.	1/6/92	Nonattainment		Nonattainment.

[a] Includes Indian country located in each county or area, except as otherwise specified.
[1] This date is 90 days after November 6, 1991, unless otherwise noted.
[2] This date is December 31, 2010, unless otherwise noted.

* * * * *

■ 9. Section 81.336 is amended by revising the table for "Ohio—Lead" to read as follows:

§ 81.336 Ohio.

* * * * *

OHIO—LEAD

Designation area	Designation for the 1978 NAAQS [a]		Designation for the 2008 NAAQS	
	Date [1]	Type	Date [2]	Type
Bellefontaine, OH:				
Logan County (part) The portions of Logan County that are bounded by: sections 27, 28, 33, and 34 of Lake Township.		Not Designated		Nonattainment.
Cleveland, OH:				
Cuyahoga County (part) The portions of Cuyahoga County that are bounded on the west by Washington Park Blvd./Crete Ave./East 49th St., on the east by East 71st St., on the north by Fleet Ave., and on the south by Grant Ave.		Not Designated		Nonattainment.
Delta, OH:				
Fulton County (part) The portions of Fulton County that are bounded by: sections 12 and 13 of York Township and sections 7 and 18 of Swan Creek Township.		Not Designated		Nonattainment.

[a] Includes Indian country located in each county or area, except as otherwise specified.
[1] This date is 90 days after November 6, 1991, unless otherwise noted.
[2] This date is December 31, 2010, unless otherwise noted.

* * * * *

■ 10. Section 81.339 is amended by adding the table for "Pennsylvania—Lead" to the end of the section to read as follows:

§ 81.339 Pennsylvania.

* * * * *

PENNSYLVANIA—LEAD

Designated area	Designation for the 1978 NAAQS [a]		Designation for the 2008 NAAQS	
	Date [1]	Type	Date [2]	Type
Lower Beaver Valley, PA:				
Beaver County (part)		Unclassifiable/Attainment		Nonattainment
Area is bounded by Potter Township and Vanport Township.				
Lyons, PA:				
Berks County (part)		Unclassifiable/Attainment		Nonattainment.
Area is bounded by Kutztown Borough, Lyons Borough, Maxatawny Township and Richmond Township.				
North Reading, PA:				
Berks County (part)		Unclassifiable/Attainment		Nonattainment.

PENNSYLVANIA—LEAD—Continued

Designated area	Designation for the 1978 NAAQS [a]		Designation for the 2008 NAAQS	
	Date [1]	Type	Date [2]	Type
Area is bounded by Alsace Township, Laureldale Borough, and Muhlenberg Township.	.....	.....	.....	

[a] Includes Indian country located in each county or area, except as otherwise specified.
[1] This date is 90 days after November 6, 1991, unless otherwise noted.
[2] This date is December 31, 2010, unless otherwise noted.

■ 11. Section 81.343 is amended by revising the table for "Tennessee—Lead" to read as follows:

§ 81.343 Tennessee.

* * * * *

TENNESSEE—LEAD

Designated area	Designation for the 1978 NAAQS [a]		Designation for the 2008 NAAQS	
	Date [1]	Type	Date [2]	Type
Bristol, TN:				
Sullivan County (part) Area is bounded by a 1.25 km radius surrounding the UTM coordinates 4042923 meters E, 386267 meters N, Zone 17, which surrounds the Exide Technologies Facility.	.....	Not Designated	.....	Nonattainment.

[a] Includes Indian country located in each county or area, except as otherwise specified.
[1] This date is 90 days after November 6, 1991, unless otherwise noted.
[2] This date is December 31, 2010, unless otherwise noted.

* * * * *

■ 12. Section 81.344 is amended by revising the table for "Texas—Lead" to read as follows:

§ 81.344 Texas.

* * * * *

TEXAS—LEAD

Designated area	Designation for the 1978 NAAQS [a]		Designation for the 2008 NAAQS	
	Date [1]	Type	Date [2]	Type
Frisco, TX:				
Collin County (part) The area immediately surrounding the Exide Technologies battery recycling plant in Frisco, bounded to the north by latitude 33.153 North, to the east by longitude 96.822 West, to the south by latitude 33.131 North, and to the west by longitude 96.837 West.	12/13/99	Attainment	.....	Nonattainment.

[a] Includes Indian country located in each county or area, except as otherwise specified.
[1] This date is 90 days after November 6, 1991, unless otherwise noted.
[2] This date is December 31, 2010, unless otherwise noted.

[FR Doc. 2010–29405 Filed 11–19–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 10–2118; MB Docket No. 08–86; RM–11432; RM–11607]

Radio Broadcasting Services; Onekama, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Northern Radio of Michigan, Inc., in its counterproposal, allots FM Channel 227A at Onekama, Michigan, as a first local aural service. Channel 227A can be allotted at Onekama, consistent with the minimum distance separation requirements of the Commission's rules, at coordinates 44–21–48 NL and 86–12–18 WL, without site restriction. The Government of Canada has concurred in the allotment, which is required because the proposed allotment is located within 320 kilometers (199 miles) of the U.S.-

Canadian border. The original proposal of Roy E. Henderson, for the substitution of FM Channel 227A for vacant Channel 263A at Custer, Michigan, was dismissed. *See* **SUPPLEMENTARY INFORMATION** *infra.*

DATES: Effective December 22, 2010.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 08–86, adopted November 3, 2010, and released November 5, 2010. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by adding Onekama, Channel 227A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 2010–29381 Filed 11–19–10; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131362–0087–02]

RIN 0648–XA051

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

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

ACTION: Temporary rule; prohibition of retention.

SUMMARY: NMFS is prohibiting retention of Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catch of Pacific cod in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the 2010 total allowable catch (TAC) of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component in this area has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), November 17, 2010, through 2400 hrs, A.l.t., December 31, 2010.

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

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

The 2010 Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the inshore component of the Western Regulatory Area of the GOA is 18,687 metric tons, as established by the final 2010 and 2011 harvest specifications for groundfish of the GOA (75 FR 11749, March 12, 2010).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2010 Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA has been reached. Therefore, NMFS is requiring that further catches of Pacific cod caught by vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b).

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 prohibition of retention of Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of November 12, 2010.

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 17, 2010.

Brian Parker,

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

[FR Doc. 2010–29376 Filed 11–17–10; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 75, No. 224
Monday, November 22, 2010

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0722 Airspace Docket No. 10–AAL–17]

Proposed Revision of Class E Airspace; Barrow, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to revise Class E airspace at Wiley Post/Will Rogers Memorial Airport in Barrow, AK, in order to accommodate the amendment of five Standard Instrument Approach Procedures (SIAPs), and one Obstacle Departure Procedure (ODP) and to enhance safety and management of Instrument Flight Rules (IFR) operations.

DATES: Comments must be received on or before January 6, 2011.

ADDRESSES: Send comments on the proposal to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2010–0722/Airspace Docket No. 10–AAL–17 at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Alaska Flight Service, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Martha Dunn, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; email: *Martha.ctr.Dunn@faa.gov.* Internet address: *http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/alaskan/rulemaking/.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2010–0722/Airspace Docket No. 10–AAL–17." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition, in person in the Federal Docket Management System Office (*see* **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Alaska Flight Services office. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14 Code of Federal Regulations (14 CFR) part 71 by revising Class E airspace at Wiley Post/Will Rogers memorial Airport at Barrow, AK, to accommodate amended SIAPs and an ODP. This Class E airspace would provide adequate controlled airspace upward from the surface, and from 700 and 1,200 feet above the surface, to increase the safety of IFR operations at Wiley Post/Will Rogers Memorial Airport by ensuring that the Class E airspace is sufficient for the management of air traffic.

The Class E2 surface areas are published in paragraph 6002 in FAA Order 7400.9U, *Airspace Designations and Reporting Points,* dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace areas designated as 700/1,200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9U, *Airspace Designations and Reporting Points,* dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be subsequently published in the Order.

The FAA has determined that this proposed 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. Because this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to revise airspace at Barrow, Alaska, and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9U, *Airspace Designations and Reporting Points,* dated August 18, 2010, and effective September 15, 2010, is to be amended as follows:

* * * * *

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

AAL AK E2 Barrow, AK [Revised]

Wiley Post/Will Rogers Memorial Airport, AK

(Lat. 71°17′06.8″ N., long. 156°45′58.2″ W.)

Within a 4.1 mile radius of the Wiley Post/Will Rogers Memorial Airport, AK.

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Barrow, AK [Revised]

Wiley Post/Will Rogers Memorial Airport, AK

(Lat. 71°17′06.8″ N., long. 156°45′58.2″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Wiley Post/Will Rogers Memorial Airport, AK; and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Wiley Post/Will Rogers Memorial Airport, AK.

Issued in Anchorage, AK, on November 10, 2010.

Michael A. Tarr,

Alaska Flight Services.

[FR Doc. 2010–29294 Filed 11–19–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

31 CFR Part 29

RIN 1505–AC02

Federal Benefit Payments Under Certain District of Columbia Retirement Plans

AGENCY: Departmental Offices, Treasury.

ACTION: Proposed rule.

SUMMARY: The Department of the Treasury proposes to amend our regulations which were promulgated pursuant to the Balanced Budget Act of 1997, as amended (the Act). Pursuant to the Act, with certain exceptions, Treasury has responsibility for payment of benefits based on service accrued as of June 30, 1997, under the retirement plans for District of Columbia teachers, police officers, and firefighters. Benefits for service after that date, and certain other benefits, are funded by the District of Columbia. The rule that we published in 2000 as part of the final regulations to implement the provisions of the Act, establishes the methodology for determining the split between the Federal and District obligations. The effective date of the regulation was delayed pending completion of Treasury's new automated retirement system, "System to Administer Retirement" (STAR), which replaced the District's legacy automated retirement system. While the new system has been completed, the proposed amended regulation will establish additional rules and provide additional examples of benefit calculation scenarios, the need for which was identified during systems development. The amendments to the regulation will have minimal financial impact and are introduced to simplify calculations and maintain consistency with the general principles established in the original regulations.

DATES: *Comment Due Date:* January 21, 2011.

ADDRESSES: Treasury invites interested members of the public to submit comments on this proposed rule. Comments may be submitted to Treasury by any of the following methods: Submit electronic comments through the federal government e-rulemaking portal, *www.regulations.gov* or by e-mail to *dcpensions@do.treas.gov* or send paper comments to Paul Cicchetti, Department of the Treasury, Office of DC Pensions, Metropolitan Square Building, Room 6G503, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

In general, the Treasury will post all comments to *http://www.regulations.gov* without change, including any business or personal information provided such as names, addresses, e-mail addresses, or telephone numbers. Treasury will also make such comments available for public inspection and copying in the Treasury's Library, Room 1428, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 622–0990. All comments, including attachments and other supporting materials received, are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Paul Cicchetti, (202) 622–1859, Department of the Treasury, Office of D.C. Pensions, Metropolitan Square Building, Room 6G503, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Background

On December 12, 2000, the Department of the Treasury (the Department or Treasury) published (at 65 FR 77500) final regulations to

implement Title XI of the Balanced Budget Act of 1997, Public Law 105–33, 111 Stat. 251, 712–731, 756–759, as amended (the Act). The Act transferred certain unfunded pension liabilities from the District of Columbia (the District) government to the Federal Government. Pursuant to the Act, with certain exceptions, Treasury is responsible for payment of benefits based on service accrued as of June 30, 1997, the date defined in the Act as the "freeze date". Under the Act, the Department calculates its obligations based on the terms of the retirement plans for District of Columbia teachers, police officers, and firefighters in effect as of June 29, 1997, referred to as the "District Retirement Program." Benefits for service after June 30, 1997, and other benefits, *e.g.,* certain disability benefits, remain a District responsibility. These proposed regulations address the Department's responsibility for retirement benefits in those situations where the benefit responsibility is shared between Treasury and the District. All benefit payments that are the responsibility of the Department under the Act are referred to as Federal Benefit Payments. Any remaining benefit payments to which an individual is entitled under the District's retirement plans are the responsibility of the District and are referred to as "District benefit payments." Annuities which consist of Federal Benefit Payments and District benefit payments are referred to as "split benefits."

The Act also established the District of Columbia Judicial Retirement and Survivors Annuity Fund, administered by Treasury's Office of DC Pensions (ODCP). Because the DC judges' benefits are now entirely a federal responsibility, the proposed split benefit regulations, discussed below, do not apply to the judges' benefit calculations.

Treasury is proposing amendments to subpart C. Subpart C contains the methodology for determining Federal Benefit Payments in situations where a teacher, police officer, or firefighter has service with the District of Columbia both before and after June 30, 1997, *i.e.,* split benefits. Subpart C was originally published as part of the final regulations to implement the provisions of the Act on December 12, 2000, 65 FR 77500, 77503. As noted above, the effective date of subpart C was delayed, pending completion of the new automated system.

On March 29, 2001, 66 FR 17222, the Department announced that it was "postponing indefinitely" the effective date of subpart C of the regulations because "Treasury decided to acquire an upgraded version of the replacement system software. This decision, coupled with the need to accommodate integration of the replacement system with systems implementation schedules of the government of the District of Columbia, protracted the implementation schedule for Treasury's replacement system." 66 FR 17222.

Treasury's ODCP, the District's Office of Payroll Services (OPRS), and the District of Columbia Retirement Board (DCRB) collaborated on the development of the replacement system, known as "System to Administer Retirement" (STAR). STAR is an automated pension/payroll system which supports the end-to-end business processes for retirement. STAR, which replaced the District's legacy system, calculates retirement and survivor benefits for the District's teachers, police officers and firefighters, regardless of whether their service accrued before or after the "freeze date" for Federal Benefit Payments.

From the earliest stages of this effort, Treasury worked with the District to arrive at key decisions for STAR development. Pursuant to Section 11041 of the Act, the District continues as the benefits administrator during the interim administration period, which is ongoing. Originally, OPRS performed the benefits administration function. DCRB assumed responsibility for benefits administration for both District benefit payments and Federal Benefit Payments on September 26, 2005. As benefits administrator, OPRS, and now DCRB, participated with Treasury to: Develop a proposed system that met the programs' needs; develop the approach for addressing and resolving issues; make decisions about development; test the system being developed; review the status of projects; evaluate readiness and approve plans for implementation.

As Treasury explained in the preamble to the original proposed regulations in 1999, 64 FR at 69435, unless an exception applies under the Act, the general rule for the calculation of Federal Benefit Payments states that in all cases "in which some service becomes creditable on or before June 30, 1997 and some service becomes creditable after June 30, 1997, Federal Benefit Payments are computed under the rules of the applicable plan as though: (1) The employee were eligible to retire as of June 30, 1997, under the same conditions as the actual retirement (that is, using the annuity computation formula that applies under the plan in effect on June 29, 1997, and the retirement age, including any applicable age reduction, based on the age at actual retirement; (2) the service that became creditable after June 30, 1997 did not exist; and (3) the average salary is the average salary at separation." The original proposed regulations were largely derived from this general rule.

In the course of developing the STAR system, the development team and the subject matter experts from ODCP and the DCRB determined that additional rules for benefit calculation scenarios were needed to simplify development and to address situations that had not been considered when the original regulations were published in 2000. STAR was programmed with these additional rules. These amendments to subpart C establish these additional rules and provide additional examples of benefit calculation scenarios. These amendments have no significant financial impact and are introduced to simplify calculations and maintain consistency with the general principles established in the original regulations.

For the convenience of readers, Treasury is restating subpart C in its entirety. However, this preamble addresses only those portions of subpart C that are being amended. For discussion of subpart C as originally proposed, see 64 FR 69432, 69434–36, December 13, 1999 and the preamble addressing the comments to the final regulations at 65 FR 77500–77501, December 12, 2000.

Proposed Amendments

Section 29.334 provides the rules for determining when deposit service is creditable for Federal Benefit Payments. The paragraph is expanded in section 29.334(a)(3) to provide for situations where deposits in Treasury funds are to be transferred to District retirement funds.

Section 29.335 provides the rules for determining when refunded service is creditable for Federal Benefit Payments. The paragraph is expanded in section 29.335(c) to provide for situations where redeposits in Treasury funds are to be transferred to District retirement funds.

Section 29.341 provides the General Principle for calculating Federal Benefit Payments. The paragraph is amended to cover an exception when Congress amends the terms of the District Retirement Program in effect on June 29, 1997.

Section 29.343 provides the rules for determining the Federal Benefit Payment in the case of a disability retirement. Section 29.343(c) is added to provide the rule for determining the Federal Benefit Payment when the individual's Federal Benefit Payment calculated under optional retirement exceeds the individual's total annuity calculated under disability retirement.

This situation can occur when an individual meets the requirements for both normal and disability retirement and elects disability retirement.

Section 29.344 provides the rules for determining the Federal Benefit Payment for survivors. The paragraph is amended to combine the provisions of current sections 29.344(a) and 29.344(b) into section 29.344(b), which provides the rule for determining the Federal Benefit Payment for survivors when death benefits are not determined by the length of service. Section 29.344(a) is added to provide the rule for determining the Federal Benefit Payment for survivors when death benefits are determined by the length of service. Section 29.344(c) is added to provide the rule for determining the Federal Benefit Payment for survivors when an individual retires based on disability or voluntary early retirement and dies before reaching the age at which a Federal Benefit Payment is payable to the individual.

Section 29.345 provides the rules for adjustments of Federal Benefit Payments after the initial calculation. Under current section 29.345, cost-of-living increases are applied directly to Federal Benefit Payments. The paragraph is amended in section 29.345(a) to introduce the federal percentage, which is applied each year after a cost-of-living increase to the total annuity to determine the new Federal Benefit Payment. This methodology required fewer programming changes in STAR and has de minimus financial impact. Section 29.345(b) is added to provide the rule for determining the Federal Benefit Payment when the total annuity is recalculated as the result of a service-based adjustment or a plan provision enacted after June 30, 1997 which does not apply to the Federal Benefit Payment.

Section 29.346 provides the rule to calculate a Federal Benefit Payment when there is an election of a reduced benefit. The paragraph is amended such that the calculation results in a reduction to the Federal Benefit Payment that is proportional to the reduction in the total annuity.

Sections 29.351 through 29.353 provide the rules for calculating the federal share of refunded employee retirement contributions and refunded purchase of service deposits.

The examples in appendix A to subpart C have been amended or expanded to illustrate the new methodology applications arising from the above section changes.

Example 10A is amended to show how the Federal Benefit Payment is calculated for a teacher who retires and elects to provide a full survivor annuity. Example 10B is amended to show how the Federal Benefit Payment is calculated for a teacher who retires and elects to provide a partial survivor annuity.

Example 13A is amended to show how a spouse survivor's Federal Benefit Payment is calculated when the employee elects at retirement that the survivor annuity be a percentage of the employee's total annuity. The current Example 13D is redesignated as Example 13E. The current Example 13C is redesignated as Example 13D and unused sick leave credit is added. Example 13C is added to show how a spouse survivor's Federal Benefit Payment is calculated when a teacher elects at retirement to provide a flat amount survivor annuity. Example 13F is added to show how a spouse survivor's Federal Benefit Payment is calculated when the spouse survivor's total annuity is based on plan provisions adopted after June 30, 1997. Example 13G is added to show how a spouse survivor's Federal Benefit Payment is calculated when a police officer or firefighter not eligible for optional retirement retires on disability and dies before reaching age 55. Example 13H is added to show how a spouse survivor's Federal Benefit Payment is calculated when a teacher not eligible for optional retirement retires on disability and dies before reaching age 62.

Example 14A is amended to show how the federal percentage for a teacher who retires is used to calculate a new Federal Benefit Payment after a cost-of-living increase. The current Example 14B is redesignated as Example 14H and amended to show the use of the federal percentage. Example 14B is added to show how a federal percentage for a teacher who retires and elects a percentage survivor annuity is used to calculate the survivor's new Federal Benefit Payment after a cost-of-living increase. Example 14C is added to show how if a teacher retires and elects a flat amount survivor annuity, a federal percentage for the survivor is calculated and used to calculate a new Federal Benefit Payment after a cost-of-living increase. Example 14D is added to show how if a teacher dies while an employee, and the survivor annuity is related to the teacher's length of service, a federal percentage for the teacher is calculated and used to calculate the survivor's new Federal Benefit Payment after a cost-of-living increase. Example 14E is added to show how if a teacher dies while an employee, and the survivor annuity is not related to the teacher's length of service, a federal percentage for the survivor is calculated and used to calculate a new Federal Benefit Payment after a cost-of-living increase. Example 14F is added to show how a federal percentage is calculated for a spouse survivor of a retired police officer or firefighter and used to calculate a new Federal Benefit Payment after a cost-of-living increase. Example 14G is added to show how if a police officer or firefighter dies while an employee, a federal percentage for the survivor is calculated and used to calculate a new Federal Benefit Payment after a cost-of-living increase.

Executive Order 12866, Regulatory Planning and Review

Because this rule is not a significant regulatory action for purposes of Executive Order 12866, a regulatory assessment is not required.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation will only affect the determination of the Federal portion of retirement benefits to certain former employees of the District of Columbia and will not have an effect on small entities. Accordingly, a regulatory flexibility analysis is not required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

List of Subjects in 31 CFR Part 29

Administrative practice and procedure, claims, Disability benefits, Firefighters, Government employees, Intergovernmental relations, Law enforcement officers, Pension, Retirement, Teachers.

Accordingly, the Department of the Treasury proposes to amend subtitle A of title 31 of the Code of Federal Regulations by revising subpart C of part 29 to read as follows:

PART 29—FEDERAL BENEFIT PAYMENTS UNDER CERTAIN DISTRICT OF COLUMBIA RETIREMENT PROGRAMS

1. The authority citation for part 29 is revised to read as follows:

Authority: Subtitle A and Chapter 3 of Subtitle H, of Pub. L. 105–33, 111 Stat. 712–731 and 786–787; as amended.

2. Subpart C is revised to read as follows:

Subpart C—Split Benefits

Sec.
29.301 Purpose and scope.
29.302 Definitions.

General Principles for Determining Service Credit To Calculate Federal Benefit Payments

29.311 Credit only for service performed on or before June 30, 1997.
29.312 All requirements for credit must be satisfied by June 30, 1997.
29.313 Federal Benefit Payments are computed based on retirement eligibility as of the separation date and service creditable as of June 30, 1997.

Service Performed After June 30, 1997

29.321 General principle.
29.322 Disability benefits.

All Requirements for Credit Must Be Satisfied by June 30, 1997

29.331 General principle.
29.332 Unused sick leave.
29.333 Military service.
29.334 Deposit service.
29.335 Refunded service.

Calculation of the Amount of Federal Benefit Payments

29.341 General principle.
29.342 Computed annuity exceeds the statutory maximum.
29.343 Disability benefits.
29.344 Survivor benefits.
29.345 Cost-of-living adjustments.
29.346 Reduction for survivor benefits.

Calculation of the Split of Refunds of Employee Contributions and Deposits

29.351 General principle.
29.352 Refunded contributions
29.353 Refunded deposits
Appendix A to Subpart C of Part 29—Examples

Subpart C—Split Benefits

§ 29.301 Purpose and scope.

(a) The purpose of this subpart is to addresses the legal and policy issues that affect the calculation of the Federal and District of Columbia portions of benefits under subtitle A of Title XI of the Balanced Budget Act of 1997, Public Law 105–33, 111 Stat. 251, 712–731, and 786–787 enacted August 5, 1997, as amended.

(1) This subpart states general principles for the calculation of Federal Benefit Payments in cases in which the Department and the District government are both responsible for paying a portion of an employee's total retirement benefits under the Police and Firefighters Plan or the Teachers Plan.

(2) This subpart provides illustrative examples of sample computations to show the application of the general principles to specific problems.

(b)(1) This subpart applies only to benefits under the Police and Firefighters Plan or the Teachers Plan for individuals who have performed service creditable under these programs on or before June 30, 1997.

(2) This subpart addresses only those issues that affect the split of fiscal responsibility for retirement benefits (that is, the calculation of Federal Benefit Payments).

(3) Issues relating to determination and review of eligibility and payments, and financial management, are beyond the scope of this subpart.

(c) This subpart does not apply to benefit calculations under the Judges Plan.

§ 29.302 Definitions.

In this subpart (including appendix A of this subpart)—

Deferred retirement means retirement under section 4–623 of the D.C. Code (1997) (under the Police and Firefighters Plan) or section 31–1231(a) of the D.C. Code (1997) (under the Teachers Plan).

Deferred retirement age means the age at which a deferred annuity begins to accrue, that is, age 55 under the Police and Firefighters Plan and age 62 under the Teachers Plan.

Department service or departmental service means any period of employment in a position covered by the Police and Firefighters Plan or Teachers Plan. Department service or departmental service may include certain periods of military service that interrupt a period of employment under the Police and Firefighters Plan or the Teachers Plan.

Disability retirement means retirement under section 4–615 or section 4–616 of the DC Code (1997) (under the Police and Firefighters Plan) or section 31–1225 of the DC Code (1997) (under the Teachers Plan), regardless of whether the disability was incurred in the line of duty.

Enter on duty means commencement of employment in a position covered by the Police and Firefighters Plan or the Teachers Plan.

Excess leave without pay or excess LWOP means a period of time in a non-pay status that in any year is greater than the amount creditable as service under § 29.105(d).

Hire date means the date the employee entered on duty.

Military service means—

(1) For the Police and Firefighters Plan, military service as defined in section 4–607 of the DC Code (1997) that is creditable as other service under section 4–602 or section 4–610 of the DC Code (1997); and

(2) For the Teachers Plan, military service as described in section 31–1230(a)(4) of the DC Code (1997).

Optional retirement means regular longevity retirement under section 4–618 of the DC Code (1997) (under the Police and Firefighters Plan) or section 31–1224(a) of the DC Code (1997) (under the Teachers Plan).

Other service means any period of creditable service other than departmental service or unused sick leave. Other service includes service that becomes creditable upon payment of a deposit, such as service in another school system (under section 31–1208 of the DC Code (1997)) (under the Teachers Plan) or prior governmental service (under the Teachers Plan and the Police and Firefighters Plan); and service that is creditable without payment of a deposit, such as military service occurring prior to employment (under the Teachers Plan and the Police and Firefighters Plan).

Pre-80 hire means an individual whose annuity is computed using the formula under the Police and Firefighters Plan applicable to individuals hired before February 15, 1980.

Pre-96 hire means an individual whose annuity is computed using the formula under the Teachers Plan applicable to individuals hired before November 1, 1996.

Sick leave means unused sick leave, which is creditable in a retirement computation, as calculated under § 29.105(c).

General Principles for Determining Service Credit To Calculate Federal Benefit Payments

§ 29.311 Credit only for service performed on or before June 30, 1997.

Only service performed on or before June 30, 1997, is credited toward Federal Benefit Payments.

§ 29.312 All requirements for credit must be satisfied by June 30, 1997.

Service is counted toward Federal Benefit Payments only if all requirements for the service to be creditable are satisfied as of June 30, 1997.

§ 29.313 Federal Benefit Payments are computed based on retirement eligibility as of the separation date and service creditable as of June 30, 1997.

Except as otherwise provided in this subpart, the amount of Federal Benefit Payments is computed based on retirement eligibility as of the separation date and service creditable as of June 30, 1997.

Service Performed After June 30, 1997

§ 29.321 General principle.

Any service performed after June 30, 1997, may never be credited toward Federal Benefit Payments.

§ 29.322 Disability benefits.

If an employee separates for disability retirement after June 30, 1997, and, on the date of separation, the employee—

(a) Satisfies the age and service requirements for optional retirement, the Federal Benefit Payment commences immediately, that is, the Federal Benefit Payment is calculated as though the employee retired under optional retirement rules using only service through June 30, 1997 (*See* examples 7A and 7B of appendix A of this subpart); or

(b) Does not satisfy the age and service requirements for optional retirement, the Federal Benefit Payment begins when the disability retiree reaches deferred retirement age. (*See* § 29.343.)

All Requirements for Credit Must Be Satisfied by June 30, 1997

§ 29.331 General principle.

To determine whether service is creditable for the computation of Federal Benefit Payments under this subpart, the controlling factor is whether all requirements for the service to be creditable under the Police and Firefighters Plan or the Teachers Plan were satisfied as of June 30, 1997.

§ 29.332 Unused sick leave.

(a) For employees separated for retirement as of June 30, 1997, Federal Benefit Payments include credit for any unused sick leave that is creditable under the applicable plan.

(b) For employees separated for retirement after June 30, 1997, no unused sick leave is creditable toward Federal Benefit Payments.

§ 29.333 Military service.

(a) For employees who entered on duty on or before June 30, 1997, and whose military service was performed prior to that date, credit for military service is included in Federal Benefit Payments under the terms and conditions applicable to each plan.

(b) For employees who enter on duty after June 30, 1997, military service is not creditable toward Federal Benefit Payments, even if performed as of June 30, 1997.

(c) For employees who entered on duty on or before June 30, 1997, but who perform military service after that date, the credit for military service is not included in Federal Benefit Payments.

§ 29.334 Deposit service.

(a) *Teachers Plan.* (1) Periods of civilian service that were not subject to retirement deductions at the time they were performed are creditable for Federal Benefit Payments under the Teachers Plan if the deposit for the service was paid in full to the Teachers Plan as of June 30, 1997.

(2) No credit is allowed for Federal Benefit Payments under the Teachers Plan for any period of civilian service that was not subject to retirement deductions at the time it was performed if the deposit for the service was not paid in full as of June 30, 1997.

(3) In cases where a retiree receives credit from the District for a service deposit paid in installments that was not paid in full as of June 30, 1997, Treasury shall transfer to the District an amount equal to the portion of the deposit completed prior to June 30, 1997.

(b) *Police and Firefighters Plan.* No credit is allowed for Federal Benefit Payments under the Police and Firefighters Plan for any period of civilian service that was not subject to retirement deductions at the time that the service was performed. (See definition of "governmental service" at DC Code § 4–607(15) (1997).)

§ 29.335 Refunded service.

(a) Periods of civilian service that were subject to retirement deductions but for which the deductions were refunded to the employee are creditable for Federal Benefit Payments if the redeposit for the service was paid in full to the District government as of June 30, 1997.

(b) No credit is allowed for Federal Benefit Payments for any period of civilian service that was subject to retirement deductions but for which the deductions were refunded to the employee if the redeposit for the service was not paid in full to the District government as of June 30, 1997.

(c) In cases where a retiree receives credit from the District for a service redeposit paid in installments that was not paid in full as of June 30, 1997, Treasury shall transfer to the District an amount equal to the portion of the redeposit completed prior to June 30, 1997.

Calculation of the Amount of Federal Benefit Payments

§ 29.341 General principle.

(a) Where service is creditable both before and after June 30, 1997, Federal Benefit Payments are computed under the rules of the applicable plan as though—

(1) The employee were eligible to retire effective July 1, 1997, under the same conditions as the actual retirement (that is, using the annuity computation formula that applies under the plan in effect on June 29, 1997, and the retirement age, including any applicable age reduction, based on the age at actual retirement);

(2) The service that became creditable after June 30, 1997, did not exist; and

(3) The average salary is the average salary at separation.

(b) Exceptions to the general principle apply where:

(1) Congress amends the terms of the District Retirement Program in effect on June 29, 1997. For example, see section 11012(e) and (f) of the Balanced Budget Act of 1997, as amended by Public Laws 106–554, 107–290, and 108–133 (codified at DC Code § 1–803.02(e) and (f));

(2) The retirement is based on disability after June 30, 1997 (*see* 29.343); or

(3) The benefit is based on the death of an employee after June 30, 1997 and the survivor benefit is not based on years of service (*see* 29.344).

Note to § 29.341: *See* examples 7B, 9, and 13 of appendix A of this subpart.

§ 29.342 Computed annuity exceeds the statutory maximum.

(a) In cases in which the total computed annuity exceeds the statutory maximum:

(1) Federal Benefit Payments may equal total benefits even if the employee had service after June 30, 1997.

(2) If the employee had sufficient service as of June 30, 1997, to qualify for the maximum annuity under the plan, the Federal Benefit Payment is the maximum annuity under the plan. This will be the entire benefit except for any amount in excess of the normal maximum due to unused sick leave, which is the responsibility of the District. (*See* example 3, of appendix A of this subpart.)

(b) If the employee did not perform sufficient service as of June 30, 1997, to reach the statutory maximum benefit, but has sufficient service at actual retirement to exceed the statutory maximum, the Federal Benefit Payment is the amount earned through June 30, 1997. The District benefit payment is the amount by which the total benefit payable exceeds the Federal Benefit Payment.

§ 29.343 Disability benefits.

(a) The general rule that Federal Benefit Payments are calculated under the applicable retirement plan as though the employee were eligible for optional retirement and separated on June 30, 1997, does not apply to disability benefits prior to optional retirement age.

(b) In cases involving disability benefits prior to optional retirement age, no Federal Benefit Payment is payable

until the retiree reaches the age of eligibility to receive a deferred annuity (age 55 under the Police and Firefighters Plan and age 62 under the Teachers Plan). When the age for deferred annuity is reached, the Federal Benefit Payment is paid using creditable service accrued as of June 30, 1997, and average salary (computed under the rules for the applicable plan) as of the date of separation. (*See* examples 6 and 7 of appendix A of this subpart.)

(c) In no case will the amount of the Federal Benefit Payment exceed the amount of the total disability annuity.

§ 29.344 Survivor benefits.

(a) The general rule that Federal Benefit Payments are calculated under the applicable retirement plan as though the employee were eligible for optional retirement and separated on June 30, 1997, applies to death benefits that are determined by length of service. In these cases, the survivor's Federal Benefit Payment is calculated by multiplying the survivor's total benefit by the ratio of the deceased retiree or employee's Federal Benefit Payment to the deceased retiree or employee's total annuity. (*See* examples 13A and B of appendix A of this subpart.)

(b) The general rule that Federal Benefit Payments are calculated under the applicable retirement plan as though the employee were eligible for optional retirement and separated on June 30, 1997, does not apply to death benefits that are not determined by length of service. In these cases, the survivor's Federal Benefit Payment is calculated by multiplying the survivor's total benefit by the deceased retiree or employee's number of full months of service through June 30, 1997, and then dividing by the retiree or employee's number of months of total service at retirement. (*See* examples 13C–F of appendix A of this subpart.)

(c) In cases involving a disability or early voluntary retiree who dies before reaching the age at which a Federal Benefit Payment is payable, the survivor's Federal Benefit Payment is calculated as though the employee had not retired from service, but had separated from service with eligibility to receive a deferred annuity. (*See* examples 13G and 13H of appendix A of this subpart.)

§ 29.345 Annuity adjustments.

(a) In cases in which the total annuity and the Federal Benefit Payment are equally impacted by a cost-of-living adjustment, the new Federal Benefit Payment is determined by applying the federal percentage of the total annuity to the new total annuity. (*See* examples 14A–G of appendix A of this subpart.)

(b) In cases in which the total annuity and the Federal Benefit Payment are not equally impacted by a change, such as a new plan provision or service-based adjustment, the Federal Benefit Payment is recalculated where applicable, and the federal percentage of the total annuity used to determine subsequent Federal Benefit Payments is recalculated. (*See* example 14H of appendix A of this subpart.)

§ 29.346 Reduction for survivor benefits.

If a retiree elects a reduction for a survivor annuity, the ratio of the unreduced Federal Benefit Payment to the unreduced total annuity is multiplied by the reduced total annuity to determine the reduced Federal Benefit Payment. (*See* example 10 of appendix A of this subpart.)

Calculation of the Split of Refunds of Employee Contributions and Deposits

§ 29.351 General principle.

Treasury will fund refunds of employee contributions and purchase of service deposits paid by or on behalf of a covered employee to the District of Columbia Police Officers' and Firefighters' Retirement Fund or District of Columbia Teachers' Retirement Fund on or before June 30, 1997.

§ 29.352 Refunded contributions.

For any given pay period, employee contributions are considered to have been made before the freeze date if the pay date was on or before June 30, 1997. As a result, for calendar year 1997, Treasury will fund refunds of employee contributions made by teachers through pay period 12 and fund refunds of employee contributions made by police officers and firefighters through pay period 13. If pay period records are unavailable for calendar year 1997, and the participant separated on or before June 30, 1997, Treasury will fund 100 percent of the refund of retirement contributions. If pay period records are unavailable for calendar year 1997, and the participant was hired before January 1, 1997 and separated after December 31, 1997, Treasury will fund 50 percent of the refund of retirement contributions made to teachers in calendar year 1997, and 48 percent of the retirement contributions made to police officers or firefighters in calendar year 1997. Otherwise, if the participant separated after June 30, 1997, the percent of contributions made in calendar year 1997 funded by Treasury is assumed to be the ratio where the numerator is the number of days before July 1 the participant was employed in calendar year 1997 and the denominator is the number of days the participant was employed in calendar year 1997.

§ 29.353 Refunded deposits.

Treasury will fund refunds of purchase of service deposits made by employees by lump sum payment or by installment payments on or before June 30, 1997.

Appendix A to Subpart C of Part 29—Examples

This appendix contains sample calculations of Federal Benefit Payments in a variety of situations.

Optional Retirement Examples

Example 1: No Unused Sick Leave

A. In this example, an individual covered by the Police and Firefighters Plan hired before 1980 retires in October 1997. At retirement, he is age 51 with 20 years and 3 days of departmental service plus 3 years, 4 months, and 21 days of military service that preceded the departmental service. The Federal Benefit Payment begins at retirement. It is based on the 19 years, 8 months, and 22 days of departmental service and 3 years, 4 months, and 21 days of military service performed as of June 30, 1997. Thus, the Federal Benefit Payment is based on 23 years and 1 month of service, all at the 2.5 percent accrual rate. The total annuity is based on 23 years and 4 months of service, all at the 2.5 percent accrual rate.

EXAMPLE 1A—POLICE OPTIONAL

[Pre-80 hire]

Total Annuity Computation
Birth date: 09/10/46
Hire date: 10/09/77
Separation date: 10/11/97
Department service: 20/00/03
Other service: 03/04/21
Sick leave:
.025 service: 23.333333
.03 service:
Average salary: $45,680.80
Total: $26,647.12
Total/month: $2,221.00

Federal Benefit Payment Computation

Birth date: 9/10/46
Hire date: 10/09/77
Freeze date: 06/30/97
Department service: 19/08/22
Other service: 03/04/21
Sick leave:
.025 service: 23.083333
.03 service:
Average salary: $45,680.80
Total: $26,361.61
Total/month: $2,197.00
Total federal/month ÷ total/month: 0.989194

B. In this example, the individual covered by the Police and Firefighters Plan was hired earlier than in example 1A and thus performed more service as of both June 30, 1997, and retirement in October 1997. At retirement, he is age 51 with 21 years, 11

months and 29 days of departmental service plus 3 years, 4 months, and 21 days of military service that preceded the departmental service. The Federal Benefit Payment begins at retirement. It is based on the 21 years, 8 months, and 18 days of departmental service and 3 years, 4 months, and 21 days of military service performed as of June 30, 1997. Thus, the Federal Benefit Payment is based on 25 years and 1 month of service, 1 year and 8 months at the 3.0 percent accrual rate and 23 years and 5 months at the 2.5 percent accrual rate (including 1 month consisting of 18 days of departmental service and 21 days of other service). The total annuity is based on 25 years and 4 months of service, 1 year and 11 months at the 3.0 percent accrual rate and 23 years and 5 months at the 2.5 percent accrual rate (including 1 month consisting of 29 days of departmental service and 21 days of other service).

EXAMPLE 1B—POLICE OPTIONAL

[Pre-80 hire]

Total Annuity Computation

Birth date: 09/10/46
Hire date: 10/13/75
Separation date: 10/11/97
Department service: 21/11/29
Other service: 03/04/21
Sick leave:
.025 service: 23.416667
.03 service: 1.916667
Average salary: $45,680.80
Total: $29,368.96
Total/month $2,447.00

Federal Benefit Payment Computation

Birth date: 09/10/46
Hire date: 10/13/75
Freeze date: 06/30/97
Department service: 21/08/18
Other service: 03/04/21
Sick leave:
.025 service: 23.416667
.03 service: 1.666667
Average salary: $45,680.80
Total: $29,026.36
Total/month: $2,419.00
Total federal/month ÷ total/month: 0.988557

Example 2: Unused Sick Leave Credit

In this example, an individual covered by the Police and Firefighters Plan and hired before 1980 retires in March 1998. At retirement, she is age 48 with 24 years, 8 months, and 6 days of departmental service plus 6 months and 4 days of other service (deposit paid before June 30, 1997) and 11 months and 11 days of unused sick leave. For a police officer (or a non-firefighting division firefighter) such an amount of sick leave would be 1,968 hours (246 days, based on a 260-day year, times 8 hours per day). For a firefighting division firefighter, such an amount would be 2,069 hours (341 days divided by 360 days per year times 2,184 hours per year). The Federal Benefit Payment begins at retirement. It is based on the 23 years, 11 months, and 23 days of departmental service performed as of June 30, 1997, and 6 months and 4 days of other service. Thus, the Federal Benefit Payment is based on 20 years departmental and 6 months of other service at the 2.5 percent accrual rate and 3 years and 11 months of service at the 3.0 percent accrual rate. The total annuity is based on 20 years and 6 months of service at the 2.5 percent accrual rate and 5 years and 7 months of service at the 3 percent accrual rate.

EXAMPLE 2—POLICE OPTIONAL

[Pre-80 hire]

Total Annuity Computation

Birth date: 05/01/49
Hire date: 07/08/73
Separation date: 03/13/98
Department service: 24/08/06
Other service: 00/06/04
Sick leave: 00/11/11
.025 service: 20.5
.03 service: 5.583333
Average salary: $61,264.24
Total: $41,659.68
Total/month: $3,472.00

Federal Benefit Payment Computation

Birth date: 05/01/49
Hire date: 07/08/73
Freeze date: 06/30/97
Department service: 23/11/23
Other service: 00/06/04
Sick leave:
.025 service: 20.5
.03 service: 3.916667
Average salary: $61,264.24
Total: $38,596.47
Total/month: $3,216.00
Total federal/month ÷ total/month: 0.926267

Example 3: Calculated Benefit Exceeds Statutory Maximum

A. In this example, an individual covered by the Police and Firefighters Plan hired before 1980 retires in March 1998. At retirement, he is age 55 with 32 years and 17 days of departmental service. The Federal Benefit Payment begins at retirement. It is based on the 31 years, 3 months, and 17 days of departmental service performed as of June 30, 1997. Thus, the Federal Benefit Payment is based on 20 years of service at the 2.5 percent accrual rate and 11 years and 3 months of service at the 3.0 percent accrual rate. However, the annuity is limited to 80 percent of the basic salary at time of retirement. (This limitation does not apply to the unused sick leave credit.) The annuity computed as of June 30, 1997, equals the full benefit payable; therefore, the Federal Benefit Payment is the total benefit.

EXAMPLE 3A—POLICE OPTIONAL

[Pre-80 hire]

Total Annuity Computation

Birth date: 06/12/42
Hire date: 03/14/66
Separation date: 03/30/98
Department service: 32/00/17

EXAMPLE 3A—POLICE OPTIONAL—Continued

[Pre-80 hire]

Other service:
Sick leave:
.025 service: 20
.03 service: 12
Average salary: $75,328.30
Final salary: $77,180.00
Total: $64,782.34
Total/month: $5,399.00
Maximum: $61,744.00
Maximum/month: $5,145.00

Federal Benefit Payment Computation

Birth date: 06/12/42
Hire date: 03/14/66
Freeze date: 03/30/97
Department service: 31/03/17
Other service:
Sick leave:
.025 service: 20
.03 service: 11.25
Average salary: $75,328.30
Final salary: $77,180.00
Total: $63,087.45
Total/month: $5,257.00
Maximum: $61,744.00
Maximum/month: $5,145.00
Total federal/month ÷ total/month: 1.0

B. In this example, the individual in example 3A also has 6 months of unused sick leave at retirement. The sick leave credit is not subject to the 80% limitation and does not become creditable service until the date of separation. For a police officer (or a non-firefighting division firefighter) such an amount of sick leave would be 1,040 hours (130 days, based on a 260-day year, times 8 hours per day). For a firefighting division firefighter, such an amount would be 1,092 hours (180 days divided by 360 days per year times 2,184 hours per year). Six months of unused sick leave increases the annual total benefit by 1.5 percent of the average salary, or in the example by $94 per month. The District is responsible for the portion of the annuity attributable to the unused sick leave because it became creditable at retirement, that is, after June 30, 1997.

EXAMPLE 3B—POLICE OPTIONAL

[Pre-80 hire]

Total Annuity Computation

Birth date: 06/12/42
Hire date: 03/14/66
Separation date: 03/30/98
Department service: 32/00/17
Other service:
Sick leave:
.025 service: 20
.03 service: 12
Average salary: $75,328.30
Final salary: $77,180.00
Total wo/sl credit: $64,782.34
Total/month: $5,399.00
Max wo/sl credit: $61,744.00
Max w/sl credit: $62,873.92
Monthly benefit: $5,239.00

EXAMPLE 3B—POLICE OPTIONAL—Continued

[Pre-80 hire]

Federal Benefit Payment Computation

Birth date: 06/12/42
Hire date: 03/14/66
Freeze date: 06/30/97
Department service: 31/03/17
Other service:
Sick leave: none
.025 service: 20
.03 service: 11.25
Average salary: $75,328.30
Final salary: $77,180.00
Total: $63,087.45
Total/month: $5,257.00
Maximum: $61,744.00
Monthly benefit: $5,145.00
Total federal/month ÷ total/month: 0.982058

Example 4: Excess Leave Without Pay

In this example, an individual covered by the Teachers Plan hired before 1996 retires in February 1998. At retirement, she is age 64 with 27 years of departmental service and 6 years, 7 months, and 28 days of other service (creditable before June 30, 1997). However, only 6 months of leave in a fiscal year without pay may be credited toward retirement under the Teachers Plan. She had 3 months and 18 days of excess leave without pay as of June 30, 1997. Since the excess leave without pay occurred before June 30, 1997, the time attributable to the excess leave without pay is subtracted from the service used in both the Federal Benefit Payment and the total benefit computations. The Federal Benefit Payment begins at retirement. It is based on the 32 years and 8 months of service (32 years, 11 months, and 28 days minus 3 months and 18 days and the partial month dropped); 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 22 years and 8 months of service at the 2 percent accrual rate. The total annuity is based on 33 years and 4 months of service (33 years, 7 months and 28 days minus 3 months and 18 days and the partial month dropped) 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate and 23 years and 4 months of service at the 2 percent accrual rate.

Note: For the Teachers Plan, section 1230(a) of title 31 of the D.C. Code (1997) allows for 6 months leave without pay in any fiscal year. For the Police and Firefighters Plan, section 610(d) of title 4 of the D.C. Code (1997) allows for 6 months leave without pay in any calendar year.

EXAMPLE 4—TEACHERS OPTIONAL

[Pre-96 hire]

Total Annuity Computation

Birth date: 11/04/33
Hire date: 03/01/71
Separation date: 02/28/98
Department service: 27/00/00
Other service: 06/07/28

EXAMPLE 4—TEACHERS OPTIONAL—Continued

[Pre-96 hire]

Excess LWOP: 00/03/18
.015 service: 5
.0175 service: 5
.02 service: 23.333333
Average salary: $53,121.00
Total: $33,421.98
Total/month: $2,785.00

Federal Benefit Payment Computation

Birth date: 11/04/33
Hire date: 03/01/71
Freeze date: 06/30/97
Department service: 26/04/00
Other service: 06/07/28
Excess LWOP: 00/03/18
.015 service: 5
.0175 service: 5
.02 service: 22.666667
Average salary: $53,121.00
Total: $32,713.66
Total/month: $2,726.00
Total federal/month ÷ total/month: 0.978815

Example 5: Service Credit Deposits

A. An individual covered by the Teachers Plan hired before 1996 retires in October 1997. At retirement, he is age 61 with 30 years and 3 days of departmental service plus 3 years, 4 months, and 21 days of other service that preceded the departmental service for which the deposit was fully paid on or before June 30, 1997. The Federal Benefit Payment begins at retirement. It is based on the 29 years, 8 months, and 22 days of departmental service and 3 years, 4 months, and 21 days of service performed as of June 30, 1997. Thus, the Federal Benefit Payment is based on 33 years and 1 month of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 23 years and 1 month of service at the 2 percent accrual rate. The total annuity is based on 33 years and 4 months of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate and 23 years and 4 months of service at the 2 percent accrual rate.

EXAMPLE 5A—TEACHERS OPTIONAL

[Pre-96 hire]

Total Annuity Computation

Birth date: 09/10/36
Hire date: 10/09/67
Separation date: 10/11/97
Department Service: 30/00/03
Other service: 03/04/21
Deposit paid before freeze date:
Other service credit allowed:
Sick leave:
.015 service: 5
.0175 service: 5
.02 service: 23.333333
Average salary: $45,680.80
Total: $28,740.85
Total/month: $2,395.00

EXAMPLE 5A—TEACHERS OPTIONAL—Continued

[Pre-96 hire]

Federal Benefit Payment Computation

Birth date: 09/10/36
Hire date: 10/09/67
Freeze date: 06/30/97
Department service: 29/08/22
Other service: 03/04/21
Deposit paid before freeze date:
Other service credit allowed:
Sick Leave:
.015 service: 5
.0175 service: 5
.02 service: 23.08333; 13 days dropped
Average salary: $45,680.80
Total: $28,512.45
Total/month: $2,376.00
Total federal/month ÷ total/month: 0.992067

B. In this example, the employee in example 5A did not pay any of the deposit to obtain credit for the 3 years, 4 months, and 21 days of other service as of June 30, 1997. Thus, none of the other service is used in the computation of the Federal Benefit Payment. An individual covered by the Teachers Plan hired before 1996 retires in October 1997. At retirement, he is age 61 with 30 years and 3 days of departmental service plus 3 years, 4 months, and 21 days of other service that preceded the departmental service for which the deposit was paid in full in October 1997 (at retirement). The Federal Benefit Payment begins at retirement. It is based on only the 29 years, 8 months, and 22 days of departmental service performed as of June 30, 1997; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 19 years and 8 months of service at the 2 percent accrual rate. The total annuity is based on 33 years and 4 months of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate and 23 years and 4 months of service at the 2 percent accrual rate.

EXAMPLE 5B—TEACHERS OPTIONAL

[Pre-96 hire]

Total Annuity Computation

Birth date: 09/10/36
Hire date: 10/09/67
Separation date: 10/11/97
$0.00
Department service: 30/00/03
Other service: 03/04/21
Total deposit paid after 6/30/97:
Sick leave:
.015 service: 5
.0175 service: 5
.02 service: 23.333333
Average salary: $45,680.80
Total: $28,740.85
Total/month: $2,395.00

Federal Benefit Payment Computation

Birth date: 09/10/36
Hire date: 10/09/67

EXAMPLE 5B—TEACHERS OPTIONAL—Continued

[Pre-96 hire]

Freeze date: 06/30/97
Department service: 29/08/22
Other service: none
Total deposit paid after 6/30/97:
Sick leave:
.015 service: 5
.0175 service: 5
.02 service: 19.666667; 22 days dropped
Average salary: $45,680.80
Total: $25,390.90
Total/month: $2,116.00
Total federal/month ÷ total/month: 0.883507

C. In this example, the employee in examples 5A and B began installment payments on the deposit to obtain credit for the 3 years, 4 months, and 21 days of other service as of June 30, 1997, but did not complete the deposit until October 1997 (at retirement). The other service is not used in the computation of the Federal Benefit Payment because the payment was not completed as of June 30, 1997. Thus, the result is the same as in example 5B.

EXAMPLE 5C—TEACHERS OPTIONAL

[Pre-96 hire]

Total Annuity Computation

Birth date: 09/10/36
Hire date: 10/09/67
Separation date: 10/11/97
Department service: 30/00/03
Other service: 03/04/21
Partial deposit paid as of 6/30/97:
Deposit completed after 6/30/97:
Sick leave:
.015 service: 5
.0175 service: 5
.02 service: 23.333333
Average salary: $45,680.80
Total: $28,740.85
Total/month: $2,395.00

Federal Benefit Payment Computation

Birth date: 09/10/36
Hire date: 10/09/67
Freeze date: 06/30/97
Department service: 29/08/22
Other service: none
Partial deposit paid as of 6/30/97:
Deposit completed after 6/30/97:
Sick leave:
.015 service: 5
.0175 service: 5
.02 service: 19.666667; 22 days dropped
Average salary: $45,680.80
Total: $25,390.90
Total/month: $2,116.00
Total federal/month ÷ total/month: 0.883507

Disability Retirement Examples

Example 6: Disability Occurs Before Eligibility for Optional Retirement

A. In this example, an individual covered by the Police and Firefighters Plan hired before 1980 retires based on a disability in the line of duty in October 1997. At retirement, he is age 45 with 18 years, 5 months, and 11 days of departmental service. Since he had performed less than 20 years of service and had not reached the age of eligibility for an optional retirement, the Federal Benefit Payment does not begin at retirement. When the disability annuitant reaches age 55, he satisfies the age and service requirements for deferred retirement. At that time (August 20, 2007), the Federal Benefit Payment begins. It is based on the 18 years, 1 month, and 17 days of departmental service performed as of June 30, 1997, all at the 2.5 percent accrual rate.

EXAMPLE 6A—POLICE DISABILITY IN LINE OF DUTY, AGE 45

[Pre-80 hire]

Total Annuity Computation

Birth date: 08/20/52
Hire date: 05/14/79
Separation date: 10/24/97
Department service: 18/05/11
Other service:
Sick leave:
.025 service: 18.416667
.03 service:
Average salary: $47,788.64
Final salary: $50,938.00
Total: $22,002.70
Total/month: $1,834.00
2/3 of average pay: $31,859.11
Monthly: $2,655.00

Federal Benefit Payment Computation

Birth date: 08/20/52
Hire date: 05/14/79
Freeze date: 06/30/97
Department service: 18/01/17
Other service:
Sick leave:
.025 service: 18.083333
.03 service:
Average salary: $47,788.64
Final salary: $50,938.00
Total: $21,604.43
Total/month: $1,800.00; deferred
Total federal/month ÷ total/month: 0.0 (at time of retirement)

B. In this example, an individual covered by the Teachers Plan hired before 1996 retires based on a disability in December 1997. At retirement, she is age 49 with 27 years and 4 months of departmental service which includes 3 years, 3 months and 14 days of excess leave without pay (prior to June 30, 1997). Since she does not qualify for optional retirement at separation, the Federal Benefit Payment does not begin at separation. When the disability annuitant reaches age 62, she will satisfy the age and service requirements for deferred retirement. At that time (March 9, 2010), the Federal Benefit Payment begins. The time attributable to the excess leave without pay is subtracted from the service used to compute the Federal Benefit Payment. Since the excess leave without pay occurred before June 30, 1997, the deferred Federal Benefit Payment is based on the 23 years and 6 months of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 13 and 6 months of service at the 2 percent accrual rate.

EXAMPLE 6B—TEACHERS DISABILITY AGE 49

[Pre-96 hire]

Total Annuity Computation

Birth date: 03/09/48
Hire date: 09/01/70
Separation date: 12/31/97
Department service: 27/04/00
Other service:
Excess LWOP: 03/03/14
.015 service: 5
.0175 service: 5
.02 service: 14
Average salary: $53,121.00
Total: $23,506.04
Total/month: $1,959.00

Federal Benefit Payment Computation

Birth date: 03/09/48
Hire date: 09/01/70
Freeze date: 06/30/97
Department service: 26/10/00
Other service:
Excess LWOP: 03/03/14
.015 service: 5
.0175 service: 5
.02 service: 13.5
Average salary: $53,121.00
Total: $22,974.83
Total/month: $1,915.00; deferred
Total federal/month ÷ total/month: 0.0 (at time of retirement)

Example 7: Disability Occurs After Eligibility for Optional Retirement

A. In this example, an individual covered by the Police and Firefighters Plan hired before 1980 retires based on a disability in the line of duty in October 1997. At retirement, she is age 55 with 24 years, 5 months, and 11 days of departmental service. Since she was also eligible for optional retirement at the time of separation, the Federal Benefit Payment commences at retirement. It is based on the 24 years, 1 month, and 17 days of departmental service performed as of June 30, 1997. Thus, the Federal Benefit Payment is based on 20 years of service at the 2.5 percent accrual rate and 4 years and 1 month of service at the 3 percent accrual rate. The total annuity is based on the disability formula and is equal to two-thirds of average pay because that amount is higher than the 63.25 percent payable based on total service.

EXAMPLE 7A—POLICE DISABILITY IN LINE OF DUTY AGE 55

[Pre-80 hire]

Total Annuity Computation

Birth date: 10/01/42
Hire date: 05/14/73
Separation date: 10/24/97
Department service: 24/05/11

EXAMPLE 7A—POLICE DISABILITY IN LINE OF DUTY AGE 55—Continued

[Pre-80 hire]

Other service:
Sick leave:
.025 service: 20
.03 service: 4.416667
Average salary: $47,788.64
Final salary: $50,938.00
Total: $30,226.31
Total/month: $2,519.00
2/3 of average pay: $31,859.11
Monthly: $2,655.00

Federal Benefit Payment Computation

Birth date: 10/01/42
Hire date: 05/14/73
Freeze date: 06/30/97
Department service: 24/01/17
Other service:
Sick leave:
.025 service: 20
.03 service: 4.083333
Average salary: $47,788.64
Final salary: $50,938.00
Total: $29,748.43
Total/month: $2,479.00
Total federal/month ÷ total/month: 0.984121

B. In this example, an individual covered by the Teachers Plan hired before 1996 retires based on a disability in December 1997. At retirement, he is age 60 with 27 years and 4 months of departmental service which includes 3 years, 3 months and 14 days of excess leave without pay (prior to June 30, 1997). Since he qualifies for optional retirement at separation, the Federal Benefit Payment begins at retirement. Since the excess leave without pay occurred before June 30, 1997, and the total annuity is based on actual service (that is, exceeds the guaranteed disability minimum), the time attributable to the excess leave without pay is subtracted from the service used to compute the Federal Benefit Payment and total benefit. The Federal Benefit Payment is based on 23 years and 6 months of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 13 years and 6 months of service at the 2 percent accrual rate. The total annuity payable is based on 24 years of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 14 years of service at the 2 percent accrual rate.

EXAMPLE 7B—TEACHERS DISABILITY AGE 60

[Pre-96 hire]

Total Annuity Computation

Birth date: 03/09/37
Hire date: 09/01/70
Separation date: 12/31/97
Department service: 27/04/00
Other service:
Excess LWOP: 03/03/14
.015 service: 5
.0175 service: 5
.02 service: 14

EXAMPLE 7B—TEACHERS DISABILITY AGE 60—Continued

[Pre-96 hire]

Average salary: $53,121.00
Total: $23,506.04
Total/month: $1,959.00

Federal Benefit Payment Computation

Birth date: 03/09/37
Hire date: 09/01/70
Freeze date: 06/30/97
Department service: 26/10/00
Other service:
Excess LWOP: 03/03/14
.015 service: 5
.0175 service: 5
.02 service: 13.5
Average salary: $53,121.00
Total: $22,974.83
Total/month: $1,915.00
Total federal/month ÷ total/month: 0.977540

Deferred Retirement Examples

Example 8: All Service Before June 30, 1997

In this example, an individual covered by the Police and Firefighters Plan hired before 1980 separated in March 1986 with title to a deferred annuity. In November 1997, he reaches age 55 and becomes eligible for the deferred annuity based on his 15 years, 9 months, and 8 days of departmental service, all at the 2.5 percent accrual rate. The total annuity is based on the same 15 years, 9 months, and 8 days of service all at the 2.5 percent accrual rate. Since all the service is creditable as of June 30, 1997, the Federal Benefit Payment equals the total annuity.

EXAMPLE 8—POLICE DEFERRED

[Pre-80 hire]

Total Annuity Computation

Birth date: 11/20/42
Hire date: 06/01/70
Separation date: 03/08/86
Department service: 15/09/08
Other service:
Sick leave:
.025 service: 15.75
.03 service: 0
Average salary: $30,427.14
Final salary: $45,415.00
Total: $11,980.69; deferred
Total/month: $998.00; deferred

Federal Benefit Payment Computation

Birth date: 11/20/42
Hire date: 06/01/70
Freeze date: 03/08/86
Department service: 15/09/08
Other service:
Sick leave:
.025 service: 15.75
.03 service: 0
Average salary: $30,427.14
Final salary: $45,415.00
Total: $11,980.69; deferred
Total/month: $998.00; deferred
Total federal/month ÷ total/month: 1.0; deferred

Example 9: Service Straddles June 30, 1997

In this example, an individual covered by the Police and Firefighters Plan hired before 1980 separated in December 1997 with title to a deferred annuity. In November 2007, he will reach age 55 and becomes eligible to receive a deferred annuity. At that time, the Federal Benefit Payment begins. It is based on the 18 years and 1 month of departmental service performed as of June 30, 1997, all at the 2.5 percent accrual rate. The total annuity begins at the same time, based on his 18 years, 6 months, and 8 days of departmental service, all at the 2.5 percent accrual rate.

EXAMPLE 9—POLICE DEFERRED

[Pre-80 hire]

Total Annuity Computation

Birth date: 11/20/52
Hire date: 06/01/79
Separation date: 12/08/97
Department service: 18/06/08
Other service:
Sick leave:
.025 service: 18.5
.03 service: 0
Average salary: $30,427.14
Final salary: $45,415.00
Total: $14,072.55; deferred
Total/month: $1,173.00; deferred

Federal Benefit Payment Computation

Birth date: 11/20/52
Hire date: 06/01/79
Freeze date: 06/30/97
Department service: 18/01/00
Other service:
Sick leave:
.025 service: 18.083333
.03 service: 0
Average salary: $30,427.14
Final salary: $45,415.00
Total: $13,755.60; deferred
Total/month: $1,146.00; deferred
Total federal/month ÷ total/month: 0.976982; deferred

Reduction To Provide a Survivor Annuity Examples

Example 10: Survivor Reduction Calculations

Both of the following examples involve a former teacher who elected a reduced annuity to provide a survivor benefit:

A. In this example, the employee elects to provide full survivor benefits of 55% of the employee's unreduced annuity. The total annuity is reduced by 2½ percent of the first $3,600 and 10 percent of the balance. The reduced Federal Benefit Payment is determined by multiplying the reduced total annuity (rounded) by the ratio of the unreduced Federal Benefit Payment to the unreduced total annuity. Military service occurred prior to June 30, 1997 and purchase of other service was completed prior to June 30, 1997.

EXAMPLE 10A—TEACHERS OPTIONAL W/SURVIVOR REDUCTION

[Pre-96 Hire]

Total Annuity Computation

Birth date: 11/01/42
Hire date: 11/01/68
Separation date: 12/31/97
Department service: 29/02/00
Other service: 03/09/18
Military: 00/09/11
.015 service: 5
.0175 service: 5
.02 service: 23.666667
Average salary: $66,785.00
Total unreduced: $42,464.13
Total unreduced/month: $3,539.00
Reduction: $3,976.41
Total: $38,487.72
Total/month: $3,207.00

Federal Benefit Payment Computation

Birth date: 11/01/42
Hire date: 11/01/68
Freeze date: 06/30/97
Department service: 28/08/00
Other service: 03/09/18
Military: 00/09/11
.015 service: 5
.0175 service: 5
.02 service: 23.166667
Average salary: $66,785.00
Total federal unreduced: $41,796.28
Total federal unreduced/month: $3,483.00
Total federal unreduced/month ÷ total unreduced/month: 0.984176
Total federal/month: $3,156.00

B. In this example, the employee elects to provide a partial survivor annuity of 26% of the employee's unreduced annuity. The total annuity is reduced by 2½ percent of the first $3,600 of $20,073.95 and 10 percent of the balance. The reduced Federal Benefit Payment is determined by multiplying the reduced total annuity (rounded) by the ratio of the unreduced Federal Benefit Payment to the unreduced total annuity.

EXAMPLE 10B—TEACHERS OPTIONAL W/SURVIVOR REDUCTION

[Pre-96 hire]

Total Annuity Computation

Birth date: 11/01/42
Hire date: 11/01/68
Separation date: 12/31/97
Department service: 29/02/00
Other service: 03/09/18
Military: 00/09/11
.015 service: 5
.0175 service: 5
.02 service: 23.666667
Average salary: $66,785.00
Total unreduced: $42,464.13
Total unreduced/month: $3,539.00
Reduction: $1,737.40
Total reduced: $40,726.73
Total reduced/month: $3,394.00

EXAMPLE 10B—TEACHERS OPTIONAL W/SURVIVOR REDUCTION—Continued

[Pre-96 hire]

Federal Benefit Payment Computation

Birth date: 11/01/42
Hire Date: 11/01/68
Freeze date: 06/30/97
Department service: 28/08/00
Other service: 03/09/18
Military: 00/09/11
.015 service: 5
.0175 service: 5
.02 service: 23.166667
Average salary: $66,785.00
Total federal unreduced: $41,796.28
Total federal unreduced/month: $3,483.00
Total federal unreduced/month ÷ total unreduced/month: 0.984176
Total federal reduced/month: $3,340.00

Early Optional or Involuntary Retirement Examples

Example 11: Early Optional With Age Reduction

In this example, an individual covered by the Teachers Plan hired before 1996 retires voluntarily in February 1998, under a special program that allows early retirement with at least 20 years of service at age 50 older, or at least 25 years of service at any age. At retirement, she is 6 full months short of age 55. She has 25 years and 5 months of departmental service; 6 years, 2 months, and 19 days of other service (creditable before June 30, 1997); and 2 months and 9 days of unused sick leave. Since she is not eligible for optional retirement and she is eligible to retire voluntarily only because of the District-approved special program, the Federal Benefit Payment is calculated similar to a disability retirement. It does not begin until she becomes eligible for a deferred annuity at age 62. When it commences the Federal Benefit Payment will be based on the service creditable as of June 30, 1997: 30 years and 11 months of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 20 years and 11 months of service at the 2 percent accrual rate. The total annuity is based on 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate and 21 years and 9 months of service at the 2 percent accrual rate (including the unused sick leave). Because the Federal Benefit Payment is based on the deferred annuity, rather than the early voluntary retirement, it is not reduced by the age reduction factor used to compute the total benefit.

EXAMPLE 11—TEACHERS EARLY OUT W/AGE REDUCTION

[Pre-96 hire]

Total Annuity Computation

Birth date: 09/20/43
Hire date: 10/01/72
Separation date: 02/28/98
Department service: 25/05/00
Other service: 06/02/19

EXAMPLE 11—TEACHERS EARLY OUT W/AGE REDUCTION—Continued

[Pre-96 hire]

Sick leave: 00/02/09
.015 service: 5
.0175 service: 5
.02 service: 21.75
Average salary: $69,281.14
Total unreduced: $41,395.48
Age reduction factor: 0.990000
Total reduced: $40,981.53
Total/month: $3,415.00

Federal Benefit Payment Computation

Birth date: 09/20/43
Hire date: 10/01/72
Freeze date: 06/30/97
Department service: 24/09/00
Other service: 06/02/19
.015 service: 5
.0175 service: 5
.02 service: 20.916667
Average salary: $69,281.14
Total unreduced: $40,240.80; deferred
Reduction factor: 1.000000 no reduction
Total reduced: $40,240.80; deferred
Total/month: $3,353.00 deferred
Total federal unreduced/month ÷ total unreduced/month: 0.0 (at time of retirement)

Example 12: Involuntary With Age Reduction

In this example, an individual covered by the Teachers Plan hired before 1996 retires involuntarily in February 1998. At retirement, she is 6 full months short of age 55. She has 25 years and 5 months of departmental service; 6 years, 2 months, and 19 days of other service (creditable before June 30, 1997); and 2 months and 9 days of unused sick leave. The Federal Benefit Payment begins at retirement. It is based on the 30 years and 11 months of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 20 years and 11 months of service at the 2 percent accrual rate. The total annuity is based on 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate and 21 years and 9 months of service at the 2 percent accrual rate (including the unused sick leave). Both the Federal Benefit Payment and the total benefit are reduced by the age reduction factor.

EXAMPLE 12—TEACHERS INVOLUNTARY W/AGE REDUCTION

[Pre-96 hire]

Total Annuity Computation

Birth date: 09/20/43
Hire date: 10/01/72
Separation date: 02/28/98
Department service: 25/05/00
Other service: 06/02/19
Sick leave: 00/02/09
.015 service: 5
.0175 service: 5
.02 service: 21.75
Average salary: $69,281.14

EXAMPLE 12—TEACHERS INVOLUNTARY W/AGE REDUCTION—Continued

[Pre-96 hire]

Total unreduced: $41,395.48
Age reduction factor: 0.990000
Total reduced: $40,981.53
Total/month: $3,415.00

Federal Benefit Payment Computation

Birth date: 09/20/43
Hire date: 10/01/72
Freeze date: 06/30/97
Department service: 24/09/00
Other service: 06/02/19
.015 service: 5
.0175 service: 5
.02 service: 20.916667
Average salary: $69,281.14
Total unreduced: $40,240.80
Age reduction factor: 0.990000
Total reduced: $39,838.39
Total/month: $3,320.00
Total federal/month ÷ total/month: 0.972182

Death Benefits Example

Example 13: Death Benefits Calculation

Examples A and B involve service-based death benefits calculations. Examples C–F involve non-service-based death benefits calculations. Examples G and H involve disability death benefit calculations.

A. In this example, an individual covered by the Teachers Plan retires in December 1997 and elects to provide a full survivor annuity. He dies in June 1998. The survivor's Federal Benefit Payment is 98.4 percent ($3,483 ÷ $3,539) of the total survivor benefit.

EXAMPLE 13A—TEACHERS DEATH BENEFITS

[Pre-96 hire]

Total Annuity Computation

Birth date: 11/01/42
Hire date: 11/01/68
Separation date: 12/31/97
Death date: 06/24/98
Department service: 29/02/00
Other service: 03/09/18
Military: 00/09/11
Average salary: $66,785.00
Total unreduced/month (retiree): $3,539.00
Total/month (survivor): $1,946.00

Federal Benefit Payment Computation

Birth date: 11/01/42
Hire date: 11/01/68
Freeze date: 06/30/97
Death date: 06/24/98
Department service: 28/08/00
Other service: 03/09/18
Military: 00/09/11
Average salary: $66,785.00
Total federal unreduced/month (retiree): $3,483.00
Total federal unreduced/month (retiree) ÷ total unreduced/month (retiree): 0.984176
Total federal/month (survivor): $1,915.00

B. In this example, a teacher dies in service on June 30, 1998 after 31 years of departmental service. Since the survivor annuity is based on actual service, the Federal Benefit Payment is 96.5 percent ($1,818 ÷ $1,883) of the total survivor benefit.

EXAMPLE 13B—TEACHERS DEATH BENEFITS

[Pre-96 hire]

Total Annuity Computation

Birth date: 07/01/39
Hire date: 07/01/67
Separation date: 06/30/98
Death date: 06/30/98
Department service: 31/00/00
Average salary: $38,787.88
Total (retiree): $22,593.94
Total/month (retiree): $1,883.00
Total/month (survivor): $1,036.00

Federal Benefit Payment Computation

Birth date: 07/01/39
Hire date: 07/01/67
Freeze date: 06/30/97
Death date: 06/30/98
Department service: 30/00/00
Average salary: $38,787.88
Total federal (retiree): $21,818.18
Total federal/month (retiree): $1,818.00
Total federal/month (retiree) ÷ total/month (retiree): 0.965481
Total federal/month (survivor): $1,000.00

C. In this example, as in Example A, an individual covered by the Teachers Plan retires in December 1997 but elects to provide a survivor annuity of $12,000. He dies in June 1998. Because the amount of the survivor annuity is not service-based, the Federal Benefit Payment is a prorated portion of the total benefit. Since the teacher had 398 months of service as of the freeze date and 404 months of service, at retirement, the Federal Benefit Payment equals 398/404ths of the total benefit.

EXAMPLE 13C—TEACHERS DEATH BENEFITS

[Pre-96 hire]

Total Annuity Computation

Birth date: 11/01/42
Hire date: 11/01/68
Separation date: 12/31/97
Death date: 06/24/98
Department service: 29/02/00
Other service: 03/09/18
Military: 00/09/11
Months of service: 404
Total: $12,000.00
Total/month: $1,000.00

Federal Benefit Payment Computation

Birth date: 11/01/42
Hire date: 11/01/68
Freeze date: 06/30/97
Death date: 06/24/98
Department service: 28/08/00

EXAMPLE 13C—TEACHERS DEATH BENEFITS—Continued

[Pre-96 hire]

Other service: 03/09/18
Military: 00/09/11
Months of service: 398
Federal service ÷ total service: 0.985149
Total: $11,820.00
Total/month: $985.00

D. In this example, a teacher dies in service on April 1, 1998 after 14 years and 6 months of departmental service. Because the survivor annuity is based on the guaranteed minimum, the Federal Benefit Payment is a prorated portion of the total benefit. Since the teacher had 165 months of service as of the freeze date and 180 months of service, including unused sick leave, at death, the Federal Benefit Payment equals 165/180ths of the total benefit.

EXAMPLE 13D—TEACHERS DEATH BENEFITS

[Pre-96 hire]

Total Annuity Computation

Birth date: 04/01/61
Hire date: 10/01/83
Separation date: 04/01/98
Death date: 04/01/98
Department service: 14/06/01
Unused Sick Leave: 00/06/00
Average salary: $36,000.00
Months of service: 180
Total: $7,920.00
Total/month: $660.00

Federal Benefit Payment Computation

Birth date: 04/01/61
Hire date: 04/01/83
Freeze date: 06/30/97
Death date: 04/01/98
Department Service: 13/09/00
Average salary: $36,000.00
Months of service: 165
Federal service ÷ total service: 0.916667
Total: $7,260.00
Total/month: $605.00

E. In this example, as in the prior example, a teacher dies in service on April 1, 1998 after 15 years of departmental service. However, in this example, the teacher was age 40 on the hire date. The amount of service used in the survivor annuity calculation equals the amount of service that the teacher would have had if the teacher continued covered employment until age 60. Because the survivor annuity is based on projected service, a form of the guaranteed minimum, the Federal Benefit Payment is a prorated portion of the total benefit. Since the teacher had 171 months of service as of the freeze date and 180 months of service at death, the Federal Benefit Payment equals 171/180ths of the total benefit.

EXAMPLE 13E—TEACHERS DEATH BENEFITS

[Pre-96 hire]

Total Annuity Computation

Birth date: 04/01/43
Hire date: 04/01/83
Separation date: 04/01/98
Death date: 04/01/98
Department service: 15/00/01
Departmental Service projected to age 60: 20/00/01
.015 service: 5
.0175 service: 5
.02 service: 10
Average salary: $36,000.00
Months of service: 180
Total: $7,177.50
Total/month: $598.00

Federal Benefit Payment Computation

Birth date: 04/01/43
Hire date: 04/01/83
Freeze date: 06/30/97
Death date: 04/01/98
Department service: 14/03/00
Average salary: $36,000.00
Months of service: 171
Federal service ÷ total service: 0.950000
Total: $6,818.63
Total/month: $568.00

F. In this example, a police officer dies in the line of duty on July 31, 2001 after 18 years of departmental service. The survivor annuity is equal to 100 percent of the officer's pay at the time of death, as provided by District legislation effective October 1, 2000. However, the Federal Benefit Payment is calculated based on plan provisions in effect on June 29, 1997, which provided for a survivor annuity equal to 40 percent of the officer's pay at the time of death. Because the Federal Benefit Payment is not service-based and the officer had 167 months of service as of the freeze date and 216 months of service, including unused sick leave, at death, the Federal Benefit Payment equals 167/216ths of the total benefit calculated according to plan provisions in effect on July 1, 1997. The difference between the total benefit paid and the Federal Benefit Payment calculated according to plan provisions in effect on June 29, 1997 is the responsibility of the District government.

EXAMPLE 13F—POLICE DEATH BENEFITS

[Pre-96 hire]

Total Annuity Computation

Birth date: 07/13/62
Hire date: 08/01/83
Death date: 07/31/2001
Department service: 18/00/00
Average salary: $54,000.00
Final salary: $56,000.00
Months of service: 216
Total: $56,004.00
Total/month: $4,667.00
Total based on July 1, 1997 provisions: $21,600.00

EXAMPLE 13F—POLICE DEATH BENEFITS—Continued

[Pre-96 hire]

Total/month based on July 1, 1997 provisions: $1,800.00

Federal Benefit Payment Computation

Birth date: 07/13/62
Hire date: 08/01/83
Freeze date: 06/30/97
Death date: 07/31/2001
Department service: 13/11/00
Months of service: 167
Federal service ÷ total service: 0.773148
Total: $16,704.00
Total/month: $1,392.00

G. In this example, a firefighter dies on July 1, 1999 at age 47 after retiring based on a disability in the line of duty in November 1997. At separation, the firefighter was not eligible for optional retirement but was eligible to receive a deferred retirement annuity at age 55. Therefore, the survivor's Federal Benefit Payment is calculated based on the plan rules for deferred retirees. Under the Police and Firefighters Plan, if a separated police officer or firefighter eligible for deferred retirement dies before reaching age 55, the survivor is eligible to receive an annuity. The survivor annuity is based on the firefighter's adjusted average pay. Therefore, the survivor's Federal Benefit Payment is a prorated portion of the survivor annuity. Since the firefighter had 217 months of service as of the freeze date and 222 months of service at retirement, the survivor's Federal Benefit Payment equals 217/222nds of the total survivor benefit.

EXAMPLE 13G—FIREFIGHTERS DISABILITY/EARLY VOLUNTARY DEATH BENEFITS

Total Annuity Computation

Birth date: 08/20/52
Hire date: 05/14/79
Separation date: 11/28/97
Death date: 07/01/99
Department service: 18/06/15
Adjusted average salary: $45,987.00
Months of service: 222
Total: $18,396.00
Total/month: $1,533.00

Federal Benefit Payment Computation

Birth date: 08/20/52
Hire date: 05/14/79
Freeze date: 06/30/97
Death date: 07/01/99
Department service: 18/01/17
Adjusted average salary: $45,987.00
Months of service: 217
Federal service ÷ total service: .977477
Total: $17,976.00
Total/month: $1,498.00

H. In this example, a teacher dies on August 3, 1999 at age 58 after retiring based on a disability in April 1998. At separation, the teacher was not eligible for optional retirement but was eligible to receive a deferred retirement annuity at age 62. Therefore, the survivor's Federal Benefit Payment is calculated based on the plan rules for deferred retirees. Under the Teachers Plan, if a separated teacher eligible for deferred retirement dies before reaching age 62, the survivor is not eligible to receive an annuity. Therefore, the survivor's Federal Benefit Payment is zero and the survivor annuity is the full responsibility of the District.

EXAMPLE 13H—TEACHERS DISABILITY/EARLY VOLUNTARY DEATH BENEFITS

Total Annuity Computation

Birth date: 08/01/41
Hire date: 07/01/76
Separation date: 04/30/98
Death date: 08/03/99
Total: $21,888.00
Total/month: $1,824.00

Federal Benefit Payment Computation

Birth date: 08/01/41
Hire date: 07/01/76
Separation date: 04/30/98
Death date: 08/03/99
Total: $0.00
Total/month: $0.00
Total federal/month ÷ total/month: 0.0

Cost of Living Adjustment (COLA) Examples

Example 14: Application of Cost of Living Adjustments

In cases in which the District plan applies the same cost of living adjustment that is provided for the Federal Benefit Payment, the federal percentage is applied to the new total benefit after the adjustment to determine the new Federal Benefit Payment after the adjustment.

A. In this example, a teacher retiree receives a cost of living adjustment that is the same for the federal and District portions of the total benefit. The federal percentage for the retiree is applied to the new total benefit after the adjustment to determine the new Federal Benefit Payment after the adjustment.

EXAMPLE 14A—TEACHERS COLA—RETIREE W/SURVIVOR REDUCTION

[Pre-96 hire]

Benefit Computation (at retirement)

Total unreduced: $42,464.13
Total unreduced/month: $3,539.00
Total/month: $3,207.00
Federal unreduced: $41,796.28
Federal unreduced/month: $3,483.00
Federal percentage = federal unreduced/month ÷ total unreduced/month: 0.984176

COLA Computation

District and Federal COLA rate 5%:
Total COLA: $160.00
New total/month: $3,367.00

EXAMPLE 14A—TEACHERS COLA—RETIREE W/SURVIVOR REDUCTION—Continued

[Pre-96 hire]

New federal benefit/month = new total benefit/month × federal percentage = $3,314.00

B. In this example, a survivor of a deceased teacher retiree receives a cost of living adjustment that is the same for the federal and District portions of the total benefit. Since the survivor benefit is service related, the federal percentage for the retiree is applied to the new total benefit of the survivor after the adjustment to determine the new Federal Benefit Payment after the adjustment.

EXAMPLE 14B—TEACHERS COLA—SURVIVOR OF RETIREE

[Pre-96 hire]

Benefit Computation (at death of retiree whose annuity was based on service—percentage survivor election)

Total/month: $2,043.00
Federal percentage (retiree): 0.984176
Federal/month: $2,011.00

COLA Computation

District and Federal COLA rate 4.5%:
Total COLA: $92.00
New total/month: $2,135.00
New federal benefit/month = new total benefit/month × federal percentage = $2,101.00

C. In this example, a survivor of a deceased teacher retiree receives a cost of living adjustment that is the same for the federal and District portions of the total benefit. Since the survivor annuity is non-service related, the federal percentage for the survivor is applied to the new total benefit of the survivor after the adjustment to determine the new Federal Benefit Payment after the adjustment.

EXAMPLE 14C—TEACHERS COLA—SURVIVOR OF RETIREE

[Pre-96 hire]

Benefit Computation (at death of retiree—flat amount survivor election)

Total months of service: 404
Federal months of service: 398
Total/month: $1,000.00
Federal percentage = federal service ÷ total service: 0.985149
Federal/month: $985.00

COLA Computation

District and Federal COLA rate 4.5%:
Total COLA: $45.00
New total/month: $1,045.00

EXAMPLE 14C—TEACHERS COLA—SURVIVOR OF RETIREE—Continued

[Pre-96 hire]

New federal benefit/month = new total benefit/month × federal percentage = $1,029.00

Note: This method also applies to a percentage survivor election by a retiree whose annuity was based on a guaranteed minimum.

D. In this example, a survivor of a deceased teacher receives a cost of living adjustment that is the same for the federal and District portions of the total benefit. Since the survivor annuity is service related, the federal percentage based on the deceased teacher's service is applied to the new total benefit of the survivor after the adjustment to determine the new Federal Benefit Payment after the adjustment.

EXAMPLE 14D—TEACHERS COLA—SURVIVOR OF EMPLOYEE

[Pre-96 hire]

Benefit Computation (at death-based on service)

Total/month: $1,036.00
Federal/month: $1,000.00
Federal percentage = federal/month ÷ total/month: 0.965251

COLA Computation

District and Federal COLA rate 5%:
Total COLA: $52.00
New total benefit/month: $1,088.00
New federal benefit/month = new total benefit/month × federal percentage = $1,050.00

E. In this example, a survivor of a deceased teacher receives a cost of living adjustment that is the same for the federal and District portions of the total benefit. Since the survivor annuity is non-service related, the federal percentage for the survivor is applied to the new total benefit of the survivor after the adjustment to determine the new Federal Benefit Payment after the adjustment.

EXAMPLE 14E—TEACHERS COLA—SURVIVOR OF EMPLOYEE

[Pre-96 hire]

Benefit Computation (at death-guaranteed minimum)

Total months of service: 180
Federal months of service: 171
Total/month: $598.00
Federal percentage = federal service ÷ total service: 0.950000
Federal/month: $568.00

COLA Computation

District and Federal COLA rate 5%:
Total COLA: $30.00
New total/month: $628.00

EXAMPLE 14E—TEACHERS COLA—SURVIVOR OF EMPLOYEE—Continued

[Pre-96 hire]

New federal benefit/month: = new total benefit/month × federal percentage = $597.00

F. In this example, a survivor of a deceased retired police officer receives a cost of living adjustment that is the same for the federal and District portions of the total benefit. Since the survivor annuity is non-service related, the federal percentage for the survivor is applied to the new total benefit of the survivor after the adjustment to determine the new Federal Benefit Payment after the adjustment.

EXAMPLE 14F—POLICE COLA—SURVIVOR OF RETIREE

Benefit Computation (at death of retiree)

Total months of service: 240
Federal months of service: 236
Total/month: $1,614.00
Federal percentage = federal service ÷ total service: 0.983333
Federal/month: $1,587.00

COLA Computation

District and Federal COLA rate 5%:
Total COLA: $81.00
New total/month: $1,695.00
New federal benefit/month = new total benefit/month × federal percentage = $1,667.00

G. In this example, a survivor of a deceased firefighter receives a cost of living adjustment that is the same for the federal and District portions of the total benefit. Since the survivor annuity is non-service related, the federal percentage for the survivor is applied to the new total benefit of the survivor after the adjustment to determine the new Federal Benefit Payment after the adjustment.

EXAMPLE 14G—FIREFIGHTER COLA—SURVIVOR OF EMPLOYEE

Benefit Computation (at death of employee in the line of duty)

Total/month: $4,667.00
Federal/month: $1,867.00
Federal percentage = federal/month ÷ total/month: 0.400043

COLA Computation

District and Federal COLA rate 4.5%:
Total COLA: $210.00
New total benefit/month: $4,877.00
New federal benefit/month = New total benefit/month × federal percentage = $1,951.00

H. In this example, a new District plan provision applies a different cost of living adjustment than is provided for the Federal Benefit Payment. In Variation 1, the federal cost of living adjustment is applied to the Federal Benefit Payment and the District cost

of living adjustment is applied to the total benefit. In Variation 2, the federal cost of living adjustment is applied to the Federal Benefit Payment and the District cost of living adjustment is applied to the District benefit payment. A new federal percentage equal to the ratio of the Federal Benefit Payment to the total benefit is established after the adjustments.

EXAMPLE 14H—TEACHERS COLA

[Pre-96 hire]

Benefit Computation (at retirement)
Total Annuity Computation

Birth date: 11/04/48
Hire date: 03/01/86
Separation date: 02/28/2013
Department service: 27/00/00
Other service paid in 1995: 06/07/28
Excess LWOP in 1990: 00/03/18
.015 service: 5
.0175 service: 5
.02 service: 23.333333
Average salary: $53,121.00
Total: $33,421.96
Total/month: $2,785.00

Benefit Computation (at retirement)
Federal Benefit Payment Computation

Birth date: 11/04/48
Hire date: 03/01/86
Freeze date: 06/30/1997
Department service: 11/04/00
Other service paid in 1995: 06/07/28
Excess LWOP in 1990: 00/03/18
.015 service: 5
.0175 service: 5
.02 service: 7.666667
Average salary: $53,121.00
Total: $16,777.38
Total/month: $1,398.00
Federal percentage: 0.501975

COLA Computation Variations
Variation 1

District COLA rate 5% applied to total benefit:
Total COLA: $139.00
New total benefit/month: $2,924.00
Federal COLA rate 4%
Federal COLA: $56.00
New federal benefit/month: $1,454.00
New federal percentage: 0.497264

Variation 2

District COLA rate 5% applied to District benefit:
Old District benefit/month: $1,387.00
District COLA: $69.00
New District benefit/month: $1,456.00
Federal COLA rate 4%:
Federal COLA: $56.00
New federal benefit/month: $1,454.00
New total benefit/month: $2,910.00
New federal percentage: 0.499656

Retroactive Payment of Accrued Annuity Example

Example 15: Accrual of Federal Benefit Payment

The Federal Benefit Payment begins to accrue on the annuity commencing date, regardless of whether the employee is added to the annuity roll in time for the regular payment cycle. If the employee is due a retroactive payment of accrued annuity, the portion of the retroactive payment that would have been a Federal Benefit Payment (if it were made in the regular payment cycle) is still a Federal Benefit Payment. In this example, a teacher retired effective September 11, 1998. She was added to the retirement rolls on the pay date November 1, 1998 (October 1 to October 31 accrual cycle). Her Federal Benefit Payment is $3000 per month and her total benefit payment is $3120 per month. Her initial check is $5200 because it includes a prorated payment for 20 days (September 11 to September 30). The Federal Benefit Payment is $5000 of the initial check ($3000 for the October cycle and $2000 for the September cycle).

EXAMPLE 15—TEACHERS ACCRUED BENEFIT

[Pre-96 hire]

Total Annuity Computation

Birth date: 11/01/42
Hire date: 09/01/66
Separation date: 09/10/98
Department service: 32/00/10
.015 service: 5
.0175 service: 5
.02 service: 22
Average salary: $62,150.00
Total: $37,445.38
Total/month: $3,120.00
Sept 11–30: $2,080.00
Oct 1–31: $3,120.00
Nov 1–30: $3,120.00

Federal Benefit Payment Computation

Birth date: 11/01/42
Hire date: 09/01/66
Freeze date: 06/30/97
Department service: 30/10/00
.15 service: 5
.0175 service: 5
.02 service: 20.833333
Average salary: $62,150.00
Total: $35,995.21
Total/month: $3,000.00
Sept 11–30: $2,000.00
Oct 1–31: $3,000.00
Nov 1–30: $3,000.00

Dated: November 4, 2010.

Nancy Ostrowski,

Director, Office of DC Pensions.

[FR Doc. 2010–29152 Filed 11–19–10; 8:45 am]

BILLING CODE 4825–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2010–0972]

RIN 1625–AA09

Drawbridge Operation Regulations; Bayou Liberty, Mile 2.0, St. Tammany Parish, Slidell, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a notice of proposed rulemaking to change the regulation governing the operation of the S433 bridge over Bayou Liberty, mile 2.0, St. Tammany Parish, Slidell, LA. It will allow the bridge to remain unmanned during most of the day by requiring a two-hour notice for an opening of the draw. This proposed rule change will be in conjunction with a temporary deviation to test the rule change and allow for public comment.

DATES: Comments and related material must be received by the Coast Guard on or before January 21, 2011.

ADDRESSES: You may submit comments identified by docket number USCG–2010–0972 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

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

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

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Jim Wetherington; Bridge Administration Branch, Eighth Coast Guard District, telephone 504–671–2128, e-mail *james.r.wetherington@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

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

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2010–0972), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (*http://www.regulations.gov*), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2010–0972," click "Search," and then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2010–0972" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

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

Public Meeting

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

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact Jim Wetherington at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Basis and Purpose

Due to a lack of required openings requested by mariners, the bridge owner requested a modification of the regulation governing the operation of the S433 bridge over Bayou Liberty, mile 2.0, St. Tammany Parish, Slidell, LA. This change would allow for the bridge owner to open the bridge for the passage of vessels while minimizing his requirements to staff and maintain the bridge. The bridge has a vertical clearance of 7.59 feet (2.31m) above the 2% flowline, elevation 2.5 feet (0.76m) NAVD 1988 in the closed-to-navigation position and unlimited in the open-to-navigation position. In accordance with 33 CFR 469, the draw of the S433 Bridge, mile 2.0, at Slidell, shall open on signal, except that between 7 p.m. and 7 a.m., the draw shall open on signal if at least two hours notice is given.

Discussion of Proposed Rule

The owner is requesting a new regulation to open with two hours notice because this will reduce the time that the owner is required to maintain a bridge tender. After the study of the bridge logs, it was shown that there was an average of less than one opening per month which is a marked decrease from an average of 70 per month the previous year. This is because the bridge for which the regulation was in place (a pontoon bridge) no longer exists. With the completion of the new bridge (a swing bridge), there is enough vertical clearance to require very few bridge openings.

Regulatory Analyses

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

Regulatory Planning and Review

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

The public would need to notify the bridge owner of a required opening two hours in advance rather than on signal.

Small Entities

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

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

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit

organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels needing to transit the bridge with less than 14-days advance notice. There have been no requests for bridge openings in several years so this proposed rule would not affect a substantial number of small entities. Vessels that can safely transit under the bridge may do so at any time. Before the effective period, we will issue maritime advisories widely available to users of the river.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or e-mail Jim Wetherington; Bridge Administration Branch, Eighth Coast Guard District, telephone 504–671–2128, e-mail *james.r.wetherington@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01, and Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment because it simply promulgates the operating regulations or procedures for drawbridges. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

2. § 117.469 is revised to read as follows:

§ 117.469 Liberty Bayou.

The draw of the S433 Bridge, mile 2.0, at Slidell, shall open on signal with a two hour notice.

Dated: October 26, 2010.

Mary E. Landry,

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

[FR Doc. 2010–29300 Filed 11–19–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 417, 422, and 423

[CMS–4144–CN]

RIN 0938–AQ00

Medicare Program; Proposed Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs for Contract Year 2012 and Other Proposed Changes; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correction of proposed rule.

SUMMARY: This document corrects a technical error that appeared in the proposed rule entitled "Medicare Program; Proposed Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs for Contract Year 2012 and Other Proposed Changes" which was filed for public inspection on November 10, 2010.

FOR FURTHER INFORMATION CONTACT: Sabrina Ahmed, (410) 786–7499.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2010–28774 filed November 10, 2010, there was a technical error that is identified and corrected in the Correction of Errors section below.

II. Summary of Errors

In the **DATES** section, we inadvertently requested that the Office of the Federal Register base the comment period closing date on the date the proposed rule will appear in the **Federal Register** instead of the date of filing for public inspection. Therefore, in section III. of this correction notice, we correct this error by inserting the date that the comment period closes, which is January 11, 2011.

III. Waiver of 60-Day Comment Period

We ordinarily permit a 60-day comment period on notices of proposed rulemaking in the **Federal Register**, as provided in section 1871(b)(1) of the Act. The change made by this correction notice does not constitute agency rulemaking, and therefore the 60-day comment period does not apply. This correction notice merely corrects a technical error in the proposed rule and does not make substantive changes to the proposed rule that would require additional time on which to comment. Instead, this correction notice is intended to ensure the accuracy of the proposed rule.

IV. Correction of Errors

In FR Doc. 2010–28774 filed November 10, 2010, make the following correction:

1. In the **DATES** section, the phrase "[OFR—insert date 60 days after date of publication in the **Federal Register**]" is corrected to read "January 11, 2011."

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 12, 2010.

Barbara J. Holland,

Deputy Executive Secretary to the Department.

[FR Doc. 2010–28997 Filed 11–12–10; 4:15 pm]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 97–95; FCC 10–186]

Allocation and Designation of Spectrum for Fixed-Satellite Services in the 37.5–38.5 GHz, 40.5–41.5 GHz and 48.2–50.2 GHz Frequency Bands

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Communications Commission (FCC) seeks comment on technical rules for the Fixed-Satellite Service in the 37.5–42.5 GHz band. The purpose of this proceeding is to ensure that satellite operators in this band can share the band with terrestrial fixed microwave services without causing harmful interference.

DATES: Comments are due on or before January 6, 2011 and reply comments are due on or before February 7, 2011.

ADDRESSES: You may submit comment, identified by WT Docket No. 07–293 and IB Docket No. 95–91, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs. Follow the instructions for submitting comments.

People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, *etc.*) by e-mail: *FCC504@fcc.gov*, phone: 202–418–0530 or TTY: 202–418–0432. For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Sean O'More (202) 418–2453, or Howard Griboff, (202) 418–0657, Policy Division, International Bureau, Federal Communications Commission, Washington, DC 20554.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Notice of Proposed Rulemaking (*Third Notice*) in IB Docket No. 97–95, adopted October 29, 2010 and released on November 1, 2010. The full text of the Notice of Proposed Rulemaking is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 488–5300, facsimile (202) 488–5563, or via e-mail *FCC@BCPIWEB.com*.

The *Third Notice* contains proposed new or modified information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. The Commission invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in the *Third Notice,* as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on the *Third Notice;* OMB comments are due on January 6, 2011. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance

the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Summary of Notice of Proposed Rulemaking

The 37.5–42.5 GHz band is shared between FSS and terrestrial microwave operators on a primary basis. Under a regulatory plan known as "soft segmentation," technical rules favor the widespread deployment of terrestrial microwave stations in the 37.5–40.0 GHz portion of the band and widespread deployment of consumer satellite earth stations in the 40.0–42.5 GHz portion of the band.

The *Third Notice* proposes to complete the allocation of the entire 37.5–42.5 GHz band to terrestrial microwave and FSS by removing allocations to the Broadcasting Service and the Broadcasting-Satellite Service in the 42.0–42.5 GHz band and by adding an allocation for FSS on a primary basis in the 42.0–42.5 GHz band.

In order to prevent harmful interference from FSS operators to terrestrial microwave and to radioastronomy operations in the adjacent 42.5–43.5 GHz band, the *Third Notice* requests comment on coordination procedures for FSS operators and terrestrial microwave operators in the band and requests comment on what protection requirements will adequately protect radioastronomy operations in the 42.5–43.5 GHz band.

To allow FSS operators to boost power in the band to compensate for signal fading due to rain, while at the same time preventing harmful interference to terrestrial microwave stations from higher-power satellite transmissions, the *Third Notice* proposes to require FSS operators in the band to use measures other than boosting power to compensate for signal fading due to rain before boosting power, depending on the rain rate in various locations in the United States.

Initial Regulatory Flexibility Analysis: As required by the Regulatory Flexibility Act (RFA),[1] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *Third Notice of Proposed Rulemaking (Third Notice).* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided in paragraph 59 of this *Third Notice.* The Commission will send a copy of this *Third Notice,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the *Third Notice* and IRFA (or summaries thereof) will be published in the **Federal Register.**[3]

A. Need for, and Objectives of, the Proposed Rules

The rules proposed in this *Third Notice* will allocate the 42.0–42.5 GHz sub-band to the Fixed Satellite Service (FSS), and remove the allocation of the same sub-band to the Broadcasting Satellite Service (BSS), in order to harmonize allocations in the 37.5–42.5 GHz band with the allocations agreed by the United States at the 2000 and 2003 World Radiocommunication Conferences. The rules proposed in this *Third Notice* will also ensure the protection of radioastronomy operations in the 42.5–43.5 GHz band from interference from satellite operations in the adjacent 37.5–42.5 GHz band. The rules proposed in this *Third Notice* will also provide standards for coordination of FSS gateway earth stations and Fixed Service (FS) stations, in order to prevent interference between these stations. Finally, the rules proposed in this *Third Notice* will establish a methodology for increasing power flux-density (PFD) from satellites operating in the 37.5–40.0 GHz band under rain fade conditions, in order to minimize the likelihood of interference to Fixed Service (FS) microwave links operating in the same band while at the same time ensuring the continuity of satellite service.

B. Legal Basis

The proposed action is authorized under Sections 4(i), 303(r), 403, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 403, and 405.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[4] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[5] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[6] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[7]

Fixed Microwave Services. Fixed microwave services include common carrier,[8] private operational-fixed,[9] and broadcast auxiliary radio services.[10] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees.[11] The Commission does not have data specifying the number of these licensees that have no more than 1,500 employees, and thus are unable at this

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et seq.,* has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] *See* 5 U.S.C. 603(a).

[3] *See id.*

[4] 5 U.S.C. 603(b)(3).

[5] 5 U.S.C. 601(6).

[6] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." 5 U.S.C. 601(3).

[7] Small Business Act, 15 U.S.C. 632 (1996).

[8] *See* 47 CFR 101 *et seq.* for common carrier fixed microwave services (except Multipoint Distribution Service).

[9] Persons eligible under parts 80 and 90 of the Commission's Rules can use Private Operational-Fixed Microwave services. *See* 47 CFR Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[10] Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. *See* 47 CFR Part 74. This service is available to licensees of broadcast stations and to broadcast and cable network entities. Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile television pickups, which relay signals from a remote location back to the studio.

[11] 13 CFR 121.201, NAICS code 517210.

time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are 22,015 or fewer common carrier fixed licensees and 61,670 or fewer private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies proposed herein. We note, however, that the common carrier microwave fixed licensee category includes some large entities.

Satellite Telecommunications and All Other Telecommunications. These two economic census categories address the satellite industry. The first category has a small business size standard of $15 million or less in average annual receipts, under SBA rules.[12] The second has a size standard of $25 million or less in annual receipts.[13] The most current Census Bureau data in this context, however, are from the (last) economic census of 2002, and we will use those figures to gauge the prevalence of small businesses in these categories.[14]

The category of Satellite Telecommunications "comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications."[15] For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year.[16] Of this total, 307 firms had annual receipts of under $10 million, and 26 firms had receipts of $10 million to $24,999,999.[17] Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

The second category of *All Other Telecommunications* comprises, *inter alia,* "establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems."[18] For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year.[19] Of this total, 303 firms had annual receipts of under $10 million and 15 firms had annual receipts of $10 million to $24,999,999.[20] Consequently, we estimate that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

The *Third Notice* proposes a rule change that will affect reporting, recordkeeping and other compliance requirements. Each of these changes is described below.

The *Third Notice* proposes to require satellite operators and FS operators in the 37.5–40.0 GHz band to coordinate the siting of gateway earth stations and FS stations in the same band when station antennas have lines of sight into the other licensees' service areas, in accordance with the frequency coordination process set forth in Section 101.103(d) of the rules. In order to accomplish such coordination, operators wishing to establish new stations would be required to accomplish coordination with all licensees whose station antennas lie within line of sight of the proposed new station, and certify to the Commission that such coordination has been accomplished along with the application for authorization for the new station.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[21]

A significant alternate coordination procedure considered in this *Notice* was to establish a specific distance between existing stations and proposed new stations within which the licensee proposing the new station must coordinate. The Commission decided, however, that the proposed coordination requirement, which is based on power-flux densities and actual lines of sight rather than a simple distance measure, provides more flexibility to licensees in siting new stations, while at the same time risking no greater likelihood of interference between stations.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

None.

Ordering Clauses

Accordingly, *It is ordered* that, pursuant to the authority contained in sections 1, 4(i), 4(j), 7(a), 301, 303(c), 303(f), 303(g), 303(r), 303(y), and 308 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157(a), 301, 303(c), 303(f), 303(g), 303(r), 303(y), 308, the Third Notice of Proposed Rulemaking in IB Docket No. 97–95 is adopted.

It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Third Notice of Proposed Rulemaking,* including Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2010–29385 Filed 11–19–10; 8:45 am]

BILLING CODE 6712–01–P

[12] 13 CFR 121.201, NAICS code 517410.

[13] 13 CFR 121.201, NAICS code 517919.

[14] 13 CFR 121.201, NAICS codes 517410 and 517910 (2002).

[15] U.S. Census Bureau, 2007 NAICS Definitions, "517410 Satellite Telecommunications"; *http://www.census.gov/naics/2007/def/ND517410.HTM.*

[16] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 517410 (issued Nov. 2005).

[17] *Id.* An additional 38 firms had annual receipts of $25 million or more.

[18] U.S. Census Bureau, 2007 NAICS Definitions, "517919 All Other Telecommunications"; *http://www.census.gov/naics/2007/def/ND517919.HTM#N517919.*

[19] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 517910 (issued Nov. 2005).

[20] *Id.* An additional 14 firms had annual receipts of $25 million or more.

[21] *See* 5 U.S.C. 603(c).

Notices

Federal Register

Vol. 75, No. 224

Monday, November 22, 2010

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

Office of the Assistant Secretary for Civil Rights

Notice of Request for Reinstatement of a Previously Approved Information Collection

AGENCY: Department of Agriculture, Office of the Assistant Secretary for Civil Rights.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the United States Department of Agriculture (USDA) Office of the Assistant Secretary for Civil Rights' (OASCR) intention to seek reinstatement of a previously approved information collection. The OASCR will use the information collected to process respondents' discrimination complaints about programs conducted or assisted by USDA.

DATES: Comments on this notice must be received by January 21, 2011 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact David King, Office of the Assistant Secretary for Civil Rights, U.S. Department of Agriculture, 1400 Independence Ave., SW., Washington, DC 20250, (202) 720–8106 (voice), (202) 619–6853 (fax), *david.king@ascr.usda.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

Title: USDA Program Discrimination Complaint Form.

OMB Number: 0508–0002.

Expiration Date of Approval: Three years from approval date.

Type of Request: Reinstatement of a previously approved information collection.

Abstract: Under 7 CFR 15.6, "Any person who believes himself/herself or any specific class of individuals to be subjected to discrimination [in any USDA assisted program or activity] * * * may by himself/herself or by an authorized representative file * * * a written complaint." Under CFR 15d.4, "Any person who believes that he or she (or any specific class of individuals) has been, or is being, subjected to [discrimination in any USDA conducted program or activity] * * * may file on his or her own, or through an authorized representative, a written complaint alleging such discrimination." The collection of this information is an avenue by which the individual or his representative may file such a program discrimination complaint.

The requested information, which can be submitted by filling out a form or by submitting a letter, is necessary in order for USDA OASCR to address the alleged discriminatory action. The respondent is asked to state his/her name, mailing address, property address (if different from mailing address), telephone number, e-mail address (if any) and to provide a name and contact information for the respondent's representative (if any). A brief description of who was involved with the alleged discriminatory action, what occurred and when, is requested. In the event that the respondent is filing the program discrimination complaint more than 180 days after the alleged discrimination occurred, the respondent is asked to provide the reason for the delay. Finally, the respondent is asked to identify which bases are alleged to have motivated the discriminatory action (of those bases prohibited under either 7 CFR 15d.2: Race, color, national origin, age, sex, disability, religion, sexual orientation, marital or familial status, or because all or part of the individual's income is derived from any public assistance program; or under nondiscrimination regulations applying to recipients of Federal financial assistance from USDA: Race, color, national origin, sex, age, disability, religion or political beliefs). (Not all bases apply to all programs.)

The program discrimination complaint filing information, which is voluntarily provided by the respondent, will be used by the staff of USDA OASCR to intake, investigate, and adjudicate the respondent's complaint. The program discrimination complaint form will enable OASCR to better collect information from complainants in a timely manner, therefore reducing delays and errors in determining USDA jurisdiction.

Estimate of Burden: Public reporting burden for this collection of information will vary based on the complexity of the complaint, but is estimated to average 1 hour per response.

Type of Respondents: Mostly individuals who seek assistance from USDA or from programs that receive financial assistance from USDA, such as agricultural producers, applicants for Supplemental Nutrition Assistance Program benefits, and multi-family housing tenants, but also including some businesses and not-for profit organizations.

Estimated Number of Respondents: 1,000.

Estimated Number of Responses: 1,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1,000 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) 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. Comments may be sent to David King, Office of the Assistant Secretary for Civil Rights, U.S. Department of Agriculture, 1400 Independence Ave., SW., Washington, DC 20250 or to *david.king@ascr.usda.gov.* All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Joe Leonard, Jr.,

Assistant Secretary for Civil Rights.

[FR Doc. 2010–29132 Filed 11–19–10; 8:45 am]

BILLING CODE M

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

November 16, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: 7 CFR 765, Direct Loan Servicing—Regular.

OMB Control Number: 0560–0236.

Summary of Collection: Authority to establish the regulatory requirements contained in 7 CFR 765, which provides that "The Head of an Executive department or military department may prescribe regulations for the government of his department, the distribution and performance of its business * * *" The Secretary delegated authority to administer the provisions of the Act applicable to the Farm Loan Program (FLP) to the Under Secretary for Farm and Foreign Agricultural Service in section 2.16 of 7 CFR part 2. FLP provides loans to family farmers to purchase real estate equipment and finance agricultural production. The regulations covered by this information collection package describes, the policies and procedures the agency uses to service most FLP loans to ensure borrowers are meeting the requirements of their loan agreements.

Need and Use of the Information: Information requested under this collection is submitted to the office serving the county in which their business is headquartered. The information is used by the agency to consider whether a borrower is in compliance with their loan covenants, assist the borrower in achieving their business goals, conduct day-to-day management of the agency's loan portfolio, and ensure that the agency's interests are protected. Failure to collect the information or collecting it less frequently could result in the failure of the farm operation or loss of agency security property or position.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 53,344.

Frequency of Responses: Reporting: On occasion; Annually.

Total Burden Hours: 63,189.

Farm Service Agency

Title: 7 CFR 764, Direct Loan Making.

OMB Control Number: 0560–0237.

Summary of Collection: Authority to establish the regulatory requirements contained in 7 CFR 764, which provides that "The Head of an Executive department or military department may prescribe regulations for the government of his department, the distribution and performance of its business * * *" The Secretary delegated authority to administer the provisions of the Act applicable to the Farm Loan Program (FLP) to the Under Secretary for Farm and Foreign Agricultural Service in section 2.16 of 7 CFR part 2. FLP provides loans to family farmers to purchase real estate equipment and finance agricultural production. The Farm Service Agency (FSA) also provides the requirements associated with Farm Ownership, Operating, Emergency and Farm Storage Facility loan programs.

Need and Use of the Information: Information is submitted by the applicants to the local agency office serving the county in which their business is headquartered. The information is necessary to thoroughly evaluate the applicant's request for a direct loan and is used by agency officials to: (1) Ensure that cash flow projections used in determining loan repayment are based on the actual production history of the operation, (2) Ensure that a loan is adequately secured, (3) Ensure the applicant meets the statutorily established program eligibility requirements, and (4) Obtain assignment on income or sales proceeds, when appropriate, to ensure timely repayment of the loans. If the information were not collected, or collected less frequently, the agency would be unable to meet the congressionally mandated mission of its loan programs.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 176,378.

Frequency of Responses: Reporting: On occasion; Annually.

Total Burden Hours: 310,347.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–29284 Filed 11–19–10; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Eleven Point Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Eleven Point Resource Advisory Committee will meet in Winona, Missouri. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is to review proposed forest management projects so that recommendations may be made to the Forest Service on which should be funded through Title II of the Secure Rural Schools and Community Self Determination Act of 2000, as amended in 2008.

DATES: The meeting will be held Tuesday, December 14th, 2010, 6:30 p.m.

ADDRESSES: The meeting will be held at the Twin Pines Conservation Education Center located on US Highway 60, Rt 1, Box 1998, Winona, MO. Written comments should be sent to David Whittekiend, Designated Federal Official, Mark Twain National Forest, 401 Fairgrounds Road, Rolla, MO.

Comments may also be sent via e-mail to *dwhittekiend@fs.fed.us* or via facsimile to 573–364–6844.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Mark Twain National Forest Supervisors Office, 401 Fairgrounds Road, Rolla, MO. Visitors are encouraged to call ahead to 573–341–7404 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Richard Hall, Eleven Point Resource Advisory Committee Coordinator, Mark Twain National Forest, 573–341–7404.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: The meeting will focus on reviewing potential projects that the RAC may recommend for funding. Persons who wish to bring related matters to the attention of the Committee may file written statements with David Whittekiend (address above) before or after the meeting.

Dated: November 16, 2010.

David Whittekiend,

Forest Supervisor.

[FR Doc. 2010–29333 Filed 11–19–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Big Horn County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Big Horn County Resource Advisory Committee will meet in Greybull, Wyoming. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose is to hold the second meeting and to vote on initial project proposals.

DATES: The meeting will be held on December 1, 2010, and will begin at 10 a.m.

ADDRESSES: The meeting will be held at the Big Horn County Weed and Pest Building, 4782 Highway 310, Greybull, Wyoming. Written comments about this meeting should be sent to Laurie Walters-Clark, Bighorn National Forest, 2013 Eastside 2nd Street, Sheridan, Wyoming 82801. Comments may also be sent via e-mail to *comments-bighorn@fs.fed.us,* with the words Big Horn County RAC in the subject line. Facsimilies may be sent to 307–674–2668.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Bighorn National Forest, 2013 Eastside 2 Street, Sheridan, Wyoming 82801. Visitors are encouraged to call ahead to 307–674–2600 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Laurie Walters-Clark, RAC coordinator, USDA, Bighorn National Forest, 2013 Eastside 2 Street, Sheridan, Wyoming 82801; (307) 674–2627.

Individuals who use telecommunication devices for the hearing impaired may call 1–307–674–2604 between 8 a.m. and 5 p.m., Mountain time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Introductions of all committee members and Forest Service personnel, (2) Finalization and approval of Committee Operating Guidelines, (3) Approve project review process, (4) Project reviews, and (5) Public Comment; and (6) Project recommendation voting. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting.

Dated: November 15, 2010.

William T. Bass,

Designated Federal Officer.

[FR Doc. 2010–29261 Filed 11–19–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

Adopted Adjustments to Alternative Site Framework

SUMMARY: The Foreign-Trade Zones (FTZ) Board has adopted minor adjustments to its practice pertaining to the alternative site framework (ASF) originally adopted by the Board in December 2008 (74 FR 1170, 01/12/09; correction 74 FR 3987, 01/22/09) as an option for grantees to designate and manage their general-purpose FTZ sites. The adjustments stem from a staff proposal published in August 2010 (75 FR 46916, 8/4/2010). The adopted adjustments take into account comments received on the staff proposal.

The comments received on the staff proposal and the FTZ Staff's analysis pertaining to the comments and the proposed adjustments are contained in a staff report available in the "Reading Room" section of the FTZ Board's Web site, which can be accessed via *http://www.trade.gov/ftz.* The two adjustments proposed by the staff and adopted by the Board are summarized as follows:

(1) Eliminate the site-specific allotment of a given grantee's 2,000-acre activation limit (including for FTZs already reorganized or with applications pending for reorganization under the ASF). Replace the site-specific allotment with a procedure—once the Online FTZ Information System (OFIS) currently under development is available and appropriate training has been provided to grantees—whereby the grantees use the OFIS online system to update information on each site's activated space.

(2) For ASF applications, allow two general options for documentation pertaining to jurisdictions (ordinarily counties) within the service area:

(a) Submitting letters from appropriate county officials acknowledging the proposed inclusion of their counties in the service area of the zone, and presenting their views on the proposal; or,

(b) In the absence of letters from appropriate county officials, submission of evidence that appropriate officials of the affected counties were notified of the proposal and were provided information on how they could submit comments to the FTZ Board regarding the proposal. For this option, a grantee should be required to use standard language provided by the FTZ Board staff, thereby ensuring that clear explanation and instructions were given to appropriate officials of the affected counties.

In the absence of governments at the county level, the publication of local public notice regarding the application should allow a full range of appropriate local public officials to be informed of the application and to submit comments if they wish to do so. However, if a grantee will be relying on the publication of local public notice due to an absence of governments at the county level, the grantee should explain that situation within the body of the "application letter" signed by an authorized grantee official.

In response to a comment received, the FTZ Board has also adopted a recommendation to clarify that a site

can be designated as Usage-Driven so long at the site falls within the grantee's service area (*i.e.,* meets the standard general-purpose FTZ adjacency requirement), has appropriate zoning (*i.e.,* can accommodate the types of uses ordinarily associated with general-purpose FTZ activity) and is tied to a single operator's or user's use.

Dated: November 16, 2010.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–29396 Filed 11–19–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–838, A–570–964]

Seamless Refined Copper Pipe and Tube From Mexico and the People's Republic of China: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value From Mexico

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

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the "Department") and the International Trade Commission ("ITC"), the Department is issuing antidumping duty orders on seamless refined copper pipe and tube ("copper pipe and tube") from Mexico and the People's Republic of China ("PRC"). In addition, the Department is amending its final determination of sales at less than fair value ("LTFV") from Mexico as a result of a ministerial error.

DATES: *Effective Dates:* November 22, 2010.

FOR FURTHER INFORMATION CONTACT: Joy Zhang (Mexico) or Shawn Higgins (PRC), AD/CVD Operations, Offices 3 and 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1168 or (202) 482–0679, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 1, 2010, the Department published its affirmative final determinations of sales at LTFV in the antidumping duty investigations of copper pipe and tube from Mexico and the PRC.[1]

On November 15, 2010, in accordance with section 735(d) of the Tariff Act of 1930, as amended (the "Act"), the ITC notified the Department of its final determination, that an industry in the United States is threatened with material injury by reason of LTFV imports of copper pipe and tube from Mexico and the PRC.[2]

Scope of the Orders

For the purpose of these orders, the products covered are all seamless circular refined copper pipes and tubes, including redraw hollows, greater than or equal to 6 inches (152.4 mm) in length and measuring less than 12.130 inches (308.102 mm) (actual) in outside diameter ("OD"), regardless of wall thickness, bore (*e.g.,* smooth, enhanced with inner grooves or ridges), manufacturing process (*e.g.,* hot finished, cold-drawn, annealed), outer surface (*e.g.,* plain or enhanced with grooves, ridges, fins, or gills), end finish (*e.g.,* plain end, swaged end, flared end, expanded end, crimped end, threaded), coating (*e.g.,* plastic, paint), insulation, attachments (*e.g.,* plain, capped, plugged, with compression or other fitting), or physical configuration (*e.g.,* straight, coiled, bent, wound on spools).

The scope of these orders covers, but is not limited to, seamless refined copper pipe and tube produced or comparable to the American Society for Testing and Materials ("ASTM") ASTM–B42, ASTM–B68, ASTM–B75, ASTM–B88, ASTM–B88M, ASTM–B188, ASTM–B251, ASTM–B251M, ASTM–B280, ASTM–B302, ASTM–B306, ASTM–359, ASTM–B743, ASTM–B819, and ASTM–B903 specifications and meeting the physical parameters described therein. Also included within the scope of these orders are all sets of covered products, including "line sets" of seamless refined copper tubes (with or without fittings or insulation) suitable for connecting an outdoor air conditioner or heat pump to an indoor evaporator unit. The phrase "all sets of covered products" denotes any combination of items put up for sale that is comprised of merchandise subject to the scope.

"Refined copper" is defined as: (1) Metal containing at least 99.85 percent by weight of copper; or (2) metal containing at least 97.5 percent by weight of copper, provided that the content by weight of any other element does not exceed the following limits:

Element	Limiting content percent by weight
Ag—Silver	0.25
As—Arsenic	0.5
Cd—Cadmium	1.3
Cr—Chromium	1.4
Mg—Magnesium	0.8
Pb—Lead	1.5
S—Sulfur	0.7
Sn—Tin	0.8
Te—Tellurium	0.8
Zn—Zinc	1.0
Zr—Zirconium	0.3
Other elements (each)	0.3

Excluded from the scope of these orders are all seamless circular hollows of refined copper less than 12 inches in length whose OD (actual) exceeds its length. The products subject to these orders are currently classifiable under subheadings 7411.10.1030 and 7411.10.1090 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Products subject to these orders may also enter under HTSUS subheadings 7407.10.1500, 7419.99.5050, 8415.90.8065, and 8415.90.8085. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these orders is dispositive.

Amendment to the Final Determination of Sales at LTFV From Mexico

On October 1, 2010, the Department published its affirmative final determination of sales at LTFV of copper pipe and tube from Mexico.[3] On October 6, 2010, Nacional de Cobre, S.A. de C.V. ("Nacobre"), a respondent in the investigation, submitted a timely ministerial error allegation and requested, pursuant to section 735(e) of the Act and 19 CFR 351.224(c), that the Department correct an alleged ministerial error in the dumping margin calculations.[4] The Department did not receive any rebuttal comments.

After analyzing Nacobre's allegation, the Department determined, in accordance with section 735(e) of the Act and 19 CFR 351.224(e), that it made a ministerial error in its calculations for the *Final Determination of Sales at LTFV from Mexico.* Specifically, the

[1] *See Seamless Refined Copper Pipe and Tube From Mexico: Final Determination of Sales at Less Than Fair Value,* 75 FR 60723 (October 1, 2010) ("*Final Determination of Sales at LTFV from Mexico*"); *Seamless Refined Copper Pipe and Tube From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 75 FR 60725 (October 1, 2010).

[2] *See* Seamless Refined Copper Pipe and Tube from China and Mexico, Investigation Nos. 731–TA–1174–1175 (Final), USITC Publication 4193, November 2010; section 735(b)(1)(A)(ii) of the Act.

[3] *See Final Determination of Sales at LTFV from Mexico.*

[4] *See* Letter from Nacobre to the Secretary of Commerce, "Seamless Refined Copper Pipe and Tube from Mexico: Nacobre's Comments Regarding Ministerial Errors in the Final Determination" (October 6, 2010).

Department relied on incorrect comparison market ("CM") data used for the price-to-price comparisons with United States sales, calculations of profit for constructed export price ("CEP") sales, and constructed value selling expenses. Therefore, the Department changed the margin program calculations for Nacobre to rely on the correct weighted-average CM data. Based on the correction of this error, Nacobre's weighted-average margin decreased from 31.43 percent to 27.16 percent. Furthermore, to remain consistent with the methodology used to calculate the "all others" rate in the *Final Determination of Sales at LTFV from Mexico,* the Department calculated a simple average of the weighted-average dumping margins for the mandatory respondents to derive a revised "all others" rate of 26.03 percent.

For a detailed discussion of the ministerial error alleged by Nacobre, as well as the Department's analysis, see the Department's October 18, 2010, ministerial error memorandum.[5]

Antidumping Duty Orders

On November 15, 2010, in accordance with section 735(d) of the Act, the ITC notified the Department of its final determination that an industry in the United States is threatened with material injury within the meaning of section 735(b)(1)(A)(ii) of the Act by reason of LTFV imports of copper pipe and tube from Mexico and the PRC. Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection ("CBP") to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or CEP) of the merchandise for all relevant entries of copper pipe and tube from Mexico and the PRC.

Pursuant to section 736(b)(2) of the Act, duties shall be assessed on subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination if that determination is based on the threat of material injury, other than threat of material injury described in section 736(b)(1) of the Act.[6] In addition, section 736(b)(2) of the Act requires CBP to release any bond or other security, and refund any cash deposit made of estimated antidumping duties posted since the Department's preliminary antidumping duty determinations.[7]

Because the ITC's final determination is based on the threat of material injury and is not accompanied by a finding that injury would have resulted but for the imposition of suspension of liquidation of entries since the Department's preliminary determinations, section 736(b)(2) of the Act is applicable. Therefore, the Department will instruct CBP to terminate the suspension of liquidation for entries of copper pipe and tube from Mexico and the PRC entered, or withdrawn from warehouse, for consumption prior to the publication of the ITC's final determination and release any bond or other security posted and refund any cash deposit of estimated antidumping duties made between the publication of the Department's preliminary determinations on May 12, 2010, and the publication of the ITC's final determination. Furthermore, the antidumping duties below will be assessed on all unliquidated entries of copper pipe and tube from Mexico and the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination of threat of material injury in the **Federal Register**.

Final Determination Margins

The margins, as amended where appropriate, and cash deposit rates are as follows:

PEOPLE'S REPUBLIC OF CHINA

Exporter	Producer	Weighted-average margin (percent)
Golden Dragon Precise Copper Tube Group, Inc	Golden Dragon Precise Copper Tube Group, Inc	11.25
Zhejiang Hailiang Co., Ltd.; Hong Kong Hailiang Metal Trading Limited; Shanghai Hailiang Copper Co., Ltd.	Zhejiang Hailiang Co., Ltd.; Shanghai Hailiang Copper Co., Ltd	60.85
Zhejiang Naile Copper Co., Ltd	Zhejiang Naile Copper Co., Ltd	36.05
Zhejiang Jiahe Pipes Inc	Zhejiang Jiahe Pipes Inc	36.05
Luvata Tube (Zhongshan) Ltd	Luvata Tube (Zhongshan) Ltd	36.05
Luvata Tube (Zhongshan) Ltd	Luvata Alltop (Zhongshan) Ltd	36.05
Luvata Alltop (Zhongshan) Ltd	Luvata Alltop (Zhongshan) Ltd	36.05
Ningbo Jintian Copper Tube Co. Ltd	Ningbo Jintian Copper Tube Co. Ltd	36.05
PRC-Wide Entity	PRC-Wide Entity	60.85
Mexico		
IUSA S.A. de C.V	IUSA S.A. de C.V	24.89
Nacional de Cobre, S.A. de C.V	Nacional de Cobre, S.A. de C.V	27.16
All Others	All Others	26.03

[5] *See* Memorandum from Melissa G. Skinner, Director, AD/CVD Operations, Office 3, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, "Ministerial Error Allegations in the Final Determination of the Antidumping Duty Investigation of Seamless Refined Copper Pipe and Tube from Mexico" (October 18, 2010).

[6] Section 736(b)(1) of the Act states that "{i}f the {ITC}, in its final determination under section 735(b), finds material injury or threat of material injury which, but for the suspension of liquidation under section 733(d)(2) would have led to a finding of material injury, then entries of the subject merchandise, the liquidation of which has been suspended under section 733(d)(2), shall be subject to the imposition of antidumping duties under section 731."

[7] *See Seamless Refined Copper Pipe and Tube From Mexico: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 75 FR 26726 (May 12, 2010), as corrected by *Seamless Refined Copper Pipe and Tube From Mexico: Correction to Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 75 FR 29990 (May 28, 2010); *Seamless Refined Copper Pipe and Tube from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 75 FR 26716 (May 12, 2010).

On or after the date of publication of the ITC's notice of final determination in the **Federal Register**, CBP must require, pursuant to section 736(a)(3) of the Act, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average margins listed above.

This notice constitutes the antidumping duty orders with respect to copper pipe and tube from Mexico and the PRC, pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room 7046 of the main Commerce building, for copies of an updated list of antidumping duty orders currently in effect.

These antidumping duty orders and amended final determination are issued and published in accordance with sections 736(a), 735(e), and 777(i)(A) of the Act and 19 CFR 351.211(b) and 351.224(e).

Dated: November 18, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–29528 Filed 11–19–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No.: PTO–P–2010–0087]

Extension of the Patent Application Backlog Reduction Stimulus Plan

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (USPTO) provides a basis (the Patent Application Backlog Reduction Stimulus Plan) under which an applicant may have an application accorded special status for examination if the applicant expressly abandons another copending unexamined application. The Patent Application Backlog Reduction Stimulus Plan allows applicants having multiple applications currently pending before the USPTO to have greater control over the priority with which their applications are examined while also stimulating a reduction of the backlog of unexamined patent applications pending before the USPTO. The USPTO is extending the Patent Application Backlog Reduction Stimulus Plan until December 31, 2011.

DATES: *Effective Date:* November 22, 2010. The Patent Application Backlog Reduction Stimulus Plan became effective on November 27, 2009, and was modified on June 24, 2010.

FOR FURTHER INFORMATION CONTACT: Pinchus M. Laufer, Office of Patent Legal Administration, Office of the Associate Commissioner for Patent Examination Policy, by telephone at 571–272–7726; or via e-mail addressed to *Pinchus.Laufer@uspto.gov;* or by mail addressed to: Box Comments Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450.

SUPPLEMENTARY INFORMATION: The USPTO published a notice in the **Federal Register** providing an additional temporary basis (the Patent Application Backlog Reduction Stimulus Plan) under which a small entity applicant may have an application accorded special status for examination if the applicant expressly abandons another copending unexamined application. *See Patent Application Backlog Reduction Stimulus Plan,* 74 FR 62285 (Nov. 27, 2009), 1349 *Off. Gaz. Pat. Off.* 304 (Dec. 22, 2009) (notice). The Patent Application Backlog Reduction Stimulus Plan allowed small entity applicants having multiple applications currently pending before the USPTO to have greater control over the priority with which their applications are examined while also stimulating a reduction of the backlog of unexamined patent applications pending before the USPTO. The USPTO indicated that the plan would last for a period ending on February 28, 2010, but may be extended for an additional time period thereafter. *See Patent Application Backlog Reduction Stimulus Plan,* 74 FR at 62287, 1349 *Off. Gaz. Pat. Off.* at 306. The USPTO extended the plan for an additional four months to June 30, 2010. *See Extension of the Patent Application Backlog Reduction Stimulus Plan,* 75 FR 5041 (February 1, 2010), 1351 *Off. Gaz. Pat. Off.* 202 (February 23, 2010). Subsequently, the USPTO expanded the plan to eliminate the small entity requirement and further extended its duration to expire at the earlier of the December 31, 2010 date, or the date that 10,000 applications have been accorded special status under this plan. *See Expansion and Extension of the Patent Application Backlog Reduction Stimulus Plan,* 75 FR 36063 (June 24, 2010), 1356 *Off. Gaz. Pat. Off.* 173 (July 20, 2010).

The USPTO is extending the Patent Application Backlog Reduction Stimulus Plan until December 31, 2011. Accordingly, the Patent Application Backlog Reduction Stimulus Plan will run until 10,000 petitions have been granted or until December 31, 2011, whichever occurs earlier. The USPTO may further extend this plan (on either a temporary or permanent basis), or may also discontinue the plan after December 31, 2011, if 10,000 petitions have not been granted, depending upon the results of the plan. Information concerning the number of petitions that have been filed and granted under the Patent Application Backlog Reduction Stimulus Plan is available on the USPTO's Internet Web site at *http://www.uspto.gov/patents/init_events/PatentStimulusPlan.jsp.* For a petition under 37 CFR 1.102 to be granted under the procedure for the Patent Application Backlog Reduction Stimulus Plan, the petition under 37 CFR 1.102 and the letter of express abandonment and its accompanying statement must be filed on or before December 31, 2011 (unless the Patent Application Backlog Reduction Stimulus Plan is extended by a subsequent notice).

Dated: November 16, 2010.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2010–29360 Filed 11–19–10; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–805]

Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Certain Circular Welded Non-Alloy Steel Pipe From Mexico

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

SUMMARY: In response to a request for an expedited changed circumstances review from Tuberia Nacional, S.A. de C.V. (TUNA) and Lamina y Placa Comercial, S.A. de C.V. (Lamina y Placa), the Department of Commerce (the Department) is initiating a changed circumstances review of the antidumping duty order on certain circular welded non-alloy steel pipe (CWP) from Mexico pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.216 and 351.221(c)(3). We have preliminarily concluded that Lamina y Placa is the successor-in-interest to TUNA and, as a result, should be accorded the same treatment previously given to TUNA with respect to the antidumping duty order on CWP from

Mexico. Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* November 22, 2010.

FOR FURTHER INFORMATION CONTACT: Mark Flessner or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 7866, Washington, DC 20230; telephone: (202) 482–6312 or (202) 482–0649, respectively.

Background

The Department published an antidumping duty order on CWP from Mexico on November 2, 1992. *See Notice of Antidumping Duty Orders: Certain Circular Welded Non-Alloy Steel Pipe from Brazil, the Republic of Korea (Korea), Mexico, and Venezuela, and Amendment to Final Determination of Sales at Less Than Fair Value: Certain Circular Welded Non-Alloy Steel Pipe from Korea,* 57 FR 49453 (November 2, 1992).

On May 17, 2010, both TUNA and Lamina y Placa filed a request for a changed circumstances review of the antidumping duty order on CWP from Mexico. TUNA and Lamina y Placa claim that Lamina y Placa is the successor-in-interest to TUNA in accordance with section 751(b) of the Act and 19 CFR 351.216 and provided documentation supporting its assertion.

On June 30, 2010, the Department issued a questionnaire to TUNA and Lamina y Placa seeking additional information related to their request for a changed circumstances review. On July 28, 2010, TUNA and Lamina y Placa filed their response to the questionnaire. On August 31, 2010, the Department issued a supplemental questionnaire to TUNA and Lamina y Placa.

On September 10, 2010, TUNA and Lamina y Placa submitted their supplemental questionnaire response. On September 21, 2010 and September 27, 2010, TUNA and Lamina y Placa provided further information clarifying the ownership structure and legal status of both entities as requested by the Department. *See* Memorandum to the File, dated October 14, 2010.

In response to TUNA's and Lamina y Placa's request, the Department is initiating a changed circumstances review of this order.

Scope of the Order

The merchandise covered by this order is circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low-pressure conveyance of water, steam, natural gas, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses, and generally meet ASTM A–53 specifications. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and related industries. Unfinished conduit pipe is also included in this order. All carbon steel pipes and tubes within the physical description outlined above are included within the scope of this order, except line pipe, oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. Standard pipe that is dual or triple certified/stenciled that enters the United States as line pipe of a kind used for oil or gas pipelines is also not included in this order.

Imports of the products covered by this order are currently classifiable under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Initiation of Antidumping Duty Changed Circumstances Review

Pursuant to section 751(b)(1) of the Act, the Department will conduct a changed circumstances review upon receipt of a request from an interested party or receipt of information concerning an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. On May 17, 2010, TUNA and Lamina y Placa submitted their request for a changed circumstances review, claiming Lamina y Placa is the successor-in-interest to TUNA. In its submission, TUNA and Lamina y Placa explain that a majority of TUNA's assets were transferred to an affiliated company, Temple de Monterrey, S.A. de C.V. (Temple de Monterrey) on September 30, 2009. TUNA and Lamina y Placa state Temple de Monterrey was subsequently acquired by Lamina y Placa on December 28, 2009. *See* TUNA's and Lamina y Placa's submission, dated May 17, 2010 at 3 and Exhibits 1 and 2. As a result of the asset transfer and corporate merger, TUNA and Lamina y Placa clarify that all of TUNA's assets previously transferred to Temple de Monterrey are now held by Lamina y Placa. *Id.* However, TUNA and Lamina y Placa also maintain that the merger did not dissolve TUNA as a legal entity, and while TUNA does not currently have manufacturing or selling activities, it does retain ownership of certain buildings and land. *See* TUNA's and Lamina y Placa's submission, dated September 27, 2010 at 2 and Exhibit 1.

No other interested parties commented on TUNA's and Lamina y Placa's submissions. Based on the information submitted by TUNA and Lamina y Placa, the Department has determined that changed circumstances sufficient to warrant a review exist. *See* 19 CFR 351.216(d). The Department also finds that expedited action is warranted in accordance with 19 CFR 351.221(c)(3)(ii), and therefore we are publishing a notice of initiation and preliminary results for this changed circumstances review concurrently. *See Ball Bearings and Parts Thereof from Japan: Initiation and Preliminary Results of Changed-Circumstances Review,* 71 FR 14679 (March 23, 2006).

Preliminary Results

In antidumping duty changed circumstances reviews involving a successor-in-interest determination, the Department typically examines several factors including, but not limited to: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See Brass Sheet and Strip from Canada: Final Results of Antidumping Duty Administrative Review,* 57 FR 20460, 20462 (May 13, 1992) and *Certain Cut-to-Length Carbon Steel Plate from Romania: Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review,* 70 FR 22847 (May 3, 2005) (*Plate from Romania*). While no single factor or combination of factors will necessarily be dispositive, the Department generally will consider the new company to be the successor to the predecessor if the resulting operations are essentially the same as those of the predecessor company. *See, e.g., Industrial Phosphoric Acid from Israel: Final Results of Antidumping Duty Changed Circumstances Review,* 59 FR 6944, 6945 (February 14, 1994), and *Plate from Romania,* 70 FR 22847.

Thus, if the record evidence demonstrates the new company operates as the same business entity as the predecessor company with respect to the production and sale of the subject merchandise, the Department may assign the new company the cash deposit rate of its predecessor. *See, e.g., Fresh and Chilled Atlantic Salmon from Norway: Final Results of Changed Circumstances Antidumping Duty Administrative Review,* 64 FR 9979, 9980 (March 1, 1999).

In accordance with 19 CFR 351.221(c)(3)(i), we preliminarily determine that Lamina y Placa is the successor-in-interest to TUNA. In its submissions, TUNA and Lamina y Placa provide documentation showing the transfer of production and sales operations from TUNA to Lamina y Placa resulted in little or no change in management, production facilities, supplier relationships, or customer base.

In its initial submission, dated May 17, 2010, TUNA and Lamina y Placa state: (1) The production of subject merchandise at Lamina y Placa is managed by the same individuals who previously managed production operations of subject merchandise at TUNA prior to the merger; (2) subject merchandise produced by Lamina y Placa is in the same location and at the same capacity as produced by TUNA before the merger; (3) Lamina y Placa consumes the same material inputs as TUNA did, sourced from the same major suppliers; and (4) Lamina y Placa sells merchandise to the same customer base to which TUNA made sales.

TUNA and Lamina y Placa further explain that the ultimate ownership of the production facilities remain the same, and did not change as a result of the transfer of a majority of TUNA's assets to Temple de Monterrey, and the latter's eventual merger with Lamina y Placa. Additionally, TUNA and Lamina y Placa point out that the Department has previously collapsed both companies into a single producer entity in the 1998–1999 administrative review of this order (*i.e.,* the most recently completed administrative review of TUNA). *See* TUNA's and Lamina y Placa's submission, dated May 17, 2010 at 6, citing *Circular Welded Non-Alloy Steel Pipe From Mexico: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review,* 65 FR 77560, 77562 (December 20, 2000) (*1998–1999 Preliminary Results*); unchanged in *Circular Welded Non-Alloy Steel Pipe From Mexico: Final Results of Antidumping Duty Administrative Review,* 66 FR 21311 (April 30, 2001) and unchanged in *Circular Welded Non-Alloy Steel Pipe From Mexico: Amended Final Results of Antidumping Duty Administrative Review,* 66 FR 37454 (July 18, 2001).

In performing our analysis, we first examined the organization charts showing the management structure and ownership information for TUNA, Lamina y Placa and Temple de Monterrey both prior to and after the merger of Temple de Monterrey into Lamina y Placa. *See* TUNA's and Lamina y Placa's submissions, dated May 17, 2010 (Exhibit 3), July 28, 2010 (Exhibit 4), September 10, 2010 (Exhibit 1) and September 21, 2010 (Exhibits 1 and 2). TUNA and Lamina y Placa note that the management of TUNA's pipe facility did not change between TUNA's asset transfer to Temple de Monterrey and Temple de Monterrey's merger into Lamina y Placa. The only significant changes involve transfers of personnel from other affiliated entities, the promotion of Lamina y Placa employees to higher positions and the creation of new positions. As such, Lamina y Placa's management structure after the merger of Temple de Monterrey, for the most part, resembles its previous management structure. *See* TUNA's and Lamina y Placa's submissions, dated July 28, 2010 at 5–6 and Exhibit 4.

Second, we reviewed production data of subject merchandise from production facilities of both Lamina y Placa and TUNA covering periods prior to and following the asset transfer and corporate merger. Data show both entities maintained the same production capacity. *See* TUNA's and Lamina y Placa's submissions, dated May 17, 2010 and July 28, 2010 at Exhibits 4 and 5, respectively.

Third, we examined the list of major input suppliers to TUNA for the production of subject merchandise prior to the transfer of a majority of its assets to Temple de Monterrey. We compared this to the list of suppliers of major inputs to Lamina y Placa for the production of subject merchandise following the transfer of TUNA's assets and found both lists were identical. *See* TUNA's and Lamina y Placa's submission, dated May 17, 2010 at Exhibit 5. Meanwhile, TUNA and Lamina y Placa clarified that Lamina y Placa also maintained relationships with additional suppliers for other material, finished goods and services. *See* TUNA's and Lamina y Placa's submission, dated July 28, 2010 at Exhibit 6.

Fourth, we reviewed the customer lists for TUNA's sales of subject merchandise prior to the transfer of its assets to Temple de Monterrey and Lamina y Placa's customers following its merger with Temple de Monterrey. TUNA and Lamina y Placa explained that prior to the asset transfer and corporate merger, Lamina y Placa did not operate any facilities for the production of subject merchandise. However, TUNA and Lamina y Placa add that TUNA was involved as a toller for Lamina y Placa, wherein Lamina y Placa placed orders with TUNA for certain subject and non-subject merchandise and paid TUNA a monthly sum for the volume of merchandise produced. TUNA and Lamina y Placa state this arrangement served as a basis for the Department's treatment of Lamina y Placa as a producer in the *1998–1999 Preliminary Results* (unchanged in the final results and amended final results) and its decision to collapse both companies as a single entity.[1] *See* TUNA's and Lamina y Placa's submission, dated July 28, 2010 at 1 and 2. As a result, Lamina y Placa claim that prior to the asset transfer and corporate merger, it sold merchandise to its own customers, while TUNA sold merchandise to only a few direct customers. *See* TUNA's and Lamina y Placa's submission, dated July 28, 2010 at 7–8 and Exhibit 7. However, since the asset transfer and corporate merger, Lamina y Placa explains it has maintained the same customer base while also absorbing TUNA's former direct customers. *Id.* at 7–8. Therefore, based on record information, we preliminarily find that Lamina y Placa's customers include those of TUNA's prior to the asset transfer and corporate merger.

For the reasons described above, we preliminarily find that Lamina y Placa is the successor-in-interest to TUNA in accordance with 19 CFR 351.221(c)(3)(i). As such, Lamina y Placa is entitled to TUNA's cash-deposit rate with respect to entries of subject merchandise. Should our final results remain the same as these preliminary results, effective the date of publication of the final results we will instruct U.S. Customs and Border Protection to assign entries of merchandise produced or exported by Lamina y Placa the antidumping duty cash-deposit rate applicable to TUNA.

Public Comment

Any interested party may request a hearing within 15 days of publication of this notice. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 22 days after the date of publication of this notice or the first working day thereafter. Interested parties may submit

[1] The Department also collapsed a third affiliated company, Lamina y Placa Monterrey, which engaged in similar tolling operations.

case briefs not later than 15 days after the date of publication of this notice. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs, which must be limited to issues raised in case briefs, may be filed not later than 20 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this changed circumstances review are requested to submit with each argument: (1) A statement of the issue; and (2) a brief summary of the argument. Consistent with 19 CFR 351.216(e), we will issue the final results of this changed-circumstances review no later than 270 days after the date on which this review was initiated, or within 45 days of publication of these preliminary results if all parties agree to our preliminary finding.

During the course of this antidumping duty changed circumstances review, the cash deposit requirements for the subject merchandise exported and manufactured by Lamina y Placa will continue to be the all-others rate established in the investigation. *See Notice of Antidumping Duty Orders: Certain Circular Welded Non-Alloy Steel Pipe from Brazil, the Republic of Korea (Korea), Mexico, and Venezuela, and Amendment to Final Determination of Sales at Less Than Fair Value: Certain Circular Welded Non-Alloy Steel Pipe from Korea,* 57 FR 49453 (November 2, 1992).

This notice of initiation and preliminary results is published in accordance with sections 751(b)(1) and 777(i)(1) of the Act, and 19 CFR 351.216 and 19 CFR 351.221(c)(3).

Dated: November 15, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–29384 Filed 11–19–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Regulations and Procedures Technical Advisory Committee; Notice of Partially Closed Meeting

The Regulations and Procedures Technical Advisory Committee (RPTAC) will meet December 8, 2010, 9 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

Agenda

Public Session

1. Opening remarks by the Chairman.
2. Opening remarks by Bureau of Industry and Security.
3. Export Enforcement update.
4. Regulations update.
5. Working group reports.
6. Automated Export System (AES) update.
7. Presentation of papers or comments by the Public.

Closed Session

8. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yspringer@bis.doc.gov* no later than December 1, 2010.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on November 3, 2010, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § (10)(d)), that the portion of the meeting dealing with matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)1 and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: November 17, 2010.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2010–29374 Filed 11–19–10; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Anvik Technologies Sdn. Bhd., a/k/a Anvik Technologies; Babak Jafarpour, a/k/a Bob Jefferson

Anvik Technologies Sdn. Bhd., a/k/a Anvik Technologies
Level 20, Menara Standard Chartered, 30 Jalan Sultan Ismail, Kuala Lumpur 50250, Malaysia
Level 36, Menara Citibank, 165 Jalan Ampang, Kuala Lumpur 50450, Malaysia
Level 19, Two International Finance Centre, 8 Finance Street Central Hong Kong
155 North Wacker Drive, 42nd Floor, Chicago, IL 60606; and
Babak Jafarpour, a/k/a Bob Jefferson
Level 20, Menara Standard Chartered, 30 Jalan Sultan Ismail, Kuala Lumpur 50250, Malaysia
Level 36, Menara Citibank, 165 Jalan Ampang, Kuala Lumpur 50450, Malaysia
Level 19, Two International Finance Centre, 8 Finance Street Central Hong Kong
155 North Wacker Drive, 42nd Floor, Chicago, IL 60606
Respondents.

Order Temporarily Denying Export Privileges

Pursuant to Section 766.24 of the Export Administration Regulations ("EAR" or the "Regulations"),[1] the Bureau of Industry and Security ("BIS"), U.S. Department of Commerce, through its Office of Export Enforcement ("OEE"), has requested that I issue an Order temporarily denying, for a period of 180 days, the export privileges under the EAR of:

1. Anvik Technologies Sdn. Bhd. a/k/a Anvik Technologies.
   Level 20, Menara Standard Chartered, 30 Jalan Sultan Ismail, Kuala Lumpur 50250, Malaysia.
   Level 36, Menara Citibank, 165 Jalan Ampang, Kuala Lumpur 50450, Malaysia.
   Level 19, Two International Finance Centre, 8 Finance Street Central

[1] The EAR is currently codified at 15 CFR parts 730–774 (2010). The EAR are issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401–2420 (2000)) ("EAA"). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive presidential notices, the most recent being that of August 12, 2010 (75 FR 50681 (Aug. 16, 2010)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.*) ("IEEPA").

Hong Kong.

155 North Wacker Drive, 42nd Floor, Chicago, IL 60606.[2]

2. Babak Jafarpour a/k/a Bob Jefferson.

Level 20, Menara Standard Chartered, 30 Jalan Sultan Ismail, Kuala Lumpur 50250, Malaysia.

Level 36, Menara Citibank, 165 Jalan Ampang, Kuala Lumpur 50450, Malaysia.

Level 19, Two International Finance Centre, 8 Finance Street Central Hong Kong.

155 North Wacker Drive, 42nd Floor, Chicago, IL 60606.[3].

Legal Standard

Pursuant to Section 766.24(b) of the Regulations, BIS may issue a TDO upon a showing that the order is necessary in the public interest to prevent an "imminent violation" of the Regulations. 15 CFR 766.24(b)(1). "A violation may be 'imminent' either in time or degree of likelihood." 15 CFR 766.24(b)(3). BIS may show "either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations." *Id.* As to the likelihood of future violations, BIS may show that "the violation under investigation or charges is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent[.]" *Id.* A "lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation." *Id.*

Background and Findings

OEE has presented evidence that, on multiple occasions, beginning in October 2009 and continuing to date, Anvik Technologies Sdn. Bhd. ("Anvik"), and its owner and operator Babak Jafarpour, have procured and attempted to procure various items subject to the Regulations for export from the United States to Iran, via transshipment through third countries, including Malaysia and Hong Kong, without obtaining the required authorization from the U.S. Government.

OEE, through its investigation, has provided evidence that Anvik and Jafarpour (hereinafter collectively referred to as "Respondents") have been utilizing a global network of leased "virtual offices"[4] to procure items from the United States and ship those items to Iran through third countries. Respondents use the leased virtual office space in order to obtain various addresses, including the addresses in Malaysia and Hong Kong, that Respondents then provide to suppliers as the ultimate destination and end-users of the items while disguising the true ultimate destination and end-users in Iran. OEE has identified at least four transactions where the Respondents have shipped or attempted to ship items to Iran using the same method of operation, including two attempted exports to Iran as recently as September 2010. In this section, I discuss evidence obtained by OEE relating to those transactions and submitted to me in support of its TDO request.

Between February and June 2010, Respondents exchanged email messages with a U.S. manufacturer concerning the procurement of microwave mixers and bias tees. These items, which are components used in communications and radar systems, are subject to the Regulations and designated as EAR99. Respondents' email messages with the U.S. manufacturer originated in Iran. However, Respondents completed an end-user statement that they provided to the U.S. manufacturer stating that the microwave mixers and bias tees were to be used by Anvik at its address at 155 North Wacker Drive, 42nd Floor, Chicago, IL 60606.

On September 7, 2010, on the instructions of Respondents, the U.S. manufacturer shipped the microwave mixers and bias tees to the address in Chicago provided by Respondents. However, the Chicago, IL address is for the "virtual office" at which Respondents do not occupy any physical space or otherwise have operations that would enable them to use these items there, and instead only lease certain services, such as remote receptionist and administrative support and use of the local phone number and address. When the microwave mixers and bias tees arrived in Chicago, the "virtual office" staff, on the instructions of Respondent Jafarpour, replaced the manufacturer's invoice with one provided by him and shipped the items to another of Respondents' "virtual office" addresses, at Level 20, Menara Standard Chartered, 30 Jalan Sultan Ismail, Kuala Lumpur 50250, Malaysia. Jafarpour instructed the virtual office staff in Malaysia to forward the package to Iran upon receipt. However, the shipment was stopped in Malaysia prior to being delivered to the virtual office address there.

As provided in Section 746.7 of the Regulations, no person may export or reexport any item that is subject to the EAR, if such transaction is prohibited by the Iranian Transactions Regulations (31 CFR part 560) and has not been authorized by OFAC. The evidence shows that using the scheme described above, Respondents took actions to evade the Regulations by exporting microwave mixers and bias tees from the United States to Iran through Malaysia. Respondents intended to have the shipment relabeled and delivered to a forwarder/shipper for transshipment to Iran once it arrived in Malaysia. Respondents had not sought or received the required U.S. Government authorization.

OEE's investigation has uncovered another recent attempt by Respondents to procure items for Iranian end-users in violation of the Regulations. Beginning in or about September 2010, Respondents attempted to export GPS timing boards, items subject to the Regulations, classified as Export Control Classification Number 7A994, and controlled for anti-terrorism reasons, from the United States to Iran without the license required under Section 742.8 of the Regulations to export or reexport anti-terrorism controlled items to Iran. The order was placed with a U.S. manufacturer through its Swedish distributor. The purchase order submitted by Anvik stated that the terms of delivery were "FOB USA," indicating that Respondents knew the items were being exported from the United States. Respondents ordered the GPS timing boards using an address at Level 19, Two International Finance Centre, 8 Finance Street Central, Hong Kong. This address is "virtual office" space leased by Respondents. Respondents provided a different address, at Level 20, Menara Standard Chartered, 30 Jalan Sultan Ismail, Kuala Lumpur 50250, Malaysia, as the "ship to" address on the order form. This address also is "virtual office" space leased by Respondents. The shipping label on the package that arrived at Respondent Anvik's address in Malaysia stated that it was from the U.S.

[2] As explained further below, this address is an address for "virtual office space" leased by Respondents from a company called Servcorp. *See* note 4. *infra*. It is BIS's understanding that other persons also rent "virtual office space" at this address. The only current users at this address subject to this Temporary Denial Order as issued are the Respondents listed above. Other persons currently using this address are not subject to the Order.

[3] *See* footnote 2 above.

[4] A "virtual office" arrangement provides users with communication and physical office services available to a typical lessee of office space, providing the appearance that the user maintains an office at the virtual office location. Virtual office users can use phone numbers, physical/mailing addresses, receptionist services, etc. without actually leasing space or ever being present at the virtual office.

manufacturer in New York, United States, and the packing list included an export control warning from the U.S. manufacturer and a certificate of U.S. origin. Information provided by the forwarder demonstrates that, once the GPS timing boards were delivered to the address in Malaysia, they were immediately relabeled for shipment by the same forwarder to Iran. The shipment from Malaysia to Iran was stopped in Singapore while en route to Iran.

OEE also has uncovered other transactions in which Respondents were able to successfully procure items subject to the Regulations and cause their export from the United States to Iran via transshipment through third countries. Respondents used methods similar to those described above, having the items shipped to "virtual offices" they leased abroad and then transshipping the items from there to Iran.

In September 2009, Respondents placed an order with a U.S. manufacturer through its Singapore-based distributor for ten digital phase shifters. These items, which have a number of uses, including in radar systems, satellite communications, phase cancellation and beamforming modules, are subject to the Regulations and designated as EAR99. Respondents provided the U.S. manufacturer and its distributor with an end-user statement indicating that the digital phase shifters would be used by Anvik at Level 36, Menara Citibank, 165 Jalan Ampang, Kuala Lumpur 50450, Malaysia, and certifying that the items "will not be diverted to any country, company or individual that is prohibited by the U.S. Government." The address listed on the end-user statement is a "virtual office" address leased by Respondents. On October 19, 2009, the U.S. manufacturer exported the digital phase shifters to Anvik in Malaysia via the distributor in Singapore. Evidence uncovered by OEE demonstrates that, once the package arrived in Malaysia, Respondents promptly instructed the "virtual office" staff to ship the package to ECI Co. in Shiraz, Iran. Respondents did not obtain the required U.S. Government authorization to export the digital phase shifters from the United States to Iran.

On October 27, 2009, a U.S. manufacturer exported a millidioptometer to Anvik at Level 36, Menara Citibank, 165 Jalan Ampang, Kuala Lumpur 50450, Malaysia. This item, which is a measuring tool used for various optical systems, including those in aircraft systems, is subject to the Regulations and designated as EAR99. The address provided by Anvik is a virtual office address leased by Respondents. Evidence obtained by OEE indicates that, at the request of Respondent Jafarpour, the virtual office staff arranged for the millidioptometer to be promptly transshipped on Respondents' behalf from Malaysia to IOI (Isfahan Optics Institute), a subsidiary of Iran Electronics Industries in Isfahan, Iran.[5] Respondents did not obtain the required U.S. Government authorization to export the digital phase shifters from the United States to Iran.

In addition to the evidence discussed above showing continued deliberate and covert actions by Anvik and Jafarpour to cause or attempt to cause items to be exported from the United States to Iran via third countries without obtaining U.S. Government authorization, BIS also has submitted direct evidence that Respondents had actual knowledge of the U.S. embargo against Iran. For example, in communications in June 2009, with a prospective supplier based in Canada, Respondent Jafarpour acknowledges knowing that the United States maintains an embargo against Iran.

OEE submits, in sum, that future violations of the EAR are imminent as defined in Section 766.24 of the Regulations. I agree based on the evidence of Respondents' continued deliberate, significant, and covert efforts to procure items from the United States for export to Iran via third countries without the required U.S. Government authorization, including by providing false information to U.S. companies about end-users in an effort to prevent U.S. law enforcement officials from discovering and ultimately stopping Respondents' conduct. Accordingly, I find that the evidence presented by OEE demonstrates that a violation of the Regulations by Respondents is imminent in both time and degree of likelihood. The conduct in this case is deliberate, significant, and likely to occur again absent the issuance of a TDO. As such, a TDO is needed to give notice to persons and companies in the United States and abroad that they should cease dealing with the Respondents in export transactions involving items subject to the EAR.

Accordingly, I find that a TDO naming Anvik Technologies Sdn. Bhd. and Babak Jafarpour is necessary, in the public interest, to prevent an imminent violation of the EAR.

This Order is being issued on an *ex parte* basis without a hearing based upon BIS's showing of an imminent violation.

I. Order

It is therefore ordered:

First, that the Respondents, Anvik Technologies SDN. BHD. also known as ("a/k/a") Anvik Technologies, Level 20, Menara Standard Chartered, 30 Jalan Sultan Ismail, Kuala Lumpur 50250, Malaysia; Level 36, Menara Citibank, 165 Jalan Ampang, Kuala Lumpur 50450, Malaysia; Level 19, Two International Finance Centre, 8 Finance Street Central, Hong Kong; 155 North Wacker Drive, 42nd Floor, Chicago, IL 60606; Babak Jafarpour a/k/a Bob Jefferson, Level 20, Menara Standard Chartered, 30 Jalan Sultan Ismail, Kuala Lumpur 50250, Malaysia; Level 36, Menara Citibank, 165 Jalan Ampang, Kuala Lumpur 50450, Malaysia; Level 19, Two International Finance Centre, 8 Finance Street Central, Hong Kong; 155 North Wacker Drive, 42nd Floor, Chicago, IL 60606, and each of their successors or assigns and, when acting for or on behalf of any of the foregoing, each of their officers, representatives, agents or employees (each a "Denied Person" and collectively the "Denied Persons") may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Export Administration Regulations ("EAR"), or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR.

Second, that no person may, directly or indirectly, do any of the following:

[5] On September 17, 2008, the U.S. Department of Treasury designated Iran Electronics Industries as a Weapons of Mass Destruction proliferator or supporter pursuant to Executive Order 13382. Iran Electronics Industries was designated because it is owned or controlled by Iran's Ministry of Defense and Armed Forces Logistics (MODAFL). MODAFL, which was designated under Executive Order 13382 on October 25, 2007, controls other previously designated entities DIO, and Aerospace Industries Organization, which is the overall manager and coordinator of Iran's missile program.

A. Export or reexport to or on behalf of a Denied Person any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by a Denied Person of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a Denied Person of any item subject to the EAR that has been exported from the United States;

D. Obtain from a Denied Person in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by a Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by a Denied Person if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to a Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the EAR where the only items involved that are subject to the EAR are the foreign-produced direct product of U.S.-origin technology.

In accordance with the provisions of Section 766.24(e) of the EAR, the Respondents may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

BIS may seek renewal of this Order by filing a written request with the Assistant Secretary of Commerce for Export Enforcement in accordance with the provisions of Section 766.24(d) of the EAR, which currently provides that such a written request must be submitted not later than 20 days before the expiration date. A Respondent may oppose a request to renew this Order in accordance with Section 766.24(d), including by filing a written submission with the Assistant Secretary of Commerce for Export Enforcement, supported by appropriate evidence. Any opposition ordinarily must be received not later than seven days before the expiration date of the Order.

Notice of the issuance of this Order shall be given to Respondents in accordance with Sections 766.5(b) and 766.24(b)(5) of the Regulations. This Order also shall be published in the **Federal Register**.

This Order is effective immediately and shall remain in effect for 180 days.

Issued this 15th day of November 2010.

David W. Mills,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2010–29327 Filed 11–19–10; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–938]

Citric Acid and Certain Citrate Salts From People's Republic of China: Partial Rescission of Countervailing Duty Administrative Review

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

DATES: *Effective Date:* November 22, 2010.

FOR FURTHER INFORMATION CONTACT: Seth Isenberg or Patricia Tran, AD/CVD Operations, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0588 and (202) 482–1503, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 3, 2010, the U.S. Department of Commerce ("Department") issued a notice of opportunity to request an administrative review of this order for the period of review ("POR") September 19, 2008, through December 31, 2009. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 75 FR 23236–37 (May 3, 2010). On June 1, 2010, in accordance with 19 CFR 351.213(b), the Department received a timely request from Archer Daniels Midland Company, Cargill, Incorporated, and Tate & Lyle Americas LLC (collectively, "Petitioners") to conduct an administrative review of 56 companies.

On June 30, 2010, the Department published the notice of initiation of this countervailing duty administrative review, covering the 56 companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 75 FR 37759 (June 30, 2010). On August 17, 2010, the Department issued a respondent selection memorandum selecting RZBC Co., Ltd./RZBC Import & Export Co., Ltd. and RZBC (Juxian) Co., Ltd. (collectively, "RZBC"); and Yixing Union Biochemical Co., Ltd. and Yixing Union Cogeneration Co., Ltd. (collectively, "Yixing-Union") as mandatory respondents. *See* Memorandum to Susan H. Kuhbach from Patricia M. Tran, regarding Respondent Selection: Countervailing Duty Administrative Review—Citric Acid and Certain Citrate Salts (August 17, 2010).

Partial Rescission of Countervailing Duty Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the party who requested the administrative review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested administrative review. On September 27, 2010, Petitioners withdrew their request for an administrative review of the following companies:

A.H.A. International Co., Ltd.
Changsha Huari Bio Pharmaceutical Co., Ltd.
Changsha Huayang Chemical Co., Ltd.
China North Industry Guangzhou Corporation
Feiyu Fine Chemical
Gansu Xuejing Biochemical Co., Ltd.
Great Vision International
Hai Hui Group Co., Ltd.
High Hope International Group Jiangsu Native
Produce Import & Export Co., Ltd.
Huangshi Xinghua Biochemical Co., Ltd.
Hunan Dongting Citric Acid Chemicals Co., Ltd.
Hunan Yinhai Petrochemicals Group Co., Ltd.
Jiali Bio Group (Qingdao) Limited
Jiangsu Gadot Nuobei Biochemical
Jiangsu Nuobei Biochemical Co., Ltd.
Juxian Hongde Citric Acid Co., Ltd.
Kelong International Co., Ltd.
Laiwu Taihe Biochemistry Co. Ltd.
Lianyungang Best Biochemical Technology Co. Ltd.
Lianyungang Famous Chemical, Ltd.
Lianyungang JF International Trade Co., Ltd.
Lianyungang Nuobei Biochemical Technology Co., Ltd.
Lianyungang Reliance

Lianyungang Samin Food Additives Co., Ltd.
Lianyungang Shuren Scientific Creation Import & Export Co., Ltd.
Linyi Bangtai Industry (Group) Co., Ltd.
Nantong Apac Best Biochemical Corp.
Nantong Huaze Chemical Co., Ltd.
Nantong Jiangei Additive
Penglai Marine Bio-Technology Co., Ltd.
Qingdao Fuso Refining and Processing Co., Ltd.
Qinhuangdao Sinochem Import & Export Co., Ltd.
Roche Zhongya (Wuxi) Citric Acid, Ltd.
Rugao Jinling Chemical Co., Ltd.
Shanxi Shunyi Co., Ltd.
Shandong Hongshide Chemical Industry Co., Ltd.
Shandong Laiwu Gangcheng Group
Shandong Ningmeng Biochemistry Co., Ltd.
Shandong Yingfeng Chemical Industry Group Co., Ltd.
Shanghai Henglijie Bio-Tech Co., Ltd.
Shanghai Fenhe Biochemical Co., Ltd.
Shanxi Rui Cheng Yellow River Industry, Ltd.
Shihezi City Changyun Biochemical Co., Ltd.
Sinochem Corporation
Sinochem Hebei Import & Export Co.
Sinochem Lianyungang Import & Export Co.
Sinochem Tianjin Import & Export Co.
Suntran Industrial Group, Ltd.
Tianyu Chemical Co., Ltd.
The TNN Development Limited
TTCA Co., Ltd.
Weifang Ensign Industry Co., Ltd.
Weifang Huiyuan Industry Co., Ltd.
Wuhan Shuangfeng Citric Acid Co., Ltd.
(collectively, "Rescinded Companies.")

Because Petitioners withdrew their request of the Rescinded Companies within the 90-day period and no other party requested review of the Rescinded Companies, in accordance with 19 CFR 351.213(d)(1), we are rescinding the review of the Rescinded Companies. This administrative review will continue with respect to RZBC and Yixing-Union.

Assessment Instructions

The Department will instruct U.S. Customs and Border Protection ("CBP") to assess countervailing duties on all appropriate entries. For the Rescinded Companies, countervailing duties shall be assessed at rates equal to the cash deposit or bonding rate of the estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: November 12, 2010.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–29298 Filed 11–19–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

Site Renumbering Notice; Foreign-Trade Zone 29—Louisville, KY

Foreign-Trade Zone 29 was approved by the FTZ Board on May 26, 1977 (Board Order 118, 42 FR 29323, 6/8/77), and expanded on January 31, 1989 (Board Order 429, 54 FR 5992, 2/7/89), December 15, 1997 (Board Order 941, 62 FR 67044, 12/23/97), July 17, 1998 (Board Order 995, 63 FR 40878, 7/31/98), December 11, 2000 (Board Order 1133, 65 FR 79802, 12/20/00), January 15, 2002 (Board Order 1204, 67 FR 4391, 12/30/02), November 20, 2003 (Board Order 1305, 68 FR 67400, 12/2/2003), and January 27, 2005 (Board Order 1364, 70 FR 6616, 2/8/2005).

FTZ 29 currently consists of 13 "sites" totaling 5,659 acres in the Louisville area. The current update does not alter the physical boundaries that have previously been approved, but instead involves an administrative renumbering that separates certain non-contiguous sites for record-keeping purposes.

Under this revision, the site list for FTZ 29 will be as follows: *Site 1* (1,643 acres)—located within the Riverport Industrial Complex (includes 247 acres along Johnsontown Road, adjacent to the Riverport Industrial Complex and 130 acres at Greenbelt and Logistics Drive, adjacent to the northern boundary of the Riverport Industrial Complex); *Site 2* (564 acres)—located at the junction of Gene Snyder Freeway and La Grange Road in eastern Jefferson County; *Site 3* (142 acres, 1,629,000 sq. ft.)—located at 5403 Southside Drive, Louisville; *Site 4* (2,149 acres) at the Louisville International Airport (includes the Airport's industrial park area, 94 acres at the Dixie Warehouse & Cartage Co. public warehousing facility located at Grade Lane [formerly Site 4, Parcel B], and 475 acres at the UPS Global Port Package Sorting Facility and Airport Tank Farm and maintenance facility [formerly part of Site 4, Parcel C]); *Site 5* (69 acres)—the Marathon Ashland Petroleum LLC Tank Farm (1.3 million barrels) and pipelines, located at 4510 Algonquin Parkway along the Ohio River, Louisville, which supplies part of the airport's fuel system; *Site 6* (316 acres)—Cedar Grove Business Park, on Highway 480, near Interstate 65, Shepherdsville, Bullitt County; *Site 7* (191 acres)—Henderson County Riverport Authority facilities, 6200 Riverport Road, Henderson; *Site 8* (182 acres)—Owensboro Riverport Authority facilities, 2300 Harbor Road, Owensboro; *Site 9* (82 acres)—two parcels within the 4 Star Regional Business Park (expires 11/30/11) (includes 42 acres located at Southern Star Way, and 40 acres located at 2001 Northern Star Way, Robards); *Site 10* (25 acres)—Global Port Business Park, 6201 Global Distribution Way, Louisville; *Site 11* (261 acres)—Outer Loop, Louisville, including a warehousing facility located at Stennett Lane (116 acres), 8100 Air Commerce Drive (44 acres) [formerly Site 4, Parcel C] and the Louisville Metro Commerce Center, 1900 Outer Loop Road (101 acres) (includes portions of two buildings located at 2240 and 2250 Outer Loop Road) [formerly Site 4, Parcel D]; *Site 12* (29 acres)—Salt River Business Park, 376 Zappos Blvd., Shepherdsville, Bullitt County [formerly part of Site 6]; and, *Site 13* (6 acres)—Custom Quality Services located at 3401 Jewell Avenue [formerly Site 1a].

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: November 16, 2010.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–29383 Filed 11–19–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Determination on Use of Cooperative Threat Reduction Funds in Pakistan and Afghanistan Under Section 1308 of the National Defense Authorization Act for Fiscal Year 2004

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: In accordance with the requirements of Section 1308 of the National Defense Authorization Act for Fiscal year 2004 (Pub. L. 108–136) as amended by Section 1305 of the National Defense Authorization Act for Fiscal year 2008 (Pub. L. 110–181), the Secretary of Defense has determined that the obligation and expenditure of Cooperative Threat Reduction (CTR) funds for the implementation of CTR programs in Pakistan and Afghanistan will permit the United States to take

advantage of an opportunity to achieve long-standing nonproliferation goals. The Secretary of Defense further determined that these cooperative threat reduction activities will be completed within a short period of time, and that the Department of Defense is the entity of the Federal Government that is most capable of carrying out such projects or activities. The Deputy Secretary of State concurred with the determination of the Secretary of Defense.

FOR FURTHER INFORMATION CONTACT: Jed Royal at (703) 693–4428, *jed.royal@osd.mil.*

Dated: November 16, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

NOV 12 2009

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR POLICY

SUBJECT: Determination on Use of Cooperative Threat Reduction Funds in Pakistan and Afghanistan under Section 1308 of the National Defense Authorization Act for Fiscal Year 2004

Pursuant to the authority vested in me by section 1308 of the National Defense Authorization Act for Fiscal Year 2004 (P.L. 108-136), as amended by Section 1305 of the National Defense Authorization Act for Fiscal Year 2008 (P.L. 110-181), and with the concurrence of the Secretary of State, I hereby determine that the obligation and expenditure of Cooperative Threat Reduction (CTR) funds for the implementation of CTR programs in Pakistan and Afghanistan will permit the United States to take advantage of an opportunity to achieve long-standing nonproliferation goals. I also determine that these cooperative threat reduction activities will be completed within a short period of time, and that the Department of Defense is the entity of the Federal Government that is most capable of carrying out such projects or activities.

Pursuant to your delegation of authority under DoD Instruction 5542.02, "DoD Policy for Congressional Authorization and Appropriations Reporting Requirements," and Deputy Secretary of Defense memorandum, dated July 26, 2002, "Expeditious Submission of Reports to Congress and Congressional Committees," please transmit this determination, along with the justification and project description required by section 1308 (d) (2) of the National Defense Authorization Act for Fiscal Year 2004, as amended, to the Congress no later than 10 days after the obligation of funds for such projects or activities. Please also arrange for the publication of this memorandum in the Federal Register.

BILLING CODE 5001–06–C

[FR Doc. 2010–29341 Filed 11–19–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Closed Meeting of the Department of Defense Wage Committee

AGENCY: Department of Defense.

ACTION: Notice of closed meetings.

SUMMARY: Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given of closed meetings of the Department of Defense Wage Committee.

DATES: Tuesday, December 14, 2010; at 10 a.m. and Tuesday, December 28, 2010; at 10 a.m.

ADDRESSES: 1400 Key Boulevard, Level A, Room A101, Rosslyn, Virginia, 22209

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

SUPPLEMENTARY INFORMATION: Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Dated: November 16, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–29336 Filed 11–19–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2010–OS–0155]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to Delete a System of Records.

SUMMARY: The Office of the Secretary of Defense is deleting a system of records notice from its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on December 22, 2010 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and/ Regulatory Information Number (RIN) and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, Room 3C843, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this Federal Register document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155, Mrs. Cindy Allard at (703) 588–6830.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the **FOR FURTHER INFORMATION CONTACT** address above.

The Office of the Secretary of Defense proposes to delete one system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: November 16, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

JS002MILPERS

DELETION:

Military Personnel Files (February 22, 1993, 58 FR 10557).

REASON:

The Joint Staff Military Personnel Files (JS002MILPERS) can be deleted.

THE SYSTEM IS COVERED BY THE FOLLOWING SYSTEM OF RECORD NOTICES:

ARMY:

A0600–8–104b AHRC, Official Military Personnel Records (August 8, 2004, 69 FR 51271).

NAVY:

N0070–3, Navy Military Personnel Records System (April 15, 2010, 75 FR 19627).

MARINE CORPS:

M01070–6, Marine Corps Official Military Personnel Files (March 17, 2008, 73 FR 14234).

AIR FORCE:

F036 AF PC C, Military Personnel Records System (October 13, 2000, 65 FR 60916).

[FR Doc. 2010–29337 Filed 11–19–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2010–0027]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Department of the Army proposes to add a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action would be effective without further notice on December 22, 2010 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and/ Regulatory Information Number (RIN) and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, Room 3C843, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905, Mr. Leroy Jones at (703) 428–6185.

SUPPLEMENTARY INFORMATION: The Department of the Army notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the **FOR FURTHER INFORMATION CONTACT** address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on November 12, 2010, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: November 12, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0215–3a FMWRC (DoD)

SYSTEM NAME:

Department of Defense Non-appropriated Fund Health Benefits (DODNHB).

SYSTEM LOCATION:

Aetna Inc., 151 Farmington Avenue, Hartford, CT 06156–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THIS SYSTEM:

Current and retired Non-appropriated Fund (NAF) employees of the U.S. Army (USA), U.S. Navy (USN), U.S. Air Force (USAF), U.S. Marine Corps (USMC), Army and Air Force Exchange System (AAFES) and the Navy Exchange Services Command (NEXCOM) who participate in the DoD NAF Health Program administered by Aetna.

CATEGORIES OF RECORDS IN THE SYSTEM:

This information includes full name, address, phone numbers, date of birth, gender, current status (actively employed or retired), Social Security Numbers (SSN), ethnicity, medical diagnostic codes, and charges for health care.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 349 of Public Law number 103–337, formerly the National Defense Authorization Act for Fiscal Year 1995; Sections 102a and 262 of Public Law number 104–191, the Health Insurance Portability and Accountability Act of 1996; Public Law number 110–173 Medicare, Medicaid and SCHIP Extension Act (MMSEA) of 2007, E.O., 9397, (SSN), as amended.

PURPOSE(S):

The DoDNHB system is used to administer a number of health care plans for Non-appropriated Fund (NAF) employees of the Army, Navy, Air Force, Marine Corps, Army-Air Force Exchange Service (AAFES) and the Navy Exchange Command (NEXCOM). Health plan administration includes such functions as maintaining a database of subscribers, tracking claims, negotiating payments to health care providers and providing reports to the DoD program office.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Note: This system of records contains Personal Identifiable Information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place at any time additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Retrieved by the employee using a unique username and password. Aetna administrators/managers retrieve individual employee data using an internally-generated number based on the plan number and customer number or Social Security Number (SSN).

SAFEGUARDS:

DODNHB is hosted at the Aetna corporate datacenter. Access to DoD employee data is limited to authorized users with a need-to-know and incorporates a "least privilege" policy for file permissions. The contract between Aetna and DoD requires a high level of information protection to include data-at-rest encryption. Regular reports on the status of information security measures are required, as is immediate notification of possible failures. Data records are maintained in datacenter facilities that are secured 24 hours per day with restricted access. Data access is restricted to the DoD NAF employee, individuals with a business "need-to-know" and authorized technical administrators.

RETENTION AND DISPOSAL:

Records are retained for seven (7) years following disenrollment of the DoD NAF employee from the health plan. Record disposal is done by securely erasing the electronic media on which the data was stored. Some data is received in paper forms. This data is transferred to electronic media and the paper forms are immediately destroyed by shredding.

SYSTEM MANAGER AND ADDRESS:

NAF Employee Benefits Program Administrator, NAF Personnel Policy Office (CPMS–AN), 1400 Key Boulevard, Suite B200, Arlington, VA 22209–1556.

PROGRAM MANAGERS FOR EACH SERVICE/NON APPROPRIATE FUND INSURANCE ARE:

For current or retired USA NAF employees: Chief, NAF Employee Benefits Office, Family and Morale, Welfare and Recreation Command, 4700 King Street, 3rd Floor, Alexandria, VA 22302–4400.

For current or retired USN NAF employees: Commander Navy Installations Command—Head, NAF Human Resources, CNIC, Millington Detachment, 7736 Kitty Hawk Drive, Building 457, N253, Millington, CT 38054–0001.

For current or retired USAF NAF employees: Chief, NAF Employee Benefits Office, HQ AFSVA/SVXBI, 10100 Reunion Plaza, Suite 502, San Antonio, TX 78216–4188.

For current or retired USMC NAF employees: Program Manager, Employee Benefits, Headquarters U.S. Marine Corps, Personal and Family Readiness Division, 3044 Catlin Avenue, Quantico, VA 22134–5003.

For current or retired AAFES NAF employees: Director of Employee Benefits, HQ AAFES, FA–T/Benefits, 3911 Walton Walker Boulevard, Dallas, TX 75236–1509.

For current or retired NEXCOM NAF employees: Director Employee Benefits, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to:

For current or retired USA NAF employees: Chief, NAF Employee Benefits Office, Family and Morale, Welfare and Recreation Command, 4700 King Street, 3rd Floor, Alexandria, VA 22302–4400.

For current or retired USN NAF employees: Commander Navy Installations Command—Head, NAF Human Resources, CNIC, Millington Detachment, 7736 Kitty Hawk Drive, Building 457, N253, Millington, CT 38054–0001.

For current or retired USAF NAF employees: Chief, NAF Employee Benefits Office, HQ AFSVA/SVXBI, 10100 Reunion Plaza, Suite 502, San Antonio, TX 78216–4188.

For current or retired USMC NAF employees: Program Manager, Employee

Benefits, Headquarters U.S. Marine Corps, Personal and Family Readiness Division, 3044 Catlin Avenue, Quantico, VA 22134–5003.

For current or retired AAFES NAF employees: Director of Employee Benefits, HQ AAFES, FA–T/Benefits, 3911 Walton Walker Boulevard, Dallas, TX 75236–1509.

For current or retired NEXCOM NAF employees: Director Employee Benefits, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

Requests should contain full name, last four digits of Social Security Number (SSN), date of birth, current status (actively employed or retired) and current mailing address with any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United State of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'."

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the appropriate DoD NAF employer below.

For current or retired USA NAF employees: Chief, NAF Employee Benefits Office, Family and Morale, Welfare and Recreation Command, 4700 King Street, 3rd Floor, Alexandria, VA 22302–4400.

For current or retired USN NAF employees: Commander Navy Installations Command—Head, NAF Human Resources, CNIC, Millington Detachment, 7736 Kitty Hawk Drive, Building 457, N253, Millington, CT 38054–0001.

For current or retired USAF NAF employees: Chief, NAF Employee Benefits Office, HQ AFSVA/SVXBI, 10100 Reunion Plaza, Suite 502, San Antonio, TX 78216–4188.

For current or retired USMC NAF employees: Program Manager, Employee Benefits, Headquarters U.S. Marine Corps, Personal and Family Readiness Division, 3044 Catlin Avenue, Quantico, VA 22134–5003.

For current or retired AAFES NAF employees: Director of Employee Benefits, HQ AAFES, FA–T/Benefits, 3911 Walton Walker Boulevard, Dallas, TX 75236–1509.

For current or retired NEXCOM NAF employees: Director Employee Benefits, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

For verification purposes, individuals should provide their full name, last four digits of Social Security Number (SSN), date of birth, current status (current employee or retired) and current mailing address and any details which may assist in locating record, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager. Denial to amend records in this system can be made only by the NAF Employee Benefits Program Administrator.

Individuals wishing to contest the content or existence of a record containing their personal or medical information should address written inquiries to the HIPAA privacy official for the DoDNHB system at: NAF Employee Benefits Program Administrator, NAF Personnel Policy Office (CPMS–AN), 1400 Key Boulevard, Suite B200, Arlington, VA 22209–1556.

RECORD SOURCE CATEGORIES:

Employee personal and eligibility data from the six DoD NAF employers, transmitted by electronic data transfer and paper application forms. Medical and billing information from health care providers, transmitted electronically. Data interchanges, required by Section 111 of Public Law 110–173, take place between Aetna and the Centers for Medicare & Medicaid Services in the Department of Health and Human Services.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–29339 Filed 11–19–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2010–0038]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Navy proposes to alter a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The changes will be effective on December 22, 2010 unless comments are received that would result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and/Regulatory Information Number (RIN) and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, Room 3C843, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Headquarters, U.S. Marine Corps, FOIA/PA Section (ARSF), 2 Navy Annex, Washington, DC 20380–1775, Ms. Teresa D. Ross (703) 614–4008.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notice subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, has been published in the **Federal Register** and is available from the **FOR FURTHER INFORMATION CONTACT** address above.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, were submitted on November 12, 2010, to the House Committee on Government Report, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individual," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: November 12, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

NM01500–2

SYSTEM NAME:

Department of the Navy (DON) Education and Training Records (February 19, 2009, 74 FR 7671)

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Student records are located at schools and other training activities of the Department of the Navy, to include the United States Navy and the United States Marine Corps (USMC). Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Sailor/Marine American Council on Education Registry Transcript (SMART) database is maintained at the Naval Education and Training Professional Development Technology Center, Code N6, 6490 Saufley Field Road, Pensacola, FL 32509–5237.

Vertical Launch System (VLS) records are maintained at the Naval Surface Warfare Center, Port Hueneme Division, Missile/Launcher Department, Launcher Systems Division (4W20), 4363 Missile Way, Port Hueneme, CA 93043–4307.

Marine Corps Training Integrated Management System (MCTIMS) records are located at the Marine Corps Training and Education Command (TECOM), 3300 Russell Road, Quantico, VA 22134–5001.

Marine Corps Distance Learning Program (MarineNet) records are maintained by the Naval Air Systems Command (NAVAIR) Naval Air Warfare Center Aircraft Division (NAWC AD) Special Communications Requirements Division (SCRD), 8185 Villa Road, St. Inigoes, MD 20684–0010.

The Data Housing and Reports Tool (DHART) database is maintained for the Commandant of the Marine Corps (PSL) by the Space and Naval Warfare Systems Center (SPAWARSYSCEN) Atlantic Charleston, Building 3147, Lab 1L2, North Charleston, SC 29419–9022. Paper DHART records are maintained by the Commandant of the Marine Corps, Plans, Policy and Operations Department, Security Division, Law Enforcement and Corrections Branch (PSL), 2111 Eisenhower Ave., Suite 402, Alexandria, VA 22314–4679, and by USMC installation Provost Marshal's offices/Marine Corps police departments.

Marine Corps Aviation Learning Management System—Enterprise (MCALMS–E) records are maintained by the Network Operations Center (NOC), Building 24, McHugh Boulevard, Marine Corps Base (MCB) Camp Lejeune, NC 28547–2519.

The Corporate Enterprise Training Activity Resource System (CeTARS) is maintained at the Naval Education and Training Professional Development Technology Center (NETPDTC), Attn: CeTARS Program Director (Code N621), 6490 Saufley Field Road, Pensacola, FL 32509–5235."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Student records cover present, former, and prospective students at the Department of Navy and USMC schools, and training activities or associated educational institution of Navy sponsored programs; instructors, staff and support personnel including contractors; participants associated with activities of the Naval Education and Training Command, including the Navy College Office and other training programs; and spouses and family members participating in online tutorial and tutorial volunteer programs.

SMART records cover Active Duty Navy and Marine Corps members, Reservists, and separated or retired Navy and Marine Corps members.

VLS records cover civilians, Active Duty Navy members, and Department of the Navy contractors.

MCTIMS, MarineNet, and MCALMS–E records cover Active Duty, Reserve, and retired Marines, civilian employees, and other service students attending Marine schools, other service's schools, or classes/courses at non-DoD educational institutions.

DHART student records cover present, former, and prospective students at police academies and individuals assigned to police activities; Marines, civilian employees, and other Service students attending police academies; and instructors, staff and support personnel.

CeTARS records cover former, present and prospective military service members, foreign nationals, DoD civilians and contractor personnel."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with: "Student records: Schools and personnel training programs, administration, and evaluation records. Records include basic identification records that consist of, Social Security Number (SSN), name, sex, date of birth, personnel records.

Personnel data and records: rank, rate, grade, branch of service, billet and expiration of active obligated service.

Contact Data: Home address, home and work telephone number, and home e-mail address.

Professional Records: Navy enlisted classification, military occupational specialty (MOS) for Marines, subspecialty codes, (civilian pay series), test scores, psychological profile, basic test battery scores, and Navy advancement test scores.

Educational Records: Education levels, service and civilian schools attended, degrees, majors, personnel assignment data, course achievement data, class grades, class standing, date of graduation, and attrition categories.

SMART Records: Enlisted Qualifications History NAVPERS Form 1070–604; certificates of completion; college transcripts; test score completions; grade reports; requests for Sailor/Marine American Council on Education Registry Transcripts.

VLS Records: Name, quiz, homework, and test scores. In those instances when the student has performed below the minimum requirements, copies of the minutes of the Academic Review Board will be included.

MCTIMS, MarineNet, and MCALMS–E Records: Student records data as shown above, individual records of all things training and education for each Marine in an individual Electronic Training Jacket, assignment to promotion points for specific completed training course and skills, proficiencies and courses/classes for current and higher Military Occupational Specialty (MOS) requirements.

DHART Police Academy and Personnel Training Program Administration and Evaluation Records Consist of Basic Identification Data: Last four of Social Security Number (SSN), name, sex, date of birth.

CeTARS Records: Contains personnel records for students, instructors and administrative staff members. The data in these personnel records consists of basic identification records: Social

Security Number (SSN), name, sex, date of birth.

Academic/training records, manual and mechanized, and other records of educational and professional accomplishment."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps: Function, composition; OPNAVINST 1510.10B, Corporate Enterprise Training Activity Resource System (CeTARS), Catalog of Navy Training Courses and Student Reporting Requirements; MCO 1580.7D, Schools Inter-service Training; and E.O. 9397 (SSN), as amended."

PURPOSE(S):

Delete entry and replace with "Student records: To record course and training demands, requirements, and achievements; analyze student groups or courses; provide academic and performance evaluation in response to official inquiries; provide guidance and counseling to students; prepare required reports; and for training administration and planning.

SMART Records: To provide recommended college credit based on military experience and training to colleges and universities for review and acceptance. Requesters may have information mailed to them or the college(s)/university(ies) of their choice.

VLS Records: To record course and training demands, requirements, and achievements; analyze student groups or courses; provide academic and performance evaluation in response to official inquiries; and provide guidance and counseling to students.

MCTIMS, MarineNet, and MCALMS–E Records: To record student records for Active Duty, Reserve, and retired Marines, civilians employed by the Marine Corps, and other service students attending Marine Corps schools and courses, other service's schools, and/or attending/completing educational institution courses/classes. To maintain an individual record of all things related to training and education for Marine Active Duty and Reserve personnel. The systems provide the individual Electronic Training Jacket that can be accessed against the unit morning report allowing evaluation against the MOS Roadmap for individual training assessment and requirements. At the unit level, the systems allow for evaluation of assigned personnel training assessment against Marine Corps Training and Readiness Manuals for automated unit training management support, assessment of the automated unit training readiness, and the determination of unit combat readiness percentage.

DHART Records: To provide a database of student records for students attending police academies, classes, and courses; to provide an individual record of all police training and education for Marines, civilian police personnel, and other service personnel attending police academies; to maintain student records for in-service, sustainment, security augmentation force, auxiliary security force, re-qualification and specialized law enforcement/security training; to provide academic and performance evaluations in response to official inquiries; to provide guidance and counseling to students; to prepare required reports; and for other training administration and planning purposes.

CeTARS Records: Facilitates the collection, storage, modification, and retrieval of training information about the students attending Navy courses, as well as course-related data, and quota data for planning/execution of Navy training."

* * * * *

RETRIEVABILITY:

Delete entry and replace with "Records are retrieved by name, full/partial Social Security Number (SSN) and/or date of birth."

SAFEGUARDS:

Delete entry and replace with "Physical access to the central computer operations area is provided on a need-to-know basis and to Common Access Card (CAC) card authorized, authenticated personnel only. Records are maintained in controlled access rooms or areas. Physical access to terminals is restricted to specifically authorized individuals who have a need-to-know. Password authorization, assignment and monitoring are the responsibility of the functional managers."

RETENTION AND DISPOSAL:

Delete entry and replace with "Student records are shredded and/or degaussed after completion of training, transfer, or discharge; provided the data has been recorded in the individual's service record or on the student's record card.

Active Duty training records for officers and enlisted personnel are permanent and transferred to the National Archives and Records Administration (NARA) for retention when they are twenty years old.

SMART Records: Automated SMART (transcripts) are retained permanently. Documents submitted to compile, update, or correct SMART records, which include Enlisted Qualifications History NAVPERS Form 1070–604, transcripts, and certificates, are destroyed after 3 years.

VLS records are shredded and/or degaussed 2 years after completion of training.

MCTIMS, MarineNET, and MCALMS–E Records: Automated records are retained permanently. The records are utilized for current future and historical assessments including training schools, courses, and training requirements, recruit selection criteria, individual course completion, school training through-put, and student attrition.

DHART Records: DHART records are retained for the duration of employment/service plus 30 years and then shredded. Active Duty training records for officers and enlisted personnel shall be maintained permanently and transferred to NARA for retention when they are twenty years old.

CeTARS Records: Permanent and transferred to NARA for retention when they are twenty years old."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Student records: The commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

SMART Records: Commander, Naval Educational and Training Professional Development Technology Center, Code N6, 6490 Saufley Field Road, Pensacola, FL 32509–5237.

VLS Records: Department Manager, Naval Surface Warfare Center, Port Hueneme Division, Missile/Launcher Department, Launcher Systems Division, 4363 Missile Way, Port Hueneme, CA 93043–4307.

MCTIMS Records: Commanding General, Training and Education Command, Attn: MCTIMS Program Manager, 3300 Russell Road, MCB Quantico, VA 22134–5001.

MarineNet Records: Commanding General, Training and Education Command, Attn: College of Distance Education and Training, 2300 A Louis Street, MCB Quantico, VA 22134–5118.

DHART Records: Commandant of the Marine Corps, Plans, Policy and Operations Department, Security Division, Law Enforcement and Corrections Branch (PSL), 3000 Marine Corps Pentagon, Washington, DC 20380–1775.

MCALMS–E Records: U.S. Marine Corps Department Head, Aviation Training Systems, Naval Air Systems

Command (PMA–205MC), 47123 Buse Road, Building 2272, Room 345, Patuxent River Naval Air Station, MD 20670–1547.

CeTARS Records: Commander, Naval Education and Training Professional Development Technology Center (NETPDTC), Attn: CeTARS Program Director (Code N621), 6490 Saufley Field Road, Pensacola, FL 32509–5235."

NOTIFICATION PROCEDURES:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the appropriate official below:

Student Records: Address inquiries to the commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Written requests should include full name, Social Security Number (SSN), military or civilian employee duty status, if applicable, and other data when appropriate, such as graduation date. All written requests must be signed and notarized.

Visitors should present drivers license, military or civilian employee identification card, or other similar identification.

SMART Records: Address written inquiries to the Commanding Officer, Center for Personal and Professional Development (Attn: Virtual Education Center), 1905 Regulus Avenue, Suite 234, Virginia Beach, VA 23461–2009.

Written requests should include a completed "Request for Sailor/Marine American Council on Education Registry Transcript" which can be obtained from the System Manger and solicits full name, command address, current rate/rank, Social Security Number (SSN), home and work telephone numbers, current status branch of service. All written requests must be signed and notarized.

VLS Records: Address written inquiries to the Department Manager, Naval Surface Warfare Center, Port Hueneme Division, Missile/Launcher Department, Launcher Systems Division (4W20), 4363 Missile Way, Port Hueneme, CA 93043–4307.

Written requests should include full name, Social Security Number (SSN), military, civilian employee, or contractor duty status, if applicable, and other data when appropriate, such as graduation date.

MCTIMS Records: Address written inquiries to the Commanding General, Training and Education Command, Attn: MCTIMS Program Manager, 3300 Russell Road, Marine Corps Base, Quantico, VA 22134–5001.

Written requests should include full name, Social Security Number (SSN), military, civilian employee, or contractor duty status, if applicable, and other data when appropriate, such as graduation date. All written requests must be signed and notarized.

MarineNet Records: Address written inquiries to the Commanding General, Training and Education Command, Attn: College of Distance Education and Training, 2300 A Louis Street, Quantico, VA 22134–5118.

Written requests should include full name, Social Security Number (SSN), military, civilian employee, or contractor duty status, if applicable, and other data when appropriate, such as graduation date. All written requests must be signed and notarized.

DHART Records: Address written inquiries to the Commandant of the Marine Corps, Plans, Policy and Operations Department, Security Division, Law Enforcement and Corrections Branch (PSL), 3000 Marine Corps Pentagon, Washington, DC 20380–1775, or to the Provost Marshal/Police Chief of the United States Marine Corps (USMC) installation in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Written requests should include full name and the last four numbers of their Social Security Number (SSN). All written requests must be signed and notarized. Visitors should present drivers license, military or civilian employee identification card, or other similar identification.

MCALMS–E Records: Address written inquiries to the U.S. Marine Corps Department Head, Aviation Training Systems, Naval Air Systems Command (PMA–205MC), 47123 Buse Road, Building 2272, Room 345, Patuxent River Naval Air Station, MD 20670–1547.

Written requests should include full name, Social Security Number (SSN), and other data when appropriate, such as graduation date. All written requests must be signed and notarized.

CeTARS Records: Address written inquiries to Commander, Naval Education and Training Professional Development Technology Center (NETPDTC), Attn: CeTARS Program Director (Code N621), 6490 Saufley Field Road, Pensacola, FL 32509–5235.

Written requests should include full name, address, and Social Security Number (SSN). All written requests must be signed and notarized."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking to access information about themselves contained in this system should address written inquiries to the appropriate official below:

Student Records: Address inquiries to the commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Written requests should include full name, Social Security Number (SSN), military or civilian employee duty status, if applicable, and other data when appropriate, such as graduation date. All written requests must be signed and notarized. Visitors should present drivers license, military or civilian employee identification card, or other similar identification.

SMART Records: Address inquiries to the Commanding Officer, Center for Personal and Professional Development (Attn: Virtual Education Center), 1905 Regulus Avenue, Suite 234, Virginia Beach, VA 23461–2009.

Written requests should include a completed "Request for Sailor/Marine American Council on Education Registry Transcript" which can be obtained from the System Manger and solicits full name, command address, current rate/rank, Social Security Number (SSN), home and work telephone numbers, current status branch of service. All written requests must be signed and notarized.

VLS Records: Address inquiries to the Department Manager, Naval Surface Warfare Center, Port Hueneme Division, Missile/Launcher Department, Launcher Systems Division (4W20), 4363 Missile Way, Port Hueneme, CA 93043–4307.

Written requests should include full name, Social Security Number (SSN), military, civilian employee or contractor duty status, if applicable, and other data when appropriate, such as graduation date. All written requests must be signed and notarized.

MCTIMS Records: Address inquiries to the Commanding General, Training and Education Command, Attn: MCTIMS Program Manager, 3300 Russell Road, Quantico, VA 22134–5001.

Written requests should include full name, Social Security Number (SSN), military, civilian employee, or contractor duty status, if applicable, and other data when appropriate, such as graduation date. All written requests must be signed and notarized.

MarineNet Records: Address inquiries to the Commanding General, Training and Education Command, Attn: College

of Distance Education and Training, 2300 A Louis Street, Quantico, VA 22134–5118.

Written request should include full name, Social Security Number (SSN), military, civilian employee, or contractor duty status, if applicable, and other data when appropriate, such as graduation date. All written requests must be signed and notarized.

DHART Records: Address inquiries to the Commandant of the Marine Corps, Plans, Policy and Operations Department, Security Division, Law Enforcement and Corrections Branch (PSL), 3000 Marine Corps Pentagon, Washington, DC 20380–1775 or to the the Provost Marshal/Police Chief of the USMC installation in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Written request should include full name and the last four numbers of their Social Security Number (SSN). All written requests must be signed and notarized. Visitors should present drivers license, military or civilian employee identification card, or other similar identification.

MCALMS–E Records: Address inquiries to the Commander, Naval Air Systems Command, Aviation Training Systems Program Office (PMA–205MC), 47123 Buse Road, Building 2272, Room 345, NAS Patuxent River, MD 20670–1547.

Written requests should include full name and the last four numbers of their Social Security Number (SSN). All written requests must be signed and notarized. Visitors should present drivers license, military or civilian employee identification card, or other similar identification.

CeTARS Records: Address inquiries to the Commander, Naval Education and Training Professional Development Technology Center (NETPDTC), Attn: CeTARS Program Director (Code N621), 6490 Saufley Field Road, Pensacola, FL 32509–5235.

Written requests should include full name, current rate/rank, Social Security Number (SSN), status, branch of service. All written requests must be signed and notarized."

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with "Individuals; schools and educational institutions; Navy Personnel Command; Naval Education and Training Command; Headquarters, Marine Corps; Naval Special Warfare Center; Navy Recruiting Command; USMC Training and Education Command; instructor personnel, Defense Enrollment Eligibility Records System (DEERS), Marine Corps Distance Learning Database (MarineNET), Marine Corps Aviation Learning Management System Enterprise (MCALMS–E) and the Joint Personnel Adjudication System (JPAS)."

* * * * *

NM01500–2

SYSTEM NAME:

Department of the Navy (DON) Education and Training Records.

SYSTEM LOCATION:

Student records are located at schools and other training activities of the Department of the Navy, to include the United States Navy and the United States Marine Corps (USMC). Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Sailor/Marine American Council on Education Registry Transcript (SMART) database is maintained at the Naval Education and Training Professional Development Technology Center, Code N6, 6490 Saufley Field Road, Pensacola, FL 32509–5237.

Vertical Launch System (VLS) records are maintained at the Naval Surface Warfare Center, Port Hueneme Division, Missile/Launcher Department, Launcher Systems Division (4W20), 4363 Missile Way, Port Hueneme, CA 93043–4307.

Marine Corps Training Integrated Management System (MCTIMS) records are located at the Marine Corps Training and Education Command (TECOM), 3300 Russell Road, Quantico, VA 22134–5001.

Marine Corps Distance Learning Program (MarineNet) records are maintained by the Naval Air Systems Command (NAVAIR) Naval Air Warfare Center Aircraft Division (NAWC AD) Special Communications Requirements Division (SCRD), 8185 Villa Road, St. Inigoes, MD 20684–0010.

The Data Housing and Reports Tool (DHART) database is maintained for the Commandant of the Marine Corps (PSL) by the Space and Naval Warfare Systems Center (SPAWARSYSCEN) Atlantic Charleston, Building 3147, Lab 1L2, North Charleston SC 29419–9022. Paper DHART records are maintained by the Commandant of the Marine Corps, Plans, Policy and Operations Department, Security Division, Law Enforcement and Corrections Branch (PSL), 2111 Eisenhower Ave., Suite 402, Alexandria, VA 22314–4679, and by USMC installation Provost Marshal's offices/Marine Corps police departments.

Marine Corps Aviation Learning Management System—Enterprise (MCALMS–E) records are maintained by the Network Operations Center (NOC), Building 24, McHugh Boulevard, Marine Corps Base (MCB) Camp Lejeune, NC 28547–2519.

The Corporate Enterprise Training Activity Resource System (CeTARS) is maintained at the Naval Education and Training Professional Development Technology Center (NETPDTC), Attn: CeTARS Program Director (Code N621), 6490 Saufley Field Road, Pensacola, FL 32509–5235.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Student records cover present, former, and prospective students at the Department of Navy and USMC schools, and training activities or associated educational institutions of Navy sponsored programs; instructors, staff and support personnel including contractors; participants associated with activities of the Naval Education and Training Command, including the Navy College Office and other training programs; and spouses and family members participating in online tutorial and tutorial volunteer programs.

SMART records cover Active Duty Navy and Marine Corps members, Reservists, and separated or retired Navy and Marine Corps members.

VLS records cover civilians, Active Duty Navy members, and Department of the Navy contractors.

MCTIMS, MarineNet, and MCALMS–E records cover Active Duty, Reserve, and retired Marines, civilian employees, and other service students attending Marine schools, other service's schools, or classes/courses at non-DoD educational institutions.

DHART student records cover present, former, and prospective students at police academies and individuals assigned to police activities; Marines, civilian employees, and other Service students attending police academies; and instructors, staff and support personnel.

CeTARS records cover former, present and prospective military service members, foreign nationals, DoD civilians and contractor personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Student Records: Schools and personnel training programs, administration, and evaluation records. Records include basic identification records that consist of, Social Security Number (SSN), name, sex, date of birth, personnel records.

Personnel Data and Records: Rank, rate, grade, branch of service, billet and expiration of active obligated service.

Contact Data: Home address, home and work telephone number, and home e-mail address.

Professional Records: Navy enlisted classification, military occupational specialty (MOS) for Marines, subspecialty codes, (civilian pay series), test scores, psychological profile, basic test battery scores, and Navy advancement test scores.

Educational Records: Education levels, service and civilian schools attended, degrees, majors, personnel assignment data, course achievement data, class grades, class standing, date of graduation, and attrition categories.

SMART Records: Enlisted Qualifications History NAVPERS Form 1070–604; certificates of completion; college transcripts; test score completions; grade reports; requests for Sailor/Marine American Council on Education Registry Transcripts.

VLS Records: Name, quiz, homework, and test scores. In those instances when the student has performed below the minimum requirements, copies of the minutes of the Academic Review Board will be included.

MCTIMS, MarineNet, and MCALMS–E Records: Student records data as shown above, individual records of all things training and education for each Marine in an individual Electronic Training Jacket, assignment to promotion points for specific completed training course and skills, proficiencies and courses/classes for current and higher Military Occupational Specialty (MOS) requirements.

DHART police academy and personnel training program administration and evaluation records consist of basic identification data: Last four of Social Security Number (SSN), name, sex, date of birth.

CeTARS Records: Contains personnel records for students, instructors and administrative staff members. The data in these personnel records consists of basic identification records: Social Security Number (SSN), name, sex, date of birth.

Academic/training records, manual and mechanized, and other records of educational and professional accomplishment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps: Function, composition; OPNAVINST 1510.10B, Corporate Enterprise Training Activity Resource System (CeTARS), Catalog of Navy Training Courses and Student Reporting Requirements; MCO 1580.7D Schools Inter-service Training; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

Student records: To record course and training demands, requirements, and achievements; analyze student groups or courses; provide academic and performance evaluation in response to official inquiries; provide guidance and counseling to students; prepare required reports; and for training administration and planning.

SMART Records: To provide recommended college credit based on military experience and training to colleges and universities for review and acceptance. Requesters may have information mailed to them or the college(s)/university(ies) of their choice.

VLS Records: To record course and training demands, requirements, and achievements; analyze student groups or courses; provide academic and performance evaluation in response to official inquiries; and provide guidance and counseling to students.

MCTIMS, MarineNet, and MCALMS–E Records: To record student records for Active Duty, Reserve, and retired Marines, civilians employed by the Marine Corps, and other service students attending Marine Corps schools and courses, other service's schools, and/or attending/completing educational institution courses/classes. To maintain an individual record of all things related to training and education for Marine Active Duty and Reserve personnel. The systems provide the individual Electronic Training Jacket that can be accessed against the unit morning report allowing evaluation against the MOS Roadmap for individual training assessment and requirements. At the unit level, the systems allow for evaluation of assigned personnel training assessment against Marine Corps Training and Readiness Manuals for automated unit training management support, assessment of the automated unit training readiness, and the determination of unit combat readiness percentage.

DHART Records: To provide a database of student records for students attending police academies, classes, and courses; to provide an individual record of all police training and education for Marines, civilian police personnel, and other service personnel attending police academies; to maintain student records for in-service, sustainment, security augmentation force, auxiliary security force, re-qualification and specialized law enforcement/security training; to provide academic and performance evaluations in response to official inquiries; to provide guidance and counseling to students; to prepare required reports; and for other training administration and planning purposes.

CeTARS Records: Facilitates the collection, storage, modification, and retrieval of training information about the students attending Navy courses, as well as course-related data, and quota data for planning/execution of Navy training.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic storage media.

RETRIEVABILITY:

Records are retrieved by name, full/partial Social Security Number (SSN) and/or date of birth.

SAFEGUARDS:

Physical access to the central computer operations area is provided on a need-to-know basis and to CAC card authorized, authenticated personnel only. Records are maintained in controlled access rooms or areas. Physical access to terminals is restricted to specifically authorized individuals who have a need-to-know. Password authorization, assignment and monitoring are the responsibility of the functional managers.

RETENTION AND DISPOSAL:

Student records are shredded and/or degaussed after completion of training, transfer, or discharge, provided the data has been recorded in the individual's service record or on the student's record card.

Active Duty training records for officers and enlisted personnel are permanent and transferred to the National Archives and Records Administration (NARA) for retention when they are twenty years old.

SMART Records: Automated SMART (transcripts) are retained permanently. Documents submitted to compile, update, or correct SMART records, which include Enlisted Qualifications History NAVPERS Form 1070–604,

transcripts, and certificates, are destroyed after 3 years.

VLS records are shredded and/or degaussed 2 years after completion of training.

MCTIMS, MarineNet, and MCALMS–E Records: Automated records are retained permanently. The records are utilized for current future and historical assessments including training schools, courses, and training requirements, recruit selection criteria, individual course completion, school training through-put, and student attrition.

DHART Records: DHART records are retained for the duration of employment/service plus 30 years and then shredded. Active Duty training records for officers and enlisted personnel shall be maintained permanently and transferred to NARA for retention when they are twenty years old.

CeTARS Records: Permanent and transferred to NARA for retention when they are twenty years old.

SYSTEM MANAGER(S) AND ADDRESS:

Student records: The commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

SMART Records: Commander, Naval Educational and Training Professional Development Technology Center, Code N6, 6490 Saufley Field Road, Pensacola, FL 32509–5237.

VLS Records: Department Manager, Naval Surface Warfare Center, Port Hueneme Division, Missile/Launcher Department, Launcher Systems Division, 4363 Missile Way, Port Hueneme, CA 93043–4307.

MCTIMS Records: Commanding General, Training and Education Command, Attn: MCTIMS Program Manager, 3300 Russell Road, MCB Quantico, VA 22134–5001.

MarineNet Records: Commanding General, Training and Education Command, Attn: College of Distance Education and Training, 2300 A Louis Street, MCB Quantico, VA 22134–5118.

DHART Records: Commandant of the Marine Corps, Plans, Policy and Operations Department, Security Division, Law Enforcement and Corrections Branch (PSL), 3000 Marine Corps Pentagon, Washington, DC 20380–1775.

MCALMS–E Records: U.S. Marine Corps Department Head, Aviation Training Systems, Naval Air Systems Command (PMA–205MC), 47123 Buse Road, Building 2272, Room 345, Patuxent River Naval Air Station, MD 20670–1547.

CeTARS Records: Commander, Naval Education and Training Professional Development Technology Center (NETPDTC), Attn: CeTARS Program Director (Code N621), 6490 Saufley Field Road, Pensacola, FL 32509–5235.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the appropriate official below:

Student Records: Address inquiries to the commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Written requests should include full name, Social Security Number (SSN), military or civilian employee duty status, if applicable, and other data when appropriate, such as graduation date. All written requests must be signed and notarized. Visitors should present drivers license, military or civilian employee identification card, or other similar identification.

SMART Records: Address written inquiries to the Commanding Officer, Center for Personal and Professional Development (Attn: Virtual Education Center), 1905 Regulus Avenue, Suite 234, Virginia Beach, VA 23461–2009.

Written requests should include a completed "Request for Sailor/Marine American Council on Education Registry Transcript" which can be obtained from the System Manager and solicits full name, command address, current rate/rank, Social Security Number (SSN), home and work telephone numbers, current status branch of service. All written requests must be signed and notarized.

VLS Records: Address written inquiries to the Department Manager, Naval Surface Warfare Center, Port Hueneme Division, Missile/Launcher Department, Launcher Systems Division (4W20), 4363 Missile Way, Port Hueneme, CA 93043–4307.

Written requests should include full name, Social Security Number (SSN), military, civilian employee, or contractor duty status, if applicable, and other data when appropriate, such as graduation date.

MCTIMS Records: Address written inquiries to the Commanding General, Training and Education Command, Attn: MCTIMS Program Manager, 3300 Russell Road, Marine Corps Base, Quantico, VA 22134–5001.

Written requests should include full name, Social Security Number (SSN), military, civilian employee, or contractor duty status, if applicable, and other data when appropriate, such as graduation date. All written requests must be signed and notarized.

MarineNet Records: Address written inquiries to the Commanding General, Training and Education Command, Attn: College of Distance Education and Training, 2300 A Louis Street, Quantico, VA 22134–5118.

Written requests should include full name, Social Security Number (SSN), military, civilian employee, or contractor duty status, if applicable, and other data when appropriate, such as graduation date. All written requests must be signed and notarized.

DHART Records: Address written inquiries to the Commandant of the Marine Corps, Plans, Policy and Operations Department, Security Division, Law Enforcement and Corrections Branch (PSL), 3000 Marine Corps Pentagon, Washington, DC 20380–1775, or to the Provost Marshal/Police Chief of the United States Marine Corps (USMC) installation in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Written requests should include full name and the last four numbers of their Social Security Number (SSN). All written requests must be signed and notarized. Visitors should present drivers license, military or civilian employee identification card, or other similar identification.

MCALMS–E Records: Address written inquiries to the U.S. Marine Corps Department Head, Aviation Training Systems, Naval Air Systems Command (PMA–205MC), 47123 Buse Road, Building 2272, Room 345, Patuxent River Naval Air Station, MD 20670–1547.

Written requests should include full name, Social Security Number (SSN), and other data when appropriate, such as graduation date. All written requests must be signed and notarized.

CeTARS Records: Address written inquiries to Commander, Naval Education and Training Professional Development Technology Center (NETPDTC), Attn: CeTARS Program Director (Code N621), 6490 Saufley Field Road, Pensacola, FL 32509–5235.

Written requests should include full name, address, and Social Security Number (SSN). All written requests must be signed and notarized.

RECORD ACCESS PROCEDURES:

Individuals seeking to access information about themselves contained in this system should address written inquiries to the appropriate official below:

Student Records: Address inquiries to the commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Written requests should include full name, Social Security Number (SSN), military or civilian employee duty status, if applicable, and other data when appropriate, such as graduation date. All written requests must be signed and notarized. Visitors should present drivers license, military or civilian employee identification card, or other similar identification.

SMART Records: Address inquiries to the Commanding Officer, Center for Personal and Professional Development (Attn: Virtual Education Center), 1905 Regulus Avenue, Suite 234, Virginia Beach, VA 23461–2009.

Written requests should include a completed "Request for Sailor/Marine American Council on Education Registry Transcript" which can be obtained from the System Manager and solicits full name, command address, current rate/rank, Social Security Number (SSN), home and work telephone numbers, current status branch of service. All written requests must be signed and notarized.

VLS Records: Address inquiries to the Department Manager, Naval Surface Warfare Center, Port Hueneme Division, Missile/Launcher Department, Launcher Systems Division (4W20), 4363 Missile Way, Port Hueneme, CA 93043–4307.

Written requests should include full name, Social Security Number (SSN), military, civilian employee or contractor duty status, if applicable, and other data when appropriate, such as graduation date. All written requests must be signed and notarized.

MCTIMS Records: Address inquiries to the Commanding General, Training and Education Command, Attn: MCTIMS Program Manager, 3300 Russell Road, Quantico, VA 22134–5001.

Written requests should include full name, Social Security Number (SSN), military, civilian employee, or contractor duty status, if applicable, and other data when appropriate, such as graduation date. All written requests must be signed and notarized.

MarineNet Records: Address inquiries to the Commanding General, Training and Education Command, Attn: College of Distance Education and Training, 2300 A Louis Street, Quantico, VA 22134–5118.

Written requests should include full name, Social Security Number (SSN), military, civilian employee, or contractor duty status, if applicable, and other data when appropriate, such as graduation date. All written requests must be signed and notarized.

DHART Records: Address inquiries to the Commandant of the Marine Corps, Plans, Policy and Operations Department, Security Division, Law Enforcement and Corrections Branch (PSL), 3000 Marine Corps Pentagon, Washington, DC 20380–1775 or to the the Provost Marshal/Police Chief of the USMC installation in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Written requests should include full name and the last four numbers of their Social Security Number (SSN). All written requests must be signed and notarized. Visitors should present drivers license, military or civilian employee identification card, or other similar identification.

MCALMS–E Records: Address inquiries to the Commander, Naval Air Systems Command, Aviation Training Systems Program Office (PMA–205MC), 47123 Buse Road, Building 2272, Room 345, NAS Patuxent River, MD 20670–1547.

Written requests should include full name and the last four numbers of their Social Security Number (SSN). All written requests must be signed and notarized. Visitors should present drivers license, military or civilian employee identification card, or other similar identification.

CeTARS Records: Address inquiries to the Commander, Naval Education and Training Professional Development Technology Center (NETPDTC), Attn: CeTARS Program Director (Code N621), 6490 Saufley Field Road, Pensacola, FL 32509–5235.

Written requests should include full name, current rate/rank, Social Security Number (SSN), status, branch of service. All written requests must be signed and notarized.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individuals; schools and educational institutions; Navy Personnel Command; Naval Education and Training Command; Headquarters, Marine Corps; Naval Special Warfare Center; Navy Recruiting Command; USMC Training and Education Command; instructor personnel, Defense Enrollment Eligibility Records System (DEERS), Marine Corps Distance Learning Database (MarineNet), Marine Corps Aviation Learning Management System Enterprise (MCALMS–E) and the Joint Personnel Adjudication System (JPAS).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–29334 Filed 11–19–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID USAF–2010–0030]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Department of the Air Force is proposing to add a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective on December 22, 2010 unless comments are received that would result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and/Regulatory Information Number (RIN) and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, Room 3C843, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Department of the Air Force Privacy Office, Air Force Privacy Act Office, Office of Warfighting Integration and Chief Information officer, ATTN: SAF/XCPPI, 1800 Air Force Pentagon, Washington, DC 20330–1800, Mr. Charles J. Shedrick, 703–696–6488.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the **FOR FURTHER INFORMATION CONTACT** address above.

The proposed systems reports, as required by 5 United States Code 552a(r) of the Privacy Act, were submitted on November 17, 2010 to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget pursuant to paragraph 4c of Appendix I to Office of Management and Budget Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996, (February 20, 1996, 61 **Federal Register** 6427).

Dated: November 17, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F065 AF FMP

SYSTEM NAME:

Financial Management Workflow.

SYSTEM LOCATION:

Located on servers hosted in Building 7510, Ellsworth Air Force Base, SD 57706–4853.

Air Force Financial Services Center Information Technology Team and the 28th Communications Squadron, Ellsworth Air Force Base, SD 57706–4853.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military and civilian personnel assigned to the Air Force and Combatant Commands under the auspices of the Department of the Air Force.

CATEGORIES OF RECORDS IN THE SYSTEM:

All open travel orders and military pay effecting transactions, with data that includes; Social Security Number (SSN), name, grade, address, date of birth, transaction ID, document or travel order number and other demographic data, as required by routine military pay or travel pay financial transaction documentation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force and E.O. 9397 (SSN), as amended.

PURPOSE(S):

This system will enable the implementation of centralized records management across the Air Force Financial Service community. This system will also facilitate processing of financial transactions including Military Pay (MilPay), Travel Pay (TDY); Retirement & Separation; Civilian Permanent Change of Station (CivPCS); Debts; and Disbursements. The system will also be used by Call Center personnel to access financial service records to assist base Financial Service Offices and Air Force customers world-wide.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the (DoD) as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media and paper records.

RETRIEVABILITY:

Name, Social Security Number (SSN) and/or transaction ID, document or travel order.

SAFEGUARDS:

Data is stored in the Ellsworth AFB facility designated to host the Financial Management Workflow. Records are accessed by users with the appropriate profiles or roles and by persons responsible for servicing the record system in performance of their official duties.

RETENTION AND DISPOSAL:

Cut off at the end of the fiscal year. Retain paper records for one year after cut off, then transfer to a Federal Records Center where they will be destroyed 6 years and 3 months after cutoff. If documents are scanned and maintained electronically, retain electronic records for 6 years and 3 months after cutoff.

SYSTEM MANAGER(S) AND ADDRESS:

Program Manager, SAF/FMP (AFFSO), 1940 Allbrook Dr., Bldg. 1, Wright Patterson Air Force Base, OH 45433–5349.

mailto:prentice.beverly@gunter.af.mil.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the system manager above.

For verification purposes, individuals should provide their full name, Social Security Number (SSN), any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

IF EXECUTED OUTSIDE THE UNITED STATES:

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United State of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the system manager above.

For verification purposes, individuals should provide their full name, Social Security Number (SSN), any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

IF EXECUTED OUTSIDE THE UNITED STATES:

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

IF EXECUTED WITHIN THE UNITED STATES, ITS TERRITORIES, POSSESSIONS, OR COMMONWEALTHS:

'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

CONTESTING RECORDS PROCEDURES:

The Air Force's rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–123; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained from the individual and financial management technicians.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–29335 Filed 11–19–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID USAF–2010–0028]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to Alter a System of Records.

SUMMARY: The Department of the Air Force is proposing to alter a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective on December 22, 2010 unless comments are received that would result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and/Regulatory Information Number (RIN) and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, Room 3C843, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Department of the Air Force Privacy Office, Air Force Privacy Act Office, Office of Warfighting Integration and Chief Information Officer, *ATTN:* SAF/XCPPI, 1800 Air Force Pentagon, Washington DC 20330–1800, Mr. Charles J. Shedrick, 703–696–6488.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the **FOR FURTHER INFORMATION CONTACT** address above.

The proposed systems reports, as required by 5 United States Code 552a(r) of the Privacy Act, were submitted on November 12, 2010 to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget pursuant to paragraph 4c of Appendix I to Office of Management and Budget Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996, (February 20, 1996, 61 **Federal Register** 6427).

Dated: November 12, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F071 AF OSI E

SYSTEM NAME:

Air Force Badge and Credentials (June 11, 1997, 62 FR 31793).

* * * * *

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with "F090 AF OSI A."

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Headquarters, Air Force Office of Special Investigations (AFOSI), 1535 Command Drive, Andrews AFB, MD 20762–7002."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "18 U.S.C. 499, Military naval or official passes; 506, Seals of departments or agencies; 701, Official badges, identification cards, other insignia; Air Force Mission Directive 39, Air Force Office of Special Investigations (AFOSI); Air Force Policy Directive 71–1, Criminal Investigations and Counterintelligence; 10 U.S.C. Chapter 47, Uniform Code of Military Justice and 10 U.S.C. 8012 Department of the Air Force: seal; 10 U.S.C. 8013, Secretary of the Air Force; DoD Directive 7730.47, Defense Incident-Based Reporting System (DIBRS); 18 U.S.C. 922 note, The Brady Handgun Violence Prevention Act; 28 U.S.C. 534 note, Uniform Federal Crime Reporting Act; 42 U.S.C. 10601, 'Victims' Rights and Restitution Act of 1990; and E.O. 9397 (SSN), as amended."

PURPOSE(S):

Delete entry and replace with "To issue and control badge and credential assigned each AFOSI special agent.

Used only by AFOSI to identify specifically which special agent each badge and credentials is assigned, to provide for orderly annual update of credentials and to insure turn in of badge and credentials whenever accreditation is terminated."

* * * * *

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Delete entry and replace with "Electronic storage media and file folders."

RETRIEVABILITY:

Delete entry and replace with "Retrieved by name and/or badge number."

SAFEGUARDS:

Delete entry and replace with "Records are accessed by custodian of the records system and by persons responsible for servicing the records system in performance of their official duties who are properly screened and cleared for need-to-know. Buildings are equipped with alarms, security guards, and/or security-controlled areas accessible only to authorized persons. Electronically and optically stored records are maintained in "fail-safe" system software with password-protected access."

RETENTION AND DISPOSAL:

Delete entry and replace with "Course/class roster, letter of authorization, and related correspondence used as identification for personnel who qualify for and who are eligible to be issued badges and credentials are destroyed after one year or when no longer needed, whichever is sooner. At HQ AFOSI the computer database records and receipts are retained for the entire period badge and credentials are issued to a specific special agent.

Badges, credentials, receipts, computer listing and inspection/inventory records are destroyed 6 months after surrender of badge and credential to which they pertain or when no longer needed whichever is later. Upon retirement or separation, the computer database records are maintained indefinitely and the paper receipts are destroyed when badge and credentials are turned in."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Director of Warfighting Integration; HQ AFOSI/XI, 1535 Command Drive, Andrews AFB, MD 20762–7002."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about them is contained in this system should address written inquiries to the Chief, Information Release Branch, HQ AFOSI/XILI, ATTN: Freedom of Information/Privacy Act Officer, 1535 Command Drive, Suite CD208, Andrews Air Force Base, Maryland, 20762."

Individuals should complete AFOSI's Certification of Identity, Freedom of Information and Privacy Act request form giving their contact information (name, address, phone number, contact e-mail address, and a brief description of the information they are seeking) and are required to sign and date the penalty of perjury clause attesting that they are the person they say they are.

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking to determine whether information about them is contained in this system should address written inquiries to the Chief, Information Release Branch, HQ AFOSI/XILI, *ATTN:* Freedom of Information/Privacy Act Officer, 1535 Command Drive, Suite CD208, Andrews Air Force Base, Maryland, 20762.

Individuals should complete AFOSI's Certification of Identity, Freedom of Information and Privacy Act request form giving their contact information (name, address, phone number, contact e-mail address, and a brief description of the information they are seeking) and are required to sign and date the penalty of perjury clause attesting that they are the person they say they are."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33–332; 32 CFR part 806b; or may be obtained from the system manager."

* * * * *

F090 AF OSI A

SYSTEM NAME:

Air Force Badge and Credentials.

SYSTEM LOCATION:

Headquarters, Air Force Office of Special Investigations (AFOSI), 1535 Command Drive, Andrews AFB, MD 20762–7002.

Categories of individuals covered by the system:

All accredited AFOSI special agents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Letters of authorization to issue badge and credentials, badge and credential receipts, badge listings, badge and credential inspection reports, punch card used to prepare badge listings and badge and credential number assigned to each AFOSI Special Agent.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

18 U.S.C. 499, Military naval or official passes; 506, Seals of departments or agencies; 701, Official badges, identification cards, other insignia; Air Force Mission Directive 39, Air Force Office of Special Investigations (AFOSI); Air Force Policy Directive 71–1, Criminal Investigations and Counterintelligence; 10 U.S.C. Chapter 47, Uniform Code of Military Justice and 10 U.S.C. 8012, Department of the Air Force: seal; 10 U.S.C. 8013, Secretary of the Air Force; DoD Directive 7730.47, Defense Incident-Based Reporting System (DIBRS); 18 U.S.C. 922 note, The Brady Handgun Violence Prevention Act; 28 U.S.C. 534 note, Uniform Federal Crime Reporting Act; 42 U.S.C. 10601, 'Victims' Rights and Restitution Act of 1990; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

To issue and control badge and credential assigned each AFOSI special agent.

Used only by AFOSI to identify specifically which special agent each badge and credentials is assigned, to provide for orderly annual update of credentials and to insure turn in of badge and credentials whenever accreditation is terminated.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media and file folders.

RETRIEVABILITY:

Retrieved by name and/or badge number.

SAFEGUARDS:

Records are accessed by custodian of the records system and by persons responsible for servicing the records system in performance of their official duties who are properly screened and cleared for need-to-know. Buildings are equipped with alarms, security guards, and/or security-controlled areas accessible only to authorized persons. Electronically and optically stored records are maintained in "fail-safe" system software with password-protected access.

RETENTION AND DISPOSAL:

Course/class roster, letter of authorization, and related correspondence used as identification for personnel who qualify for and who are eligible to be issued badges and credentials are destroyed after one year or when no longer needed, whichever is sooner. At HQ AFOSI the computer database records and receipts are retained for the entire period badge and credentials are issued to a specific special agent.

Badges, credentials, receipts, computer listing and inspection/inventory records are destroyed 6 months after surrender of badge and credential to which they pertain or when no longer needed whichever is later. Upon retirement or separation, the computer database records are maintained indefinitely and the paper receipts are destroyed when badge and credentials are turned in.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Warfighting Integration; HQ AFOSI/XI, 1535 Command Drive, Andrews AFB, MD 20762–7002.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about them is contained in this system should address written inquiries to the Chief, Information Release Branch, HQ AFOSI/XILI, *ATTN:* Freedom of Information/Privacy Act Officer, 1535 Command Drive, Suite CD208, Andrews Air Force Base, Maryland.

Individuals should complete AFOSI's Certification of Identity, Freedom of Information and Privacy Act request form giving their contact information (name, address, phone number, contact e-mail address, and a brief description of the information they are seeking) and are required to sign and date the penalty of perjury clause attesting that they are the person they say they are.

RECORD ACCESS PROCEDURES:

Individuals seeking to determine whether information about them is contained in this system should address written inquiries to the Chief, Information Release Branch, HQ AFOSI/XILI, *ATTN:* Freedom of Information/Privacy Act Officer, 1535 Command Drive, Suite CD208, Andrews Air Force Base, Maryland, 20762

Individuals should complete AFOSI's Certification of Identity, Freedom of Information and Privacy Act request form giving their contact information (name, address, phone number, contact e-mail address, and a brief description of the information they are seeking) and are required to sign and date the penalty of perjury clause attesting that they are the person they say they are.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33–332; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained from personnel records and issued badge.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–29340 Filed 11–19–10; 8:45 am]

BILLING CODE 5001–06–P

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold an informal conference followed by a public hearing on Wednesday, December 8, 2010. The hearing will be part of the Commission's regular business meeting. The conference session and business meeting both are open to the public and will be held at the West Trenton Volunteer Fire Company, located at 40 West Upper Ferry Road, West Trenton, New Jersey.

The conference among the commissioners and staff will begin at 10:30 a.m. and will consist of: A report by a representative of the National Weather Service (NOAA–NWS) on inundation mapping available on the web pages of the NWS Advanced Hydrologic Prediction Service; and a report by staff on historical and ongoing efforts to restore dissolved oxygen in the Delaware Estuary.

The subjects of the public hearing to be held during the 1:30 p.m. business meeting include the dockets listed below:

1. *Pennsylvania Utility Company, D–1975–093 CP–4.* An application for renewal of the Tamiment Wastewater Treatment Plant (WWTP). The existing 0.25 million gallons per day (mgd) WWTP will continue to spray irrigate treated effluent at the Tamiment Golf Course. Treated effluent that is not spray irrigated discharges to an unnamed tributary to Little Bush Kill, a tributary of the Delaware River. The facility is located in Lehman Township, Pike County, Pennsylvania and is located within the drainage area of the section of the non-tidal Delaware River known as the Middle Delaware, which is classified as Special Protection Waters. The project discharge is located at River Mile 226.9–0.8–1.5–1.85. The project outfall is located in the Bush Kill Watershed.

2. *Pilgrim's Pride—Franconia, D–1989–065–3.* An application to renew the discharge of up to 0.3 mgd of treated effluent from Outfall No. 001 at the Franconia Industrial Wastewater Treatment Plant (IWTP). The IWTP will continue to discharge to an unnamed tributary of Indian Creek at River Mile 92.47–32.3–11.3–5.5–3.4–0.8 (Delaware River—Schuylkill River—Perkiomen Creek—East Branch Perkiomen Creek—Indian Creek—UNT), in Franconia Township, Montgomery County, Pennsylvania.

3. *Amity Township, D–1990–078 CP–3.* An application to renew the approval of the existing 4.0 mgd Amity WWTP. Effluent limits required by PADEP and the DRBC are based upon an average monthly discharge flow of up to 2.2 mgd. Treated effluent will continue to discharge to the Schuylkill River via existing Outfall No. 001 at River Mile 92.47–58.35 (Delaware River—Schuylkill River), in Amity Township, Berks County, Pennsylvania.

4. *Shoemakersville Borough Authority, D–1993–074 CP–3.* An application to renew the discharge of up to 0.75 mgd of treated effluent from existing Outfall No. 001 at the Shoemakersville WWTP. The WWTP discharges to the Schuylkill River at River Mile 92.47–92.3 (Delaware River—Schuylkill River), in the Borough of Shoemakersville, Berks County, Pennsylvania.

5. *Exelon Generation Company, LLC—Fairless Hills Generating Station, D–1996–063 CP–2.* An application to renew approval of the Fairless Hills Generating Station (FHGS), which includes a subsidiary water allocation of 4,795.7 million gallons per month (mgm), provided by U.S. Steel Real Estate (U.S. Steel) to the Exelon FHGS. The water is used for cooling purposes associated with power generation. The FHGS is located within the U.S. Steel complex in Falls Township, Bucks County, Pennsylvania.

6. *Dominion Energy Company—Fairless Hills Generation Energy Generating Facility, D–2001–028 CP–2.* An application to renew approval of the Fairless Hills Generation Energy Generating Facility (FHG–EGF) and the subsidiary water allocation of 356.5 mgm provided by U.S. Steel Real Estate (U.S. Steel) to the Dominion FHG–EGF. The water is used for cooling purposes associated with power generation. The FHG–EGF is located within the U.S. Steel complex in Falls Township, Bucks County, Pennsylvania.

7. *Penns Grove Sewerage Authority, D–2005–029 CP–2.* An application for approval to continue discharging 0.75 mgd of treated effluent from the Penns Grove WWTP. The Penns Grove WWTP will continue to discharge to Water Quality Zone 5 at River Mile 72.0 (Delaware River). The Penns Grove WWTP is located in Penns Grove Borough, Salem County, New Jersey.

8. *Exide Technologies, D–1976–097–2.* Exide Technologies (Exide) applied to the Commission on February 27, 2007 for renewed approval of the discharge of up to 0.325 mgd of treated wastewater from the existing 0.7 mgd IWTP via Outfall No. 101, and the continuance of its current limits for Total Dissolved Solids (TDS). Exide proposes to reduce its average discharge from Outfall No. 101 from 0.325 mgd to 0.25 mgd, while maintaining its current approved monthly and daily average TDS effluent concentration limits of 6,000 mg/l and 7,500 mg/l. Additionally, Exide has requested approval to construct a 1.1 mgd stormwater treatment plant (SWTP). The SWTP is designed to remove lead and other heavy metals from contaminated stormwater runoff. The SWTP will discharge an average monthly flow of 0.4 mgd of treated stormwater via Outfall No. 201. The existing IWTP and proposed SWTP will discharge to a stormwater conveyance system that discharges to the Schuylkill River at River Mile 92.47–78.29 (Delaware River—Schuylkill River), in Muhlenberg Township, Berks County, Pennsylvania.

9. *Valley Forge Sewer Authority, D–1995–006 CP–3.* An application for approval of the expansion of the Valley Forge Sewer Authority WWTP. The hydraulic design capacity of the existing WWTP is proposed to be expanded from 9.2 mgd to 11.75 mgd. The expansion includes the addition of a second aeration tank and a fourth final clarifier and upgrading the headworks, primary

clarifier system, secondary treatment system, sludge handling, and operations facilities of the existing WWTP. The WWTP will continue to discharge to the Schuylkill River. The facility is located in Schuylkill Township, Chester County, Pennsylvania.

10. *Portland Borough Authority, D–1997–029 CP–2.* Application for approval of a ground water withdrawal (GWD) project to supply up to 4.32 mgm of water to the applicant's public water supply system from new Well No. 4 and to increase the existing withdrawal from all wells from 5.7 million gallons per 30 days (mg/30 days) to 12.4 mgm. The increased allocation is requested in order to meet projected increases in service area demand and to replace lost yield from Well No. 3. The project well is completed in the Martinsburg Formation and is located in the Slateford Creek Watershed in Upper Mount Bethel Township, Northampton County, Pennsylvania. The site is located within the drainage area of the section of the non-tidal Delaware River known as the Lower Delaware, which is classified as Special Protection Waters.

11. *United States Steel, LLC, D–2009–006–1.* An application for approval of an existing surface water withdrawal project (SWWD) to continue to supply up to 15,772.43 mgm of water to the applicant's U.S. Steel Real Estate Complex. The complex houses four existing users and one new user, which are supplied from two existing intakes. The project SWWD is located in Water Quality Zone 2 of the Delaware River at River Mile 127.0, in Falls Township, Bucks County, Pennsylvania.

12. *Deb-El Foods, D–2009–036–1.* An application for approval to construct a 0.05 mgd IWTP that will discharge to the Neversink River at River Mile 253.64–28.7 (Delaware River—Neversink River) in the drainage area of the section of the Non-Tidal Delaware River known as the Middle Delaware, which is designated as Special Protection Waters. The IWTP is located in the Town of Thompson, Sullivan County, New York.

13. *Frenchtown Borough, D–2010–021 CP–1.* An application for approval of the upgrade and expansion of the existing Frenchtown Borough WWTP. The proposed upgrade to the WWTP consists of replacing the existing trickling filter treatment system with a new oxidation ditch treatment system. The hydraulic design capacity of the upgraded WWTP is also being expanded from 0.15 mgd to 0.26 mgd; however, the WWTP does not have planning approval to expand beyond 0.15 mgd, and therefore the WWTP will remain at a permitted flow of 0.15 mgd. The project WWTP was not previously approved by the DRBC. The WWTP will continue to discharge to the section of the non-tidal Delaware River known as the Lower Delaware, which is classified as Special Protection Waters, at River Mile 164.5 in Delaware River Water Quality Zone 1E. The facility is located in Frenchtown Borough, Hunterdon County, New Jersey.

14. *Exelon Generation Company, LLC—Fairless Hills, D–2010–036 CP–1.* An application for the approval of an existing discharge of up to 37.4 mgd of Power Plant Condenser Cooling Water (PPCCW), non-contact cooling water (NCCW) and stormwater from the Fairless Hills Generating Station (FHGS) via Outfall No. 001. Outfall No. 001 discharges to Water Quality Zone 2 of the Delaware River at River Mile 126.85. The FHGS is located within the U.S. Steel complex in Falls Township, Bucks County, Pennsylvania.

In addition to the standard business meeting items, consisting of adoption of the Minutes of the Commission's September 15, 2010 business meeting, announcements of upcoming meetings and events, a report on hydrologic conditions, reports by the Executive Director and the Commission's General Counsel, and public dialogue, the business meeting also will include public hearings: (a) On a resolution extending Docket No. D–69–210 CP Final (Revision 12) for the Exelon Limerick Generating Station Water Supply Modification Demonstration Project and Wadesville Mine Pool Withdrawal and Streamflow Augmentation Demonstration Project; (b) on a resolution authorizing the Executive Director to enter into an agreement for the management of comments received on a proposed rulemaking; (c) for Lambertville Municipal Utility Authority (LMUA) to show cause why its wastewater treatment plant improvements should not be subject to review in accordance with Section 3.8 of the *Delaware River Basin Compact* and DRBC Regulations; (d) on a resolution authorizing the Executive Director to enter into an agreement for the analysis of periphyton samples from the non-tidal Delaware River; and (e) on a resolution to adopt the Commission's operating and capital budgets for fiscal year 2012. Consideration by the Commission also will be given to a resolution amending the *Water Quality Regulations, Water Code and Comprehensive Plan* to update water quality criteria for toxic pollutants in the Delaware Estuary and extend these criteria to Delaware Bay (a proposal on which a public hearing was conducted on September 23, 2010), and a resolution to correct a technical error in the September 15, 2010 amendment of the water charging rates.

Draft dockets scheduled for public hearing on September 15, 2010 can be accessed through the Notice of Commission Meeting and Public Hearing on the Commission's Web site, drbc.net, ten days prior to the meeting date. Additional public records relating to the dockets may be examined at the Commission's offices. Please contact William Muszynski at 609–883–9500, extension 221, with any docket-related questions.

Note that conference items are subject to change and items scheduled for hearing are occasionally postponed to allow more time for the Commission to consider them. Please check the Commission's website, drbc.net, closer to the meeting date for changes that may be made after the deadline for filing this notice.

Individuals who wish to comment for the record on a hearing item or to address the Commissioners informally during the public dialogue portion of the meeting are asked to sign up in advance by contacting Ms. Paula Schmitt of the Commission staff, at *paula.schmitt@drbc.state.nj.us* or by phoning Ms. Schmitt at 609–883–9500 ext. 224.

Individuals in need of an accommodation as provided for in the Americans with Disabilities Act who wish to attend the informational meeting, conference session or hearings should contact the Commission Secretary directly at 609–883–9500 ext. 203 or through the Telecommunications Relay Services (TRS) at 711, to discuss how the Commission can accommodate your needs.

Dated: November 16, 2010.

Pamela M. Bush,

Commission Secretary.

[FR Doc. 2010–29366 Filed 11–19–10; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before December 22, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: November 16, 2010.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: Extension.

Title of Collection: Ronald E. McNair Postbaccalaureate Achievement Program Annual Performance Report.

OMB Control Number: 1840–0640.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: Businesses or other for-profit; Not-for-profit institutions.

Total Estimated Number of Annual Responses: 200.

Total Estimated Annual Burden Hours: 1,000.

Abstract: McNair Program grantees must submit the report annually. The report provides the U.S. Department of Education with information needed to evaluate a grantee's performance and compliance with program requirements and to award prior experience points in accordance with the program regulations. The data collection is also aggregated to provide national information on project participants and program outcomes.

Requests for copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's website at *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4374. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–29346 Filed 11–19–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Department of Education (the Department), 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 and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 21, 2011.

ADDRESSES: Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. 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.

Dated: November 16, 2010.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title of Collection: Projects with Industry Annual Reporting Form.

OMB Control Number: 1820–0631.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: Businesses or other for-profit; Not-for-profit institutions; State, Local, or Tribal Government, State Educational Agencies or Local Education Agencies.

Total Estimated Number of Annual Responses: 67.

Total Estimated Number of Annual Burden Hours: 6,030.

Abstract: The current Projects with Industry Annual Reporting Form collects data that is used to: (1) Evaluate the performance of grant recipients with

respect to their compliance with evaluation standards as required under section 611(f)(3)(B) of the Rehabilitation Act of 1973, as amended; (2) determine whether a grantee's performance meets the requirements for continuation funding as required by section 611(f)(4); (3) comply with mandated annual reporting requirements in section 611(a)(5); and (4) evaluate the performance of the program and its grantees with respect to measures established pursuant to the Government Performance and Results Act and the job training common measures.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4453. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–29406 Filed 11–19–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC10–919–001]

Commission Information Collection Activities (FERC–919); Comment Request; Submitted for OMB Review

November 12, 2010.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission or FERC) has submitted the information collection described below to the Office of Management and Budget (OMB) for review and renewal. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission issued a Notice in the **Federal Register** (75FR 41840, 07/19/2010) requesting public comments on renewing this information collection. FERC received one comment on the FERC–919 from Edison Electric Institute (EEI) and has made this notation in its submission to OMB.

DATES: Further comments on this collection of information are due by December 22, 2010.

ADDRESSES: Address further comments on this collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *oira_submission@omb.eop.gov* and include OMB Control Number 1902–0234 for reference. The Desk Officer may be reached by telephone at 202–395–4638.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission and should refer to Docket No. IC10–919–001. Comments may be filed either electronically or in paper format. Those persons filing electronically do not need to make a paper filing. Documents filed electronically via the Internet must be prepared in an acceptable filing format and in compliance with the Federal Energy Regulatory Commission submission guidelines. Complete filing instructions and acceptable filing formats are available at *http://www.ferc.gov/help/submission-guide.asp.* To file the document electronically, access the Commission's Web site and click on Documents & Filing, E-Filing (*http://www.ferc.gov/docs-filing/efiling.asp*), and then follow the instructions for each screen. First-time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

For paper filings, the comments should be submitted to the Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426, and should refer to Docket No. IC10–919–001.

Users interested in receiving automatic notification of activity in FERC Docket Number IC10–919 may do so through eSubscription at *http://www.ferc.gov/docs-filing/esubscription.asp.* All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the "eLibrary" link. For user assistance, contact *ferconlinesupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by e-mail at *DataClearance@FERC.gov,* by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION: The Commission is responding to comments on its request for a three-year extension of the information collected under FERC–919 (OMB Control No. 1902–0234) "Market Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities." Order No. 697 [1] was issued by the Commission on June 21, 2007 to modify Subpart H to 18 Code of Federal Regulations (CFR) part 35, governing market-based authorization. In Order No. 697, the Commission revised and codified its standards for obtaining and retaining market-based rates for public utilities. Order No. 697 also made minor adjustments to the change in status filing requirements adopted in Order No. 652.[2] It added a requirement to include appendices of generation and transmission assets in the form provided in Appendix B of Order No. 697 when reporting a change in status regarding a change that impacts the pertinent assets held by a seller or its affiliates with market-based rate authorization.

The market power analyses required by Order No. 697 help to inform the Commission as to whether an entity seeking market-based rate authority lacks market power, and whether rates charged by that entity will be just and reasonable. The updated market power analyses allow the Commission to monitor changes in a seller's market presence or potential abuses of market power. The use of the Order No. 697 screens and reviews for market power for all companies seeking authority for market-based rates and those who have been charging market based rates results in a consistent authorization and review process. It provides regulatory certainty while ensuring the Commission meets

[1] *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities,* Order No. 697, 72 FR 39,904 (Jul. 20, 2007), FERC Stats. & Regs. ¶ 31,252 (2007), *clarified,* 121 FERC ¶ 61,260 (2007), *order on reh'g,* Order No. 697–A, 73 FR 25832 (May 7, 2008), FERC Stats. & Regs. ¶ 31,268, Order No. 697–B, 73 FR 79610 (Dec. 30, 2008), FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g,* Order No. 697–C, 74 FR 30924 (June 29, 2009), FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g,* Order No. 697–D, 75 FR 14342 (Mar. 25, 2010), FERC Stats. & Regs. ¶ 31,305 (2010).

[2] *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority,* Order No. 652, 70 FR 8253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175, *order on reh'g,* 111 FERC ¶ 61,413 (2005), FERC Stats. & Regs. ¶ 31,175.

its statutory requirements as mandated by the Federal Power Act (FPA) sections 205 and 206.

For more detailed background information on the Commission's MBR program and polices as they relate to this Information Collection Review (ICR), see the public notice issued July 13, 2010 under Docket No. IC10–919–000 at *http://elibrary.ferc.gov/idmws/File_list.asp?document_id=13831765.*

Public Comment and FERC Response. The Commission received comments from EEI in response to the previously mentioned July 2010 public notice on this ICR. No other comments were filed. A summary of the comments by EEI regarding FERC–919 reporting requirements and the Commission's response, including proposed changes to the burden estimates of the FERC–919 requirements, are provided below. For documents related to this ICR, see *http://www.reginfo.gov/public/do/PRAMain,* scroll to "Currently under Review," key in "Federal Energy Regulatory Commission" and scroll to 1902–0234 "Market Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities."

Public Comment: Triennial Reviews. EEI asserts the ICR's burden estimate for the triennial review filings appears to be too low. Based on research and historical activity, FERC concluded 74 triennial market power analyses in category 2[3] were filed annually. FERC estimated that it took an average of 40 hours to prepare each of these. EEI states that "several member companies" take 400 to 720 hours or more of company and consultant time to prepare the triennial review applications. EEI states these companies reported to them that preparation of the triennial review entailed:

- 120 to 160 hours for internal engineering analyses, including calculation of simultaneous transmission import limits;
- 150 to 160 hours for internal legal and compliance analyses; and
- 110 to 450 hours for outside consultant market-power and legal analyses, including obtaining data pertaining to loads, generation resources, planned outages, remote generation, and power purchase arrangements in broad first and second tier balancing authority areas.

EEI states there is additional time devoted to regional coordination related to triennial review preparation.

Moreover, EEI asserts that FERC's total estimated annual cost burden for triennial review applications is too low. In its 60-day notice, FERC estimated the total average annual cost burden for respondents filing the data required in the FERC–919 is $2,801,891. This resulted from using an average cost estimate of $137,874. This average cost was based on salaries for internal professional and clerical support, as well as direct and indirect overhead costs. EEI argues that this average cost is not an appropriate figure to use because the vast majority of the work done on triennial review applications is performed by highly paid professionals. They state that outside legal, engineering, and economic expertise costs far more than the estimate included in the July 2010 notice for this ICR.

EEI comments that the Commission's burden estimate for triennial review applications may be low by a factor of 10 or more.

FERC Response. According to EEI comments, it is the association of the nation's shareholder-owned electric utilities, international affiliates, and industry associates worldwide. Its members represent approximately 70 percent of the U.S. electric power industry and serve 95 percent of the ultimate customers in the shareholder-owned segment of the industry. EEI members include the majority of the public utilities that are subject to the Commission's rate jurisdiction under Federal Power Act section 205 and, therefore, must submit MBR applications and change-in-status reports to obtain and to retain MBR authorizations.

In response to the EEI statement that "several EEI member companies" report a higher number of hours for preparing triennial reviews than FERC estimated in its ICR, FERC acknowledges that large transmission-owning utilities with market-based rate authority have to undertake more complex analyses in their triennial reviews than smaller companies who do not own transmission. However, there are significantly fewer entities that prepare complex analyses for their triennial reviews than there are small energy businesses that prepare the triennial reviews. FERC records show in September 2010 there were 1,590 organizations with authority to charge market-based rates. According to the Energy Information Administration's most recent count from 2009, there are 201 investor owned utilities (generally larger than other respondents). These numbers give an order of magnitude as to how many more small sellers there are than big sellers. The filings of these smaller companies related to the activities of this ICR are far simpler and require significantly fewer resources and time to complete. It is this wide variation in the amount of effort required to prepare triennial reviews that led the Commission to conclude that basing its estimate on an average made the reporting burden in the July 2010 Notice as accurate as possible.

Nevertheless, in consideration of EEI's concerns, FERC acknowledges in this Notice that the complexity characteristic of triennial reviews prepared by transmission-owning utilities with market-based rate authority typically approaches what is done in the initial market power analysis where the utility first sought market-based rate authorization. FERC also recognizes that the complex analysis of triennial reviews for transmission-owning utilities results from the work of a diverse set of professions including consultant economists, lawyers, and electrical engineers. The costs of engaging these professionals may be somewhat higher than the estimate included in the July 2010 Notice of this ICR.

As a result of the foregoing, FERC has increased the estimated average hours per response for triennial review applications from 40 to 250—the same amount of time FERC estimates it takes to prepare a market power analysis for a new market-based rate application. The Commission has also increased the average annual salary figure associated with completing market power analysis in new applications for market-based rates as well as completing triennial reviews from $137,874 to $166,602. Even though EEI comments do not address the costs associated with initial applications for MBRs, FERC will use the revised $166,602 annual salary rate for triennials as the average annual salary amount associated with its estimates for initial MBR filings. The latter is an average, including benefits and bonuses, of the salaries for a mid-level economist, lawyer, and electrical engineer according to Salary.com data. (See *http://salary.com*).

Public Comment: Change in status. EEI states that the ICR's burden estimate for change in status filings appears to be

[3] *Category 2* means any sellers not in Category 1. *Category 1 Sellers* means wholesale power marketers and wholesale power producers that own or control 500 MW or less of generation in aggregate per region; that do not own, operate or control transmission facilities other than limited equipment necessary to connect individual generating facilities to the transmission grid (or have been granted waiver of the requirements of Order No. 888, FERC Stats. & Regs. ¶ 31,036); that are not affiliated with anyone that owns, operates or controls transmission facilities in the same region as the seller's generation assets; that are not affiliated with a franchised public utility in the same region as the seller's generation assets; and that do not raise other vertical market power issues.

too low. They argue that each change in status filing is unique and must be developed to fit specific circumstances. They state that FERC regulations require updated market-power analyses to accompany certain change in status filings, for example, any time there is a cumulative increase in ownership or control of 100 MW or more of generation capacity in a market. EEI states that the burden in such cases potentially is comparable to the burden of performing the market-power analysis portion of the triennial reviews. EEI asserts that the burden of complying is far higher than FERC's estimated one hour per report. Even in cases where a full market-power analysis is not required to be filed, EEI states that some analysis has to be done to determine whether such an analysis should be included in the filing. Also, beyond drafting and submitting the change in status filing, EEI notes in its comments that regulatory staff must constantly monitor business activities, and must train business unit staff to inform them of changes which may lead to a required change in status filing.

FERC Response. As noted above, the Commission directed the filing of changes in status in Order No. 652. In that order, the Commission found the ongoing burden associated with change in status filings to be *de minimis.*[4] As a result of that determination, the Commission did not attribute a burden estimate to this activity at that time; therefore, no authorization from OMB was needed for that data collection. In examining various aspects of it market-based rate program in Order No. 697, FERC compiled all market-based rate data requirements into this ICR, the FERC–919. Although the consolidation of market-based rate data requirements in the FERC–919 included change in status filings, FERC did not estimate burden hours for the change in status filings based on the assumption they were still a *de minimis* activity as determined in Order No. 652. In the July Notice for this ICR FERC did, however, estimate that the Appendix B addition to change in status filings would take one hour to complete.

As an initial matter, FERC would like to clarify an apparent misunderstanding regarding whether an updated market power analysis is required to be submitted with a change in status filing. FERC does not, in all instances, require market-based rate sellers to include an updated market power analysis with a change in status filing that involves an increase in ownership or control of 100 MW or more of capacity. The Commission has left it to the market-based rate seller to determine whether a change in status is a material change and to provide adequate support and analysis for that conclusion, including submission of an updated market power analysis if it chooses.[5] However, it is hereby noted that the Commission retains the right to require additional information, including an updated market power analysis where necessary to determine the effect of a seller's change in status on its market-based rate authority.[6]

In response to EEI's comments, FERC reviewed change in status filings made October 21, 2008 to October 20, 2010. To facilitate its analyses, FERC divided change in status filings into two categories based on the complexity and amount of work evident in the filing. Those filings that were voluminous, provided detailed economic and market data, undertook market power analyses and provided substantive information about current operational dynamics were categorized as "major" change in status filings. These filings most commonly included a full market power analysis with significant amount of detail and complexity. Filings that did not include detailed market power analyses but instead relied on simplified assumptions based on previously submitted market power analyses to conclude that the change in status did not reflect a departure from the characteristics the Commission relied upon in granting the seller market-based rate authority were categorized as "minor." The change in status filings categorized as "minor" were often from a market-based rate seller who simply pointed to a recent market power study for the same market as support for its contention that, given the size of the market and the size of the seller's uncommitted generation capacity, the seller does not have market power in the market; thus, the acquisition has not changed any of the facts upon which the Commission relied in granting the seller market-based rate authority. FERC also noted that sellers sometimes make supplemental filings providing additional information relating to previously submitted change in status. These supplemental filings can similarly be categorized as "major" or "minor."

FERC assessment and tally of these filings is as follows:

TOTAL NUMBER OF CHANGE IN STATUS FILINGS AT FERC: 82

[10–21–2009 to 10–20–2010]

All change in status filings	Change in status (CIS) filings			Supplemental CIS filings		
Total filings	Initial CIS filing	CIS requiring major work	CIS requiring minor work	CIS previously filed	Major work	Minor work
82	62	9	53	20	3	17

[4] Order No. 652, FERC Stats. & Regs. ¶ 31,175 at P 35 ("the time and effort required to prepare the notice of a change in status—consisting of a transmittal sheet and a brief narrative statement—will be *de minimis* and will constitute a fraction of that required to submit the [FPA] section 203 application or [FPA] section 205 filing. Furthermore, the information required to comply with the reporting requirement would normally be collected by the market-based rate seller in the ordinary course of preparing the underlying filing.")

[5] *See* Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 504 ("In Order No. 652, the Commission clarified and standardized market-based rate sellers' reporting requirement for changes in status and the Commission considered and rejected the idea that change in status filing include an updated market power analysis. The Commission explained that it is incumbent on an applicant to decide whether a change in status is a material change and that an applicant should provide adequate support and analysis, including an updated market power analysis if it chooses.") See also Order No. 652, FERC Stats. & Regs. ¶ 31,175 at P 95.

[6] *See* Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 505.

TOTAL NUMBER OF CHANGE IN STATUS FILINGS AT FERC: 78

[10–21–2008 to 10–20–2009]

All change in status filings	Change in status (CIS) filings			Supplemental CIS filings		
Total filings	Initial CIS filing	CIS requiring major work	CIS requiring minor work	CIS previously filed	Major work	Minor work
78	77	8	69	1		1

From October 21, 2009 to October 20, 2010, there were a total of 82 change in status filings. Sixty-two of these were initial change in status filings, nine of which were categorized as "major" and 53 of which were categorized as "minor." The remaining 20 filings were supplements to initial notice of change in status filings submitted by companies to provide additional information regarding a filing they had already made; 3 of these supplemental filings were categorized as "major" and 17 were categorized as "minor." Between October 21, 2008 to October 20, 2009, there were a total of 78 change in status filings. Seventy-seven were initial change in status filings, eight of which were "major" and 69 of which were categorized as "minor." One of the 78 filings was a "minor" supplement to an initial change in status.

Based on the EEI's comments and historical data regarding change in status filings, FERC has decided to increase its assessment of the reporting burden hours for change in status filings to 34.75 hours per response, which includes preparation of the associated asset appendices. FERC estimates an average of 80 change in status filings per year [(82 + 78)/2 = 80)]. Of these, it estimates that 10 will be major (250 hours per response) and 70 will be minor (4 hours per response). By taking an average, FERC estimates that the total annual burden for change in status filings is 2,780 hours [(250*10 = 2500) + (70*4 = 280) = 2,780]. FERC estimates an average of 58 respondents per year each filing an average of 1.38 responses (80 filings per year/58 = 1.38 [7]). Using the above estimates the average burden hours per response is 34.75 (2,780 total hours/80 responses = 34.75).

Action: The Commission is requesting a three-year extension of the FERC–919 reporting requirements, with revised burden and cost estimates based on comments received in response to its July 2010 Notice and as described above. There is no change to the reporting requirements.

Burden Statement: The revised estimated annual burden for triennial market power analysis in category 2 seller updates and the change in status filings are shown below. There are also changes from the July 2010 Notice burden and cost estimates for market power analyses in new applications for market based rates because FERC has revised the average salary estimate for preparing market power analysis. There are no changes to the burden estimates for the quarterly land acquisition reports.

FERC–919	Estimated number of respondents annually (1)	Average number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1) × (2) × (3)
Market power analysis in new applications for market-based rates (required in 18 CFR 35.37(a))	155	1	250	38,750
Triennial market power analysis in category 2 seller updates (required in 18 CFR 35.37(a))	74	1	250	18,500
Quarterly land acquisition reports (required in 18 CFR 35.42(d))	40	1	4	160
Change in Status Filings (required in 18 CFR 35.42(a))	58	1.38	34.75	[7] 2,780
Total				60,190

The total estimated annual cost burden to respondents is $4,814,968 [((38,750 + 18,500 + 2,500 [8])/2,080 [9] hours per year, times $166,602) + ((280 [10] + 160)/2,080 hours per year, times $137,874) = $4,814,968]. This number uses the average salary rate of $166,602, which includes annual salaries, bonuses and benefits, of a mid-level economist, lawyer, and electrical engineer according to Salary.com data, for the hours required in 18 CFR 35.37(a) for market power analysis in new applications for market-based rates, triennial market power analysis in category 2 seller updates and major change in status filings. It uses the average salary rate for an internal professional of $137,874, based on a FERC estimate, for preparation of the quarterly land acquisition reports and minor change in status filings.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information;

[7] Rounded off due to truncating the average number of responses per respondent to two decimal places.

[8] Total number of burden hours for major change in status filings. Of the 80 responses per year, 10 are major (10 responses × 250 hours per response = 2500).

[9] Estimated number of hours an employee works each year.

[10] Total number of burden hours for minor change in status filings. Of the 80 responses per year, 70 are minor (70 responses × 4 hours per response = 280).

and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Any additional comments are invited on: (1) Whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden of the proposed collections 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 collections 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.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–29304 Filed 11–19–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–28–000]

Monroe Gas Storage Company, LLC; Notice of Application

November 12, 2010.

Take notice that on November 12, 2010, Monroe Gas Storage Company, LLC (Monroe), 3773 Cherry Creek North Drive, Suite 1000, Denver, CO 80209, filed pursuant to Section 7(c) of the Natural Gas Act and the Commission's regulations thereunder, an abbreviated application for an amendment to its certificate of public convenience and necessity authorizing Monroe to make changes to the certificated design of the Monroe Gas Storage Project.

Specifically, Through this Application, Monroe seeks authorization to (1) change the location of the Well MGS–4 surface facilities to another existing Project well pad, (2) move the Well MGS–9 surface facilities to a different location on the currently authorized well pad, and (3) modify the Project's water disposal facilities by adding a water disposal well—Monroe Water Disposal #1 ("MWD–1"). In conjunction with the relocation of Wells MGS–4–E–V and MGS–9–E–V, Monroe also proposes to relocate the bottom hole location of the wells and redesignate these wells as Wells MGS–4–E–D and MGS–9–ED.

Monroe states that the proposed amendment will not change its currently certificated authority to provide about 12.0 billion cubic feet (Bcf) of high-deliverability working gas storage capacity, with about 4.46 Bcf of base gas. Nor is any change proposed in Monroe's certificated capability for receiving and injecting gas at maximum rates of up to 445 million cubic feet per day (MMcf/d) and withdrawing and delivering gas at maximum rates of up to 465 MMcf/d.

Any questions regarding the application should be directed to Fred Witsell, Monroe Gas Storage Company, LLC, 3773 Cherry Creek North Drive, Suite 1000, Denver, CO 80209, (303) 815.1010, or Erik J.A. Swenson, Fulbright & Jaworski L.L.P, 801 Pennsylvania Avenue, NW., Washington, DC 20004–2623, (202) 622–4555.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 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 e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnline Support@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: November 22, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–29303 Filed 11–19–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11313–019]

White Mountain Hydroelectric Corp.; Notice of Application for Amendment of License, and Soliciting Comments, Motions To Intervene, and Protests

November 12, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Non-Capacity Amendment of License.

b. *Project No.:* 11313–019.

c. *Date Filed:* March 31, 2010.

d. *Applicant:* White Mountain Hydroelectric Corp.

e. *Name of Project:* Apthorp Hydroelectric Project.

f. *Location:* The project is located on the Ammonoosuc River in Grafton County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Peter Govoni, White Mountain Hydroelectric Corp., P.O. Box 715, Lincoln, New Hampshire 03251; telephone: (207) 487–3328.

i. *FERC Contact:* Any questions regarding this notice should be directed to Mr. Anthony DeLuca (202) 502–6632 or *Anthony.deluca@ferc.gov.*

j. *Deadline for filing comments, motions to intervene and protest:* December 13, 2010. 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 at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments.

Please include the project number (P–11313–019) on any comments, motions, or recommendations filed.

k. *Description of Request:* The licensee proposes to delete from the license the authorized but unconstructed 175-kW generating unit. The licensee states that the unit, which was authorized under the license issued October 17, 1995, was never constructed due to project economics.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* 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 e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@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:* Any filing must (1) Bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene or protests should relate to project works which are the subject of the license amendment. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–29308 Filed 11–19–10; 8:45 am]

BILLING CODE 6717–01–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13860–000]

Jones Canyon Hydro, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

November 12, 2010.

On October 14, 2010, Jones Canyon Hydro, LLC (Jones Canyon Hydro) 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 Jones Canyon Pumped Storage Project (Project) near Grass Valley, Sherman County, Oregon. 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 will consist of: (1) Two artificial reservoirs created by embankments and joined by approximately 6,225 feet of conduit; (2) one 250-megawatt (MW), one 100–MW, and one 50–MW reversible pump-turbines, totaling 400 MW of generating capacity, with up to 100 MW of additional pumping capacity, for a total of 500 MW pumping capacity; (3) a 4.15-kilovolt, 1,800-foot-long, underground transmission line connecting to an existing substation; and (4) appurtenant facilities. The estimated annual energy production for

the Project is approximately 1,226,400 megawatt-hours.

Applicant Contact: Matthew Shapiro, CEO, Gridflex Energy, LLC, 1210 W. Franklin St., Ste. 2, Boise, ID 83702; phone: (208) 246–9925.

FERC Contact: Patrick Murphy (202) 502–8755.

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. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13860–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–29310 Filed 11–19–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

[Project No. 2850–015]

Hampshire Paper Company; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions

November 15, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2850–015.

c. *Date Filed:* June 17, 2010.

d. *Applicant:* Hampshire Paper Company.

e. *Name of Project:* Emeryville Hydroelectric Project.

f. *Location:* The existing project is located on the Oswegatchie River in the hamlet of Emeryville, in St. Lawrence County, New York. The project does not occupy federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825 (r).

h. *Applicant Contact:* Michael McDonald, Facility Manager, Hampshire Paper Company, 1827 County Road 22, Gouverneur, NY 13642; Telephone (315) 287–1990.

i. *FERC Contact:* John Baummer, Telephone (202) 502–6837, and e-mail *john.baummer@ferc.gov*.

j. Deadline for filing motions to intervene and protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions is 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

Motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions 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 require 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.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. *The existing Emeryville Hydroelectric Project consists of:* (1) A 16.7-foot-high, 185-foot-long, timber and earth fill gravity dam with a 17-foot-long concrete spillway equipped with 2.4-foot-high flashboards and a 4-foot-wide minimum flow rectangular weir with a minimum elevation of 584.2 feet National Geodetic Vertical Datum (NGVD); (2) a 35-acre reservoir with a normal water surface elevation of 586.6 feet NGVD; (3) a 140-foot-long by 30-foot-wide reinforced concrete intake and headrace structure equipped with four headgates and a trashrack with 5-inch spacing; (4) a 60-foot-long by 14-foot-diameter steel penstock leading to; (5) a 67-foot-long by 32-foot concrete powerhouse containing a horizontal axial flow turbine with a maximum hydraulic capacity of 1,470 cubic feet per second and a net head of 32 feet, directly connected to a horizontal generator unit with a rated capacity of 3,481 kilowatts for an estimated average annual generation of 18.4 million kilowatt-hours; (6) an 80-foot-long, 23-kilovolt transmission line; and (7) appurtenant facilities. The dam and existing project facilities are owned by the applicant. The licensee proposes to continue to operate the project in a run-of-river mode, install staff gages or monuments to verify a proposed minimum flow of 20 cubic feet per second, install seasonal trashracks at the existing intake structure, and modify the existing bypassed reach to enhance downstream fish passage.

m. 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 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.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. 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.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "PRELIMINARY TERMS AND CONDITIONS," or "PRELIMINARY FISHWAY PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

o. *Procedural Schedule:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Filing of recommendations, preliminary terms and conditions, and preliminary fishway prescriptions	60 days from the issuance date of this notice.
Commission issues EA	May 2011.
Comments on EA	June 2011.
Modified terms and conditions	August 2011.

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

q. A license applicant must file no later than 60 days following the date of issuance of the notice of acceptance and ready for environmental analysis provided for in § 5.22: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–29314 Filed 11–19–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13735–000; Project No. 13735–000; Project No. 13756–000; Project No. 13779–000]

Lock Hydro Friends Fund XXXV; FFP Missouri 7, LLC; Dashields Hydro, LLC; Notice of Competing Preliminary Permit Applications Accepted for Filing and Soliciting Comments, and Motions To Intervene

November 15, 2010.

On May 18, 2010, Lock Hydro Friends Fund XXXV, FFP Missouri 7, LLC, and Dashields Hydro, LLC filed applications, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of hydropower at the U.S. Army Corps of Engineers Dashields Lock & Dam located on the Ohio River in Alleghany County, Pennsylvania. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

Descriptions of the proposed Dashields Lock and Dam Projects:

Lock Hydro Friends Fund XXXV's project (Project No. 13735–000) would consist of: (1) Two 44-foot-high, 75-foot-long prefabricated concrete walls attached to the downstream side of the Corps dam which will support two frame modules; (2) each frame module will be 109 feet long and weigh 1.16 million pounds and contain 10 generating units with a total combined capacity of 10.0 megawatts (MW); (3) a new switchyard containing a transformer; (4) a proposed 6,000-foot-long, 36.7-kilovolt (kV) transmission line to an existing substation. The proposed project would have an average annual generation of 43.83 gigawatt-hours (GWh), which would be sold to a local utility.

Applicant Contact: Mr. Mark R. Stover, Hydro Green Energy LLC, 5090 Richmond Avenue #390, Houston, TX 77056; phone (877) 556–6566 x711.

FFP Missouri 7, LLC's project (Project No. 13756–000) would consist of: (1) An excavated intake channel slightly longer and wider than the powerhouse; (2) a 200-foot-long, 200-foot-wide, 50-foot-high proposed powerhouse containing five generating units having a total installed capacity of 25.0 MW; (3) an excavated tailrace channel slightly longer and wider than the powerhouse; (4) a proposed 11,500-foot-long, 34.0 to 230-kV transmission line. The proposed project would have an average annual generation of 120.0 GWh, which would be sold to a local utility.

Applicant Contact: Ms. Ramya Swaminathan, Free Flow Power Corporation, 33 Commercial Street, Gloucester, MA 01930; phone (978) 283–2822.

Dashields Hydro, LLC's project (Project No. 13779–000) would consist of: (1) A proposed 200-foot-long excavated power canal; (2) a proposed powerhouse containing three generating units having a total installed capacity of 12.0 MW; (3) a 180-foot-long excavated tailrace; (4) a proposed 2.1-mile-long, 69.0-kV transmission line. The proposed project would have an average annual generation of 44.4 GWh, which would be sold to a local utility.

Applicants Contact: Mr. Brent Smith, Symbiotics LLC., P.O. Box 535, Rigby, ID 83442; phone (208) 745–0834.

FERC Contact: Michael Spencer, (202) 502–6093.

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;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–13735–000, 13756–000, or 13779–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–29316 Filed 11–19–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP11–18–000; PF10–13–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application

November 12, 2010.

Take notice that on October 29, 2010, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251–1396, filed in Docket No. CP11–18–000 an application pursuant to Section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations seeking authorization to construct and operate certain pipeline and compression facilities in Alabama, Georgia, South Carolina, and North Carolina that comprise its Mid-South Expansion Project. Specifically, Transco requests (1) authorization to construct a total of approximately 22.6 miles of 42-inch diameter pipeline looping; (2) authorization to construct a new compressor station and upgrade three existing compressor stations for a total of approximately 47,780 horsepower; (3) approve incremental transportation rates; and (4) acceptance of the pro forma tariff sheets included in Exhibit P to the application. Transco estimates that its Mid-South Expansion Project facilities would cost $218,749,000 to construct, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding this application should be directed to Bill Hammons, Team Leader, Rates and Regulatory, P.O. Box 1396, Houston, Texas 77251, at (713) 215–2130. In addition, Transco has established a toll-free telephone number, (866) 455–9103, so that parties can call with questions about the Project, as well as an e-mail support address (*PipelineExpansion@williams.com*).

On March 9, 2009, the Commission staff granted Transco's March 2, 2009, request to use the pre-filing process and assigned Docket No. PF10–13–000 for this proceeding during the pre-filing review of the Mid-South Expansion. Now, as of the filing of Transco's application on October 29, 2010, the pre-filing process for this project has ended. From this time forward, Transco's proceeding will be conducted in Docket No. CP11–18–000, as noted in the caption of this Notice.

Pursuant to section 157.9 of the Commission's regulations, 18 CFR 157.9, within 90 days of this Notice, the Commission's staff will either complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission's staff issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify Federal and State agencies of the timing for the completion of all necessary reviews, and the subsequent need to reach a final decision on a request for Federal authorization within 90 days of the date of issuance of the Commission staff's EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to

participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: December 3, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–29317 Filed 11–19–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13862–000]

Deer Creek Hydro, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

November 12, 2010.

On October 14, 2010, Deer Creek Hydro, LLC (Deer Creek Hydro) 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 Deer Creek Pumped Storage Project (Project) near Glenrock, Converse County, Wyoming. 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 will consist of: (1) Two artificial reservoirs created by embankments and joined by approximately 9,715 feet of conduit; (2) an underground powerhouse to be located approximately 3,000 feet southeast of the lower reservoir dam, at an elevation of approximately 5,450 feet; (3) two 150-megawatt (MW) and two 100-MW reversible pump-turbines, totaling 500 MW of generating capacity, with up to 150 MW of additional pumping capacity, for a total of 650 MW pumping capacity; (4) a double-circuit 230-kilovolt, approximately 1.2-mile-long transmission line connecting to an existing substation; and (5) appurtenant facilities. The estimated annual energy production for the proposed Project is approximately 1,533,000 megawatt-hours.

Applicant Contact: Matthew Shapiro, CEO, Gridflex Energy, LLC, 1210 W. Franklin St. Ste. 2, Boise, ID 83702; phone: (208) 246–9925.

FERC Contact: Patrick Murphy (202) 502–8755.

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. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13862–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–29311 Filed 11–19–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13799–000]

San Jose Water Company; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, Protests, Recommendations, and Terms and Conditions

November 12, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 13799–000.

c. *Date filed:* June 25, 2010 and supplemented August 27, 2010.

d. *Applicant:* San Jose Water Company.

e. *Name of Project:* Cox Station Project.

f. *Location:* The project is located in Santa Clara County, California.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Thomas Gee, San Jose Water Company, 1265 South Bascom Avenue, San Jose, CA 95128, (408) 279–7886.

i. *FERC Contact:* Steven Sachs, (202) 502–8666, or *Steven.Sachs@ferc.gov.*

j. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

k. *Deadline for filing responsive documents:* Due to the small size and location of the proposed project in a closed system, as well as the resource agency consultation letters filed with the application, the 60-day timeframe specified in 18 CFR 4.43(b) for filing all comments, motions to intervene, protests, recommendations, terms and conditions, and prescriptions is shortened to 30 days from the issuance date of this notice. All reply comments filed in response to comments submitted by any resource agency, Indian tribe, or person, must be filed with the Commission within 45 days from the issuance date of this notice.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Project:* The San Jose Water Company requests Commission approval for exemption for a small conduit hydroelectric facility. This proposal consists of adding two 55-kilowatt turbine/generator units in parallel with a pressure reduction valve at the San Jose Water Company's Cox Avenue Station. The primary purpose of the conduit is water delivery and distribution for consumptive domestic use. The hydraulic capacity of each turbine will be 9.5 cubic feet per second and the units will have an estimated average annual generation of 220,000 kWh.

m. This filing is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street, NE., Washington, DC 20426. The filing may also be viewed on the web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number, here P–13799, in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for review and reproduction at the address in item h above.

n. *Development Application*—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a competing development application. A notice of intent must be served on the applicant(s) named in this public notice.

p. *Protests or Motions To Intervene*—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

q. All filings must (1) Bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "COMMENTS", "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Office of Energy Projects, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–29309 Filed 11–19–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10854–109]

Upper Peninsula Power Company; UP Hydro; Notice of Application for Transfer of License, and Soliciting Comments and Motions To Intervene

November 12, 2010.

On November 1, 2010, Upper Peninsula Power Company (transferor) and UP Hydro (transferee) filed an application for transfer of license for the Cataract Hydroelectric Project No. 10854, located on the Escanaba River in Marquette County, Michigan.

Applicants seek Commission approval to transfer the license for the Cataract Hydroelectric Project from transferor to transferee.

Applicants' Contact: Transferor: Terry P. Jensky, Upper Peninsula Company, 700 N. Adams Street, Green Bay, WI 54307, (920) 433–2900. For Transferee: Charles F. Alsberg, North American Hydro Holdings, Inc., 116 State Street, Neshkoro, WI 54960, (920) 293–4628 Ext. 11.

FERC Contact: Patricia W. Gillis (202) 502–8735.

Deadline for filing comments and motions to intervene: 15 days from the issuance date of this notice. 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–10854) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–29307 Filed 11–19–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1940–024]

Wisconsin Public Service Corporation; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

November 12, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Application to amend project boundary.

b. *Project No.:* 1940–024.

c. *Date Filed:* June 30, 2010.

d. *Applicant:* Wisconsin Public Service Corporation.

e. *Name of Project:* Tomahawk Hydroelectric Project.

f. *Location:* Wisconsin River in Lincoln County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Shawn Puzen, telephone: (920) 433–1094.

i. *FERC Contact:* Mark Carter, telephone (678) 245–3083, e-mail *mark.carter@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* December 13, 2010.

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 at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–1940–024) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners 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 intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, it must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Application:* The licensee requests Commission approval to amend the project boundary to remove lands not needed for project purposes (e.g., lands that contain residential homes and seasonal cottages), and add lands that are necessary for project purposes (e.g., wetland areas, land in the 100-year floodplain, etc.).

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also 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 (P–1940) 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 e-mail *FERCOnlineSupport@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:* Any filing must (1) Bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the amendment application. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in

accordance with 18 CFR 4.34(b) and 385.2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–29306 Filed 11–19–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No 1

November 10, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP11–1506–000.
Applicants: Northern Natural Gas Company.
Description: Executive Summary—On November 9, 2010, Northern filed a Petition for a Limited Waiver of Northern's FERC Gas Tariff to allow resolution of a prior period measurement billing error for CenterPoint Energy Minnesota Gas.
Filed Date: 11/09/2010.
Accession Number: 20101109–5056.
Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Docket Numbers: RP11–1507–000.
Applicants: Honeoye Storage Corporation.
Description: Honeoye Storage Corporation submits tariff filing per 154.203: Honeoye Storage Corporation, Volume No. 2 to be effective 11/9/2010.
Filed Date: 11/09/2010.
Accession Number: 20101109–5057.
Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Docket Numbers: RP11–1508–000.
Applicants: Dominion South Pipeline Company, LP.
Description: Dominion South Pipeline Company, LP submits tariff filing per 154.204: DSP—NAESB Waiver Filing to be effective 12/13/2010.
Filed Date: 11/10/2010.
Accession Number: 20101110–5022.
Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Docket Numbers: RP11–1509–000.
Applicants: High Island Offshore System, L.L.C.
Description: High Island Offshore System, L.L.C. submits tariff filing per 154.403(d)(2): 2010 Fuel Interim Adjustment to be effective 12/1/2010.
Filed Date: 11/10/2010.
Accession Number: 20101110–5055.
Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Any person desiring to intervene or to protest in any of the above proceedings 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) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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 St. NE., Washington, DC 20426.

The filings in the above proceedings 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 e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–29325 Filed 11–19–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

November 15, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–566–001; ER10–566–002.
Applicants: ArcLight Energy Marketing, LLC, Oak Creek Wind Power, LLC, Coso Geothermal Power Holdings, LLC.
Description: Supplemental to Updated Market Power Analysis for the Southwest Region of Coso Geothermal Power Holdings, LLC.
Filed Date: 11/12/2010.
Accession Number: 20101112–5264.
Comment Date: 5 p.m. Eastern Time on Friday, December 03, 2010.

Docket Numbers: ER11–2082–000.
Applicants: South Carolina Electric & Gas Transmission.
Description: South Carolina Electric & Gas Transmission submits tariff filing per 35: Compliance filing clean up after initial baseline filing to be effective 11/11/2010.
Filed Date: 11/12/2010.
Accession Number: 20101112–5006.
Comment Date: 5 p.m. Eastern Time on Friday, December 03, 2010.

Docket Numbers: ER11–2083–000.
Applicants: Duke Energy Fayette II, LLC.
Description: Duke Energy Fayette II, LLC submits tariff filing per 35.15: Cancel Tariff Database to be effective 1/10/2011.
Filed Date: 11/12/2010.
Accession Number: 20101112–5012.
Comment Date: 5 p.m. Eastern Time on Friday, December 03, 2010.

Docket Numbers: ER11–2084–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): Module B—Facilities Study to be effective 1/12/2011.
Filed Date: 11/12/2010.
Accession Number: 20101112–5119.
Comment Date: 5 p.m. Eastern Time on Friday, December 03, 2010.

Docket Numbers: ER11–2086–000.
Applicants: California Independent System Operator Corporation.
Description: Petition of the California Independent System Operator Corporation for Approval of Disposition of Proceeds of Penalty Assessments.
Filed Date: 11/12/2010.

Accession Number: 20101112–5145.
Comment Date: 5 p.m. Eastern Time on Friday, December 3, 2010.

Docket Numbers: ER11–2086–000.
Applicants: California Independent System Operator Corporation.
Description: Petition of the California Independent System Operator Corporation for Approval of Disposition of Proceeds of Penalty Assessments.
Filed Date: 11/12/2010.
Accession Number: 20101112–5146.
Comment Date: 5 p.m. Eastern Time on Friday, December 03, 2010.

Docket Numbers: ER11–2087–000.
Applicants: FC Landfill Energy, LLC.
Description: FC Landfill Energy, LLC submits tariff filing per 35.1: Baseline to be effective 11/12/2010.
Filed Date: 11/12/2010.
Accession Number: 20101112–5156.
Comment Date: 5 p.m. Eastern Time on Friday, December 03, 2010.

Docket Numbers: ER11–2088–000.
Applicants: Border Energy Electric Services, Inc.
Description: Border Energy Electric Services, Inc. submits tariff filing per 35.12: FERC Electric Tariff, Volume No. 1 to be effective 1/11/2011.
Filed Date: 11/12/2010.
Accession Number: 20101112–5157.
Comment Date: 5 p.m. Eastern Time on Friday, December 03, 2010.

Docket Numbers: ER11–2090–000.
Applicants: Duke Energy Hanging Rock II, LLC.
Description: Duke Energy Hanging Rock II, LLC submits tariff filing per 35.13(a)(2)(iii): Reactive Power Filing to be effective 12/31/9998.
Filed Date: 11/12/2010.
Accession Number: 20101112–5241.
Comment Date: 5 p.m. Eastern Time on Friday, December 3, 2010.

Docket Numbers: ER11–2091–000.
Applicants: Duke Energy Washington II, LLC.
Description: Duke Energy Washington II, LLC submits tariff filing per 35.13(a)(2)(iii): Reactive Power Filing to be effective 12/31/9998.
Filed Date: 11/12/2010.
Accession Number: 20101112–5242.
Comment Date: 5 p.m. Eastern Time on Friday, December 03, 2010

Docket Numbers: ER11–2092–000.
Applicants: Duke Energy Vermillion II, LLC.
Description: Duke Energy Vermillion II, LLC submits tariff filing per 35.13(a)(2)(iii): Reactive Power Filing to be effective 12/31/9998.
Filed Date: 11/12/2010.
Accession Number: 20101112–5243.
Comment Date: 5 p.m. Eastern Time on Friday, December 03, 2010.

Docket Numbers: ER11–2093–000.
Applicants: Ameren Illinois Company.
Description: Ameren Illinois Company submits tariff filing per 35.13(a)(2)(iii): Amendment B to Legacy Agreements to be effective 12/31/9998.
Filed Date: 11/12/2010.
Accession Number: 20101112–5245.
Comment Date: 5 p.m. Eastern Time on Friday, December 03, 2010.

Docket Numbers: ER11–2094–000.
Applicants: Duke Energy Lee II, LLC.
Description: Duke Energy Lee II, LLC submits tariff filing per 35.13(a)(2)(iii): Reactive Power Filing to be effective 12/31/9998.
Filed Date: 11/12/2010.
Accession Number: 20101112–5246.
Comment Date: 5 p.m. Eastern Time on Friday, December 03, 2010.

Docket Numbers: ER11–2095–000.
Applicants: Duke Energy Fayette II, LLC.
Description: Duke Energy Fayette II, LLC submits tariff filing per 35.13(a)(2)(iii): Reactive Power Filing to be effective 12/31/9998.
Filed Date: 11/12/2010.
Accession Number: 20101112–5247.
Comment Date: 5 p.m. Eastern Time on Friday, December 03, 2010.

Docket Numbers: ER11–2096–000.
Applicants: The Connecticut Light and Power Company.
Description: The Connecticut Light and Power Company submits tariff filing per 35.13(a)(2)(iii): Localized Costs Responsibility Agreement to be effective 1/1/2011.
Filed Date: 11/12/2010.
Accession Number: 20101112–5252.
Comment Date: 5 p.m. Eastern Time on Friday, December 3, 2010.

Docket Numbers: ER11–2097–000.
Applicants: Oklahoma Gas and Electric Company.
Description: Oklahoma Gas and Electric Company submits tariff filing per 35.1: OG&E Baseline Filing for WM–1 and WC–1 Tariff to be effective 11/12/2010.
Filed Date: 11/12/2010.
Accession Number: 20101112–5263.
Comment Date: 5 p.m. Eastern Time on Friday, December 03, 2010.

Docket Numbers: ER11–2098–000.
Applicants: Duke Energy Ohio, Inc.
Description: Duke Energy Ohio, Inc. submits tariff filing per 35.15: Reactive Tariff Cancellations to be effective 12/31/9998.
Filed Date: 11/12/2010.
Accession Number: 20101112–5265.
Comment Date: 5 p.m. Eastern Time on Friday, December 03, 2010.

Docket Numbers: ER11–2099–000.
Applicants: Public Service Company of New Hampshire.
Description: Public Service Company of New Hampshire submits tariff filing per 35.13(a)(2)(iii): Localized Costs Responsibility Agreement to be effective 1/1/2011.
Filed Date: 11/12/2010.
Accession Number: 20101112–5270
Comment Date: 5 p.m. Eastern Time on Friday, December 03, 2010.

Docket Numbers: ER11–2100–000.
Applicants: Western Massachusetts Electric Company.
Description: Western Massachusetts Electric Company submits tariff filing per 35.13(a)(2)(iii): Localized Costs Responsibility Agreement to be effective 1/1/2011.
Filed Date: 11/12/2010.
Accession Number: 20101112–5275.
Comment Date: 5 p.m. Eastern Time on Friday, December 03, 2010.

Docket Numbers: ER11–2101–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii): Transmission Owner Definition Membership Agreement Revision to be effective 1/12/2011.
Filed Date: 11/12/2010.
Accession Number: 20101112–5292.
Comment Date: 5 p.m. Eastern Time on Friday, December 03, 2010.

Docket Numbers: ER11–2102–000.
Applicants: Oklahoma Gas and Electric Company.
Description: Oklahoma Gas and Electric Company submits tariff filing per 35.1: OG&E Baseline Filing for Cost Based Tariff to be effective 11/12/2010.
Filed Date: 11/12/2010.
Accession Number: 20101112–5296.
Comment Date: 5 p.m. Eastern Time on Friday, December 03, 2010.

Docket Numbers: ER11–2103–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii): Transmission Owner Definition Tariff Revision to be effective 1/12/2011.
Filed Date: 11/12/2010.
Accession Number: 20101112–5300.
Comment Date: 5 p.m. Eastern Time on Friday, December 03, 2010.

Docket Numbers: ER11–2104–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): 11–12–10 AXTI Attachment O Filing to be effective 1/1/2011.
Filed Date: 11/12/2010.
Accession Number: 20101112–5304.

Comment Date: 5 p.m. Eastern Time on Friday, December 03, 2010.

Docket Numbers: ER11–2105–000.
Applicants: Oklahoma Gas and Electric Company.
Description: Oklahoma Gas and Electric Company submits tariff filing per 35.1: OG&E Baseline Filing for Market Based Tariff to be effective 11/12/2010.
Filed Date: 11/12/2010.
Accession Number: 20101112–5307.
Comment Date: 5 p.m. Eastern Time on Friday, December 03, 2010.

Docket Numbers: ER11–2106–000.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corporation submits tariff filing per 35.13(a)(2)(iii): 2010–11–12 CAISO MSG Delay of Implementation Amendment to be effective 12/7/2010.
Filed Date: 11/12/2010.
Accession Number: 20101112–5319.
Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Docket Numbers: ER11–2107–000.
Applicants: North Community Turbines LLC.
Description: North Community Turbines LLC submits tariff filing per 35.12: North Community Turbines LLC Market-Based Rate Application to be effective 1/1/2011.
Filed Date: 11/12/2010.
Accession Number: 20101112–5321.
Comment Date: 5 p.m. Eastern Time on Friday, December 03, 2010.

Docket Numbers: ER11–2108–000.
Applicants: North Wind Turbines LLC.
Description: North Wind Turbines LLC submits tariff filing per 35.12: North Wind Turbines LLC Market-Based Rate Application to be effective 1/1/2011.
Filed Date: 11/12/2010.
Accession Number: 20101112–5325.
Comment Date: 5 p.m. Eastern Time on Friday, December 03, 2010.

Docket Numbers: ER11–2109–000.
Applicants: Oklahoma Gas and Electric Company.
Description: Oklahoma Gas and Electric Company submits tariff filing per 35.1: OG&E Baseline Filing for Open Access Transmission Tariff to be effective 11/12/2010.
Filed Date: 11/12/2010.
Accession Number: 20101112–5328.
Comment Date: 5 p.m. Eastern Time on Friday, December 03, 2010.

Docket Numbers: ER11–2110–000.
Applicants: Allegheny Energy Supply Company LLC.
Description: Allegheny Energy Supply Company, LLC submits authorization to make wholesale power to its affiliate.
Filed Date: 11/12/2010.
Accession Number: 20101112–0204.
Comment Date: 5 p.m. Eastern Time on Friday, December 03, 2010.

Docket Numbers: ER11–2111–000.
Applicants: Allegheny Energy Supply Company LLC.
Description: Allegheny Energy Supply Company, LLC submits authorization to make wholesale power to its affiliate.
Filed Date: 11/12/2010.
Accession Number: 20101112–0203.
Comment Date: 5 p.m. Eastern Time on Friday, December 03, 2010.

Docket Numbers: ER11–2112–000.
Applicants: Blue Creek Wind Farm LLC.
Description: Blue Creek Wind Farm LLC submits tariff filing per 35.12: Initial Market-Based Rate Filing to be effective 1/14/2011.
Filed Date: 11/15/2010.
Accession Number: 20101115–5023.
Comment Date: 5 p.m. Eastern Time on Monday, December 06, 2010.

Docket Numbers: ER11–2112–000.
Applicants: Blue Creek Wind Farm LLC.
Description: Blue Creek Wind Farm LLC submits tariff filing per 35.12: Initial Market-Based Rate Filing to be effective 1/14/2011.
Filed Date: 11/15/2010.
Accession Number: 20101115–5023.
Comment Date: 5 p.m. Eastern Time on Monday, December 06, 2010.

Docket Numbers: ER11–2113–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): ITC Schedule 1 to be effective 1/1/2011.
Filed Date: 11/15/2010.
Accession Number: 20101115–5029.
Comment Date: 5 p.m. Eastern Time on Monday, December 06, 2010.

Docket Numbers: ER11–2114–000.
Applicants: Entergy Arkansas, Inc.
Description: Entergy Arkansas, Inc. submits tariff filing per 35.1: EAI Fourth Rev. Rate Schedule No. 94 to be effective 11/12/2010.
Filed Date: 11/15/2010.
Accession Number: 20101115–5043.
Comment Date: 5 p.m. Eastern Time on Monday, December 06, 2010.

Docket Numbers: ER11–2115–000.
Applicants: Entergy Gulf States Louisiana, L.L.C.
Description: Entergy Gulf States Louisiana, L.L.C. submits tariff filing per 35.1: EGSL First Rev. Rate Schedule No. 181 to be effective 11/12/2010.
Filed Date: 11/15/2010.
Accession Number: 20101115–5050.
Comment Date: 5 p.m. Eastern Time on Monday, December 06, 2010.

Docket Numbers: ER11–2116–000.
Applicants: Entergy Louisiana, LLC.
Description: Entergy Louisiana, LLC submits tariff filing per 35.1: ELL Fourth Rev. Rate Schedule No. 69 Baseline Filing to be effective 11/12/2010.
Filed Date: 11/15/2010.
Accession Number: 20101115–5051.
Comment Date: 5 p.m. Eastern Time on Monday, December 06, 2010.

Docket Numbers: ER11–2117–000.
Applicants: Entergy Mississippi, Inc.
Description: Entergy Mississippi, Inc. submits tariff filing per 35.1: EMI Fourth Rev. Rate Schedule No. 262 Baseline Filing to be effective 11/12/2010.
Filed Date: 11/15/2010.
Accession Number: 20101115–5052.
Comment Date: 5 p.m. Eastern Time on Monday, December 06, 2010.

Docket Numbers: ER11–2118–000.
Applicants: Entergy New Orleans, Inc.
Description: Entergy New Orleans, Inc. submits tariff filing per 35.1: ENOI Fourth Rev. Rate Schedule No. 8 Baseline Filing to be effective 11/12/2010.
Filed Date: 11/15/2010.
Accession Number: 20101115–5053.
Comment Date: 5 p.m. Eastern Time on Monday, December 06, 2010.

Docket Numbers: ER11–2119–000.
Applicants: Entergy Texas, Inc.
Description: Entergy Texas, Inc. submits tariff filing per 35.1: ETI First Rev. Rate Schedule No. 181 to be effective 11/12/2010.
Filed Date: 11/15/2010.
Accession Number: 20101115–5055.
Comment Date: 5 p.m. Eastern Time on Monday, December 06, 2010.

Docket Numbers: ER11–2120–000.
Applicants: Arizona Public Service Company.
Description: Arizona Public Service Company submits tariff filing per 35.13(a)(2)(iii): Rate Schedule No. 217, Amendments to Exhibit B to be effective 11/12/2010.
Filed Date: 11/15/2010.
Accession Number: 20101115–5088.
Comment Date: 5 p.m. Eastern Time on Monday, December 06, 2010.

Docket Numbers: ER11–2121–000.
Applicants: Arizona Public Service Company.
Description: Arizona Public Service Company submits tariff filing per 35.12: Service Schedule No. 306 to be effective 10/15/2010.
Filed Date: 11/15/2010.
Accession Number: 20101115–5089.
Comment Date: 5 p.m. Eastern Time on Monday, December 06, 2010.

Docket Numbers: ER11–2123–000.
Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35: Att. X & Mod E Compliance Filing to be effective 8/4/2010.

Filed Date: 11/15/2010.

Accession Number: 20101115–5102.

Comment Date: 5 p.m. Eastern Time on Monday, December 06, 2010.

Any person desiring to intervene or to protest in any of the above proceedings 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) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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 St., NE., Washington, DC 20426.

The filings in the above proceedings 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 e-mail 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.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–29324 Filed 11–19–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

November 15, 2010.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC11–19–000.

Applicants: Exeter Energy Limited Partnership, ReEnergy Sterling LLC.

Description: Exeter Energy Limited Partnership submits Authorization under Section 203 of the Federal Power Act and Request for Waivers.

Filed Date: 11/12/2010.

Accession Number: 20101112–0205.

Comment Date: 5 p.m. Eastern Time on Friday, December 3, 2010.

Docket Numbers: EC11–20–000.

Applicants: EIF Renewable Energy Holdings LLC, Innovative Energy Systems, LLC, Seneca Energy, II LLC.

Description: Application of Seneca Energy II, LLC, *et al.* requesting Commission's approval to transfer control over their jurisdictional facilities to EIF Renewable Energy Holdings LLC pursuant to Section 203 of the FPA.

Filed Date: 11/12/2010.

Accession Number: 20101112–5417.

Comment Date: 5 p.m. Eastern Time on Friday, December 3, 2010.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG11–11–000.

Applicants: Community Wind North, LLC.

Description: Community Wind North, LLC Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 11/12/2010.

Accession Number: 20101112–5302.

Comment Date: 5 p.m. Eastern Time on Friday, December 3, 2010.

Docket Numbers: EG11–12–000.

Applicants: Community Wind North 1 LLC.

Description: Community Wind North, LLC 1 Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 11/12/2010.

Accession Number: 20101112–5320.

Comment Date: 5 p.m. Eastern Time on Friday, December 3, 2010.

Docket Numbers: EG11–13–000.

Applicants: Community Wind North 2 LLC.

Description: Community Wind North 2 LLC Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 11/12/2010.

Accession Number: 20101112–5322.

Comment Date: 5 p.m. Eastern Time on Friday, December 3, 2010.

Docket Numbers: EG11–14–000.

Applicants: Community Wind North 3 LLC.

Description: Community Wind North 3 LLC Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 11/12/2010.

Accession Number: 20101112–5324.

Comment Date: 5 p.m. Eastern Time on Friday, December 3, 2010.

Docket Numbers: EG11–15–000.

Applicants: Community Wind North 5 LLC.

Description: Community Wind North 5 LLC Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 11/12/2010.

Accession Number: 20101112–5326.

Comment Date: 5 p.m. Eastern Time on Friday, December 3, 2010.

Docket Numbers: EG11–16–000.

Applicants: Community Wind North 6 LLC.

Description: Community Wind North 6 LLC Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 11/12/2010.

Accession Number: 20101112–5336.

Comment Date: 5 p.m. Eastern Time on Friday, December 3, 2010.

Docket Numbers: EG11–17–000.

Applicants: Community Wind North 7 LLC.

Description: Community Wind North 7 LLC Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 11/12/2010.

Accession Number: 20101112–5346.

Comment Date: 5 p.m. Eastern Time on Friday, December 3, 2010.

Docket Numbers: EG11–18–000.

Applicants: Community Wind North 8 LLC.

Description: Community Wind North 8 LLC Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 11/12/2010.

Accession Number: 20101112–5351.

Comment Date: 5 p.m. Eastern Time on Friday, December 3, 2010.

Docket Numbers: EG11–19–000.

Applicants: Community Wind North 9 LLC.

Description: Community Wind North 9 LLC Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 11/12/2010.

Accession Number: 20101112–5352.

Comment Date: 5 p.m. Eastern Time on Friday, December 3, 2010.

Docket Numbers: EG11–20–000.
Applicants: Community Wind North 10 LLC.
Description: Community Wind North 10 LLC Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 11/12/2010.
Accession Number: 20101112–5355.
Comment Date: 5 p.m. Eastern Time on Friday, December 3, 2010.

Docket Numbers: EG11–21–000.
Applicants: Community Wind North 11 LLC.
Description: Community Wind North 11 LLC Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 11/12/2010.
Accession Number: 20101112–5358.
Comment Date: 5 p.m. Eastern Time on Friday, December 3, 2010.

Docket Numbers: EG11–22–000.
Applicants: Community Wind North 13 LLC.
Description: Community Wind North 13 LLC Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 11/12/2010.
Accession Number: 20101112–5364.
Comment Date: 5 p.m. Eastern Time on Friday, December 3, 2010.

Docket Numbers: EG11–23–000.
Applicants: Community Wind North 15 LLC.
Description: Community Wind North 15 LLC Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 11/12/2010.
Accession Number: 20101112–5372.
Comment Date: 5 p.m. Eastern Time on Friday, December 3, 2010.

Docket Numbers: EG11–24–000.
Applicants: Duke Energy Fayette II, LLC.
Description: Notice of Self-Certification as an EWG of Duke Energy Fayette II, LLC.
Filed Date: 11/15/2010.
Accession Number: 20101115–5079.
Comment Date: 5 p.m. Eastern Time on Monday, December 6, 2010.

Docket Numbers: EG11–25–000.
Applicants: Duke Energy Hanging Rock II, LLC.
Description: Notice of Self-Certification as an EWG of Duke Energy Hanging Rock II, LLC.
Filed Date: 11/15/2010.
Accession Number: 20101115–5080.
Comment Date: 5 p.m. Eastern Time on Monday, December 6, 2010.

Docket Numbers: EG11–26–000.
Applicants: Duke Energy Lee II, LLC.
Description: Notice of Self-Certification as an EWG of Duke Energy Lee II, LLC.
Filed Date: 11/15/2010.
Accession Number: 20101115–5081.
Comment Date: 5 p.m. Eastern Time on Monday, December 6, 2010.

Docket Numbers: EG11–27–000.
Applicants: Duke Energy Vermillion II, LLC.
Description: Notice of Self-Certification as an EWG of Duke Energy Vermillion II, LLC.
Filed Date: 11/15/2010.
Accession Number: 20101115–5082.
Comment Date: 5 p.m. Eastern Time on Monday, December 6, 2010.

Docket Numbers: EG11–28–000.
Applicants: Duke Energy Washington II, LLC.
Description: Notice of Self-Certification as an EWG of Duke Energy Washington II, LLC.
Filed Date: 11/15/2010.
Accession Number: 20101115–5083.
Comment Date: 5 p.m. Eastern Time on Monday, December 6, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER05–721–016; ER06–1334–013; ER06–230–013; ER07–277–012; ER07–810–011; ER08–1172–010; ER08–237–011; ER09–1339–006; ER09–1340–006; ER09–1341–006; ER09–1342–006; ER09–429–007; ER09–430–007; ER09–946–006; ER10–956–002; ER99–2341–019.
Applicants: Forward Energy LLC, Sheldon Energy LLC, Invenergy Cannon Falls LLC, Spindle Hill Energy LLC, Spring Canyon Energy LLC, Grand Ridge Energy LLC, Willow Creek Energy LLC, Hardee Power Partners Limited, Judith Gap Energy LLC, Invenergy TN LLC, Wolverine Creek Energy LLC, Grand Ridge Energy II LLC, Grand Ridge Energy III LLC, Grand Ridge Energy IV LLC, Grand Ridge Energy V LLC, Vantage Wind Energy LLC, Beech Ridge Energy LLC, Grays Harbor Energy LLC.
Description: Notification of Change in Facts Under Market-Based Rate Authority of Spring Canyon Energy LLC, *et al.*
Filed Date: 11/12/2010.
Accession Number: 20101112–5206.
Comment Date: 5 p.m. Eastern Time on Friday, December 3, 2010.

Docket Numbers: ER07–1106–009.
Applicants: ArcLight Energy Marketing, LLC, Oak Creek Wind Power, LLC, Coso Geothermal Power Holdings, LLC.
Description: Supplemental to Updated Market Power Analysis for the Southwest Region of Coso Geothermal Power Holdings, LLC, ER10–566, *et al.*
Filed Date: 11/12/2010.
Accession Number: 20101112–5264.
Comment Date: 5 p.m. Eastern Time on Friday, December 3, 2010.

Docket Numbers: ER08–1255–003
Applicants: Oak Creek Wind Power, LLC.
Description: Supplemental to Updated Market Power Analysis for the Southwest Region of Coso Geothermal Power Holdings, LLC, ER10–566, *et al.*
Filed Date: 11/12/2010.
Accession Number: 20101112–5264.
Comment Date: 5 p.m. Eastern Time on Friday, December 3, 2010.

Docket Numbers: ER08–1255–004.
Applicants: ArcLight Energy Marketing, LLC, Oak Creek Wind Power, LLC, Coso Geothermal Power Holdings, LLC.
Description: Supplemental to Updated Market Power Analysis for the Southwest Region of Coso Geothermal Power Holdings, LLC, ER10–566, et al.
Filed Date: 11/12/2010.
Accession Number: 20101112–5264.
Comment Date: 5 p.m. Eastern Time on Friday, December 3, 2010.

Docket Numbers: ER10–2061–002.
Applicants: Tampa Electric Company.
Description: Tampa Electric Company submits tariff filing per 35: Compliance Wholesale Requirements Rate Case to be effective 3/1/2011.
Filed Date: 11/15/2010.
Accession Number: 20101115–5109.
Comment Date: 5 p.m. Eastern Time on Monday, December 6, 2010.

Docket Numbers: ER10–2299–001.
Applicants: Entergy Texas, Inc., Entergy Arkansas, Inc., Entergy Gulf States Louisiana, L.L.C., Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy New Orleans, Inc.
Description: Entergy Texas, Inc. submits tariff filing per 35: Plum Point DTOA Compliance Filing to be effective 8/20/2010.
Filed Date: 11/12/2010.
Accession Number: 20101112–5369.
Comment Date: 5 p.m. Eastern Time on Friday, December 3, 2010.

Docket Numbers: ER10–2656–001.
Applicants: Tucson Electric Power Company.
Description: Tucson Electric Power Company submits tariff filing per 35: OATT Compliance Filing—Correction of Table of Contents Titles to be effective 9/16/2010.
Filed Date: 11/12/2010.
Accession Number: 20101112–5274.
Comment Date: 5 p.m. Eastern Time on Friday, December 3, 2010.

Docket Numbers: ER10–2665–001.
Applicants: UNS Electric, Inc.
Description: UNS Electric, Inc. submits tariff filing per 35: Amendment to Baseline OATT Filing to be effective 9/16/2010.
Filed Date: 11/12/2010.
Accession Number: 20101112–5287.

Comment Date: 5 p.m. Eastern Time on Friday, December 3, 2010.

Docket Numbers: ER10–2942–001.
Applicants: Elk River Windfarm, LLC.
Description: Elk River Windfarm, LLC submits tariff filing per 35: Amendment to Baseline Tariff Filing to be effective 9/24/2010.
Filed Date: 11/15/2010.
Accession Number: 20101115–5073.
Comment Date: 5 p.m. Eastern Time on Monday, December 6, 2010.

Docket Numbers: ER10–2944–001.
Applicants: Elm Creek Wind, LLC.
Description: Elm Creek Wind, LLC submits tariff filing per 35: Amendment to Baseline Tariff Filing to be effective 9/24/2010.
Filed Date: 11/15/2010.
Accession Number: 20101115–5070.
Comment Date: 5 p.m. Eastern Time on Monday, December 6, 2010.

Docket Numbers: ER10–2945–001.
Applicants: Elm Creek Wind II LLC.
Description: Elm Creek Wind II LLC submits tariff filing per 35: Amendment to Baseline Tariff Filing to be effective 9/24/2010.
Filed Date: 11/15/2010.
Accession Number: 20101115–5072.
Comment Date: 5 p.m. Eastern Time on Monday, December 6, 2010.

Docket Numbers: ER10–2949–001.
Applicants: Farmers City Wind, LLC.
Description: Farmers City Wind, LLC submits tariff filing per 35: Amendment to Baseline Tariff Filing to be effective 9/24/2010.
Filed Date: 11/15/2010.
Accession Number: 20101115–5026.
Comment Date: 5 p.m. Eastern Time on Monday, December 6, 2010.

Docket Numbers: ER10–2956–001.
Applicants: Flying Cloud Power Partners, LLC.
Description: Flying Cloud Power Partners, LLC submits tariff filing per 35: Amendment to Baseline Tariff Filing to be effective 9/24/2010.
Filed Date: 11/15/2010.
Accession Number: 20101115–5078.
Comment Date: 5 p.m. Eastern Time on Monday, December 6, 2010.

Docket Numbers: ER10–2957–001.
Applicants: Hay Canyon Wind LLC.
Description: Hay Canyon Wind LLC submits tariff filing per 35: Amendment to Baseline Tariff Filing to be effective 9/24/2010.
Filed Date: 11/15/2010.
Accession Number: 20101115–5025.
Comment Date: 5 p.m. Eastern Time on Monday, December 6, 2010.

Docket Numbers: ER10–3215–002.
Applicants: Eagle Power Authority, Inc.
Description: Eagle Power Authority, Inc. submits FERC Tariff 1, to be effective 11/12/2010.
Filed Date: 11/15/2010.
Accession Number: 20101115–5000.
Comment Date: 5 p.m. Eastern Time on Monday, December 6, 2010.

Docket Numbers: ER10–3272–001.
Applicants: Lower Mount Bethel Energy, LLC.
Description: Lower Mount Bethel Energy, LLC submits tariff filing per 35: Lower Mount Bethel Energy, LLC Resubmission of Reactive Power Tariff Baseline to be effective 9/30/2010.
Filed Date: 11/12/2010.
Accession Number: 20101112–5230.
Comment Date: 5 p.m. Eastern Time on Friday, December 3, 2010.

Docket Numbers: ER10–3273–001.
Applicants: PPL EnergyPlus, LLC.
Description: PPL EnergyPlus, LLC submits tariff filing per 35: PPL EnergyPlus, LLC Resubmission of Reactive Power Tariff Baseline to be effective 9/30/2010.
Filed Date: 11/12/2010.
Accession Number: 20101112–5231.
Comment Date: 5 p.m. Eastern Time on Friday, December 3, 2010.

Any person desiring to intervene or to protest in any of the above proceedings 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) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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 St. NE., Washington, DC 20426.

The filings in the above proceedings 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 e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2010–29323 Filed 11–19–10; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

November 10, 2010.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG11–10–000.
Applicants: AES Laurel Mountain, LLC.
Description: Notice of Self-Certification as an Exempt Wholesale Generator of AES Laurel Mountain, LLC.
Filed Date: 11/09/2010.
Accession Number: 20101109–5067.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 30, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER94–1384–038; ER03–1108–011; ER99–2329–009; ER01–457–009; ER03–1109–011; ER04–733–007; ER08–1432–007;
Applicants: Morgan Stanley Capitol Group Inc., Naniwa Energy LLC, Power Contract Finance, L.L.C., South Eastern Generating Corporation, South Eastern Electric Development Corporation, Utility Contract Funding II, LLC, MS Solar Solutions Corp., Power Contract Financing II, L.L.C., Power Contract Financing II, Inc.
Description: Supplemental Information of Morgan Stanley Capital Group Inc., *et. al.*
Filed Date: 11/09/2010.
Accession Number: 20101109–5155.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 30, 2010.

Docket Numbers: ER10–2250–001.
Applicants: Portland General Electric Company.

Description: Portland General Electric Company submits its Reserve Energy Service Baseline Filing, to be effective 8/17/2010.
Filed Date: 11/10/2010.
Accession Number: 20101110–5010.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 1, 2010.

Docket Numbers: ER11–2060–000.
Applicants: Edison Mission Marketing & Trading, Inc., Exelon Generation Company, LLC.
Description: Joint Request for Limited Waivers of PJM Operating Agreement and OATT filed by Edison Mission Marketing & Trading, Inc., *et. al.*
Filed Date: 11/09/2010.
Accession Number: 20101109–5194.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 30, 2010.

Docket Numbers: ER11–2061–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35: Ministerial Filing reflecting revisions per Order in Docket No. ER10–2323 to be effective 10/25/2010.
Filed Date: 11/10/2010.
Accession Number: 20101110–5040.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 1, 2010.

Docket Numbers: ER11–2062–000.
Applicants: Energy Plus Holdings LLC.
Description: Energy Plus Holdings LLC submits tariff filing per 35.1: Baseline 714 compliance to be effective 4/27/2010.
Filed Date: 11/10/2010
Accession Number: 20101110–5048.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 1, 2010.

Docket Numbers: ER11–2063–000.
Applicants: Duke Energy Vermillion II, LLC.
Description: Duke Energy Vermillion II, LLC submits tariff filing per 35.1: MBR Filing to be effective 1/9/2011.
Filed Date: 11/10/2010.
Accession Number: 20101110–5056.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 1, 2010.

Docket Numbers: ER11–2064–000.
Applicants: Duke Energy Hanging Rock II, LLC.
Description: Duke Energy Hanging Rock II, LLC submits tariff filing per 35.1: MBR Filing to be effective 1/9/2011.
Filed Date: 11/10/2010.
Accession Number: 20101110–5063.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 1, 2010.

Docket Numbers: ER11–2065–000.
Applicants: Duke Energy Lee II, LLC.
Description: Duke Energy Lee II, LLC submits tariff filing per 35.1: MBR Filing to be effective 1/9/2011.
Filed Date: 11/10/2010.
Accession Number: 20101110–5065.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 1, 2010.

Docket Numbers: ER11–2066–000.
Applicants: Duke Energy Washington II, LLC.
Description: Duke Energy Washington II, LLC submits an Application for Order Accepting Market-Based Rate Tariffs, Granting Waivers and Blanket Authorizations, to be effective 1/9/2011.
Filed Date: 11/10/2010.
Accession Number: 20101110–5067.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 1, 2010.

Docket Numbers: ER11–2067–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii: LGIA Manzana Wind Project SA 89 to be effective 1/10/2011.
Filed Date: 11/10/2010.
Accession Number: 20101110–5072.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 1, 2010.

Docket Numbers: ER11–2068–000.
Applicants: Xcel Energy Services Inc.
Description: Xcel Energy Services Inc. submits Notice of Cancellation of Emergency Connection Agreement Tariff.
Filed Date: 11/10/2010.
Accession Number: 20101110–5073.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 1, 2010.

Docket Numbers: ER11–2069–000.
Applicants: Duke Energy Lee II, LLC.
Description: Duke Energy Lee II, LLC submits tariff filing per 35.1: MBR Filing to be effective 1/9/2011.
Filed Date: 11/10/2010.
Accession Number: 20101110–5093.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 1, 2010.

Docket Numbers: ER11–2070–000.
Applicants: Carolina Power & Light Company.
Description: Carolina Power & Light Company submits tariff filing per 35.13(a)(2)(iii: Service Agreement No. 315 under Carolina Power and Light OATT to be effective 11/1/2010.
Filed Date: 11/10/2010.
Accession Number: 20101110–5104.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 1, 2010.

Docket Numbers: ER11–2071–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii: Submission of Changes to Pricing Zone Rates—OMPA to be effective 7/26/2010.
Filed Date: 11/10/2010.
Accession Number: 20101110–5105.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 1, 2010.

Docket Numbers: ER11–2072–000.
Applicants: Carolina Power & Light Company.
Description: Carolina Power & Light Company submits tariff filing per 35.13(a)(2)(iii: Service Agreement No. 316 under Carolina Power and Light OATT to be effective 11/1/2010.
Filed Date: 11/10/2010.
Accession Number: 20101110–5106.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 1, 2010.

Docket Numbers: ER11–2073–000.
Applicants: PJM Interconnection, L.L.C.
Description: Interim Interconnection Service Agreement Cancellation Notice of PJM Interconnection, L.L.C.
Filed Date: 11/10/2010.
Accession Number: 20101110–5111.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 1, 2010.

Docket Numbers: ER11–2074–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35: Compliance Filing per August 12, 2010 Order in Docket No. ER09–1063–003 to be effective 11/11/2010.
Filed Date: 11/10/2010.
Accession Number: 20101110–5116.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 1, 2010.

Docket Numbers: ER11–2075–000.
Applicants: Ameren Illinois Company.
Description: Ameren Illinois Company submits tariff filing per 35.13(a)(2)(iii): Submission of Changes to Joint Ownership Agreement to be effective 12/31/9998.
Filed Date: 11/10/2010.
Accession Number: 20101110–5117.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 1, 2010.

Docket Numbers: ER11–2076–000.
Applicants: Deseret Generation & Transmission Co-operative, Inc.
Description: Deseret Generation & Transmission Co-operative, Inc. submits tariff filing per 35.1: Baseline Tariff Filing to be effective 11/10/2010.
Filed Date: 11/10/2010.
Accession Number: 20101110–5118.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 1, 2010.

Docket Numbers: ER11–2077–000.
Applicants: Ameren Transmission Company of Illinois.
Description: Ameren Transmission Company of Illinois submits tariff filing per 35.1: Submission of Changes to Joint Ownership Agreement to be effective 12/31/9998.

Filed Date: 11/10/2010.
Accession Number: 20101110–5120.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 1, 2010.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES10–58–000.
Applicants: Kansas City Power & Light Company.
Description: Amendment to Section 204 Application of Kansas City Power & Light Company.
Filed Date: 11/10/2010.
Accession Number: 20101110–5053.
Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Any person desiring to intervene or to protest in any of the above proceedings 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) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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 St. NE., Washington, DC 20426.

The filings in the above proceedings 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 e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2010–29322 Filed 11–19–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

November 15, 2010.

Take notice that the Commission received the following land acquisition reports:

Docket Numbers: LA10–3–000.
Applicants: Pacific Gas and Electric Company.
Description: Report/Form of Pacific Gas and Electric Company.
Filed Date: 10/21/2010.
Accession Number: 20101021–5060.
Comment Date: 5 p.m. Eastern Time on Friday, November 19, 2010.

Docket Numbers: LA10–3–000.
Applicants: Bendwind, LLC; Big Sky Wind, LLC; DeGreeff DP, LLC; DeGreeffpa, LLC; CL Power Sales Eight, L.L.C.; Coalinga Cogeneration Company; CP Power Sales Nineteen, L.L.C.; CP Power Sales Seventeeen, L.L.C.; CP Power Sales Twenty, L.L.C.; Edison Mission Marketing & Trading, Inc.; Edison Mission Solutions, LLC; Elkhorn Ridge Wind, LLC; EME Homer City Generation, L.P.; Forward WindPower, LLC; Groen Wind, LLC; High Lonesome Mesa; Hillcrest Wind, LLC; Jeffers Wind 20, LLC; Kern River Cogeneration Company; Loredo Ridge Wind, LLC; Larswind, LLC; Lookout WindPower, LLC; Mid-Set Cogeneration Company; Midway-Sunset Cogeneration Company; Midwest Generation, LLC; Mountain Wind Power, LLC; Mountain Wind Power II, LLC; Salinas River Cogeneration Company; San Juan Mesa Wind Project, LLC; Sargent Canyon Cogeneration Company; Sierra Wind, LLC; Sleeping Bear, LLC; Southern California Edison Company; TAIR Windfarm, LLC; Walnut Creek Energy, LLC; Watson Cogeneration Company; Wildorado Wind, LLC; Taloga Wind, LLC.
Description: Q3 2010 CIS in Dkt. No. LA10–3 of Edison International.
Filed Date: 10/21/2010.
Accession Number: 20101021–5077.
Comment Date: 5 p.m. Eastern Time on Friday, November 19, 2010.

Docket Numbers: LA10–3–000.
Applicants: East Coast Power Linden Holding, LLC; Cogen Technologies Linden Venture, L.P.; Fox Energy Company LLC; Birchwood Power Partners, L.P.; Shady Hills Power Company, LLC; EFS Parlin Holdings, LLC; Inland Empire Energy Center, LLC.
Description: 3Q 2010 Site Report of GE Companies.
Filed Date: 10/21/2010.
Accession Number: 20101021–5102.
Comment Date: 5 p.m. Eastern Time on Friday, November 19, 2010.

Docket Numbers: LA10–3–000.
Applicants: Cloud County Wind Farm LLC.
Description: Cloud County Wind Farm LLC Notice of Non-Material Change in Status.
Filed Date: 10/25/2010.
Accession Number: 20101025–5302.
Comment Date: 5 p.m. Eastern Time on Friday, November 19, 2010.

Docket Numbers: LA10–3–000.
Applicants: CinCap IV, LLC; CinCap V, LLC; Cinergy Capital Trading, Inc.; Duke Energy Commercial Asset Management, Inc.; Duke Midwest Operating Companies; Duke Energy Carolinas, LLC; Duke Energy Indiana, Inc.; Duke Energy Kentucky, Inc.; Duke Energy Ohio, Inc.; Duke Energy Retail Sales, LLC; Duke Energy Trading and Marketing, LLC; Happy Jack Windpower, LLC; North Allegheny Wind, LLC; Silver Sage Windpower, LLC; St. Paul Cogeneration, LLC; Three Buttes Windpower, LLC; Kit Carson Windpower, LLC; Top of the World Energy, LLC.
Description: Duke Energy Corporation submits Land Acquisition Quarterly Report.
Filed Date: 10/27/2010.
Accession Number: 20101027–5050.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 17, 2010.

Docket Numbers: LA10–3–000.
Applicants: Duquesne Power, LLC; Duquesne Light Company; Duquesne Keystone LLC; Duquesne Conemaugh LLC; Macquarie Energy LLC.
Description: Reporting Site for New Generation Capacity Development of Macquarie Energy LLC, *et. al.*
Filed Date: 10/27/2010.
Accession Number: 20101027–5165.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 17, 2010.

Docket Numbers: LA10–3–000.
Applicants: ArcLight Energy Marketing, LLC; Coso Geothermal Power Holdings, LLC; Oak Creek Wind Power, LLC.
Description: Land Acquisition Site Reporting of ArcLight Energy Marketing, LLC, Coso Geothermal Power Holdings, LLC, and Oak Creek Wind Power, LLC.

Filed Date: 10/28/2010.
Accession Number: 20101028–5130.
Comment Date: 5 p.m. Eastern Time on Thursday, November 18, 2010.

Docket Numbers: LA10–3–000.
Applicants: Spring Canyon Energy LLC; Judith Gap Energy LLC; Invernergy TN LLC; Wolverine Creek Energy LLC; Grays Harbor Energy LLC; Forward Energy LLC; Grand Ridge Energy LLC; Willow Creek Energy LLC; Sheldon Energy LLC; Hardee Power Partners Limited; Spindle Hill Energy LLC; Invernergy Cannon Falls LLC; Beech Ridge Energy II LLC; Grand Ridge Energy III LLC; Grand Ridge Energy IV LLC; Grand Ridge Energy V LLC; Vantage Wind Energy LLC; Grand Ridge Energy II LLC.
Description: Site Report 2010 Third Quarter of Spring Canyon Energy LLC, *et. al.*
Filed Date: 10/29/2010.
Accession Number: 20101029–5128.
Comment Date: 5 p.m. Eastern Time on Friday, November 19, 2010.

Docket Numbers: LA10–3–000.
Applicants: Astoria Generating Company, L.P.; Boston Generating, LLC; Fore River Development, LLC; Mystic I, LLC; Mystic Development, LLC.
Description: Quarterly Land Acquisition Report of Astoria Generating Company, L.P.
Filed Date: 10/29/2010.
Accession Number: 20101029–5198.
Comment Date: 5 p.m. Eastern Time on Friday, November 19, 2010.

Docket Numbers: LA10–3–000.
Applicants: Alabama Electric Marketing, LLC; Big Sandy Peaker Plant, LLC; California Electric Marketing, LLC; Crete Energy Venture, LLC; High Desert Power Project, LLC; Kiowa Power Partners, LLC; Lincoln Generating Facility, LLC; New Covert Generating Company, LLC; New Mexico Electric Marketing, LLC; Rolling Hills Generating, L.L.C.; Tenaska Alabama Partners, Ltd.; Tenaska Alabama II Partners, L.P.; Tenaska Frontier Partners, Ltd; Tenaska Gateway Partners, Ltd; Tenaska Georgia Partners, L.P.; Tenaska Gateway Partners, Ltd; Tenaska Georgia Partners, L.P.; Tenaska Power Services Co.; Tenaska Virginia Partners, L.P.; Tenaska Washington Partners, L.P.; Tenaska Electric Marketing, LLC; University Park Energy, LLC; Wolf Hills Energy, LLC.
Description: Quarterly Land Acquisition Report of Alabama Electric Marketing, LLC.
Filed Date: 10/29/2010.
Accession Number: 20101029–5239.
Comment Date: 5 p.m. Eastern Time on Friday, November 19, 2010.

Docket Numbers: LA10–3–000.
Applicants: Niagara Generation, LLC.
Description: Land Acquisition Report for (3Q 2010) of Niagara Generation, LLC.
Filed Date: 11/01/2010.
Accession Number: 20101101–5189.
Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Docket Numbers: LA10–3–000.
Applicants: Iberdrola Renewables, Inc.; Atlantic Renewable Projects II LLC; Barton Windpower LLC; Big Horn Wind Project LLC; Big Horn II Wind Project LLC; Buffalo Ridge I LLC; Buffalo Ridge II LLC; Casselman Windpower LLC; Colorado Green Holdings LLC; Dillon Wind LLC; Dry Lake Wind Power, LLC; Dry Lake Wind Power II, LLC; Elk River Windfarm, LLC; Elm Creek Wind, LLC; Elm Creek Wind II LLC; Flat Rock Windpower LLC; Flat Rock Windpower II LLC; Flying Cloud Power Partners, LLC; Hardscrabble Wind Power LLC; Hay Canyon Wind LLC; Juniper Canyon Wind Power LLC; Klamath Energy LLC; Klamath Generation LLC; Klondike Wind Power LLC; Klondike Wind Power II LLC; Klondike Wind Power III LLC; Leaning Juniper Wind Power II LLC; Lempster Wind, LLC; Locust Ridge Wind Farm, LLC; Locust Ridge Wind Farm II, LLC; MinnDakota Wind LLC; Moraine Wind LLC; Moraine Wind II LLC; Mountain View Power Partners III, LLC; Pebble Springs Wind LLC; Providence Heights Wind, LLC; Rugby Wind LLC; Shiloh I Wind Project, LLC; Star Point Wind Project LLC; Streator-Cayuga Ridge Wind Power LLC; Trimont Wind I LLC; Twin Buttes Wind LLC; Northern Iowa Windpower II LLC; Farmers City Wind II LLC.
Description: Land Acquisition Report of Iberdrola Renewables, Inc., *et. al.*
Filed Date: 11/01/2010.
Accession Number: 20101101–5188.
Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Docket Numbers: LA10–3–000.
Applicants: Arlington Valley, LLC; Bluegrass Generation Company, L.L.C.; Bridgeport Energy LLC; DeSoto County Generating Company, LLC; Griffith Energy LLC; Las Vegas Power Company, LLC; LS Power Marketing, LLC; Renaissance Power, L.L.C.; Riverside Generating Company, L.L.C.; Rocky Road Power, LLC; Tilton Energy LLC.
Description: Quarterly Land Acquisition Report of Arlington Valley, LLC, *et al.*
Filed Date: 11/01/2010.
Accession Number: 20101101–5190.
Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Docket Numbers: LA10–3–000.
Applicants: El Dorado Energy, LLC; Elk Hills Power, LLC; Fowler Ridge II Wind Farm LLC; Gateway Energy Services, Corp; Mesquite Power, LLC; MXenergy Electric Inc.; San Diego Gas & Electric Company; Sempra Energy Trading LLC; Sempra Generation; Termoelectrica U.S., LLC.
Description: Land Acquisition Report of San Diego Gas & Electric Company.
Filed Date: 11/01/2010.
Accession Number: 20101101–5199.
Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Docket Numbers: LA10–3–000.
Applicants: Consumers Energy Company; CMS Energy Resource Management Company; Grayling Generating Station Limited Partnership; Genesee Power Station Limited Partnership; CMS Generation Michigan Power, L.L.C.; Dearborn Industrial Generation, L.L.C.
Description: Land Acquisition Report of Consumers Energy Company, *et al.*
Filed Date: 11/01/2010.
Accession Number: 20101101–5205.
Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Docket Numbers: LA10–3–000.
Applicants: Ashtabula Wind, LLC; Ashtabula Wind II, LLC; Ashtabula Wind III, LLC; Backbone Mountain Windpower LLC; Badger Windpower, LLC; Baldwin Wind, LLC; Bayswater Peaking Facility, LLC; Blythe Energy, LLC; Butler Ridge Wind Energy Center, LLC; Calhoun Power Company I, LLC; Crystal Lake Wind, LLC; Crystal Lake Wind II, LLC; Crystal Lake Wind III, LLC; Day County Wind, LLC; Diablo Winds, LLC; Doswell Limited Partnership; Elk City Wind, LLC; ESI Vansycle Partners, L.P.; Florida Power & Light Company; FPL Energy Burleigh County Wind, LLC; FPL Energy Cabazon Wind, LLC; FPL Energy Cape, LLC; FPL Energy Cowboy Wind, LLC; FPL Energy Green Power Wind, LLC; FPL Energy Hancock County Wind, LLC; FPL Energy Illinois Wind, LLC; FPL Energy Maine Hydro LLC; FPL Energy Marcus Hook, L.P.; FPL Energy MH50 L.P.; FPL Energy Mower County, LLC; FPL Energy New Mexico Wind II, LLC; FPL Energy North Dakota, LLC; FPL Energy North Dakota, LLC FPL Oklahoma Wind, LLC; FPL Energy Oliver Wind I, LLC; FPL Energy Oliver Wind II, LLC; FPL Energy Sooner Wind, LLC; FPL South Dakota Wind, LLC; FPL Energy Stateline II, Inc.; FPL Energy Vansycle, LLC; FPL Energy Wyman, LLC; FPL Energy Wyman IV, LLC; FPL Energy Wyoming, LLC; FPLE Rode Island State Energy, L.P.; Garden Wind, LLC; Gexa Energy LP; Gray County Wind Energy, LLC; Hawkeye Power Partners, LLC; High Majestic Wind Energy Center, LLC; High Winds, LLC; Jamaica Bay Peaking Facility, LLC;

Lake Benton Power Partners II, LLC; Langdon Wind, LLC; Logan Wind Energy LLC; Meyersdale Windpower LLC; Mill Run Windpower, LLC; Minco Wind, LLC; NextEra Energy Duane Arnold, LLC; NextEra Energy Power Marketing, LLC; NextEra Energy Point Beach, LLC; NextEra Energy Seabrook, LLC; Northeast Energy Associates, LP; North Jersey Energy Associates, LP; Northern Colorado Wind Energy, LLC; Osceola Windpower, LLC; Osceola Windpower II, LLC; Peetz Table Wind Energy, LLC; Pennsylvania Windfarms, Inc.; Sky River LLC; Somerset Windpower, LLC; Story Wind, LLC; Victory Garden Phase IV, LLC; Waymart Wind Farm, L.P.; Wessington Wind Energy Center, LLC; Wilton Wind II, LLC.

Description: Third Quarter 2010 Site Control Quarterly Filing of the NextEra Energy Companies submitted two days out-of-time.

Filed Date: 11/03/2010.

Accession Number: 20101103–5119.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 24, 2010.

Any person desiring to intervene or to protest in any of the above proceedings 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) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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 St. NE., Washington, DC 20426.

The filings in the above proceedings 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 e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–29321 Filed 11–19–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

November 15, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–1311–001.

Applicants: El Paso Natural Gas Company.

Description: El Paso Natural Gas Company submits tariff filing per 154.203: Non-Conforming Agreements Compliance to be effective 10/18/2010.

Filed Date: 11/04/2010.

Accession Number: 20101104–5030.

Comment Date: 5 p.m. Eastern Time on Thursday, November 18, 2010.

Docket Numbers: RP10–1228–001.

Applicants: Midcontinent Express Pipeline LLC.

Description: Midcontinent Express Pipeline LLC submits tariff filing per 154.203: Compliance Filing in Docket No. RP10–1228 to be effective 11/1/2010.

Filed Date: 11/10/2010.

Accession Number: 20101110–5071.

Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Docket Numbers: RP10–1236–001.

Applicants: Columbia Gas Transmission, LLC.

Description: Columbia Gas Transmission, LLC submits tariff filing per 154.203: NAESB V 1.9n Compliance 11.10.10 to be effective 9/17/2010.

Filed Date: 11/10/2010.

Accession Number: 20101110–5172.

Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Docket Numbers: RP10–1244–001.

Applicants: Kinder Morgan Louisiana Pipeline LLC.

Description: Kinder Morgan Louisiana Pipeline LLC submits tariff filing per 154.203: Compliance Filing in Docket No. RP10–1244 to be effective 11/1/2010.

Filed Date: 11/10/2010.

Accession Number: 20101110–5089.

Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Docket Numbers: RP10–1254–001.

Applicants: Crossroads Pipeline Company.

Description: Crossroads Pipeline Company submits tariff filing per 154.203: NAESB V 1.9 Compliance 11.10.10 to be effective 9/17/2010.

Filed Date: 11/10/2010.

Accession Number: 20101110–5161.

Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Docket Numbers: RP10–1399–001.

Applicants: Dauphin Island Gathering Partners.

Description: Dauphin Island Gathering Partners submits tariff filing per 154.203: Negotiated Rates Correction Filing to be effective 10/1/2010 .

Filed Date: 11/10/2010.

Accession Number: 20101110–5150.

Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Docket Numbers: RP10–1116–001.

Applicants: Steckman Ridge, LP.

Description: Steckman Ridge, LP submits tariff filing per 154.203: RP10–1116 Compliance Filing to be effective 11/1/2010.

Filed Date: 11/12/2010.

Accession Number: 20101112–5135.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 24, 2010.

Docket Numbers: RP10–1120–001.

Applicants: Egan Hub Storage, LLC.

Description: Egan Hub Storage, LLC submits tariff filing per 154.203: RP10–1120 Compliance Filing to be effective 11/1/2010.

Filed Date: 11/12/2010.

Accession Number: 20101112–5136.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 24, 2010.

Docket Numbers: RP10–1176–001.

Applicants: Southern Star Central Gas Pipeline, Inc.

Description: Southern Star Central Gas Pipeline, Inc. submits tariff filing per 154.203: NAESB 1.9 Correction Filing to be effective 10/20/2010.

Filed Date: 11/12/2010.

Accession Number: 20101112–5169.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 24, 2010.

Docket Numbers: RP10–1205–001.

Applicants: Young Gas Storage Company, Ltd.
Description: Young Gas Storage Company, Ltd. submits tariff filing per 154.203: NAESB Compliance to be effective 11/1/2010.
Filed Date: 11/12/2010.
Accession Number: 20101112–5388.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 24, 2010.

Docket Numbers: RP10–1214–001.
Applicants: Transwestern Pipeline Company, LLC.
Description: Transwestern Pipeline Company, LLC submits tariff filing per 154.203: TW NAESB 1.9 Compliance Filing to be effective 11/1/2010.
Filed Date: 11/12/2010.
Accession Number: 20101112–5272.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 24, 2010.

Docket Numbers: RP10–1215–001.
Applicants: Black Marlin Pipeline Company.
Description: Black Marlin Pipeline Company submits tariff filing per 154.203: NAESB V 1.9—Second Compliance Filing to be effective 11/1/2010.
Filed Date: 11/12/2010.
Accession Number: 20101112–5174.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 24, 2010.

Docket Numbers: RP10–1230–001.
Applicants: Cimarron River Pipeline, LLC.
Description: Cimarron River Pipeline, LLC submits tariff filing per 154.203: NAESB Correction Filing to be effective 11/1/2010.
Filed Date: 11/12/2010.
Accession Number: 20101112–5002.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 24, 2010.

Docket Numbers: RP10–1238–002.
Applicants: Columbia Gulf Transmission Company.
Description: Columbia Gulf Transmission Company submits tariff filing per 154.203: NAESB V 1.9 Compliance 11.11.10 to be effective 9/17/2010.
Filed Date: 11/12/2010.
Accession Number: 20101112–5005.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 24, 2010.

Docket Numbers: RP10–1335–001.
Applicants: Honeoye Storage Corporation.
Description: Honeoye Storage Corporation submits tariff filing per 154.203: Honeoye Storage Corporation, Volume No. 1A to be effective 11/1/2010.
Filed Date: 11/12/2010.
Accession Number: 20101112–5205.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 24, 2010.

Docket Numbers: RP10–960–004.
Applicants: B–R Pipeline Company.
Description: B–R Pipeline Company submits tariff filing per 154.203: NAESB 1.9 compliance 2 to be effective 11/1/2010.
Filed Date: 11/12/2010.
Accession Number: 20101112–5323.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 24, 2010.

Docket Numbers: RP10–961–004.
Applicants: USG Pipeline Company.
Description: USG Pipeline Company submits tariff filing per 154.203: NAESB 1.9 compliance 2 to be effective 11/1/2010.
Filed Date: 11/12/2010.
Accession Number: 20101112–5158.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 24, 2010.

Docket Numbers: RP11–10–001.
Applicants: Destin Pipeline Company, L.L.C.
Description: Destin Pipeline Company, L.L.C. submits tariff filing per 154.203: NASEB 1.9 Compliance Filing 1 to be effective 11/1/2010.
Filed Date: 11/12/2010.
Accession Number: 20101112–5301.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 24, 2010.

Docket Numbers: RP11–1429–001.
Applicants: Trans-Union Interstate Pipeline, L.P.
Description: Trans-Union Interstate Pipeline, L.P. submits tariff filing per 154.203: Trans-Union's Second Order No. 587 Compliance Filing to be effective 11/1/2010.
Filed Date: 11/12/2010.
Accession Number: 20101112–5182.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 24, 2010.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2010–29320 Filed 11–19–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No 1

November 15, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP11–1510–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: Transcontinental Gas Pipe Line Company, LLC Submits a Request for Waiver of the Commission's Capacity Regulations.
Filed Date: 11/10/2010.
Accession Number: 20101110–5074.
Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Docket Numbers: RP11–1511–000.
Applicants: Natural Gas Pipeline Company of America, LLC.
Description: Natural Gas Pipeline Company of America LLC submits tariff filing per 154.203: Compliance Filing in Docket No. RP10–1223 to be effective 11/1/2010.
Filed Date: 11/10/2010.
Accession Number: 20101110–5146.
Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Docket Numbers: RP11–1512–000.
Applicants: White River Hub, LLC.
Description: White River Hub, LLC submits tariff filing per 154.204: WRH Section Tabs to be effective 12/13/2010.
Filed Date: 11/10/2010.
Accession Number: 20101110–5170.
Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Docket Numbers: RP11–1513–000.
Applicants: Steuben Gas Storage Company.
Description: Steuben Gas Storage Company submits tariff filing per 154.203: Steuben Gas Storage 11–10–2010 filing to be effective 11/10/2010.

Filed Date: 11/10/2010.
Accession Number: 20101110–5173.
Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Docket Numbers: RP11–1514–000.
Applicants: Questar Overthrust Pipeline Company.
Description: Questar Overthrust Pipeline Company submits tariff filing per 154.204: QOPC Section Headings 2 to be effective 12/13/2010.
Filed Date: 11/10/2010.
Accession Number: 20101110–5174.
Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Docket Numbers: RP11–1515–000.
Applicants: Questar Southern Trails Pipeline Company.
Description: Questar Southern Trails Pipeline Company submits tariff filing per 154.204: QSTP Section Tabs to be effective 12/13/2010.
Filed Date: 11/12/2010.
Accession Number: 20101112–5000.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 24, 2010.

Docket Numbers: RP11–1516–000.
Applicants: Panther Interstate Pipeline Energy, LLC.
Description: Panther Interstate Pipeline Energy, LLC submits tariff filing per 154.203: Panther Tariff Filing Pursuant to Order on Order No. 587–U Compliance Filing to be effective 11/1/2010.
Filed Date: 11/12/2010.
Accession Number: 20101112–5120.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 24, 2010.

Docket Numbers: RP11–1517–000.
Applicants: American Midstream (AlaTenn), LLC.
Description: American Midstream (AlaTenn), LLC submits AlaTenn Compliance Filing, to be effective 11/1/2010.
Filed Date: 11/12/2010.
Accession Number: 20101112–5128.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 24, 2010.

Docket Numbers: RP11–1518–000.
Applicants: American Midstream (Midla), LLC.
Description: American Midstream (Midla), LLC submits tariff filing per 154.203: Midla Compliance Filing in Docket No. RP10–1268 to be effective 11/1/2010.
Filed Date: 11/12/2010.
Accession Number: 20101112–5129.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 24, 2010.

Docket Numbers: RP11–1519–000.
Applicants: Discovery Gas Transmission LLC.
Description: Discovery Gas Transmission LLC submits tariff filing per 154.313: 2011 HMRE Filing to be effective 1/1/2011.
Filed Date: 11/12/2010.
Accession Number: 20101112–5131.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 24, 2010.

Docket Numbers: RP11–1520–000.
Applicants: Destin Pipeline Company, L.L.C.
Description: Destin Pipeline Company, L.L.C. Annual Revenue Crediting Report.
Filed Date: 11/12/2010.
Accession Number: 20101112–5147.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 24, 2010.

Docket Numbers: RP11–1521–000.
Applicants: Discovery Gas Transmission LLC.
Description: Discovery Gas Transmission LLC submits tariff filing per 154.203: NAESB V1.9—2nd Compliance to be effective 11/1/2010.
Filed Date: 11/12/2010.
Accession Number: 20101112–5148.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 24, 2010.

Docket Numbers: RP11–1522–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: Transcontinental Gas Pipe Line Company, LLC submits tariff filing per 154.204: Clean-up Filing to be effective 12/13/2010.
Filed Date: 11/12/2010.
Accession Number: 20101112–5159.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 24, 2010.

Docket Numbers: RP11–1523–000.
Applicants: MoGas Pipeline LLC.
Description: MoGas Pipeline LLC submits tariff filing per 154.203: Supplemental NAESB Compliance Filing to be effective 11/1/2010 under RP11–01523–000.
Filed Date: 11/12/2010.
Accession Number: 20101112–5170.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 24, 2010.

Docket Numbers: RP11–1524–000.
Applicants: Total Peaking Services, L.L.C.
Description: Total Peaking Services, L.L.C. submits tariff filing per 154.203: Total Peaking Compliance Filing in Docket No. RP10–1259 to be effective 11/1/2010.
Filed Date: 11/12/2010.
Accession Number: 20101112–5228.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 24, 2010.

Docket Numbers: RP11–1525–000.
Applicants: Northern Natural Gas Company.
Description: Northern Natural Gas Company submits Second Revised Sheet No. 67 *et* al to FERC Gas Tariff, Sixth Revised Volume No. 1, Original Volume No. 1A, to be effective 10/25/2010.
Filed Date: 11/12/2010.
Accession Number: 20101112–5239.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 24, 2010.

Docket Numbers: RP11–1526–000.
Applicants: Pine Needle LNG Company, LLC.
Description: Pine Needle LNG Company, LLC Request for Waivers.
Filed Date: 11/12/2010.
Accession Number: 20101112–5276.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 24, 2010.

Docket Numbers: RP11–1527–000.
Applicants: Dauphin Island Gathering Partners.
Description: Dauphin Island Gathering Partners submits tariff filing per 154.204: Negotiated Rates 2010–11–10 to be effective 11/16/2010.
Filed Date: 11/15/2010.
Accession Number: 20101115–5027.
Comment Date: 5 p.m. Eastern Time on Monday, November 29, 2010.

Any person desiring to intervene or to protest in any of the above proceedings 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) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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 St. NE., Washington, DC 20426.

The filings in the above proceedings 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 e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–29319 Filed 11–19–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice Of Filings No 2

November 10, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–1082–001.
Applicants: Mojave Pipeline Company, LLC.
Description: Mojave Pipeline Company, LLC submits tariff filing per 154.203: Mojave Rate Case Tariff Sheet to be effective 12/1/2010.
Filed Date: 11/08/2010.
Accession Number: 20101108–5067.
Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Docket Numbers: RP10–1283–001.
Applicants: WestGas InterState, Inc.
Description: WestGas InterState, Inc. submits tariff filing per 154.203: 11.08.2010 WGI Baseline Correction to be effective 9/8/2010.
Filed Date: 11/08/2010.
Accession Number: 20101108–5150.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 17, 2010.

Docket Numbers: RP10–1107–001.
Applicants: Cimarron River Pipeline, LLC.
Description: Cimarron River Pipeline, LLC submits tariff filing per 154.203: Baseline Compliance to be effective 9/1/2010.
Filed Date: 11/09/2010.
Accession Number: 20101109–5108.
Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Docket Numbers: RP10–1181–001.
Applicants: Horizon Pipeline Company, L.L.C.
Description: Horizon Pipeline Company, L.L.C. submits tariff filing per 154.203: Compliance Filing Pursuant to FERC Order in Docket No. RP10–1181, to be effective 11/1/2010.
Filed Date: 11/09/2010.
Accession Number: 20101109–5059.
Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Docket Numbers: RP10–1206–001.
Applicants: Kinder Morgan Illinois Pipeline LLC.
Description: Kinder Morgan Illinois Pipeline LLC submits tariff filing per 154.203: Compliance Filing Pursuant to FERC Order in Docket No. RP10–1206–001, to be effective 11/1/2010.
Filed Date: 11/09/2010.
Accession Number: 20101109–5115.
Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Docket Numbers: RP10–1209–001
Applicants: Trailblazer Pipeline Company LLC.
Description: Trailblazer Pipeline Company LLC submits tariff filing per 154.203: Compliance Filing Pursuant to FERC Order in Docket No. RP10–1209 to be effective 11/1/2010.
Filed Date: 11/09/2010.
Accession Number: 20101109–5089.
Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Docket Numbers: RP10–1216–001.
Applicants: Hardy Storage Company, LLC.
Description: Hardy Storage Company, LLC submits tariff filing per 154.203: NAESB V 1.9 Compliance 11.9.10 to be effective 9/17/2010.
Filed Date: 11/09/2010.
Accession Number: 20101109–5144.
Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Docket Numbers: RP10–1248–001.
Applicants: Central Kentucky Transmission Company
Description: Central Kentucky Transmission Company submits tariff filing per 154.203: NAESB V 1.9 Compliance 11.9.10 to be effective 9/17/2010.
Filed Date: 11/09/2010.
Accession Number: 20101109–5117.
Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Docket Numbers: RP10–1137–002.
Applicants: Cimarron River Pipeline, LLC.
Description: Cimarron River Pipeline, LLC submits tariff filing per 154.203: ACA Correction No. 2 to be effective 10/1/2010.
Filed Date: 11/10/2010.
Accession Number: 20101110–5054.
Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Docket Numbers: RP10–1150–001.
Applicants: Kinder Morgan Interstate Gas Transmission LLC.
Description: Kinder Morgan Interstate Gas Transmission LLC submits Compliance Filing, to be effective 11/1/2010.
Filed Date: 11/10/2010.
Accession Number: 20101110–5041.
Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Docket Numbers: RP10–1151–001.
Applicants: TransColorado Gas Transmission Company LLC
Description: TransColorado Gas Transmission Company LLC submits tariff filing per 154.203: NAESB 1.9 Compliance to be effective 11/1/2010.
Filed Date: 11/10/2010.
Accession Number: 20101110–5044.
Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Docket Numbers: RP10–1153–001.
Applicants: Rockies Express Pipeline LLC.
Description: Rockies Express Pipeline LLC submits tariff filing per 154.203: NAESB 1.9 Compliance to be effective 11/1/2010.
Filed Date: 11/10/2010.
Accession Number: 20101110–5042.
Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Docket Numbers: RP10–1180–001.
Applicants: Transcontinental Gas Pipe Line Company,
Description: Transcontinental Gas Pipe Line Company, LLC submits Correction to NAESB 1.9 Compliance Filing, to be effective 11/1/2010.
Filed Date: 11/10/2010.
Accession Number: 20101110–5043.
Comment Date: 5 p.m. Eastern Time on Monday, November 22, 2010.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public

Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–29318 Filed 11–19–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7518–012—New York]

Erie Boulevard Hydropower L.P.; Notice of Scoping Meetings and Environmental Site Review

November 15, 2010.

Commission staff will be conducting two public scoping meetings and an environmental site review in support of the relicensing proceeding for the Hogansburg Hydroelectric Project (No. 7518), at the times and places noted below. The daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization concerns, while the evening meeting is primarily for receiving input from the public. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document that Commission staff will prepare in this proceeding.

The times of these meetings are as follows:

Daytime Scoping Meeting

Date: Tuesday, December 14, 2010.
Time: 1 p.m.

Evening Scoping Meeting

Date: Tuesday, December 14, 2010.
Time: 7 p.m.

The location for both meetings is: Wolfclan 37 Hotel, 1450 State Route 37, Hogansburg, NY 13655, Phone: (770) 992–2055.

Commission staff will conduct an environmental site review (site visit) of the project on Tuesday, December 14, 2010, starting at 3 p.m., following the daytime scoping meeting. All participants should meet at the Wolfclan 37 Hotel, 1450 State Route 37, Hogansburg, NY. All participants are responsible for their own transportation. Anyone with questions about the site visit should contact Mr. Steven Murphy of Brookfield Power at (315) 598–6130 on or before December 10, 2010.

Further details about the scoping process and the relicensing of the Hogansburg Project will be provided in a subsequent notice. For additional information, please contact John Mudre of the Commission staff at (202) 502–8902.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–29315 Filed 11–19–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ11–4–000]

City of Vernon, CA; Notice of Filing

November 15, 2010.

Take notice that on November 2, 2010, the City of Vernon, California submitted, with supporting documentation, the annual revision to its Transmission Revenue Balancing Account Adjustment and the Transmission Revenue Requirement, to be effective in calendar year 2011.

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 e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on November 23, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–29313 Filed 11–19–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Docket No. CP11–20–000

Transcontinental Gas Pipe Line Company, LLC; Notice of Request Under Blanket Authorization

November 15, 2010.

Take notice that on November 2, 2010, Transcontinental Gas Pipe Line Company, LLC (Transco), Post Office Box 1396, Houston, Texas 77251, filed a prior notice request pursuant to sections 157.205 and 157.216 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act (NGA) and Transco's blanket certificate issued in Docket Nos. CP82–426–000, for authorization to abandon certain offshore facilities. Specifically, Transco seeks to abandon, in place, 23.5 miles of 12-inch diameter pipeline located in offshore Texas extending from Matagorda Island Block 639 to Brazos Block A–133 and related metering and regulating facilities referred to as the Supply Lateral. Transco states the Supply Lateral will be abandoned in place by cutting and capping, pigging and filling with sea water. Transco also states the abandonment will not have any adverse impact on Transco's existing customers and no customers have received service through Supply Lateral for several years, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call

toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Nan Miksovsky, Post Office Box 1396, Houston, TX 77251, and telephone no. (713) 215–3422.

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–29312 Filed 11–19–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commissioners and Staff Attendance at FERC/NARUC Collaborative on Smart Response Meeting

November 12, 2010.

The Federal Energy Regulatory Commission (FERC or Commission) hereby gives notice that members of the Commission and/or Commission staff may attend the following meeting: FERC/NARUC Collaborative on Smart Response: Omni Hotel at CNN Center, 100 CNN Center, Atlanta, GA 30303. November 14, 2010 (8:15 a.m.–12:30 p.m.).

Further information may be found at *http://annual.narucmeetings.org/Program.cfm.*

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–29305 Filed 11–19–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2010–0874; FRL–8852–3]

Agency Information Collection Activities; Proposed Collection; Comment Request; Safer Detergent Stewardship Initiative (SDSI) Program; EPA ICR No. 2261.02, OMB Control No. 2070–0171

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.)*, this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR, entitled: "Safer Detergent Stewardship Initiative (SDSI) Program" and identified by EPA ICR No. 2261.02 and OMB Control No. 2070–0171, is scheduled to expire on March 31, 2011. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection.

DATES: Comments must be received on or before January 21, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2010–0874, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East, Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2010–0874. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–201–0874. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* 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 electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are

processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Clive Davies, Economics, Exposure, & Technology Division (7406M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–3821; fax number: (202) 564–8893; e-mail address: *davies.clive@epa.gov.*

For general information contact: The TSCA–Hotline, ABVI–Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

II. What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the collection activity.
7. Make sure to submit your comments by the deadline identified under **DATES**.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

III. What information collection activity or ICR does this action apply to?

Affected entities: Entities potentially affected by this action are establishments or organizations engaged in formulating, producing, purchasing, or distributing surfactants or products containing surfactants.

Title: Safer Detergent Stewardship Initiative (SDSI) Program.

ICR numbers: EPA ICR No. 2261.02, OMB Control No. 2070–0171.

ICR status: This ICR is currently scheduled to expire on March 31, 2011. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the Code of Federal Regulations (CFR), after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The SDSI is a voluntary program administered by the EPA to offer resources and recognition to businesses involved in the transition to safer surfactants. Surfactants are a major ingredient in cleaning products such as detergents, cleaners, airplane deicers, and fire-fighting foams. Safer surfactants are those that break down quickly to non-polluting compounds.

Under SDSI, businesses that have fully transitioned to safer surfactants, or (for non-profits, academic institutions, etc.) can document outstanding efforts to encourage the use of safer surfactants, are granted Champion status. At this level, the participant is invited to the SDSI awards ceremony, listed on the EPA SDSI Web site as a champion, and may use a special logo in their literature to help explain their participation in the program. Businesses that commit to a full and timely transition to safer surfactants, or (for non-profits, academic institutions, etc.) can document outstanding efforts to encourage the use of safer surfactants, are granted Partner status. This category provides recognition of significant accomplishments towards the use of safer surfactants. Partners will be listed on the EPA SDSI Web site and may be granted recognition as a Champion in the future if appropriate. This information collection addresses reporting activities that support the administration of the SDSI program.

Responses to this collection of information are voluntary. Respondents may claim all or part of a response confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average about 10 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 42 over 3 years/14 annually.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 1.0.

Estimated total annual burden hours: 140 hours.

Estimated total annual costs: $7,770. This includes an estimated burden cost of $7,770 and an estimated cost of $0 for capital investment or maintenance and operational costs.

IV. Are there changes in the estimates from the last approval?

There is a decrease of 3,610 hours (from 3,750 hours to 140 hours) in the total estimated annual respondent burden compared with that identified in the information collection most recently approved by OMB. This decrease reflects improved estimates of the number of applications EPA expects to receive, based on actual experience in administering the SDSI program. The decrease is an adjustment.

V. What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: November 16, 2010.

Stephen A. Owens,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2010–29393 Filed 11–19–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9229–7]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("CAA" or the "Act"), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree to address a lawsuit filed by Association of Irritated Residents in the United States District Court for the Northern District of California: *Association of Irritated Residents* v. *Jackson,* No. 3:10–CV–03051–WHA (N.D. CA.). On July 12, 2010, Plaintiff filed a complaint alleging that EPA failed to perform a mandatory duty under section 110(k)(2) of the CAA, 42 U.S.C. 7410(k)(2), to take timely final action on a submission entitled the 2008 $PM_{2.5}$ San Joaquin Valley Unified Air Pollution Control District Plan (the SJV $PM_{2.5}$ Nonattainment SIP), which was submitted to EPA on or about June 30, 2008. The SJV $PM_{2.5}$ nonattainment SIP includes measures intended to control emissions of fine particulate matter and its precursors within the San Joaquin Valley for purposes of attaining the 1997 annual and 24-hour PM2.5 NAAQS. The proposed consent decree establishes a deadline for EPA to take action on the SJV PM2.5 nonattainment SIP.

DATES: Written comments on the proposed consent decree must be received by *December 22, 2010.*

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2010–0886, online at *http://www.regulations.gov* (EPA's preferred method); by e-mail to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, *Mailcode:* 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Geoffrey L. Wilcox, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564–5601; fax number (202) 564–5603; email address: *wilcox.geoffrey@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

The proposed consent decree would resolve a lawsuit seeking to compel the Agency to take timely final action under section 110(k) of the CAA to approve, disapprove, or partially approve/disapprove the submission entitled the 2008 PM2.5 San Joaquin Valley Unified Air Pollution Control District Plan (the SJV PM2.5 nonattainment SIP), which was submitted to EPA on or about June 30, 2008. The SJV PM2.5 nonattainment SIP includes measures intended to control emissions of fine particulate matter and its precursors from sources located within the designated nonattainment area in the San Joaquin Valley of California, for purposes of attaining the 1997 annual and 24-hour PM2.5 NAAQS. The proposed consent decree requires that no later than September 30, 2011, EPA shall sign a notice taking the Agency's final action on the SJV PM2.5 nonattainment SIP, pursuant to section 110(k) of the CAA, 42 U.S.C. 7410(k). In addition, the proposed consent decree requires that no later than 15 business days following signature, EPA shall send the notice to the Office of the Federal Register for review and publication in the **Federal Register**. After EPA fulfills its obligations under the proposed consent decree, it provides that the parties shall file a joint request to the Court to dismiss this matter with prejudice.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this consent decree should be withdrawn, the terms of the proposed consent decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How can I get a copy of the consent decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2010–0886) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *http://www.regulations.gov.* You may use *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those

documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select "search".

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *http://www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD–ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *http://www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through *http://www.regulations.gov,* your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: November 12, 2010.

Richard B. Ossias,

Associate General Counsel.

[FR Doc. 2010–29404 Filed 11–19–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9229–8]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Consent Decree; Request for Public Comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("CAA" or the "Act"), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree to address a lawsuit filed by Sierra Club and Medical Advocates for Healthy Air (collectively "Plaintiffs") in the United States District Court for the Northern District of California: *Sierra Club, et al.* v. *Jackson,* No. 10–cv–01954 VRW (N.D. CAO.). On May 6, 2010, Plaintiffs filed a complaint alleging that EPA failed to perform a mandatory duty under section 110(k)(2) of the CAA, 42 U.S.C. 7410(k)(2) to take timely final action to approve, disapprove, or partially approve/disapprove the San Joaquin Valley Air Pollution Control District's 8-Hour Ozone Plan, which was submitted to EPA on November 16, 2007. The proposed consent decree establishes a deadline for EPA to take action.

DATES: Written comments on the proposed consent decree must be received by *December 22, 2010.*

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2010–0942, online at *http://www.regulations.gov* (EPA's preferred method); by e-mail to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Jan Tierney, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564–5598; fax number (202) 564–5603; email address: *tierney.jan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

The proposed consent decree would resolve a lawsuit seeking to compel the Administrator to take timely final action under section 110(k) of the CAA to approve, disapprove, or partially approve/disapprove the San Joaquin Valley Air Pollution Control District's 8-Hour Ozone Plan, which was submitted to EPA on November 16, 2007 (8-Hour Ozone Plan). The proposed consent decree requires that no later than December 15, 2011, EPA shall sign a notice of the Agency's final action on the 8-Hour Ozone Plan pursuant to section 110(k) of the CAA, and thereafter send the notice to the Office of the Federal Register for publication. After EPA fulfills its obligations under the decree, the parties shall file a joint request to the Court to dismiss this matter with prejudice.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How can I get a copy of the consent decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2010–0942) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *http://www.regulations.gov.* You may use *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select "search".

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *http://www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD–ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *http://www.regulations.gov* website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through *http://www.regulations.gov,* your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: November 12, 2010.

Richard B. Ossias,

Associate General Counsel.

[FR Doc. 2010–29399 Filed 11–19–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9228–1]

Notice of a Project Waiver of Section 1605 (Buy American Rquirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Utah Division of Water Quality (UDWQ)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA is hereby granting a project waiver of the Buy American requirements of ARRA Section 1605 under the authority of Section 1605(b)(2) [manufactured goods are not produced in the United States of a satisfactory quality] to the UDWQ for the purchase of coconut fiber (coir) woven mats. This is a project-specific waiver and only applies to the use of the specified product for the ARRA-funded project being proposed. Any other ARRA project that may wish to use the same product must apply for a separate waiver based on project-specific circumstances. These coconut fiber woven mats, which are supplied by Geo Dynamics in Ogden, UT, are manufactured in India and Sri Lanka, and meet the UDWQ's performance specifications and requirements. The Regional Administrator is making this determination based on the review and recommendations of EPA Region 8's Technical & Financial Services Unit. The UDWQ has provided sufficient documentation to support its request. The Assistant Administrator of the Office of Administration and Resources Management has concurred on this decision to make an exception to Section 1605 of ARRA. This action permits the purchase of coconut fiber woven mats for the East Canyon Stream Restoration Project being implemented by the UDWQ that may otherwise be prohibited under Section 1605(a) of the ARRA.

DATES: *Effective Date:* October 15, 2010.

FOR FURTHER INFORMATION CONTACT: Jody Ostendorf, Recovery Act Coordinator, (303) 312–7814, or Brian Friel, SRF Coordinator, (303) 312–6277, Technical & Financial Services Unit, Water Program, Office of Partnerships & Regulatory Assistance, U.S. EPA Region 8, 1595 Wynkoop St., Denver, CO 80202.

SUPPLEMENTARY INFORMATION: In accordance with ARRA Section 1605(c) and pursuant to Section 1605(b)(2) of Public Law 111–5, Buy American requirements, EPA hereby provides notice that it is granting a project waiver to the UDWQ for the acquisition of coconut fiber woven mats which are manufactured in India and Sri Lanka.

Section 1605 of the ARRA requires that none of the appropriated funds may be used for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States, or unless a waiver is provided to the recipient by the head of the appropriate agency, here EPA. A waiver may be provided if EPA

determines that (1) applying these requirements would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

This manufactured good will be used as part of the "East Canyon Stream Restoration Project," a stream stabilization project in Utah. The UDWQ states that only coconut fiber woven mats meet the specific needs of this project, which are durability, mat size and biodegradability. They indicate that the key characteristics that set coconut fiber woven mats apart from other alternatives are a 4–5 year in-stream life expectancy followed by 100% biodegradation, and visually unobtrusive properties. UDWQ states that coconut fibers are more durable than straw and other materials used in alternative mat products, and they do not require the incorporation of polypropylene and/or other synthetic products that are not 100% biodegradable.

The April 28, 2009 EPA HQ Memorandum, "Implementation of Buy American provisions of Public Law 111–5, the 'American Recovery and Reinvestment Act of 2009'," defines *reasonably available quantity* as "the quantity of iron, steel, or relevant manufactured good is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design."

The OMB ARRA Buy American Guidance cites the Federal Acquisition Regulation (FAR) as an appropriate reference for availability waiver inquiries. Specifically, the OMB Guidance at § 176.80(a)(1) states (at 77 FR 18452) that "The determinations of nonavailability of the articles listed at 48 CFR 25.104(a) and the procedures at 48 CFR 25.103(b)(1) also apply if any of those articles are manufactured goods needed in the project. The FAR's list of nonavailable articles includes "Fibers of the following types: * * * coir," thereby establishing a presumption of lack of U.S. availability. The FAR procedures at 48 CFR 25.103(b)(1) specified as required in the OMB Guidance state that:

(1)(i) A nonavailability determination has been made for the articles listed in 25.104. This determination does not necessarily mean that there is no domestic source for the listed items, but that domestic sources can only meet 50 percent or less of total U.S. government and nongovernment demand. (ii) Before acquisition of an article on the list, the procuring agency is responsible to conduct market research appropriate to the circumstances, including seeking of domestic sources.

The applicant met the procedures specified for the availability inquiry as appropriate to the circumstances by conducting on-line research and contacting suppliers, and all sources indicated that coconut fiber woven mats are only manufactured outside of the U.S. Therefore, based on the information provided to EPA and to the best of our knowledge at this time, coconut fiber woven mats are not manufactured in the United States, and no other U.S. manufactured product can meet UDWQ's performance specifications and requirements.

The purpose of the ARRA is to stimulate economic recovery in part by funding current infrastructure construction, not to delay projects that are "shovel ready" by requiring agencies such as UDWQ to revise their standards and specifications and to start the bidding process again. The imposition of ARRA Buy American requirements on such projects otherwise eligible for ARRA State Revolving Fund assistance would result in unreasonable delay and thus displace the "shovel ready" status for this project. To further delay project implementation is in direct conflict with a fundamental economic purpose of the ARRA, which is to create or retain jobs.

EPA's national contractor prepared a technical assessment report dated September 8, 2010 based on the submitted waiver request. The report determined that the waiver request submittal was complete, that adequate technical information was provided, and that there were no significant weaknesses in the justification provided. The report confirmed the waiver applicant's claim that there are no comparable domestic products that can meet the specific durability, size and biodegradation needs of this project.

The Technical & Financial Services Unit has reviewed this waiver request and has determined that the supporting documentation provided by the UDWQ is sufficient to meet the criteria listed under Section 1605(b) of the ARRA and in the April 28, 2009, "Implementation of Buy American provisions of Public Law 111–5, the 'American Recovery and Reinvestment Act of 2009' Memorandum": Iron, steel, and the manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality. The basis for this project waiver is the authorization provided in Section 1605(b)(2) of the ARRA. Due to the lack of production of this product in the United States in sufficient and reasonably available quantities and of a satisfactory quality in order to meet the UDWQ's performance specifications and requirements, a waiver from the Buy American requirement is justified.

EPA has determined that the UDWQ's waiver request can be processed as timely even though the request was made after the construction contract was signed. Consistent with the direction of the OMB Guidance at 2 CFR176.120, EPA has evaluated the UDWQ's request to determine if the request constitutes a late request. EPA will generally regard waiver requests with respect to components that were specified in the bid solicitation or in a general/primary construction contract as "late" if submitted after the contract date. However, in this case EPA has determined that the UDWQ's request, though requested after the contract date, may be processed as if it were timely. After the contract date, on July 20, 2010, the project manager visited the ARRA-funded Strawberry River Restoration project, which received a waiver for the same coir mat product. The success of that project inspired a re-design of the East Canyon Stream Restoration project to incorporate the identical coir mat product. At that time, the UDWQ realized that they would need a waiver. Accordingly, EPA has evaluated the request as a timely request.

The March 31, 2009 Delegation of Authority Memorandum provided Regional Administrators with the authority to issue exceptions to Section 1605 of the ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients. Having established both a proper basis to specify the particular good required for this project, and that this manufactured good was not available from a producer in the United States, the UDWQ is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111–5 for the purchase of coconut fiber woven mats using ARRA funds as specified in the UDWQ's request of July 8, 2009. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers "based on a finding under subsection (b)."

Authority: Pub. L. 111–5, section 1605.

Dated: October 28, 2010.

James B. Martin,

Regional Administrator, Region 8.

[FR Doc. 2010–29403 Filed 11–19–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

November 15, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before January 21, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to the Federal Communications Commission via e-mail to *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information contact Leslie F. Smith, (202) 418–0217, *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0997.

Title: Section 52.15(k), Numbering Utilization and Compliance Audit.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents and Responses: 25 respondents; 25 responses.

Estimated Time per Response: 33 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Mandatory. *See* 47 U.S.C. 251.

Total Annual Burden: 825 hours.

Total Annual Cost: $0.00.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: Commission employees and the independent auditor are prohibited by 47 U.S.C. 220(f) from divulging any fact or information that may come to their knowledge in the course of performing the audit, except as directed by the Commission or a court.

Needs and Uses: The audit program, consisting of audit procedures and guidelines, is developed to conduct random audits. The random audits are conducted on the carriers that use numbering resources in order to verify the accuracy of numbering data reported on FCC Form 502, and to monitor compliance with FCC rules, orders and applicable industry guidelines. Failure of the audited carriers to respond to the audits can result in penalties. Based on the final audit report, evidence of potential violations may result in enforcement action.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2010–29380 Filed 11–19–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update listing of financial institutions in liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as "of record" notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *http://www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: November 15, 2010.

Federal Deposit Insurance Corporation.

Pamela Johnson,

Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10311	Copper Star Bank	Scottsdale	AZ	11/12/2010
10312	Darby Bank & Trust Co.	Vidalia	GA	11/12/2010
10313	Tifton Banking Company	Tifton	GA	11/12/2010

[FR Doc. 2010–29382 Filed 11–19–10; 8:45 am]

BILLING CODE 6741–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 6, 2010.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *The James Blin Family (James Lee Blin and Randy Alan Blin, both of Independence, Iowa; Timothy Lee Blin, Ponte Vedra Beach, Florida; Sandra Blin Burgard, Bozeman, Montana; and Tamara Blin Diamond, Mesa, Arizona);* to retain control of voting shares of Independence Bancshares, Inc., Independence, Iowa, and thereby indirectly retain control of voting shares of Security State Bank, Independence, Iowa and Northeast Security Bank, Sumner, Iowa.

Board of Governors of the Federal Reserve System, November 16, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–29269 Filed 11–19–10; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 16, 2010.

A. Federal Reserve Bank of Atlanta (Clifford Stanford, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30309:

1. *Independent Bancshares, Inc. Employee Stock Ownership Plan,* Red Bay, Alabama; to acquire 27.17 percent of the voting shares of Independent Bancshares, Inc., and thereby indirectly acquire voting shares of Community Spirit Bank, both of Red Bay, Alabama, and voting shares of Spirit Bancshares, Inc., and thereby indirectly acquire voting shares of Spirit Bank, both of Belmont, Mississippi.

2. *North American Financial Holdings, Inc.,* Charlotte, North Carolina; to acquire up to 100 percent of the voting shares of Capital Bank Corporation, and thereby indirectly acquire voting shares of Capital Bank, both of Raleigh, North Carolina.

Board of Governors of the Federal Reserve System, November 17, 2010.

Robert de V. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–29345 Filed 11–19–10; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 16, 2010.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *FA Capital, LLC, and Community Bank Investors of America, L.P.,* both of Richmond, Virginia; to retain 9.86 percent of the voting shares of ICB Financial, and thereby indirectly retain voting shares of Inland Community Bank, N.A., both of Ontario, California.

Board of Governors of the Federal Reserve System, November 16, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–29268 Filed 11–19–10; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the

companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 6, 2010.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *Royal Bank of Canada,* Montreal, Canada; to acquire BlueBay Asset Management plc, London, England, and thereby indirectly acquire BlueBay Asset Management USA LLC, Darien, Connecticut, and thereby engage in financial and investment advisory activities, pursuant to section 225.28(b)(6)(iii) of Regulation Y.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Aslin Group, Inc.,* Overland Park, Kansas; to engage in servicing loans, pursuant to section 225.28(b)(1) of Regulation Y.

2. *Aslin Capital I, LLC,* Cape Haze, Florida; to engage in servicing loans, pursuant to section 225.28(b)(1) of Regulation Y.

3. *Aslin Opportunity Fund BK, LP,* Cape Haze, Florida; to engage in servicing loans, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, November 16, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–29270 Filed 11–19–10; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Projects of National Significance—Family Support 360.

OMB No.: New collection.

Description: The Administration on Developmental Disabilities (ADD), part of the Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), funds the Projects National Significance Family Support 360 (FS 360) Initiative. As with any program of Federal assistance to the States, it is in the public's interest to determine the extent to which it has the desired impacts. To complete this task with scientific rigor, it will be necessary to collect high quality survey data from the participants in the 17 funded programs across the nation.

ADD has already designed the instruments, methodologies, procedures, and analytical techniques for this task. Moreover, they have been pilot tested in 11 States. The tools and techniques were submitted for review, and were approved, by Institutional Review Boards for the Protection of Human Subjects (IRB) in those States in which IRB approval was necessary. The tools and techniques were repeatedly revised and improved, then applied successfully.

These instruments and methods are all aimed to answer the elementary scientific outcome questions: Are the participants in the FS 360 programs "better off" because of their participation? If so, how much, in what way(s), and at what public cost?

This information will inform public policy regarding the best methods to deliver important supports to families of individuals with developmental disabilities.

Respondents: The respondents are the families of and individuals with developmental disabilities who participate in the ADD Family Supports 360 grant programs at 17 sites across the nation. Ten of the sites are focused on military families, and the other seven are focused on civilian families. Each year will consist of a pre and post assessment. On an annual basis, it is expected that 680 participating families will be encouraged to participate. Of this number, it is estimated that interviews will be completed with 510 or 75 percent (some families may not give informed consent or may miss the appointment for interviews).

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
The survey instrument is called the Impact Assessment for Family Support 360 Participants. It does not have a common acronym or ACF report number. It is a very brief two page protocol derived from twenty years of quality of life research in the developmental disabilities field.	680	1	0.52	353.60

Estimated Total Annual Burden Hours:

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7285, E-mail: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Dated: November 16, 2010.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2010–29293 Filed 11–19–10; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–267]

Availability of Draft Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (DHHS).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the Toxicological Profile for Toxaphene (Update) and the Toxicological Profile for Trichlorobenzenes for review and comment. We are seeking public comments for review and potential inclusion in the profiles. These comments can include additional information or reports on studies about the health effects of toxaphene and trichlorobenzenes. ATSDR remains committed to providing a public comment period for these documents to best serve public health and our clients.

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), section 104(i)(3), [42 U.S.C. 9604(i)(3)], directs the ATSDR administrator to prepare toxicological profiles of priority hazardous substances and, as necessary, to revise and publish each updated toxicological profile.

DATES: To be considered, comments on these draft toxicological profiles must be received not later than February 25, 2011. Comments received after the close of the public comment period will be considered at the discretion of ATSDR, based upon what is deemed to be in the best interest of the general public.

ADDRESSES: Requests for printed copies of the draft toxicological profiles should be sent via e-mail to *cdcinfo@cdc.gov*, or to Ms. Olga Dawkins, Division of Toxicology and Environmental Medicine, Agency for Toxic Substances and Disease Registry, Mailstop F–62, 1600 Clifton Road, NE., Atlanta, Georgia 30333. Electronic access to these documents is also available at: *http://www.atsdr.cdc.gov/toxprofiles/index.asp.*

Written comments and other data submitted in response to this notice and to the draft toxicological profiles should bear the docket control number ATSDR–XXX. Send one copy of all comments and three copies of all supporting documents to the attention of Ms. Nickolette Roney, Division of Toxicology and Environmental Medicine, Agency for Toxic Substances and Disease Registry, Mailstop F–62, 1600 Clifton Road, NE., Atlanta, Georgia 30333, by the end of the comment period. Electronic comments may be sent via e-mail to: *tppubliccomments@cdc.gov*. Please include toxaphene or trichlorobenzenes in the subject line of the e-mail. Because all public comments regarding ATSDR toxicological profiles are available for public inspection, no confidential business information or other confidential information should be submitted in response to this notice.

FOR FURTHER INFORMATION CONTACT: Ms. Olga Dawkins, Division of Toxicology and Environmental Medicine, Agency for Toxic Substances and Disease Registry, Mailstop F–62, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (770) 488–3315. Electronic access to this document is also available at: *http://www.atsdr.cdc.gov/toxprofiles/index.asp.*

Comments and other data submitted in response to this notice and the draft toxicological profiles should bear the docket control number ATSDR–267.

SUPPLEMENTARY INFORMATION: The Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99–499) amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 *et seq.*) by establishing certain responsibilities for ATSDR and the U.S. Environmental Protection Agency (U.S. EPA) with regard to hazardous substances most commonly found at facilities on the CERCLA National Priorities List (NPL). As part of these responsibilities, the ATSDR administrator must prepare toxicological profiles for substances enumerated on the priority list of hazardous substances. This list identifies 275 hazardous substances that, according to ATSDR and U.S. EPA, pose the most significant potential threat to human health. The availability of the revised priority list of 275 hazardous substances was announced in the **Federal Register** on March 6, 2008 (73 FR 12178). In addition, ATSDR has the authority to prepare toxicological profiles for substances not found at sites on the NPL, in an effort to "* * * establish and maintain inventory of literature, research, and studies on the health effects of toxic substances" under CERCLA Section 104(i)(1)(B), to respond to requests for consultation under CERCLA Section 104(i)(4), and as otherwise necessary to support the site-specific response actions conducted by ATSDR.

Each profile will include an examination, a summary, and an interpretation of available toxicological information and epidemiological evaluations. This information and these data identify the levels of significant human exposure for the substances and for the associated health effects. The profiles must also include a determination of whether adequate information on the health effects of each substance is available or is being developed. If adequate information is not available, ATSDR, in cooperation with the National Toxicology Program (NTP), is required to ensure the initiation of research to determine such health effects.

Although ATSDR considered key studies for each of the substances during the profile development process, this **Federal Register** notice solicits any relevant, additional studies, particularly unpublished data and ongoing studies. ATSDR will evaluate such data or studies for possible addition to the profiles, now or in the future. All toxicological profiles issued as "Drafts for Public Comment" represent ATSDR's best efforts to provide crucial toxicological information on priority hazardous substances.

The draft toxicological profiles will be made available to the public on or about October 17, 2010.

Hazardous substances	CAS No.
Toxaphene	8001–35–2
Trichlorobenzenes *	
1,2,3 Trichlorobenzene	87–61–6
1,2,4 Trichlorobenzene	120–82–1
1,3,5 Trichlorobenzene	108–70–3
Trichlorobenzene	12002–48–1

* Denotes new profile.

Dated: November 17, 2010.

Ken Rose,

Director, Office of Policy, Planning and Evaluation, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry.

[FR Doc. 2010–29332 Filed 11–19–10; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0571]

Guidance for Industry: The Safety of Imported Traditional Pottery Intended for Use With Food and the Use of the Term "Lead Free" in the Labeling of Pottery; and Proper Identification of Ornamental and Decorative Ceramicware; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled "Guidance for Industry: The Safety of Imported Traditional Pottery Intended for Use With Food and the Use of the Term 'Lead Free' in the Labeling of Pottery; and Proper Identification of Ornamental and Decorative Ceramicware." FDA is issuing the guidance in response to recent findings of lead contamination of imported traditional pottery labeled as "Lead Free." The guidance identifies several key practices that manufacturers of pottery may implement to help ensure that lead contamination of non-lead glazed (NLG) pottery will not occur and also reminds manufacturers of existing requirements for properly labeling certain ornamental and decorative ceramicware as not for use for food-handling purposes.

DATES: Submit either electronic or written comments on the guidance at any time.

ADDRESSES: Submit electronic comments on the guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written requests for single copies of the guidance to the Office of Food Safety, Center for Food Safety and Applied Nutrition (HFS–317), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. *See* the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Michael E. Kashtock, Center for Food Safety and Applied Nutrition (HFS–317), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2022.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance entitled "The Safety of Imported Traditional Pottery Intended for Use With Food and the Use of the Term 'Lead Free' in the Labeling of Pottery; and Proper Identification of Ornamental and Decorative Ceramicware." FDA is issuing the guidance in response to recent findings of lead contamination of imported traditional pottery labeled as "Lead Free." This contamination is occurring even with the use of newer production practices that do not utilize intentionally added lead (*e.g.,* the use of non-lead glazes). The guidance identifies several key practices that manufacturers of pottery may implement to help ensure that lead contamination of NLG pottery will not occur and also reminds manufacturers of existing requirements for properly labeling certain ornamental and decorative ceramicware items as not for use for food-handling purposes.

FDA is issuing this guidance as level 1 guidance. Consistent with FDA's good guidance practices regulation (21 CFR 10.115), the Agency will accept comments, but is implementing the guidance document immediately, in accordance with 21 CFR 10.115(g)(2), because the Agency has determined that prior public participation is not feasible or appropriate in light of the need to respond expeditiously to numerous recent reports of lead contamination of imported traditional pottery. The guidance represents the Agency's current thinking on food safety considerations relevant to lead contamination of NLG traditional pottery, and labeling considerations for food use and non food use pottery that may contain lead. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternate approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (*see* **ADDRESSES**) either electronic or written comments regarding the guidance. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the guidance at *http://www.fda.gov/FoodGuidances* or *http://www.regulations.gov*.

Dated: November 5, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–29292 Filed 11–19–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Competitive Revision for Stem Cell Repository Relevant to Mental Disorders.

Date: December 1, 2010.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Vinod Charles, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9606, Bethesda, MD 20892–9606, 301–443–1606, *charlesvi@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS).

Dated: November 16, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–29356 Filed 11–19–10; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Conference Grants Review.

Date: December 13, 2010.

Time: 1 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 3AN–12F, Bethesda, MD 20814.

Contact Person: Helen R. Sunshine, PhD, Chief, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–12F, Bethesda, MD 20892, 301–594–2881, *sunshinh@nigms.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: November 16, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–29359 Filed 11–19–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee J—Population and Patient-Oriented Training.

Date: February 24, 2011.

Time: 7:45 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Alexandria, 400 Courthouse Square, Alexandria, VA 22314.

Contact Person: ILDA M. Mckenna, PhD, Scientific Review Officer, Research Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8111, Bethesda, MD 20892, 301–496–7481, *mckennai@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 16, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–29362 Filed 11–19–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group; Subcommittee A—Cancer Centers.

Date: December 9–10, 2010.

Time: 8 a.m. to 12 p.m.

Agenda: To reveiw and evaluate grant applications.

Place: Residence Inn Bethesda, 735 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Gail J. Bryant, MD, Medical Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 8107, MSC 8328, Bethesda, MD 20892–8328, (301) 402–0801, *gb30t@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 16, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–29363 Filed 11–19–10; 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; Member Conflict: Neurodegenerative Disease and Anterior Eye Disorders.

Date: December 9–10, 2010.

Time: 8 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Suzan Nadi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892, 301–435–1259, *nadis@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Biomaterials and Biointerfaces Study Section.

Date: January 5–6, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Steven J Zullo, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7849, Bethesda, MD 20892, 301–435–2810, *zullost@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: November 16, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–29361 Filed 11–19–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0586]

Hoffmann-La Roche Inc.; Withdrawal of Approval of a New Drug Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new drug application (NDA) for ACCUTANE (isotretinoin) Capsules held by Hoffmann-La Roche Inc., 340 Kingsland St., Nutley, NJ 07110–1199. Hoffmann-La Roche Inc. notified the Agency in writing that the drug product was no longer marketed and requested that the approval of the application be withdrawn.

DATES: *Effective Date:* November 22, 2010.

FOR FURTHER INFORMATION CONTACT: Florine P. Purdie, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6366, Silver Spring, MD 20993–0002, 301–796–3601.

SUPPLEMENTARY INFORMATION: Hoffmann-La Roche Inc. has requested that FDA withdraw approval of NDA 18–662, ACCUTANE (isotretinoin) Capsules, under the process in § 314.150(c) (21 CFR 314.150(c)), stating that the drug product is no longer marketed. Hoffmann-La Roche Inc. has also, by its request, waived its opportunity for a hearing. Withdrawal of approval of an application under § 314.150(c) is without prejudice to refiling.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research, by the Commissioner of Food and Drugs, approval of NDA 18–662, ACCUTANE (isotretinoin) Capsules, and all amendments and supplements thereto, is hereby withdrawn, effective November 22, 2010. Introduction or delivery for introduction into interstate commerce of a product without an approved application violates sections 301(a) and (d) of the FD&C Act (21 U.S.C. 331(a) and (d)). ACCUTANE (isotretinoin) Capsules that are in inventory on the date that this notice becomes effective (see the **DATES** section) may continue to be dispensed until the inventories have been depleted or the drug product has reached its expiration date or otherwise become violative, whichever occurs first.

In the **Federal Register** of July 7, 2010 (75 FR 39024), FDA issued a notice announcing its determination that ACCUTANE (isotretinoin) Capsules were not withdrawn from sale for reasons of safety or effectiveness, and isotretinoin continues to be marketed under approved abbreviated new drug applications (ANDAs). The holders of ANDAs for isotretinoin are subject to an approved risk evaluation and mitigation strategy (REMS) under section 505–1 of the FD&C Act (21 U.S.C. 355–1), and the REMS, known as the iPLEDGE program, remains in effect.

Dated: November 2, 2010.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 2010–29348 Filed 11–19–10; 8:45 am]

BILLING CODE 4160–01–P

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Meeting; Advisory Council on Historic Preservation

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation (ACHP) will meet Thursday, December 2, 2010. The meeting will be held in Room MO9 of the Old Post Office Building, 1100 Pennsylvania Ave, NW., Washington, DC at 9 a.m.

The ACHP was established by the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*) to advise the President and Congress on national historic preservation policy and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The ACHP's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Defense, Housing and Urban Development, Commerce, Education, Veterans Affairs, and Transportation; the Administrator of the General Services Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; a Native American; and eight non-Federal members appointed by the President.

Call to Order—9 a.m.

I. Chairman's Welcome
II. Chairman's Report
III. Executive Director's Report
IV. Native American Activities
  A. Native American Program Report
  1. HUD Delegation of Tribal Consultation Responsibilities
  2. DOI–DoD–ACHP Memorandum of Understanding on Consultation with Native Hawaiians
  B. Native American Advisory Group
V. Strategic Planning: Next Steps
VI. Sustainability and Historic Preservation Task Force
VII. Preservation Initiatives Committee
  A. America's Great Outdoors Initiative and Historic Preservation
  B. Economic Benefits Study
  C. Legislation
VIII. Federal Agency Programs Committee
  A. Historic Preservation and Energy Development Working Group
  B. National Trust Section 106 Report
  C. Section 106 Update
IX. Communications, Education, and Outreach Committee
  A. Engaging Youth in Historic Preservation
  B. New Directions for ACHP Awards Programs
X. New Business
XI. Adjourn

Note: The meetings of the ACHP are open to the public.

If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Room 803, Washington, DC, 202–606–8503, at least seven (7) days prior to the meeting. For further information: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., #803, Washington, DC 20004.

Dated: November 16, 2010.

John M. Fowler,

Executive Director.

[FR Doc. 2010–29355 Filed 11–19–10; 8:45 am]

BILLING CODE 4310–K6–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2010–0065]

Public Meetings of National Flood Insurance Program (NFIP) Reform Effort; Correction

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Announcement of Public Meetings; correction.

SUMMARY: The Federal Emergency Management Agency (FEMA) published a document in the **Federal Register** on November 10, 2010 (75 FR 69096), announcing two public meetings. The document contained an incorrect e-mail address. Due to the incorrect e-mail address, FEMA is lengthening the amount of time that the public has to contact FEMA to request special accommodations. FEMA has chosen to republish the corrected notice in its entirety. This notice announces two public meetings of the National Flood Insurance Program (NFIP) Reform Effort. In performing its mission, FEMA believes it is important to continually update stakeholders on its programs and answer any questions and listen to comments from them on how its programs can be more efficient and effective at meeting the needs of the public. To this end, FEMA has engaged in a comprehensive reform effort to address the concerns of the wide array of stakeholders involved in the ongoing debate about the NFIP. FEMA chose a participatory policy analysis framework to guide the NFIP Reform effort. Policy analysis employs systematic inquiry and evaluation to assess policy alternatives. The participatory policy analysis process allows public decisions to be made in a structured, defensible, and collaborative manner.

The effort is comprised of three phases designed to engage the greatest number of stakeholders and consider the largest breadth of public policy options. Phase I focused on the capture and analysis of stakeholder concerns and recommendations. During Phase II, FEMA performed additional analysis of existing data and identified a set of evaluation criteria. In Phase III, a portfolio of public policy alternatives is being developed and will be analyzed using the evaluation criteria. The resulting recommendations will be reported to FEMA leadership. The purpose of the public meetings is to describe, update, and explain straw man policy alternatives and to answer questions and listen to comments from interested stakeholders. Additional information on the straw man policy alternatives has been made available prior to the meeting via the NFIP Reform website and has been posted to Docket ID: FEMA–2010–0065.

In addition, through these public meetings, FEMA will accept stakeholder input of the policy evaluation process through the use of a pair-wise comparison method. The pair-wise tool is also available via the NFIP Reform Web site at *http://www.fema.gov/business/nfip/nfip_reform.shtm.*

DATES: *Meeting Date:* The first public meeting will be held on December 2, 2010, from 10 a.m. to 5 p.m. EST. This meeting will be held in Washington, DC. The second public meeting will be held on December 9, 2010, from 10 a.m. to 5 p.m. MST. This meeting will be held in Denver, CO.

Comment Date: Written comments must be received by December 31, 2010.

ADDRESSES: All written comments must be received by Friday, December 31, 2010. All submissions received must include the Docket ID: FEMA–2010–0065 and may be submitted by any one of the following methods:

Federal Rulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments on the Web site.

E-mail: FEMA–RULES@dhs.gov. Include Docket ID: FEMA–2010–0065 in the subject line of the message.

Facsimile: (703) 483–2999.

Mail: FEMA, Office of Chief Counsel, 500 C Street, SW., Room 840, Washington, DC 20472–3100.

Hand Delivery/Courier: FEMA, Office of Chief Counsel, 500 C Street, SW., Room 840, Washington, DC 20472–3100.

Instructions: All submissions received must include the Docket ID: FEMA–2010–0065. Comments received will also be posted without alteration at *http://www.regulations.gov,* including any personal information provided. You may want to read the Privacy Act Notice located on the Privacy and Use Notice link on the Administration Navigation Bar of the Web site *http://www.regulations.gov.*

Docket: For access to the docket to read documents or comments received by FEMA, go to *http://www.regulations.gov.* The straw man policy alternatives have been posted to Docket ID: FEMA–2010–0065.

Special Accomodations: For anyone attending the meeting who is hearing or visually impaired, or who requires special assistance or accommodations, please contact Jason "Tommy" Kennedy by November 29, 2010. For further information, please contact Mr. Kennedy by telephone at 202–646–3779.

Meeting Locations: The first public meeting will be held in Washington, DC, at the Washington Marriott at Metro Center, 775 12th Street NW., Washington, DC. The second public meeting will be held in Denver, Colorado at the Denver Federal Center, Building 810—Entrance W–5, Denver, CO.

Meeting Accessibility: Due to space constraints of the facilities, seating will be limited to 200 participants. To reserve a seat in advance, please provide a request via email or mail with the contact information of the participant (including name, mailing address, and e-mail address), the meeting(s) to be attended, and include the subject/attention line (or on the envelope if by mail): Reservation Request for NFIP Reform Meeting. Advance reservations must be received 3 business days prior to the meeting to ensure processing. Unregistered participants will be accepted after all participants with reservations have been accommodated and will be admitted on a first-come, first-serve basis, provided the 200 person capacity is not exceeded. To submit reservations, please email: *FEMA–NFIP–REFORM@dhs.gov* or send by mail to the address listed in the **FOR FURTHER INFORMATION CONTACT** caption.

Web site: http://www.fema.gov/business/nfip/nfip_reform.shtm.

FOR FURTHER INFORMATION CONTACT: Michael Grimm, by telephone at 202–646–2878 or by e-mail at *FEMA-NFIP-REFORM@dhs.gov. Mailing Address:* NFIP Reform, 1800 South Bell Street, Room 970, Arlington, VA 20598–3030.

Meeting Topics: Background information about these topics is available on the NFIP Reform website. The straw man policy alternatives have

been be posted to Docket ID: FEMA–2010–0065.

Procedure: This meeting is open to the public.

Dated: November 16, 2010.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–29349 Filed 11–19–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5300–FA–23]

Announcement of Funding Awards for the HOPE VI Revitalization Grant Program for Fiscal Year 2009

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Fiscal Year 2009 (FY 2009) Notice of Funding Availability (NOFA) for the HOPE VI Revitalization grant program. This announcement contains the names and addresses of this FY 2009's award recipients.

FOR FURTHER INFORMATION CONTACT: For questions concerning the HOPE VI Revitalization grant awards, contact the Ms. Leigh van Rij, Office of Public Housing Investments, 451 7th Street SW., Room 4130, Washington, DC 20410, telephone (202) 402–5788. Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: This program provides grants to public housing authorities (PHAs) to: (1) Improve the living environment for public housing residents of severely distressed public housing projects through the demolition, rehabilitation, reconfiguration, or replacement of obsolete public housing projects; (2) revitalize sites on which such public housing projects are located and contribute to the improvement of the surrounding neighborhood; (3) provide housing that will avoid or decrease the concentration of very low-income families; and (4) build sustainable communities.

The FY 2009 awards announced in this Notice were selected for funding in a competition, the results of which were announced on May 26, 2010. The grantees were posted at that time to the HUD Web site at: *http://www.hud.gov/offices/pih/programs/ph/hope6/grants/revitalization/09/2009revawards.cfm.* Applications were scored and selected for funding based on the selection criteria in the FY 2009 HOPE VI Revitalization NOFA.

The amount appropriated in FY 2009 to fund HOPE VI was $120,000,000. Of this amount, $4,000,000 was used for HOPE VI Main Street grant awards and $2,400,000 of this amount was set-aside to fund technical assistance and contract expertise. The remaining $113,600,000 was used to fund the FY 2009 HOPE VI Revitalization grants.

In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat.1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of the six awards made under the FY 2009 HOPE VI Revitalization grant competition in Appendix A to this document.

Dated: November 16, 2010.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

APPENDIX A

HOPE VI revitalization grantee name and contact information	Amount funded	Project funded
1 Housing Authority of the City of Charlotte, 1301 South Boulevard, Charlotte, NC 28203, (704) 336–5183.	$20,900,000	Boulevard Homes.
2 Housing Authority of Covington, 2300 Madison Avenue, Covington, KY 41014, (859) 292–2145.	17,000,000	Jacob Price Homes.
3 Housing Authority of the City of Dallas, 3939 North Hampton Road, Dallas, TX 75212, (214) 951–8301.	22,000,000	Turner Courts.
4 Housing Authority of the City of Jersey City, 400 U.S. Highway #1, Jersey City, NJ 07306, (201) 706–4601.	9,700,000	A. Harry Moore Apartments.
5 Memphis Housing Authority, 700 Adams Avenue, Memphis, TN 38105, (901) 544–1102	22,000,000	Cleaborn Homes.
6 Housing Authority of the City of Trenton, 875 New Willow Street, Trenton, NJ 08638, (609) 278–5026.	22,000,000	Miller Homes.
Total	113,600,000	

[FR Doc. 2010–29392 Filed 11–19–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Vendor Outreach Workshop for Women Owned Small Businesses in the National Capitol Region of the United States

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: The Office of Small and Disadvantaged Business Utilization of the Department of the Interior is hosting a Vendor Outreach Workshop for women owned small businesses in the National Capitol region of the United States that are interested in doing business with the Department. This outreach workshop will review market contracting opportunities for the attendees. Business owners will be able to share their individual perspectives with Contracting Officers, Program Managers and Small Business Specialists from the Department.

DATES: The workshop will be held on January 21, 2011, from 8:30 a.m. to 1:30 p.m.

ADDRESSES: The workshop will be held at the U.S. Department of the Interior Main Auditorium, 1849 C Street, NW., Washington, DC 20240. Register online at: *http://www.doi.gov/osdbu.*

FOR FURTHER INFORMATION CONTACT: Mark Oliver, Director, Office of Small and Disadvantaged Business Utilization, 1951 Constitution Ave., NW., MS–320

SIB, Washington, DC 20240, telephone 1–877–375–9927 (Toll-Free).

SUPPLEMENTARY INFORMATION: In accordance with the Small Business Act, as amended by Public Law 95–507, the Department has the responsibility to promote the use of small and small disadvantaged business for its acquisition of goods and services. The Department is proud of its accomplishments in meeting its business goals for small, small disadvantaged, 8(a), woman-owned, HUBZone, and service-disabled veteran-owned businesses. In Fiscal Year 2010, the Department awarded 50 per cent of its $2.6 billion in contracts to small businesses.

This fiscal year, the Office of Small and Disadvantaged Business Utilization is reaching out to our internal stakeholders and the Department's small business community by conducting several vendor outreach workshops. The Department's presenters will focus on contracting and subcontracting opportunities and how small businesses can better market services and products. Over 3,000 small businesses have been targeted for this event. If you are a small business interested in working with the Department, we urge you to register online at: *http://www.doi.gov/osdbu* and attend the workshop.

These outreach events are a new and exciting opportunity for the Department's bureaus and offices to improve their support for small business. Additional scheduled events are posted on the Office of Small and Disadvantaged Business Utilization Web site at *http://www.doi.gov/osdbu*.

Mark Oliver,

Director, Office of Small and Disadvantaged Business Utilization.

[FR Doc. 2010–29369 Filed 11–19–10; 8:45 am]

BILLING CODE 4210–RK–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Land Acquisitions; Navajo Nation, Arizona

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of final agency determination.

SUMMARY: The Assistant Secretary—Indian Affairs made a final agency determination to acquire approximately 405.61 acres of land into trust for the Navajo Nation of Arizona on November 10, 2010.

FOR FURTHER INFORMATION CONTACT: Paula L. Hart, Director, Office of Indian Gaming, MS–3657 MIB, 1849 C Street, NW., Washington, DC 20240; Telephone (202) 219–4066.

SUPPLEMENTARY INFORMATION: This notice is published to comply with the requirement of 25 CFR 151.12(b) that notice be given to the public of the Secretary's decision to acquire land in trust at least 30 days prior to signatory acceptance of the land into trust. The purpose of the 30-day waiting period in 25 CFR 151.12(b) is to afford interested parties the opportunity to seek judicial review of final administrative decisions to take land in trust for Indian tribes and individual Indians before transfer of title to the property occurs. On November 10, 2010, the Assistant Secretary—Indian Affairs decided to accept approximately 405.61 acres of land into trust for the Navajo Nation of Arizona. The 405.61 acres are located in Coconino County, Arizona.

The land proposed for acquisition is described as follows:

A portion of the north half of Section 31, and the south half of Section 29, Township 21 North, Range 11 East, Gila and Salt River Meridian, Coconino County, Arizona, described as follows:

Beginning at a set aluminum cap marked "RLS 18215" at the corner common to Sections 29, 30, 31 and 32, Township 21 North, Range 11 East, Gila and Salt River Meridian, Coconino County, Arizona.

Thence North 00°25′51″ West, 460.17 feet along the west line of said Section 29 to a found ½;" diameter rebar with plastic cap marked "RLS 18215";

Thence continuing North 00°25′51″ West, 880.64 feet along said west line of Section 29 to a found ½″ diameter rebar with plastic cap marked "RLS 18215";

Thence continuing North 00°25′51″ West, 1297.66 feet along said west line of Section 29 to a found U.S. Government Land Office brass cap at the west quarter corner of said Section 29;

Thence North 89°34′49″ East, 90.00 feet along the latitudinal mid-section line of said Section 29 to a set ½" diameter rebar with plastic cap marked "RLS 18215";

Thence South 00°25′51″ East 935.28 feet along a line parallel with and 90.00 feet east of said west line of Section 29 to a set ½" diameter rebar with plastic cap marked "RLS 18215";

Thence North 44°11′15″ East, 99.65 feet to a set ½" diameter drill hole with brass tag °marked "RLS 18215";

Thence North 88°48′21″ East, 292.56 feet to a set ½" diameter rebar with plastic cap marked "RLS 18215" and a point of curvature;

Thence northeasterly and southeasterly, 142.20 feet along the arc of a 1,500.00 foot radius curve, concave to the southwest, having a central angle of 05°25′53″, to a set ½″ diameter rebar with plastic cap marked "RLS 18215";

Thence South 85°45′56″ East, 282.63 feet to a set ½" diameter rebar with plastic cap marked "RLS 18215" and a point of curvature;

Thence southeasterly and northeasterly, 313.58 feet along the arc of a 310.00 foot radius curve, concave to the northwest, having a central angle of 57°57′30″, to a set ½" diameter rebar with plastic cap marked "RLS 18215";

Thence North 36°16′45″ East, 332.86 feet to a set ½" diameter rebar with plastic cap marked "RLS 18215" and a point of curvature;

Thence northeasterly and northwesterly, 128.10 feet along the arc of a 120.00 foot radius curve, concave to the northwest, having a central angle of 36°41′55″, to a set ½″ diameter rebar with plastic cap marked "RLS 18215";

Thence North 00°25′11″ West, 378.02 feet to a point on said latitudinal mid-section line of Section 29 and the south line of ANTELOPE HILLS as recorded in Instrument No. 3438078, RCC, from which a ½" diameter rebar with cap marked "WITNESS CORNER" lies North 00°25′11″ West 75.00 feet;

Thence North 89°34′49″ East, 920.62 feet along said latitudinal mid-section line of said Section 29 and said south line of said ANTELOPE HILLS to a found ½" diameter rebar with plastic cap marked "RLS 18215" at the southeast corner of said ANTELOPE HILLS and the southwest corner of that parcel described in Docket 1810, Page 456, RCC;

Thence continuing North 89°34′49″ East, 110.50 feet along said latitudinal mid-section line of said Section 29 and the south line of said parcel described in Docket 1810, Page 456, RCC to a found ½″ diameter rebar with plastic cap marked "RLS 18215" at the southeast corner of said parcel;

Thence continuing North 89°34′49″ East, 224.26 feet along said latitudinal mid section line of said Section 29 and the south line of said parcel to a found ½″ diameter rebar with plastic cap marked "RLS 18548" at the center quarter corner of said Section 29;

Thence North 89°34′22″ East, 985.24 feet along said latitudinal mid-section line of said Section 29, the south line of said parcel, and the south line of that parcel described in Docket 1566, Page 60, RCC, to a found U.S. Government Land Office brass cap on the west line of the Navajo Indian Reservation per Executive Order November 14, 1901;

Thence South 00°21′46″ East, 1299.10 feet along said west line to a found ½"

diameter rebar with plastic cap marked "RLS 18215";

Thence continuing South 00°21′46″ East, 1342.25 feet along said west line to a found U.S. Government Land Office brass cap marked "M1 NIR" at the intersection of said west line and the line common to said Section 29 and 32;

Thence South 89°37′12″ West, 985.03 feet along the south line of said Section 29 to a found ½" diameter rebar with tag marked "RLS 18215" at the south quarter corner of said Section 29;

Thence South 89°36′50″ West, 184.95 feet along said south line of said Section 29 to a found ½" diameter rebar with plastic cap marked "RLS 18215";

Thence continuing South 89°36′50″ West, 1135.59 feet along said south line of said Section 29 to a found ½" diameter rebar with cap marked "RLS 18548" ;

Thence continuing South 89°38′10″ West, 34.93 feet along said south line of said Section 29 to a found ½" diameter rebar with cap marked "RLS 18215";

Thence continuing South 89°38′10″ West 967.64 feet along said south line of said Section 29 to a found ½″ diameter rebar with cap marked "RLS 18215";

Thence continuing South 89°38′10″ West, 318.08 feet along said south line of said Section 29 to said set aluminum cap marked "RLS 18215" at said corner common to Sections 29, 30, 31 and 32, Township 21 North, Range 11 East, Gila and Salt River Meridian, Coconino County, Arizona;

Thence South 00°14′09″ East, 1442.34 feet along said east line of Section 31 to a found ½" diameter rebar with plastic cap marked "RLS 18215";

Thence continuing South 00°14′09″ East, 1196.29 feet along said east line of Section 31 to a found U.S. Government Land Office brass cap at the east quarter corner of said Section 31;

Thence South 89°38′03″ West, 1455.50 feet along the meridional mid-section line of said Section 31 to a found ½" diameter rebar with plastic cap marked "RLS 18215";

Thence continuing South 89°38′03″ West, 1184.20 feet along said meridional mid-section line of said Section 31 to a found aluminum cap marked "LS 18548" at the center quarter corner of said Section 31;

Thence South 89°37′41″ West, 532.09 feet along said meridional mid-section line of said Section 31 to a found ½" diameter rebar with plastic cap marked "RLS 18215";

Thence continuing South 89°37′41″ West, 128.83 feet along said meridional mid-section line of said Section 31 to a found ½" diameter rebar with broken aluminum cap;

Thence South 89°41′33″ West, 660.12 feet along said meridional mid-section line of said Section 31 to a found ½" diameter rebar with broken aluminum cap;

Thence South 89°36′36″ West, 661.07 feet along said meridional mid-section line of said Section 31 to a found ½″ diameter rebar with plastic cap marked "RLS 18215";

Thence North 00°22′23″ West, 659.83 feet to a set ½" diameter rebar with plastic cap marked "RLS 18215";

Thence North 00°21′46″ West, 659.54 feet to a found ½" diameter rebar with plastic cap marked "RLS 18215";

Thence North 00°23′06″ West, 989.81 feet to a found drill hole in rock with a brass tag marked "RLS 18215" on the north line of said Section 31;

Thence North 89°38′52″ East, 1321.10 feet along said north line of Section 31 to a found ½" diameter rebar with plastic cap marked "RLS 18215";

Thence South 00°23′36″ East, 1154.89 feet to a found ½" diameter rebar with plastic cap with obliterated markings:

Thence South 89°40′52″ West, 132.11 feet to a found ½″ diameter rebar with aluminum cap marked "LS 28717";

Thence South 89°39′38″ West, 528.45 feet to a found ½″ diameter rebar with cap marked "LS 14184";

Thence South 00°23′27″ East, 293.62 feet to a found ½″ diameter rebar with plastic cap marked "RLS 18215";

Thence South 00°23′27″ East, 530.82 feet to a found ½″ diameter rebar with plastic cap marked "RLS 18215";

Thence North 89°39′30″ East, 528.41 feet to a found ½″ diameter rebar with plastic cap marked "RLS 18215";

Thence North 00°23′54″ West, 549.91 feet to a found ½″ diameter rebar with aluminum cap marked "LS 28717";

Thence North 89°38′16″ East, 792.64 feet to a found ½″ diameter rebar with aluminum cap marked "LS 28717";

Thence South 00°24′27″ East, 550.19 feet to a found ½″ diameter rebar with plastic cap marked "RLS 18215";

Thence North 89°37′33″ East, 660.15 feet to a found ½″ diameter rebar with plastic cap marked "RLS 18215";

Thence North 00°21′31″ West, 1319.49 feet to a found ½″ diameter rebar with plastic cap marked "RLS 18215";

Thence North 89°37′18″ East, 495.88 feet to a found ½″ diameter rebar with tag marked "RLS 18215";

Thence North 00°19′21″ West, 659.45 feet to a found ½″ diameter rebar with plastic cap marked "RLS 18215" on said north line of Section 31;

Thence North 89°39′00″ East, 827.35 feet along said north line of Section 31 to a found ½" diameter rebar with plastic cap marked "RLS 18215";

Thence North 89°37′28″ East, 661.65 feet along said north line of Section 31 to the point of beginning.

Containing 17,668,330 square feet (405.61 acres), more or less.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

Dated: November 12, 2010.

Larry Echo Hawk,

Assistant Secretary—Indian Affairs.

[FR Doc. 2010–29389 Filed 11–19–10; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Land Acquisitions; Puyallup Tribe of Washington

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of final agency determination.

SUMMARY: The Assistant Secretary—Indian Affairs made a final agency determination to acquire a 13.9-acre tract of land into trust for the Puyallup Tribe of Washington (Tribe) on November 10, 2010.

FOR FURTHER INFORMATION CONTACT: Paula L. Hart, Director, Office of Indian Gaming, Bureau of Indian Affairs, MS–3657 MIB, 1849 C Street, NW., Washington, DC 20240; Telephone (202) 219–4066.

SUPPLEMENTARY INFORMATION: This notice is published to comply with the requirements of 25 CFR 151.12(b) that notice be given to the public of the Secretary's decision to acquire land in trust at least 30 days prior to signatory acceptance of the land into trust. The purpose of the 30-day waiting period in 25 CFR 151.12(b) is to afford interested parties the opportunity to seek judicial review of final administrative decisions to take land in trust for Indian tribes and individual Indians before transfer of title to the property occurs. On November 10, 2010, the Assistant Secretary—Indian Affairs decided to accept a 13.9-acre tract of land into trust for the Puyallup Tribe of Washington under the authority of the Indian Reorganization Act of 1934, 25 U.S.C. 465. The 13.9-acre tract is located within the exterior boundaries of the Puyallup Reservation in Pierce County, Washington. The parcel is currently used for two (2) parking structures in support of the Tribe's existing Fife gaming facility.

The 13.9-acre tract located in Pierce County, Washington is described as follows:

PARCEL A: (0420072126)

Lot(s) 3, as shown on Short Plat No. 9103180301, which is an amendment of Short Plat Nos. 8502210395 and 8403080186, filed with Pierce County Auditor, in Pierce County, Washington.

Except that portion of Lot 3 conveyed to the State of Washington by Deeds recorded under Auditor's file number 689865 and 689858.

Together with the East half of the Northeast quarter of the Northwest quarter of Section 7, Township 20 North, Range 4 East of the W.M., in Pierce County, Washington, lying Northerly of Primary State Highway No. 1.

Except 62nd Avenue East.

PARCEL B: (0420067016, 0720067017)

Lots 1 and 2, as shown on Short Plat No. 9103180301, which is an amendment of Short Plat Nos. 8502210395 and 8403080186, filed with the Pierce County Auditor, in Pierce County, Washington.

Except those portions of Lots 1 and 2 conveyed to the State of Washington by Deeds recorded under Auditor's file numbers 689865 and 689858.

Also except that portion of Lot 1 conveyed to Pierce County by Deed recorded under Auditor's file number 9005140272.

PARCEL C: (0420072124)

That portion of the East 165.3 feet of the South 100 feet of the West one half of the Southeast one quarter of the Southwest one quarter of Section 6, Township 20 North, Range 4 East of the W.M., in Pierce County, Washington, lying South of the South line of Pacific Highway East (State Road No. 1) as conveyed to the State of Washington by deed recorded September 13, 1923 and November 19, 1923 under Auditor's file number 689858 and 689869.

Together with the East 165.3 feet of the North 409.6 feet of the West one half of the Northeast one quarter of the Northwest one quarter, Section 7, Township 20 North, Range 4 East of the W.M.

Except the West 10 feet of the South 209.6 feet thereof.

(Being revised Parcel A of Boundary Line Revisions recorded under recording number 9812185004)

PARCEL D: (0420072085)

Commencing at the Northeast corner of the Northwest Quarter of Section 7, Township 20 North, Range 4 East of the W.M., in Pierce County, Washington;

Thence West 778.38 feet;

Thence South 200 feet to the true point of beginning;

Thence West 155.3 feet to the West boundary of the East Half of the West Half of the Northeast Quarter of the Northwest Quarter of said Section;

Thence on said West Boundary line South 509.15 feet;

Thence East 154.7 feet;

Thence North 509.605 feet to the true point of beginning.

Except the North 136 feet thereof,

Also Except that portion of the above described property conveyed to the State of Washington for State Highway by Deed recorded under recording number 1877004.

PARCEL E: (0420063094)

That portion of the South 100 feet of the West Half of the West Half of the Southeast Quarter of the Southwest Quarter of Section 6, Township 20 North, Range 4 East of the W.M., lying South of the South line of Pacific Highway East (State Road No. 1) as conveyed to the State of Washington under Auditor's file number 689869 and 689858.

Except Dyslin County Road (58th Avenue East).

PARCEL F: (0420072035)

Beginning at the Northwest corner of the North Half of the West Half of the West Half of the Northeast Quarter of the Northwest Quarter of Section 7, Township 20 North, Range 4 East of the W.M. in Pierce County, Washington;

Thence on the West line of said subdivision South 259.50 feet to a line parallel with and 397 feet North of the South line of said subdivision;

Thence Easterly along said parallel line to the East line of said subdivision;

Thence North to the North line of said subdivision;

Thence West along said North line to the Point of Beginning;

Except the Westerly 30 feet thereof for 58th Avenue East (Dyslin County Road).

PARCEL G: (0420072069)

Beginning at the Northwest corner of the North Half of the West Half of the West Half of the Northeast Quarter of the Northwest Quarter of Section 7, Township 20 North, Range 4 East of the W.M. in Pierce County, Washington;

Thence on the West line of said subdivision South 355.50 feet to a line parallel with and 310 feet North of the South line of said subdivision, being the true point of beginning;

Thence on said parallel line East 148.00 feet;

Thence parallel with said West line South 78 feet, more or less, to a line parallel with and 145 feet Northerly, as measured at right angles to the centerline of Primary State Highway No. 1, Tacoma to King County line;

Thence on said parallel line East 148 feet to the West line of said subdivision;

Thence on said West line North 85 feet, more or less, to the true point of beginning;

Except the West 30 feet for Dyslin County Road.

PARCEL H: (0420072074)

That portion of Section 7, Township 20 North, Range 4 East of the W.M. described as follows:

Beginning at the Northwest corner of the North Half of the West Half of the West Half of the Northeast Quarter of the Northwest Quarter of Section 7, Township 20 North, Range 4 East of the W.M. in Pierce County, Washington;

Thence on the West line of said subdivision South 259.50 feet to a line parallel with and 397 feet North of the South line of said subdivision and the true point of beginning;

Thence continue on said West line South 96 feet;

Thence parallel with said South line East 148 feet;

Thence parallel with said West line South 78 feet more or less to a line parallel with and 145 feet Northerly, as measured at right angles to the centerline of Primary State Highway No. 1, Tacoma to King County line;

Thence on said parallel line Northeasterly to the East line of said subdivision;

Thence on said East line North 167 feet more or less to a line parallel with and 397 feet North of the South line of said subdivision;

Thence West on said parallel line to the point of beginning;

Except the West 30 feet for Dyslin County Road

PARCEL I: (0420072125)

The North 200 feet of the West 145.3 feet of the East 310.6 feet of the West Half of the Northeast Quarter of the Northwest Quarter of Section 7, Township 20 North, Range 4 East of the W.M. in Pierce County, Washington;

Together with that portion of the South 100 feet of West 145.3 feet of the East 310.6 feet of the West Half of the Southeast Quarter of the Southwest Quarter of Section 6, Township 20 North, Range 4 East of the W.M. in Pierce County, Washington, lying South of the South right-of-way line of State Road No. 1, as conveyed in instruments recorded under recording number 689869 and 689858.

Also Together with the North 136 feet of the following described property: Beginning at the Northeast corner of the Northwest Quarter of Section 7, Township 20 North, Range 4 East of the W.M. in Pierce County, Washington;

Thence West 788.38 feet;

Thence South 200 feet to the true point of beginning;

Thence West 145.3 feet to the West boundary of the East Half of the West Half of the Northeast Quarter of the Northwest Quarter of said Section;

Thence on said West boundary South 509.15 feet;

Thence East 144.7 feet;

Thence North 509.6 feet to the true point of beginning.

Also Together with a strip of land 10 feet in width lying East of and adjoining the North 136 feet of the following described property:

Beginning at the Northeast corner of the Northeast Quarter of the Northwest Quarter of Section 7, Township 20 North, Range 4 East of the W.M. in Pierce County, Washington;

Thence West 788.38 feet;

Thence South 200 feet to the true point of beginning;

Thence West 145.3 feet to the West boundary of the East Half of the West Half of the Northeast Quarter of the Northwest Quarter of said Section;

Thence on said West boundary South 509.15 feet;

Thence East 144.7 feet;

Thence North 509.6 feet to the true point of beginning.

Pierce County, Washington

Containing 13.9 acres, more or less.

This notice is published in the exercise of authority delegated by the

Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

Dated: November 12, 2010.

Larry Echo Hawk,

Assistant Secretary—Indian Affairs.

[FR Doc. 2010–29391 Filed 11–19–10; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Land Acquisitions; Suquamish Indian Tribe, Washington

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of final agency determination.

SUMMARY: The Assistant Secretary—Indian Affairs made a final agency determination to acquire an approximately 6.67-acre tract of land into trust for the Suquamish Indian Tribe of Washington on November 10, 2010.

FOR FURTHER INFORMATION CONTACT: Paula L. Hart, Director, Office of Indian Gaming, MS–3657 MIB, 1849 C Street, NW., Washington, DC 20240; Telephone (202) 219–4066.

SUPPLEMENTARY INFORMATION: This notice is published to comply with the requirement of 25 CFR part 151.12(b) that notice be given to the public of the Secretary's decision to acquire land in trust at least 30 days prior to signatory acceptance of the land into trust. The purpose of the 30-day waiting period in 25 CFR 151.12(b) is to afford interested parties the opportunity to seek judicial review of final administrative decisions to take land in trust for Indian tribes and individual Indians before transfer of title to the property occurs. On November 10, 2010, the Assistant Secretary—Indian Affairs decided to accept an approximately 6.67-acre tract of land, consisting of nine (9) parcels, of land into trust for the Suquamish Tribe of Washington. The 6.67-acre tract of land parcel is located in Suquamish, Washington.

The land proposed for acquisition is described as follows:

That part of government lots 2 and 4, section 29, township 26 north, range 2 east, Willamette Meridian, Kitsap County, Washington, described as follows:

Parcels I through IX, inclusive, as shown on volume 72 of surveys, pages 226 through 234, inclusive, auditor's file No. 200907220134, records of Kitsap County, Washington; together with an easement 16 feet in width for access and utilities over portions of Government lot 2, said section 29, township 26 north, range 2 east, W.M., as established in instruments recorded on December 8, 195, under auditor's file Nos. 1117923 and 1117924, records of Kitsap County, Washington;

Situate in the County of Kitsap, State of Washington.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

Dated: November 12, 2010.

Larry Echo Hawk,

Assistant Secretary—Indian Affairs.

[FR Doc. 2010–29387 Filed 11–19–10; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Announcement of National Geospatial Advisory Committee Meeting

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of meeting.

SUMMARY: The National Geospatial Advisory Committee (NGAC) will meet on December 7–8, 2010 at the American Institute of Architects Building, 1735 New York Avenue, NW., Washington, DC 20006. The meeting will be held in the Gallery Room. The NGAC, which is composed of representatives from governmental, private sector, non-profit, and academic organizations, was established to advise the Federal Geographic Data Committee on management of Federal geospatial programs, the development of the National Spatial Data Infrastructure, and the implementation of Office of Management and Budget (OMB) Circular A–16. Topics to be addressed at the meeting include:

—Geospatial Platform
—Geospatial Workforce
—The National Map
—FGDC Update
—Geospatial Program Updates
—NGAC Subcommittee Reports

The meeting will include an opportunity for public comment on December 8. Comments may also be submitted to the NGAC in writing. Members of the public who wish to attend the meeting must register in advance. Please register by contacting Arista Maher at the U.S. Geological Survey (703–648–6283, *amaher@usgs.gov*). Registrations are due by December 3, 2010. While the meeting will be open to the public, seating may be limited due to room capacity.

DATES: The meeting will be held from 8:30 a.m. to 5 p.m. on December 7 and from 8:30 a.m. to 4 p.m. on December 8.

FOR FURTHER INFORMATION CONTACT: John Mahoney, U.S. Geological Survey (206–220–4621).

SUPPLEMENTARY INFORMATION: Meetings of the National Geospatial Advisory Committee are open to the public. Additional information about the NGAC and the meeting is available at *http://www.fgdc.gov/ngac.*

Dated: November 16, 2010.

Ken Shaffer,

Deputy Executive Director, Federal Geographic Data Committee.

[FR Doc. 2010–29279 Filed 11–19–10; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMTB07900 09 L10100000.PH0000 LXAMANMS0000]

Notice of Public Meeting; Western Montana Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Western Montana Resource Advisory Council (RAC) will meet as indicated below.

DATES: The meeting will be held December 9, 2010, beginning at 9 a.m. with a 30-minute public comment period and will adjourn at 3 p.m.

ADDRESSES: The meeting will be in the Bureau of Land Management Butte Field Office (106 North Parkmont) in Butte, Montana.

SUPPLEMENTARY INFORMATION: This 15-member council advises the Secretary of the Interior on a variety of management issues associated with public land management in Montana. During these meetings the council will participate in/discuss/act upon several topics, including: new RAC member orientation; information on the Landscape Conservation Cooperative program; Field Office updates; discussion of oil and gas leasing reform; and administrative details.

All RAC meetings are open to the public. The public may present written comments to the RAC. Each formal RAC meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

FOR FURTHER INFORMATION CONTACT: David Abrams, Western Montana Resource Advisory Council Coordinator, Butte Field Office, 106 North Parkmont, Butte, Montana 59701, telephone 406–533–7617.

Richard M. Hotaling,

District Manager, Western Montana District.

[FR Doc. 2010–29328 Filed 11–19–10; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Relocation of Listed Property 2280–665

Pursuant to section 60.14 of 36 CFR part 60, comments are being accepted on the following properties listed on the National Register of Historic Places that are being considered for relocation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by December 7, 2010.

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

Alexandra Lord,

Acting Chief, National Register of Historic Places/National Historic Landmarks Program.

Request for RELOCATION has been made for the following resources:

MISSISSIPPI

Harrison County

Quarles, W.J., House and Cottage, 120 and 122 E Railroad St., Long Beach, 80002244

ALASKA

Skagway-Hoonah-Angoon

Windfall Harbor CCC Shelter Cabin, Admiralty Island National Monument, Angoon, 95001299

[FR Doc. 2010–29286 Filed 11–19–10; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions 2280–665

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before October 23, 2010. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St., NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by December 7, 2010.

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

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

FLORIDA

Alachua County

Island Grove Masonic Lodge No. 125, 20114 SE 219 Ave., Island Grove, 10000984

GEORGIA

Fulton County

First Methodist Episcopal Church, South, 360 Peachtree St., NW, Atlanta, 10001000

GUAM

Guam County

Baza Outdoor Oven, (Guam's Outdoor Ovens MPS), Beatrice Baza Rd, Yona, 10000972

Chaco Outdoor Oven, (Guam's Outdoor Ovens MPS), Chalan Josen Milagro St., Agat, 10000967

Cruz Outdoor Oven, (Guam's Outdoor Ovens MPS), Route 16, Barrigada, 10000966

Flores Outdoor Oven, (Guam's Outdoor Ovens MPS), Matcella Dr., Agana Heights, 10000965

Jinaspan Outdoor Oven, (Guam's Outdoor Ovens MPS), Beach Rd., Andersen AFB, Yigo, 10000968

Paulino Outdoor Oven, (Guam's Outdoor Ovens MPS), Afgayan Bay, Bear Rock Ln., Inarajan, 10000971

Quan Outdoor Oven, (Guam's Outdoor Ovens MPS), J.C. Santos St., Piti, 10000970

Won Pat Outdoor Oven, (Guam's Outdoor Ovens MPS), Between 114 and 126 Mansanita Ct., Sinajana, 10000969

ILLINOIS

Champaign County

Mattis, George and Elsie, House, 900 W Park Ave., Champaign, 10000993

Lawrence County

Lawrence County Courthouse, 1100 State St., Lawrenceville, 10000992

LOUISIANA

East Baton Rouge Parish

Lincoln Theater, 1305 Myrtle Walk, East Baton Rouge, 10000980

Orleans Parish

Algiers Point Historic District Boundary Increase, Roughly bounded by Slidell, Brooklyn, Atlantic, Newton, and Homer Sts., New Orleans, 1000097

Lincoln Parish

Grambling State University Historic District, Founders Ave., at College Ave., Grambling, 100009839

Winn Parish

Gum Springs Recreation Area, 12312 US HWY 84 W, Winnfield, 10000986

MICHIGAN

Wayne County

Kellog Park Historic District Boundary Increase, Roughly bounded by Church and Main St., and including Veteran's Park, Plymouth, 10000973

MISSOURI

Jackson County

Squibb, E.R. and Sons, Building, 2500 W Pennyway, Kansas City, 10000985

NEW YORK

Allegany County

Ceres School, School St., Ceres, 10000991

Erie County

Kensington Gardens Apartment Complex, 1, 2, 3 W Cleveland Dr., Buffalo, 10000989

Zink Block, The, 346 Connecticut St., Buffalo, 10000987

St. Lawrence County

Sunday Rock, NY 56, South Colton, 10000990

Suffolk County

Edwards House, The, 39 Edwards St., Sayville, 10000988

NORTH DAKOTA

Burleigh County

Depression Era Work Relief Construction Features at Menoken State Historic Site, (Federal Relief Construction in North Dakota, 1931–1943, MPS), 171 St. and 32 Ave., NE; 1.7 mi N of Menoken, Bismarck vicinity, 10000998

Divide County

Alkabo School, North end of Main St., Divide, 10000997

Kidder County

Crystal Springs Fountain, (Federal Relief Construction in North Dakota, 1931–1943, MPS), 1 mi NE from Crystal Springs on old US HWY 10, Crystal Springs, 10000999

OHIO

Summit County

Brookdale Farm, (Historic Bath Township, 1810–1959, MPS), 1148 N Cleveland—Massillon Rd., Akron, 10000975

Ghent Historic District, (Historic Bath Township, 1810–1959, MPS), W side of Wye Rd., between Granger and Yellow Creek Rds., Ghent, 10000974

Lambert, Jeremiah, House and Barn, (Historic Bath Township, 1810–1959, MPS), 2138 Cleveland—Massillon Rd, Ghent, 10000977

Voris, Peter Jr., Residence, (Historic Bath Township, 1810–1959, MPS), 3622 Ira Rd., Bath Township, 10000976

RHODE ISLAND

Providence County

Belknap School, 509 Greenville Ave., Johnston, 10000978

TEXAS

Bee County

Lott—Canada School, (Rosenwald School Building Program in Texas MPS), 900 W Corpus Christi St., Beeville, 10000981

Potter County

Triangle Motel, (Route 66 in Texas MPS), 7804, 7808, 7954, and 8024 E Amarillo Blvd., Amarillo, 10000982

WASHINGTON

King County

University Heights School, 50301 University Way NE, Seattle, 10000995

Pierce County

Tacoma Ice Company's Cold Storage Plant, 2602 S Holgate St., Tacoma, 10000994

Whitman County

Ferguson, Florence, House, 504 N Mill St., Colfax, 10000996

[FR Doc. 2010–29285 Filed 11–19–10; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDT03000.L14300000.EU0000; IDI–35323]

Notice of Realty Action: Direct Sale of Public Land in Blaine County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) proposes to sell a parcel of public land totaling 17 acres in Blaine County, Idaho, to the Animal Shelter of Wood River Valley (Animal Shelter) for the appraised fair market value of $18,700.

DATES: Comments regarding the proposed sale must be received by the BLM January 6, 2011.

ADDRESSES: Written comments concerning the proposed sale should be sent to Ruth A. Miller, BLM Shoshone Field Manager, 400 West F Street, Shoshone, Idaho 83352.

FOR FURTHER INFORMATION CONTACT: Tara Hagen, Realty Specialist, BLM Shoshone Field Office, 400 West F Street, Shoshone, Idaho 83352 or (208) 732–7205.

SUPPLEMENTARY INFORMATION: The following described public land is being proposed for direct sale to the Animal Shelter in accordance with Sections 203 and 209 of the Federal Land Policy and Management Act of 1976, as amended, (43 U.S.C. 1713 and 1719), at no less than the appraised fair market value:

Boise Meridian

T. 2 N., R. 18 E.,
Sec. 17, lots 5, 6, and 7.
The area described contains 17 acres in Blaine County.

The appraised fair market value is $18,700. The public land is identified as suitable for disposal in the 1982 BLM Sun Valley Management Framework Plan, as amended, and is not needed for any other Federal purposes.

The Animal Shelter is a non-profit corporation that provides public benefits to Blaine County (County) residents in the form of an adoption center, an impound facility for the County and local cities, administration of the county dog licensing program, and an informational and educational center. The Animal Shelter owns approximately 5 acres of private land abutting the east boundary of the proposed sale parcel. The Animal Shelter was issued a right-of-way for a road and a fence that cross the 17-acre subject parcel in August 1986 for a period of 30 years. Within the last 20 years or so, the Animal Shelter has inadvertently encroached upon a portion of the 17-acre subject parcel with infrastructure and associated uses.

The disposal of the 17 acres to the Animal Shelter would allow the BLM to support the local non-profit's and local government's interest in acquiring public lands; to extend community services; to dispose of an isolated parcel of public land; and would formally resolve an inadvertent trespass by the Animal Shelter.

Regulations contained in 43 CFR 2711.3–3 permit direct sales when a competitive sale is inappropriate and when the public interest would best be served by a direct sale, including the need to resolve inadvertent unauthorized use or occupancy of the lands, or when a tract is identified for transfer to State or local government or non-profit organizations. In accordance with 43 CFR part 2710, the BLM authorized officer finds that the public interest would best be served by authorizing the direct sale to the Animal Shelter, which would allow the identified lands to be consolidated with their adjacent private property to be used for purposes of an animal shelter and would allow the existing infrastructure and improvements on the 17-acre subject parcel to remain.

The subject parcel contains no known mineral values; therefore, the BLM proposes that the conveyance of the Federal mineral interests occur simultaneously with the sale of the land. The Animal Shelter will be required to pay a $50 nonrefundable filing fee for the conveyance of the mineral interests.

On January 16, 2009, the above described land was segregated from appropriation under the public land laws, including the mining laws. The segregation terminates (1) Upon issuance of a patent, (2) publication in the **Federal Register** of a termination of the segregation, or (3) 2 years from the date of segregation, whichever occurs first.

The land will not be sold before January 21, 2011. Any patent issued will contain the following terms, conditions, and reservations:

1. A reservation to the United States for ditches and canals constructed by the authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945);

2. A condition that the conveyance be subject to all valid existing rights of record;

3. A notice and indemnification statement under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9620(W)),

indemnifying and holding the United States harmless from any release of hazardous materials that may have occurred;

4. An appropriate indemnification clause protecting the United States from claims arising out of the lessee's/patentee's use, occupancy or operations on the leased/patented lands; and

5. Additional terms and conditions that the authorized officer deems appropriate. Detailed information concerning the proposed land sale including the appraisal, planning and environmental documents, and a mineral report are available for review at the BLM Shoshone Field Office at the location identified in the **ADDRESSES** section above. Normal business hours are 7:45 a.m. to 4:30 p.m., Monday through Friday, except for Federal holidays.

Public Comments: Public comments regarding the proposed sale may be submitted in writing to the BLM Shoshone Field Manager (*see* **ADDRESSES** section) on or before January 6, 2011. Comments received in electronic form, such as e-mail or facsimile, will not be considered. Any adverse comments regarding the proposed sale will be reviewed by the BLM Idaho State Director or other authorized official of the Department of the Interior, who may sustain, vacate, or modify this realty action in whole or in part. In the absence of timely filed objections, this realty action will become the final determination of the Department of the Interior.

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

Authority: 43 U.S.C. 1713 and1719; 43 CFR 2711.1–2(a) and (c) and 2711.3–3.

Ruth A. Miller,

Shoshone Field Manager.

[FR Doc. 2010–29372 Filed 11–19–10; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVS03000 L51010000.ER0000 LVRWF09F8590 241A; 11–08807; TAS:14X5017]

Notice of Availability of Record of Decision for the Solar Millennium, LLC, Amargosa Farm Road Solar Energy Project

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) for the Solar Millennium, LLC, Amargosa Farm Road Solar Energy Project Environmental Impact Statement (EIS). The Secretary of the Interior approved the ROD on November 15, 2010, which constitutes the final decision of the Department.

ADDRESSES: Copies of the ROD are available upon request from the BLM Southern Nevada District Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130 or via the internet at the following Web site: *http://www.blm.gov/nv/st/en/fo/lvfo.html.* Copies of the ROD are also available for public inspection at the BLM Southern Nevada District Office and the BLM Nevada State Office, 1340 Financial Blvd., Reno, Nevada.

FOR FURTHER INFORMATION CONTACT: Gregory Helseth, Renewable Energy Project Manager; *telephone:* (702) 515–5173; *mailing address:* BLM Southern Nevada District Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130; or *e-mail: Gregory_Helseth@blm.gov.*

SUPPLEMENTARY INFORMATION: The applicant, Solar Millennium, LLC, is authorized to construct the Amargosa Farm Road Solar Energy Project on approximately 6,320 acres of public land in 2 separate phases with a total generating capacity of approximately 500 megawatts (MW) of power. The Amargosa Farm Road Solar Energy Project is a solar facility utilizing parabolic trough solar thermal technology. Phase 1 of the project will generate 250–MW and Phase 2 will generate 250–MW, with an average net output of approximately 232–MW for each phase. Each phase will consist of power blocks, a solar field, a heat transfer fluid and steam generation system, a nitrate salt thermal storage system, conventional water treatment, electrical switchgear, administration, warehouse, and maintenance facilities.

The project facility will disturb approximately 4,350 acres of the 6,320 acre project area and will include solar fields, power blocks, office buildings, maintenance building, parking area, lay down area, storm water detention basin, evaporation ponds, switch yard, and a realignment of Amargosa Farm Road. The Notice of Availability (NOA) for the Draft EIS analyzing impacts of the proposed project was published in the **Federal Register** on March 19, 2010 (75 FR 13301) for public review and comment. A total of 37 comment letters were received on the Draft EIS. The comments were incorporated, where appropriate, to clarify the analysis presented in the Final EIS. The NOA for the Final EIS was published in the **Federal Register** on October 15, 2010 (75 FR 63503). The Final EIS analyzes 3 alternatives; a No Action Alternative, the Proposed Action, and a Wet-Cooled Alternative. These alternatives were shaped in part by comments received from the public and internal BLM review.

Alternative 1: No Action. The No Action Alternative assumes the right-of-way application for the Amargosa Farm Road Solar Energy Project would be denied and the proposed project would not be built.

Alternative 2: Proposed Action (Dry-Cooled). This is the Environmentally Preferable Alternative that analyzes the construction, operation, maintenance and decommissioning of 2 dry-cooled solar power plants, each with a nameplate capacity of 250–MW and a net output of approximately 232–MW.

Alternative 3: Wet-Cooled Alternative. Under the wet-cooled alternative, the proponent would construct and operate 2 wet-cooled solar power plants, each with a nameplate capacity of 250–MW and a net output of approximately 242–MW. Each solar plant would be equipped with thermal storage capability and associated linear facilities. Construction and operation of a wet-cooled project would be similar to a dry-cooled plant, however, the net power output from a wet-cooled solar power plant facility is greater than the net power output from a dry-cooled solar power plant facility. Plant components and layout are similar under both the wet- and dry-cooled alternatives; the primary differences are the amount of water used for plant operations, the need for cooling towers for heat rejection from the steam cycle for the wet-cooled alternative, and the area needed for evaporation ponds.

Because this decision is approved by the Secretary of the Interior, it is not subject to administrative appeal (43 CFR 4.410(a)(3)).

Authority: 40 CFR 1506.6 and 1506.10.

Robert V. Abbey,

Director, Bureau of Land Management.

[FR Doc. 2010–29370 Filed 11–19–10; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

San Joaquin River Restoration Program: Reach 4B, Eastside Bypass, and Mariposa Bypass Channel and Structural Improvements Project, Merced County, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Revised notice of intent to prepare an Environmental Impact Statement/Environmental Report (EIS/EIR) and Notice of Scoping Meeting.

SUMMARY: The Bureau of Reclamation and the California Department of Water Resources are revising our proposal to prepare a joint EIS/EIR on the effects of the proposed Reach 4B, Eastside Bypass, and Mariposa Bypass Channel and Structural Improvements Project under the San Joaquin River Restoration Program. The original notice of intent was published in the **Federal Register** on September 9, 2009 (74 FR 46453). This revised proposal would include measures for the conveyance of Interim and Restoration flows and incorporation of fish habitat through Reach 4B and/or the bypasses. When evaluating comments on this proposal, we will also consider comments that we received on the previous proposal.

DATES: Submit written comments on the scope of the EIS/EIR by December 22, 2010. We will hold a scoping meeting on Monday, December 6, 2010, from 6:30 to 8 p.m. in Los Banos, California.

ADDRESSES: Send written comments to Ms. Michelle Banonis, Natural Resources Specialist, Bureau of Reclamation, 2800 Cottage Way, MP–170, Sacramento, CA 95825 or via e-mail at *reach4b@restoresjr.net.* We will hold a public scoping meeting at the Miller and Lux Building, 830 6th Street, Los Banos, California.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret Gidding, Outreach Coordinator, 2800 Cottage Way, MP–170, Sacramento, CA 95825, or via e-mail at *mgidding@usbr.gov,* by telephone at 916–978–5461, TDD 916–978–5608 or via fax at 916–978–5469. Additional information is available online at *http://www.restoresjr.net.*

SUPPLEMENTARY INFORMATION: The Proposed Action includes improving conveyance capacity in the San Joaquin River from the Reach 4B headgates near Washington Road to the confluence of the Mariposa Bypass with the San Joaquin River (generally referred to as Reach 4B1). The improvements will incorporate modifications to Reach 4B and the Eastside and Mariposa bypass channels to allow for conveyance of Interim and Restoration flows. Improvements will also include the incorporation of fish habitat in Reach 4B and/or the bypasses and maintain the current flood operations and conveyance capacity of the system. Additionally, the Proposed Action may result in an opportunity for improvements to the existing flood system. These improvements are intended to support paragraph 11 Settlement actions related to Reach 4B, the Eastside Bypass, and the Mariposa Bypass. The planning and environmental review for the Proposed Action is authorized under Section 3406(c)(1) of the Central Valley Project Improvement Act and the San Joaquin River Restoration Settlement (SJRRS) Act. Construction of the Proposed Action is authorized under Section 10004 of the SJRRS Act. The Proposed Action would be implemented consistent with the Settlement and the SJRRS Act.

San Joaquin River Restoration Program

In 1988, a coalition of environmental groups led by the Natural Resources Defense Council (NRDC) filed a lawsuit challenging the renewal of the long-term water service contracts between the United States and the Central Valley Project Friant Division Contractors. After more than 18 years of litigation known as *NRDC, et al.,* v. *Kirk Rodgers, et al.,* the NRDC, Friant Water Users Authority, and the Departments of the Interior and Commerce (Settling Parties) reached agreement on the terms and conditions of the San Joaquin River Stipulation of Settlement (Settlement) that was subsequently approved by the Court on October 23, 2006. The Settlement can be found online at *http://www.restoresjr.net.*

The Settlement is based on two parallel Goals:

- The Restoration Goal—To restore and maintain fish populations in "good condition" in the main stem of the San Joaquin River below Friant Dam to the confluence of the Merced River, including naturally reproducing and self-sustaining populations of salmon and other fish; and
- The Water Management Goal—To reduce or avoid adverse water supply impacts to all of the Friant Division long-term Contractors that may result from the Interim Flows and Restoration Flows provided for in the Settlement.

The Settling Parties acknowledge that accomplishing the Goals requires planning, implementation, and funding of certain activities, such as environmental review, design, and construction. With regard to the Restoration Goal, the Settlement calls for a combination of channel and structural improvements along the San Joaquin River below Friant Dam, releases of additional water from Friant Dam to the confluence of the Merced River, and the reintroduction of spring and/or fall-run Chinook salmon.

The Settlement states that the Secretary of the Interior shall diligently pursue completion of the improvements listed in Paragraph 11 in coordination with the Restoration Administrator and with other federal, state, and local agencies. Additionally, the Settling Parties agreed that implementation of the Settlement shall also require participation of the State of California. Therefore, concurrent with the execution of the Settlement, the Settling Parties entered into a Memorandum of Understanding with the State of California, by and through the California Resources Agency, DWR, the Department of Fish and Game (DFG), and the California Environmental Protection Agency, regarding the State's role in the implementation of the Settlement. The program established to implement the Settlement is the SJRRP, and the "Implementing Agencies" responsible for the management of the SJRRP include Reclamation, the U.S. Fish and Wildlife Service (USFWS), the National Marine Fisheries Service (NMFS), DWR, and DFG. The Federal Implementing Agencies (Reclamation, USFWS, and NMFS) are authorized to implement the Settlement under the SJRRS Act included in Public Law 111–11.

A Program Environmental Impact Statement/Environmental Impact Report (PEIS/EIR) is currently being developed for implementation of the SJRRP. If applicable, the EIS/EIR for the Proposed Action will supplement, tier from, incorporate by reference, or adopt relevant NEPA analyses from the PEIS/EIR once a Record of Decision is signed.

Special Assistance for Public Meetings

If special assistance is required to participate in the scoping meeting, please contact Ms. Margaret Gidding at 916–978–5461, by TDD 916–978–5608, or via e-mail at *mgidding@usbr.gov.* Please contact Ms. Gidding at least ten working days prior to the meeting.

Public Disclosure

Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be 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.

Dated: October 6, 2010.

Anastasia T. Leigh,

Acting Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. 2010–29330 Filed 11–19–10; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1174–1175 (Final)]

Seamless Refined Copper Pipe and Tube From China and Mexico

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission ("Commission") determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is threatened with material injury [2 3 4] by reason of imports of seamless refined copper pipe and tube ("SRC pipe and tube") from China and Mexico provided for in subheadings 7411.10.10 and 8415.90.80 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce ("Commerce") to be sold in the United States at less than fair value ("LTFV").

Background

The Commission instituted these investigations effective on September 30, 2009, following receipt of a petition filed with the Commission and Commerce by Cerro Flow Products, Inc., St. Louis, MO; Kobe Wieland Copper Products, LLC, Pine Hall, NC; Mueller Copper Tube Products, Inc. and Mueller Copper Tube Company, Inc., Memphis, TN. The final phase of these investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of SRC pipe and tube from China and Mexico were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 11, 2010 (75 FR 33330). The hearing was held in Washington, DC, on September 23, 2010, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigation to the Secretary of Commerce on November 15, 2010. The views of the Commission are contained in USITC Publication 4193 (November 2010), entitled *Seamless Refined Copper Pipe and Tube from China and Mexico: Investigation Nos. 731–TA–1174–1175 (Final).*

By order of the Commission.

Issued: November 15, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–29301 Filed 11–19–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–680]

In the Matter of Certain Machine Vision Software, Machine Vision Systems, and Products Containing Same; Notice of Commission Decision To Modify a Final Initial Determination and To Terminate the Investigation With a Finding of No Violation of Section 337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to modify a final initial determination ("ID") of the presiding administrative law judge ("ALJ"). The Commission has determined that there is no violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–2310. 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 July 16, 2009 based on a complaint filed on May 28, 2009, by Cognex Corporation of Natick, Massachusetts and Cognex Technology & Investment Corporation of Mountain View, California (collectively "complainants"). 74 FR 34589–90 (July 16, 2009). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 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 machine vision software, machine vision systems, or products containing same by reason of infringement of certain claims of U.S. Patent Nos. 7,016,539 ("the '539 patent); 7,065,262 ("the '262 patent"); and 6,959,112 ("the '112 patent"). The complaint further alleged that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complaint named numerous respondents including the following: Multitest Elektronische Systems GmbH of Germany and Multitest Electronic Systems, Inc. of Santa Clara, California (collectively, "Multitest respondents"); Yxlon International GmbH of Germany and Yxlon International, Inc. of Mogadore, Ohio (collectively, "Yxlon respondents"); Amistar Automation, Inc. ("Amistar") of San Marcos, California; Techno Soft Systemnics, Inc. ("Techno Soft") of Japan; Fuji Machine Manufacturing Co., Ltd. of Japan and Fuji America Corporation of Vernon

[1] The record is defined in Sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Chairman Deanna Tanner Okun, Vice Chairman Irving A. Williamson, Commissioner Daniel R. Pearson, and Commissioner Shara L. Aranoff determine that they would not have found material injury but for the suspension of liquidation.

[3] Commissioner Charlotte R. Lane determines that the domestic SRC pipe and tube industry is materially injured by reason of imports of the subject merchandise from China and Mexico.

[4] Commissioner Dean A. Pinkert did not participate in these investigations.

Hills, Illinois (collectively, "Fuji respondents"); E. Zoller GmbH & Co. KG of Germany and Zoller, Inc. of Ann Arbor, Michigan (collectively, "Zoller respondents"); IDS Imaging Development Systems GmbH of Germany and IDS Development Systems, Inc. of Woburn, Massachusetts (collectively, "IDS respondents"); Delta Design, Inc. ("Delta") of Poway, California; Subtechnique, Inc. ("Subtechnique") of Alexandria, Virginia; Rasco GmbH ("Rasco") of Germany; MVTec Software GmbH of Germany and MVTec LLC of Cambridge, Massachusetts (collectively, "MVTech respondents"); Omron Corporation ("Omron") of Japan, Resolution Technology, Inc. ("Resolution") of Dublin, Ohio; Visics Corp. ("Visics") of Wellesley, Massachusetts; Daiichi Jitsugyo Viswill Co., Ltd. of Japan; and Daiichi Jitsugyo (America), Inc. of Wood Dale, Illinois (collectively, "Daiichi respondents").

On November 19, 2009, the Commission issued notice of its decisions not to review IDs terminating the investigation as to the Multitest respondents and the Yxlon respondents based on a consent order and settlement agreement. On February 16, 2010, the Commission issued notice of its decisions not to review IDs terminating the investigation as to Amistar based on a consent order and settlement agreement, and as to Techno Soft based on partial withdrawal of the complaint. On April 20, 2010, the Commission issued notice of its decision not to review an ID terminating the investigation as to the Fuji respondents based on a settlement agreement. On May 5, 2010, the Commission issued notice of its decisions not to review IDs terminating the investigation as to the Multitest respondents based on a consent order and settlement agreement, and as to the Zoller respondents, the IDS respondents, and Delta based on partial withdrawal of the complaint. On June 11, 2010, the Commission issued notice of its decision not to review an ID terminating the investigation as to Subtechnique based on a consent order. On June 18, 2010, the Commission issued notice of its decision not to review an ID terminating the investigation as to Rasco based on a consent order and settlement agreement (notice of rescission and issuance of revised order on July 6, 2010).

The respondents remaining in the investigation include: MVTec respondents, Omron, Resolution, Visics, and the Daiichi respondents.

On April 9, 2010, the Commission issued notice of its decision not to review an ID terminating the investigation as to the '112 patent on the basis of partial withdrawal of the complaint. On April 20, 2010, the Commission issued notice of its decision not to review an ID granting complainants' motion for summary determination on the economic prong of the domestic industry requirement with respect to the remaining asserted patents, the '539 and '262 patents. On May 18, 2010, the Commission issued notice of its decision not to review an ID granting complainants' motion for summary determination that the importation element under Section 337(a)(1)(B) has been satisfied as to the MVTech respondents, Omron, and the Daiichi respondents.

On July 16, 2010, the ALJ issued his final ID finding no violation of section 337 by the remaining respondents. He concluded that each accused product did not infringe any asserted claim of the '539 or '262 patents. Also, he found that claims 1, 12, 13, 28, and 29 of the '262 patent are anticipated under 35 U.S.C. 102. Further, he found that all asserted claims of both patents are invalid, pursuant to 35 U.S.C. 101, for failure to claim patent-eligible subject matter. On August 2, 2010, complainants, respondents, and the Commission investigative attorney each filed a petition for review of the final ID. Each party filed responses to the other parties' petitions on August 10, 2010.

On September 24, 2010, the Commission issued notice of its determination to review only the following: (1) Relating to the '539 patent, the ALJ's construction of the claim terms "test," "match score surface," and "gradient direction," all of his infringement findings except for the claim steps containing the limitations "locating local maxima" and "comparing the magnitude of each local maxima," and his invalidity and domestic industry findings; (2) the ALJ's finding that the '539 and '262 patents are invalid, pursuant to section 101, for failure to claim patent-eligible subject matter; and (3) the ALJ's findings concerning anticipation of claims 1, 12, 13, 28, and 29 of the '262 patent.

The Commission requested the parties to respond to a certain question concerning issue (1) under review. 75 FR 60478–80 (September 30, 2010). On October 8 and 15, 2010, respectively, complainants, respondents, and the Commission investigative attorney filed briefs and reply briefs on the issue for which the Commission requested written submissions.

Having reviewed the record in this investigation, including the final ID and the parties' briefing, the Commission has determined to: (1) Modify-in-part the final ID and issue an Opinion supplementing the ID's analysis concerning its finding that the '539 and '262 patents fail to claim patent-eligible subject matter pursuant to section 101; (2) set aside the ID's finding that claims 1, 12, 13, 28, and 29 of the '262 patent are invalid as anticipated; and (3) affirm all other findings of the ID under review. The Commission terminates the investigation with a finding of no violation of section 337.

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 section 210.45 of the Commission's Rules of Practice and Procedure, 19 CFR 210.45.

By order of the Commission.
Issued: November 16, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–29302 Filed 11–19–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

United States Parole Commission

Record of Vote of Meeting Closure

(Pub. L. 94–409) (5 U.S.C. Sec. 552b)

I, Isaac Fulwood, of the United States Parole Commission, was present at a meeting of said Commission, which started at approximately 10:30 a.m., on Tuesday, November 9, 2010, at the U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20615. The purpose of the meeting was to decide eleven petitions for reconsideration pursuant to 28 CFR 2.27. Four Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Isaac Fulwood, Cranston J. Mitchell and Patricia K. Cushwa, J. Patricia Wilson Smoot.

In witness whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: November 10, 2010.

Isaac Fuiwood,

Chairman, U.S. Parole Commission.

[FR Doc. 2010–29354 Filed 11–19–10; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement—Production of Seven Live Satellite/Internet Broadcasts

AGENCY: National Institute of Corrections, U.S. Department of Justice.

ACTION: Solicitation for a cooperative agreement.

SUMMARY: The National Institute of Corrections (NIC) announces the availability of funds in fiscal year 2011 for a cooperative agreement to fund the production of seven live satellite/Internet broadcasts. All of the proposed satellite/Internet programs are three-hour nationwide broadcasts. This agreement also includes the production of twelve to fifteen short video vignettes (less than 5 minutes each) to support the content of the satellite/Internet broadcasts or to be used by NIC to enhance other training projects.

DATES: Applications must be received by 4 p.m. (EDT) on Wednesday, December 15, 2010.

ADDRESSES: Mailed applications must be sent to: Director, National Institute of Corrections, 320 First Street NW., Room 5002, Washington, DC 20534. Applicants are encouraged to use Federal Express, UPS, or similar service to ensure delivery by the due date.

Hand-delivered applications should be brought to 500 First Street NW., Washington, DC 20534. At the front desk, dial 7–3106, extension 0, for pickup. Faxed applications will not be accepted. Only electronic applications submitted via *http://www.grants.gov* will be accepted.

FOR FURTHER INFORMATION: A copy of this announcement can be downloaded from the NIC Web site at *http://www.nicic.gov.* All technical and/or programmatic questions concerning this announcement should be directed to Steven Swisher, Correctional Program Specialist, Academy Division, National Institute of Corrections. He may be reached by calling 800–995–6429, ext 4416, or by e-mail at *sswisher@bop.gov.*

SUPPLEMENTARY INFORMATION:

Background: Satellite/Internet broadcasting is defined as training/education transpiring between trainers and facilitators at one location and participants/students at other locations via technology. NIC uses satellite broadcasting and the Internet economically to reach a larger and broader audience from federal, state, and local criminal justice agencies, as well as new partners and vested stakeholders who have a common interest in and/or contact with offender populations. Many of these audiences were previously hard to reach using traditional modes of training.

Additionally, NIC, as a leader in correctional learning, continually seeks to use and integrate various forms of visual technology to support and enhance learning within its full continuum of training delivery strategies.

Purpose: The purpose of funding this initiative is to produce seven live satellite/Internet broadcasts, disseminating current and emergent information to the criminal justice community. Each of these broadcasts will be 3 hours long. Additionally, as part of this award, twelve to fifteen stand-alone video vignettes will be produced to support the content of the live broadcasts or other NIC curriculum development projects. It is estimated that each of these video vignettes will be 3 to 5 minutes long.

Scope of Work: To address the scope of work for this project, the following will be needed:

Producer Consultation and Creative Services: The producer for this project plays a key role in managing the project, but he/she must also possess a wide range of technical experience, including script writing, in the development and delivery of video broadcasts. The producer will (1) consult and collaborate with NIC's distance learning administrator (DLA) on program design, program coordination, design and field segments, and content development and (2) participate in/coordinate all planning meetings and planning activities that support each broadcast. A minimum of one face-to-face planning session will be held for each broadcast. Planning sessions typically last 2 days and are convened in the NIC Aurora office or at the Washington, DC headquarters.

The producer must plan all other activities through telephone and various virtual online platforms (e.g., WebEx) and consult and collaborate with NIC's DLA in the selection of talent for each broadcast. This will entail review of written and video materials, as well as phone conversations with potential talent. Face-to-face interviews typically will not be required.

The producer must work with each consultant/trainer to develop his/her content for delivery using the satellite/Internet format. This will entail regular e-mail and telephone communication as well as regularly scheduled updates with key stakeholders on the broadcast team.

The producer will serve as the coordinator of script development, graphic design, production elements, and rehearsals for each broadcast and use his/her professional expertise in designing creative ways to deliver satellite/Internet broadcasts.

The producer will develop detailed storyboards for each broadcast. Significant contribution to the development of the storyboard will come from designated content experts, the talent selected to appear in the broadcast, and NIC's DLA. NIC's DLA maintains final approval of all storyboards, video, and other materials produced or used in any broadcast.

The producer will supervise camera and audio crews assigned to capture testimonial footage from leaders in the criminal justice field, who answer questions and provide general comment on an array of correctional topics. There will be three to four of these sessions during this agreement. Each shoot will entail 1- to 2-day video shoots at national correctional conferences where appropriate talent/audiences will be convening.

Content Development Process: Having both quality content development and innovative and engaging content delivery are critical components of successful live broadcasts. Therefore, the content development process, as part of the storyboard development for each broadcast, must be carefully developed. The following process outlines the necessary steps the producer must take to ensure that the content of each broadcast is informative, innovative, and engaging. While each broadcast must be treated as a unique product, it is expected that the following processes will be followed. If adjustments or modifications need to be made to the process to meet the unique needs or circumstances of any of the broadcasts, approval of the DLA is required.

STEP ONE: Convene a planning meeting with an NIC representative and four to five other stakeholders vested in the topic being developed. Attendees are told they are helping develop ideas for a broadcast on a specific topic. Participation in the planning meeting does not necessarily mean that participants will be used as talent during the live broadcast. **Note:** The exception may be if some of the attendees have been specifically determined by NIC to be critical to the broadcast because of their specific expertise or background.

NIC's DLA will lead meetings with the broadcast host(s) and video producer in attendance. The meeting will (1) set learning objectives, (2) develop a theme, metaphor, or other creative hook that will set a context for

the broadcast (The hook will support the content of the broadcast and will assist in determining the creative approaches through which that content can be delivered in a live broadcast.), (3) develop a rough outline of key content for each broadcast segment, using content learning objectives as a guideline, (4) generate a list of resources (videos, photos, etc.) that could support the segment, and (5) discreetly determine which experts might be good on camera and involved in the future development process.

STEP TWO: Cast the program after the meeting is complete. The producer, host(s), and DLA will meet with appropriate NIC staff soon following the planning meeting—the next day is preferred. Together, the meeting participants will (1) determine a list of presenters for the program, (2) determine the fields that the presenters should come from and what casting types are needed to cover each segment or content type, (3) create a cast list, (4) set deadlines for pre-interviewing and recruiting those available on the scheduled dates for the rehearsal and broadcast (**Note:** selected talent must be available for both the rehearsal day and the broadcast day in order to participate), (5) conduct pre-interviews to gather content and make suggestions for on-camera appearances, and (6) work with the DLA and appropriate NIC staff named as on-camera presenters and assign them to specific program segments.

STEP THREE: Develop content for broadcast.

The producer will schedule a call/video conference with the producer, host(s), DLA, and each segment's small group of presenters; review, revise, and annotate the broadcast outline; generate a further list of resources during the call (The producer may need two calls per segment, but the goal would be one.); and have the DLA sign off on broadcast's content outline.

STEP FOUR: Develop the broadcast programming.

The producer, host(s), and/or DLA will (1) outline the program and its elements, including content questions (Most segments of each program will be designed so that a host(s) will facilitate each segment, rather than allowing small groups of practitioners to facilitate on their own.); (2) revise outlines and make initial testimonial selections, working from transcripts, acquired clips, and other source materials; (3) work with DLA to identify graphic/visual needs and content; (4) work with production staff to compile support materials (making direct contact with prisons, jails, etc.); (5) work with production staff to develop all graphics and visuals for approval; (6) work with DLA to review and approve all materials and program development, including standardized intro and outro segments highlighting NIC and its graphic image.

STEP FIVE: Prepare the broadcast.

The awardee will book one preparation call with presenters the week before the cast and crew travel to the shoot location. The call will cover logistics and an overview of the agenda for the 2 days. On rehearsal day (typically, Tuesday morning), the producer will show all broadcast staff and talent the final video clips, graphics, and visuals, etc., and complete a technical run through of the program. The host(s) and producer will lead staff through the program outline. **Note:** If the schedule allows, it would be best to have 12 to 14 weeks between each planning meeting and the broadcast. This allows enough time to do a round of pre-interviews and make on-camera selections. Production schedules will overlap to fit all broadcasts within the award period. Planning sessions for back-to-back live events (a maximum of two at a time) may be desirous for a number of reasons. This planning model will be used as a pilot for two of the events set for this award. Depending on the pilot experiences, other events may also use this model.

Pre-Production Video: The producer will supervise the production of vignettes to be used in each of the broadcasts, as well as the vignettes to be produced as stand-alone pieces to support other NIC curriculum projects. There will be twelve to fifteen of these vignettes in all. Content experts (typically, correctional professionals) will draft conceptual outlines of the scripts for each vignette. From these outlines, the producer (or a script writing expert) will develop scripts and have them approved by NIC's DLA. Professional actors will play the parts designated by the script. Testimonial video footage must be captured well in advance of broadcast delivery dates to ensure ample time for considering the clips for inclusion in the storyboard of a broadcast and to allow sufficient time for editing. These video clips are used in the broadcasts to support the content delivery and to provide transitions/bumps between segments/modules within the broadcast.

Video Production: Video production for each of the broadcasts and each video vignette for stand-alone projects will consist of videotaping content-related events in the field, editing existing video, and videotaping experts for testimonial presentations. It will also include voiceover, audio, and music, if necessary, for each broadcast or vignette. Blank tapes and narration for field shooting will be purchased for each site. The format for all field shooting will be either Betacam, DVD Pro Digital, and/or Mini DVD. The awardee will develop a detailed storyboard for each broadcast. Significant contribution to the development of the storyboard will come from designated content experts, the talent selected to appear in the broadcasts, and NIC's DLA. NIC's DLA maintains final approval of all storyboards, video, and other materials used in any broadcast. Innovative and thought-provoking opening sequences will be produced for each broadcast. In addition, the broadcasts will use graphics to enhance viewer learning. The producer will coordinate art direction, lighting, set design, props, and furniture for all broadcast segments. Customized set design will be required for each broadcast. Each set should include signage, posters, props, and/or other visuals that clearly relate to the content of the broadcast. The producer will organize and supervise the complete production crew on rehearsal and production days.

Production: The awardee's production group will set up and maintain studio lighting, adjust audio, and have a complete production crew for the days and hours set by the DLA for each rehearsal and broadcast. The producer will coordinate art direction, lighting, set design, props, and furniture for all broadcast segments. Customized set design will be required for each broadcast. Each set should include signs, posters, props and/or other visuals that clearly relate to the content of the broadcast. The producer will organize and supervise the complete production crew on rehearsal and production days. A production crew shall include the following: Director, audio operator, video operator, character generator operator, floor director, four camera operators, teleprompter operator, online Internet coordinator, makeup artist (at production time only), and interactive assistance personnel (for fax, e-mail, and telephone communications).

Post-Production: The producer also oversees the production and editing of a DVD of each broadcast for a final and approved cut by NIC's DLA. Within one week after each broadcast, the awardee will provide to NIC's DLA a live and active link to the archived version of the broadcast. Within sixty (60) days after each broadcast, the awardee will provide NIC's DLA five master copies of the edited and approved broadcast. These copies must be provided on

Betacam and/or DVD. The broadcast footage will need to be edited to include a splash page that provides an outline/menu of the content of the broadcast by days, modules, and/or other appropriate categories to assist a user in finding specific content in which they may have an interest. Additionally, any original vignettes produced for the broadcast must be included on the DVD. All edits must be approved by the DLA.

Transmission: The producer will (1) purchase satellite uplink time that will include the footprints of Alaska, Hawaii, the Virgin Islands, and the continental United States; (2) acquire downlink transponder time from Ku band; (3) purchase Internet streaming of 200 simultaneous feeds for each program, and (4) be able to provide closed captioning on the final edited DVD of each production. For each broadcast, the awardee will test the Internet link and streaming. The test should verify connectivity to the site, as well as audio and video quality. The test must occur at least 72 hours prior to the start of the live broadcast. The awardee will provide real-time, live, toll-free telephone support to participant sites or individual participants to address access, connectivity, and quality issues on the day of the live broadcast beginning at least 1 hour in advance of the broadcast and continuing through the broadcast.

Equipment: Applicants must have a minimum of the following equipment: Broadcast studio of approximately 2,000 square feet, with an area for a studio audience of 10 to 20 people; four digital studio cameras (one of which must be an overhead camera with robotic control); chroma key: At least one wall with chroma key capability, along with a digital ultimate keying system, a tape operation facility providing playback/record in various formats, including DVD, Betacam, Betacam SP, SVHS, VHS, U–Matic ¾ and SP, and Advit, or comparable editing bay; three-dimensional animation with computer graphics; Internet streaming capacity for several hundred simultaneous downloads in both G2 Real Player and Microsoft Media Player-Capture Closed Captioning; archive ability for all satellite/Internet broadcasts from this agreement; computer teleprompter for at least three studio cameras; interruptible fold back (IFB) or in-ear monitor (IEM) for all key presenters and the moderator/hosts during each live broadcast with individual control from the control room and the DLA; wireless microphones for each presenter/all talent during the live broadcasts; and microphones for the studio audience at each roundtable (should be able to pick up audio) during the training program (It is expected that studio audiences will be used in four of the live broadcasts.); satellite uplink and transponder: Ku band digital with the footprints of Alaska, Hawaii, Virgin Islands, and the continental United States; Web/Internet equipment for Internet link during live broadcasts; and portable field equipment (digital video cameras with recording decks, portable lighting kits, microphones [both hand-held and lapel], field monitors, audio mixers, and camera tripods).

Personnel: Applicants must have a minimum of the following qualified personnel: Producer/director; script writer; set designer; lighting designer; audio operator; graphics operator; tape operator; location camera operator; teleprompter operator; clerical/administrative support; makeup artist (as needed during live production); closed caption operator (as needed during production).

Application Requirements: Applications should be concisely written, typed double spaced, and reference the project by the "NIC Opportunity Number" and Title in this announcement. The package must include a cover letter that identifies the audit agency responsible for the applicant's financial accounts, as well as the audit period or fiscal year that the applicant operates under (*e.g.,* July 1 through June 30); a program narrative in response to the statement of work; a budget narrative in response to the statement of work; and a budget narrative explaining projected costs. The following forms must also be included: OMB Standard Form 424, Assurances—Non-Construction Programs (These forms are available at *http://www.grants.gov*) and DOJ/NIC Certification Regarding Lobbying; Debarment, Suspension and other Responsibility Matters; and Drug-Free Workplace Requirements (available at *http://www.nicic.gov/Downloads/PDF/certif-frm.pdf*).

Applications may be submitted in hard copy, or electronically via *http://www.grants.gov.* If submitted in hard copy, there must be an original and three copies of the full proposal (program and budget narratives, application forms, and assurances). The original should have the applicant's signature in blue ink.

Authority: Public Law 93–415.

Funds Available: NIC is seeking the applicant's best ideas regarding accomplishment of the scope of work and the related costs for achieving the goals of this solicitation. Funds may be used only for activities that are linked to the desired outcome of the project.

This project will be a collaborative venture with the NIC Academy Division.

Eligibility of Applicants: An eligible applicant is any public or private agency, educational institution, organization, individual, or team with expertise in the described areas.

Review Considerations: Applications received under this announcement will be subjected to an NIC 3- to 5-member review panel. The criteria for the evaluation of each application will be as follows:

Technical and Programmatic (40%)

Are all elements outlined within the scope of work effectively understood and a description provided of how each element will be addressed? Is there a complete and precise, technically sufficient description of the design and methodology for the required services? Is there a clear statement of how each project deliverable will be accomplished, including major tasks that will lead to achieving the goal, the strategies to be employed, required staffing and other required resources? Are there any innovative approaches, techniques, or design aspects proposed that will enhance the project?

Organizational (40%)

Does the proposed project staff possess the skills, knowledge, and expertise necessary to complete the tasks, including all of the elements listed within the project scope of work? Does the applicant agency, institution, organization, individual, or team have the organizational capacity to complete all deliverables? If consultants and/or partnerships are proposed, is there a reasonable justification for their inclusion in the project and a clear structure to ensure effective coordination? Does the applicant demonstrate the ability to purchase satellite uplink and internet streaming with closed captioning? Does the applicant demonstrate the ability to produce vignettes and capture testimonials for each broadcast? Are the proposed project management and staffing plans realistic and sufficient to complete the project within the award period? Is the proposed budget realistic, does it provide sufficient cost detail/narrative, and does it represent good value relative to the anticipated results?

Past Performance (20%)

Is the applicant experienced in producing live satellite/Internet broadcasts, in producing training video vignettes to support program and

training content, and in capturing video testimonials from field locations? Can the applicant provide adequate studio space and all equipment necessary to produce the required deliverables?

Note: NIC will not award a cooperative agreement to an applicant who does not have a Dun and Bradstreet Database Universal Number (DUNS) and is not registered in the Central Contractor Registry (CCR).

A DUNS number can be received at no cost by calling the dedicated toll-free DUNS number request line at 1–800–333–0505 (if you are a sole proprietor, you would dial 1–866–705–5711 and select option 1).

Registration in the CRR can be done online at the CRR Web site: *http://www.crr.gov.* A CRR Handbook and worksheet can also be reviewed at the Web site.

Number of Awards: One.

NIC Opportunity Number: 11AC02. This number should appear as a reference line in your cover letter, where indicated on Standard Form 424, and on the outside of the envelope in which the application is sent.

Catalog Federal Domestic Assistance Number: 16.601.

Executive Order 12372: This program is not subject to the provisions of Executive Order 12372.

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. 2010–29379 Filed 11–19–10; 8:45 am]

BILLING CODE 4410–36–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Technical Correction and Clarification for Prohibited Transaction Exemption (PTE) 2010–26, PNC Financial Services Group, Inc.

AGENCY: Employee Benefits Security Administration, Department of Labor (the Department).

ACTION: Notice of technical correction and clarification.

In the September 16, 2010 issue of the **Federal Register**, the Department published PTE 2010–26 at 75 FR 56564, which is an administrative exemption from the prohibited transaction provisions of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986, as amended, for PNC Financial Services Group, Inc; the corresponding Notice of Proposed Exemption (the Notice) was published at 75 FR 22853 on April 30, 2010.

This document will provide corrections and clarifications with respect to certain statements contained in PTE 2010–26 and the Notice.

1. Renumbering

To correct the numbering errors for PTE 2010–26, the second reference of Section II(a) should be revised to become Section II(b) and subsequent paragraphs should be revised in corresponding sequential order. Accordingly, the last two recordkeeping paragraphs in Section II of PTE 2010–26 should be identified as Section II(o) and (p).

2. Use of the Term Affiliate

Section II(a)(1) of PTE 2010–26 and the Notice read:

A Client Plan invested in a Fund does not pay any plan-level investment management fee, investment advisory fee or similar fee (Plan-Level Fee(s)) to PNC or its affiliates with respect to any of the assets of such Client Plan which are invested in shares of such Funds for the entire period of such investment (the Offset Fee Method).

The Department hereby deletes the phrase "or its affiliates" from Section II(a)(1) of PTE 2010–26 and the Notice.

3. Independent Audit Disclosures

Section II(m)(3) of PTE 2010–26 (as corrected by this document) and the Notice states:

A copy of the annual financial disclosure report which includes information about Fund portfolios, as well as the audit findings of an independent auditor, within (60) days of the preparation of such report; and

The Department deletes the following phrase in Section II(m)(3):

",as well as the audit findings of an independent auditor,".

The Department adds the following new paragraph to Section II(m)(5) of PTE 2010–26 (as corrected by this document) and the Notice:

A copy of the audit findings prepared by the independent Auditor, as required by Section II(a)(3), is provided by PNC at least annually within sixty (60) days of the completion of the report of such audit findings, to the Second Fiduciary of those Client Plans using the Credit Fee method as described in Section II(a)(3).

The last sentence of the second paragraph of Representation 18 of the Notice states the following:

Specifically, on an annual basis, such Second Fiduciary receives copies of the current Fund prospectuses, as well as copies of the annual financial disclosure reports containing information about the Funds and audit findings of the Auditor within sixty (60) days of the preparation of such report.

The Department hereby restates the last sentence of the second paragraph of Representation 18 of the Notice to read as follows:

Specifically, on an annual basis, such Second Fiduciary receives copies of the current Fund prospectuses, as well as copies of the annual financial disclosure reports, and for Client Plans investing in the Funds pursuant to the Credit Fee Method, reports with respect to the audit findings of the Auditor containing information about the Funds within sixty (60) days of the preparation of such report.

4. Custodial Services

The Department notes that the last sentence of Representation 3 of the Notice states:

However, the custodian for the Client Plans is not a PNC affiliate.

The Department deletes and replaces the last sentence of Representation 3 of the Notice as follows:

However, the custodian for the PNC Funds is not a PNC affiliate.

5. PNC's Compliance With PTE 77–4

The second sentence of Representation 9 in the Notice states that:

In addition, PNC has satisfied certain conditions in PTE 77–4.

The Department deletes this sentence and replaces it with the following sentence:

In addition, PNC represents it has satisfied all the conditions in PTE 77–4.

6. Technical Clarifications

The first paragraph of Section II(h) of the Notice and PTE 2010–26 (as corrected by this document) states:

A second fiduciary (Second Fiduciary), as defined below in Section III, who is acting on behalf of a Client Plan receives, in advance of any initial investment by a Plan Client in a Fund, full and detailed written disclosure of information concerning such Fund including but not limited to:

The Department deletes the term "Plan Client" and inserts "Client Plan" in lieu thereof. The Department corrects the first paragraph of Section II(h) of the Notice and PTE 2010–26 to read as follows:

A second fiduciary (Second Fiduciary), as defined below in Section III, who is acting on behalf of a Client Plan receives, in advance of any initial investment by a Client Plan in a Fund, full and detailed written disclosure of information concerning such Fund including but not limited to:

Additionally, Section III(k)(1) of the Notice states:

PNC is open for conducting all or substantially or substantially all of its banking functions, and

The Department corrects Section III(k)(1) of the Notice and PTE 2010–26 to state:

PNC is open for conducting all or substantially all of its banking functions, and

FOR FURTHER INFORMATION CONTACT: Mr. Anh-Viet Ly of the Department at (202) 693–8648. (This is not a toll-free number.)

Signed at Washington, DC, this 17th day of November, 2010.

Ivan L. Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2010–29342 Filed 11–19–10; 8:45 am]

BILLING CODE 4510–29–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2010–0360]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The NRC invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* Comprehensive Decommissioning Program, Including Annual Data Collection.

2. *Current OMB Approval Number:* OMB 3150–0206.

3. *How often the collection is required:* Annually.

4. *Who is required or asked to report:* All Agreement States who have signed Section 274(b) Agreements with NRC.

5. *The number of annual respondents:* 37 (13 Agreement States respondents with sites of interest + 24 Agreement States respondents with no sites of interest).

6. *An estimate of the total number of hours needed annually to complete the requirement or request:* 662 (590 hours from Agreement States with sites of interest + 72 hours from Agreement States with no sites of interest).

7. *Abstract:* Agreement States will be asked to provide information about uranium recovery and complex sites undergoing decommissioning regulated by the Agreement States on an annual basis. The information request will allow the NRC to compile, in a centralized location, more complete information on the status of decommissioning and decontamination in the United States in order to provide a national perspective on decommissioning. The information will be made available to the public by the NRC in order to ensure openness and promote communication to enhance public knowledge of the national decommissioning program. This does not apply to information, such as trade secrets and commercial or financial information provided by the Agreement States, that is considered privileged or confidential. Information such as financial assurance and the status of decommissioning funding would need to be identified by the Agreement State as privileged or confidential, whereupon the NRC would withhold such information from public access and treat it as sensitive or non-sensitive, per the considerations in 10 CFR 2.390 and 9.17. This does not apply to financial assurance or decommissioning funding information that is already available to the public. Although specific details of the funding mechanisms are treated as confidential, beneficial lessons learned regarding the improvement of decommissioning-related funding will be shared with the Agreement States.

Submit, by January 21, 2011, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, Maryland 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. Comments submitted should reference Docket No. NRC–2010–0339. You may submit your comments by any of the following methods: Electronic comments: Go to *http://www.regulations.gov* and search for Docket No. NRC–2010–0339. Mail comments to NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Questions about the information collection requirements may be directed to the NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–6258, or by e-mail to *INFOCOLLECTS.Resource@nrc.gov.*

Dated at Rockville, Maryland, this 10th day of November 2010

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2010–29375 Filed 11–19–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–361 and 50–362; NRC–2010–0359]

Southern California Edison; San Onofre Nuclear Generating Station, Unit 2 and Unit 3; Exemption

1.0 Background

Southern California Edison (SCE, the licensee) is the holder of the Facility Operating License Nos. NPF–10 and NPF–15, which authorize operation of the San Onofre Nuclear Generating Station (SONGS), Unit 2 and Unit 3, respectively. The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC or the Commission) now or hereafter in effect.

The facility consists of two pressurized-water reactors located in San Diego County, California.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR) part 73, "Physical protection of plants and materials,"

Section 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," published in the **Federal Register** on March 27, 2009, effective May 26, 2009, with a full implementation date of March 31, 2010, requires licensees to protect, with high assurance, against radiological sabotage by designing and implementing comprehensive site security programs. The amendments to 10 CFR 73.55 published on March 27, 2009 (74 FR 13926), establish and update generically applicable security requirements similar to those previously imposed by Commission orders issued after the terrorist attacks on September 11, 2001, and implemented by the licensees. In addition, the amendments to 10 CFR 73.55 include additional requirements to further enhance site security based upon insights gained from implementation of the post September 11, 2001, security orders. It is from one of these additional requirements that SCE now seeks an exemption from the implementation date. All other physical security requirements established by this recent rulemaking have been implemented by the licensee.

By letter dated August 24, 2010, as supplemented by letter dated October 17, 2010, the licensee requested an exemption in accordance with 10 CFR 73.5, "Specific exemptions." Portions of the August 24 and October 17, 2010, submittals contain safeguards and security-related information and, accordingly, redacted versions of those letters are available for public review in the Agencywide Documents Access and Management System (ADAMS), at Accession Nos. ML102380401 and ML102920691, respectively. By letter dated March 16, 2010 (Accession No. ML100630530), the NRC granted a previous exemption to SCE for two specific items subject to the revised rule in 10 CFR 73.55, allowing the implementation of one item to be deferred until October 31, 2010, and the implementation of a second item until January 31, 2011. The licensee has now requested an additional exemption from the current implementation date established in the prior exemption for one item, based on, in part, significant, unanticipated delays in the production, acceptance testing, and delivery of critical security equipment needed to meet the requirements of the new rule. Specifically, the licensee's request is to extend the implementation date deadline from the current date of October 31, 2010, to February 28, 2011, for one specific requirement. In its October 17, 2010, supplemental letter, SCE provided additional information supporting the requested extension for implementation of the first item, and also determined that it is currently in compliance with the new rule for the second item, thereby withdrawing its exemption request for the second item. Granting this exemption extending the implementation date for the one remaining item would allow the licensee to complete the modifications designed to update aging equipment and incorporate state-of-the-art technology to meet the noted regulatory requirements.

3.0 Discussion of Part 73 Schedule Exemption From the March 31, 2010, Full Implementation Date

Pursuant to 10 CFR 73.55(a)(1), "By March 31, 2010, each nuclear power reactor licensee, licensed under 10 CFR part 50, shall implement the requirements of this section through its Commission-approved Physical Security Plan, Training and Qualification Plan, Safeguards Contingency Plan, and Cyber Security Plan referred to collectively hereafter as 'security plans.'" Pursuant to 10 CFR 73.5, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 73 when the exemptions are authorized by law, and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

NRC approval of this exemption would allow an additional extension of the implementation date approved under a previous exemption from October 31, 2010, until February 28, 2011, for one specific remaining requirement of the new rule. As stated above, 10 CFR 73.5 allows the NRC to grant exemptions from the requirements of 10 CFR part 73. The NRC staff has determined that granting the licensee's proposed exemption would not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

In the draft final power reactor security rule provided to the Commission, the NRC staff proposed that the requirements of the new regulation be met within 180 days. The Commission directed a change from 180 days to approximately 1 year for licensees to fully implement the new requirements. This change was incorporated into the final rule. From this, it is clear that the Commission wanted to provide a reasonable timeframe for licensees to achieve full compliance.

As noted in the final rule, the Commission also anticipated that licensees would have to conduct site-specific analyses to determine what changes were necessary to implement the rule's requirements, and that changes could be accomplished through a variety of licensing mechanisms, including exemptions. Since issuance of the final rule, the Commission has rejected a generic industry request to extend the rule's compliance date for all operating nuclear power plants, but noted that the Commission's regulations provide mechanisms for individual licensees, with good cause, to apply for relief from the compliance date as documented in a letter from R. W. Borchardt (NRC) to M. S. Fertel (Nuclear Energy Institute) dated June 4, 2009. The licensee's request for an exemption is therefore consistent with the approach set forth by the Commission and discussed in the June 4, 2009, letter.

SONGS Schedule Exemption Request

The licensee provided detailed information in its letters dated August 24 and October 17, 2010, requesting an exemption. In those letters, the licensee described its comprehensive plan to design, construct, test, and turn over the new equipment for the enhancement of the security capabilities at the SONGS site to achieve full compliance with the new regulation. The August 24 and October 17, 2010, letters contain security-related and safeguards information regarding the site security plan, details of the specific requirements of the regulation for which the licensee seeks exemption, justification for the additional extension request, a description of the required changes to the site's security configuration, and a revised timeline with critical path activities that would enable the licensee to achieve full compliance by February 28, 2011. The timeline provides revised dates indicating when construction will be completed on various phases of the project and when critical equipment will be received, installed, tested and become operational.

Notwithstanding the schedule exemption for this one remaining item, the licensee would continue to be in compliance with all other applicable physical security requirements, as described in 10 CFR 73.55 and reflected in its current NRC-approved physical security program. By February 28, 2011, SONGS would be in full compliance with all of the regulatory requirements of 10 CFR 73.55, as issued on March 27, 2009.

4.0 Conclusion for Part 73 Schedule Exemption Request

The NRC staff has reviewed the licensee's submittal and concludes that the licensee has provided adequate justification for its request for an extension of the previously authorized compliance date from October 31, 2010, to February 28, 2011, for one specific requirement. This conclusion is based on the staff's determination that SCE has made a good faith effort to meet the requirements in a timely manner, has sufficiently described the reasons for the unanticipated delays, and has provided an updated detailed schedule with adequate justification for the additional time requested for the extension, based on those delays and an expansion to the original scope of work that the staff agrees is needed to ensure that required system capabilities are met.

Accordingly, the Commission has determined that pursuant to 10 CFR 73.5, "Specific exemptions," an exemption to further extend the March 31, 2010, compliance date is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the requested exemption.

The NRC staff has determined that the long-term benefits that will be realized when the SONGS security modifications are completed justifies exceeding the full compliance date with regard to the specified requirements of 10 CFR 73.55. The significant security enhancements SONGS needs additional time to complete are new requirements imposed by March 27, 2009, amendments to 10 CFR 73.55, and are in addition to those required by the security orders issued in response to the events of September 11, 2001. Therefore, the NRC concludes that the licensee's actions are in the best interest of protecting the public health and safety through the security changes that will result from granting this exemption.

As per the licensee's request and the NRC's regulatory authority to grant an exemption from the March 31, 2010, deadline for the one remaining item specified in Enclosure 1 of SCE's letters dated August 24 and October 17, 2010, the licensee is required to be in full compliance by February 28, 2011. In achieving compliance, the licensee is reminded that it is responsible for determining the appropriate licensing mechanism (i.e., 10 CFR 50.54(p) or 10 CFR 50.90) for incorporation of all necessary changes to its security plans.

Pursuant to 10 CFR 51.32, "Finding of no significant impact," the Commission has previously determined that the granting of this exemption will not have a significant effect on the quality of the human environment (75 FR 69136; November 10, 2010).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 10th day of November 2010.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–29368 Filed 11–19–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Reliability and PRA; Notice of Meeting

The ACRS Subcommittee on Reliability and PRA will meet on December 13–14, 2010, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The agenda for the subject meeting shall be as follows: *Monday, December 13, 2010—8:30 a.m. until 5 p.m. and Tuesday, December 14, 2010—8:30 a.m. until 5 p.m.*

The Subcommittee will review the current state of licensee efforts on the fire protection program transition to NFPA–805. The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), John Lai (Telephone 301–415–5197 or E-mail: *John.Lai@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010, (75 FR 65038–65039).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs*. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: November 15, 2010.

Antonio Dias,

Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. 2010–29373 Filed 11–19–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–320; License No. DPR–73; NRC–2010–0358]

Receipt of Request for Action Under 10 CFR 2.206

Notice is hereby given that by petition dated September 30, 2010, Mr. Eric J. Epstein has requested that pursuant to Title 10 of the Code of Federal Regulations (10 CFR), Section 2.206, "Requests for Action under this Subpart," the U.S. Nuclear Regulatory Commission (NRC) take action with regard to the Three Mile Island Unit-2 (TMI–2) Nuclear Power Station. Mr. Epstein requests that the Commission take enforcement action in the form of a Demand for Information from FirstEnergy relating to inadequate financial assurance provided by the licensee for TMI–2's nuclear decommissioning fund prior to the consummation of FirstEnergy's proposed merger with Allegheny Energy. As the basis for this request, the petitioner states that the current radiological decommissioning cost estimate is $831.5 million and the current amount in the decommissioning trust fund is $484.5 million, as of December 31, 2008. Further, the petitioner states that FirstEnergy's decommissioning report is inadequate,

and fails to account for the special status of TMI–2, the current level of underfunding, or the fact that decommissioning rate recovery for Metropolitan Edison and Pennsylvania Electric cease per Pennsylvania Public Utility Commission Orders on December 31, 2010.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of the Office of Federal and State Materials and Environmental Management Programs (FSME). As provided by 10 CFR 2.206, appropriate action will be taken on this petition within a reasonable time. The petitioner met with FSME's Petition Review Board (PRB), via teleconference, on October 19, 2010, to discuss the petition. The results of that discussion have been considered in the PRB's determination regarding the petitioner's request for additional information from FirstEnergy and in establishing the schedule for the review of the petition.

Copies of the petition are available to the public from the NRC's Agencywide Documents Access and Management System (ADAMS) in the public Electronic Reading Room on the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* under ADAMS Accession No. ML102770308, and are available for inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

Dated at Rockville, Maryland, November 9, 2010.

For the Nuclear Regulatory Commission.

Charles L. Miller,

Director, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2010–29367 Filed 11–19–10; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Market Test of Experimental Product: "Alternative Postage Payment Method for Greeting Cards"

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of a market test of an experimental product in accordance with statutory requirements.

DATES: November 22, 2010.

FOR FURTHER INFORMATION CONTACT: David H. Rubin, 202–268–2986.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice pursuant to 39 U.S.C. 3641(c)(1) that it will begin a market test of its "Alternative Postage Payment Method for Greeting Cards" experimental product on January 2, 2011. The Postal Service has filed with the Postal Regulatory Commission a notice setting out the basis for the Postal Service's determination that the market test is covered by 39 U.S.C. 3641 and describing the nature and scope of the market test. Documents are available at *http://www.prc.gov,* Docket No. MT2011–1.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 2010–29288 Filed 11–19–10; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Tuesday, November 23, 2010 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Paredes, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session, and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting scheduled for Tuesday, November 23, 2010 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: November 18, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–29475 Filed 11–18–10; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63318; File No. SR–Phlx–2010–148]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change Relating to Certain Membership Rules

November 16, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on November 5, 2010, NASDAQ OMX PHLX LLC ("Phlx" 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 Exchange, pursuant to Section 19(b)(1) of the Act [3] and Rule 19b–4 thereunder,[4] proposes to delete Exchange Rule 793, Affiliations—Dual and [sic] Multiple and amend Rule 908, Rights and Privileges of A–1 Permits, and Option Floor Procedure Advices ("OFPAs") F–9, Dual Affiliations, and F–11, Splitting Order [sic], and Regulation 3, Identification Badges/Access Cards to provide that a Series A–1 permit holder may affiliate with two member organizations under common ownership.

The Exchange is also proposing to make a clarifying amendment to Rule 908(h) regarding permit transfer. Finally, the Exchange desires to amend Exchange Rule 900.2 to add a provision for lapsed applications.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* at the principal office of the Exchange, and at

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(1).

[4] 17 CFR 240.19b–4.

the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to eliminate and reserve Exchange Rule 793 titled Affiliations—Dual or Multiple and adopt a simple standard for multiple affiliations. Currently, Exchange Rule 793 provides that no person shall at the same time be a partner, officer, director, stockholder, or associated person of more than one member or participant organization, nor shall he be affiliated in any manner with a non-member or non-participant organization which is engaged in the securities business, unless such affiliation has been disclosed to and approved in writing by the member and/or participant organization and such approval has been filed with the Office of the Secretary.

Currently, a permit holder may affiliate with more than one member or participant organization so long as the Exchange is notified, in writing, of the affiliation. The affiliation involves an agreement between the member organizations and the permit holder. The Exchange is not a party to that arrangement. The Exchange requires: (i) An explanation of the business purpose for the arrangement; and (ii) identification of the individuals who shall supervise the business conduct of the permit holder that is multiply affiliated for compliance with the By-Laws and Rules. The Exchange may disapprove multiple affiliations which are inconsistent with Exchange standards of financial responsibility, operational capability, or compliance responsibility.

Currently, an affiliation pursuant to Rule 793 allows a person to be associated with multiple member organizations for different purposes. Specifically, if a broker dealer sought membership on the Exchange for the purpose of electronic access to the Exchange's trading system, that broker dealer could seek an affiliation pursuant to Rule 793. In this example, the affiliation would serve to provide membership status to a broker dealer without the need for the broker dealer to secure a permit. If a member organization is solely gaining electronic access to the Exchange, that member organization only requires one permit to qualify as a member organization.

Another purpose for the dual affiliation could involve access to the Exchange's trading floor and the ability for permit holders to affiliate with multiple member organizations for greater flexibility. In this example floor traders could become affiliated with various related member organizations in order to satisfy certain trading and/or staffing requirements. If a member organization is conducting business on the Exchange's trading floor, each person associated with that member organization on the trading floor who functions in a trading capacity is required to have a permit. Every trader on the Exchange's trading floor is required to obtain a Series A–1 permit.

The Exchange is proposing to eliminate this Rule [5] and instead amend Exchange Rule 908 to allow a Series A–1 permit holder on the Exchange's trading floor to affiliate with up to two member organizations (a primary and a secondary member organization) that are under common ownership, a primary and a secondary member organization.[6] The common ownership would be at least 75% common ownership between the member organizations. Both the primary and secondary member organizations would be required to notify the Membership Department of such an affiliation. Notification of such affiliation pursuant to 908(b)(i) would include: (i) An attestation of common ownership; (ii) the names of the individuals responsible for supervision of the permit holder; and (iii) the Exchange account numbers for billing purposes.[7] A Series A–1 permit holder would also be required to comply with all current membership By-Laws and Rules. Specifically, By-Laws 13–2, 13–4 and 13–6, among others, would still condition membership.

While a Series A–1 permit holder who is already affiliated with a member organization (primary affiliation) may affiliate with a member organization under common ownership (a secondary affiliation) as proposed herein, the permit holder must comply with all applicable registration, qualification and examination requirements. The proposed amendment to Rule 908(b)(i) allows the Series A–1 permit holder the ability to engage in trading activity on behalf of either the primary or secondary member organization that the permit holder is affiliated with as per Rule 908(b)(i). The Exchange's By-Laws and Rules would continue to apply to affiliated permit holders (permit holders with a primary and a secondary affiliation) and the affiliated member organizations (primary and secondary affiliations) with respect to trading, registration, qualifications, examinations and other membership requirements. Further, the Exchange would have access to information on the affiliate in order to allow it to carry out its regulatory responsibility with respect to the member organization and its affiliated persons.

For example, an affiliated Series A–1 permit holder (a permit holder with a primary and a secondary affiliation) is required to display a badge on the Exchange's trading floor identifying on behalf of which member organization the permit holder is trading for on a particular day. For example whether the Series A–1 permit holder is trading for the primary or secondary member organization.[8] The badge is used to identify the member organization with which the Series A–1 permit holder is affiliated. The Series A–1 permit holder is required to maintain all the requisite qualifications, registrations and comply with all applicable trading rules at all times. The Series A–1 permit holder is required to specifically obtain and maintain all necessary registrations to trade for an affiliated member organization, as well as the necessary qualifications.

In particular, the Exchange requires certain information from the Series A–1 permit holder seeking affiliation in order to assure compliance with Rule 908 and other membership requirements

[5] The Commission notes the Exchange is proposing to reserve Rule 793.

[6] Notwithstanding applicable By-Laws and Rules conditioning membership, a Series A–1 permit holder on the Exchange's trading floor may be affiliated with up to two (2) member organizations that are under common ownership.

[7] Both the primary and secondary member organizations would be required to execute a form which the Membership Department shall make available once the Membership Department is notified of the proposed affiliation.

[8] The Exchange requires a Series A–1 permit holder on the Exchange's trading floor to wear a badge which is provided by the Exchange and contains identifying information. The affiliated Series A–1 permit holder cannot simultaneously trade for both the primary and secondary member organization on the same day.

as well as other Rules. Specifically, the affiliated permit holder (permit holder with a primary and a secondary affiliation) would be required to disclose the individuals at each member organization (primary and secondary) responsible for supervising the Series A–1 permit holder.[9] This information is utilized by the Regulatory staff in its examination of persons trading on the Exchange for appropriate compliance with the Rules of the Exchange.

If a Series A–1 permit holder who is currently affiliated pursuant to Rule 793 is not affiliated with entities under common ownership, the organization that they qualify as a member would be required to obtain its own permit in order to maintain its membership status. A Series A–1 permit holder who currently affiliates with an unrelated party (not under common ownership) to qualify a member organization for electronic access or access to the trading floor would not be permitted to continue to qualify that member organization under this proposal. Similarly, if a permit holder had more than two affiliations with a member organization they would only be permitted to maintain an affiliation with up to two member organizations. The amended text of Rule 908 requires that a Series A–1 permit holder can only affiliate with up to two member organizations that are under common ownership.

In addition, the Exchange proposes to make conforming amendments to certain OFPAs[10] and Regulations,[11] specifically, OFPA F–9, Dual Affiliations, OFPA F–11, Splitting Order [sic], and Regulation 3, Identification Badges/Access Cards.

The Exchange proposes to amend OFPA F–9 by removing references to "dual" so that the filing [sic] simply refers to affiliations. The Exchange is changing the requirement to report to the Office of the Secretary to the Membership Department to conform with the proposed amendment to Rule 908. The Exchange proposes to amend the reference to Rule 793, which is being deleted, and instead refer to Rule 908.

The Exchange is also proposing to amend the language in OFPA F–9 to remove the requirements to explain compensation since the only affiliations that will be acceptable are those under common ownership. The Exchange is deleting the requirement to file an explanation of all agreed upon forms of compensation between affiliated firms because the Exchange believes that the information is not necessary since the firms would be required to be under common ownership pursuant to this proposal. The Exchange is also adding a sentence indicating that floor members must adhere to the requirements in renamed (a) and (b). The Exchange is proposing to reference Exchange Rule 1020 for the newly named F–9(ii)(a). The Exchange added this reference to Rule 1020 in paragraph F–9(ii)(a) in order to cross-reference the Rule concerning information barriers. This is not a substantive amendment; the purpose of this amendment is to be more specific with respect to the information in that paragraph. The Exchange simply renamed (b) for ease of reference.

The Exchange is proposing to amend OFPA F–11 by similarly removing references to "dual" and replacing references to Rule 793 with Rule 908. The Exchange is proposing to amend Regulation 3 by removing the reference to the word "dual."

The Exchange also proposes to amend Exchange Rule 908(h) to add an "or" to the text of the Exchange Rule 908(h) to make clear that a permit may be transferred either intra-firm or to an inactive nominee registered with the Exchange. This proposal is solely to clarify an existing practice.

The Exchange proposes to amend Exchange Rule 900.2, Membership and Foreign Currency Options Applications, to address lapsed applications. Pursuant to Exchange Rule 900.2, applicants desiring membership in the Exchange are required to submit information in a form prescribed by the Membership Department.[12] The Exchange expends resources in processing applications for members. The determination to admit a person for membership in the Exchange is contingent on the information provided in the application. After a 90 day calendar period has elapsed, the information provided by the applicant is stale and no longer a reasonable basis for the Exchange to make a determination on admitting a person for membership. The Membership Department expends a considerable amount of resources requesting updates from members and researching information to make a reasonable determination when an application is outdated.

This proposal seeks to amend Exchange Rule 900.2[13] to require persons seeking membership to the Exchange to provide all information and subsequent requests from the Membership Department for information within a 90 calendar day period or the application lapses. The Exchange may extend the timeframe for extraordinary purposes or in the instance that the Exchange makes a request relatively close to the 90-day timeframe. If an application lapses, the person would be required to submit a new application.[14] The Exchange intends that all applicants be provided an equal opportunity to seek membership to the Exchange. Additionally, the Exchange would not refund the fee associated with submitting an application and the applicant would be required to pay a new fee to resubmit the application.[15]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[16] in general, and furthers the objectives of Section 6(b)(5) of the Act[17] 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 continuing to allow a Series A–1 permit holder to affiliate a permit in certain circumstances.

Exchange Rule 793 was initially proposed[18] prior to demutualization when the Exchange had a seat market and at that time it was more costly to obtain the right to trade on the

[9] The Commission notes that the Exchange has proposed that both member organizations, not the affiliated permit holder, will be responsible for notifying the Exchange of the identity of the individuals supervising the affiliated permit holder. *See* proposed Rule 908(b)(i).

[10] The Exchange's minor rule plan consists of options floor procedure advices ("OFPAs" or "Advices") with preset fines, pursuant to Rule 19d–1(c) under the Act. 17 CFR 240.19d–1(c). Most OFPAs have corresponding options rules.

[11] Regulation 3 is part of the Exchange's Order and Decorum Regulations administered pursuant to Exchange Rule 60.

[12] The Membership Department posts the requisite forms on the Exchange's Web site at *http://www.nasdaqomxtrader.com/Trader.aspx?id=membership_phlx.* The Membership Department updates the forms from time to time and makes them available on this Web site.

[13] The Commission notes that the Exchange proposes to renumber Rule 900.2(e) as 900.2(f) due to the new proposed Rule 900.2(e).

[14] The purpose of the new application would be to update all information to provide the Membership Department current information on which to basis [sic] a decision to accept the applicant for membership. The Exchange intends to file a proposal with the Commission to amend its Fee Schedule to reflect the lapsed application fee.

[15] The Exchange's Application Fee can be found on the Fee Schedule located on the Exchange's Web site at *http://www.nasdaqomxtrader.com/content/marketregulation/membership/phlx/feesched.pdf.*

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] *See* Securities Exchange Act Release No. 21777 (January 9, 1985) [sic], 50 FR 8030, February 21, 1985) [sic] (SR–Phlx–84–14).

Exchange.[19] Since demutualization, a Series A–1 permit has expanded a member's ability to gain access to the Exchange at a significantly lower cost.[20] Today, there are no restrictions on the number of permits the Exchange may issue and, assuming the qualifications are met, a member organization may hold any number of permits, which does not prevent access to the Exchange.

The Exchange believes that this proposal simplifies the affiliation process and applies it equally to all members. The Exchange believes that allowing for affiliation where there is a common ownership and up to two affiliations is a simple, straightforward process for allowing access to the Exchange for the purpose of allowing floor traders to meet Exchange rules and for assistance with staffing issues.

The Exchange believes that amending the language in Rule 908(h) will provide members with clarity as to permit transfers. Finally, requiring applicants to submit their information within a 90 calendar day period, absent a showing of good cause, provides the Membership Department with information that can be utilized to make reasonable decisions concerning membership at the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR–Phlx–2010–148 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 No. *SR–Phlx–2010–148.* This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. *SR–Phlx–2010–148* and should be submitted on or before December 13, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–29343 Filed 11–19–10; 8:45 am]

BILLING CODE 8011–01–P

[19] Prior to demutualization, the Exchange had a limited number of seats and the dual affiliation allowed for additional access. There is no fixed number of Series A–1 permits today.

[20] The Exchange also allows members on the Exchange's trading floor to appoint inactive nominees pursuant to By-Law Article XII, Section 12–10. The inactive nominee allows a Member to have additional flexibility in obtaining coverage on the trading floor.

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63317; File No. SR–NYSEArca–2010–101]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of the ProShares VIX Short-Term Futures ETF and the ProShares VIX Mid-Term Futures ETF

November 16, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on November 5, 2010, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the ProShares VIX Short-Term Futures ETF and the ProShares VIX Mid-Term Futures ETF under NYSE Arca Equities Rule 8.200, Commentary .02. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Arca Equities Rule 8.200, Commentary .02, permits the trading of Trust Issued Receipts ("TIRs") either by listing or pursuant to unlisted trading privileges ("UTP").[3] The Exchange proposes to list and trade shares ("Shares") of the ProShares VIX Short-Term Futures ETF and the ProShares VIX Mid-Term Futures ETF ("Funds") under NYSE Arca Equities Rule 8.200, Commentary .02.[4] The Funds seek to provide investment results (before fees and expenses) that match the performance of a benchmark that seeks to offer exposure to market volatility through publicly traded futures markets. The benchmark for ProShares VIX Short-Term Futures ETF is the S&P 500 VIX Short-Term Futures Index and the benchmark for ProShares VIX Mid-Term Futures ETF is the S&P 500 VIX Mid-Term Futures Index (each, an "Index," and, collectively, "Indexes").[5] The Funds will invest in futures contracts based on the Chicago Board Options Exchange ("CBOE") Volatility Index ("VIX") to pursue their respective investment objectives. Each Fund also may invest in cash or cash equivalents such as U.S. Treasury securities or other high credit quality short-term fixed-income or similar securities (including shares of money market funds, bank deposits, bank money market accounts, certain variable-rate demand notes and repurchase agreements collateralized by government securities) that may serve as collateral for the futures contracts.

ProShare Capital Management LLC ("Sponsor"), a Maryland limited liability company, serves as the Sponsor of ProShares Trust II ("Trust"). The Sponsor is a commodity pool operator and commodity trading advisor.[6] Brown Brothers Harriman & Co. serves as the administrator ("Administrator"), custodian and transfer agent of the Funds and their respective Shares. SEI Investments Distribution Co. ("Distributor") serves as Distributor of the Shares. Wilmington Trust Company, a Delaware banking corporation, is the sole trustee of the Trust.

According to the Registration Statement, if a Fund is successful in meeting its objective, its value (before fees and expenses) should gain approximately as much on a percentage basis as the level of its corresponding Index when it rises. Conversely, its value (before fees and expenses) should lose approximately as much on a percentage basis as the level of its corresponding Index when it declines. Each Fund acquires exposure through VIX futures contracts traded on the CBOE Futures Exchange ("CFE") ("VIX Futures Contracts"), such that each Fund has exposure intended to approximate the benchmark at the time of the net asset value ("NAV") calculation.[7]

According to the Registration Statement, each Fund is not actively managed by traditional methods, which typically involve effecting changes in the composition of a portfolio on the basis of judgments relating to economic, financial and market considerations with a view toward obtaining positive results under all market conditions. Rather, the Sponsor seeks to cause the NAV to track the performance of an Index, even during periods in which that benchmark is flat or moving in a manner which causes the NAV of a Fund to decline.

In seeking to achieve each Fund's investment objective, the Sponsor uses a mathematical approach to investing. Using this approach, the Sponsor determines the type, quantity and mix of investment positions that the Sponsor believes in combination should produce returns consistent with such Fund's objective. The Sponsor relies upon a pre-determined model to generate orders that result in repositioning the Funds' investments in accordance with their respective investment objectives.

VIX Futures Contracts:

The Indexes are comprised of, and the value of the Funds will be based on, VIX Futures Contracts. VIX Futures Contracts are measures of the market's expectation of the level of VIX at certain points in the future, and, as such, will behave differently than current, or spot, VIX.[8] The Funds are not linked to the VIX, and in many cases the Indexes, and by extension the Funds, will significantly underperform the VIX.

While the VIX represents a measure of the current expected volatility of the S&P 500 over the next 30 days, the prices of VIX Futures Contracts are based on the current expectation of what the expected 30-day volatility will be at a particular time in the future (on the expiration date). To illustrate, on July 30, 2010, the VIX was 23.5 and the price of the October 2010 VIX Futures Contracts expiring on October 20, 2010 was 29.7. In this example, the price of the VIX represented the 30-day implied, or "spot," volatility (the volatility expected for the period from July 30 to August 30, 2010) of the S&P 500, and the October VIX Futures Contracts represented forward implied volatility (the volatility expected for the period from October 20 to November 20, 2010) of the S&P 500.[9] The VIX Futures Contracts trade from 9:30 a.m. to 4:15 p.m. Eastern Time ("E.T.")

The S&P 500 VIX Short-Term Futures Index and S&P 500 VIX Mid-Term Futures Index

According to the Registration Statement, the Indexes act as a measure

[3] Commentary .02 to NYSE Arca Equities Rule 8.200 applies to TIRs that invest in "Financial Instruments." The term "Financial Instruments," as defined in Commentary .02(b)(4) to NYSE Arca Equities Rule 8.200, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars and floors; and swap agreements.

[4] The Commission previously has approved listing on the Exchange under Commentary .02 to NYSE Arca Equities Rule 8.200 of certain securities issuers. *See, e.g.,* Securities Exchange Act Release Nos. 58457 (September 3, 2008), 73 FR 52711 (September 10, 2008) (SR–NYSEArca–2008–91) (order granting accelerated approval to list on NYSE Arca of 14 ProShares funds); and 58983 (November 20, 2008), 73 FR 73368 (December 2, 2008) (SR–NYSEArca–2008–126) (order granting accelerated approval to list on NYSE Arca the GreenHaven Continuous Commodity Index Fund). *See also* Securities Exchange Act Release No. 58968 (November 17, 2008), 73 FR 71082 (November 24, 2008) (SR–NYSEArca–2008–111) (order granting accelerated approval of proposed rule change to amend NYSE Arca Equities Rule 5.2(j)(6)(v) to add CBOE Volatility Index (VIX) Futures to the definition of Futures Reference Asset).

[5] Standard & Poor's Financial Services LLC is the index sponsor with respect to the Indexes and has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Indexes.

[6] The Funds have filed a registration statement on Form S–3 under the Securities Act of 1933, dated November 5, 2010 (File No. 333–163511) ("Registration Statement"). The description of the Funds and the Shares contained herein are based on the Registration Statement.

[7] Terms relating to the Funds, the Shares and the Indexes referred to, but not defined, herein are defined in the Registration Statement.

[8] VIX is the ticker symbol for the CBOE Volatility Index, a popular measure of implied volatility. The goal of the VIX is to estimate the implied volatility of the S&P 500 over the next 30 days. A relatively high level of the VIX corresponds to a more volatile U.S. equity market as expressed by more costly options on the S&P 500 Index. The VIX represents one measure of the market's expectation of [sic] over the next 30 day period. It is a blend of prices for a range of options on the S&P 500 Index. The formula utilizes current market prices for a series of out-of-the-money calls and puts for the front month and second month expirations.

[9] As of June 14, 2010, there was VIX Futures Contracts open interest on CFE of 88,366 contracts with a contract price of $25.55 and value of open interest of $2,257,751,300. Total CFE trading volume in 2009 in VIX Futures Contracts was 1,143,612 contracts, with average daily volume of 4,538 contracts. Total volume year-to-date (through May 31, 2010) is 1,399,709 contracts, with average daily volume of 13,458 contracts. (Source: Bloomberg and CBOE).

of volatility as reflected by the price of certain VIX Futures Contracts ("Index Components"), with the price of each VIX Futures Contract reflecting the market's expectation of future volatility. Each Index seeks to reflect the returns that are potentially available from holding an unleveraged long position in certain VIX Futures Contracts.

Unlike the Indexes, the VIX, which is not a benchmark for either Fund, is calculated based on the prices of put and call options on the S&P 500, which are traded on the CBOE.

The S&P 500 VIX Short-Term Futures Index employs rules for selecting the Index Components and a formula to calculate a level for the Index from the prices of these components. Specifically, the Index Components represent the prices of the two near-term VIX futures months, replicating a position that rolls the nearest month VIX Futures Contract to the next month VIX Futures Contract on a daily basis in equal fractional amounts. This results in a constant weighted average maturity of one month. The roll period begins on the Tuesday prior to the monthly CFE VIX Futures Contracts settlement date and runs through the Tuesday prior to the subsequent month's CFE VIX Futures Contract settlement date.

The S&P 500 VIX Mid-Term Futures Index also employs rules for selecting the Index Components and a formula to calculate the level of the Index from the prices of these components. Specifically, the Index Components represent the prices for four contract months of VIX Futures Contracts, representing a market-based estimation of constant maturity, five-month forward implied VIX values. The S&P 500 VIX Mid-Term Futures Index measures the return from a rolling long position in the fourth, fifth, sixth and seventh month VIX Futures Contracts, and rolls continuously throughout each month while maintaining positions in the fifth and sixth month contracts. This results in a constant weighted average maturity of five months.

Calculation of the Indexes

The level of each Index is calculated in accordance with the method described in the Registration Statement. The level of each Index will be published at least every 15 seconds both in real time from 9:30 a.m. to 4:15 p.m. E.T., and at the close of trading on each Business Day by Bloomberg L.P. and Reuters.[10]

The Index Components comprising each Index represent the prices of certain futures contracts on the VIX. Each Index takes a daily rolling long position in contracts of specified maturities and is intended to reflect the returns that are potentially available through an unleveraged investment in those contracts. The S&P 500 VIX Short-Term Futures Index measures the return from a rolling long position in the first and second month VIX Futures Contracts. The Index rolls continuously throughout each month from the first month VIX Futures Contracts into the second month VIX Futures Contracts. The S&P 500 VIX Mid-Term Futures Index measures the return from a rolling long position in the fourth, fifth, sixth and seventh month VIX Futures Contracts. The Index rolls continuously throughout each month from the fourth month contract into the seventh month contract while maintaining positions in the fifth month and sixth month contracts.

The Indexes roll on a daily basis. One of the effects of daily rolling is to maintain a constant weighted average maturity for the underlying futures contracts. Unlike equities, which typically entitle the holder to a continuing stake in a corporation, futures contracts normally specify a certain date for the delivery of the underlying asset or financial instrument or, in the case of futures contracts relating to indices such as the VIX, a certain date for payment in cash of an amount determined by the level of the underlying index. The Indexes operate by selling, on a daily basis, Index Components with a nearby settlement date and purchasing Index Components with a longer-dated settlement date. The roll for each contract occurs on each Business Day according to a pre-determined schedule that has the effect of keeping constant the weighted average maturity of the relevant futures contracts. This process is known as "rolling" a futures position, and each Index is a "rolling index." The constant weighted average maturity for the futures underlying the S&P 500 VIX Short-Term Futures Index is one month and for the futures underlying the S&P 500 VIX Mid-Term Futures Index is five months.

Because the Indexes incorporate this process of rolling futures positions on a daily basis, and the Funds, in general, also roll their positions on a daily basis, the daily roll is not anticipated to be a significant source of tracking error between either Fund and its respective Index. The Indexes are based on VIX Futures Contracts and not the VIX, and, as such, neither the Funds nor the Indexes are expected to track the VIX.

Purchases and Redemptions of Creation Units

The Funds will create and redeem Shares from time to time in one or more Creation Units. A Creation Unit is a block of 50,000 Shares. Except when aggregated in Creation Units, the Shares are not redeemable securities.

On any Business Day, an Authorized Participant may place an order with the Distributor to create one or more Creation Units.[11] The total cash payment required to create each Creation Unit is the NAV of 50,000 Shares of the Funds on the purchase order date plus the applicable transaction fee.

The procedures by which an Authorized Participant can redeem one or more Creation Units mirror the procedures for the purchase of Creation Units. On any Business Day, an Authorized Participant may place an order with the Distributor to redeem one or more Creation Units. The redemption proceeds from a Fund consist of the cash redemption amount. The cash redemption amount is equal to the NAV of the number of Creation Unit(s) of a Fund requested in the Authorized Participant's redemption order as of the time of the calculation of a Fund's NAV on the redemption order date, less transaction fees.

Availability of Information Regarding the Shares

The NAV for the Funds' Shares will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time.[12] The Exchange will make available on its Web site daily trading volume of each of the Shares, closing prices of such Shares, and number of Shares outstanding.

The closing prices and settlement prices of the Index Components are also readily available from the Web sites of the CFE *(http://www.cfe.cboe.com)*, automated quotation systems, published or other public sources, or on-line

[10] A "Business Day" means any day other than a day when any of the NYSE, the NYSE Arca, the CBOE, or the CFE or other exchange material to the valuation or operation of the Funds, or the calculation of the VIX, options contracts underlying the VIX, VIX Futures Contracts or the Indexes is closed for regular trading.

[11] Authorized Participants have a cut-off time of 12 p.m. E.T. to place creation and redemption orders.

[12] According to the Registration Statement, net asset value means the total assets of the Funds including, but not limited to, all cash and cash equivalents or other debt securities less total liabilities of the Funds, each determined on the basis of generally accepted accounting principles in the United States, consistently applied under the accrual method of accounting. Each Fund's NAV is calculated at 4:15 p.m. (E.T.).

information services such as Bloomberg or Reuters. Complete real-time data for component futures underlying the Indexes is available by subscription from Reuters and Bloomberg. The CFE also provides delayed futures information on current and past trading sessions and market news free of charge on its Web site (*http://www.cfe.cboe.com*). The specific contract specifications for component futures underlying the Indexes are also available on such Web sites, as well as other financial informational sources. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association ("CTA"). In addition, the Funds' Web site at *http://www.proshares.com* will display the end of day closing Index levels and NAV.

The Funds will provide Web site disclosure of portfolio holdings daily and will include, as applicable, the notional value (in U.S. dollars) of VIX Futures Contracts and characteristics of such instruments and cash equivalents, and amount of cash held in the portfolio of the Funds. This Web site disclosure of the portfolio composition of the Funds will occur at the same time as the disclosure by the Funds of the portfolio composition to Authorized Participants so that all market participants are provided portfolio composition information at the same time. Therefore, the same portfolio information will be provided on the public Web site as well as in electronic files provided to Authorized Participants. Accordingly, each investor will have access to the current portfolio composition of the Funds through the Funds' Web site.

In addition, in order to provide updated information relating to the Funds for use by investors and market professionals, an updated Indicative Optimized Portfolio Value ("IOPV") will be calculated. The IOPV is an indicator of the value of the VIX Futures Contracts and cash and/or cash equivalents less liabilities of a Fund at the time the IOPV is disseminated. NYSE Arca calculates and disseminates every 15 seconds throughout the trading day an updated IOPV. The IOPV is calculated by the NYSE Arca using the prior day's closing net assets of a Fund as a base and updating throughout the trading day changes in the value of the Funds' holdings.

The NYSE Arca disseminates the IOPV. In addition, the IOPV is published on the NYSE Arca's Web site and is available through on-line information services such as Bloomberg and Reuters.

The IOPV disseminated during the Core Trading Session should not be viewed as an actual real-time update of the NAV, which is calculated only once a day. The IOPV also should not be viewed as a precise value of the Shares.

The Exchange believes that dissemination of the IOPV provides additional information regarding the Funds that is not otherwise available to the public and is useful to professionals and investors in connection with the related Shares trading on the Exchange or the creation or redemption of such Shares.

Additional information regarding the Funds and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes is included in the Registration Statement.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. E.T. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

The trading of the Shares will be subject to NYSE Arca Equities Rule 8.200, Commentary .02(e), which sets forth certain restrictions on ETP Holders acting as registered Market Makers in Trust Issued Receipts to facilitate surveillance. See "Surveillance" below for more information.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the underlying futures contracts; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule [13] or by the halt or suspension of trading of the underlying futures contracts.

The Exchange represents that the Exchange may halt trading during the day in which the interruption to the dissemination of the IOPV, the value of the Index, the VIX or the value of the underlying VIX Futures Contracts occurs. If the interruption to the dissemination of the IOPV, the value of the Index, the VIX or the value of the underlying VIX Futures Contracts persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

The Funds will meet the initial and continued listing requirements applicable to Trust Issued Receipts in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto. With respect to application of Rule 10A–3 under the Act,[14] the Shares must be in compliance with NYSE Arca Equities Rule 5.3 and Rule 10A–3 under the Act. A minimum of 100,000 Shares of each of the Funds will be outstanding as of the start of trading on the Exchange.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products, including Trust Issued Receipts, to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillances focus on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. The Exchange is able to obtain information regarding trading in the Shares, options, futures or options on futures on, Shares through ETP Holders, in connection with such ETP Holders' proprietary or customer trades through ETP Holders which they effect on any relevant market. The Exchange can obtain market

[13] *See* NYSE Arca Equities Rule 7.12.

[14] 17 CFR 240.10A–3.

surveillance information, including customer identity information, with respect to transactions occurring on the exchanges that are members of the Intermarket Surveillance Group ("ISG"), including the CBOE and CFE. A list of ISG members is available at *http://www.isgportal.org.*

The Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) The risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IOPV will not be calculated or publicly disseminated; (2) the procedures for purchases and redemptions of Shares in Creation Baskets and Redemption Baskets (and that Shares are not individually redeemable); (3) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Funds. The Exchange notes that investors purchasing Shares directly from the Funds will receive a prospectus. ETP Holders purchasing Shares from the Funds for resale to investors will deliver a prospectus to such investors. The Information Bulletin will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Bulletin will reference that the Funds are subject to various fees and expenses described in the Registration Statement. The Information Bulletin will also reference that the Commodity Futures Trading Commission has regulatory jurisdiction over futures contracts traded on U.S. markets.

The Information Bulletin will also disclose the trading hours of the Shares of the Funds and that the NAV for the Shares is calculated after 4:15 p.m. E.T. each trading day. The Bulletin will disclose that information about the Shares of the Funds is publicly available on the Funds' Web site.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[15] in general, and furthers the objectives of Section 6(b)(5),[16] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the proposed rule change will permit the listing of an additional issuance of Trust Issued Receipts on the Exchange that will enhance competition, to the benefit of investors and the marketplace. In addition, the listing and trading criteria set forth in Rule 8.200 are intended to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2010–101 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2010–101. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549–1090 on official business days between 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the Exchange's principal office. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2010–101 and should be submitted on or before December 13, 2010.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–29351 Filed 11–19–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63321; File No. SR–BX–2010–077]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish a Pilot Program to List Series With Additional Expiration Months for Each Class of Options Opened for Trading on BOX

November 16, 2010.

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 November 10, 2010, NASDAQ OMX BX, Inc. (the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been 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 Chapter IV, Section 6 (Series of Options Contracts Open for Trading) of the Rules of the Boston Options Exchange Group, LLC ("BOX") to adopt a Pilot Program to list additional expiration months for each class of options opened for trading on BOX. The text of the proposed rule change is available from the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov,* at the Commission's Public Reference Room and also on the Exchange's Internet web site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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 proposes to adopt a Pilot Program to list additional expiration months for each class of options opened for trading on BOX, by adding proposed Supplementary Material .08 in Chapter IV, Section 6 of the BOX Rules.

Pursuant to Chapter IV, Section 6(e) of the BOX Rules, BOX currently opens four expiration months for each class of options open for trading on BOX, the first two being the two nearest months, regardless of the quarterly cycle on which that class trades; the third and fourth being the next two months of the quarterly cycle previously designated for that specific class. For example, if BOX listed in late May a new equity option on a January-April-July-October quarterly cycle, BOX would list the two nearest term months (June and July) and the next two months of the cycle (October and January). When the June series expires, BOX would add the August series as the next nearest month. And when the July series expires, BOX would add the September series.

BOX believes that there is market demand for a greater number of expiration months. The Exchange therefore proposes to adopt a Pilot Program pursuant to which it will list up to an additional two expiration months, for a total of six expiration months for each class of options open for trading on BOX. The program will be effective on a pilot basis immediately after approval is received to establish the pilot program, and expiring on October 31, 2011. Under the proposal, the additional months listed pursuant to the pilot program will result in four consecutive expiration months plus two months from the quarterly cycle. For example, for option classes in the January cycle that have expiration months of June, July, October, and January, BOX would additionally list the August and September series. For options classes in the February quarterly cycle that have expiration months of October, November, February, and May, BOX would additionally list the December and January series. Under the proposal, no additional LEAP Series will be created.

BOX seeks to limit the proposed rule change to 20 actively traded options classes. By limiting the pilot to a small number of classes, BOX will be able to gauge interest in the pilot while limiting any additional demands on system resources. It has been estimated that this pilot could add up to six or seven percent to current quote traffic, although changes in market maker quoting behavior may reduce that increase by up to half. BOX believes that a limited pilot is a prudent step to determine actual market demand for additional expiration months.

If the Exchange were to propose an extension or an expansion of the pilot program, or should the Exchange propose to make the pilot program permanent, BOX will submit, along with any filing proposing such amendments to the pilot program, a pilot program report ("Report") that will provide an analysis of the Pilot Program covering the first nine months of the pilot program and shall submit the Report to the Commission at least sixty (60) days prior to the expiration date of the pilot program. The Report will include, at a minimum: (1) Data and written analysis on the open interest and trading volume in the classes for which additional expiration months were opened; (2) an assessment of the appropriateness of the options classes selected for the pilot program; (3) an assessment of the impact of the pilot program on the capacity on BOX, OPRA, and on market data vendors (to the extent data from market data vendors is available); (4) any capacity problems or other problems that arose during the operation of the pilot program and how BOX addressed such problems; (5) any complaints that BOX or the Exchange received during the operation of the pilot program and how BOX and the Exchange addressed them; and (6) any additional information that would assist the Commission in assessing the operation of the Pilot Program.

Finally, BOX represents that it has the necessary systems capacity to support new options series that will result from the introduction of additional expiration months listed pursuant to this proposed rule change.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[3]

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

in general, and Section 6(b)(5) of the Act,[4] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the Exchange believes listing additional near-term expiration months will offer investors more variety in trading options series that were previously not available. The Exchange believes this proposal will also generate additional volume in these options classes without significantly taxing system resources.

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

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[5] and Rule 19b–4(f)(6) thereunder.[6]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to that of another exchange that has been approved by the Commission.[7] Therefore, the Commission designates the proposal operative upon filing.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BX–2010–077 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2010–077. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of 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–BX–2010–077 and should be submitted on or before December 13, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–29352 Filed 11–19–10; 8:45 am]

BILLING CODE 8011–01–P

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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. The Commission has waived the five-day pre-filing requirement in this case.

[7] *See* Securities Exchange Act Release No. 63104 (October 14, 2010), 75 FR 64773 (October 20, 2010) (Approving Additional Expiration Months Pilot Program).

[8] 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).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63319; File No. SR–FINRA–2010–060]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Update Certain Cross-References and Make Non-Substantive Technical Changes to Certain FINRA Rules

November 16, 2010.

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 November 10, 2010, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to update cross-references within certain FINRA rules to reflect changes adopted in the consolidated FINRA rulebook and to make non-substantive technical changes to certain FINRA Rules.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA is in the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook").[4] That process involves FINRA submitting to the Commission for approval a series of proposed rule changes over time to adopt rules in the Consolidated FINRA Rulebook. The phased adoption and implementation of those rules necessitates periodic amendments to update rule cross-references and other non-substantive technical changes in the Consolidated FINRA Rulebook.

The proposed rule change would update rule cross-references to reflect recent changes adopted in the Consolidated FINRA Rulebook. In this regard, the proposed rule change would update references in FINRA Rules 0150 (Application of Rules to Exempted Securities Except Municipal Securities), 2130 (Approval Procedures for Day-Trading Accounts), 2140 (Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes), 2150 (Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts), 2270 (Day-Trading Risk Disclosure Statement), 2360 (Options), 5110 (Corporate Financing Rule—Underwriting Terms and Arrangements), 5122 (Private Placements of Securities Issued By Members), 5250 (Payments for Market Making), 6630 (Applicability of FINRA Rules to Securities Previously Designated as PORTAL Securities), 9217 (Violations Appropriate for Disposition Under Plan Pursuant to SEA Rule 19d–1(c)(2)), 9610 (Application), and 11574 (Certificate in Name of Deceased Person, Trustee, etc.) that are needed as the result of Commission approval of five recent FINRA proposed rule changes.[5] In addition, the proposed rule change would amend FINRA Rules 11100 (Scope of Uniform Practice Code) and 11580 (Transfer of Limited Partnership Securities), to update cross-references to NASD Rule 2810, which was renumbered as FINRA Rule 2310.[6] Finally, the proposed rule change would make non-substantive technical changes to FINRA Rules 6420 (Definitions), 8313 (Release of Disciplinary Complaints, Decisions and Other Information), 11560 (Certificate of Company Whose Transfer Books Are Closed), 11720 (Irregular Delivery—Transfer Refused—Lost or Stolen Securities), and 11870 (Customer Account Transfer Contracts), and delete a reference to Rule 11830 (Reserved) to reflect changes in FINRA style and naming conventions.

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date for the proposed rule change will be December 15, 2010, the date on which certain of the previously approved rule changes will be implemented,[7] except for proposed rule changes to FINRA Rule 6630(d)(1) that would eliminate the references to NASD Rules 2730, 2740 and 2750 and add references to FINRA Rule 5141. Those proposed changes will be implemented on February 8, 2011, the date on which the relevant previously approved rule change will be implemented.[8]

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[9] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes the proposed rule change will provide greater clarity to members and the public regarding FINRA's rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if

[4] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[5] *See* Securities Exchange Act Release No. 62482 (July 12, 2010), 75 FR 41562 (July 16, 2010) (Order Approving File No. SR–FINRA–2010–024); Securities Exchange Act Release No. 62539 (July 21, 2010), 75 FR 44033 (July 27, 2010) (Order Approving File No. SR–FINRA–2010–029); Securities Exchange Act Release No. 62702 (August 12, 2010), 75 FR 51147 (August 18, 2010) (Order Approving File No. SR–FINRA–2010–026); Securities Exchange Act Release No. 62762 (August 23, 2010), 75 FR 53362 (August 31, 2010) (Order Approving File No. SR–FINRA–2009–042); Securities Exchange Act Release No. 62842 (September 3, 2010), 75 FR 55842 (September 14, 2010) (Order Approving File No. SR–FINRA–2010–030).

[6] *See* Securities Exchange Act Release No. 59987 (May 27, 2009), 74 FR 26902 (June 4, 2009) (Order Approving File No. SR–FINRA–2009–016).

[7] *See Regulatory Notice* 10–49 (October 2010) (regarding File Nos. SR–FINRA–2009–042, FINRA–2010–026, and SR–FINRA–2010–030, effective December 15, 2010). File No. SR–FINRA–2010–024 is effective December 2, 2010. *See Regulatory Notice* 10–45 (October 2010).

[8] *See Regulatory Notice* 10–47 (October 2010) (regarding File No. SR–FINRA–2010–029).

[9] 15 U.S.C. 78*o*–3(b)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2010–060 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2010–060. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2010–060 and should be submitted on or before December 13, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–29395 Filed 11–19–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63316; File No. SR–FINRA–2010–056]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Adopt FINRA Rule 1113 (Restriction Pertaining to New Member Applications) and To Amend the FINRA Rule 9520 Series (Eligibility Proceedings)

November 15, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 1, 2010, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt new FINRA Rule 1113 (Restriction Pertaining to New Member Applications) and to amend the FINRA Rule 9520 Series (Eligibility Proceedings) to restrict new member applicants' and certain members' association with disqualified persons.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA is proposing a rule change to adopt new FINRA Rule 1113 (Restriction Pertaining to New Member Applications) and to amend the FINRA Rule 9520 Series (Eligibility Proceedings) to restrict new member applicants' and certain members' association with disqualified persons. The details of the proposed rule change are described below.

Background

Article III, Section 3(b) of the FINRA By-Laws provides that no person shall be associated with a member, continue to be associated with a member, or transfer association to another member if such person is or becomes subject to disqualification; and that no firm shall be admitted to membership, and no member shall be continued in membership, if any person associated with it is subject to a disqualification. Pursuant to Article III, Section 4 of the FINRA By-Laws, a person is subject to a "disqualification" with respect to membership, or association with a member, if such person is subject to any "statutory disqualification" as such term is defined in Exchange Act Section 3(a)(39).[3]

[3] *See* 15 U.S.C. 78c(a)(39). Pursuant to Exchange Act Section 3(a)(39), a person is subject to a "statutory disqualification" with respect to membership or participation in, or association with a member of, a self-regulatory organization ("SRO") if such person, among other things: Has been convicted of certain misdemeanor and all felony criminal convictions for a period of ten years from the date of the filing of an application for membership or participation in, or to become associated with a member of, such SRO; is subject to a temporary or permanent injunction (regardless of its age) issued by a court of competent jurisdiction involving a broad range of unlawful investment activities; has been expelled or suspended from membership or participation in an SRO; or is subject to an SEC order denying, suspending, or revoking broker-dealer registration.

The FINRA Rule 9520 Series sets forth procedures for a person to become or remain associated with a member, notwithstanding the existence of a statutory disqualification, and for a current member or person associated with a member to obtain relief from the eligibility or qualification requirements of the FINRA By-Laws and rules. The FINRA Rule 9520 Series also contemplates that a new member applicant may sponsor a proposed associated person or itself for relief from the eligibility or qualification requirements. A member (or new member applicant) seeking to associate with a person subject to a disqualification must seek approval from FINRA by filing a Form MC–400 application, pursuant to the FINRA Rule 9520 Series. Members (and new member applicants) that are themselves subject to a disqualification that wish to obtain relief from the eligibility requirements are required to submit a Form MC–400A application.

New Membership Application Rule

FINRA is proposing to adopt new FINRA Rule 1113 providing that the Department of Member Regulation ("Department") shall reject an application for FINRA membership [4] in which either the applicant or an associated person, as defined in Article I of the FINRA By-Laws,[5] of the applicant is subject to a statutory disqualification, as defined in Article III, Section 4 of the FINRA By-Laws.[6] The proposed rule also provides that any new member application that the Department approves by virtue of Department or applicant error (including, but not limited to, an inadvertent or intentional misstatement or omission by the applicant or associated person) shall be subject to membership cancellation in accordance with FINRA Rule 9555 (Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services).

FINRA believes that a new member applicant should enter the membership application process free of the concerns and issues that can arise from either being associated with a disqualified person or being itself subject to a statutory disqualification. Also, a new member applicant has no prior operating or supervisory history, and therefore, would not be able to demonstrate adequately its ability to supervise a disqualified person.

FINRA Rule 9520 Series Amendments

FINRA also is proposing several amendments to the FINRA Rule 9520 Series, which, as noted above, set forth the eligibility proceedings. First, the proposed rule change would amend the FINRA Rule 9520 Series definition of "sponsoring member" [7] to eliminate the reference to new member applicants. As stated above, FINRA is concerned about the ability of new member applicants to supervise adequately a disqualified person, as such new member applicants generally would not have any prior operating or supervisory history that would indicate the necessary experience to supervise disqualified persons. Thus, this amendment conforms to the proposed new membership application rule discussed above by precluding new member applicants from being able to sponsor disqualified persons.[8]

Second, the proposed rule change would amend the definition of "disqualified member" [9] in the FINRA Rule 9520 Series to clarify that a new member applicant is not eligible to submit an application for relief under the FINRA Rule 9520 Series where the new member applicant itself is subject to a disqualification.

Lastly, the proposed rule change would further amend the definition of "sponsoring member" to preclude any member from sponsoring the association or continued association of a disqualified person to be admitted, readmitted, or permitted to continue in association that is directly or indirectly a beneficial owner of more than five percent of the sponsoring member. This proposed change reflects FINRA's belief that a member cannot effectively supervise such a disqualified person in light of the inherent conflict of interest resulting from the ownership interest. In FINRA's experience, a member's decision to sponsor such a person is nearly always influenced more by that person's beneficial ownership interest in the firm, rather than by objective considerations, such as the person's work experience, the length of time since the disqualifying event, the person's professional activities since the time of the disqualifying event, or subsequent lack of disciplinary history.[10]

FINRA notes that the proposed rule change is not designed to apply in several situations. Proposed new FINRA Rule 1113 would not apply to a new member applicant that itself is subject to a statutory disqualification solely due to its association with a non-natural person that is subject to a statutory disqualification.[11] Also, in such situations, notwithstanding the proposed rule change to the FINRA Rule 9520 Series that would preclude a new member applicant from submitting an application for relief under the FINRA Rule 9520 Series, the new member applicant would be permitted to file an MC–400A application on behalf of itself.

Moreover, the proposed amendments to the FINRA Rule 9520 Series that would preclude any member from sponsoring a disqualified person that is directly or indirectly a beneficial owner of more than five percent of the sponsoring member would not preclude a member from filing an MC–400A application to sponsor itself where needed (*e.g.,* a member whose majority owner is subject to a 30-day principal suspension for failure to supervise a books and records violation may seek to sponsor itself for continued membership rather than having to cease business for the period of its owner's suspension).

FINRA will announce the effective date of the proposed rule change in a

[4] Proposed FINRA Rule 1113, by its terms, will not apply to a member submitting a continuing membership application pursuant to NASD Rule 1017 (Application for Approval of Change in Ownership, Control, or Business Operations).

[5] Article I of the FINRA By-Laws defines an associated person as a: (1) A natural person who is registered or has applied for registration under FINRA rules; (2) a sole proprietor, partner, officer, director, or branch manager of a member, or other natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with FINRA under its By-Laws or rules; and (3) for purposes of FINRA Rule 8210, any other person listed in Schedule A of Form BD of a member. *See* FINRA By-Laws, Article I (rr) (definition of "person associated with a member" or "associated person of a member").

[6] As previously noted, Article III, Section 4 of the FINRA By-Laws incorporates the definition of "statutory disqualification" as such term is defined in Exchange Act Section 3(a)(39).

[7] FINRA Rule 9521(b)(4).

[8] The proposed rule change also would make conforming amendments throughout the FINRA Rule 9520 Series to reflect the proposed amendment discussed above that a new member applicant may not sponsor a person subject to a disqualification.

[9] FINRA Rule 9521(b)(2).

[10] *See The Ass'n of X as a Gen. Secs. Representative, Chairman, CEO, and owner, Redacted Decision No. SD99013 (NASD NAC 1999)* at 9 (the National Adjudicatory Council denied a sponsoring firm's statutory disqualification application, finding that the proposed supervisor would not adequately supervise a disqualified individual who would be 100 percent owner of the firm).

[11] Exchange Act Section 3(a)(39)(E) subjects a person to a statutory disqualification if the person is associated with any person who is known, or in the exercise of reasonable care should be known, by him to be subject to any statutory disqualification described in Exchange Act Sections 3(a)(39)(A) through (D). Because the applicable definition of "associated person" (set forth in Exchange Act Section 3(a)(21)) includes non-natural persons, a member may find itself subject to a statutory disqualification solely because it is associated with a person who is subject to a statutory disqualification pursuant to Exchange Act Section 3(a)(39)(A) through (D). For additional information, *see Regulatory Notice* 09–19 (April 2009).

Regulatory Notice to be published no later than 60 days following Commission approval. The effective date will be no later than 90 days following publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[12] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change will further these purposes by restricting certain members and new member applicants from being able to associate with statutorily disqualified persons in light of the concerns to investor protection raised by such associations.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2010–056 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2010–056. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2010–056 and should be submitted on or before December 13, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–29281 Filed 11–19–10; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78*o*–3(b)(6).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63322; File No. SR–BATS–2010–032]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish a $0.50 Strike Program

November 16, 2010.

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 November 10, 2010, BATS Exchange, Inc. (the "Exchange" or "BATS") 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 Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. 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 is proposing to amend Rule 19.6 (Series of Options Contracts Open for Trading) to adopt a $0.50 Strike Program consistent with analogous programs offered by other options exchanges.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov*, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to adopt a $0.50 Strike Program for BATS Options in order to provide investors with opportunities and strategies to minimize losses associated with owning a stock declining in price. In addition to adoption of a $0.50 Strike Program, the Exchange proposes to make minor modifications to its $1 Strike Program.

The Exchange is proposing to establish strike price intervals of $0.50, beginning at $0.50 for certain options classes where the strike price is $5.50 or less and whose underlying security closed at or below $5.00 in its primary market on the previous trading day and which have national average daily volume that equals or exceeds 1,000 contracts per day as determined by The Options Clearing Corporation ("OCC") during the preceding three calendar months. The Exchange also proposes to limit the listing of $0.50 strike prices to options classes overlying no more than 20 individual stocks as specifically designated by the Exchange. In addition, the Exchange proposes to list $0.50 strike prices on any other option classes if those classes are specifically designated by other securities exchanges that employ a similar $0.50 Strike Program under their respective rules.

The Exchange does not currently offer a $0.50 Strike Program, but does offer a $1 Strike Program. The proposal would provide $0.50 strike offerings to market participants, such as traders and retail investors, and thereby enhance their ability to tailor investing and hedging strategies and opportunities in a volatile market place.

By way of example, if an investor wants to invest in 5,000 shares of Sirius Satellite ("SIRI") at $ 0.9678,[5] the only choice the investor would have today would be to buy out-of-the-money calls, at the $1.00 strike, or to invest in the underlying stock with a total outlay of $.96 per share or $4,800. However, if a $0.50 strike series were available, an investor may be able to invest in 5,000 shares by purchasing an exercisable in-the-money $0.50 strike call option. It is reasonable to assume that with SIRI trading at $.96, the $0.50 strike call option would trade at an estimated price of $.46 to $.48 under normal circumstances. This would allow the investor to manage 5,000 shares with the same upside potential return for a cost of only $2,350 (assuming $.47 as a call price).

Similarly, if an investor wanted to spend $4,800 for 5,000 shares of SIRI, a $0.50 put option that would trade for $.01 to $.05 would provide protection against a declining stock price in the event that SIRI dropped below $0.50 per share. In a down market, where high volume widely held shares drop below $1.00, investors deserve the opportunity to hedge downside risk in the same manner as investors have with stocks greater than $1.00.

The proposal to allow $0.50 strikes in stocks under $5.00 will aid investors by offering opportunities to manage risk and execute a variety of option strategies to improve returns. For example, today an investor can enhance their yield by selling an out-of-the-money call. Using an example of an investor who wants to hedge Citigroup ("C") which is trading at $4.24,[6] that investor would be able to choose the $4.50 strike which is 6% out-of-the-money or they would be able to choose the $5.00 strike which is 17.92% out-of-the-money, under this proposal. Today, this investor only has the latter choice. Beyond that, this investor today may choose the $6.00 strike which is 41% out-of-the-money and offers significantly less premium. Pursuant to this proposal if this investor had a choice to hedge with a $5.50 strike option, the investor would have the opportunity to sell the option at only 29% out-of-the-money and would improve their return by gaining more premium, while also benefitting from 29% of upside return in the underlying equity.

Based on its experience with $1 strike prices, the Exchange does not believe that $0.50 strikes will have any impact on capacity. Further, the Exchange has observed the popularity of $0.50 strikes on other exchanges. The open interest in the $2.50 August strike series for Synovus Financial Corp. ("SNV"), which closed at $2.71 on July 13, 2010, was 12,743 options; whereas open interest in the $2 and $3 August strike series was a combined 318 options. The open interest in the August $1.50 strike series for Ambac Financial Group, Inc. ("ABK"), which closed at $0.7490 on July 13, 2010, was 15,879 options compared to 8,174 options for the $2 strike series. The August $2.50 strike series had open interest of 22,280 options, also more than the traditional $2 strike series.

By adopting a $0.50 Strike Program investors would be able to better enhance returns and manage risk by providing investors with significantly greater flexibility in the trading of equity options that overlie lower price stocks by allowing investors to establish equity options positions that are better tailored to meet their investment, trading and risk.

The Exchange also proposes making a corresponding amendment to Rule 19.6, Interpretation and Policy .02(b), which addresses listing series with $1 intervals within $0.50 of an existing strike price in the same series. Specifically, to account for the overlap with the $0.50 Strike Program, the Exchange proposes to exclude the following series from this prohibition: Strike prices of $2, $3, $4, $5 and $6 to account for the proposed $0.50 Strike Program, which will allow strike prices of $5.50.

Finally, the Exchange proposes making an amendment to Rule 19.6, Interpretation and Policy .02(a), to expand the Exchange's $1 Strike Program. The $1 Strike Program currently allows the Exchange to select a total of 55 individual stocks on which option series may be listed at $1 strike price intervals. In order to be eligible for selection into the $1 Strike Program, the underlying stock must close below $50 in its primary market on the previous trading day. If selected for the $1 Strike Program, the Exchange may list strike prices at $1 intervals from $1 to $50, but no $1 strike price may be listed that is greater than $5 from the underlying stock's closing price in its primary market on the previous day. The Exchange may also list $1 strikes on any other option class designated by another securities exchange that employs a similar Program under their respective rules. The Exchange now proposes to expand the $1 Strike Program to allow the Exchange to select a total of 150 individual stocks on which option series may be listed at $1 strike price intervals. The existing restrictions on listing $1 strikes would continue, *i.e.,* no $1 strike price may be listed that is greater than $5 from the underlying stock's closing price in its primary market on the previous day, and the Exchange is restricted from listing any series that would result in strike prices being $0.50 apart (unless an option class is selected to participate in both the $1 Strike Program and the $0.50 Strike Program).

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and OPRA have the

[5] SIRI was trading at $0.9678 on July 13, 2010.

[6] C was trading at $4.24 on July 14, 2010.

necessary systems capacity to handle the potential additional traffic associated with the listing and trading of an expanded number of series in the $1 Strike Program. The Exchange believes that the $1 Strike Program has provided investors with greater trading opportunities and flexibility and the ability to more closely tailor their investment and risk management strategies and decisions to the movement of the underlying security. Furthermore, the Exchange has not detected any material proliferation of illiquid options series resulting from the narrower strike price intervals. For these reasons, the Exchange requests an expansion of the current $1 Strike Program and the opportunity to provide investors with additional strikes for investment, trading, and risk management purposes.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [7] in general, and furthers the objectives of Section 6(b)(5) of the Act [8] in particular in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes that adopting the $0.50 Strike Program will result in a benefit to investors by giving them more flexibility to closely tailor their investment decisions in a greater number of securities. Investors would be provided with an opportunity to minimize losses associated with declining stock prices that do not exist today. With the increase in active, low-prices securities, the Exchange believes that adopting the $0.50 Strike Program to allow a $0.50 strike interval below $1 for strike prices of $5.50 or less is necessary to provide investor additional opportunity to minimize and manage risk. In addition, the Exchange believes that expanding the current $1 Strike Program will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment decisions in a greater number of securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to that of another exchange that has been approved by the Commission.[11] Therefore, the Commission designates the proposal operative upon filing.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BATS–2010–032 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–BATS–2010–032. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of 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–BATS–2010–032 and should be submitted on or before December 13, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–29344 Filed 11–19–10; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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. The Commission has waived the five-day pre-filing requirement in this case.

[11] *See* Securities Exchange Act Release No. 63132 (October 19, 2010), 75 FR 65541 (October 25, 2010) (SR–Phlx–2010–118) (order approving expansion of $0.50 Strike Price Program). *See also* Securities Exchange Act Release No. 62420 (June 30, 2010), 75 FR 39593 (July 9, 2010) (SR–Phlx–2010–72) (order approving expansion of $1 Strike Price Program).

[12] 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).

[13] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2010–0050]

Social Security Disability Program Demonstration Project: Benefit Offset National Demonstration (BOND)

AGENCY: Social Security Administration.

ACTION: Notice.

SUMMARY: We are announcing the following demonstration project relating to the Social Security disability program under title II of the Social Security Act (Act). Under this project, we will test modifications to current title II program rules that we apply to beneficiaries who work and receive title II benefits based on disability. We will also modify current rules for paying outcome payments to providers of services under the Ticket to Work and Self-Sufficiency program (Ticket to Work program). We are conducting this project, called the Benefit Offset National Demonstration (BOND), under the demonstration authority provided in section 234 of the Act.

In this project, we are testing the use of a benefit offset based on earnings as an alternative to certain rules that we currently apply to title II disability beneficiaries who work. Under the benefit offset, we will reduce title II disability benefits by $1 for every $2 that a beneficiary earns above a substantial gainful activity threshold amount. This alternative rule will allow a beneficiary to receive reduced benefit payments when we would ordinarily stop payments under our usual rules because of the beneficiary's work and earnings.

In selecting beneficiaries to participate in the project, we will include some beneficiaries who receive only title II disability benefits. We also will include some beneficiaries who receive both title II disability benefits and Supplemental Security Income (SSI) based on disability or blindness under title XVI of the Act. However, we are only modifying title II program rules for beneficiaries who participate in the project. We will continue to apply the usual SSI program rules for participants who receive SSI payments in addition to title II disability benefits.

DATES: The demonstration project will begin January 2011 and will end September 2022.

FOR FURTHER INFORMATION CONTACT: Jamie Kendall by email at *jamie.kendall@ssa.gov*, by telephone at (202) 358–6448, or by mail at Social Security Administration, Office of Program Development and Research, ITC Building, 500 E Street, SW., Washington, DC 20254.

SUPPLEMENTARY INFORMATION:

Background

Who may receive disability benefits?

Under title II of the Act, we provide for the payment of the following benefits to persons who meet the definition of disability under the Act:

- Disability insurance benefits for a worker insured under the Act;
- Widow's and widower's insurance benefits based on disability for a widow, widower, or surviving divorced spouse of an insured worker; and
- Childhood disability benefits for a child of an insured worker who is entitled to retirement or disability benefits or has died.

In the rest of this notice, we refer to these benefits collectively as Social Security Disability Insurance (SSDI) benefits and refer to the beneficiaries who receive them as SSDI beneficiaries.

Under title XVI of the Act, we pay SSI to persons who are aged, blind, or disabled and have limited income and resources. An SSDI beneficiary with limited income and resources may qualify for SSI payments.

A person must meet the definition of disability under title II of the Act in order to be eligible for SSDI benefits. A person is disabled under title II if he or she has a physical or mental impairment or combination of impairments that is expected to last for at least 12 months or to result in death and prevents the person from doing any substantial gainful work.[1] This definition of disability also applies under title XVI of the Act for persons age 18 or older.[2]

How do we help disability beneficiaries to return to work?

Under the Act, we offer certain work incentives to encourage disability beneficiaries to attempt to work. We also administer the Ticket to Work program and other employment support programs to assist disability beneficiaries to become as self-sufficient as possible through work and to promote their economic independence. Under certain provisions of the Act, such as the title II provision for a trial work period, beneficiaries are allowed to test their ability to work and continue to keep their cash and medical benefits.

The Trial Work Period

We provide a trial work period (TWP) that allows SSDI beneficiaries to test their ability to work for at least nine months and not have that work considered for disability purposes.[3] During this period, beneficiaries continue to receive full SSDI benefits regardless of how much money they earn as long as they report the work activity and continue to have a disabling impairment. The TWP ends when a beneficiary has completed nine trial work months, not necessarily consecutive, within a 60-month period. (The TWP may end earlier if we determine that the beneficiary's disability ended based on medical factors.)[4] We count as a trial work month any month in which a beneficiary's gross earnings are above a certain amount ($720 a month in 2010) or in which the beneficiary works more than 80 hours in self-employment.[5]

What happens if a beneficiary works after the TWP?

If a beneficiary works after the TWP ends, we review the beneficiary's work and earnings to decide if the work is substantial gainful activity (SGA). Work is "substantial" if it involves doing significant physical or mental activities. Work activity may be "substantial" even if it is performed on a part-time basis. Work activity is "gainful" if it is performed for pay or profit or is the kind of work usually performed for pay or profit, whether or not a profit is realized.[6]

In deciding whether work is SGA, we consider the nature of the person's job duties, the skills and experience the person needs to do the job, and how much the person actually earned. Usually, we consider a person's work to be substantial and gainful if monthly earnings, after allowable deductions, average more than the monthly SGA amount (in 2010, $1,000 a month for a person who is not blind, or $1,640 a month for a person who is blind). If the person is self-employed, we may give more consideration to the kind and value of the work, including the person's part in the management of the business, than to the person's income alone.[7]

We will decide that an SSDI beneficiary's disability has ended in the first month he or she does SGA after completion of the TWP.[8] We pay benefits for the month disability ended and the following two months, no matter how much the beneficiary earns.[9]

[1] Section 223(d)(1)(A) of the Act; 20 CFR 404.1505(a).

[2] Section 1614(a)(3)(A) of the Act; 20 CFR 416.905(a).

[3] Sections 222(c) and 223(d)(4) of the Act; 20 CFR 404.1592.

[4] *Id.*

[5] 20 CFR 404.1592(b).

[6] 20 CFR 404.1572.

[7] 20 CFR 404.1571–404.1576.

[8] 20 CFR 404.1592a(a)(1) and 404.1594(d)(5).

[9] 20 CFR 404.401a and 404.1592a(a)(2).

This three-month period is the "grace period."

What happens next depends on whether disability ended due to SGA during or after the reentitlement period.[10]

The Reentitlement Period

We provide a 36-month reentitlement period that begins immediately after an SSDI beneficiary completes the TWP. The reentitlement period allows an SSDI beneficiary with a disabling impairment an additional period to test his or her ability to work.[11] The reentitlement period ends after 36 months or when the beneficiary ceases to have a disabling impairment, whichever is earlier.[12]

If we determine that a beneficiary's disability ended during the reentitlement period because he or she performed SGA, we will pay benefits for the months in the three-month grace period. After the grace period, we will not pay benefits to the disability beneficiary or anyone receiving benefits on his or her earnings record for any month during the reentitlement period in which the disability beneficiary does SGA. However, we will pay benefits for any month during the reentitlement period in which the disability beneficiary does not do SGA.[13] If the beneficiary performs SGA after the reentitlement period, we will find that entitlement to disability benefits terminates in the first month after the reentitlement period in which he or she performs SGA.[14]

When we determine whether a beneficiary performed SGA in a month after the grace period, we only consider his or her work in or earnings for that month. We do not apply the rules regarding averaging of earnings or unsuccessful work attempts.[15]

We apply different rules if the month a beneficiary's disability ended due to the performance of SGA occurred after the 36-month reentitlement period. In this situation, we will find that entitlement to and payment of benefits terminate in the first month after the grace period.[16]

Period of Disability for an Insured Worker

Under title II of the Act, a worker who becomes disabled may apply to have us establish a period of disability to protect his or her earnings record as well as apply for disability insurance benefits. A period of disability protects the benefit rights of a worker and his or her dependents or survivors by allowing us to exclude the time the worker is disabled from consideration in determining his or her insured status and the amount of monthly benefits payable on his or her record.

In general, to be entitled to a period of disability, a worker must:

- File an application;
- Be insured for disability under the Act; and
- Be disabled throughout a period of at least five full calendar months.[17]

A period of disability may begin on the day the worker's disability begins if he or she is insured for disability on that day. The period of disability ends with the earliest of the following months:

- The month before the month he or she attains full retirement age;
- The month before his or her termination month; or
- If he or she performs SGA during the reentitlement period, the last month for which he or she received cash benefits.[18]

Description of the BOND Project

Under the BOND project, we will modify certain title II disability program rules that we currently apply to SSDI beneficiaries who work. We will test alternate rules to determine their effectiveness in encouraging SSDI beneficiaries to return to work or increase their earnings. We are testing the use of a benefit offset based on earnings and the provision of enhanced benefits counseling services. Under the benefit offset, we will reduce SSDI benefits by $1 for every $2 of a beneficiary's earnings that are above a certain dollar amount. This dollar amount is equal to the applicable monthly SGA amount for the calendar year multiplied by the number of months for which the beneficiary is eligible for the offset in that year. The benefit offset will allow a beneficiary to receive reduced SSDI benefit payments when we would ordinarily stop or terminate benefit payments under our usual rules because of the beneficiary's performance of SGA. We will evaluate the impact of the benefit offset and the enhanced counseling services on work activity, earnings, and continued receipt of cash benefits.

We have contracted with Abt Associates to assist in implementing the BOND project and to conduct the evaluation activities. Under a prior contract with us, Abt Associates helped us develop the demonstration project design and evaluation plans. The design identified the program changes, target populations, treatment groups, sample sizes, and project sites. The evaluation plan identified pertinent outcomes, the data necessary for the analysis, and appropriate measurements of the effects of the alternate rules that we will test. The evaluation will focus on issues such as the rate of return to work by project participants, their earnings and ability to sustain work, and the rate at which they leave cash benefits due to work. We will also examine for whom these interventions appear to be the most effective.

Where will we conduct the BOND project?

We will conduct this project in 10 sites across the country. Abt Associates is setting up local demonstration site offices in each of these locations to work directly with the beneficiaries in this project. We randomly selected the following 10 locations to be project sites. (These locations are general descriptions of the project sites as some small areas within certain locations may not be part of the demonstration site.)

- Alabama;
- Arizona and Southeastern California;
- Colorado and Wyoming;
- Southeastern Michigan;
- Southeastern Texas;
- Southern Florida;
- Vermont, Maine, New Hampshire, and Northern Massachusetts;
- Washington DC area including Northern Virginia, suburban Maryland, and Northeastern West Virginia;
- Western New York State; and
- Wisconsin.

Who is eligible to participate in the BOND project?

To be eligible to participate in the project, a beneficiary must:

- Be at least age 20 and under age 60;
- Be entitled to title II benefits based on disability;
- Receive title II disability cash benefits, unless we are not paying cash benefits because the beneficiary is engaging in SGA after the grace period and during the reentitlement period;
- Reside in one of the 10 sites for the project, according to our administrative records; and

[10] The SSI program under title XVI of the Act does not provide a TWP. The performance of SGA by a recipient of SSI payments based on disability or blindness does not affect the recipient's disability or blindness status under the SSI program. Section 1619 of the Act; 20 CFR 416.260–416.269.

[11] Sections 202(d)(1), (d)(6), (e)(1), and (f)(1) and 223(a)(1) of the Act; 20 CFR 404.316(d), 404.337(d), 404.352(e), and 404.1592a(a).

[12] 20 CFR 404.1592a(b).

[13] Section 223(e) of the Act; 20 CFR 404.401a and 404.1592a(a)(2).

[14] 20 CFR 404.325 and 404.1592a(a)(3)(i).

[15] 20 CFR 404.1592a(a)(2)(i) and (3)(i).

[16] 20 CFR 404.325 and 404.1592a(a)(3)(ii).

[17] Section 216(i) of the Act; 20 CFR 404.320.

[18] Section 216(i)(2)(D) of the Act; 20 CFR 404.321 and 404.325.

• Not be a current or prior treatment or control group participant in any of our other demonstration projects.

How will we select participants and assign them to control or treatment groups?

We will select potential participants for the BOND project from a pool of beneficiaries who are entitled to SSDI benefits, reside in one of the 10 sites according to our records, and meet the other requirements for eligibility for participation described above. This pool will include some concurrent SSDI/SSI beneficiaries, that is, beneficiaries who receive both title II benefits based on disability and title XVI payments based on disability or blindness. We estimate that the pool will consist of approximately one million beneficiaries, with SSDI-only beneficiaries comprising about 80% of the pool and concurrent SSDI/SSI beneficiaries comprising about 20% of the pool. We will identify the beneficiaries in the pool who are SSDI-only beneficiaries and will randomly assign these beneficiaries to one of the three groups described below. We will identify the beneficiaries in the pool who are concurrent SSDI/SSI beneficiaries and will randomly assign these beneficiaries to one of the first two groups described below.

• Stage 1 Control Group—We will assign approximately 580,000 SSDI-only and concurrent SSDI/SSI beneficiaries to this group, which will continue to be subject to our usual program rules. We will not test any alternative rules with this group.

• Stage 1 Treatment Group—We will assign approximately 80,000 SSDI-only and concurrent SSDI/SSI beneficiaries to this group, which will be offered the opportunity for the benefit offset under Stage 1 of the project.

• Stage 2 Eligible Group—We will assign approximately 340,000 SSDI-only beneficiaries to this group, from which we expect to recruit about 12,600 beneficiaries to volunteer to participate in Stage 2 of the BOND project. We will randomly assign SSDI-only beneficiaries who have agreed to participate in Stage 2 of the project to a Control Group or one of two Treatment Groups, as described below. Concurrent SSDI/SSI beneficiaries are not eligible to participate in Stage 2 of the project.

How will we conduct Stage 1 and Stage 2 of the BOND project?

The BOND project design includes two separate stages. Stage 1 will consist of a control group that receives no alternative program rules and a treatment group that is offered the opportunity for the benefit offset. Beneficiaries randomly assigned to the Stage 1 treatment group will receive a notice informing them of their eligibility for the project and the alternate program rules that will apply for the treatment of earnings. The notice will provide contact information for beneficiaries to establish Abt Associates as their central point of contact for the BOND project.

Stage 2 will consist of a control group and two treatment groups. We will recruit volunteers for Stage 2 from the pool of approximately 340,000 SSDI-only beneficiaries in the Stage 2 Eligible Group described above. We will recruit about 12,600 SSDI-only beneficiaries to volunteer to participate in Stage 2 of the project. While we are not required to obtain a beneficiary's consent to participate in a demonstration project under section 234 of the Act, we will require beneficiaries whom we recruit for Stage 2 of the project and who wish to participate in the project to sign a consent form to indicate their agreement to participate. We will randomly assign the SSDI-only beneficiaries who consent to participate to one of the following three groups:

• Stage 2 Control Group—We will assign approximately 4,800 beneficiaries to this group, which will continue to be subject to our usual program rules. We will not test any alternative rules with this group.

• Stage 2 Offset Treatment Group—We will assign approximately 4,800 beneficiaries to this group. We will offer this group the opportunity for the benefit offset under Stage 2 of the project.

• Stage 2 Offset and Enhanced Benefits Counseling Treatment Group—We will assign approximately 3,000 beneficiaries to this group. We will offer this group the opportunity for the benefit offset and enhanced benefits counseling services. We will send the volunteers randomly assigned to the two treatment groups in Stage 2 a notice informing them of the alternate program rules that will apply for the treatment of earnings and the enhanced benefits counseling, depending on their treatment group.

Alternate Title II Program Rules for Participants in the Benefit Offset Treatment Groups

We will apply the following alternate program rules to beneficiaries assigned to the treatment groups. The alternate rules will provide a beneficiary whose disability ended because of the performance of SGA the opportunity to continue working or start working again and receive SSDI benefit payments, subject to a benefit offset. The benefit offset will allow a beneficiary who performs SGA after the grace period to receive reduced SSDI benefit payments when we would ordinarily stop payments or terminate entitlement under our usual rules. We will continue to apply our usual rules for the TWP, for deciding whether disability ended due to the performance of SGA, and for paying benefits for months in the grace period to participants in the treatment groups.

When will a participant in a treatment group be eligible for the benefit offset?

A beneficiary who is in a Stage 1 or Stage 2 treatment group and whose disability ends or has ended under our usual rules due to the performance of SGA will be eligible for the benefit offset during his or her "BOND participation period." The BOND participation period is a period of up to 60 months that begins and ends as described below. A beneficiary must complete the TWP by September 30, 2017 to qualify for the BOND participation period. A beneficiary whose disability ended because of the performance of SGA will be eligible for the benefit offset during his or her BOND participation period beginning with the later of the following months:

• The month after the beneficiary's three-month grace period; or

• The first month of the beneficiary's BOND participation period.

When does the BOND participation period begin?

The BOND participation period of a beneficiary who is assigned to a treatment group begins as follows:

• For a beneficiary who did not complete the TWP in or before the month of assignment to a treatment group, the BOND participation period begins with the month after the month the TWP is completed, provided the beneficiary completes the TWP by September 30, 2017.

• For a beneficiary who completed the TWP in or before the month of assignment to a treatment group, the BOND participation period begins with the month after the month of assignment to a treatment group.

We explain in the following table when the BOND participation period and eligibility for the benefit offset begin depending on a beneficiary's status as of the close of the month of his or her assignment to a treatment group.

Beneficiary status at close of month of random assignment to a treatment group	BOND Participation period begins	Eligibility for the benefit offset begins
TWP not completed	Month after TWP completed, provided TWP completed by September 30, 2017.	Month after grace period if disability ends due to SGA.
TWP completed and disability did not end due to SGA.	Month after month of assignment to treatment group.	Month after grace period if disability ends due to SGA.
TWP completed, disability ended due to SGA, and grace period has not ended.	Month after month of assignment to treatment group.	Month after grace period.
TWP completed, disability ended due to SGA, grace period has ended, and entitlement has not terminated.	Month after month of assignment to treatment group.	First month of BOND participation period.

When does the BOND participation period end?

The BOND participation period ends with the earliest of the following months:

- The 60th month after it begins;
- The month before the month the beneficiary ceases to have a disabling impairment;[19]
- For a beneficiary in a Stage 2 treatment group, the month before the month the beneficiary's withdrawal of consent to participate becomes effective;
- For a beneficiary entitled to disability insurance benefits, the month before the month the beneficiary attains full retirement age; or
- The month before the month of death.

When will a participant in the Stage 2 Offset and Enhanced Benefits Counseling Treatment Group be eligible for counseling services?

A beneficiary assigned to this Stage 2 treatment group will be eligible for enhanced benefits counseling services beginning with the month after the month he or she is assigned to this treatment group. The beneficiary will continue to be eligible for these services until his or her BOND participation period ends. A beneficiary who does not complete the TWP by September 30, 2017 and does not qualify for the BOND participation period will no longer be eligible for these counseling services beginning October 1, 2017.

What happens if a participant in a treatment group does not complete the TWP by September 30, 2017?

A beneficiary in a Stage 1 or Stage 2 treatment group who does not complete the TWP by September 30, 2017 will not qualify for the BOND participation period and will not be eligible for the benefit offset. We will apply our usual title II disability program rules beginning October 1, 2017.

In addition, a beneficiary in the Stage 2 Offset and Enhanced Benefits Counseling Treatment Group who does not complete the TWP by September 30, 2017 will no longer be eligible for the enhanced benefits counseling beginning October 1, 2017.

How will we apply the benefit offset?

We may apply the benefit offset to reduce monthly SSDI benefits beginning with the first month a beneficiary in a treatment group is eligible for the offset. A beneficiary who qualifies for the BOND participation period and whose disability has ended due to the performance of SGA is eligible for the offset beginning with the first month after his or her grace period or the first month of his or her BOND participation period, whichever is later. A beneficiary is eligible for the offset only during his or her BOND participation period.

If a beneficiary is eligible for the offset throughout a calendar year, we will determine whether his or her earnings for the year, after allowable deductions, exceed the BOND yearly amount to decide whether to reduce SSDI benefits payable for months in that year under the benefit offset. We will reduce a beneficiary's monthly SSDI benefit payments by $1 for every $2 of the beneficiary's yearly earnings that are above the applicable BOND yearly amount. If the beneficiary's earnings for the year do not exceed the BOND yearly amount, we will not reduce his or her SSDI benefits for months in that year under the offset.

The BOND yearly amount for a calendar year is equal to twelve times the applicable monthly SGA amount for that year. For example, in 2010, the monthly SGA amount is $1,000 for a beneficiary who is not blind and $1,640 for a beneficiary who is blind. The BOND yearly amount for 2010 would be $12,000 for a beneficiary who is not blind and $19,680 for a beneficiary who is blind.

A beneficiary may be eligible for the benefit offset for less than an entire calendar year. This situation may occur, for example, in a beneficiary's first and last years of eligibility for the offset. In this situation, we will prorate the applicable BOND yearly amount for the calendar year based on the number of months for which the beneficiary is eligible for the offset in that year. We will use the prorated BOND yearly amount to decide whether to offset the beneficiary's SSDI benefits based on his or her earnings. We will only consider the beneficiary's earnings for the period of months for which he or she is eligible for the offset in the calendar year and will only apply the offset to the benefits payable for months in that period. The period of months for which a beneficiary is eligible for the offset in a calendar year is his or her "offset period" in that year.

When a beneficiary's offset period is less than the calendar year, we will determine whether the beneficiary's earnings for the offset period, after allowable deductions, exceed the prorated BOND yearly amount to decide whether to reduce SSDI benefits payable for months in the offset period. We will reduce a beneficiary's monthly SSDI benefit payments for months in his or her offset period by $1 for every $2 of the beneficiary's earnings for that period that are above the prorated BOND yearly amount. If the beneficiary's earnings for the offset period do not exceed the prorated BOND yearly amount, we will not reduce his or her SSDI benefits for months in that period under the offset.

We will decide whether to reduce a beneficiary's monthly SSDI benefit payments under the offset and determine the amount by which monthly benefits will be reduced (i.e., the monthly offset amount) based on a beneficiary's estimate of earnings for the calendar year or for the months for which he or she is eligible for the offset in the calendar year. A beneficiary who is eligible for the benefit offset will provide us with an estimate of earnings after deducting the estimated amount of any impairment-related work expenses and any earnings that are not counted under our usual SGA rules.[20]

[19] If a beneficiary whose disability has ended due to SGA appeals an impairment severity cessation determination and receives statutory benefit continuation pending the appeal, the BOND participation period may continue during the appeal.

[20] 20 CFR 404.1574–404.1576.

In the example below, we show how we will calculate the amount by which monthly SSDI benefit payments will be reduced under the offset for a beneficiary who is eligible for the offset throughout a calendar year and whose estimated yearly earnings exceed the BOND yearly amount. In the example, we use the BOND yearly amount that would apply in 2010 to a beneficiary who is not blind. However, since the BOND yearly amount is equal to twelve times the applicable monthly SGA amount, the BOND yearly amount may increase from year to year as a result of increases in the applicable SGA amount.[21] Therefore, the BOND yearly amount for 2011, or for a later year, may be higher than the amount that would apply in 2010.

Example

A beneficiary who is eligible for the offset throughout a calendar year provides us with an estimate of his earnings for the year. The beneficiary estimates that his yearly earnings, after allowable deductions, will be $15,000. The BOND yearly amount is $12,000. The beneficiary's estimated yearly earnings exceed the BOND yearly amount by $3,000. We will reduce each of the beneficiary's SSDI benefit payments for months in the year by $125. The calculations for this example are as follows:

First, we calculate the amount of estimated annual earnings that exceed the BOND yearly amount.

$15,000 (annual earnings estimate)

- $12,000 (BOND yearly amount)

$ 3,000

Second, we calculate the annual $1 for $2 benefit offset amount by dividing the amount of estimated earnings that exceeds the BOND yearly amount by 2.

$3,000 ÷ 2 = $1,500 (annual $1 for $2 benefit offset amount)

Finally, we calculate the monthly offset amount by dividing the annual offset amount by 12 months.

$1,500 ÷ 12 = $125 (monthly $1 for $2 benefit offset amount)

For the purposes of the BOND project, we will round the monthly benefit offset amount resulting from the calculations above up to the nearest dime.

In determining when wages will be counted as earnings for purposes of applying the benefit offset, we will count a beneficiary's wages as earnings at the earliest of the following times:

- When the beneficiary receives the wages;
- When they are credited to the beneficiary's account; or
- When they are set aside for the beneficiary's use.

If the beneficiary is self-employed, we count net earnings from self-employment on a taxable year basis. However, we divide the total of these earnings equally among the months in the taxable year to get the beneficiary's earnings for each month. For example, if the beneficiary's net earnings from self-employment for a taxable year are $2,400, we consider that the beneficiary received $200 in each month. If the beneficiary has net losses from self-employment, we divide them over the taxable year in the same way, and we deduct them only from the beneficiary's other earned income.

We will perform an end-of-year reconciliation after the close of each calendar year in which a beneficiary was eligible for the benefit offset. We will determine the actual amount of the beneficiary's earnings, after allowable deductions, for the calendar year (or for those months for which the beneficiary was eligible for the offset in the year) to decide if he or she was paid more or less in benefits than was due under the offset. We will make appropriate adjustments to future benefit payments if we determine that we paid the beneficiary too much or too little in benefits under the offset. We will send the beneficiary a written notice of our determination that will provide appeal rights.

What happens to the payment of benefits to other persons entitled on the earnings record of a beneficiary whose SSDI benefits are subject to the offset?

If any other person(s) is entitled to benefits on the earnings record of a beneficiary whose SSDI benefits are subject to the offset, we will pay the other person(s) the full amount of monthly cash benefits that he or she is otherwise due for any month for which the beneficiary is eligible for payment of a reduced SSDI benefit under the offset. However, we will not pay benefits to the other person(s) for any month for which the beneficiary's SSDI benefit is reduced to zero under the offset.

What happens to the reentitlement period of a beneficiary who qualifies for the BOND participation period?

The BOND participation period replaces a beneficiary's reentitlement period or supplements it if the reentitlement period ended in or before the month of the beneficiary's assignment to a treatment group. The BOND participation period will:

- Replace the reentitlement period if a beneficiary completes the TWP in or after the month of assignment to a treatment group and on or before September 30, 2017 (subject to the exception below);
- Replace any remaining months of the reentitlement period if a beneficiary completed the TWP and his or her reentitlement period did not end in or before the month of assignment to a treatment group (subject to the exception below); or
- Provide an additional period for a beneficiary to test his or her ability to work if the beneficiary completed the TWP and his or her reentitlement period ended in or before the month of assignment to a treatment group.

Exception: If a beneficiary's BOND participation period ends before his or her reentitlement period would have ended under the usual rules, the beneficiary will be eligible under the usual rules for whatever months of his or her reentitlement period remain after the BOND participation period ends.

What happens when a beneficiary's BOND participation period ends?

We will apply our usual title II disability program rules beginning with the first month after his or her BOND participation period ends. If a beneficiary works after the BOND participation period ends, we will review the beneficiary's work and earnings under our usual rules to decide

[21] 20 CFR 404.1574(b)(2) and 404.1584(d)(3).

if the work is SGA. We will apply the same rules that we would apply to a beneficiary who works after his or her reentitlement period ends, including the rules for terminating entitlement to SSDI benefits if the work is SGA.[22] However, under the exception described in the previous section, a beneficiary may be eligible for one or more months of the reentitlement period after his or her BOND participation period ends. In this situation, we will consider any work the beneficiary performs in any remaining months of his or her reentitlement period under the usual rules that we apply to a beneficiary who works during the reentitlement period.[23] In either situation, we will use the following rules to decide whether the work performed by a beneficiary after the BOND participation period ends is SGA:

- If the beneficiary's disability ended due to SGA before or during the BOND participation period, we will decide whether this work is SGA under our usual rules for evaluating whether work performed after the grace period is SGA.[24] We will not apply the rules on averaging of earnings or unsuccessful work attempts.[25]
- If the beneficiary's disability has not ended due to SGA, we will decide whether the work is SGA under our usual rules for evaluating whether work is SGA for purposes of determining if disability has ended, including the rules on averaging of earnings and unsuccessful work attempts.[26]

When will the period of disability end for a BOND participant entitled to disability insurance benefits?

We will apply our usual title II disability program rules to determine when the period of disability ends for a participant in a treatment group who does not complete the TWP by September 30, 2017 or whose disability does not end due to the performance of SGA before the end of his or her BOND participation period. See the section "Period of disability for an insured worker" for our usual rules on when a period of disability ends.

We will apply the following alternate rules to determine when the period of disability ends for a disability insurance beneficiary in a treatment group whose disability ended due to SGA before or during his or her BOND participation period.

1. The beneficiary's period of disability will end with the close of the earliest of the following months:
- The month before the month he or she attains full retirement age;
- The month before his or her termination month; or
- The last month for which he or she received a benefit payment if his or her monthly benefits were reduced to zero under the benefit offset for each month thereafter up to his or her termination month.

2. For purposes of determining when his or her period of disability ends, the beneficiary's termination month will be the earlier of the following months:
- The third month following the month in which he or she no longer has a disabling impairment; or
- The first month in which he or she performs SGA following his or her BOND participation period or, if later, the month after the grace period.

Will the alternate rules under the BOND project affect a beneficiary's Medicare coverage?

The alternate program rules that we will apply to a beneficiary in a treatment group will not affect his or her Medicare eligibility. A beneficiary who is under age 65 and who has been entitled to SSDI benefits for 24 months is entitled to Hospital Insurance under the Medicare program (Medicare Part A).[27] Entitlement to Medicare coverage generally continues as long as a beneficiary's entitlement to SSDI benefits continues. However, a beneficiary whose entitlement to SSDI benefits terminates due to the performance of SGA and who continues to have a disabling impairment may be entitled to extended Medicare coverage for a period of at least 93 months following the end of his or her TWP. Under the Act, the period of extended Medicare coverage is determined as if the beneficiary had a 15-month reentitlement period following the end of his or her TWP.[28] This rule for determining the period of extended Medicare coverage will continue to apply to an SSDI beneficiary who is in a BOND treatment group and entitled to Medicare.

May a beneficiary in a Stage 2 treatment group withdraw from the BOND project?

A beneficiary in a Stage 2 treatment group may withdraw his or her consent to participate in the BOND project at any time in writing. A beneficiary who wishes to withdraw his or her consent to participate will work with Abt Associates to facilitate his or her withdrawal from the project. A beneficiary in a Stage 2 treatment group who withdraws his or consent to participate will no longer be eligible for the alternate program rules or any project services available under the BOND project. We will continue to track the beneficiary for project evaluation using administrative data. We will apply our usual program rules to the beneficiary beginning with the month his or her withdrawal from the project becomes effective.

Ticket to Work Program

We issue tickets to disability beneficiaries, which they may use to obtain services from service providers under the Ticket to Work program. A beneficiary may assign his or her ticket to a qualified service provider to obtain employment services to find, enter, and retain employment.[29] A qualified service provider is an Employment Network (EN) or a State vocational rehabilitation agency that qualifies to receive EN payments from us.[30] We pay a qualified service provider, to which a beneficiary has assigned a ticket, for certain outcomes achieved by the beneficiary.[31] We may pay an outcome payment to a qualified service provider for each month for which SSDI benefits and Federal SSI are not payable to the beneficiary because of the performance of SGA or by reason of earnings from work activity.[32] If the beneficiary is an SSDI-only or concurrent SSDI/SSI beneficiary, we may pay outcome payments for a maximum of 36 months, not necessarily consecutive.[33]

Alternate Rule for Paying Outcome Payments Under the Ticket to Work Program

We will apply an alternate rule for paying outcome payments to a qualified service provider that has been assigned a ticket by an SSDI-only or concurrent SSDI/SSI beneficiary in a BOND treatment group. We will pay an outcome payment to the provider for each month for which the beneficiary's SSDI benefits are reduced under the benefit offset and Federal SSI is not payable by reason of earnings from work activity. We will apply this alternate rule for paying outcome payments only during a beneficiary's BOND participation period. We will apply our usual rule for paying outcome payments

[22] 20 CFR 404.1592a(a)(3).
[23] 20 CFR 404.1592a(a)(1) and (2).
[24] 20 CFR 404.1592a(a)(2)(i) and (3)(i).
[25] *Id.*
[26] 20 CFR 404.1592a(a)(1) and (3)(ii).
[27] Section 226(b) of the Act; 42 CFR 406.12.
[28] *Id.*
[29] Section 1148 of the Act; 20 CFR part 411.
[30] 20 CFR 411.135.
[31] 20 CFR part 411, subpart H.
[32] Section 1148(h) of the Act; 20 CFR 411.500, 411.525, and 411.575.
[33] 20 CFR 411.500 and 411.525.

beginning with the first month after a beneficiary's BOND participation period ends. We will continue to limit the number of months for which outcome payments may be made based on the same ticket to a maximum of 36 months. We will count any month for which we pay an outcome payment under the alternate rule or our usual rule toward this 36-month limit.

What is our authority for conducting the BOND project?

We are conducting the BOND project under the demonstration authority in section 234 of the Act. This section of the Act directs us to carry out experiments and demonstration projects to determine the relative advantages and disadvantages of, among other approaches, various alternative methods of treating the work activity of individuals entitled to title II benefits based on disability, including such methods as a reduction in benefits based on earnings. Section 234 of the Act authorizes us to waive compliance with the benefit requirements of title II of the Act and the requirements of section 1148 of the Act (concerning the Ticket to Work program) as they relate to the title II program, insofar as is necessary for a thorough evaluation of the alternative methods under consideration.

What provisions of the Act and regulations are we waiving to provide alternate rules under the BOND project?

Alternate Title II Program Rules

Under the Act and our regulations, we provide an SSDI beneficiary with a disabling impairment a 36-month reentitlement period following the completion of the TWP during which the beneficiary's entitlement to benefits continues even if the beneficiary is performing SGA. However, we do not pay benefits to the disability beneficiary or any other person entitled to benefits on his or her earnings record for any month after the grace period and during the reentitlement period in which the disability beneficiary performs SGA. In determining whether a beneficiary performs SGA in a month after the grace period, we consider only his or her work in or earnings for that month. We terminate entitlement to benefits if the disability beneficiary performs SGA after the reentitlement period. In addition, we provide a disability insurance beneficiary a period of disability to protect his or her earnings record. We terminate the beneficiary's period of disability when his or her entitlement to cash benefits terminates or, if earlier, with the last month for which he or she received cash benefits during the reentitlement period. Sections 202(d)(1), (d)(6), (e)(1), and (f)(1), 216(i)(2)(D), and 223(a)(1) and (e) of the Act; 20 CFR 404.316(d), 404.321(c), 404.325, 404.337(d), 404.352(e), 404.401a, and 404.1592a.

We are waiving these provisions of the Act and regulations to the extent necessary to provide the alternate title II program rules described in this notice to beneficiaries in the BOND treatment groups. (See the section "Alternate Title II Program Rules for Participants in the Benefit Offset Treatment Groups" for the rules we will apply.) In general, under the alternate program rules, we will provide the following to an SSDI beneficiary assigned to a treatment group who completes the TWP by September 30, 2017:

- A BOND participation period of up to 60 months beginning with the month after completion of the TWP or the month after assignment to a treatment group, whichever is later;
- Eligibility for the benefit offset during a beneficiary's BOND participation period beginning with the month after the grace period or the first month of the BOND participation period, whichever is later;
- Payment of SSDI benefits, subject to reduction under the benefit offset, for months for which the SSDI beneficiary is eligible for the benefit offset (see the section "How will we apply the benefit offset?" for the rules we will apply);
- Payment of benefits to any other person entitled to benefits on the earnings record of the SSDI beneficiary for any month for which the beneficiary's SSDI benefits are reduced under the benefit offset, unless SSDI benefits are reduced to zero under the offset;
- Termination of a disability insurance beneficiary's period of disability with the close of the last month for which he or she received a benefit payment if his or her monthly benefits were reduced to zero under the benefit offset for each month thereafter up to the month his or her entitlement to cash benefits terminated; and
- Application of our usual program rules beginning with the month after the BOND participation period ends.

Alternate Rule for Paying Outcome Payments Under the Ticket to Work Program

Under the Ticket to Work program, we pay a qualified service provider, to which a disability beneficiary has assigned a ticket, for certain outcomes achieved by the beneficiary. We may pay an outcome payment to a qualified service provider for each month for which SSDI benefits and Federal SSI are not payable to the beneficiary because of the performance of SGA or by reason of earnings from work activity. If the beneficiary is an SSDI-only or concurrent SSDI/SSI beneficiary, we may pay outcome payments for a maximum of 36 months, not necessarily consecutive. Section 1148(h) of the Act; 20 CFR 411.500(b)–(e), 411.525(a)(1)(i), and 411.575(b)(1)(i)(A).

We are waiving this section of the Act and these provisions of our regulations to the extent necessary to provide the alternate rule described in this notice for paying outcome payments to a qualified service provider to which a beneficiary in a treatment group has assigned a ticket. In general, under the alternate rule, a qualified service provider will be eligible for an outcome payment for each month (up to a maximum of 36) for which the beneficiary's SSDI benefits are reduced under the benefit offset and Federal SSI are not payable by reason of earnings from work activity.

Authority: Section 234 of the Act.

Dated: November 12, 2010.

Michael J. Astrue,

Commissioner of Social Security.

[FR Doc. 2010–29350 Filed 11–19–10; 8:45 am]

BILLING CODE 4191–02–P

SUSQUEHANNA RIVER BASIN COMMISSION

Notice of Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of approved projects.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: October 1, 2010, through October 31, 2010.

ADDRESSES: Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, PA 17102–2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238–0423, ext. 306; fax: (717) 238–2436; e-mail: *rcairo@srbc.net* or Stephanie L. Richardson, Secretary to the Commission, telephone: (717) 238–0423, ext. 304; fax: (717) 238–2436; e-mail: *srichardson@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described

below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(e) and 18 CFR 806.22(f) for the time period specified above:

Approvals By Rule Issued Under 18 CFR § 806.22(e):

1. Hydro Recovery, LP, Pad ID: Treatment Facility, ABR–201010061, Blossburg Borough, Tioga County, Pa.; Consumptive Use of up to 0.100 mgd; Approval Date: October 21, 2010.

Approvals By Rule Issued Under 18 CFR 806.22(f):

1. XTO Energy Incorporated, Pad ID: Levan 8526H, ABR–201010001, Pine Township, Columbia County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 1, 2010.

2. East Resources Management, LLC, Pad ID: Kindon 374, ABR–201010002, Union Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 4, 2010.

3. Chesapeake Appalachia, LLC, Pad ID: Lemoreview Farms, ABR–201010003, Leroy Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 4, 2010.

4. Chesapeake Appalachia, LLC, Pad ID: Hopson, ABR–201010004, Asylum Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 4, 2010.

5. Chesapeake Appalachia, LLC, Pad ID: Scrivener, ABR–201010005, Rome Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 4, 2010.

6. East Resources Management, LLC, Pad ID: Red Run Mountain Inc 739, ABR–201010006, McIntyre Township, Lycoming County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 5, 2010.

7. Ultra Resources, Inc., Pad ID: State 814, ABR–201010007, Elk Township, Tioga County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: October 6, 2010, including a partial waiver of 18 CFR 806.15.

8. Talisman Energy USA Inc., Pad ID: 05 056 Miller, ABR–201010008, Warren Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: October 6, 2010.

9. Chesapeake Appalachia, LLC, Pad ID: Craige, ABR–201010009, Rush Township, Susquehanna County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 7, 2010.

10. East Resources Management, LLC, Pad ID: Heuer 701, ABR–201010010, Union Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 7, 2010.

11. East Resources Management, LLC, Pad ID: Heath 418, ABR–201010011, Delmar Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 7, 2010.

12. Talisman Energy USA Inc., Pad ID: 05 064 Manchester K, ABR–201010012, Orwell Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: October 7, 2010.

13. East Resources Management, LLC, Pad ID: Redl 600, ABR–201010013, Sullivan Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 7, 2010.

14. East Resources Management, LLC, Pad ID: East Point Fish & Game Club 726, ABR–201010014, Liberty Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 8, 2010.

15. Chesapeake Appalachia, LLC, Pad ID: Yvonne, ABR–201010015, Rush Township, Susquehanna County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 8, 2010.

16. Chesapeake Appalachia, LLC, Pad ID: Goll, ABR–201010016, Ulster Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 12, 2010.

17. Williams Production Appalachia LLC, Pad ID: Hollenbeck ABR, ABR–201010017, Franklin Township, Susquehanna County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 12, 2010.

18. Southwestern Energy Production Company, Pad ID: Daniels Pad, ABR–201010018, Gibson Township, Susquehanna County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: October 12, 2010.

19. Chesapeake Appalachia, LLC, Pad ID: Landmesser, ABR–201010019, Towanda Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 12, 2010.

20. Chesapeake Appalachia, LLC, Pad ID: Field, ABR–201010020, Cherry Township, Sullivan County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 12, 2010.

21. Talisman Energy USA Inc., Pad ID: 05 040 Cook, ABR–201010021, Orwell Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: October 13, 2010.

22. Chesapeake Appalachia, LLC, Pad ID: Millville, ABR–201010022, Fox Township, Sullivan County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 13, 2010.

23. East Resources Management, LLC, Pad ID: Signor 578, ABR–201010023, Charleston Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 13, 2010.

24. Talisman Energy USA Inc., Pad ID: 05 070 Corbin T, ABR–201010024, Orwell Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: October 13, 2010.

25. Chesapeake Appalachia, LLC, Pad ID: Sidonio, ABR–201010025, Ulster Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 14, 2010.

26. Talisman Energy USA Inc., Pad ID: 05 022 DeCristo, ABR–201010026, Warren Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: October 14, 2010.

27. Talisman Energy USA Inc., Pad ID: 05 029 Neville, ABR–201010027, Warren Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: October 14, 2010.

28. East Resources Management, LLC, Pad ID: Harman 565, ABR–201010028, Charleston Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 15, 2010.

29. East Resources Management, LLC, Pad ID: Hudson 575, ABR–201010029, Charleston Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 15, 2010.

30. East Resources Management, LLC, Pad ID: Dietz 490, ABR–201010030, Richmond Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 15, 2010.

31. Southwestern Energy Production Company, Pad ID: Behrend Pad, ABR–201010031, Herrick Township, Bradford County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: October 18, 2010.

32. Talisman Energy USA Inc., Pad ID: 05 129 Upham R, ABR–201010032, Pike Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: October 18, 2010.

33. Talisman Energy USA Inc., Pad ID: 05 118 Allyn A, ABR–201010033, Warren Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: October 18, 2010.

34. Talisman Energy USA Inc., Pad ID: 05 034 Jones, ABR–201010034, Pike Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: October 18, 2010.

35. Ultra Resources, Inc., Pad ID: State 841, ABR–201010035, Elk Township, Tioga County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: October 19, 2010, including a partial waiver of 18 CFR 806.15.

36. Ultra Resources, Inc., Pad ID: State 827, ABR–201010036, Elk Township, Tioga County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: October 19, 2010, including a partial waiver of 18 CFR 806.15.

37. Ultra Resources, Inc., Pad ID: State 820, ABR–201010037, Gaines Township, Tioga County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: October 19, 2010, including a partial waiver of 18 CFR 806.15.

38. Ultra Resources, Inc., Pad ID: State 818, ABR–201010038, Elk Township, Tioga County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: October 19, 2010, including a partial waiver of 18 CFR 806.15.

39. Ultra Resources, Inc., Pad ID: State 816, ABR–201010039, Elk Township, Tioga County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: October 19, 2010, including a partial waiver of 18 CFR 806.15.

40. East Resources Management, LLC, Pad ID: Westbrook 487, ABR–201010040, Richmond Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 19, 2010.

41. East Resources Management, LLC, Pad ID: Berguson 622, ABR–201010041, Covington Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 19, 2010.

42. East Resources Management, LLC, Pad ID: Zimmer 586, ABR–201010042, Covington Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 19, 2010.

43. East Resources Management, LLC, Pad ID: Stevens 413, ABR–201010043, Delmar Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 19, 2010.

44. Chesapeake Appalachia, LLC, Pad ID: Folta, ABR–201010044, Tuscarora Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 19, 2010.

45. Talisman Energy USA Inc., Pad ID: 05 097 Hartnett, ABR–201010045, Warren Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: October 19, 2010.

46. Talisman Energy USA Inc., Pad ID: 05 015 Warner, ABR–201010046, Stevens Township and Pike Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: October 19, 2010.

47. Ultra Resources, Inc., Pad ID: State 842, ABR–201010047, Elk Township, Tioga County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: October 19, 2010, including a partial waiver of 18 CFR 806.15.

48. Ultra Resources, Inc., Pad ID: State 843, ABR–201010048, Elk Township, Tioga County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: October 19, 2010, including a partial waiver of 18 CFR 806.15.

49. Chesapeake Appalachia, LLC, Pad ID: Gemm, ABR–201010049, Litchfield Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 19, 2010.

50. Chesapeake Appalachia, LLC, Pad ID: Phillips, ABR–201010050, Elkland Township, Sullivan County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 19, 2010.

51. Chesapeake Appalachia, LLC, Pad ID: Grant, ABR–201010051, Smithfield Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 20, 2010.

52. East Resources Management, LLC, Pad ID: Schimmel 828, ABR–201010052, Farmington Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 19, 2010.

53. East Resources Management, LLC, Pad ID: Parsons 613, ABR–201010053, Delmar Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 19, 2010.

54. East Resources Management, LLC, Pad ID: Signor 566, ABR–201010054, Charleston Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 19, 2010.

55. East Resources Management, LLC, Pad ID: Smithgall 293, ABR–201010055, Charleston Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 20, 2010.

56. Chesapeake Appalachia, LLC, Pad ID: Tall Maples, ABR–201010056, Elkland Township, Sullivan County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 20, 2010.

57. Chesapeake Appalachia, LLC, Pad ID: Tama, ABR–201010057, North Towanda Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 20, 2010.

58. EQT Production Co., Pad ID: Phoenix H, ABR–201010058, Morris Township, Tioga County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: October 20, 2010.

59. Williams Production Appalachia LLC, Pad ID: Resource Recovery Well Pad 1, ABR–201010059, Snow Shoe Township, Centre County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 21, 2010.

60. Williams Production Appalachia LLC, Pad ID: Resource Recovery Well Pad 3, ABR–201010060, Snow Shoe Township, Centre County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 21, 2010.

61. Chesapeake Appalachia, LLC, Pad ID: Abel, ABR–201010062, Shrewsbury Township, Sullivan County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 25, 2010.

62. Talisman Energy USA Inc., Pad ID: 05 031 Smolko, ABR–201010063, Pike Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: October 27, 2010.

63. Chesapeake Appalachia, LLC, Pad ID: Shores, ABR–201010064, Sheshequin Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 27, 2010.

64. Chesapeake Appalachia, LLC, Pad ID: Juser, ABR–201010065, Rush Township, Susquehanna County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 29, 2010.

65. Chesapeake Appalachia, LLC, Pad ID: Drake, ABR–201010066, Litchfield Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 28, 2010.

66. Chief Oil & Gas LLC, Pad ID: Smith Drilling Pad #1, ABR–201010067, Franklin Township, Bradford County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: October 29, 2010.

67. Chief Oil & Gas LLC, Pad ID: B & B Investment Group Drilling Pad #1, ABR–201010068, Asylum Township, Bradford County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: October 29, 2010.

68. Chief Oil & Gas LLC, Pad ID: Boileau Drilling Pad #1, ABR–201010069, Goshen Township, Clearfield County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: October 29, 2010.

69. XTO Energy Incorporated, Pad ID: PA Tract 8546H, ABR–201010070, Chapman Township, Clinton County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 29, 2010.

Authority: Pub L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR Parts 806, 807, and 808.

Dated: November 10, 2010.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2010–29331 Filed 11–19–10; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: San Diego County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA, on behalf of the California Department of Transportation (Caltrans), is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared

for a proposed highway project in San Diego County, California.

DATES: Public Scoping Meeting: January 12, 2011; 5 p.m. to 8 p.m.

ADDRESSES: Sherman Heights Community Center, 2258 Island Avenue, San Diego, California 92102.

FOR FURTHER INFORMATION CONTACT: Kevin Hovey, Environmental Analysis Branch Chief, California Department of Transportation, District 11—Environmental Division, MS 242, 4050 Taylor Street, San Diego, CA 92110, Regular Office Hours 7 a.m. to 3 p.m., Telephone number 619–688–0240, e-mail *Kevin.Hovey@dot.ca.gov.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and Caltrans assumed environmental responsibilities for this project pursuant to 23 U.S.C. 327. Caltrans as the delegated National Environmental Policy Act (NEPA) agency will prepare a Draft Environmental Impact Statement on a proposal for a highway project in San Diego County, California.

The project is approximately three miles in length and its project limits are post miles (PM) 1.4 to 4.4 along SR–94, PM 12.95 to 13.51 along Interstate 805 (I–805), and PM R0.655 to R3.4 along State Route 15 (SR–15). The proposed action includes the addition of two dedicated HOV/BRT lanes and, depending on the alternative, the following additional improvements: Relocating left-hand connectors; constructing new interchanges and improvements along the existing connectors; removal, replacement, and relocation of bridge overcrossings; and drainage modifications within the project corridor. Retaining/Sound walls would also be added and new right-of-way (ROW) would be required.

Two build alternatives and one no build alternatives are under consideration. The No Build Alternative assumes that no improvements would be made along the SR–94 project corridor and that conditions would remain the same. No HOV/BRT lanes would be constructed, and no other freeway improvements would be made. Maintaining existing conditions would not manage the available capacity on SR–94 and would not facilitate the use of HOV/BRT.

Alternative 1 would provide a HOV/BRT lane in each direction of SR–94 between I–5 and I–805. These lanes would be constructed in the median of SR 94. The HOV/BRT lanes also include direct connectors at I–805 in the north-west and east-south directions and at SR–15 in the south-west and east-north directions. This alternative would remove the left hand branch connectors at the SR–94/SR–15 interchange and replace them with right hand branch connectors. The estimated capital cost of this alternative is 465 million dollars.

Alternative 2 would provide a HOV/BRT lane in each direction on SR–94 between I–5 and I–805. These lanes would be constructed in the median of SR 94. The HOV/BRT lanes also include direct connectors at I–805 in the north-west and east-south directions, and at I–15 in the south-west and east-north directions. The I–805/SR–94 HOV/BRT connector would stay elevated over SR–15 and 32nd Street and touchdown west of 30th Street. The existing left hand branch connectors at SR–15 would be left in place. The estimated capital cost of this alternative is 452 million dollars.

This project will be subject to the Section 6002 Environmental Review process and potential final approvals for the proposed project include, but are not limited to, consultation with the U.S. Fish and Wildlife Service under Section 7 of the Federal Endangered Species Act; conformance with Section 404 of the Clean Water Act; conformance with Section 4(f) of the Department of Transportation Act of 1966; conformance under Section 106 of the National Historic Preservation Act; and conformance of the Clean Air Act.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, Participating Agencies, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A public scoping meeting will be held at the Sherman Heights Community Center in San Diego, California on January 12, 2011 from 5 p.m. to 8 p.m. In addition, a public hearing will be held. Public notice will be given of the time and place of the meeting and hearing. The Draft Environmental Impact Statement will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to Caltrans at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: November 16, 2010.

Cindy Vigue,

Director, State Programs, Federal Highway Administration, Sacramento, California.

[FR Doc. 2010–29338 Filed 11–19–10; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Rescinding the Notice of Intent for an Environmental Impact Statement (EIS): Harrison and Stone Counties, MS

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Rescind Notice of Intent to prepare an EIS.

SUMMARY: This notice rescinds the Notice of Intent for preparing an Environmental Impact Statement (EIS) for proposed highway, State Route 601, to provide a connection between Interstate 10 at the Canal Road Interchange and State Route 26 in the City of Wiggins, Harrison and Stone Counties, Mississippi. The original Notice of Intent for this EIS process was published in the **Federal Register** on August 12, 2005.

FOR FURTHER INFORMATION CONTACT: Claiborne Barnwell, Project Development Team Leader, Federal Highway Administration, Mississippi Division, 100 West Capitol Street, Suite 1026, Jackson, Mississippi 39269, Telephone: (601) 965–4217.

SUPPLEMENTARY INFORMATION:

Background

The Federal Highway Administration (FHWA) in cooperation with the Mississippi Department of Transportation (MDOT) initiated an Environmental Impact Statement (EIS) with a Notice of Intent August 12, 2005, to provide a connector road, to be built to interstate standards, between Interstate 10 and State Route 26.

Due to funding constraints the Notice of Intent is rescinded.

Andrew H. Hughes,

Division Administrator, Mississippi, Federal Highway Administration, Jackson, Mississippi.

[FR Doc. 2010–29141 Filed 11–19–10; 8:45 am]

BILLING CODE M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Notice of Limitation on Claims Against Proposed Public Transportation Projects

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of limitation on claims.

SUMMARY: This notice announces final environmental actions taken by the Federal Transit Administration (FTA) for the following projects: (1) Fredericksburg Road Bus Rapid Transit, VIA Metropolitan Transit, San Antonio, TX; (2) Draper Transit Corridor Project, Utah Transit Authority, Salt Lake County, Utah; (3) Wyandanch Intermodal Transit Facility, Town of Babylon, Wyandanch, NY; (4) Fayetteville Multi-Modal Bus Transfer Center, The City of Fayetteville, Fayetteville, NC; (5) Second Avenue Subway Extension, Metropolitan Transportation Authority, New York, NY; and (6) East Side Access, Metropolitan Transportation Authority, New York, NY. The purpose of this notice is to announce publicly the environmental decisions by FTA on the subject projects and to activate the limitation on any claims that may challenge these final environmental actions.

DATES: By this notice, FTA is advising the public of final agency actions subject to Section 139(l) of Title 23, United States Code (U.S.C.). A claim seeking judicial review of the FTA actions announced herein for the listed public transportation projects will be barred unless the claim is filed on or before May 23, 2011.

FOR FURTHER INFORMATION CONTACT: Katie Grasty, Environmental Protection Specialist, Office of Planning and Environment, 202–366–9139, or Christopher Van Wyk, Attorney-Advisor, Office of Chief Counsel, 202–366–1733. FTA is located at 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 9 a.m. to 5:30 p.m., EST, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FTA has taken final agency actions by issuing certain approvals for the public transportation projects listed below. The actions on these projects, as well as the laws under which such actions were taken, are described in the documentation issued in connection with each project to comply with the National Environmental Policy Act (NEPA) and in other documents in the FTA administrative record for the project. Interested parties may contact either the project sponsor or the relevant FTA Regional Office for more information on these projects. Contact information for FTA's Regional Offices may be found at *http://www.fta.dot.gov.*

This notice applies to all FTA decisions on the listed projects as of the issuance date of this notice and all laws under which such actions were taken, including, but not limited to, NEPA [42 U.S.C. 4321–4375], Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303], Section 106 of the National Historic Preservation Act [16 U.S.C. 470f], and the Clean Air Act [42 U.S.C. 7401–7671q]. This notice does not, however, alter or extend the limitation period of 180 days for challenges of project decisions subject to previous notices published in the **Federal Register**. For example, this notice does not extend the limitation on claims announced for earlier decisions on the Second Avenue Subway or the East Side Access project.

The projects and actions that are the subject of this notice are:

1. *Project name and location:* Fredericksburg Road BRT, San Antonio, TX. *Project sponsor:* VIA Metropolitan Transit. *Project description:* This project includes the construction of eight BRT stations and two transit centers in southwest San Antonio. The BRT system would operate from the University of Texas at San Antonio main campus through downtown San Antonio and will operate in mixed flow traffic along a nine-mile corridor. *Final agency actions:* Section 106 finding of no adverse effect; project-level air quality conformity determination; Section 4(f) no use determination; and a Finding of No Significant Impact (FONSI) dated August 2010. *Supporting documentation:* Environmental Assessment dated August 2010.

2. *Project name and location:* Draper Transit Corridor Project, Salt Lake County, Utah. *Project sponsor:* Utah Transit Authority (UTA). *Project description:* The project consists of a 3.8-mile light rail transit extension operating from the existing 10000 South (Sandy Civic Center) Station of the Transit Express (TRAX) line along the UTA owned right-of-way of the former Union Pacific Provo Industrial Lead Railroad to Draper Town Center near 12400 South (Pioneer Road) in Draper with three new passenger stations. *Final agency actions:* Section 4(f) de minimis impact determination; a Section 106 Memorandum of Agreement; and a Record of Decision dated September 2010. *Supporting documentation:* Final Environmental Impact Statement dated July 2010.

3. *Project name and location:* Wyandanch Intermodal Transit Facility, Wyandanch, NY. *Project sponsor:* Town of Babylon. *Project description:* The project includes a new parking garage, public open space, new and relocated bus stops, a drop-off and pick up area, a new street network, off-site roadway and streetscape improvement, drainage improvements, and wayfinding elements. The project is located on a 13.9-acre site. *Final agency actions:* Section 106 finding of no adverse effect and a FONSI signed September 2010. *Supporting documentation:* Environmental Assessment dated July 2010.

4. *Project name and location:* Fayetteville Multi-Modal Bus Transfer Center, Fayetteville, NC. *Project sponsor:* The City of Fayetteville. *Project description:* The multi-modal center will include a two-story building, bus bay platforms, taxi stands and landscaped areas. It will be constructed on a 2.55-acre downtown city block. *Final agency actions:* Section 106 finding of no adverse effect; no use of Section 4(f) properties; and a revised FONSI signed October 2010. *Supporting documentation:* Environmental Assessment dated April 2010.

5. *Project name and location:* Second Avenue Subway, New York, NY. *Project sponsor:* Metropolitan Transportation Authority. *Project description:* The Second Avenue Subway project is the phased construction of a new 8.5-mile subway line under Second Avenue in Manhattan from 125th Street to Hanover Square in Lower Manhattan. It includes sixteen new stations which will be accessible by persons with disabilities. FTA has agreed to funding for the first phase of the project which will run between 105th Street and 62nd Street and will connect to the existing F line at 63rd Street, so that Phase 1 can be operated before the other phases are built. Various changes to Phase 1 have been evaluated in six technical memorandums.

Final agency actions: FTA determination in each case that neither a Supplemental Environmental Impact Statement nor a Supplemental Environmental Assessment is necessary. *Supporting documentation:* Technical Memorandum No. 1 assessing design changes to tunnels south of 70th Street and modifications to three stations, dated January 2007; Technical Memorandum No. 2 assessing design change to 96th Street station ancillary facility, dated April 2007; Technical Memorandum No. 3 assessing design change to 63rd Street station ventilation

system and the location of station entrances, dated July 2007; Technical Memorandum No. 4 assessing design change to reduce the number of tracks near 72nd Street and to lower the tunnel near the 72nd Street and 86th Street stations, dated September 2008; Technical Memorandum No. 5 assessing design change to Lexington Avenue/63rd Street Station entrances, dated April 2010; and Technical Memorandum No. 6 evaluation of 69th Street ancillary facility, dated September 2010.

6. *Project name and location:* East Side Access, New York, NY. *Project sponsor:* Metropolitan Transportation Authority. *Project description:* The East Side Access project will connect the Long Island Rail Road's (LIRR) Main and Port Washington lines in Queens to a new LIRR terminal beneath Grand Central Terminal in Manhattan. Various project changes have been evaluated in three technical memorandums. *Final agency actions:* FTA determination in each case that neither a Supplemental Environmental Impact Statement nor a Supplemental Environmental Assessment is necessary. *Supporting documentation:* Technical Memorandum No. 2 assessing design changes to track configuration at Sunnyside Yard, addition of a new 43rd Street substation, and design changes to tracks at Harold Interlocking and substation, dated April 2006; Technical Memorandum No. 3 assessing refinements to tail track and associated ventilation plenum near East 37th Street, Manhattan, dated July 2008; and Technical Memorandum No. 4 assessing design changes to East Side Access LIRR concourse, construction near 37th Street, and the elimination of three East Side Access LIRR street entrances at 44th Street, 45th Street, and 48th Street, Manhattan, dated March 2010.

Issued on: November 12, 2010.

Susan Borinsky,

Associate Administrator for Planning and Environment, Washington, DC.

[FR Doc. 2010–29290 Filed 11–19–10; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Program Management Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Program Management Committee meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the RTCA Program Management Committee.

DATES: The meeting will be held December 8, 2010 from 8:30 a.m. to 1:30 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 850, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a RTCA Program Management Committee meeting. The agenda will include:

- Opening Plenary (Welcome and Introductions)
- Review/Approve Summary of September 15, 2010 PMC meeting, RTCA Paper No. 198–10/PMC–826.
- Publication Consideration/Approval
  - Final Draft, New Document, *Safety, Performance and Interoperability Requirements Document for ATSA–SURF Application,* RTCA Paper No. 197–10/PMC–825, prepared by SC–186.
  - Final Draft, New Document, *Safety, Performance and Interoperability Requirements Document for ADS–B Airport Surface Surveillance Application (ADS–B–APT),* RTCA Paper No. 200–10/PMC–828, prepared by SC–186.
  - Final Draft, New Document, *Safety, Performance and Interoperability Requirements Document for Enhanced Traffic Situational Awareness on the Airport Surface with Indications and Alerts,* RTCA Paper No. 194–10/PMC–824, prepared by SC–186.
  - Final Draft, Revised DO–160F, *Environmental Conditions and Test Procedures for Airborne Equipment,* RTCA Paper No. 201–10/PMC–829, prepared by SC–135.
  - Final Draft, New Document, *Safety and Performance Requirements (SPR) for Aeronautical Information Services (AIS) and Meteorological (MET) Data Link Services,* RTCA Paper No. 202–10/PMC–830, prepared by SC–206.
  - Final Draft, New Document, *Airworthiness Security Process Specification,* RTCA Paper No. 203–10/PMC–831, prepared by SC–216.
  - Final Draft, New Document, *Minimum Operational Performance Standards for Automatic Flight Guidance and Control Systems and Equipment,* RTCA Paper No. 204–10/PMC–832, prepared by SC–220.
- Integration and Coordination Committee (ICC)—Status Report
- Action Item Review
  - SC–206—Aeronautical Information Services (AIS) Data Link—Review/Approve Revised Terms of Reference—Co-Chairman Review/Approval
  - MASPS/MOPS/SPR/Concepts—Discussion
- Discussion
  - Rechargeable and Permanently Installed Lithium Batteries—Small and Medium Size—Discussion—Possible New Special Committee
  - SC–222—Inmarsat AMS(R)S—Discussion—Review/Approve Revised Terms of Reference
  - SC–219—Attitude and Heading Reference Systems (AHRS)—Discussion—Review/Approve Revised Terms of Reference
  - SC–217/WG–44—Terrain and Airport Databases—Discussion—Review/Approve Revised Terms of Reference
  - SC–216—Aeronautical Systems Security—Discussion—Review/Approve Revised Terms of Reference
  - SC–214/WG–78—Standards for Air Traffic Data Communications Services—Discussion—Review/Approve Revised Terms of Reference
  - SC–203—Unmanned Aircraft Systems—Co-Chairman Review/Approval
  - SC–135—Environmental Test—Discussion—Review/Approve Revised Terms of Reference
  - SC–159—Global Positioning System—Discussion—Committee Status
  - Trajectory Operations—Discussion—Status
  - Special Committees—Chairmen's Reports SC–216—Aeronautical Systems
- Closing Plenary (Other Business, Document Production and PMC Meeting Schedule Meeting, Adjourned)

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 15, 2010.

Robert L. Bostiga,

RTCA Advisory Committee.

[FR Doc. 2010–29295 Filed 11–19–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Twelfth Meeting: Joint RTCA Special Committee 213: EUROCAE WG–79: Enhanced Flight Vision Systems/ Synthetic Vision Systems (EFVS/SVS)

AGENCY: Federal Aviation Administration, Department of Transportation.

ACTION: Notice of Joint RTCA Special Committee 213: EUROCAE WG–79: Enhanced Flight Vision Systems/ Synthetic Vision Systems (EFVS/SVS).

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of Joint RTCA Special Committee 213: EUROCAE WG–79: Enhanced Flight Vision Systems/Synthetic Vision Systems (EFVS/SVS).

DATES: The meeting will be held January 11–13, 2011 from 8:30 a.m.–5 p.m. (0830–1700).

ADDRESSES: The meeting will be held at the Honeywell Deer Valley Facility, 2111 N. 19th Ave., Phoenix, AZ 85027. Logistics: If attending, guests must provide name, company affiliation and citizenship to *gail.dunda@honeywell.com* and *thea.feyereisen@honeywell.com* prior to January 3, 2011. Please read the attached SC–213 Jan 2011 Phoenix Meeting attachment. Objectives are Plenary approval DO–315B (MASPS for SVS approach) and to continue discussions on DO–315C performance objectives.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Joint RTCA Special Committee 213: EUROCAE WG–79: Enhanced Flight Vision Systems/ Synthetic Vision Systems (EFVS/SVS) meeting.

The agenda will include:

Tuesday, January 11

- Morning:
  - Plenary discussion (sign-in at 0830)
  - Introductions and administrative items
  - Review and approve minutes from last full plenary meeting
- Afternoon:
  - Work Group 1 (SVS) Discussion: Review DO–315 draft and comments list
  - Work Group 2 (EFVS) Discussion: Begin discussion of DO–315C performance objectives for landing in reported visibilities < 1,000 ft RVR.

Wednesday, January 12

- Plenary Discussion of DO–315B draft and comments list (830–1700, including breaks and lunch).

Thursday, January 13

- Plenary discussion (0830–1500, including breaks and lunch)
  - Approve DO–315B draft.
  - Administrative items (meeting schedule)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 15, 2010.

Robert L. Bostiga,

RTCA Advisory Committee.

[FR Doc. 2010–29296 Filed 11–19–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

23rd Meeting: RTCA Special Committee 206: EUROCAE WG 76 Plenary: AIS and MET Data Link Services

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 206: EUROCAE WG 76 Plenary: AIS and MET Data Link Services meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 206: EUROCAE WG 76 Plenary: AIS and MET Data Link Services.

DATES: The meeting will be held December 14–16, 2010 from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a RTCA Special Committee 206: EUROCAE WG 76 Plenary: AIS and MET Data Link Services meeting. The agenda will include:

- Special Committee (SC) 206, Aeronautical Information and Meteorological Data Link Services, is finishing it's work on the Safety and Performance Requirements for Aeronautical Information Services (AIS) and Meteorological (MET) Data Link Services and a revised Terms of Reference (TOR) for SC–206 has been approved by the RTCA Program Management Committee. A brief description of the document deliverables called out in the revised SC–206 TOR is provided below to inform industry decisions relating to SC–206 participation.
- These deliverables not only provide data link independent Aeronautical Information Services (AIS) and Meteorological (MET) data link standards and guidelines, but also guidance to RTCA Special Committees that may be developing data link specific standards for AIS and MET data link services. In addition to a Minimum Aviation System Performance Standards (MASPS) for Flight Information Services-Broadcast (FIS–B) Data Link, RTCA DO–267A, revision and an AIS and MET Data Link MASPS, that defines the system-level requirements to provide for data driven intended functional use of AIS/MET data link information as the normal (or primary) means for cockpit receipt, a Concept of Use for AIS and MET Data Link Services and an AIS and MET Services Delivery Architecture Recommendations are included in the TOR deliverables.
- The Concept of Use for AIS and MET Data Link Services document includes, in a data-link independent manner, AIS and MET services to the aircraft and MET data link services from the aircraft to ground, to provide a common operating picture for evolving global ATM concepts. The AIS and MET Services Delivery Architecture Recommendations deliverable is a holistic, data-link-agnostic technical analysis of delivery methods to and from the aircraft with respect to the operational and safety requirements for AIS and MET services and provides recommended alternatives for AIS and MET data delivery architectures. The Concept of Use and Delivery Architectures document will inform the AIS and MET Data Link MASPS on its scope and content and help determine whether a revision to the Minimum Interoperability Standards (MIS) for

Automated Meteorological Transmission (AUTOMET), RTCA DO–252, may be required. See attached Agenda for Meeting # 23 schedule.

14 December—Tuesday

- 9 a.m.—Opening Plenary
- Chairmen's remarks and Host's comments
- Introductions, approval of previous meeting minutes, review and approve meeting agenda
- Schedule for this week
- Action Item Review
- SC Revised TOR Background and Plan—Chairmen
- Working Group 1, Wake Vortex, Air Traffic Management, and Weather Applications, WG1 Chairmen
- Working Group 2, AIS Uplink and MET Uplink, Downlink, and Crosslink, Concept of Use—WG2 Chairmen
- Working Group 3, AIS and MET Services Delivery Architecture Recommendations—WG3 Chairmen
- 1 p.m. WG1, WG2, and WG3 Meetings

15 December—Wednesday

- 9 a.m. WG1, WG2, and WG3 Meetings

16 December—Thursday

- 9 a.m. WG1, WG2, and WG3 Meetings
- 2 p.m. Plenary Session
  - SAE G–10—Gary Livack
  - Working Group Reports
  - Action Item Review
- Other Business
- Meeting Plans and Dates

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 15, 2010.

Robert L. Bostiga,

RTCA Advisory Committee.

[FR Doc. 2010–29297 Filed 11–19–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Vehicle Theft Prevention Standard; BMW

AGENCY: National Highway Traffic Safety Administration (NHTSA) Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the BMW of North America, LLC (BMW) petition for exemption of the Carline X1 vehicle line in accordance with 49 CFR part 543, *Exemption from the Theft Prevention Standard.* This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541).

DATES: The exemption granted by this notice is effective beginning with the 2012 model year.

FOR FURTHER INFORMATION CONTACT: Ms. Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Programs, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building, Room W43–439, Washington, DC 20590. Ms. Ballard's telephone number is (202) 366–5222. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: In a petition dated June 1, 2010, BMW requested exemption from the parts-marking requirements of the theft prevention standard (49 CFR part 541) for the MY 2012 BMW Carline X1 vehicle line. The petition requested exemption from parts-marking pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention Standard,* based on the installation of an antitheft device as standard equipment for an entire vehicle line. The agency informed BMW by telephone on July 12, and by letter dated September 20, 2010 of the areas of insufficiency with respect to its June 1, 2010 petition for exemption. On October 8, 2010, BMW submitted supplementary information to the agency addressing its areas of insufficiency.

Under § 543.5(a), a manufacturer may petition NHTSA to grant exemptions for one vehicle line per model year. In its petition, BMW provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for its Carline X1 vehicle line. BMW will install its passive antitheft device as standard equipment on the line. Key features of the antitheft device will include a key with a transponder, loop antenna (coil), engine control unit (DME/DDE) with encoded start release input, an electronically-coded vehicle immobilizer/car access system (EWS/CAS) control unit and a passive immobilizer. BMW's submission, along with its supplementary information is considered a complete petition as required by 49 CFR 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

BMW stated that the EWS immobilizer device prevents the vehicle from being driven away under its own engine power. The EWS control unit provides the interface to the loop antenna (coil), engine control unit and starter. It queries key data from the transponder and provides the coded release of the engine management for a valid key. The ignition and fuel supply are only released when a correct coded release signal has been sent by the EWS control unit, to allow the vehicle to start. The immobilizer device is automatically activated when the engine is shut off and the vehicle key is removed from the ignition lock cylinder. The antitheft device can be further secured by locking the vehicle doors and hood using either the key lock cylinder on the driver's door or the remote frequency remote control. The frequency for the remote control constantly changes to prevent an unauthorized person from opening the vehicle by intercepting the signals of its remote control. The vehicle is also equipped with a central-locking system that can be operated to lock and unlock all doors or to unlock only the driver's door, preventing forced entry into the vehicle through the passenger doors. BMW stated that the transponder is a special transmitter/receiver in the key which communicates with the EWS control unit, the transponder also has a chip which is integrated in the key consisting of a transmitter/receiver, a small antenna coil, and a read/write memory. The transponder chip is supplied with energy via the loop antenna around the key slot; therefore, a battery is not necessary in the key for a voltage supply. The engine control unit (DME/DDE) is designed to cause the ignition and fuel supply to be released when the EWS control unit has sent a correct release signal, and after the initial starting value, the release signal becomes a rolling, ever-changing, random code that is stored in the DME/

DDE and EWS (CAS control modules). The DME/DDE must identify the release signal and only then will the ignition signal and fuel supply be released.

Additionally, BMW stated that the mechanical keys for the Carline X1 are unique. A special key blank, a special key cutting machine and the vehicle's unique code are needed to duplicate a key. BMW stated that new keys will only be issued to authorized persons.

BMW stated that the proposed antitheft device does not provide any visible or audible indication of unauthorized entry. BMW asserts that theft data have indicated a decline in theft rates for vehicle lines that have been equipped with antitheft devices similar to that which it proposes to install on the Carline X1 line.

BMW compared the effectiveness of its antitheft device with devices which NHTSA has previously determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements of Part 541. The antitheft device that BMW intends to install on its Carline X1 vehicle line for MY 2012 is the same device that BMW installed on its BMW X3 and X5 vehicle lines, and its Carline 1, 3, 5, 6, 7, Z4, and MINI vehicle lines. BMW has concluded that the antitheft device proposed for the Carline X1 vehicle line is no less effective than those devices and similar devices for which NHTSA has already been granted exemptions from the parts-marking requirements.

BMW stated that the agency's theft rate data indicate that antitheft devices installed on BMW vehicles have been very effective in decreasing thefts. Specifically, BMW stated that all of its vehicle lines are installed with antitheft devices as standard equipment and the agency's data show that theft rates for those vehicle lines are very low. Specifically, BMW stated that for MY/CY 2008, the agency's data show that theft rates for those lines are: 0.08 (1-series), 0.74 (3-series), 0.65 (3-series), 0.66 (6-series), 2.79 (7-series), 0.63 (M3), 1.12 (M5), 0.68 (Z4(M)), and 0.26 (MINI Cooper) respectively. Using an average of 3 MYs data (2006–2008), theft rates for those lines are: 0.0841, 0.7719, 0.9636, 1.4791, 2.2942, 2.0251, 1.7992, 0.6916, 0.3299, respectively.

In addressing the specific content requirements of 543.6, BMW provided information on the reliability and durability of its device. To ensure reliability and durability of the device, BMW conducted tests based on its own specified standards and believes that the device is reliable and durable since the device complied with its specified requirements for each test. BMW provided a detailed list of the tests conducted.

Based on the supporting evidence submitted by BMW, the agency believes that the antitheft device for the BMW Carline X1 vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). The agency concludes that the device will provide four of the five types of performance listed in § 543.6(a)(3): Promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7(b), the agency grants a petition for exemption from the parts-marking requirements of Part 541, either in whole or in part, if it determines that, based upon supporting evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of Part 541. The agency finds that BMW has provided adequate reasons for its belief that the antitheft device for the Carline X1 vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). This conclusion is based on the information BMW provided about its device.

For the foregoing reasons, the agency hereby grants in full BMW's petition for exemption for the MY 2012 Carline X1 vehicle line from the parts-marking requirements of 49 CFR part 541. The agency notes that 49 CFR part 541, Appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR part 543.7(f) contains publication requirements incident to the disposition of all Part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the Theft Prevention Standard.

If BMW decides not to use the exemption for this line, it must formally notify the agency. If such a decision is made, the line must be fully marked as required by 49 CFR parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if BMW wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the anti-theft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions "to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden that Part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis.* Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis,* it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: November 16, 2010.

Joseph S. Carra,

Acting Associate Administrator for Rulemaking.

[FR Doc. 2010–29289 Filed 11–19–10; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2010–52]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number

involved and must be received on or before December 2, 2010.

ADDRESSES: You may send comments identified by Docket Number FAA–2010–0897 using any of the following methods:

• *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

• *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

• *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.

• *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Keira Jones (202) 267–4025, Tyneka Thomas (202) 267–7626 or David Staples (202) 267–4058, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on November 16, 2010.

Dennis Pratte,

Acting Deputy Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2010–0897.

Petitioner: Everts Air Fuel.

Section of 14 CFR Affected: 14 CFR 91.313(a)(1), (2) & (c).

Description of Relief Sought: Relief is sought to allow Everts Air Fuel to operate Air Tractor AT–802 or AT–1002 (or equivalent) aircraft modified to haul fuel (either company- or customer-owned) with an FAA-approved tanks system to Alaskan villages, mines, cabins, and other remote Alaskan sites.

[FR Doc. 2010–29377 Filed 11–19–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Union Pacific Railroad Company

[Waiver Petition Docket Number FRA–2004–17565]

The Union Pacific Railroad Company (UPRR) seeks an amendment to an existing waiver of compliance from certain provisions of Title 49 CFR parts 231 and 232, concerning the operation of RoadRailer® and RailRunner® equipment on their railroad. Subject to certain conditions, the existing waiver in this docket authorizes UPRR to operate RoadRailer equipmen on their railroad. UPRR now seeks relief from certain provisions of the Railroad Safety Appliance Standards in Title 49 CFR part 231, that stipulate the number, location, and dimensions for handholds, ladders, sill steps, uncoupling levers, and handbrakes to operate RailRunner equipment commingled with RoadRailer equipment. UPRR also seeks relief from Title 49 CFR 231.31, which sets the standard height for drawbars. UPRR states that this relief is necessary to allow them to operate and commingle the RoadRailer® and RailRunner® equipment on dedicated trains operating from Chicago, Illinois, to Minneapolis, Minnesota.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2004–17565) and may be submitted by any of the following methods:

• Web site: *http://www.regulations.gov.* Follow the online instructions for submitting comments.

• *Fax:* 202–493–2251.

• *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.

• *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Page 19477) or at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC on November 15, 2010.

Michael Logue,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 2010–29291 Filed 11–19–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the renewal of an 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 Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning an information collection titled, "Examination Questionnaire." The OCC is also giving notice that it is sending the information collection to OMB for review.

DATES: Comments must be submitted by December 22, 2010.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, Attention: 1557–0199, 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 to OCC Desk Officer, 1557–0199, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You may request additional information or a copy of the collection and supporting documentation submitted to OMB by contacting: Mary Gottlieb, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend the approval for the following information collection:

Title: Examination Questionnaire.

OMB Control No.: 1557–0199.

Affected Public: Businesses or other for-profit.

Type of Review: Regular review.

Abstract: The OCC has revised its Examination Questionnaire and updated the estimated burden hours to adjust for the reduction in the number of national banks. Completed Examination Questionnaires provide the OCC with information needed to properly evaluate the effectiveness of the examination process and agency communications. The OCC will use the information to identify problems or trends that may impair the effectiveness of the examination process, to identify ways to improve its service to the banking industry, and to analyze staff and training needs. A questionnaire is provided to each national bank at the conclusion of their supervisory cycle (12 or 18-month period). A banker may now choose to complete this questionnaire on National BankNet, the OCC's extranet site.

Burden Estimates:

Estimated Number of Respondents: 1,565.

Estimated Number of Responses per Respondent per Year: 0.89.

Estimated Number of Responses: 1,393.

Estimated Time per response: 10 minutes.

Frequency of Response: On occasion.

Estimated Annual Burden: 232 hours.

Comments: A 60-day **Federal Register** notice was issued on July 22, 2010 (75 FR 42825). No comments were received. 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 information collection burden;

(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.

Dated: November 16, 2010.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

[FR Doc. 2010–29287 Filed 11–19–10; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–56 OTS No. H–4438]

Atlantic Coast Financial Corporation, Waycross, GA; Approval of Conversion Application

Notice is hereby given that on November 12, 2010, the Office of Thrift Supervision approved the application of Atlantic Coast Federal, MHC and Atlantic Coast Bank, Waycross, Georgia, to convert to the stock form of organization. Copies of the application are available for inspection by appointment (phone number: 202–906–5922 or e-mail *Public.Info@OTS.Treas.gov*) at the Public Reading Room, 1700 G Street, NW., Washington, DC 20552, and the OTS Southeast Regional Office, 1475 Peachtree Street, NE., Atlanta, Georgia 30309.

Dated: November 16, 2010.

By the Office of Thrift Supervision.

Sandra E. Evans,

Federal Register Liaison.

[FR Doc. 2010–29256 Filed 11–19–10; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–55: OTS Nos. 02620 and H4753]

Wolverine Bank, MI; Approval of Conversion Application

Notice is hereby given that on November 12, 2010, the Office of Thrift Supervision approved the application of Wolverine Bank, Midland, Michigan, to convert to the stock form of organization. Copies of the application are available for inspection by appointment (phone number: (202) 906–5922 or e-mail *Public.Info@OTS.Treas.gov*) at the Public Reading Room, 1700 G Street, NW., Washington, DC 20552, and the OTS Central Regional Office, 1 South Wacker Drive, Suite 2000, Chicago, Illinois 60606.

Dated: November 16, 2010.

By the Office of Thrift Supervision.

Sandra E. Evans,

Federal Register Liaison.

[FR Doc. 2010–29258 Filed 11–19–10; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting for the Electronic Tax Administration Advisory Committee (ETAAC)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of open meeting.

SUMMARY: In 1998 the Internal Revenue Service established the Electronic Tax Administration Advisory Committee (ETAAC). The primary purpose of ETAAC is for industry partners to provide an organized public forum for discussion of electronic tax administration issues in support of the overriding goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC offers constructive observations about current or proposed policies, programs, and procedures, and suggests improvements. Listed is a summary of the agenda along with the planned discussion topics.

Summarized Agenda

8:30 a.m.—Meet and Greet

9 a.m.—Meeting Opens

11 a.m.—Meeting Adjourns

The topics for discussion include:

(1) IRS Official Response to 2010 ETAAC Recommendations

(2) ETAAC 1040 Modernized e-File (MeF) Subcommittee

(3) ETAAC Security Subcommittee

Note: Last-minute changes to these topics are possible and could prevent advance notice.

DATES: There will be a meeting of ETAAC on Wednesday, December 8, 2010. You must register in advance to be put on a guest list to attend the meeting. This meeting will be open to the public, and will be in a room that accommodates approximately 40 people, including members of ETAAC and IRS officials. Seats are available to members of the public on a first-come, first-served basis. Escorts will be provided so attendees are encouraged to arrive at least 30 minutes before the meeting begins. Members of the public may file written statements sharing ideas for electronic tax administration. Send written statements to *etaac@irs.gov*.

ADDRESSES: The meeting will be held at the Internal Revenue Service, 1111 Constitution Avenue, NW., Room 2116, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: You must provide your name in advance for the guest list and be able to show your state-issued picture identification on the day of the meeting. Otherwise, you will not be able to attend the meeting as this is a secured building. To receive a copy of the agenda or general information about ETAAC, call Cassandra Daniels on 202–283–2178 or send an email to etaac@irs.gov by Monday, December 6, 2010. Notification of intent should include your name, organization and telephone number. Please spell out all names if you leave a voice message.

SUPPLEMENTARY INFORMATION: ETAAC reports to the Director, Electronic Tax Administration and Refundable Credits, who is also the executive responsible for the electronic tax administration program. Increasing participation by external stakeholders in the development and implementation of the strategy for electronic tax administration will help IRS achieve the goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC members are not paid for their time or services, but consistent with Federal regulations, they are reimbursed for their travel and lodging expenses to attend the public meetings, working sessions, and an orientation each year.

Dated: November 15, 2010.

Diane Fox,

Acting Chief, Relationship Management.

[FR Doc. 2010–29283 Filed 11–19–10; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Monday,
November 22, 2010

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 417, 422, and 423

Medicare Program; Proposed Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs for Contract Year 2012 and Other Proposed Changes; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 417, 422, and 423

[CMS–4144–P]

RIN 0938–AQ00

Medicare Program; Proposed Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs for Contract Year 2012 and Other Proposed Changes

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: We are proposing revisions to the Medicare Advantage (MA) program (Part C) and Prescription Drug Benefit Program (Part D) to implement provisions specified in the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 (collectively referred to as the Affordable Care Act) (ACA) and make other changes to the regulations based on our continued experience in the administration of the Part C and D programs. These latter proposed revisions would clarify various program participation requirements; make changes to strengthen beneficiary protections; strengthen our ability to identify strong applicants for Parts C and D program participation and remove consistently poor performers; and make other clarifications and technical changes.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. Eastern Standard Time (EST) on January 21, 2011.

ADDRESSES: In commenting, please refer to file code CMS–4144–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. You may submit comments in one of four ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to *http://www.cms.hhs.gov/eRulemaking.* Click on the link "Submit electronic comments on CMS regulations with an open comment period." (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–4144–P, P.O. Box 8013, Baltimore, MD 21244–8013.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–4144–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members. Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Submission of comments on paperwork requirements. You may submit comments on this document's paperwork requirements by mailing your comments to the addresses provided at the end of the "Collection of Information Requirements" section in this document.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

Vanessa Duran, (410) 786–8697 and Sabrina Ahmed, (410) 786–7499, General information.
Christopher McClintick, (410) 786–4682, Part C issues.
Deborah Larwood, (410) 786–9500, Part D issues.
Kristy Nishimoto, (410) 786–8517, Part C and D enrollment and appeals issues.
Deondra Moseley, (410) 786–4577, Part C payment issues.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on all issues set forth in this rule to assist us in fully considering issues and developing policies. You can assist us by referencing the file code CMS–4144–P.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received at *http://www.cms.hhs.gov/eRulemaking.* Click on the link "Electronic Comments on CMS Regulations" on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

Table of Contents

I. Background
A. Overview of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003
B. History and Overview
II. Provisions of the Proposed Regulation
A. Overview of the Proposed Changes
B. Changes To Implement the Provisions of the Affordable Care Act of 2010
1. Cost Sharing for Specified Services at Original Medicare Levels (§ 417.101 and § 422.100)
2. Simplification of Beneficiary Election Periods (§ 422.62, § 422.68, § 423.38, and § 423.40)
3. Special Needs Plan (SNP) Provisions (§ 422.2, § 422.4, § 422.101, § 422.107, and § 422.152)
a. Adding a Definition of Fully Integrated Dual Eligible SNP (§ 422.2)
b. Extending SNP Authority
c. Dual-Eligible SNP Contracts With State Medicaid Agencies (§ 422.107)
d. Approval of Special Needs Plans by the National Committee for Quality Assurance (§ 422.4, § 422.101, and § 422.152)
4. Section 1876 Cost Contractor Competition Requirements (§ 417.402)
5. Making Senior Housing Facility Demonstration Plans Permanent (§ 422.2 and § 422.53)
6. Authority To Deny Bids (§ 422.254, § 422.256, § 423.265, and § 423.272)

7. Determination of Part D Low-Income Benchmark Premium (§ 423.780)
8. Voluntary De Minimis Policy for Subsidy Eligible Individuals (§ 423.34 and § 423.780)
a. Reassigning LIS Individuals (§ 423.34)
b. Enrollment of LIS-Eligible Individuals (§ 423.34)
c. Premium Subsidy (§ 423.780)
9. Increase in Part D Premiums Due to the Income Related Monthly Adjustment Amount (D—IRMAA) (§ 423.44, § 423.286, and § 423.293)
a. Rules Regarding Premiums (§ 423.286)
b. Collection of Monthly Beneficiary Premium (§ 423.293)
c. Involuntary Disenrollment by CMS (§ 423.44)
10. Elimination of Medicare Part D Cost-Sharing for Individuals Receiving Home and Community-Based Services (§ 423.772 and § 423.782)
11. Appropriate Dispensing of Prescription Drugs in Long-Term Care Facilities Under PDPs and MA–PD Plans (§ 423.154)
12. Complaint System for Medicare Advantage Organizations and PDPs (§ 422.504 and § 423.505)
13. Uniform Exceptions and Appeals Process for Prescription Drug Plans and MA–PD Plans (§ 423.128 and § 423.562)
14. Including Costs Incurred by AIDS Drug Assistance Programs and the Indian Health Service Toward the Annual Part D Out-of-Pocket Threshold (§ 423.100 and § 423.464)
15. Cost Sharing for Medicare-Covered Preventive Services (§ 417.101 and § 422.100)
16. Elimination of the Stabilization Fund (§ 422.458)
17. Improvements to Medication Therapy Management Programs (§ 423.153)
18. Changes To Close the Part D Coverage Gap (§ 423.104 and § 423.884)
19. Payments to Medicare Advantage Organizations (§ 422.308)
a. Authority To Apply Frailty Adjustment Under PACE Payment Rules for Certain Specialized MA Plans for Special Needs Individuals (§ 422.308)
b. Application of Coding Adjustment (§ 422.308)
c. Improvements to Risk Adjustment for Special Needs Individuals With Chronic Health Conditions (§ 422.308)
20. Medicare Advantage Benchmark, Quality Bonus Payments, and Rebate (§ 422.252, § 422.258, and § 422.266)
a. Terminology (§ 422.252)
b. Calculation of Benchmarks (§ 422.258)
c. Increases to the Applicable Percentage for Quality (§ 422.258(d))
d. Beneficiary Rebates (§ 422.266)
21. Quality Bonus Payment and Rebate Retention Appeals (§ 422.260)
C. Clarify Various Program Participation Requirements
1. Clarify Payment Rules for Non-Contract Providers (§ 422.214)
2. Pharmacist Definition (§ 423.4)
3. Prohibition on Part C and D Program Participation by Organizations Whose Owners, Directors, or Management Employees Served in a Similar Capacity With Another Organization That Terminated Its Medicare Contract Within the Previous 2 Years (§ 422.506, § 422.508, § 422.512, § 423.508, § 423.507, and § 423.510)
4. Timely Transfer of Data and Files When CMS Terminates a Contract With a Part D Sponsor (§ 423.509)
5. Review of Medical Necessity Decisions by a Physician or Other Health Care Professional and the Employment of a Medical Director (§ 422.562, § 422.566, § 423.562, and § 423.566)
6. Compliance Officer Training (§ 422.503 and § 423.504)
7. Removing Quality Improvement Projects and Chronic Care Improvement Programs From CMS Deeming Process (§ 422.156)
8. Definitions of Employment-Based Retiree Health Coverage and Group Health Plan for MA Employer/Union-Only Group Waiver Plans (§ 422.106)
D. Strengthening Beneficiary Protections
1. Agent and Broker Training Requirements (§ 422.2274 and § 423.2274)
a. CMS-Approved or Endorsed Agent and Broker Training and Testing (§ 422.2274 and § 423.2274)
b. Extending Annual Training Requirements to All Agents and Brokers (§ 422.2274 and § 423.2274)
2. Call Center and Internet Web Site Requirements (§ 422.111 and § 423.128)
a. Extension of Customer Call Center and Internet Web site Requirements to MA Organizations (§ 422.111)
b. Call Center Interpreter Requirements (§ 422.111 and § 423.128)
3. Require Plan Sponsors To Contact Beneficiaries To Explain Enrollment by an Unqualified Agent/Broker (§ 422.2272 and § 423.2272)
4. Customized Enrollee Data (§ 422.111 and § 423.128)
5. Extending the Mandatory Maximum Out-of-Pocket (MOOP) Amount Requirements to Regional PPOs (§ 422.100 and § 422.101)
6. Prohibition on Use of Tiered Cost Sharing by MA Organizations (§ 422.262)
7. Delivery of Adverse Coverage Determinations (§ 423.568)
8. Extension of Grace Period for Good Cause and Reinstatement (§ 422.74 and § 423.44)
9. Translated Marketing Materials (§ 422.2264 and § 423.2264)
E. Strengthening Our Ability To Distinguish for Approval Stronger Applicants for Part C and Part D Program Participation and To Remove Consistently Poor Performers
1. Expand Network Adequacy Requirements to Additional MA Plan Types (§ 422.112)
2. Maintaining a Fiscally Sound Operation (§ 422.2, § 422.504, § 423.4, and § 423.505)
3. Release of Part C and Part D Payment Data
4. Required Use of Electronic Transaction Standards for Multi-Ingredient Drug Compounds; Payment for Multi-Ingredient Drug Compounds (§ 423.120)
5. Denial of Applications Submitted by Part C and D Sponsors With Less Than 14 Months Experience Operating Their Medicare Contracts (§ 422.502 and § 423.503)
F. Other Clarifications and Technical Changes
1. Clarification of the Expiration of the Authority To Waive the State Licensure Requirement for Provider-Sponsored Organizations (§ 422.4)
2. Cost Plan Enrollment Mechanisms (§ 417.430)
3. Fast-Track Appeals of Service Terminations to Independent Review Entities (IREs) (§ 422.626)
4. Part D Transition Requirements (§ 423.120)
5. Revision to Limitation on Charges to Enrollees for Emergency Department Services (§ 422.113)
6. Clarify Language Related to Submission of a Valid Application (§ 422.502 and § 423.503)
7. Modifying the Definition of Dispensing Fees (§ 423.100)
III. Collection of Information Requirements
A. ICRs Regarding Cost Sharing for Specified Services at Original Medicare Levels (§ 417.101 and § 422.100)
B. ICRs Regarding SNP Provisions (§ 422.101, § 422.107, and § 422.152)
1. Dual-Eligible SNP Contracts With State Medicaid Agencies (§ 422.107)
2. ICRs Regarding NCQA Approval of SNPs (§ 422.101 and § 422.152)
C. ICRs Regarding Voluntary De Minimis Policy for Subsidy Eligible Individuals (§ 423.34 and § 423.780)
D. ICRs Regarding Increase in Part D Premiums Due to the Income Related Monthly Adjustment Amount (D—IRMAA) (§ 423.44)
E. ICRs Regarding Elimination of Medicare Part D Cost Sharing for Individuals Receiving Home and Community-Based Services (§ 423.772 and § 423.782)
F. ICRs Regarding Appropriate Dispensing of Prescription Drugs in Long-Term Care Facilities Under PDPs and MA–PD plans (§ 423.154) and Dispensing Fees (§ 423.100)
G. ICRs Regarding Complaint System for Medicare Advantage Organizations and PDPs (§ 422.504 and § 423.505)
H. ICRs Regarding Uniform Exceptions and Appeals Process for Prescription Drug Plans and MA–PD Plans (§ 423.128(b)(7)(i), § 423.128(d), and § 423.562(a)(3))
I. ICRs Regarding Including Costs Incurred by AIDS Drug Assistance Programs and the Indian Health Service Toward the Annual Part D Out-of-Pocket Threshold (§ 423.100 and § 423.464)
J. ICRs Regarding Improvements to Medication Therapy Management Programs (§ 423.153(vii))
K. ICRs Regarding Changes To Close the Part D Coverage Gap (§ 423.104 and § 423.884)
L. ICRs Regarding Medicare Advantage Benchmark, Quality Bonus Payments, and Rebate (§ 422.252, § 422.258 and § 422.266)
M. ICRs Regarding Quality Bonus Appeals (§ 422.260)
N. ICRs Regarding Timely Transfer of Data and Files When CMS Terminates a

Contract With a Part D Sponsor (§ 423.509)
O. ICRs Regarding Compliance Officer Training (§ 422.503 and § 423.504)
P. ICRs Regarding Agent and Broker Training Requirements (§ 422.2274 and § 423.2274)
Q. ICRs Regarding Call Center and Internet Web Site Requirements (§ 422.111 and § 423.128)
R. ICRs Regarding Requiring Plan Sponsors To Contact Beneficiaries To Explain Enrollment by an Unqualified Agent/Broker (§ 422.2272 and § 423.2272)
S. ICRs Regarding Customized Enrollee Data (§ 422.111 and § 423.128)
T. ICRs Regarding Extending the Mandatory Maximum Out-of-Pocket (MOOP) Amount Requirements to Regional PPOs (§ 422.100(f) and § 422.101(d))
U. ICRs Regarding Prohibition on Use of Tiered Cost Sharing by MA Organizations (§ 422.100 and § 422.262)
V. ICRs Regarding Translated Marketing Materials (§ 422.2264 and § 423.2264)
W. ICRs Regarding Expanding Network Adequacy Requirements to Additional MA Plan Types (§ 422.112)
X. ICRs Regarding Maintaining a Fiscally Sound Operation (§ 422.2, § 422.504, § 423.4, and § 423.505)
Y. ICRs Regarding Release of Part C and Part D Payment Data
Z. ICRs Regarding Revision to Limitation on Charges to Enrollees for Emergency Department Services (§ 422.113)
IV. Response to Comments
V. Regulatory Impact Analysis
A. Overall Impact
B. Costs, Savings, and Anticipated Effects Associated With This Proposed Rule
1. Cost Sharing for Specified Services at Original Medicare Levels (§ 417.101 and § 422.100)
2. Approval of Special Needs Plans (SNPs) by National Committee for Quality Assurance (NCQA) (§ 422.4, § 422.101, and § 422.152)
3. Determination of Part D Low-Income Benchmark Premium (§ 423.780)
4. Voluntary De Minimis Policy for Subsidy Eligible Individuals (§ 423.34 and § 423.780)
5. Increase in Part D Premiums Due to the Income-Related Monthly Adjustment Amount (D—IRMAA) (§ 423.44)
6. Elimination of Medicare Part D Cost Sharing for Individuals Receiving Home and Community-Based Services (§ 423.772 and § 423.782)
7. Appropriate Dispensing of Prescription Drugs in Long-Term Care Facilities Under PDPs and MA–PD Plans (§ 423.154) and Dispensing Fees (§ 423.100)
8. Complaint System for Medicare Advantage Organizations and PDPs (§ 422.504 and § 423.505)
9. Uniform Exceptions and Appeals Process for Prescription Drug Plans and MA–PD Plans (§ 423.128 and § 423.562)
10. Including Costs Incurred by the AIDS Drug Assistance Program (ADAP) and the Indian Health Service (IHS) Toward the Annual Part D Out-of-Pocket Threshold (§ 423.100 and § 423.464)
11. Cost Sharing for Medicare Covered Preventive Services (§ 417.101 and § 422.100)
12. Elimination of the Stabilization Fund (§ 422.458)
13. Improvements to Medication Therapy Management Programs (§ 423.153)
14. Changes To Close the Part D Coverage Gap (§ 423.104 and § 423.884)
15. Medicare Advantage Benchmark, Quality Bonus Payments, and Rebate and Application of Coding Adjustment (§ 422.252, § 422.258, § 422.266, and § 422.308)
16. Quality Bonus Appeals (§ 422.260)
17. Timely Transfer of Data and Files When CMS Terminates a Contract With a Part D Sponsor (§ 423.509)
18. Review of Medical Necessity Decisions by a Physician or Other Health Care Professional and the Employment of a Medical Director (§ 422.562, § 422.566, § 423.562, and § 423.566)
19. Compliance Officer Training (§ 422.503 and § 423.504)
20. Agent and Broker Training Requirements (§ 422.2274 and § 423.2274)
21. Call Center Interpreter Requirements (§ 422.111 and § 423.128)
22. Customized Enrollee Data (§ 422.111 and § 423.128)
23. Extending the Mandatory Maximum Out-of-Pocket (MOOP) Amount Requirements to Regional PPOs (§ 422.100 and § 422.101)
24. Translated Marketing Materials (§ 422.2264 and § 423.2264)
C. Expected Benefits
1. Cost Sharing for Specified Services at Original Medicare Levels (§ 417.101 and 422.100)
2. Determination of Part D Low-Income Benchmark Premium (§ 423.780)
3. Voluntary De Minimis Policy for Subsidy Eligible Individuals (§ 423.34 and § 423.780)
4. Increase in Part D Premiums Due to the Income Related Monthly Adjustment Amount (D—IRMAA) (§ 423.44)
5. Elimination of Medicare Part D Cost Sharing for Individuals Receiving Home and Community-Based Services (§ 423.772 and § 423.782)
6. Appropriate Dispensing of Prescription Drugs in Long-Term Care Facilities Under PDPs and MA–PD Plans (§ 423.154) and Dispensing Fees (§ 423.100)
7. Complaint System for Medicare Advantage Organizations and PDPs (§ 422.504 and § 423.505)
8. Uniform Exceptions and Appeals Process for Prescription Drug Plans and MA–PD Plans (§ 423.128 and § 423.562)
9. Including Costs Incurred by the AIDS Drug Assistance Program (ADAP) and the Indian Health Services (IHS) Toward the Annual Part D Out-of-Pocket Threshold (§ 423.100 and § 423.464)
10. Cost Sharing for Medicare Covered Preventive Service (§ 417.101 and § 422.100)
11. Elimination of the Stabilization Fund (§ 422.458)
12. Improvements to Medication Therapy Management Programs (§ 423.153)
13. Changes to Close the Part D Coverage Gap (§ 423.104 and § 423.884)
14. Medicare Advantage Benchmark, Quality Bonus Payments, and Rebate and Application of Coding Adjustment (§ 422.252, § 422.258 and § 422.266, and § 422.308)
15. Quality Bonus Appeals (§ 422.260)
16. Timely Transfer of Data and Files When CMS Terminates a Contract With a Part D Sponsor (§ 423.509)
17. Review of Medical Necessity Decisions by a Physician or Other Health Care Professional and the Employment of a Medical Director (§ 422.562, § 422.566, § 423.562, and § 423.566)
18. Compliance Officer Training (§ 422.503 and § 423.503)
19. Agent and Broker Training Requirements (§ 422.2274 and § 423.2274)
20. Call Center Interpreter Requirements (§ 422.111 and § 423.128)
21. Customized Enrollee Data (§ 422.111 and § 423.128)
22. Extending the Mandatory Maximum Out-of-Pocket (MOOP) Amount Requirements to Regional PPOs (§ 422.100 and § 422.101)
23. Translated Marketing Materials (§ 422.2264 and § 423.2264)
D. Alternatives Considered
1. Cost Sharing for Specified Services at Original Medicare Levels (§ 417.101 and § 422.100)
2. Cost Sharing for Medicare Covered Preventive Services (§ 417.101 and § 422.100)
3. Quality Bonus Appeals (§ 422.260)
4. Timely Transfer of Data and Files When CMS Terminates a Contract With a Part D Sponsor (§ 423.509)
5. Review of Medical Necessity Decisions by a Physician or Other Health Care Professional and the Employment of a Medical Director (§ 422.562, § 422.566, § 423.562, and § 423.566)
6. Compliance Officer Training (§ 422.503 and § 423.504)
7. Agent and Broker Training Requirements (§ 422.2274 and § 423.2274)
8. Call Center Interpreter Requirements (§ 422.111 and § 423.128)
9. Customized Enrollee Data (§ 422.111 and § 423.128)
10. Extending the Mandatory Maximum Out-of-Pocket (MOOP) Amount Requirements to Regional PPOs (§ 422.100 and § 422.101)
11. Translated Marketing Materials (§ 422.2264 and § 423.2264)
12. Increases to the Applicable Percentage for Quality (§ 422.258(d))
E. Accounting Statement

Regulations Text

Acronyms

ACA The Affordable Care Act of 2010 (which is the collective term for the Patient Protection and Affordable Care Act (Pub. L. 111–148) and the Health Care and Education Reconciliation Act (Pub. L. 111–152))

AO Accrediting Organization

ADS Automatic Dispensing System

AEP Annual Enrollment Period
AHFS American Hospital Formulary Service
AHFS–DI American Hospital Formulary Service-Drug Information
AHRQ Agency for Health Care Research and Quality
ALJ Administrative Law Judge
ANOC Annual Notice of Change
BBA Balanced Budget Act of 1997 (Pub. L. 105–33)
BBRA [Medicare, Medicaid and State Child Health Insurance Program] Balanced Budget Refinement Act of 1999 (Pub. L. 106–113)
BIPA Medicare, Medicaid, and SCHIP Benefits Improvement Protection Act of 2000 (Pub. L. 106–554)
CAHPS Consumer Assessment Health Providers Survey
CAP Corrective Action Plan
CCIP Chronic Care Improvement Program
CCS Certified Coding Specialist
CHIP Children's Health Insurance Programs
CMP Civil Money Penalties
CMR Comprehensive Medical Review
CMS Centers for Medicare & Medicaid Services
CMS–HCC CMS Hierarchal Condition Category
CTM Complaints Tracking Module
COB Coordination of Benefits
CORF Comprehensive Outpatient Rehabilitation Facility
CPC Certified Professional Coder
CY Calendar Year
DOL U.S. Department of Labor
DRA Deficit Reduction Act of 2005 (Pub. L. 109–171)
DUM Drug Utilization Management
EGWP Employer Group/Union-Sponsored Waiver Plan
EOB Explanation of Benefits
EOC Evidence of Coverage
ESRD End-Stage Renal Disease
FACA Federal Advisory Committee Act
FDA Food and Drug Administration (HHS)
FEHBP Federal Employees Health Benefits Plan
FFS Fee-for-Service
FY Fiscal Year
GAO Government Accountability Office
HCPP Health Care Prepayment Plans
HEDIS HealthCare Effectiveness Data and Information Set
HHS [U.S. Department of] Health and Human Services
HIPAA Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–191)
HMO Health Maintenance Organization
HOS Health Outcome Survey
HPMS Health Plan Management System
ICD–9–CM Internal Classification of Disease, 9th, Clinical Modification Guidelines
ICEP Initial Coverage Enrollment Period
ICL Initial Coverage Limit
ICR Information Collection Requirement
IRMAA Income-Related Monthly Adjustment Amount
IVC Initial Validation Contractor
LEP Late Enrollment Penalty
LIS Low Income Subsidy
LTC Long Term Care
MA Medicare Advantage
MAAA Member of the American Academy of Actuaries
MA–PD Medicare Advantage-Prescription Drug Plans
M+C Medicare +Choice Program
MOC Medicare Options Compare
MPDPF Medicare Prescription Drug Plan Finder
MIPPA Medicare Improvements for Patients and Providers Act of 2008
MMA Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173)
MSA Metropolitan Statistical Area
MSAs Medical Savings Accounts
MSP Medicare Secondary Payer
MTM Medication Therapy Management
MTMP Medication Therapy Management Programs
NAIC National Association Insurance Commissioners
NCPDP National Council for Prescription Drug Programs
NCQA National Committee for Quality Assurance
NGC National Guideline Clearinghouse
NIH National Institutes of Health
NOMNC Notice of Medicare Non-Coverage
OEP Open Enrollment Period
OIG Office of Inspector General
OMB Office of Management and Budget
OPM Office of Personnel Management
OTC Over the Counter
PART C Medicare Advantage
PART D Medicare Prescription Drug Benefit Programs
PBM Pharmacy Benefit Manager
PDE Prescription Drug Event
PDP Prescription Drug Plan
PFFS Private Fee For Service Plan
POS Point of Service
PPO Preferred Provider Organization
PPS Prospective Payment System
P&T Pharmacy & Therapeutics
QIO Quality Improvement Organization
QRS Quality Review Study
PACE Programs of All Inclusive Care for the Elderly
RADV Risk Adjustment Data Validation
RAPS Risk Adjustment Payment System
RHIA Registered Health Information Administrator
RHIT Registered Health Information Technician
SEP Special Enrollment Periods
SHIP State Health Insurance Assistance Programs
SNF Skilled Nursing Facility
SNP Special Needs Plan
SPAP State Pharmaceutical Assistance Programs
SSA Social Security Administration
SSI Supplemental Security Income
TrOOP True Out-Of-Pocket
U&C Usual and Customary
USP U.S. Pharmacopoeia

SUPPLEMENTARY INFORMATION:

I. Background

A. Overview of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) established the Part D program and made significant revisions to Part C provisions governing the Medicare Advantage (MA) program. The MMA directed that important aspects of the Part D program be similar to, and coordinated with, regulations for the MA program. Generally, the provisions enacted in the MMA took effect January 1, 2006. The final rules implementing the MMA for the MA and Part D prescription drug programs appeared in the **Federal Register** on January 28, 2005 (70 FR 4588 through 4741 and 70 FR 4194 through 4585, respectively).

As we have gained experience with the MA program and the prescription drug benefit program, we periodically have revised the Part C and D regulations to continue to improve or clarify existing policies and/or codify current guidance for both programs. For example, in December 2007, we published a final rule with comment on contract determinations involving Medicare Advantage (MA) organizations and Medicare Part D prescription drug plan sponsors (72 FR 68700). In April 2008, we published a final rule to address policy and technical changes to the Part D program (73 FR 20486). In September 2008 and January 2009, we finalized revisions to both the Medicare Advantage and Medicare prescription drug benefit programs (73 FR 54226 and 74 FR 1494, respectively) to implement provisions in the Medicare Improvement for Patients and Providers Act (MIPPA) (Pub. L. 110–275), which contained provisions affecting both the Medicare Part C and D programs, and to make other policy changes and clarifications based on experience with both programs (73 FR 54208, 73 FR 54226, and 74 FR 2881). In April 2010, we finalized new policies for both the MA and Part D prescription drug programs as part of our continuing efforts to protect beneficiaries from excessive out-of-pocket costs, ensure transparency in plan costs and benefits, and strengthen plan compliance with our requirements (75 FR 19678 through 19826).

B. History and Overview

The Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33) established a new "Part C" in the Medicare statute (sections 1851 through 1859 of the Social Security Act (the Act)) which established the current MA program. As discussed above, the MMA, enacted on December 8, 2003, added a new "Part D" to the Medicare statute (sections 1860D–1 through 42 of the Act) creating the Medicare Prescription Drug Benefit Program, and made significant changes to the M+C program.

Also as noted previously, MIPPA, enacted on July 15, 2008, further amended provisions in Part C and D, including adding extensive new provisions governing marketing under both programs, which were implemented in a final rule that paralleled provisions in MIPPA that was published in the **Federal Register** on September 18, 2008 (73 FR 54208), and in the same issue of the **Federal Register** (73 FR 54226) we published a separate interim final rule that addressed the other provisions of MIPPA affecting the MA and Part D programs. We also clarified the MIPPA marketing provisions in a November 2008 interim final rule (73 FR 67407) and issued a separate interim final rule in January 2009 to address MIPPA provisions related to Part D plan formularies (74 FR 2881).

The proposed and final rules addressing additional policy clarifications under the Part C and D programs appeared in the October 22, 2009 (74 FR 54634) and April 15, 2010 **Federal Register** (75 FR 19678 through 19826), respectively. (These rules are hereinafter referred to as the October 2009 proposed rule and the April 2010 final rule, respectively.) As noted when issuing these rules, we believed that additional programmatic and operational changes were needed in order to further improve our oversight and management of the Part C and D programs, and to further improve a beneficiary's experience under MA or Part D plans.

Indeed, one of the primary reasons set forth in support of issuing our April 2010 final rule was to address beneficiary concerns associated with the annual task of selecting a Part C or Part D plan from so many options. We noted that while it was clear that the Medicare Part C and D programs have been successful in providing additional health care options for beneficiaries, a significant number of beneficiaries have been confused by the array of choices provided and have found it difficult to make enrollment decisions that are best for them. Moreover, experience had shown that organizations submitting multiple bids under Part C and D had not consistently submitted benefit designs significantly different from each other, which we believed added to beneficiary confusion. For this reason, the April 2010 rule required that multiple plan submissions in the same area have significant differences from each other. Other changes set forth in the April 2010 final rule were aimed at strengthening existing beneficiary protections, improving payment rules and processes, enhancing our ability to pursue data collection for oversight and quality assessment, strengthening formulary policy, and finalizing a number of clarifications and technical corrections to existing policy.

In this new proposed rule, we are continuing our process of implementing improvements in policy consistent with those included in the April 2010 final rule, while also implementing changes to the Part C and Part D programs made by recent legislative changes. The Patient Protection and Affordable Care Act (Pub. L. 111–148) was enacted on March 23, 2010, as passed by the Senate on December 24, 2009, and the House on March 21, 2010. The Health Care and Education Reconciliation Act (Pub. L. 111–152), which was enacted on March 30, 2010, modified a number of Medicare provisions in Pub. L. 111–148 and added several new provisions. The Patient Protection and Affordable Care Act (Pub. L. 111–148) and the Health Care and Education Reconciliation Act (Pub. L. 111–152) are collectively referred to as the Affordable Care Act (ACA). The ACA includes significant reforms to both the private health insurance industry and the Medicare and Medicaid programs. Provisions in the ACA concerning the Part C and D programs largely focus on beneficiary protections, MA payments, and simplification of MA and Part D program processes. These provisions affect the way we implement our policies concerning beneficiary cost-sharing, assessing bids for meaningful differences, and ensuring that cost-sharing structures in a plan are transparent to beneficiaries and not excessive. Some of the other provisions for which we are proposing revisions to the MA and Part D programs, based on the ACA and our experiences in administering the MA and Part D programs, concern MA and Part D marketing, including agent/broker training; payments to MA organizations based on quality ratings; standards for determining if organizations are fiscally sound; low income subsidy policy under the Part D program; payment rules for non-contract health care providers; extending current network adequacy standards to Medicare medical savings account (MSA) plans that employ a network of providers; establishing limits on out-of-pocket expenses for MA enrollees; and several revisions to the special needs plan requirements, including changes concerning SNP approvals and deeming. In general, our proposals are intended to strengthen the way we administer the Part C and D programs, and help beneficiaries make the best plan choices for their health care needs.

II. Provisions of the Proposed Regulations

A. Overview of Proposed Changes

In the sections that follow, we discuss the proposed changes to the regulations in 42 CFR parts 417, 422, and 423 governing the MA and prescription drug benefit programs. To better frame the discussion of the specific regulatory provisions we are proposing, we have structured the preamble narrative by topic area rather than in subpart order. Accordingly, our proposals address the following five specific goals:

- Implementing the provisions of the ACA.
- Clarifying various program participation requirements.
- Strengthening beneficiary protections.
- Strengthening our ability to distinguish for approval stronger applicants for Parts C and D program participation and to remove consistently poor performers.
- Implementing other clarifications and technical changes.

A number of the proposed revisions and clarifications affect both the MA and prescription drug programs, while some affect section 1876 cost contracts. Within each section, we have provided a chart listing all subject areas containing provisions affecting the Part C, Part D, and section 1876 cost contract programs, and the associated regulatory citations that would be revised.

We note that these regulations would be effective 60 days after the publication of the final rule that will finalize the proposed changes discussed in this proposed rule, except where otherwise noted in the preamble. Table 1 lists the proposed changes that have an effective date other than 60 days after the publication of the final rule. The proposed effective dates are discussed in the preamble for each of these items.

We are proposing several changes to the regulations to reflect provisions in the ACA which either are already in effect, or have an effective date that will likely be earlier than 60 days after the publication of the final rule. Table 2 lists these proposed changes. While these ACA provisions are effective on the statutory effective date, we propose that the regulations implementing these provisions be effective 60 days after the publication of the final rule.

BILLING CODE 4120–01–P

Table 1: Proposed Effective Date of Certain Proposed Provisions Effective on Dates other than 60 Days after the Publication of the Final Rule

Preamble Section	Section Title	Effective Date As Specified in the ACA
II.B.10	Elimination of Medicare Part D Cost-Sharing for Individuals Receiving Home and Community-Based Services	01/01/2012
II.B.11	Appropriate Dispensing of Prescription Drugs in Long-term Care Facilities Under PDPs and MA-PD Plans	01/01/2012
II.B.12	Complaint System for Medicare Advantage Organizations and PDPs	01/01/2012
II.B.13	Uniform Exceptions and Appeals Process for Prescription Drug Plans and MA-PD Plans	01/01/2012
II.B.17	Improvements to Medication Therapy Management Programs	01/01/2013
II.B.20.a through d	Medicare Advantage Benchmark, Quality Bonus Payments, and Rebate	01/01/2012
II.E.4	Required Use of Electronic Transaction Standards for Multi-Ingredient Drug Compounds; Payment for Multi-Ingredient Drug Compounds	01/01/2012
II.F.4	Part D Transition Requirements	01/01/2012

Table 2: Certain Proposed Provisions with ACA Effective Dates Earlier than 60 Days after the Publication of the Final Rule

Preamble Section	Section Title	Effective Date As Specified in the ACA
II.B.2	Simplification of Beneficiary Election Periods	01/01/2011
II.B.3.b	Extending SNP Authority	Upon enactment of the ACA
II.B.3.c	Dual Eligible SNP Contracts with State Medicaid Agencies	Upon enactment of the ACA
II.B.4	Section 1876 Cost Contract Plan Competition Requirements	Upon enactment of the ACA
II.B.5	Making Senior Housing Facility Demonstration Plans Permanent	01/01/2010
II.B.6	Authority to Deny Bids	01/01/2011
II.B.7	Determination of Part D Low-Income Benchmark Premium	01/01/2011
II.B.8.a through c	Voluntary De Minimis Policy for Subsidy Eligible Individuals	Plan year 2011
II.B.9.a through c	Increase In Part D Premiums Due to the Income Related Monthly Adjustment Amount (D-IRMAA)	01/01/2011
II.B.14	Including Costs Incurred by AIDS Drug Assistance Programs and the Indian Health Service Toward the Annual Part D Out-of-Pocket Threshold	01/01/2011
II.B.18	Changes to Close the Part D Coverage Gap	01/01/2011
II.B.19.a	Authority to Apply Frailty Adjustment under PACE payment rules for Certain Specialized MA Plans for Special Needs Individuals	01/01/2011
II.B.19.b	Application of Coding Adjustment	01/01/2006
II.B.19.c	Improvements to Risk Adjustment for Special Needs Individuals with Chronic Health Conditions	01/01/2011

B. Changes to Implement the Provisions of the Affordable Care Act

The ACA includes significant reforms of both the private health insurance industry and the Medicare and Medicaid programs. Provisions in the Act concern the Part C and D programs and largely focus on beneficiary protections, MA payments, and simplification of MA and Part D program processes. The changes based on provisions in the ACA are detailed in Table 3.

BILLING CODE 4120–01–P

TABLE 3—Changes to Implement the Provisions of the Affordable Care Act

PROVISION	PART 417/422		PART 423	
	Subpart	Section	Subpart	Section
Cost Sharing for Specified Services at Original Medicare Levels	Subpart B Subpart C	§417.101 §422.100	N/A	N/A
Simplification of Beneficiary Election Periods	Subpart B	§422.62 §422.68	Subpart B	§423.38 §423.40
Special Needs Plan (SNP) Provisions	Subpart A Subpart C Subpart D	§422.2 §422.4 §422.101 §422.107 §422.152	N/A	N/A
Section 1876 Cost Contractor Competition Requirements	Subpart J	§417.402	N/A	N/A
Making Senior Housing Facility Demonstration Plans Permanent	Subpart A Subpart B	§422.2 §422.53	N/A	N/A
Authority to Deny Bids	Subpart F	§422.254 §422.256	Subpart F	§423.265 §423.272
Determination of Part D Low-Income Benchmark Premium	N/A	N/A	Subpart P	§423.780
Voluntary De Minimis Policy for Subsidy Eligible Individuals	N/A	N/A	Subpart B Subpart P	§423.34 §423.780
Increase In Part D Premiums Due to the Income Related Monthly Adjustment Amount (D-IRMAA)	N/A	N/A	Subpart B Subpart F	§423.44 §423.286 §423.293
Elimination of Medicare Part D Cost-Sharing for Individuals Receiving Home and Community-Based Services	N/A	N/A	Subpart P	§423.772 §423.782
Appropriate Dispensing of Prescription Drugs in Long-Term Care Facilities Under PDPs and MA-PD Plans	N/A	N/A	Subpart D	§423.154
Complaint System for Medicare Advantage Organizations and PDPs	Subpart K	§422.504	Subpart K	§423.505
Uniform Exceptions and Appeals Process for Prescription Drug Plans	N/A	N/A	Subpart C Subpart M	§423.128 §423.562

PROVISION	PART 417/422		PART 423	
	Subpart	Section	Subpart	Section
and MA-PD Plans				
Including Costs Incurred by AIDS Drug Assistance Programs and the Indian Health Service Toward the Annual Part D Out-of-Pocket Threshold	N/A	N/A	Subpart C Subpart J	§423.100 §423.464
Cost Sharing for Medicare-Covered Preventive Services	Subpart B Subpart C	§417.101 §422.100	N/A	N/A
Elimination of the Stabilization Fund	Subpart J	§422.458	N/A	N/A
Improvements to Medication Therapy Management Programs	N/A	N/A	Subpart D	§423.153
Changes to Close the Part D Coverage Gap	N/A	N/A	Subpart C Subpart R	§423.104 §423.884
Payments to Medicare Advantage Organizations	Subpart G	§422.308	N/A	N/A
Medicare Advantage Benchmark, Quality Bonus Payments, and Rebate	Subpart F	§422.252 §422.258 §422.266	N/A	N/A
Quality Bonus Payment and Rebate Retention Appeals	Subpart F	§422.260	N/A	N/A

BILLING CODE 4120–01–C

1. Cost Sharing for Specified Services at Original Medicare Levels (§ 417.101 and § 422.100)

Section 3202 of the ACA amended section 1852 of the Act to establish new standards for MA plans' cost sharing. Specifically, section 1852(a)(1)(B) of the Act was amended by the addition of a new clause (iii) that limits cost sharing under MA plans so that it cannot exceed the cost sharing imposed under Original Medicare for specific services identified in a new clause (iv). New section 1852(a)(1)(B)(iv) of the Act lists the three services for which cost sharing in MA plans may not exceed that required in Original Medicare (chemotherapy administration services, renal dialysis services, skilled nursing care) and at section 1852(a)(1)(B)(iv)(IV) of the Act specifies that this limit on cost sharing also applies to such other services that the Secretary determines appropriate, including services that the Secretary determines require a high level of predictability and transparency for beneficiaries. The limits on cost sharing in clause (iii) are "subject to" an exception in clause (v) which provides that, "[i]n the case of services described in clause (iv) for which there is no cost sharing required under Parts A and B, cost sharing may be required for those services" under the clause (i) standard in place prior to the amendments made by section 3202 of the ACA. This section requires that overall cost sharing for Medicare Part A and B services be actuarially equivalent to that imposed under Original Medicare. As noted in the final rule that appeared in the April 15, 2010 **Federal Register** (75 FR 19712) and clarified in our April 16, 2010 policy guidance, the provisions of section 3202 of the ACA apply to MA plans offered in CY 2011. To codify these provisions, we are proposing to amend § 422.100 by adding a new paragraph (g). In addition, under our authority in section 1876(i)(3)(D) of the Act to impose "other terms and conditions" deemed "necessary and appropriate," we are proposing in a proposed new paragraph (g) in § 417.100 that the requirements in section 3202 of the ACA be extended by regulation to section 1876 cost contracts. We believe that this extension is necessary in order to ensure that all Medicare beneficiaries have the benefit of the cost sharing protections enacted in the ACA, regardless of whether they receive their Part A and B benefits through Original Medicare, an MA plan, or under a section 1876 cost contract.

We believe that the measures to protect beneficiaries from high out-of-pocket costs in section 3202 of the ACA complement the steps we already have taken in our April 2010 final rule to protect beneficiaries from health plans with high out-of-pocket costs, discriminatory cost sharing and benefit designs that interfere with beneficiaries' access to affordable high quality health care, and create confusion that is attributable to having too many MA plan choices in an area that are not "meaningfully different." In fact, for CY 2011, MA organizations already were expected to comply with new standards for cost sharing and to submit meaningfully different plans in order to reduce beneficiary confusion, and were strongly encouraged to provide Medicare-covered preventive services without cost sharing. Organizations also were expected to limit the number of plans offered in a service area by identifying for non-renewal plans with sustained low enrollment.

In our April 16, 2010 guidance issued via the Health Plan Management System (HPMS) ("Benefits Policy and Operations Guidance Regarding Bid Submissions; Duplicative and Low Enrollment Plans; Cost Sharing Standards; General Benefits Policy Issues; and Plan Benefits Package (PBP) Reminders for Contract Year (CY) 2011"), we included clarifying information related to implementation of the required cost sharing for chemotherapy administration services, renal dialysis services, and skilled nursing care for CY 2011 and we defined chemotherapy administration services to include chemotherapy drugs, radiation therapy services and other related chemotherapeutic agents, as well as administration, and skilled nursing care to mean skilled nursing facility services. We also clarified that, since there is no cost sharing under Original Medicare for the first 20 days of skilled nursing services, under section 1852(a)(1)(B)(v) of the Act, the new restrictions in section 3202 of the ACA

do not apply to such services during this period.

In our proposed addition to § 422.100 and § 417.101, we would incorporate these definitions for the two service categories. We welcome comments on these proposed cost sharing standards.

We also are proposing to limit cost sharing for home health services under MA plans to that charged under Original Medicare. We note that, although we can generally rely on our authority at 1852(a)(1)(B)(iv)(IV) of the Act to apply Original Medicare cost sharing limits to other services that the Secretary determines appropriate, because there is no cost sharing under Original Medicare for home health services, as in the case of the first 20 days of skilled nursing facility services, the exception in clause (v) of section 1852(a)(1)(B) of the Act would apply, and the limit on cost sharing under section 1852(a)(1)(B)(iii) of the Act would not apply. Thus, in proposing to apply Original Medicare cost sharing amounts to home health services or any other service with zero cost sharing, we would rely instead on our authority in section 1856(b)(1) of the Act to establish MA standards by regulation, and in section 1857(e)(1) of the Act to impose additional "terms and conditions" found "necessary and appropriate" to require that cost sharing for these services under MA plans conform to that under Original Medicare, meaning that no cost sharing could be imposed for these services.

We believe that even with the additional restriction on cost sharing for home health services, MA organizations will continue to have adequate flexibility to design plan benefits that are responsive to beneficiary needs and preferences while providing access to high quality and affordable health care. We are soliciting public comment on our proposal to limit cost sharing for home health services to that charged for those services under Original Medicare.

2. Simplification of Beneficiary Election Periods (§ 422.62, § 422.68, § 423.38, and § 423.40)

Section 3204 of the ACA modified section 1851(e)(3)(B) of the Act such that, beginning with plan year 2012, the annual coordinated election period (AEP) under Parts C and D will be held from October 15 to December 7. We propose to amend § 422.62(a)(2) and § 423.38(b) to codify this change, which will be effective October 15, 2011 for elections effective January 1, 2012.

Section 3204 of the ACA also revised section 1851(e)(2)(C) of the Act to establish, beginning in 2011, a 45-day period at the beginning of the year (January 1 through February 14) that allows beneficiaries enrolled in MA plans the opportunity to disenroll and join Original Medicare, with the option to enroll in a Medicare prescription drug plan. This 45-day period replaces the MA open enrollment period that previously occurred annually from January 1 to March 31, and eliminates the requirements in section 1851(e)(2)(c)(iii) of the previous open enrollment provision that required that Part D status be maintained when an election is made (under the previous rule, an individual disenrolling from an MA–PD plan to Original Medicare was required to enroll in a Part D plan, where it is optional under the new provision). We propose to amend § 422.62(a) to provide for this new disenrollment opportunity, and modify § 423.38(d) to allow for enrollment into a standalone PDP.

We also would amend § 422.62(a) to clarify that the open enrollment opportunities for those beneficiaries who are newly eligible for MA would continue only through the end of 2010. Additionally, we would modify § 422.68(f) to specify the effective date for disenrollment requests submitted during the new 45-day disenrollment period. Finally, in § 423.40(d), we would specify the enrollment effective dates for individuals who enroll in a standalone Medicare prescription drug plan after disenrolling from MA during the 45-day period. These changes would be effective January 1, 2011.

As indicated in section II.A. of this proposed rule, we propose that the regulations implementing these provisions be effective 60 days after the publication of the final rule.

3. Special Needs Plan (SNP) Provisions (§ 422.2, § 422.4, § 422.101, § 422.107, and § 422.152)

This section proposes a definition of a fully integrated dual-eligible special needs plan (SNP) for purposes of section 3205(b)(iv)(II) of the ACA, and regulations implementing changes made by the ACA which extend the SNP program, extend provisions permitting existing DE–SNPs that were not seeking to expand their service areas to continue operating through 2012, and establish a required NCQA approval process for SNPs.

a. Adding a Definition of Fully Integrated Dual Eligible SNP (§ 422.2)

Section 3205 of the ACA revised section 1853(a)(1)(B) of the Act provides authority to apply a frailty payment under PACE payment rules for certain individuals under fully integrated dual-eligible special needs plans described in section 3205(b)(iv)(II) of the ACA. We are adding a definition of fully integrated dual-eligible SNPs to § 422.2 that would apply for these purposes. Under this definition, a plan—

- Is a SNP enrolling special needs individuals entitled to medical assistance under a State plan under Medicaid, as defined under section 1859(b)(6)(B)(ii) of the Act and § 422.2;
- Provides dually-eligible beneficiaries access to Medicare and Medicaid benefits under a single managed care organization (MCO);
- Has a capitated contract with a state Medicaid agency that includes coverage of specified primary, acute and, long-term care benefits and services, consistent with State policy;
- Coordinates the delivery of covered Medicare and Medicaid health and long-term care services, using aligned care management and specialty care network methods for high-risk beneficiaries; and
- Employs policies and procedures approved by CMS and the State to coordinate or integrate member materials, including enrollment, communications, grievance and appeals, and quality assurance.

b. Extending SNP Authority

Section 3205 of the ACA revised section 1859(f)(1) of the Act to extend the authority for SNPs to restrict enrollment to special needs individuals, thereby permitting SNPs to continue to limit enrollment to special needs individuals through the 2013 contract year. This extension applies to all SNP categories, with the exception of dual eligible SNPs that do not have a contract with the State in which they operate as described in section II.B.1.c. of this proposed rule. This provision is effective upon enactment of the ACA. However, as indicated in section II.A. of this proposed rule, we propose that the regulations implementing this provision be effective 60 days after the publication of the final rule.

c. Dual-Eligible SNP Contracts With State Medicaid Agencies (§ 422.107)

Section 164 of MIPPA provided that all new dual-eligible SNPs (DE SNPs) must have contracts with the State Medicaid Agencies in the States in which the SNP plans operate. The provision also allowed existing DE SNPs that were not seeking to expand their service areas to continue to operate without a State contract through the 2010 contract year as long as all other MIPPA established requirements were met. This authority was codified at § 422.107. Section 3205 of the ACA extended this provision for existing DE SNPs through December 31, 2012 such

that all new DE SNPs must have contracts with State Medicaid agencies, while all renewing DE SNPs that do not have contracts with State Medicaid agencies and are not seeking to expand their service areas may continue to offer DE SNPs through the 2012 contract. For contract year 2013, all DE SNPs—new and renewing—must have contracts with State Medicaid agencies. Accordingly, we propose revising § 422.107(d)(ii) to codify this provision. This provision is effective upon enactment of the ACA. However, as indicated in section II.A. of this proposed rule, we propose that the regulations implementing this provision be effective 60 days after the publication of the final rule.

d. Approval of Special Needs Plans by the National Committee for Quality Assurance (§ 422.4, § 422.101, and § 422.152)

The ACA amended section 1859(f) of the Act to require that SNPs be approved by the National Committee for Quality Assurance (NCQA) effective January 1, 2012 and subsequent years. Under this section, the NCQA approval process shall be based on the standards established by the Secretary.

The NCQA SNP approval process should provide a foundation for selecting Medicare Advantage organizations that comprehend the unique requirements of the SNP program and are capable of implementing these requirements. Both the overall quality improvement (QI) program description and the model of care (MOC) are critical clinical elements that represent the potential for the SNP to provide integrated care for Medicare enrollees.

New SNPs or SNPs that are expanding their service areas are already required to submit a QI Program Plan and a MOC as part of the application process. For 2012, we will also require existing SNPs to submit their QI Program and MOC during the same application timeframe. NCQA will review the QI program and the MOC elements during the application process using the standards that are currently being developed by CMS. NCQA would assume responsibility for the review and scoring of the overall QI program plan and the MOC based on the standards developed by CMS. While we will coordinate with NCQA in developing these standards, CMS will not participate in the scoring and review of the MOC and QI program plans.

Shortly, we will release specific instructions and guidance to organizations about how to submit their QI program and MOCs. This guidance will include the specific criteria that NCQA will use to evaluate the QI program and the MOC. Also included in the guidance will be information about technical assistance that will be available to the SNPs as they prepare their QI Program and MOC submissions as well as details on the frequency of the SNP approval process. We are concerned that an annual approval process could be burdensome for plans. Therefore, we are considering an approval cycle that would occur between 1 to 5 years. This approval cycle would be designed so that the plans that have a higher score on the initial approval of their QI program and MOC would be granted a longer period before being required to be re-approved. While plans that scored at the lower end of the acceptable spectrum would be granted a shorter period before the next approval was required. We are also considering using other quality improvement measures to help determine the length of time a plan may have before reapproval. For example, plans that score well during their annual quality improvement audits may be eligible for extensions to the time period for the approval process. We would like to use the public comment period to help to determine the appropriate frequency for the SNP approval process.

We are conducting a review of the MOCs from a sample of the SNPs. Data are not yet available from these audits. However, it is anticipated that the audits will be completed by the end of the calendar year. Information received from the audits will be used to assist CMS in revising and improving the MOC. In addition, we intend to use this information to modify and refine the required evaluation criteria over time to improve the QI program and the MOC.

Accordingly, we propose adding a new paragraph (iv) to § 422.4(a) to require MA plans wishing to offer a SNP, whether new or current, to be approved by NCQA, effective January 1, 2012, by submitting their overall quality QI program and MOC to CMS for NCQA evaluation and approval, per CMS guidance. We also propose codifying the new requirement at § 422.101(f), which specifies MOC requirements, by adding a new paragraph (vi). Finally we propose codifying the new requirement by revising § 422.152(g), which specifies QI program requirements.

4. Section 1876 Cost Contractor Competition Requirements (§ 417.402)

Section 3206 of the ACA revised section 1876(h)(5)(C) of the Act to extend implementation of the section 1876 cost contract competition provisions until January 1, 2013. Previously, MIPPA had specified that section 1876 cost contractors operating in service areas or portions of service areas with two or more local or two or more regional Medicare coordinated care plans meeting minimum enrollment requirements (5,000 enrollees for urban areas and 1,500 enrollees for non urban areas) be non-renewed beginning in 2010. In addition, MIPPA specified that MA plan enrollment be assessed over a full contract year.

As a result of the ACA revision, we will evaluate enrollment of competing MA coordinated care plans beginning 2012, and affected section 1876 cost contractors will receive non-renewal notices beginning 2013. Beginning in 2014, section 1876 cost contractors will no longer be able to offer health care services in affected service areas. We propose to revise § 417.402(c) to specify the statutory change in the implementation date of the section 1876 cost plan competition requirements from 2010 to 2013.

This provision is effective upon enactment of the ACA. However, as indicated in section II.A. of this proposed rule, we propose that the regulations implementing this provision be effective 60 days after the publication of the final rule.

5. Making Senior Housing Facility Demonstration Plans Permanent (§ 422.2 and § 422.53)

Section 3208 of the ACA establishes (at section 1859(g) of the Act) that as of January 1, 2010, senior housing facility plans participating as of December 31, 2009 "in a demonstration project established by the Secretary under which such a plan was offered for not less than 1 year" may continue participation as Medicare Advantage senior housing facility plans. MA senior housing facility plans must:

- Limit enrollment to residents of continuing care retirement communities as defined in section 1852(l)(4)(B) and codified at § 422.133(b)(2)—that is, an arrangement under which housing and health-related services are provided (or arranged) through an organization for the enrollee under an agreement that is effective for the life of the enrollee or for a specified period;
- Provide primary care services onsite and have a ratio of accessible physicians to beneficiaries that the Secretary determines is adequate; and
- Provide transportation services for beneficiaries to specialty providers outside of the facility.

We propose to amend the definitions section at § 422.2 to include "senior

housing facility plan" as a new coordinated care plan type. Our proposed definition of the term senior housing facility plan would be consistent with the statutory requirements for such plans at section 1859(g) of the Act—that is, that such plan restrict enrollment to individuals who reside in a continuing care retirement community as defined in § 422.133(b)(2); provide primary care services onsite and have a ratio of accessible physicians to beneficiaries that we determine is adequate consistent with prevailing patterns of community health care as provided under § 422.112(a)(10); provide transportation services for beneficiaries to specialty providers outside of the facility; and was participating as of December 31, 2009 in a demonstration established by us for not less than 1 year. We note that a senior housing facility plan must otherwise meet all requirements applicable to MA organizations under this part.

In addition, we propose to add a new § 422.53 to subpart B of Part 422 to address the eligibility and enrollment policies applicable to senior housing facility plans. We propose specifying at § 422.53 that MA senior housing facility plans must restrict enrollment in these plans to residents of continuing care retirement communities, and that individuals enrolled in such plans must meet all other MA eligibility requirements in order to be eligible to enroll. In addition, we propose specifying at § 422.53(c) that an MA senior housing facility plan must verify the eligibility of each individual enrolling in its plan using a CMS approved process. As indicated in section II.A. of this proposed rule, we propose that the regulations implementing this provision be effective 60 days after the publication of the final rule.

6. Authority To Deny Bids (§ 422.254, § 422.256, § 423.265, and § 423.272)

Section 3209 of the ACA amends section 1854(a)(5) of the Act by adding subsections (C)(i) and (ii) to provide that nothing in section 1854 of the Act shall be construed as requiring the Secretary to accept any or every bid submitted by an MA organization, and expressly provides that the Secretary may deny a bid submitted by an MA organization for an MA plan if it proposes significant increases in cost sharing or decreases in benefits offered under the plan. Section 3209 also extends these provisions to apply to the review of bids from Part D sponsors by amending section 1860D–11(d) of the Act to add a new paragraph (3). This statutory authority applies to bids submitted for contract years beginning on or after January 1, 2011. However, as indicated in section II.A. of this proposed rule, we propose that the regulations implementing this provision be effective 60 days after the publication of the final rule.

We believe that these amendments clarify the Secretary's authority to deny bids submitted by MA organizations and PDP sponsors and provide support for our current policies intended to encourage plans that are high quality, meaningfully different from each other, and nondiscriminatory with respect to cost sharing. In our final rule entitled "Policy and Technical Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs" (75 FR 19678), we established authority to impose limits on cost sharing and to deny bids submitted by plans with sustained low enrollment, and for plans not meaningfully different from other plans offered by the same MA organization or PDP sponsor in a service area. We provided further guidance related to these policies via the Health Plan Management System (HPMS) on April 16, 2010 ("Benefits Policy and Operations Guidance Regarding Bid Submissions; Duplicative and Low Enrollment Plans; Cost Sharing Standards; General Benefits Policy Issues; and Plan Benefits Package (PBP) Reminders for Contract Year (CY) 2011"and "2011 Part D Plan Benefit Package (PBP) Submission and Review Instructions").

Using our authority under sections 1857(c)(2)(B) and 1860D–12(b)(3)(D) of the Act, we codified requirements in § 422.506(b)(1)(iv) and § 423.507(b)(1)(iii) for Part C and Part D, respectively, to non-renew a health plan or prescription drug plan (at the benefit-package level) if the plan does not have sufficient number of enrollees to establish that it is a viable independent plan option. Consistent with that authority, we scrutinized low-enrollment plans during the bid review period this year and encouraged sponsors to withdraw or consolidate low-enrollment plans prior to submitting bids for CY 2011. We revised § 422.256(b)(4)(i) and § 423.272(b)(3)(i) to stipulate that we would only approve a bid submitted by a MA organization or Part D sponsor if its benefit package or plan cost structure is substantially different from those of other plan offerings by the organization or sponsor in the service area with respect to key characteristics such as premiums, cost-sharing, formulary structure, or benefits offered. Related changes to § 422.254(a)(4) and § 423.265(b)(2) provide that MA organizations and Part D sponsors may submit multiple bids in the same area only if the offerings are substantially different from each other. In the above-mentioned April 16, 2010 guidance for PDP sponsors, for the CY 2011 plan year, we defined meaningful differences between health plans as a $20 per member per month difference (PMPM) in cost sharing and for PDPs as a $22 PMPM difference in cost sharing (not including premiums) as reflected in the out-of-pocket cost (OOPC) data.

We further indicated that we do not believe sponsors can demonstrate meaningful differences based on expected out-of-pocket costs between two stand-alone basic Part D benefit designs and maintain both statutory actuarial equivalence requirements and fulfill the requirement (in § 423.153(b)) to maintain cost-effective drug utilization review programs. Therefore, we indicated that PDP sponsors should submit only one basic offering (where basic offering includes defined standard, actuarial equivalent or basic alternative drug benefit types) for a stand-alone prescription drug plan in a service area. We also are increasing our scrutiny of the expected cost sharing amounts incurred by beneficiaries under coinsurance tiers, in order to more consistently compare copay and coinsurance cost sharing impacts. If a sponsor submitted coinsurance values (instead of copayment values) for its formulary tiers, we requested documentation from the sponsor on the average expected price for medications on the coinsurance tier(s) in order to better translate the coinsurance value into an average cost sharing amount for the purpose of our anti-discrimination review. These additional benefit and formulary evaluations are in addition to our formulary review and analysis of tier placement of drugs to ensure that the coverage is balanced and that the associated cost sharing does not discriminate against beneficiaries with a certain disease or diagnosis category. Therefore, we have already established, in effect, a bid review policy that evaluates the limits plans place on member benefits and cost sharing.

Under authority clarified in section 3209 of the ACA to decline to accept bids, we believe that we can choose to limit the number and/or type of plans offered in service areas to enhance our ability to achieve our goals, which are to protect beneficiaries from confusion, discriminatory cost sharing, and any but the highest performing plans. For instance, for CY 2011, we are requiring that MA organizations and PDP sponsors meet new cost sharing standards, ensure that meaningful differences exist between plan offerings,

and consolidate or terminate plans with sustained low enrollment. Although we are not now proposing to establish additional restrictive criteria for CY 2012, we considered proposing additional regulatory restrictions and assessed the expected effects of such additional restrictions on MA organizations, PDP sponsors, and beneficiaries. For example, we believe the Secretary has authority under section 3209 by regulation to set specific thresholds limiting premium increases that can be imposed without a bid being denied, limit which MA organizations and PDP sponsors may offer plans based on quality ratings, and specify caps on the number or the types of plans that may be offered in a service area.

We concluded that we would not propose such additional restrictions limiting MA organizations' or PDP sponsors' plan bids until we were able to evaluate the effectiveness of the limits in place for CY 2011. We also are aware of the many changes we required plans to make for CY 2011 and believe that allowing plans time to adjust to the most recent policies prior to implementing further restrictions may be the most advantageous and reasonable approach for CMS, Medicare beneficiaries, and the organizations and sponsors. Thus, although we believe the new authority strengthens our ability to take corrective action in the event that MA organizations and PDP sponsors do not meet the criteria in our current regulation and subsequent guidance, we realize that setting further limits before we have enough information to evaluate the effectiveness of our recent policy changes or their effects on the market may be premature.

Furthermore, with respect to Part C, we believe that the implementation of specific non-acceptance and denial policies based on comparisons of premium and cost sharing increases and benefit decreases from year to year would be especially challenging considering the number of plan types and services offered by MA organizations. There would be serious difficulties with an effective quantitative premium and cost sharing evaluation process. Such a process would need to measure and adjust for annual changes in maximum out-of-pocket limits, Original Medicare cost-sharing and premiums, medical cost inflation, MA payment policy, benefit designs, and plan service expansions and reductions. Such a process might well turn out to be too rigid to adapt to rapidly changing circumstances and market conditions.

To avoid such rigidity, and to promote the statutory goals (including protection of beneficiaries from confusion and discriminatory cost sharing), we do not propose to specify additional criteria such as thresholds (either absolute or relative to the distribution of bids received) limiting acceptable premium increases. But we do seek comment on our proposed approach and on possible alternatives, designed to balance the need to avoid rigidity while promoting clarity and predictability. We are specifically soliciting public comments from the industry and advocacy communities regarding the criteria outlined in our April 16, 2010 guidance issued via HPMS and whether we should establish additional requirements to limit plan offerings in a service area. We also invite comment as to whether there are other measures we should consider as part of future rulemaking that may help us in our efforts to protect beneficiaries and promote provision of high quality, affordable health plans. We also solicit comments on whether we should adopt other substantive criteria for exercising our authority under section 3209 of the ACA by implementing caps, or limits, on the number of plans offered in a region, or on the number of sponsors participating in the program. For example, for contract year 2011, we identified plan outliers based on changes in premiums and cost-sharing and required some changes to plan bids in order for them to be approved. We solicit comment on this and other, similar approaches of using outlier analyses based on previous and/or current contract year bids to exercise our authority under section 3209 of the ACA. We ask the industry and advocacy communities what we should consider when limiting the acceptance of plan bids or denying plan bids (for example, comparability and access to services in certain service areas, plan performance, outlier plans with the highest bids), were we to choose to move in that direction. Finally, we solicit comment on the best way to ensure fair notice and equal treatment for all plan bids in the absence of specific non-acceptance and denial policies. Our decision not to propose additional specific criteria for CY 2012 should not be interpreted as an indication that we will not adopt specific policies in future rulemaking or that we will not perform robust and thorough reviews of bid submissions. We will continue to use our statutory and regulatory authority to ensure that only high value, non-discriminatory, and actuarially sound bid submissions are approved as we evaluate the effects of our current cost sharing, meaningful differences and low-enrollment policies and consider the timely suggestions and comments we receive from the public on this proposed rule to guide our future policy. Additionally, we note that our discretion to make determinations that MA plan bids propose significant increases in cost sharing or decreases in benefits offered on a case-by-case basis, in accordance with statutory goals, is limited to consideration of the criteria for acceptance or denial of plan bids that have been established via rulemaking and guidance.

We propose to codify the amendments made to sections 1854(a)(5) and 1860D–11(d) of the Act by adding paragraph (a)(5) to § 422.254, revising § 422.256(a), adding paragraph (b)(3) to § 423.265 and by adding paragraph (b)(4) to § 423.272.

7. Determination of Part D Low-Income Benchmark Premium (§ 423.780)

The ACA amends the statute governing the calculation of the LIS benchmark premium amount. Section 1860D–14(b)(3)(B)(iii) of the Act, as amended by the ACA, requires us to calculate the LIS benchmarks using MA–PD basic Part D premiums before the application of Part C rebates each year, beginning with 2011. This proposed rule updates the regulations at § 423.780(b)(2)(ii)(C) to incorporate this change. As indicated in section II.A. of this proposed rule, we propose that the regulations implementing this provision be effective 60 days after the publication of the final rule.

We note that the ACA also requires us to calculate the low-income premium benchmarks before the application of the quality bonuses under section 1853(o) of the Act. The ACA section 1102(d) ties the level of rebate to a plan's star rating for quality of performance. Since the quality bonus is part of the rebate, we do not refer to this requirement in the regulation text. The quality bonus is described in more detail in the Medicare Advantage Benchmark, Quality Bonus Payments, and Rebate section (*see* section II.B.20. of this proposed rule).

8. Voluntary De Minimis Policy for Subsidy Eligible Individuals (§ 423.34 and § 423.780)

Section 3303(a) of the ACA modifies section 1860D–14(a) of the Act by creating a new subsection (5) that permits PDPs and MA–PD plans to waive a *de minimis* monthly beneficiary premium for low income subsidy (LIS) eligible individuals who are enrolled in the plan. The provision also prohibits the Secretary from reassigning LIS individuals the plan's premium was greater than the LIS benchmark premium amount, so long as amount of

the premium is *de minimis* and the plan waives it.

Section 3303(b) of the ACA modifies section 1860D–1(b)(1) of the Act that permits the Secretary to include PDPs and MA–PD plans that waive the *de minimis* amount in the auto-enrollment process that we use to enroll those LIS eligible individuals who fail to enroll in a Part D plan. If these plans are included in the process, and there is more than one plan, the statute requires that enrollees be randomly assigned among all such plans in the PDP region. We propose to amend regulations in § 423.34 and § 423.780(f) to codify the new statutory requirements. The statutory provision is effective January 1, 2011. However, as indicated in section II.A. of this proposed rule, we propose that the regulations implementing these provisions be effective 60 days after the publication of the final rule.

a. Reassigning LIS Individuals (§ 423.34)

Currently, § 423.34(c) specifies that CMS may reassign certain low income subsidy eligible individuals if CMS determines that further enrollment is warranted. We have used this authority to reassign LIS eligible individuals annually when a PDP's monthly beneficiary premium amount is going to exceed the low income benchmark as calculated in § 423.780(b)(2). As noted above, the ACA prohibits the Secretary from reassigning a plan's LIS eligible enrollees based on the fact that the plan's monthly beneficiary premium exceeds the LIS benchmark premium amount, so long as the amount of premium is *de minimis* and the plan volunteers to waive the amount by which their monthly premium exceeds the LIS benchmark. Thus, plans that would otherwise have lost enrollees because of a *de minimis* monthly beneficiary premium can retain their membership. We are proposing to amend § 423.34(c) regarding reassignment of LIS beneficiaries to reflect section 1860D–1(a)(5) of the Act.

b. Enrollment of LIS-Eligible Individuals (§ 423.34)

Currently, § 423.34(d) specifies that CMS enroll LIS eligible individuals who fail to enroll in a PDP. The PDP into which we auto-enroll these individuals are those plans with monthly beneficiary premiums for LIS eligible individuals that do not exceed the low income benchmark as calculated in § 423.780(b)(2).

We are proposing to amend § 423.34(d) regarding auto-enrollment of LIS eligible individuals to be consistent with section 1860D–1(b)(1) of the Act, as modified by the ACA. We will provide details on when we will use this discretion in forthcoming guidance, specifically operational guidance memorandums as well as in Chapter 3 on Eligibility, Enrollment, and Disenrollment of the Medicare Prescription Drug Benefit Manual. We expect that we will not auto-enroll or reassign beneficiaries into plans that volunteer to waive the *de minimis* amount. The only exception would be in cases where the reassignments would allow beneficiaries to remain within the same parent organization. Plans within the same organization usually have the same formulary, so keeping a person within the same organizations minimizes disruption. This mimics the policy in place during the *de minimis* demonstration from 2007 and 2008. The goal of that policy was to minimize reassignments, while maintaining downward pressure on Part D bids by not rewarding *de minimis* plans with new enrollees. Beneficiaries with 100 percent premium subsidy who are already enrolled in, or voluntarily elect, a PDP or MA–PD plan that waives the *de minimis* amount will not be liable for premiums. Although we do not intend to exercise this discretion by including Part D plans that waive the *de minimis* amount in the pool of Part D plans qualified to receive auto-enrollees or reassignees, we do believe that the D regulations should be modified so that the flexibility to do so can be maintained.

c. Premium Subsidy (§ 423.780)

We are also proposing to amend § 423.780(f) to reflect section 1860D–14(a)(5) of the Act. In addition, because section 1860D–14(a)(5) of the Act refers to waivers of *de minimis* premium that exceeds the low-income benchmark, which accounts only for the basic benefit, we propose to limit the waiver of the *de minimis* amount to the premium applicable to the basic benefit. We will determine the *de minimis* amount taking into consideration the goal of minimizing reassignments without undue cost to the program. We will announce the *de minimis* amount each August, in conjunction with our announcement of the LIS benchmarks. Plans will volunteer as part of the bid finalization process. Additional details will be provided in forthcoming guidance.

9. Increase In Part D Premiums Due to the Income Related Monthly Adjustment Amount (D—IRMAA) (§ 423.44, § 423.286, and § 423.293)

Section 3308 of the ACA amended section 1860D–13(a) of the Act by establishing an income related monthly adjustment amount (hereafter referred to as Part D—IRMAA) that is added to the monthly Part D premium for individuals whose modified adjusted gross income exceeds the same income threshold amounts established under section 1839(i) of the Act with respect to the Medicare Part B income-related monthly adjustment amount (Part B—IRMAA).

In calendar year (CY) 2007, the income ranges set forth in section 1839(i) of the Act required that individual and joint tax filers enrolled in Part B whose modified adjusted gross income exceeded $80,000 and $160,000, respectively, would be assessed the Part B—IRMAA on a sliding scale. As specified in section 1839(i)(5) of the Act, since the implementation of the Part B—IRMAA, each dollar amount within the income threshold tiers has been adjusted annually based on the Consumer Price Index. As a result of the annual adjustment, for calendar year 2010, the income threshold amounts were increased to reflect the four income threshold amount tiers shown below:

Individual tax filers with income:	Joint tax filers with income:	Premium percentage
Equal to or less than $85,000	Equal to or less than $170,000	0—No IRMAA.
Greater than $85,000 and less than or equal to 107,000	Greater than $170,000 and less than or equal to $214,000	35.
Greater than $107,000 and less than or equal to $160,000	Greater than $214,000 and less than or equal to $320,000	50.
Greater than $160,000 and less than or equal to $214,000	Greater than $320,000 and less than or equal to $428,000	65.
Greater than $214,000	Greater than $428,000	80.

We note that section 3402 of the ACA freezes the income thresholds at the above 2010 levels through 2019.

In accordance with section 3308 of the ACA, effective January 1, 2011, any individual enrolled in the Medicare prescription drug program whose modified adjusted gross income exceeds the same income threshold amount tiers established under Part B will have an income related increase to his/her Part D monthly premium. Section 3308 of the ACA provides that the income related monthly amount for Part D will be calculated using the Part D national base beneficiary premium and the premium percentages in the above chart as follows: BBP x [(P percent − 25.5 percent)/25.5 percent]. The BBP is the base beneficiary premium and P percent is the applicable premium percentage (35 percent, 50 percent, 65 percent, or 80 percent). The premium percentage used in the calculation will depend on the level of the Part D enrollee's modified adjusted gross income.

Section 3308 of the ACA requires us to provide the Social Security Administration (SSA) with the national base beneficiary premium amount used to calculate the Part D—IRMAA, no later than September 15 of every year, beginning in 2010. We must also provide SSA, no later than October 15 of each year, beginning 2010, with: (1) The modified adjusted gross income threshold ranges; (2) the applicable percentages established for Part D—IRMAA in accordance with section 1839(i) of the Act; (3) the corresponding monthly adjustment amounts; and (4) any other information SSA deems necessary to carry out the Part D—IRMAA. With respect to the final item, we will provide SSA with an initial list of all individuals enrolled in the Part D program. In accordance with section 3308 of the ACA, SSA will use this initial list of Part D enrollees to request beneficiary-specific tax payer information from the Internal Revenue Service in order to determine: (1) Which Part D enrollees exceed the income threshold amounts established under section 1839(i) of the Act; and (2) the income related monthly adjustment amount that these enrollees must pay. This exchange of information between CMS and SSA will occur in 2010 so that individuals identified will be billed the correct Part D—IRMAA beginning January 1, 2011. Following this initial data exchange with SSA, CMS will routinely provide SSA with the names of all individuals newly enrolling in the Part D program so that SSA can repeat the process of identifying individuals who must pay the Part D—IRMAA and the specific income related amount. We will also routinely provide the names of individuals who have disenrolled from the Part D program so that such individuals will no longer be assessed the Part D—IRMAA. In cases where an individual disagrees with a determination that he/she is subject to the Part D—IRMAA, such individual may appeal to SSA in the same manner that has been established for the Part B—IRMAA under 20 CFR Part 418.

Section 3308 of the ACA also stipulates that the Part D—IRMAA must be withheld from benefit payments in accordance with section 1840 of the Act. Therefore, in cases where an individual is receiving benefit payments from SSA, the Railroad Retirement Board (RRB), or the Office of Personnel Management (OPM), the Part D—IRMAA must be withheld from such benefit payments. However, if the benefit payment is insufficient to allow the Part D—IRMAA withholding, or an individual is not receiving benefit payments as described in section 1840 of the Act, section 3308 of the ACA requires SSA to enter into agreements with CMS, RRB, and OPM, as necessary, in order to allow the Part D—IRMAA to be collected directly from these beneficiaries.

To implement section 3308 of the ACA, we are proposing to revise § 423.286 (rules regarding premiums), § 423.293 (collection of monthly beneficiary premium), and § 423.44 (involuntary disenrollment by PDP).

a. Rules Regarding Premiums (§ 423.286)

Currently, § 423.286(a) provides that the monthly beneficiary premium for a Part D plan in a PDP region is the same for all Part D-eligible individuals enrolled in the plan with the exception of employer group waivers, the assessment of the Part D late enrollment penalty, or an enrollee receiving low-income assistance. We propose to revise § 423.286(a) to include the assessment of the income related monthly adjustment amount as another exception to the requirement for a uniform monthly beneficiary premium for a Part D plan in a PDP region.

We also propose to add a new § 423.286(d)(4) to define the increase for the income related monthly adjustment amount for Part D. This provision would specify that, beginning, January 1, 2011, the monthly beneficiary premium amount would be increased for any individual whose modified adjusted gross income amount exceeds the minimum income threshold amounts established at 20 CFR 418.1115 for the Part B—IRMAA. Additionally, proposed § 423.286(d)(4)(i) would specify that SSA would determine the individuals that are subject to the Part D—IRMAA and the amount of the adjustment. Proposed § 423.286(d)(4)(ii) would provide the formula used to calculate the monthly adjustment amount. Finally, proposed § 423.286(d)(4)(iii)–(iv) would provide appeals rights to individual who disagree with SSA's determination that they are subject to Part D—IRMAA or the threshold amount.

b. Collection of Monthly Beneficiary Premium (§ 423.293)

We are proposing to establish a new § 423.293(d)(1) that describes how the Part D—IRMAA would be collected. First, we would address the process for collecting the Part D—IRMAA from SSA, RRB or OPM benefit payments. In cases where SSA had determined that a Part D enrollee must pay an income related monthly adjustment amount, such amount must be paid through withholding from the enrollee's Social Security benefit payments, or benefit payments by the RRB or OPM in the manner that the Part B premium is withheld. Additionally, we would establish at § 423.293(d)(2) that in cases where premium withholding is not possible because the monthly benefit check is insufficient to allow the withholding, or the enrollee is not receiving any monthly benefit payment, the individual must be directly billed for the Part D—IRMAA through an electronic funds transfer mechanism (such as automatic charges of an account at a financial institution or a credit or debit card account) or according to other means that we may specify.

Section 3308 of the ACA provides that the Part D—IRMAA is an increase to the monthly beneficiary premium for certain individuals. Section 1851(g)(B)(i) of the Act, as incorporated by section 1860D–1(b)(5) of the Act, establishes that a beneficiary may be terminated for failing to pay his/her Part D premiums. Although the Part D—IRMAA is paid to CMS (via benefit payment withholdings or direct billing as described above), and not to the PDP, we believe the same consequences should apply for failure to pay the Part D—IRMAA as for failure to pay plan premiums. Therefore, we are proposing, at § 423.293(d)(3), that CMS would terminate Part D coverage for any individual who fails to pay the income related monthly adjustment amount in accordance with proposed § 423.44.

c. Involuntary Disenrollment by CMS (§ 423.44)

Section 3308 of the ACA provides that the Part D—IRMAA increases the

monthly beneficiary premium for individuals who are subject to the assessment. Therefore, we propose to apply provisions similar to the existing Part D premium rules to terminate Part D coverage for any individual who fails to pay the Part D—IRMAA. However, prior to terminating coverage, we propose to provide the beneficiary with a grace period to pay the Part D—IRMAA. We propose to add § 423.44(e), to specify the involuntary disenrollment process by CMS when an individual fails to pay the Part D—IRMAA.

Section 1860D–13(c) of the Act provides that enrollees' Part D coverage can be terminated if they fail to pay their Part D premiums to the PDP after a grace period and adequate notice has been provided. In cases where enrollees' Part D coverage is terminated due to their failure to pay premiums, Medicare rules do not now provide reinstatement if the enrollee later pays the premium arrearages after the termination date. We note that section C.8 of this preamble addresses our proposal to amend § 423.44(d)(1) to reinstate a beneficiary's enrollment into Part D if the beneficiary demonstrates good cause for failing to pay the Part D premium. Additionally, terminated enrollees cannot re-enroll in a stand-alone Part D or MA–PD plan unless they have a valid enrollment period. Consequently, waiting for a valid enrollment period may create a period in which an individual is without coverage and, depending on the duration, the enrollee may incur a Part D late enrollment penalty. Therefore, we propose to create a grace period and an extension of the grace period for good cause and reinstatement at § 423.44(e)(2) and (3) for individuals subject to the Part D—IRMAA. Although CMS recently extended the grace period that PDPs must provide enrollees before disenrolling them for failure to pay their premium (75 FR 19816) from a minimum of 1 month to 2 months, we propose to apply a longer grace period with respect to the Part D—IRMAA. The extended grace period under this proposed provision would be similar to the grace period (and extension of the initial grace period) afforded individuals under section 1838(b) of the Act with respect to the Part B premium (including the Part B—IRMAA).

We believe that it is appropriate to provide additional beneficiary flexibility in terms of a longer grace period for the Part D—IRMAA because section 3308 of the ACA does not impact the direct subsidy amount that CMS is required to pay Part D plan sponsors. Specifically, the Part D—IRMAA is not a reduction in the direct subsidy that CMS pays to PDPs; instead, it is an income-based amount paid to CMS in addition to the premium that is paid by the enrollee to his/her Part D plan. Thus, an extended grace period would not impact PDPs negatively. Furthermore, the extended grace period would allow the beneficiary more time to pay the Part D—IRMAA arrearages and avoid an immediate disenrollment that would leave the beneficiary without Part D coverage sooner. Therefore, we are proposing to allow all enrollees a minimum grace period of 3 months following the billing month to pay any Part D—IRMAA arrearages before they are disenrolled from their Part D plan. In addition, we propose that an enrollee's Part D coverage may be reinstated without interruption if the enrollee, within 3 calendar months after the termination date, demonstrates "good cause" (as defined under § 423.44(d)(1)(iv)of this proposed rule) for failure to pay Part D—IRMAA during the initial grace period, pays all Part D—IRMAA arrearages, and does not owe any plan premiums to the PDP. CMS (or an entity acting on behalf of CMS) will determine whether the beneficiary has demonstrated "good cause."

We are also proposing at § 423.44(e)(4) to require PDPs, after notification by CMS, to notify enrollees of the termination of their enrollment in the Part D plan in a form and manner determined by CMS. We are also proposing to add a provision at § 423.44(e)(5) that would stipulate that in cases where an enrollee has been directly billed for the Part D—IRMAA and provided with the appropriate grace period as described above, the enrollee's termination will be effective the first day following the last day of the initial grace period. That is, the enrollee's last day of Part D coverage would be the last day of the grace period.

Finally, we propose to modify the title of § 423.44 from "Involuntary disenrollment by the PDP" to "Involuntary Disenrollment from Part D Coverage." The new title would encompass disenrollments at the behest of both PDPs and CMS. In addition to disenrollments for failure to pay the Part D—IRMAA, examples of disenrollments that may be initiated by CMS include disenrollment due to death or loss of entitlement to Medicare Parts A or B.

10. Elimination of Medicare Part D Cost-Sharing for Individuals Receiving Home and Community-Based Services (§ 423.772 and § 423.782)

The MMA, as reflected in § 423.782, established that full-benefit dual eligible institutionalized individuals have no cost-sharing for covered Part D drugs under their PDP or MA–PD plan. Section 3309 of the ACA also eliminates cost-sharing for full-benefit dual eligible individuals who are receiving home and community-based services (HCBS) under a home and community-based waiver authorized for a State under section 1115 or subsection (c) or (d) of section 1915 of the Act, or under a State Plan Amendment under section 1915(i) of the Act, or if such services are provided through enrollment in a Medicaid managed care organization with a contract under section 1903(m) or 1932 of the Act. These services are targeted to frail, elderly individuals who, without the delivery in their home of services such as personal care services, would be at risk of institutionalization. We propose to amend § 423.772 to establish the definition of "individual receiving home and community-based services" and § 423.782(a)(2)(ii) to reflect that these individuals will have no cost-sharing. The Best Available Evidence policy in 42 CFR 423.800—which requires plans to charge a lower copayment if certain evidence is provided—is written broadly enough that it will apply to this new copayment category without any further regulatory changes. We will update our guidance to plans to provide additional detail on how the Best Available Evidence regulation applies to this population.

Section 3309 of the ACA provides the Secretary the discretion regarding the effective date of this provision, with the stipulation that it shall be effective no earlier than January 1, 2012. We rely on data from State Medicaid agencies, submitted to us no less frequently than monthly, to identify the individuals in the State who are full-benefit dual eligibles and are institutionalized. These data allow us to set these individuals' Part D cost-sharing to zero. To expand the population entitled to zero cost-sharing to include individuals receiving home and community-based services, states would be required to identify these additional individuals in their data to CMS.

We are proposing that this provision take effect on January 1, 2012. We believe it is important to provide this benefit at the earliest possible date, since it will provide assistance to an estimated 600,000 beneficiaries a year. In proposing an effective date, we considered the administrative impact on States, and we believe that even the earliest possible effective date will provide States with adequate time for implementation.

11. Appropriate Dispensing of Prescription Drugs in Long-Term Care Facilities Under PDPs and MA–PD Plans (§ 423.154)

Section 3310 of the ACA provides that the Secretary shall require Part D sponsors to utilize specific, uniform dispensing techniques, as determined by the Secretary in consultation with relevant stakeholders, such as weekly, daily, or automated dose dispensing when dispensing covered Part D drugs to enrollees who reside in long-term care (LTC) facilities in order to reduce waste associated with 30-day fills. We propose to implement this requirement by adding a new regulation at § 423.154 to govern how plan sponsors handle dispensing of covered Part D drugs in LTC facilities. The provisions of this regulation will apply to all organizations and sponsors offering Part D including stand alone Part D plans, MA organizations, EGWP contracts, and PACE plans.

Consistent with section 3310 of the ACA, we consulted with a number of stakeholders about dispensing in the LTC arena and their recommendations for implementing section 3310 of the ACA. On March 19, 2010, we participated in the "Short Cycle Dispensing Focus Group for Long Term Care" program hosted by the National Council for Prescription Drug Programs (NCPDP). The well attended focus group brought together pharmacies servicing LTC facilities, LTC facilities, vendors, prescription drug plans, and pharmacy benefit managers (PBMs). The objective of the conference was to discuss the implementation of 7-day-or-less dispensing from various points of view. We announced our open-door policy in several industry forums and have also actively reached out to all industry groups we could identify. We have consulted with a wide spectrum of industry stakeholders including professional organizations and trade groups; providers of LTC pharmacy services; vendors for automated dispensing technologies, pre-pack filling equipment and software; Part D sponsors; group purchasing organizations; LTC pharmacy networks; and pharmacy benefit managers. On June 29, 2010, we hosted a meeting on long-term care waste and the implementation of section 3310 of the ACA. The meeting brought together leaders in the LTC industry including nursing and pharmacy professional organizations, LTC facilities, and LTC pharmacies. The industry has been helpful in providing recommendations for implementing Section 3310 of the ACA to reduce waste associated with 30-day dispensing.

We consider "waste" to occur when a Part D drug is dispensed to a Part D enrollee residing in a LTC facility and billed to a Part D sponsor, but is not consumed by the Part D enrollee. Waste may occur, for example, when treatment with the Part D drug has been discontinued, the Part D enrollee has been discharged to the community, the Part D enrollee has been hospitalized, or the Part D enrollee has died, leaving unused dispensed drugs.

Under § 423.154 (a)(1)(i), we propose to require all pharmacies servicing long-term care facilities, as defined in § 423.100, to dispense brand-name medications, as defined in § 423.4, to enrollees in such facilities in no greater than 7-day increments at a time. During our discussions with the industry, multiple parties reported that 75 percent to 80 percent of the cost of drug wastage arises from only 20 percent of the drugs. That 20 percent is made up exclusively of brand-name medications. In an effort to target the drugs resulting in the most financial waste and to lessen the burden for facilities transitioning from 30-day supplies to 7-day supplies, we propose initially limiting the requirement for 7-day-or-less dispensing to brand-name drugs as defined in § 423.4. However, nothing precludes LTC pharmacies and facilities from expanding 7-day-or-less dispensing to more than brand-name drugs, and we encourage Part D sponsors to facilitate that practice. While we considered imposing the 7-day dispensing requirement for all drugs at once, in consultation with industry representatives, we have concluded that a transitional approach would ease the initial burden on nursing facility nursing staff time and LTC pharmacy pharmacist staff time, in particular by reducing the number of products for which a pharmacy would have to transition from dispensing one 30-day supply per month to dispensing at least four 7-day supplies per month. Many industry participants in our consultative phone interviews and face-to-face meetings indicated that they believed it would be feasible to change quickly to 7-days-or-less dispensing for the 20 percent of total scripts (that is, those for brand-name drugs). Although other industry representatives opined that a transitional approach was not necessary and that the additional labor associated with four times as many dispensing events per month on all applicable medications was being overestimated. Nonetheless, we are not aware of any objective data which demonstrate the cost effectiveness of full versus partial implementation, and thus we believe the more prudent course is to proceed with a transitional approach. If such data does exist, we welcome comments from the public presenting such data. Therefore, our proposal would apply the 7-day-or-less supply requirement initially only to brand-name drugs and would postpone applying the requirement to generic drugs until a later date which we will determine through future rulemaking. In the meantime, we solicit comments on how soon the industry can transition to include generic drugs in the 7-day-or-less requirement.

We also propose excluding from the requirements of § 423.154(a) those drugs that are difficult to dispense in a 7-day or less supply and drugs that are dispensed for acute illnesses. We believe that requiring these types of drugs to be dispensed in 7-day-or-less increments could result in safety or efficacy concerns or could have the counterproductive effect of increasing drug waste. We propose to codify these exclusions at § 423.154(b). In proposing these exclusions, we recognize that there are some medications that, for the reasons described above, do not lend themselves well to a 7-day or less supply. These include eye drops, ear drops, inhalers and inhalation drugs, nasal sprays, reconstituted antibiotics and other drugs with parenteral route of administration, drugs that must remain in their original container, and topical medications. However, in keeping with the statute's intent—that is, the reduction of drug waste in the LTC setting—our proposal aims to be limited to instances where a 7-day-or-less dispensing requirement is truly not feasible. For example, some in the industry have suggested that we exclude liquids from the requirements; however, we believe most liquids can be transferred to smaller amber prescription bottles or oral syringes to accommodate 7-day-or-less dispensing, so we decline to propose the exclusion of all liquids. In contrast, we believe antibiotics reconstituted from powder need to remain in their original container and, thus, our proposal would exclude them from the 7-day-or-less dispensing requirement. For other medications that we proposed excluding from the requirement, we encourage use of smaller size containers, when available, to reduce the potential for waste. We solicit comments on the types of dosage forms and drugs that should be excluded from the requirements under § 423.154(a).

Another solution we considered to reduce waste in LTC facilities is in the area of return for credit and reuse. Under this scenario, Part D sponsors

would have policies in place, consistent with state law, to require unused Part D drugs to be returned to the pharmacy for reuse to fill another patient's prescription. Although return for credit and reuse is not prohibited by CMS, we recognize limitations to this approach since return for credit and reuse is not permitted in all states, often excludes lower cost generic drugs, and is frequently limited to a subset of drugs in unused or specially approved packaging. Moreover, return and reuse of controlled substances is limited by the Drug Enforcement Agency (DEA). In order to reduce pharmaceutical and financial waste, pharmacies must reclaim the unused medications from the LTC facility, reverse, and re-bill the claim to reflect the unused portion of drug, and restock the drug. We understand from discussions with the industry that this places a significant burden on the pharmacies. In addition, there are safety and quality control issues regarding storage of the unused medications in the LTC facility and chain of custody of the drugs to be returned. Finally, return for credit and reuse does not address issues regarding drug diversion because unused drugs that may be returned to the pharmacy for reuse are still available for diversion prior to restocking. Upon consideration of these facts, we decided that return for credit and reuse would not be the optimal solution to address drug waste generated by LTC facilities under Part D. However, we believe that Part D sponsor contracts should not be silent on the disposition of unused drugs. Only when data has been systematically collected will the extent of waste of Part D drugs be quantifiable on other than an anecdotal basis. Therefore, we propose to add a provision at § 423.154(f) to require that Part D sponsors include terms in their LTC pharmacy contracts that require any unused drugs originally dispensed to the Part D sponsor's enrollees to be returned to the pharmacy (not necessarily for reuse) and reported to the sponsor. Such contracts will also address contractual obligations for disposal in accordance with Federal and State regulations, as well as whether return for credit and reuse is authorized where permitted under State law. Beyond these proposed requirements, we urge the industry to improve practices with respect to the tracking and inventory control of returned unused drugs, as well as electronic transactions for adjustments to previously submitted claims and other reporting on the disposition of unused drugs. We solicit comments on whether there are DEA or state technical issues that may be barriers to the implementation of this provision.

Although we are not proposing to recognize return for credit and reuse as an alternative to 7-day-or-less dispensing, we understand that return for credit and reuse may be a supplement to reduce the minimal pharmaceutical waste associated with 7-day-or-less dispensing. Through conversations with the industry, we learned that there are circumstances where a Part D drug can be safely returned to stock for reuse. For example, a LTC facility may have an onsite pharmacy that services only that facility using unit dose packaging. Under those conditions, assuming state law allows return for credit and reuse, it would be a reasonable way to reduce the minimal waste that may be generated with 7-day-or-less dispensing. We will allow return for credit and reuse in LTC pharmacies, when return for credit and reuse is permitted under the state law and is allowed under the contract between the Part D sponsor and the pharmacy. We expect that if Part D drugs are returned for credit, the Part D drugs will be reused only if the environments to which the drugs have been exposed and chain of custody of the drugs do not compromise the safety or efficacy of the medication. In addition, when permitted or required contractually, we believe pharmacy dispensing fees paid to pharmacies may take into account restocking fees consistent with the proposed modification to dispensing fees under § 423.100, "Dispensing Fees" discussed in section II.F. of this proposed rule (Other Clarifications and Technical Changes).

While we believe return for credit and reuse, where permitted, can help to reduce some drug waste after it occurs, we believe it is better to prevent the waste from occurring in the first place through the use of 7-day-or-less dispensing. It stands to reason that if fewer drugs are available to be wasted, fewer drugs will be wasted. That proposition is supported in smaller studies and analyses projecting waste based on retrospective reviews of drugs dispensed using less than 30-day dispensing methodologies.[1] Those studies not only show a reduction in pharmaceutical waste, but also show savings associated with reduction of the waste.

Seven-day-or-less dispensing has advantages besides reducing financial waste. For example, 7-day-or-less dispensing is consistent with the DEA's requirement to guard against diversion of controlled substances by limiting the quantity of drugs dispensed. (See for example 21 CFR 1301.71). We are also convinced that 7-day-or-less dispensing would be more beneficial for the environment. We note that the Environmental Protection Agency (EPA) recommends that LTC facilities reduce the amount of pharmaceutical waste generated by limiting the amount of pharmaceuticals dispensed at one time.[2]

Based on our research and discussions with stakeholders, we therefore propose to require that for the purposes of dispensing Part D drugs to Part D enrollees in LTC facilities, Part D sponsors require that their contracted pharmacies dispense no more than a 7-day supply of brand-name drugs as defined in § 423.4, except when a brand-name drug is excluded from the requirement. We understand from the industry that 7-day-or-less dispensing has been used for decades by some pharmacies servicing small facilities with as few as ten beds, as well as by some pharmacies that service large facilities with hundreds of beds. Many pharmacies are currently using 14-day or 7-day-or-less dispensing methodologies for their Medicare Part A population since the nursing facilities are responsible for Part A stay-related costs and recognize the cost-saving value of lesser amounts dispensed at a time. As a result, many pharmacies providing drugs to LTC facilities have experience with 7-day-or-less dispensing.

The requirement would generally apply to "all pharmacies," including not only closed-door exclusively LTC pharmacies, but also retail pharmacies and mail order pharmacies that dispense to LTC facilities. Under section § 423.100, a LTC facility means a skilled nursing facility as defined in section 1819(a) of the Act, or a medical institution or nursing facility for which payment is made for an institutionalized

[1] James W. Moncrief, Advanced Pharmacy, data from a seven month study of 36 LTC facilities presented at the NCPDP Short Cycle Dispensing Meeting. Sheraton Hotel BWI, March 19, 2010.

Lepinski PW, Am J Hosp Pharm 1986 Nov; 43 (11):2771–9 Cost comparison of unit dose and traditional drug distribution in a long-term-care facility.

Brown CH, Am J Hosp Pharm. 1984 Apr; 41(4):698–702 Cost of discarded medication in Indiana LTC facilities.

Parrott KA Am J Hosp Pharm 1980 Nov; 37(11);1531–4 Drug waste in LTC facilities: impact of drug distribution system.

Farmer RG Am J Hosp Pharm 1985 Nov; 42(11):2488–91 Cost of drugs wasted in the multiple-dose drug distribution system in long-term-care facilities.

[2] Environmental Protection Agency, Unused Pharmaceuticals the health care industry: Interim report, August 2008 (available at *http://epa.gov/waterscience/ppcp/hcioutreach.pdf*)

individual under section 1902(q)(1)(B) of the Act. We note that this provision does not encompass settings such as group homes or assisted living facilities that may also be serviced by these same pharmacies.

We also note that 7-day-or-less dispensing does not correspond to a change in the quantity of a prescription a prescriber writes, or the number of prescriptions. Unlike the typical 30 or 90-day prescriptions written for individuals in the community, prescribing in the LTC setting is generally done by physicians inserting standing orders for medications into the residents' medical record. Pharmacies may dispense a partial days supply in a manner consistent with the proposed requirements of § 423.154(a)(1). Partial filling of prescriptions is not inconsistent with DEA regulations and is permissible under 21 CFR 1306.23 for Schedule III, IV, and V drugs and under 21 CFR 1306.13(b) for Schedule II drugs.

Under § 423.154(a)(1)(ii), we propose to permit the use of uniform dispensing techniques defined by each of the LTC facilities being serviced. By uniform techniques, we mean that dispensing methodologies will be uniform with respect to the type of packaging used to dispense Part D drugs within a LTC facility, but may vary by the quantity of medication (days' supply) dispensed at a time. The industry currently employs a variety of single and multi-dose packaging systems such as punch cards (also known as blister packs or bingo cards), strip packaging, cassettes, pouches, and envelopes. Consistent with section 3310 of the ACA, we consulted with the LTC industry and based on industry input, we have determined that it is not possible or practical for CMS or Part D sponsors to identify the uniform dispensing techniques that must be used by all pharmacies. Rather, it is the LTC facilities that are in the best position to identify uniform dispensing techniques to be used throughout their LTC facility. We understand from the industry that there are various constraints and considerations that limit the type of dispensing systems used in a particular LTC facility. For example, we understand that there are older LTC facilities that cannot easily support automated dose dispensing technology because of the computer networking and ventilation considerations for that type of equipment. Therefore, we are proposing that Part D sponsors must permit their contracted pharmacies to implement the uniform dispensing techniques selected by each LTC facility, and may not require the use of a different packaging system or technology than that selected by the facility through its contracted LTC pharmacy. Based on our conversations with industry, we understand that one of the greatest potential problems in implementing a 7-day-or-less dispensing approach would be any inconsistency in the dispensing methodology and/or packaging technique utilized in the same LTC facility. We believe our proposal to require that Part D sponsors must ensure that their contracted pharmacies dispense Part D drugs using techniques that are uniform throughout the facility would address this concern. We believe this proposal is consistent with the purpose of section 3310 of the ACA because it is intended to minimize waste through the use of uniform dispensing techniques that are specific to the LTCs being served.

We understand from the industry that depending on the 7-day-or-less dispensing methodology used, there may be an increase in nursing time devoted to ordering and receiving medication. We encourage LTC facilities to work with the pharmacies serving them to determine the 7-day-or-less dispensing methodology that will work best for the LTC facility, taking into account not only physical plant and labor considerations, but also overall cost effectiveness and waste reduction potential . We believe our proposed requirement will accommodate various 7-day-or-less on-demand or cycle filling methodologies in use by the LTC industry today, including (1) 7-day-supply dispensing; (2) dispensing of a drug for 2 days, followed by the dispensing of the drug for another 2 days, followed by dispensing of the drug for 3 days, referred to as "2–2–3" day dispensing; (3) dispensing of a drug for 4 days followed by the dispensing of the drug for 3 days, referred to as "4–3" day dispensing; (5) daily dispensing; and (6) automated shift or dose dispensing.

In making this proposal, we recognize that automated dose dispensing, which generally refers to medication dispensing through automated technology located at the facility on a demand basis, is likely the most efficient dispensing methodology and the most effective in reducing waste. However, we recognize there are significant limitations to the rapid adoption of automated dose dispensing systems, including capital acquisition costs, state pharmacy board restrictions, the lack of final automated medical record and interface standards, and inventory considerations. Additionally, automated dose dispensing may not be considered practical by some LTC facilities and the pharmacies servicing them due to size or physical plant limitations. Thus, we expect Part D sponsors to encourage pharmacies and LTC facilities to work together to determine the most appropriate dispensing methodology or methodologies to be used for a particular facility.

We recognize that the majority of pharmacies not already using 7-day-or-less dispensing methodologies are using 30-day dispensing for their Part D population. We understand that the most common 30-day dispensing system is the 30-day punch card. As a result, these pharmacies will have to make changes in the number of medications packed in a 30-day card or switch to 7-day card stock in order to continue dispensing brand-name drugs to Part D enrollees residing in LTC facilities. Our conversations with manufacturers of the 30-day punch card systems have indicated that there is minimal conversion involved in the transition from 30-day dispensing to 7-day dispensing.

We also do not expect a pharmacy's delivery schedule to be greatly affected since deliveries are generally made at least daily to long-term care facilities to accommodate first dose and new admission needs. However, we recognize that for some pharmacies there will be changes in the way deliveries are made. Some pharmacies may not service the number of beds to justify hiring additional delivery drivers and purchasing additional delivery vehicles. These arrangements need to be considered by the pharmacy and LTC facilities. As specified under 50.5.2 of Chapter 5 of the Medicare Prescription Drug Benefit Manual (See *http://www.cms.gov/PrescriptionDrugCovContra/Downloads/Chapter5.pdf*), which outlines the Long-Term Care Performance and Service Criteria, specific delivery arrangements are to be determined through an agreement between the pharmacy and the LTC facility. Accordingly and subject to any state law restrictions, pharmacies and LTC facilities may agree to use a common carrier for some deliveries of drugs to LTC facilities. We would not consider a contractual agreement to deliver a portion of Part D drugs to Part D enrollees residing in LTC facilities via a common carrier to constitute a mail order benefit, or the pharmacy making some but not all deliveries by common carrier being considered a mail order pharmacy. We solicit comments on this interpretation.

We note that options for billing to accommodate 7-day-or-less dispensing are being discussed in a National Council for Prescription Drug Programs (NCPDP) workgroup. Unless the

industry voluntarily adopts a single billing standard, we believe that Part D sponsors should generally allow pharmacies to use currently accepted transactions to minimize burden in transitioning to more frequent dispensing of smaller amounts. However, pursuant to our authority under section 1860D–12(b)(3)(D) of the Act, which incorporates by reference section 1857(e)(1) of the Act, we also propose establishing a new requirement under § 423.154(a)(2) in which Part D sponsors must collect and report to CMS the dispensing methodology used for each dispensing event described by proposed § 423.154(a)(1)(i) and (ii). We expect that our data collection efforts will help us to estimate the relative efficiencies of dispensing methodologies and determine the residual waste to estimate additional savings. We cannot establish the impact of increased dispensing fees prior to the dispensing fees being renegotiated. We believe that it is critical for Part D sponsors and CMS to obtain data to identify changes in the industry and to evaluate the effect of different dispensing methodologies on the reduction of waste. We note that the NCPDP workgroup is considering the adoption and transmission of specific codes on billing transactions that would facilitate the collection of this information by Part D sponsors in an automated and cost-effective manner.

We note that if adopted, this proposal would likely lead to a change in copayment methodology. We anticipate the implementation of particular co-payment methodologies will be dependent on the billing and dispensing methodologies used, and as a result, we acknowledge that co-payment methodologies within the same plan may vary depending on the LTC facility where the beneficiary resides. We believe implementation of co-payment methodologies in this way is consistent with the uniform benefit requirement at § 423.104(b)(2) so long as the copayment methodology throughout the plan's service area is consistent for beneficiaries who receive their Part D medications using the same dispensing methodology. Copayment may be collected at the first dispensing event in a month, the last dispensing event in a month, or prorated based on the number of days a Part D drug was dispensed in a month. However, due to the relatively small copayments for low-income subsidy (LIS) beneficiaries, copayments for LIS beneficiaries should be billed with the first or last dispensing event of the month.

Despite the changes in dispensing events, billing, and co-payments, we are considering limiting the LTC claims prescription drug events (PDEs) to 1 per month for each standing order or prescription. We solicit comments on this proposal.

We realize our proposed requirements are likely to result in renegotiations of dispensing fees to reflect the costs associated with additional dispensing events in a single billing cycle for a single prescription and the costs undertaken to acquire technology aimed at reducing waste. Currently, Part D plans have the flexibility to vary the actual dispensing fees paid to pharmacies. As provided in section 1860D–11(i) of the Act, we are prohibited from intervening in negotiations between pharmacies and Part D plans; however, we do believe that it reasonable to expect that dispensing fees be adjusted based on the proposed requirements under this provision. Accordingly, we propose to modify the definition of "dispensing fee" under § 423.100 to include costs associated with the acquisition and maintenance of technology to maintain reasonable pharmacy costs. Although it is not our intent to include all activities that are "reasonable costs" in the definition of "dispensing fees," in light of statutory requirements regarding LTC pharmacy dispensing, we believe it is particularly important to highlight potential pharmacy costs aimed at reducing waste and efficiency of dispensing. We also believe dispensing fees are likely to differentiate among the costs associated with different dispensing methodologies and appropriately address costs that are incurred to offset waste. Appropriate dispensing fees that differentiate among the various dispensing methodologies could incentivize more rapid adoption of the most cost-effective technologies and align facility, plan sponsor, and public interests in minimizing costs and pharmaceutical waste.

We also solicit comments on whether the requirements should be waived for particular types of LTC pharmacies. We propose to waive the requirements under paragraph (a) for pharmacies when they dispense brand-name Part D drugs to Part D enrollees residing in an intermediate care facilities for the mentally retarded and developmentally disabled (ICFMRDD) and institutes for mental disease (IMDs) under § 423.154(c). We believe that due to specific problems with medication delivery and dispensing to closed (and often locked) facilities, it would be difficult for these pharmacies to adhere to 7-day-or-less dispensing. Waving the requirements in this instance would be consistent with the statute when done on a uniform basis (that is, all similarly situated LTCs) and when there is a demonstration that applying the dispensing requirements to that type of LTC would not serve to reduce waste. For the ICFMRDD and IMDs, there is a good rationale for not requiring 7-day dispensing, because requiring 7-day-or-less dispensing is not feasible and could increase costs rather than decrease waste associated with 30-day dispensing. We solicit comments on whether other types of similarly situated facilities (such as LTC facilities utilizing Indian Health Service (IHS) facilities to provide pharmaceuticals or utilizing Tribal facilities providing pharmacy services for the IHS under Pub. L. 93–638 compacts or contracts) should also be waived from the requirement and specific reasons as to why those facilities should be waived from the requirement.

We note that we originally considered waiving the requirements for pharmacies dispensing to small LTC facilities. However, we do not believe that such a waiver is supported based on conversations with the industry which, as stated above, demonstrate that pharmacies servicing LTC facilities as small as 10 beds are using 7-day-or-less dispensing methodologies. We also considered waiving the requirements for pharmacies that dispense to LTC facilities in rural areas. Similarly, we do not believe such a waiver is supported since many of these pharmacies deliver to LTC facilities daily to accommodate first fill and new admissions. We solicit specific comments on the waiver criteria for LTC pharmacies.

Pursuant to section 3310 of the ACA, the requirements of this section go into effect January 1, 2012. However, as a result of discussions with the LTC industry, we propose a limited extension to a Part D sponsor when an independent community pharmacy (such as, not a closed door pharmacy dedicated to servicing LTC facilities only) with which the Part D sponsor has contracted is the primary provider to a small LTC facility (less than 80 beds) in rural communities, as defined by the Bureau of the Census, and the pharmacy is not already dispensing a 7-day supply to any patient population in the LTC facility. Since independent community pharmacies are frequently the only pharmacy provider to rural LTC facilities, we understand that there could be significant challenges in getting Part D drugs to beneficiaries residing in LTC facilities in rural areas. We have heard from the industry that small pharmacies dispensing to small LTC facilities in rural areas frequently only dispense in 30-day supplies. We understand that those facilities may

need extra time because of a lack of dedicated staff to adequately train and make the necessary changes to convert to 7-day-or-less dispensing by January 1, 2012. Under § 423.154(e), we propose allowing an independent community pharmacy that is the primary provider of the Part D drugs to a LTC facility located in a rural to dispense no more than a 14-day supply through December 31, 2012. We expect that these pharmacies contracted with Part D sponsors will find solutions to their significant challenges and work towards full compliance with § 423.154(a) during this extension. We propose that Part D sponsors contracted with these independent community pharmacies must come into full compliance with § 423.154(a) by January 1, 2013. We solicit comments on this proposal.

Based on the preceding, we propose to revise § 423.150 by renumbering paragraphs (b) through (g) as paragraphs (c) through (h) and adding a new paragraph (b) that would address appropriate dispensing of covered Part D drugs in LTC facilities. We also propose to add new requirements, as discussed previously, at § 423.154 to require Part D sponsors to ensure that all pharmacies servicing LTC facilities dispense no more than a 7-day supply of brand-name medications and use uniform dispensing methodologies as defined by each of the LTC facilities being serviced. In addition, we propose § 423.154 (a)(2) which requires Part D sponsors to collect and report, as CMS requires, the dispensing methodology used for each dispensing event described by paragraphs (a)(1)(i) and (ii) of § 423.154. We propose exceptions to this requirement at § 423.154(b)(1) and (2) relative to specific drugs and waivers of this requirements for specific pharmacies under § 423.154(c). Pursuant to section 3310 of the ACA, we propose the effective date of January 1, 2012 for § 423.154 under § 423.154(d) with a limited extension through December 31, 2012 to pharmacies meeting the requirements under § 423.154(e). We also propose to add the requirement that Part D sponsors require any unused Part D drugs originally dispensed to its enrollees to be returned to the pharmacy and reported to the sponsor and address whether return for credit and reuse is permitted under their contracts with pharmacies servicing LTC facilities in § 423.154(f).

12. Complaint System for Medicare Advantage Organizations and PDPs (§ 422.504 and § 423.505)

The Secretary has the authority under the Act to include any terms or conditions the Secretary deems necessary and appropriate in MA organization and Part D sponsor contracts, including requiring the organization to provide the Secretary with such information as the Secretary may find necessary and appropriate. (*See* section 1857(e)(1) of the Act as incorporated into Part D through section 1860D–12(b)(3)(D) of the Act.) Under this authority, we have proposed a number of contract provisions that require MA organizations and Part D sponsors to report specific information to CMS for a variety of purposes, with the overall goal of improving the Part C and D programs. For example, we relied on this authority to establish a requirement related to the reporting of prescription drug event data under Part D for purposes other than payment. One of the purposes for requiring submission of these data for nonpayment-related purposes was to enable us to conduct evaluations of the data in order to make recommendations for improving the Medicare program.

Up until now, we have not implemented specific regulatory requirements related to the tracking and resolution of complaints that we capture from the Part C and D enrollees in the CMS-established Health Plan Management System (HPMS) Complaints Tracking Module (CTM). This system was established at the start of the Part D program in order to record and track complaints received by CMS from beneficiaries, providers, and other constituents about prescription drug plans. After the start of the Part D program, the system was expanded in July 2008 to collect and capture complaints related to the Part C program.

With the establishment of the CTM system, we have routinely provided complaint-related information to Part C and D sponsoring organizations to assist sponsors in the identification of operational and plan performance issues. In addition, we have issued oversight and compliance direction to Part C and D sponsors with respect to CTM complaints, including CMS' expectations of MA organization and Part D sponsors with regard to complaint resolution. These expectations are largely contained in recommended standard operation procedures (SOPs) that CMS issued to MA organization and Part D sponsors (*see https://www.cms.gov/PrescriptionDrugCovContra/Downloads/CTMSOP_10.06.09.pdf*). As part of these procedures, CMS directed MA organizations and Part D sponsors to document when they resolve a complaint in their case notes, and to enter a resolution date and a resolution summary note in the CTM complaint tracking system, to which they have access. Since we developed the CTM system, we have focused on complaint resolution monitoring for oversight purposes but have not gone so far as requiring in regulation that MA organizations and Part D sponsors respond to complaints received by us and document the details of the complaint resolution in the CMS CTM system.

With the enactment of the Affordable Care Act, we now believe additional requirements in the area of complaint resolutions are necessary. Under section 3311 of the Affordable Care Act, we (under our delegation of authority by the Secretary of HHS) are directed to develop a complaint system that will allow for the collection and maintenance of complaints against PDPs and MA–PD plans. We are also directed to develop a model electronic complaint form that is to be maintained on *http://www.medicare.gov* and the Office of Medicare Ombudsman's Web site. Finally, we are required to report to Congress annually on the number and types of complaints reported in the system, geographic variations in such complaints, the timeliness of agency or plan responses to such complaints, and the resolution of such complaints.

We believe that the current CTM system largely fulfills the requirement by Congress that we establish a complaint system to capture complaints against Part D plans. As explained previously, the CTM system was established to record and track complaints received by us from beneficiaries, providers, and other constituents about health and drug plans. However, to ensure that the data collected and warehoused in the system provide us with sufficient information to report to Congress, we believe that enhancements to the current system are necessary, particularly with respect to the data relating to the closure of complaints. While our SOP instructs MA organizations and Part D sponsors to indicate in the system a clear and concise complaint resolution summary note when the complaint is resolved, we have determined that many sponsors do not do so and merely write the words "complaint closed" in the CTM. Absent more detailed information on how a complaint is resolved by the plan, we do not believe we will be able to meet the objectives of Congress to report on the timeliness and resolution of complaints. Therefore, to ensure that we have the appropriate information to report to Congress, and to further improve our monitoring efforts with respect to complaint closure, we are proposing a

new requirement on MA organizations and Part D sponsors, under the authority of section 3311 of the ACA and section 1857(e)(1) and 1860D–12(b)(3)(D) of the Act, to require sponsors to respond to complaints received by us. We believe it is necessary and appropriate to apply these requirements to both MA organizations and Part D sponsors to maintain a balanced and fair program for beneficiaries receiving medications under the Part D program or an enhanced benefit under the MA program. At this time, with respect to the proposed requirement to document how a complaint was resolved, we are contemplating adding a drop down checklist to CTM that MA organization and Part D sponsors would use to document closure of complaints, as opposed to requiring free text descriptions of complaint closure. We invite comments on this approach.

With respect to the model electronic complaint form to be used for reporting plan complaints, Congress has directed us to prominently display the form on the front page of the Medicare.gov Internet Web site and on the Internet Web site of the Medicare Beneficiary Ombudsman. We are in the process of developing the model electronic complaint form and plan to make this form available on the internet websites as required. Considering the importance that Congress has given to the issue of reporting complaints and the development of a standardized form for taking complaints against plans, we are also proposing to require MA organizations and Part D plans to link to the CMS-developed electronic complaint form on the Medicare.gov Internet Web site from their main Web page. We believe the importance Congress has given to the issue of complaint reporting makes it necessary and appropriate to propose to apply this requirement to both MA organizations and Part D plans.

Accordingly, based on the preceding, we propose to add a new requirement to § 422.504(a) and § 423.505(b) to require MA organization and Part D sponsors to address and resolve all complaints in the CMS complaint tracking system and to require a link to the electronic complaint form at the Medicare.gov Internet Web site on each Part C and Part D sponsor main Web page. If adopted, this requirement would be effective January 1, 2012. Following the issuance of a final rule, we will develop guidance to instruct MA organizations and Part D sponsors on how to comply with this new requirement.

13. Uniform Exceptions and Appeals Process for Prescription Drug Plans and MA–PD Plans (§ 423.128 and § 423.562)

Section 3312 of the ACA amends section 1860D–4(b)(3) of the Act by adding a new section (H) that will require, effective January 1, 2012, each PDP sponsor of a prescription drug plan to use a single, uniform exceptions and appeals process (including, to the extent the Secretary determines feasible, a single uniform model form for use under such process) with respect to the determination of prescription drug coverage for an enrollee under the plan; and to provide instant access to such processes by enrollees through a toll-free telephone number and an Internet Web site.

Since the inception of the Part D program, we have received numerous comments, especially from beneficiary advocacy groups, suggesting the coverage determination and appeals processes are too complex and difficult for enrollees to navigate. The commenters recommended streamlining the existing coverage determination and appeals processes in order to simplify the plan appeals procedures for both enrollees and providers. The most significant concerns noted by commenters involve access to the Part D coverage determination and redetermination processes. For a variety of reasons, enrollees often have difficulty making initial requests for coverage. Over time, plan sponsors have developed plan-specific forms for requesting coverage, and often have multiple request forms that are drug-specific. As a result, enrollees often have difficulty locating or obtaining these plan-specific request forms and determining which form should be used for their particular request. Even when enrollees are able to locate and complete the appropriate request forms, they may have trouble determining where the forms should be submitted, because plan sponsors often have multiple addresses, telephone numbers, and fax numbers, and it is not clear which address or phone number should be used to submit a particular request. Commenters indicate these elements create a process that is quite overwhelming and frustrating for enrollees, and for those who try to assist them.

In accordance with the new section 1860D–4(b)(3)(H) of the Act, we propose to revise the regulation at § 423.562(a) to require Part D plans to use a single, uniform exceptions and appeals process that includes procedures for accepting oral and written requests for coverage determinations and redeterminations. In addition, we also propose to revise the regulation at § 423.128 paragraphs (b)(7) and (d) to provide specific mechanisms that plan sponsors must have in place in order to meet the uniform appeals requirements of section 1860D–4(b)(3)(H) of the Act. We believe the proposed requirements will address many of the long-standing concerns about the Part D coverage determination and appeals processes being too complex and difficult for enrollees to navigate.

At § 423.128(b)(7), we propose adding paragraph (i) to require that plan sponsors make available a standard form to request a coverage determination and a standard form to request a redetermination, to the extent such standard request forms have been approved for use by CMS. We plan to evaluate the feasibility of developing and requiring the use of standard request forms and will determine whether a single form can reduce confusion and address the needs of beneficiaries, providers, and PDP sponsors. If it is determined that standardized forms are appropriate, the forms will be developed by us and will be used to request any type of coverage determination under Part D (including exception requests and requests for drugs that may be subject to a utilization management requirement) and redeterminations. We will evaluate existing plan and CMS forms used for requesting coverage determinations and redeterminations to determine what elements should be included in the forms. We welcome comments and suggestions regarding: (1) The specific elements that should be included in these forms; (2) whether a single request form is feasible; and (3) any other issues that should be considered and/or resolved before this requirement is operationalized.

Section 3312 of the ACA also requires plan sponsors to provide instant access to the coverage determination and appeals processes through an internet Web site. Therefore, we propose to add paragraph (ii) to § 423.128(b)(7), which would require sponsors to develop a Web-based electronic interface that allows an enrollee (or an enrollee's prescriber or representative) to immediately request a coverage determination or redetermination via a plan's secure Web site. We believe that allowing requests for coverage determinations and redeterminations to be made through plan websites will further increase beneficiary access to the coverage determination and redetermination processes. We propose that the interface would be the "electronic equivalent" of the paper

coverage determination and appeals forms proposed at § 423.128(b)(7)(i). In establishing this interface, Part D sponsors must ensure that any such interface complies with the Health Insurance Portability and Accountability Act (HIPAA) of 1996, the Privacy Act, and CMS's information security requirements where appropriate. Some Part D sponsors may already have an electronic means for requesting coverage determinations and redeterminations available to their enrollees. We request comments and ideas regarding how such an electronic interface should work and any issues that need to be addressed before operationalizing this requirement.

Plan sponsors must also establish a toll-free telephone line that provides instant access to the coverage determination and appeals process pursuant to section 3312 of the ACA. Therefore, we propose to revise § 423.128(d)(1) to include a requirement that sponsors provide a toll-free telephone line for requesting coverage determinations and appeals. We currently require sponsors to offer a toll-free customer call center as part of the provision of specific information requirements at § 423.128(d), and propose requiring plan sponsors to provide enrollees with access to the coverage determination and redetermination processes through the toll-free customer call center if sponsors are not doing so already. In other words, we envision the customer service representative (CSR) accessing the on-line coverage determination and redetermination process via the plan's web-based application discussed previously, and entering the information supplied by the enrollee via telephone. We will develop model scripts for the CSRs to use for this purpose.

Consistent with the proposals to require the use of standardized forms for requesting coverage determinations and redeterminations (should this be determined feasible and to the extent that standard request forms have been approved for use by CMS), and the establishment of a toll-free telephone number and Web site for accepting requests for coverage determinations and redeterminations, we propose to amend § 423.562 by adding a new paragraph (a)(1)(ii) which cross-references the proposed requirements in § 423.128 paragraphs (b)(7) and (d)(1)(iii), and redesignating paragraphs (a)(1)(ii) and (a)(1)(iii) as paragraphs (a)(1)(iii) and (a)(1)(iv) respectively.

Finally, we are proposing to require Part D sponsors to modify their electronic response transactions to pharmacies so that they can transmit codes instructing the pharmacy to provide a point-of-sale (POS) notice to enrollees when a prescription cannot be filled. Currently, when an enrollee attempts to fill a prescription at a pharmacy, the pharmacist receives certain information electronically related to the prescription from the Part D sponsor, which may include whether it is on the plan's formulary, and whether there are any conditions associated with filling the prescription. In cases where a prescription cannot be filled as written, Part D sponsors are required under § 423.562(a)(3) to arrange with their network pharmacies to either post or distribute a pharmacy notice advising the enrollee of his or her right to contact the plan to request a coverage determination. The pharmacy notice is generic and does not include plan-specific information for requesting coverage determinations. While the current pharmacy notice provides enrollees with some information about requesting coverage determinations, beneficiary advocacy groups have argued the notice is too generic to provide enrollees with all of the information they need to easily access the coverage determination process. Advocates have also expressed concern about enrollees not receiving, or not being directed to the notice. Although we have been concerned about these complaints, under the existing pharmacy billing standard agreed upon by the National Council of Prescription Drug Programs (NCPDP version 5.1), it has not been feasible for plan sponsors to systematically transmit situation-specific messaging to pharmacists because transaction coding could not easily or quickly be changed. Furthermore, the pharmacies do not have the capability to populate, print, and distribute plan-specific notices to each enrollee who is not able to obtain a prescription as written.

With the adoption of the new HIPAA pharmacy billing standard (NCPDP version D.0), we now have the opportunity to work with the NCPDP to develop and standardize use of codes that will prompt a Part D network pharmacist to print or provide a POS notice to give to enrollees when a prescription cannot be filled. Accordingly, we are proposing at § 423.128(b)(7)(iii) that Part D sponsors modify their systems so that the plan sponsors are capable of transmitting codes to their contracted pharmacies and that the pharmacy will be notified to populate or provide a notice that can be printed by the pharmacist at the point of sale. We believe such notices should be printed and provided in the same manner as other instructions (for example, instructions for taking prescriptions). We will develop a model notice to ensure that messaging at the pharmacy is consistent with and in accordance with CMS rules. Consistent with this proposal, we are also proposing to revise § 423.562(a)(3) by deleting the reference to posting the pharmacy notice and requiring the sponsor to arrange with its network pharmacies to distribute notices instructing enrollees how to contact their plans to obtain a coverage determination or request an exception if they disagree with the information provided by the pharmacist. We propose that the pharmacy notice be provided in writing, consistent with the standards established in § 423.128(b)(7)(iii), and will include instructions explaining how enrollees can request coverage determinations by calling their plan sponsor's toll free customer service line or accessing their plan sponsor's Web site.

14. Including Costs Incurred by AIDS Drug Assistance Programs and the Indian Health Service Toward the Annual Part D Out-of-Pocket Threshold (§ 423.100 and § 423.464)

Section 1860D–2(b)(4)(C) of the Act provides protection against high out-of-pocket expenditures for Part D eligible individuals. Under the standard Part D benefit, a beneficiary is entitled to reductions in cost sharing under the catastrophic phase of the benefit once his or her true out-of-pocket (TrOOP) expenditures reach the annual Part D out-of-pocket threshold. TrOOP expenditures represent costs actually paid by the beneficiary, another person on behalf of the beneficiary, or a qualified State Pharmaceutical Assistance Program (SPAP). Most third party assistance, such as that from employers and unions, does not count toward the TrOOP threshold.

Prior to the passage of the ACA, our policy as specified in the definition of "incurred cost" at § 423.100 and as clarified in section 30.4 of Chapter 5 of the Prescription Drug Benefit Manual was that to the extent that a party paying for cost-sharing on behalf of a Part D enrollee was a group health plan, insurance program or otherwise (such as a government-funded health program), or third party payment arrangement with an obligation to pay for covered Part D drugs, that party's payment would not count toward TrOOP. Under this policy, supplemental drug coverage provided by the Indian Health Service (IHS), as defined in section 4 of the Indian Health Care Improvement Act, Indian tribes and organizations, and

urban Indian organization facilities were not considered to be TrOOP eligible because these entities fell under our definition of "government-funded health program," under § 423.100.

Similarly, Aids Drug Assistance Programs (ADAPs) co-payments, which are funded under the Ryan White CARE Act, were not counted toward TrOOP for the purpose of meeting the out-of-pocket threshold at which catastrophic coverage under the Part D benefit begins. As explained in the preamble in the January 2005 final rule (see 70 FR 4240 and 4241) implementing the Part D program, ADAPs were not considered SPAPs because these programs receive Federal funding. Moreover, because the law specified that costs for covered Part D drugs paid by insurance or otherwise on behalf of a Part D enrollee do not count as incurred costs, any coverage that supplements the benefits available under Part D coverage that are provided to beneficiaries by Medicaid, Medicaid Section 1115 waiver programs, the VA health care program, the IHS, ADAP programs, and local or State indigent drug programs would not count as an incurred cost for purposes of TrOOP (see 70 FR 4240 and 4241).

With the passage of the ACA, CMS requirements as they relate to IHS and ADAPs have been superseded effective January 1, 2011. Section 3314 of the ACA amends section 1860D–2(b)(4)(C) of the Act to specify that costs borne or paid for by IHS, an Indian tribe or tribal organization, or an urban Indian organization, and costs borne or paid for by an ADAP would be treated as incurred costs for the purpose of meeting the annual out-of-pocket threshold. Based on these amendments, we propose to revise the definition of incurred cost at § 423.100(2)(ii) to include cost paid for by the IHS (as defined in section 4 of the Indian Health Care Improvement Act), an Indian tribe or tribal organization, or an urban Indian organization (referred to as I/T/U pharmacy in § 423.100) or under an AIDS Drug Assistance Program (as defined in part B of title XXVI of the Public Health Service). We also propose to amend § 423.464(f)(2) to specifically exclude expenditures made by IHS, an Indian tribe or tribal organization, or an urban Indian organization (referred to as I/T/U pharmacy in § 423.100) or under an AIDS Drug Assistance Program (as defined in part B of title XXVI of the Public Health Service) from the requirement to exclude such expenditures for the purpose of determining whether a Part D enrollee has satisfied the out-of-pocket threshold.

As indicated in section II.A. of this proposed rule, we propose that the regulations implementing this provision be effective 60 days after the publication of the final rule.

15. Cost Sharing for Medicare-Covered Preventive Services (§ 417.101 and § 422.100)

Effective January 1, 2011, sections 4103 and 4104 of the ACA revise sections 1833 and 1861 of the Act to create new coverage of Personalized Prevention Plan Services (PPPS) or "annual wellness visits" and establish a requirement that no cost sharing may be charged to beneficiaries under Original Medicare for the annual wellness visit, the initial preventive physical exam (IPPE) and Medicare-covered preventive services graded as an A or B by the U.S. Preventive Services Task Force (USPSTF).

In light of the new legislative requirements for Original Medicare, and the importance of preventive services in managed and coordinated care, we included information related to coverage and cost sharing for preventive services in guidance issued via the Health Plan Management System (HPMS) on April 16, 2010 ("Benefits Policy and Operations Guidance Regarding Bid Submissions; Duplicative and Low Enrollment Plans; Cost Sharing Standards; General Benefits Policy Issues; and Plan Benefits Package (PBP) Reminders for Contract Year (CY) 2011") and May 20, 2010 ("Supplemental 2011 Benefits Policy and Operations Guidance on Application of the Mandatory Maximum Out-of-Pocket (MOOP) for Dual Eligible SNPs, and Cost Sharing for Preventive Services"). In this guidance, we strongly encouraged MA organizations to provide all in-network Medicare-covered preventive services without cost sharing charges under their MA plans in contract year 2011, indicated our intention to consider rulemaking to require that such preventive services be provided with no cost sharing, and provided instructions on how to reflect the zero cost sharing in their plan benefit package (PBP) submissions for contract year 2011.

As required at section 1852(a)(1)(A) of the Act (except as provided in section 1859(b)(3) of the Act for MSA plans and in section 1852(a)(6) of the Act for MA regional plans), each MA plan must provide to its members all Parts A and B benefits included under the Original Medicare fee-for-service program as defined at section 1852(a)(1)(B) of the Act. Because we agree with Congress that the utilization of preventive services should be encouraged by providing them without cost sharing, we believe it is necessary, and appropriate, to provide this same incentive to all Medicare beneficiaries, whether they receive their benefits through Original Medicare, under an MA plan, or under a section 1876 cost contract.

Therefore, under our authority in section 1856(b)(1) of the Act to establish MA standards by regulation, and our authority in section 1857(e)(1) of the Act to establish requirements we find "necessary and appropriate," we propose to add a new paragraph (h) to § 422.100 to require MA organizations to provide in-network Medicare-covered preventive benefits at zero cost sharing, consistent with the new regulations for Original Medicare-covered preventive benefits. More specifically, we propose requiring that all MA organizations provide Medicare-covered preventive services, as specified by CMS, without enrollee cost sharing charges. Under our authority in section 1876(i)(3)(D) of the Act to impose requirements we find "necessary and appropriate," we also propose to add a new paragraph (f) to § 417.101 to extend this proposed requirement to section 1876 cost plans.

For specific information about the list of preventive services covered under Original Medicare without cost sharing and information about what is included in the annual wellness visit, we propose to direct plans to go to the following Medicare Web sites: *https://www.cms.HospitalOPPS/* and *http://www.cms.gov/PhysicianFeeSched/.*

16. Elimination of the Stabilization Fund (§ 422.458)

Section 221(c) of the MMA added section 1858 of the Act to establish rules for MA Regional Plans. Section 1858(e) established an MA Regional Plan Stabilization Fund (the Fund) for the purpose of providing financial incentives to MA organizations that offered new MA Regional Plans nationally, or in each MA region without one. The Fund was also established to retain MA regional plans in regions with relatively low MA market penetration. Specifically, the MMA authorized us to make a 1-year "national bonus payment" to an organization or organizations that offered an MA Regional Plan in each MA region in a given year (if there was no such plan offered in one or more regions in the previous year). If no national bonus payment was made in a given year, we could have used the fund to increase payments to MA regional plans offered in regions that did not have any MA regional plans offered in the prior year. Finally, to encourage plans to remain in regions with

relatively low MA market penetration, we could have used the Fund to make retention payments to MA regional plans that notified us of their intent to exit a region prior to the bidding deadline. Payments from the Fund, which was initially established at $10 billion, were first available beginning January 1, 2007.

Section 301 of Division B, Title III, of the Tax Relief and Health Care Act of 2006—enacted December 20, 2006—delayed Stabilization Fund payments until January 1, 2012, and limited initial funding to $3.5 billion. Subsequent legislation, including the Medicare, Medicaid and SCHIP Extension Act of 2007, and the Medicare Improvements for Patients and Providers Act of 2008, further delayed the timeframe during which initial funding was available until 2014 and limited the amount to $1.

Section 10327(c) of the ACA repealed section 1858(e) of the Act, eliminating the Stabilization Fund. Therefore, we are proposing to delete paragraph (f) from § 422.458, since the statutory basis for the Fund no longer exists.

17. Improvements to Medication Therapy Management Programs (§ 423.153)

Section 1860D–4(c)(1)(C) of the Act requires Part D sponsors to establish Medication Therapy Management programs (MTMPs). Section 1860D–4(c)(2) of the Act requires MTMPs to be designed to ensure that, with respect to targeted beneficiaries described in section 1860D–4(c)(2)(A)(ii) of the Act, covered Part D drugs are appropriately used to optimize therapeutic outcomes through improved medication use and to reduce the risk of adverse events. These requirements are codified in § 423.153(d) of the Part D regulations.

The federal regulations at § 423.153(d)(1) require each Part D sponsor to establish a MTMP that is designed to ensure that covered Part D drugs (as defined in § 423.100) prescribed to targeted beneficiaries are appropriately used to optimize therapeutic outcomes through improved medication use; designed to reduce the risk of adverse events for targeted beneficiaries; furnished by a pharmacist or other qualified provider; and allowed to distinguish between services provided in ambulatory and institutional settings. Beginning in 2011, § 423.153(d)(2) defines targeted beneficiaries as enrollees who have multiple chronic diseases, are taking multiple Part D drugs, and are likely to incur annual costs for covered Part D drugs that are greater than or equal to $3,000 as adjusted by the annual percentage increase under § 423.153(d)(5)(iv) for subsequent years.

With the recent passage of the Affordable Care Act, Congress provided for specific MTMP improvements by law. Effective January 1, 2013, section 10328 of the ACA amends section 1860D–4(c)(2) of the Act to require prescription drug plan sponsors to perform a quarterly assessment of all "at risk" individuals who are not already enrolled in an MTMP, establish opt-out enrollment for MTM, and offer medication therapy management services to targeted beneficiaries that include, at a minimum, an annual comprehensive medication review (CMR) that may be furnished person-to-person or via telehealth technologies and a review of the individual's medications, which may result in the creation of a recommended medication action plan, with a written or printed summary of the results of the review provided to the targeted individual. The law also requires that the action plan and summary resulting from the CMR be written in a standardized format.

Prior to the passage of the new legislation, we had already made several improvements to the MTM program via the 2010 Call Letter to Part D sponsors on the CMS Web site at *http://www.cms.gov/PrescriptionDrugCovContra/,* as well as via the 2011 final rule containing policy and technical changes under the Part C and D programs (*see* 75 FR 19772 through 19776 and 19818 and 19819). In this final rule, in accordance with our authority under sections 1860D–4(c)(1)(C) and 1860D–4(c)(2) of the Act, we revised our regulations at § 423.153(d)(1)(v) to require Part D sponsors to enroll beneficiaries in their MTMPs using only an opt-out method of enrollment; § 423.153(d)(1)(vi) to require Part D sponsors to target beneficiaries for enrollment in the MTMP at least quarterly during each plan year; and § 423.153(d)(1)(vii) to require Part D sponsors to offer a minimum level of MTM services for each beneficiary enrolled in the MTMP that includes interventions for both beneficiaries and prescribers including, an annual comprehensive medication review with a written summary, and quarterly targeted medication reviews with follow up when necessary. We also revised § 423.153(d)(2) to clarify which beneficiaries should be targeted for MTMP services.

In comparing the requirements codified in the final rule to those required by section 10328 of the ACA, we found that a number of the provisions are consistent. The final rule requires opt-out enrollment of targeted beneficiaries, quarterly targeting of beneficiaries for enrollment into the MTMP, and quarterly targeted medication reviews for individuals enrolled in the MTMP with follow up interventions when necessary.

Based on this review and to ensure that our policies are fully consistent with the new requirements added by section 10328 of the ACA, we have determined that it is necessary to amend the current regulations to clarify the Part D MTMP requirements relating to the required use of a standardized format for the written summary and action plan that may result from the CMR. Thus, in accordance with sections 1860D–4(c)(1)(C) and 1860D–4(c)(2) of the Act as amended by section 10328 of the ACA, we propose to amend § 423.153(d)(1)(vii) to add the requirement that Part D sponsors use a standardized format for the action plan and summary resulting from a review of the targeted beneficiary's individual medications, and to provide the individual with a written or printed copy of the summary. We plan to award a contract to an outside entity to work in consultation with stakeholders in order to develop a standardized format for the action plan and summary which may result from annual or quarterly targeted medication reviews.

We also propose to amend the MTMP requirements at § 423.153(d)(1)(vii) to explicitly permit the use of telehealth technologies to conduct the required annual CMR as referenced under the ACA, to allow the sponsors to attempt innovative techniques that provide care at a distance in order to better serve the beneficiary, especially beneficiaries that cannot travel to the provider's location, or who reside in a remote location or in different time zone. Recent advancements in digitized health care and telecommunication now permit some direct provider care to be delivered to beneficiaries remotely. As promoted in the American Recovery and Reinvestment Act of 2009 (ARRA), the adoption and use of health information technology (HIT) and electronic health records (EHR) to provide patient care is encouraged by the federal government. We emphasize that when using telehealth technologies, personal health information privacy and security must be ensured.

In addition to the regulatory changes required to implement the ACA provisions, we are proposing a further revision to the MTMP requirements related specifically to MTM services furnished in LTC facilities. Under sections 1819(b)(4) and 1919(b)(4) of the Act, LTC facilities must provide, either directly or under arrangements with

others, for the provision of pharmaceutical services to meet the needs of each resident. This requirement is codified in regulations at § 483.60 which require LTC facilities to employ or obtain the services of a licensed pharmacist to provide consultation on all aspects of the provision of pharmacy services in the facility, including a drug regimen review at least once a month for each facility resident. Although Part D sponsors are required to provide MTM services to all beneficiaries meeting the target criteria, it is not clear that these services are being made available to nursing home residents meeting these criteria. Further, we are concerned that if MTM is provided, in the absence of coordination, the MTMP and the consultant pharmacist's drug regimen review could result in conflicting recommendations relating to medication management. Therefore, we propose to add a requirement for Part D sponsors to coordinate their MTMP with the drug regimen reviews performed by the LTC consultant pharmacists.

Specifically, we propose to revise § 423.153(d)(5) to require Part D sponsors to contract with LTC facilities to provide appropriate MTM services to residents in coordination with the monthly medication reviews and assessments performed by the LTC consultant pharmacist. We believe this approach would enable beneficiaries to receive the full benefits of the sponsor's MTMP and would also result in coordinated assessments that would be more likely to discover evidence of adverse side effects and medication overuse. We believe that requiring this coordination is the best way to ensure that residents receive the advantage of MTM services in LTC facilities. We are soliciting comments from the public on how such coordination between sponsors and LTC facilities might work best.

18. Changes To Close the Part D Coverage Gap (§ 423.104 and § 423.884)

Section 1860D–2(b) of the Act, as amended by the ACA, revises the Part D benefit structure to close the gap in coverage that occurs between the initial coverage limit for the year and the out-of-pocket threshold. The new provisions not only revise the amount of coinsurance for costs of covered drugs above the initial coverage limit and below the out-of-pocket threshold (that is, within the Part D coverage gap), but also reduce the growth in the annual out-of-pocket threshold from 2014 to 2019.

Under the new provisions in section 1860D–2(b)(2)(C) and (D) of the Act, effective January 1, 2011, cost sharing in the coverage gap will be determined on the basis of whether the covered Part D drug is considered an "applicable drug" under the Medicare coverage gap discount program as defined at section 1860D–14A(g)(2). Section 1860D–14A(g)(2)(A) defines an applicable drug under the Medicare coverage gap discount program as a covered Part D drug that is either approved under a new drug application (NDA) under section 505(b) of the Federal Food, Drug, and Cosmetic Act or, in the case of a biologic product, licensed under section 351 of the Public Health Service Act (BLA) (other than under section 351(k)). Under standard prescription drug coverage, coinsurance in the coverage gap for drugs that are not applicable drugs under the Medicare coverage gap discount program (that is, generic drugs) will be either: (1) Equal to the statutory generic gap coinsurance percentage for the year; or (2) actuarially equivalent to an average expected coinsurance for covered Part D drugs that are not applicable drugs under the Medicare coverage gap discount program at the statutory generic gap coinsurance percentage for the year, as determined through processes and methods established under section 1860D–11(c) of the Act and implemented at § 423.265(c) and (d) of our regulations. For applicable drugs under the Medicare gap coverage discount program, coinsurance in the coverage gap for the actual cost of the drug as defined at § 423.100 minus any applicable dispensing fees will be either: (1) Equal to the difference between the applicable gap percentage for the year and the discount percentage determined under the Medicare coverage gap discount program at section 1860D–14A(4)(A) of the Act; or (2) actuarially equivalent to an average expected payment of the coinsurance for applicable covered Part D drugs at the applicable gap percentage for the year, as determined through processes and methods established under section 1860D–11(c) of the Act and implemented at § 423.265(c) and (d) of our regulations. As a result, when the applicable drug is purchased at a network pharmacy, the beneficiary will be fully liable for any dispensing fees, since the statute requires that the coinsurance apply only to the negotiated price of the drug minus dispensing fees.

We propose codifying these new requirements in § 423.104(d)(4). Additionally, since the terms applicable drug, applicable beneficiary, and coverage gap have not been previously defined in regulation, we are proposing new definitions for these terms at § 423.100.

Under the new provisions in section 1860D–2(b)(4)(B)(i) of the Act, the rate of growth of the annual out-of-pocket threshold will be reduced from 2014 to 2019. In accordance with the new requirements, as proposed in § 423.104(d)(5)(iii), the annual out-of-pocket threshold for years 2014 and 2015 will be the amount specified for the previous year, increased by the "annual percentage increase" in the average expenditures for Part D drugs per eligible beneficiary currently specified in § 423.104(d)(5)(iv), minus 0.25 percentage point. In accordance with the new requirements in sections 1860D–2(b)(4)(B)(i) and 1860D–2(b)(7) of the Act, we propose amending § 423.104(d)(5)(iii) and (v), to reflect that for years 2016 through 2019, the annual out-of-pocket threshold will be the amount specified for the previous year, increased by the lesser of: (1) The annual percentage increase in the consumer price index specified in § 423.104(d)(5)(v) for the year involved plus 2 percentage points; or (2) the "annual percentage increase" specified in § 423.104(d)(5)(iv), rounded to the nearest $50. The new provisions in section 1860D–2(b)(4)(B)(i) of the Act require us to calculate the annual out-of-pocket threshold for 2020 and later as if no change had been made to the calculation of the out-of-pocket threshold for 2014 through 2019 under the ACA. Thus, we propose to amend § 423.104(d)(5)(iii) to reflect this requirement.

The ACA also amended section 1860D–22(a)(2)(A) of the Act by adding a provision with regard to the actuarial equivalence of retiree prescription drug plan coverage to standard coverage. Specifically, the new provision requires that when attesting to the actuarial equivalence of the plan's prescription drug coverage to defined standard coverage, qualified retiree prescription drug plans not take into account the value of any discount or coverage provided during the gap in coverage that occurs between the initial coverage limit during the year and the out-of-pocket threshold for defined standard coverage under Part D. We propose codifying this new requirement in § 423.884(d) of this rule.

As indicated in section II.A. of this proposed rule, we propose that the regulations implementing these provisions be effective 60 days after the publication of the final rule.

19. Payments to Medicare Advantage Organizations (§ 422.308)

Section 1853(a)(1)(C) of the Act requires the Secretary to adjust MA payments by risk factors including age, disability status, gender, institutional status, and other factors as the Secretary determines to be appropriate, including adjustment for health status. Section 1853(a)(3) of the Act required the Secretary to establish a "risk adjustment" methodology which "accounts for variations in per capita costs based on [the] health status [of the enrollee]."

Generally, the law related to MA payments is self-implementing, and the effective dates for changes to the payment methodology are established in statute and announced in accordance with section 1853(b) of the Act. Regulations related to payment provisions thus implement requirements that are effective on the date specified in statute and as provided for in the Annual Announcement of MA Capitation Rates and MA and Part D Payment Policies.

a. Authority To Apply Frailty Adjustment Under PACE Payment Rules for Certain Specialized MA Plans for Special Needs Individuals (§ 422.308)

Section 3205 of the ACA provides the Secretary with the authority to apply a frailty adjustment to payments to certain SNPs, starting with plan year 2011. The statute permits the Secretary to apply the payment rules under section 1894(d) of the Act (other than paragraph (3) of such section), rather than the payment rules that would otherwise apply under this part, but only to the extent necessary to reflect the costs of treating high concentrations of frail individuals.

We are interpreting this new statutory language to mean that payments to frailty-qualifying SNPs will continue to be calculated using the existing MA payment rules under which all SNPs are paid with the sole exception of the application of a frailty adjustment. Further, we are interpreting this new statutory language to permit us to use the same methodology to adjust payment to take into account the frailty of SNP enrollees as we use for the PACE program.

The Secretary determines the adjustment methodology for frailty, which frailty scores will be considered "similar" to PACE program, and how to measure the "average level of frailty of the PACE program." We will announce any changes to the methodology used to pay for the frailty, as well as how we determine PACE program averages, and which frailty-qualifying SNPs have similar levels of frailty, in the Advance Notice and Rate Announcement for the plan year in question.

The Secretary has the authority to make an adjustment to payment to take into account the level of frailty among the enrollees of a plan if the plan meets our proposed definition of a fully integrated dual-eligible special needs plan at § 422.2 and the plan has a similar average level of frailty as the PACE program. In order to have a frailty score that can be compared to the PACE program, MA organizations sponsoring a dual eligible SNP that meets our proposed definition of a fully integrated dual-eligible SNP must fund any survey used by us to support the calculation of frailty scores; the survey must be fielded such that we can calculate a frailty score at the plan benefit package level for each SNP in question (currently the counts of limitations on activities of daily living (ADLs) used to calculate frailty scores are taken from the HOS or HOS–M). Further, the survey must adhere to the methodological requirements of any such survey.

As indicated in section II.A. of this proposed rule, we propose that the regulations implementing this provision be effective 60 days after the publication of the final rule.

b. Application of Coding Adjustment (§ 422.308)

Section 1102(e) of the ACA amended section 5301(b) of the Deficit Reduction Act (DRA) of 2005. Beginning in 2006, section 1853(a)(1)(C)(ii), as added by section 5301(b) of the DRA, required the Secretary, in risk adjusting payments for health status under 1853(a)(1)(C)(i), to ensure that such adjustment reflects changes in treatment and coding practices in the FFS sector and beginning in 2008 reflects differences in coding patterns between MA plans and providers under Part A and B, to the extent that the Secretary has identified such differences. The ACA adds new statutory language clarifying our existing authority to adjust risk scores for coding trends in the FFS sector, under its general authority to conduct risk adjustment in an actuarially equivalent manner under 1853(a)(1)(C)(i) of the Act. Further, this new language extends the mandate that CMS adjust risk scores for differences in coding patterns between MA plans and FFS beyond 2010.

Adjusting risk scores for the underlying FFS trend—or normalization—is necessary to ensure accurate payments because, each time we recalibrate a risk adjustment model, the average risk score is set to 1.0 using the fixed set of coefficients appropriate to the population and data for that calibration year. When the model with fixed coefficients is used to predict expenditures for other years, predictions for prior years are lower and predictions for succeeding years are higher than for the calibration year. Because average predicted expenditures increase after the model calibration year due to coding and population changes, we apply a normalization factor to adjust beneficiaries' risk scores so that the average risk score is 1.0 in subsequent years.

Adjusting risk scores for the difference between MA and FFS coding patterns is also necessary in order for payments to be accurate because we calibrate the CMS–HCC model using FFS data, and the relative factors reflect the FFS pattern of coding. We adjust for the trend in the rate of increase of diagnoses codes submitted by FFS providers with the application of a normalization factor that is updated annually and that adjusts risk scores with the goal that the average remains 1.0 in each payment year. However, because MA coding patterns differ from those in FFS, MA risk scores generally increase more quickly and are, therefore, higher than they would be if MA plans coded in the same manner as FFS providers.

The DRA also required the Secretary to conduct an analysis of the differences in FFS and MA coding patterns in order to ensure payment accuracy. Such an analysis was to be completed in time to ensure that the results of such analysis were incorporated into the risk scores for 2008 through 2010. In conducting such analysis, the Secretary was to use data submitted with respect to 2004 and subsequent years, as available.

The ACA made four modifications to this requirement for analysis. They are—(1) The analysis must now be conducted annually; (2) the data used in the analysis is to be updated as appropriate; (3) the results of the analysis are to be incorporated into risk scores on a timely basis; and (4) the application of an adjustment for differences in coding patterns is extended indefinitely.

The ACA added two additional requirements to the DRA-mandated requirements. First, the ACA requires that the adjustment factor for 2014 be not less than the adjustment factor applied for 2010 plus 1.3 percentage points; for each of the years 2015 through 2018, not less than the adjustment factor applied for the previous year plus 0.25 percentage points; and for 2019 and each subsequent year not less than 5.7 percent.

Second, the ACA requires the Secretary to apply the coding adjustment to risk scores until the implementation of risk adjustment using MA diagnostic, cost, and use data.

As indicated in section II.A. of this proposed rule, we propose that the regulations implementing this provision be effective 60 days after the publication of the final rule.

c. Improvements to Risk Adjustment for Special Needs Individuals With Chronic Health Conditions (§ 422.308)

The CMS–HCC risk adjustment model incorporates a set of coefficients for calculating risk scores for new enrollees that are based on demographic factors only, such as age, sex, Medicaid status, and original reason for entitlement. A new enrollee risk score is used in the payment of a beneficiary who is enrolled in an MA plan or PACE organization and who does not have enough diagnoses in the data collection period to calculate a full risk score. We classify a beneficiary as a new enrollee when they do not have 12 months of Part B in the data collection period.

Because chronic SNP enrollees must, as a condition of enrollment, have specific conditions, the average new enrollee risk score of new enrollees in chronic SNPs is likely to understate these beneficiaries' risk. For 2011 and subsequent years, for purposes of the adjustment under section 1853(a)(1)(C)(i) of the Act, the Secretary will use a risk score that reflects the known underlying risk profile and chronic health status of similar individuals. The Secretary is required to use such risk score instead of using the default risk score that is otherwise used in payment for new enrollees in MA plans.

The risk score developed for this purpose will be used in calculating payments for a special needs individual described in section 1859(b)(6)(B)(iii) of the Act who enrolls in a specialized MA plan for special needs individuals on or after January 1, 2011.

For 2011 and periodically thereafter, the Secretary will evaluate and revise the risk adjustment system under this subparagraph in order, as accurately as possible, to account for higher medical and care coordination costs associated with frailty, individuals with multiple, comorbid chronic conditions, and individuals with a diagnosis of mental illness, and also to account for costs that may be associated with higher concentrations of beneficiaries with those conditions. The Secretary is required to publish in the Rate Announcement, as described under section 1853(b) of the Act, a description of any evaluation conducted during the preceding year and any revisions made under such clause as a result of such evaluation.

As indicated in section II.A. of this proposed rule, we propose that the regulations implementing this provision be effective 60 days after the publication of the final rule.

20. Medicare Advantage Benchmark, Quality Bonus Payments, and Rebate (§ 422.252, § 422.258, and § 422.266)

a. Terminology (§ 422.252)

In order to implement new ACA provisions affecting MA payments, we propose to revise § 422.252 by adding two new terms and revising one term. We propose to add the terms "new MA plan" and "low enrollment contract." A new MA plan means, for the purpose of quality ratings under proposed § 422.258(d)(7) (discussed below), with respect to a year, a plan offered by an organization or sponsor that has not had a contract as an MA organization in the preceding 3-year period. A low enrollment contract is a contract that could not undertake Healthcare Effectiveness Data and Information Set (HEDIS) and Health Outcome Survey (HOS) data collections because of a lack of a sufficient number of enrollees to reliably measure the performance of the health plan.

We also propose to revise the definition of Unadjusted MA area-specific non-drug monthly benchmark amount to reflect the provision of the ACA that, effective for 2012, the MA area-specific non-drug monthly benchmark amount is the blended benchmark amount determined according to the rules set forth under § 422.258(d). In addition, this revision clarifies that ratesetting rules for county capitation rates are specific to a time period, as set forth at § 422.258(a). Finally, this revision further clarifies that the term "unadjusted" refers to a standardized amount, reflecting a risk profile based on the national average.

b. Calculation of Benchmarks (§ 422.258)

Section 1102(b) of the ACA establishes a new blended benchmark as the MA county rate, effective 2012, and section 1102(c) of the Act establishes quality-based increases to the blended benchmark. To implement these rate-setting rules for the MA program effective 2012 onward, we propose amendments to § 422.258(a) and § 422.258(c)(3), and propose the addition of a new paragraph § 422.258(d), which sets forth the provisions for MA blended benchmarks, including increases to the benchmarks for quality bonuses at § 422.258(d)(7).

Proposed § 422.258(a) implements section 1853(j) of the Act to reflect the ACA requirement that CY 2011 MA capitation rates be set at 2010 levels. Proposed § 422.258(a) also clarifies which ratesetting rules are in effect for a particular time period by distinguishing the (c)(1) capitation rates in effect prior to 2007 from the applicable amount rates in effect from 2007 to 2011 (section 1853(k)(1) of the Act), and from the blended benchmark rates effective for 2012 (section 1853(n) of the Act).

We also propose to amend § 422.258(c)(3) to require that the MA regional plan statutory component of the region-specific benchmarks be calculated using the county rates determined under proposed § 422.258(a) for the year. This amendment ensures that the statutory component of the regional plan benchmarks reflects rate-setting rules regarding blended benchmarks for counties that are effective in 2012.

To implement sections 1853(n) and (o) of the Act, as added by sections 1102(b) and (c) of the ACA, respectively, on blended benchmarks and quality-based increases to the benchmarks, we propose to add a new paragraph § 422.258(d). Paragraphs (1) through (6), and (8) and (9), of paragraph (d) implement provisions regarding the blended benchmark, effective for 2012 onward. Paragraph (7) implements the provisions to increase the blended benchmarks for MA plans that receive quality ratings of a specified level. The quality bonus provisions in § 422.258(d)(7) are discussed following presentation of other provisions on the blended benchmarks that are implemented in this proposed paragraph.

The MMA established the concept of the "unadjusted MA area-specific non-drug monthly benchmark amount" as the service-area level benchmark for an MA plan, as specified in section 1853(j) of the Act and implemented at § 422.258(a) for MA local plans and § 422.258(b) for MA regional plans. Under rules established by the MMA, the service area-level benchmark for an MA plan is, in effect, the bidding target. Service area-level benchmarks are based on county capitation rates, and the general amendments to the rules for setting county capitation rates are as follows. The MMA eliminated the "higher of three" rate-setting rule that had been established by the Balanced Budget Act of 1997 (BBA), and mandated a transition to the ratesetting rule that a county capitation rate was

the (redefined) minimum percentage increase rate for a year (that is, the previous year's rate increased by the greater of 102 percent or the National Per Capita Medicare Advantage Growth Percentage), except in years when county average FFS expenditures were rebased (updated with more recent data); in rebasing years a county rate for a year was the greater of the FFS rate and the minimum percentage increase rate. The DRA introduced section 1853(k)(1) of the Act, which mandated that a county rate is an "applicable amount" for an area for a year, also used "for purposes of subsection (j)," that is, to determine a plan's service area-level benchmark. Effective in 2007, the applicable amount under section 1853(k)(1) of the Act for an area for a year was the (again, redefined) minimum percentage increase rate (that is, the prior year's rate increase by the National Per Capita Medicare Advantage Growth Percentage), except in a year when we rebased the FFS rates; in a rebasing year, the applicable amount was the greater of the county's rebased FFS rate and its minimum percentage increase rate. In other words, the "unadjusted MA area-specific non-drug monthly benchmark amount" was now based on applicable amounts under section 1853(k)(1) of the Act.

Section 1102(b)(2) of the ACA introduces section 1853(n) of the Act, which creates a new type of county capitation rate, the "blended benchmark amount" for an area for a year, which also must be determined "for purposes of subsection (j)"—to determine MA plans' service area-level benchmarks. Effective 2012 onward, the blended benchmark will be set at some percentage of the county's average FFS expenditure (the FFS rate). This percentage varies depending on several rules discussed below. The minimum percentage increase rate will no longer exist. Rather, we must rebase the 2012 county FFS rates, and all 2012 county capitation rates are based on the FFS rates. The rebasing rule at section 1853(c)(1)(D)(ii) of the Act remains in effect, requiring us to rebase the FFS rates at least every 3 years. In years after 2012 when the FFS rates are not rebased, the county rate is the previous year's rate increased by the National Per Capita Medicare Advantage Growth Percentage. In effect, the ACA mandates that the "unadjusted MA area-specific non-drug monthly benchmark amount" will be based on the blended benchmark rate, thus replacing the applicable amounts determined under section 1853(k)(1) of the Act.

However, section 1853(n) of the Act states that there are two components of the blended benchmark: The applicable amount determined under section 1853(k)(1) of the Act and described at proposed § 422.258(d)(1); and the "specified amount" introduced at section 1853(n)(2) of the Act and described at proposed § 422.258(d)(2). The two components must be combined using weights that are specific to the phase-in period assigned each area (county), according to rules set forth at sections 1853(n)(1) and (n)(3) of the Act and implemented at proposed paragraphs (d)(8) and (d)(9) of § 422.258 of the regulations. At the conclusion of an area's phase-in period, the blended benchmark for the area for a year will be the area's specified amount under section 1853(n)(2) of the Act. In other words, when all counties have concluded their transition periods to a blended benchmark based on 100 percent of the specified amount, the "blended" aspect of the benchmark will also be concluded, because the proportion attributed to the applicable amount under section 1853(k)(1) of the Act will be zero. However, we will continue to calculate the applicable amounts under section 1853(k)(1) of the Act because section 1853(n)(4) of the Act requires that the blended benchmarks for an area for a year must be capped at what the applicable amount under section 1853(k)(1) of the Act would be for a year if the blended benchmark provisions were not in effect.

Specified Amount. Section 1853(n)(2) of the Act, as implemented by proposed § 422.258(d)(2), (d)(3), and (d)(4), sets forth the formula for the specified amount and the rules for tabulating the components of the formula. Specifically, the specified amount is the product of two quantities: the base payment amount defined at section 1853(n)(2)(E) of the Act (adjusted to carve-out the indirect medical education (IME) amount, as required at section 1853(k)(4)) of the Act and implemented at § 422.306(c); and the applicable percentage defined at section 1853(n)(2)(B) of the Act and implemented at proposed § 422.258(d)(4).

The base payment amount for an area for 2012 is the average FFS expenditure amount determined for 2012, as specified in proposed § 422.306(b)(2). For subsequent years, the base payment amount for an area is the average FFS expenditure amount specified in § 422.306(b)(2), which includes the requirement to rebase (update with more recent data) the FFS rates no less frequently than every 3 years.

The applicable percentage is one of four values assigned to an area (a county) based on our determination of the quartile ranking for the previous year of the area's average FFS expenditure amount (described at § 422.306(b)(2)) relative to this amount for all counties. The FFS rate used for the quartile ranking must be net of the IME amount determined under § 422.306(c) for the year. For the 50 States or the District of Columbia, counties whose FFS rates (net of the IME amount for the year) fall in the highest quartile of all such amounts for the previous year receive an applicable percentage of 95 percent, while counties falling in the second highest quartile receive an applicable percentage of 100 percent, counties falling in the third highest quartile receive an applicable percentage of 107.5 percent, and counties falling in the lowest quartile receive an applicable percentage of 115 percent. To determine the applicable percentages for a territory, we must rank such areas for a year based on the level of the area's FFS amount net of the IME amount, relative to the quartile rankings computed for the 50 States and the District of Columbia.

After establishing the basic formula for the specified amount and setting the rules for calculating its components—the base payment amount and the applicable percentage, sections 1853(n) and (o) of the Act provide additional rules for determining the applicable percentage for a county for a year. There are four sets of rules: (1) When to re-rank the county FFS rates to determine whether some counties receive quartile reassignments; (2) how to transition a county from one quartile assignment to another; (3) how to assign a county its transition period of 2, 4, or 6 years, whereby at the conclusion of the transition period, the county's blended benchmark equals 100 percent of the specified amount; and (4) under what conditions the applicable percentage shall be increased to provide a quality bonus payments to qualifying plans. The first three types of rules are discussed here, and the fourth rule on quality bonuses is discussed in the next section on paragraph § 422.258(d)(7).

First, section 1853(n)(2)(C) of the Act, implemented at proposed § 422.258(d)(5)(i), provides that the quartile ranking of all county FFS rates (net of the IME carve-out) for a contract year must be re-ranked whenever the FFS rates for the year prior to the contract year are rebased FFS rates, per the rebasing rule set forth at § 422.306(b)(2). For example, if we did not rebase the FFS rates for contract year 2013, but did rebase them for contract year 2014, the base payment amount for contract year 2014 would be

the 2014 rebased FFS rates, but the applicable percentage for contract year 2014 must be based on the previous year's quartile ranking, which would be the 2013 rates. Under this hypothetical scenario, because the 2013 FFS rates were not rebased, the 2013 FFS rates are the 2012 FFS rates increased by the 2013 National Per Capita Medicare Advantage Growth Percentage; further, because the 2013 growth trend would be applied as a constant to all 2012 FFS rates, in effect the applicable percentages for contract year 2014 would be based on the quartile ranking of the 2012 rebased FFS rates.

Second, section 1853(n)(2)(D) of the Act, implemented at proposed § 422.258(d)(5)(ii), provides that for a year after 2012, if there is a change in a county's quartile ranking for a contract year compared to the county's ranking in the previous year, the applicable percentage for the area for the year shall be the average of the applicable percentage for the previous year and the applicable percentage that would otherwise apply for the area for the year in the absence of this transitional provision. For example, if a county's ranking changed from the third quartile to the second quartile, the applicable percentage would be 103.75 percent for the year of the change—the average of 107.5 percent and 100 percent.

Third, sections 1853(n)(2) and (n)(3) of the Act, implemented at proposed § 422.258(d)(8) and (d)(9) respectively, establish the methodology that we must use to assign one of three transition periods to each county—a 2-year, 4-year, or 6-year transition—to phase-in the blended benchmark amount to be equal to 100 percent of the specified amount. Assignment of a phase-in period is determined by the size of the difference between the 2010 applicable amount under section 1853(k)(1) of the Act at proposed paragraph (d)(1) and "the projected 2010 benchmark amount" at proposed (d)(8)(i), which is a quantity created at section 1853(n)(3)(C) of the Act solely for the purpose of assigning a transition period to each county. The projected 2010 benchmark amount is equal to one-half of the 2010 applicable amount and one-half of the specified amount; the latter is calculated as if the 2012 effective date for the specified amount were instead 2010. This modified specified amount for 2010 is the product of two quantities: the 2010 base payment amount adjusted as required under paragraph § 422.306(c); and the applicable percentage, which is determined under the rules set forth at proposed paragraph (d)(8)(ii)(B). Specifically, all applicable percentages are increased as if all counties were in qualifying plans in 2010 for the purpose of calculating the projected 2010 benchmark amount (thus adding 1.5 percentage points to each county's applicable percentage). Further, we must determine a list of 2010 qualifying counties using the criteria set forth for 2012 onward in proposed paragraph (d)(7)(ii), thus further increasing the applicable percentage of this subset of 2010 counties an additional 1.5 percentage points.

Once the special quantity "projected 2010 benchmark amount" is compared to the 2010 specified amount under section 1853(k)(1) of the Act, the phase-in assignments are made as follows. A county is assigned a 2-year phase-in period if the difference between the applicable amount and the projected 2010 benchmark amount is less than $30, a 4-year phase-in period if the difference is at least $30 but less than $50, and a 6-year phase-in period if the difference is at least $50.

Finally, section 1853(n)(3), implemented at proposed § 422.258(d)(8), sets forth the rules for calculating the blended benchmark depending on the assigned phase-in period. For counties assigned the 2-year phase-in period, the blended benchmark for 2012 is the sum of one-half of the applicable amount at paragraph (1) and one-half of the specified amount at paragraph (2); and or subsequent years, the blended benchmark equals the specified amount. For counties assigned the 4-year phase-in period, the blended benchmark is calculated as follows: for 2012 the blended benchmark is the sum of three-quarters of the applicable amount for the area and year and one-fourth of the specified amount for the area and year; for 2013, it is the sum of one-half of the applicable amount for the area and year and one-half of the specified amount for the area and year; for 2014 it is the sum of one-fourth of the applicable amount for the area and year and three-fourths of the specified amount for the area and year; and for subsequent years, the blended benchmark equals the specified amount. For counties assigned the 6-year phase-in period, for 2012, the blended benchmark is the sum of five-sixths of the applicable amount for the area and year and one-sixth of the specified amount for the area and year; for 2013 it is the sum of two-thirds of the applicable amount for the area and year and one-third of the specified amount for the area and year; for 2014 it is the sum of one-half of the applicable amount for the area and year and one-half of the specified amount for the area and year; for 2015 it is the sum of one-third of the applicable amount for the area and year and two-thirds of the specified amount for the area and year; for 2016 it is the sum of one-sixth of the applicable amount for the area and year and five-sixths of the specified amount for the area and year; and for subsequent years, the blended benchmark equals the specified amount.

c. Increases to the Applicable Percentage for Quality (§ 422.258(d))

Under the ACA, the Secretary is required to implement increases to MA plan benchmarks (which are the basis of a plan's bidding target) if they attain 4 or more stars on a 5 star quality rating system implemented by the Secretary. The effective date for this provision is January 1, 2012. For the purposes of this preamble, we will refer to these quality-based increases in MA benchmarks as quality bonus payments (QBPs) for MA plans. We propose to implement the quality payment provisions under section 1102 of the ACA at § 422.258(d)(7) and at § 422.252. Below we discuss our proposal for applying a star rating system to MA plan benchmarks.

Under the terms of proposed §§ 422.258(d)(7) and 422.252, MA organizations would be evaluated and scored on a 5-star rating system, with bonus payments made to qualifying organizations that have a star rating of 4 or higher. As specified under section 1102 of the ACA, the 5 star rating system that serves as the basis for making the bonus payment must be based on quality information collected by us under authority of section 1852(e) of the Act.

Under the proposed regulations, the blended benchmark for 2012 and future years would reflect the level of quality rating at the organization or contract level, as determined by the Secretary pursuant to a methodology that would be set forth in a notice to MA organizations for the calendar year in question. This notice would come in the form of a memorandum to the Medicare Compliance Officers of MA organizations. As discussed in section II.B.20.b of this proposed rule, the blended benchmark has two components—the applicable amount and the specified amount. A qualifying organization that receives 4 or more stars on a 5 star rating system would, under the proposed regulations, receive an increase in the specified amount component of the blended benchmark amount of 1.5 percentage points in 2012, 3.0 percentage points in 2013 and 5.0 percentage points in 2014 and in subsequent years. A qualifying organization in a qualifying county would receive double the applicable

percentage increase. A qualifying county is defined as a county that has an MA capitation rate that, in 2004, was based on the amount specified in subsection c1b for a Metropolitan Statistical Area (MSA) with a population of more than 250,000; has at least 25 percent of MA eligible individuals enrolled in MA plans as of December 2009; and has a per capita fee-for-service spending that is lower than the national monthly per capita cost for expenditures for individuals enrolled under the Original Medicare fee-for-service program for the year. Under the proposed regulations, a new MA plan would receive an increase in the specified amount component of the blended benchmark amount of 1.5 percentage points in 2012; 2.5 percentage points in 2013; and 3.5 percentage points in 2014 and in subsequent years.

The 5 star ratings system that would be used is the system currently in place, which historically has served two purposes. First, the plan ratings provide beneficiaries information on organization performance that they may consider (in addition to cost and benefit information) when choosing a plan. The second purpose is to assist us in identifying poor performing organizations for compliance actions. Under the plan rating system, if an MA–PD organization offers health and drug benefits, both Part C and Part D summary ratings scores are generated. In the Fall of 2010, MA–PDs will receive a combined Part C and D summary rating to summarize overall contract performance with respect to health and drug issues. This combined rating would, under the proposed regulations, be used to determine the new quality bonus payments (QBPs) based on quality.

We have always considered the plan rating system to be based on information consistent with section 1852(e) of the Act, which specifies that MA organizations are required to collect, analyze and report data that measure health outcomes and other quality indices. Because section 1852(e) of the Act states that "The Secretary shall not collect data on quality, outcomes and beneficiary satisfaction to facilitate consumer choice and program administration other than the types of data that were collected by the Secretary as of November 1, 2003", we clarify here the types of data included under the plan rating system are consistent with the types of data collected as of November 1, 2003. Since 1997 Medicare managed care organizations have been required to annually report quality of care performance measures through HEDIS. HEDIS is a widely used quality measures set in the managed care industry, developed and maintained by the National Committee for Quality Assurance (NCQA). HEDIS data includes clinical measures assessing the effectiveness of care, access/availability measures such as telephone customer service, and use of service measures. We have also been conducting the Consumer Assessment of Healthcare Providers and Systems (CAHPS) survey since 1997 to measure beneficiary's experiences and satisfaction with their health plans. HOS began in 1998 to capture changes in the physical and mental health of MA enrollees. Additionally, there are several measures based on performance that address telephone customer service, members' complaints, disenrollment rates, and the seriousness of problems found during a Medicare audit. All of these measures reflect structure, process, and outcomes indices of quality that form the measurement set under plan ratings.

Additionally, since 2007, we have publicly reported a number of measures related to the drug benefit as part of the plan ratings. For MA organizations that offer prescription drug coverage, we have developed a series of measures focusing on administration of the drug benefit. Similar to MA measures of quality relative to health services, the Part D measures focus on customer service and satisfaction, effectiveness, and access to care relative to the drug benefit. Because these measures focus on structure, process, and outcomes indices of quality, we believe that they too are consistent with the types of information referenced in section 1852 (e) of the Act. Therefore, we believe that the Part C and D plan ratings are consistent with the limitation expressed in section 1852(e) of the Act limiting data collection for quality to the types of data collected as of November 1, 2003.

Additionally, for 2012 and thereafter, the ACA directs the Secretary to develop definitions for new organizations that lack sufficient data to produce a star rating. Those new plans as defined by the Secretary will be considered qualifying organizations and will receive a bonus payment. The ACA requires that for 2012 the Secretary develop definitions for low enrollment plans that lack sufficient data to produce a star rating. For years after 2012, the Secretary must develop a methodology in order to rate these low enrollment plans for purposes of determining whether these plans qualify for quality bonus payments and what are the applicable beneficiary rebates percentages for these plans. We are proposing to add a new paragraph (d)(7) to § 422.258 to reflect our authority to make bonus payments based on quality. Under § 422.252, we propose definitions of a low enrollment organization and a new organization for the purpose of identifying qualifying organizations eligible to receive a bonus payment. Low enrollment plans will be qualifying plans for 2012 and in subsequent years, the Secretary is directed to develop a methodology to assign star ratings to low enrollment organizations. MA organizations that fail to report data as required by the Secretary shall be counted as having a rating of fewer than 3.5 stars at the organization or contract level, as determined by the Secretary. For the purpose of awarding 2012 quality bonus payments, we propose to define low enrollment organizations as those that could not undertake HEDIS and HOS data collections because of a lack of a sufficient number of enrollees to reliably measure the performance of the health plan. New MA organizations that meet criteria specified by the Secretary are also treated as qualifying organizations for the purposes of QBPs. We propose to define a new MA organization as a MA contract offered by a parent organization that has not had another MA contract in the previous 3 years; these contracts would qualify for the QBP. Other MA contracts that open in a given year, but have had other contracts offered by the parent organization offering the new plan in the prior three years would be assigned a star rating based on the average enrollment-weighted performance of the other contracts offered by the parent organization to reflect the overall performance of the organization. Also under the ACA, new MA organizations that meet criteria specified by the Secretary are treated as qualifying organizations for the purposes of QBPS. We propose to define a new MA organization as a MA contract offered by a parent organization that has not had another MA contract in the previous 3 years; these contracts would qualify for the QBP. Other MA contracts that open in a given year, but have had other contracts offered by the parent organization offering the new plan in the prior three years would be assigned a star rating based on the average enrollment-weighted performance of the other contracts offered by the parent organization to reflect the overall performance of the organization.

We anticipate moving toward transformation of the rating system in future years in order to advance more ambitious and comprehensive quality improvement objectives. These

objectives will include greater emphasis on demonstrable improvements in beneficiary access to care, beneficiary health status and outcomes, beneficiary satisfaction and engagement, prevention and management of chronic conditions as well as coordination across the continuum of care. By designing the MA quality rating system around these types of objectives, we expect to encourage and incentivize MA plans and affiliated providers to transform their delivery systems and processes to provide beneficiaries with high-quality and efficient care. Ultimately, we seek to design the MA quality rating system to ensure that Medicare beneficiaries enrolled in MA organizations receive efficient, high quality care and services every time. Future quality agenda and measurement development will be designed to ensure that MA organizations lead the healthcare industry in providing cutting edge, integrated and coordinated care for our beneficiaries using evidence-based and demonstrable metrics.

As we develop a longer term strategic framework for transforming the MA quality rating system, over the near term, we also will consider guiding principles for the MA quality agenda. For instance, these principles could be based on aims from the 2001 Institute of Medicine (IOM) Report "*Crossing the Quality Chasm: A New Health System for the 21st Century*." From this IOM Report, the six aims that have been described are being proposed as a framework for the MA Quality Strategic Plan. The IOM Report provides the following definitions for the six aims: Safe is defined as avoiding injuries to patients from the care that is intended to help them. Effective refers to providing services based on scientific knowledge to all who could benefit, and refraining from providing services to those not likely to benefit. Patient-centered is providing care that is respectful of and responsive to individual patient preferences, needs, and values, and ensuring that patient values guide all clinical decisions. Timely is defined as reducing waits and sometimes harmful delays for both those who receive and those who give care. Efficient is avoiding waste, including waste of equipment, supplies, ideas, and energy. Equitable is providing care that does not vary in quality because of personal characteristics such as gender, ethnicity, geographic location, and socioeconomic status (IOM, 2001).

We invite public comment on what types of principles or objectives that we should adopt for the MA quality rating system over the longer term. For instance, are there specific frameworks or elements that we should adopt from the National Quality Forum (NQF), NCQA, the Agency for Healthcare Research and Quality and Research (AHRQ) or other experts in this field? How should these objectives evolve over time so the rating system rewards continual improvement and innovation on the part of MA organizations?

As a part of developing our long-term quality strategy, we have begun to identify measures that can be implemented in the near term to further the MA quality agenda. Looking beyond the 2012 plan ratings, we are exploring using measures, such as reportable adverse events and hospital acquired conditions, which are submitted via the Part C reporting requirements. We are also examining the use of alternative measurement sets (for example, ACOVE), exploring the use of data collected in other settings (for example, rural hospital quality data annual payment update (RHQDAPU)), considering incorporating encounter data into quality measures, and are considering development of additional outcome measures designed specifically for MA. The NCQA is also developing measures of all-cause readmission rates and ambulatory care sensitive conditions that we would look to implement as they become available. These are some of the activities that we anticipate engaging in over the next few years, and we expect to undertake further measure identification, refinement, and development as we implement the MA quality bonus payments.

Further, beyond broadening the goals of the MA quality rating system, for instance by incorporating more outcomes-based measures, we also seek to continually raise performance targets, so as to incentivize continual quality improvement across established metrics of performance and quality. We invite public comment on appropriate performance and quality benchmarks, and what approach should be used for updating these benchmarks, including frequency of updates.

The MA quality agenda will also be coordinated with the national priorities for quality that are being set as part of the ACA. As the national priorities for quality are shaped, the MA quality agenda will be aligned with these priorities. We are working on the MA quality agenda and have also established an agency-wide Quality Working Group Advisory Panel. Senior CMS leadership has convened an agency-wide Quality Working Group Advisory Panel to facilitate the coordination of the CMS quality initiatives in support of the development of the HHS National Strategy for Quality that is required by the ACA. This working group will ensure that the MA Quality agenda aligns with other components within CMS and with HHS national goals. CMS's participation in the HHS-wide Interagency Quality Measures Workgroup will also further ensure that MA quality measures are developed in a coordinated way across the Department.

Accordingly, based on the preceding, we are proposing the following amendment to § 422.258 to add a new paragraph (d)(7) to reflect our authority to make bonus payments based on quality. Under § 422.252, we propose definitions of low enrollment organization and new organization for the purpose of identifying qualifying organizations eligible to receive a bonus payment.

While the regulations we are proposing in this section would implement the QBP provisions specified in the ACA on a permanent basis, for the near term we will be conducting a demonstration project under which the rules for determining QBPs set forth in the Affordable Care Act and in these proposed regulations would be waived, and QBPs would instead be determined under the terms of the demonstration. For CYs 2012 through 2014, MA payment will be determined under the terms of the national quality bonus payment demonstration project. Details on the demonstration will be provided on the CMS Web site.

d. Beneficiary Rebates (§ 422.266)

The proposed rule for calculation of beneficiary rebates implements section 1102(d) of the ACA, which reduces the amount of beneficiary rebate, and ties the level of rebate to a plan's star rating for quality of performance.

The ACA does not change the basic rules for determining whether or not an MA plan must provide a beneficiary rebate. These three basic rules are as follows. As set forth at § 422.262, we determine whether an MA plan must charge a basic beneficiary premium for coverage of Original Medicare benefits by comparing the unadjusted (standardized) Parts A/B bid amount to the unadjusted (standardized) Parts A/B benchmark amount for the plan for the year. If the bid is less than the benchmark, the basic beneficiary premium for coverage of Original Medicare benefits is zero. Second, as set forth at § 422.264(c) and (d) for local and regional plans, we calculate the amount of savings for MA plans with zero basic beneficiary premiums, which is 100 percent of the difference between

the risk-adjusted bid amount and the risk-adjusted benchmark amount. Finally, as set forth at § 422.266, the MA plan's beneficiary rebate amount is calculated as a percentage of the savings amount. Rebates must be used to reduce the costs of Part C mandatory supplemental benefits, Part D supplemental benefits, and/or to reduce the Part D basic premium and Part B premium.

Section 1102(d) of the ACA changes the share of savings that MA plans must provide to enrollees as the beneficiary rebate specified at § 422.266(a). Specifically, this provision mandates that the level of rebate is tied to the level of a plan's star rating for quality of performance. Under the new provisions, the highest possible rebate, for plans with a 4.5 star rating or higher, is set at 70 percent of the average per capita savings. The rebate is reduced further for plans with lower star ratings for a year. These new provisions are phased-in from 2012 through 2014. The demonstration project mentioned in section II.B.20.c. of this proposed rule would not affect the rebate percentages associated with a particular star rating, under the terms of the ACA.

We propose to revise § 422.266 by first redesignating paragraph (a) as paragraph (a)(1), and amending it to apply to years 2006 through 2011. We further propose to add paragraph (a)(2), which sets forth the rebate determination rules for 2012 and subsequent years. Proposed § 422.266(a)(2)(ii) states that for 2014 and subsequent years, the final applicable rebate percentage (the percentage applied to the savings amount to determine the rebate amount) is 70 percent in the case of a plan with a quality rating under such system of at least 4.5 stars; 65 percent in the case of a plan with a quality rating of at least 3.5 stars and less than 4.5 stars; and 50 percent in the case of a plan with a quality rating of less than 3.5 stars.

Proposed § 422.266(a)(2)(i) describes the transition period during which the old 75 percent rule at paragraph (a)(1) will be phased-out and the (a)(2)(ii) rules phased in. For 2012, the rebate percentage equals the sum of: Two-thirds of the old proportion of 75 percent of the average per capita savings; and one-third of the new proportion assigned the plan or contract under paragraph (ii), based on the plan's star rating for the year. For 2013, the rebate percentage equals the sum of: One-third of the old proportion of 75 percent of the average per capita savings; and two-thirds of the new proportion assigned the plan or contract based on the plan's star rating for the year.

Proposed § 422.266(a)(2)(iii) describes the rules for low enrollment plans. For 2012, the ACA requires that low enrollment plans shall be treated as having a rating of 4.5 stars for the purpose of determining the beneficiary rebate amount. Proposed § 422.266(a)(2)(iii) describes the rules for new MA plans. For 2012 or a subsequent years, a new MA plan defined at § 422.252 that meets the criteria specified by us for purposes of § 422.258(d)(7)(v) shall be treated as a qualifying plan under paragraph (7)(i), except that plan must be treated as having a rating of 3.5 stars for purposes of determining the beneficiary rebate amount.

For the purpose of setting a plan's rebate level for 2012 and 2013, we anticipate that MA organizations will receive adjustments to their quality ratings in a manner similar to the adjustments proposed for benchmarks, in recognition that MA organizations have limited ability to influence their summary plan ratings for purposes of the 2012 and 2013 determination of the plan rebate amount.

21. Quality Bonus Payment and Rebate Retention Appeals (§ 422.260)

Section 1853(o) of the Act requires us to make QBPs to MA organizations that achieve performance rating scores of at least 4 stars under a five star rating system. While we have applied a star rating system to MA organizations for a number of years, these star ratings have thus far been used only to provide additional information for beneficiaries to consider in making their Part C and D plan elections. Beginning in 2012, the star ratings we assign for purposes of QBPs under section 1858(o) of the Act will directly affect the monthly payment amount MA organizations receive from us under their contracts. In effect, the bonus payment provisions of the new statute create a new category of CMS determinations related to MA organizations that affect their payments, arguably similar in terms of possible adverse impact to determinations related to contract qualification, termination, sanction, and payment reconciliation. Historically, a key aspect of the exercise of our authority to make such organization-specific determinations has been making an administrative review process available to MA organizations. Accordingly, we are proposing a review process through which MA organizations may seek review of their star rating ("QBP status") for QBP determinations.

Section 1854(b)(1)(C)(v) of the Act, as added by the ACA, also requires us to change the share of savings that MA organizations must provide to enrollees as the beneficiary rebate specified at § 422.266(a) based on the level of a sponsor's star rating for quality performance. This review process will also apply to the determinations made by us where the organization's plan rating sets its QBP status at ineligible for rebate retention.

While the statute does not specify a process for appealing low star ratings for QBP purposes, we are proposing this process pursuant to our authority to establish MA program standards by regulation at section 1856(b)(1) of the Act. We are proposing to afford the MA organization the opportunity to seek an appeal of their QBP status by a hearing officer. Prior to a request for an appeal, we will afford MA organizations the benefit of a technical report on the calculation of their QBP status, at the organization's request.

As previously discussed, for calendar years 2012 through 2014, QBP payments will be awarded under the terms of a demonstration project. Because the appeals process proposed in this proposed rule contemplates that the regulations governing QBP payments would be in effect, we are considering that these regulations not take effect until after the demonstration project has terminated. We anticipate making the appeals regulations effective when the demonstration project has terminated. In the interim, we will announce a process to appeal low star ratings for both QBP determinations under the demonstration and rebate retention allowances in separate guidance. We request comment regarding our proposal to delay the effective date of the appeals process set forth in this proposed rule until after the end of the demonstration.

Under the proposed regulations described in this section, MA organizations would be permitted to request a report on the calculation of their QBP status upon CMS' issuance of its final QBP payment determinations each year. Currently, we make plan star ratings available to MA organizations each September. As we have in prior years, we will continue to provide all organizations with a two-week preview period during which they can review their plan rating and raise questions concerning its accuracy with us before it is displayed on the CMS Web site. As noted in the discussion of the implementation of quality bonus payments earlier in this preamble, the plan ratings play a significant role in identifying MA organizations that qualify for QBPs. While we reserve the

right to use the same star rating that applies to the plan rating for QBP determinations, we will provide MA organizations notice each year regarding their QBP status. QBP determinations will be considered made, subject to the appeal rights described in this section, when the notice of QBP status is released.

Under our proposed regulations, MA organizations would have 5 calendar days from the date of CMS' release of its QBP determinations to request from CMS a technical report explaining the development of their QBP status. The report would be produced by an independent contractor engaged by us to review the application of CMS' QBP payment methodology to the organization's performance for the most recent evaluation period. The technical report would be designed primarily to allow MA organizations to "see CMS' work" by providing the organization with a full explanation of how the values were determined for each performance area and how those values were in turn incorporated into the methodology used to calculate the QBP. This information would help MA organizations identify the ways in which their organization would need to improve to qualify for a QBP in future MA program years. The technical report contractor would provide its report in writing by electronic mail to the MA organization and CMS within 30 days of CMS' receipt of the organization's request for the report.

If, after reviewing the technical report, the MA organization believes that we were incorrect in its QBP determination, the MA organization would be able to request an appeal to be conducted by a hearing officer designated by CMS. The organization would be required to make such a request within 7 calendar days of the MA organization's confirmed receipt of the technical report. Such request would have to include a statement that describes the errors that we made in our QBP determination and how correction of those errors would result in the organization's qualification for a QBP.

We propose that the scope of the hearing be limited to challenges of CMS' application of its QBP determination methodology to the appealing MA organization and, in very limited instances, the accuracy of the data CMS used to make the QBP determination. We would make available and request comment from the public on the star rating calculation methodology each year. Once that process is concluded, the appeals process proposed may not be used as a means to challenge the validity of the adopted methodology.

Generally, we do not believe that the appeals process should provide a forum for MA organizations to challenge the accuracy of plan rating data as such data has often been made available to the sponsor and been subject to independent review (for example, HEDIS, CAHPS) prior to their use in QBP determinations. However, we acknowledge that while MA organizations often have access to the their raw performance data, the data sets we actually develop and use for the calculation of some of the performance measures may not be made available to the MA organization until they are released to them during the star rating preview period or through the technical report proposed here (for example, call center studies, appeals processing analysis). With respect to those data sets, we think it is appropriate to afford MA organizations the opportunity to challenge their accuracy during an appeal. Therefore, we propose to limit the scope of the hearing officer's consideration concerning the underlying data sets to those that have not been previously subject to independent validation. We are soliciting comments on whether this is an appropriate limitation on the scope of a QBP status appeal.

We expect that the appropriately limited scope of the appeal means that the relevant issues can be developed sufficiently for review by a hearing that would be conducted on the record, unless the parties requested and the hearing officer approved, a live or telephonic hearing. Also, the parties will not be permitted to conduct discovery as the only facts at issue will already have been sufficiently developed by CMS and in the QBP technical report contractor.

In determining the appropriate official to conduct a QBP appeal, we must consider issues of expertise and efficiency. We are proposing to designate a hearing officer who was not directly involved in the QBP determinations but who has sufficient understanding of the QBP methodology to promptly and effectively consider an MA organization's appeal. The designated hearing officer for the purpose of these appeals may or may not be the CMS Hearing Officer.

The hearing officer would be required to issue his or her decision on or before May 15 of the year preceding the year in which the plans for which the QBP is to be applied will be offered. This deadline is necessary to afford MA organizations time to incorporate their QBP status into their plan bids, due to us by the first Monday in June. The hearing officer's decision would be final and binding on both the MA organization and CMS. In the event that the hearing officer finds that CMS' QBP determination was incorrect, we would be obligated to recalculate the organization's QBP status based on the hearing officer's findings.

We would have the right to revise, on its own initiative, an MA organization's QBP status at any time after the initial release of the QBP determinations through May 15 of each year. We may take this action on the basis of any credible information, including the technical report issued pursuant to the process proposed here, which demonstrates that the initial QBP determination was incorrect.

At this time, we are not proposing another level of administrative review beyond the hearing officer. While many of our administrative processes include the potential for review by the CMS Administrator, given the timing considerations of concern for both CMS and the MA organizations, we have opted not to propose Administrator review in these cases. We expect that the time between our notification to MA organizations of their QBP status and the date by which organizations need to have certainty concerning their QBP status to develop their MA plan bids each year may only be sufficient to accommodate the completion of the technical report and the hearing officer review. We believe that it would not benefit MA organizations to afford them an appeal right which they likely may not be able to avail themselves of in time to affect their bid calculations. However, we are soliciting comments on the need for an independent contractor level review prior to an appeal to be conducted by a hearing officer designated by CMS or an Administrator-level review both in terms of its contribution to administrative due process and its impact on the annual MA bid submission timeline.

C. Clarify Various Program Participation Requirements

The proposed regulations in this section clarify existing regulations or implement new requirements consistent with existing policy guidance to assist sponsoring organizations with attaining the goals envisioned by the Congress when the legislation implementing the Medicare Advantage and Prescription Drug Benefit programs was first passed. These clarifications are detailed in Table 4.

TABLE 4: Provisions to Clarify Various Sponsor Program Participation Requirements

PROVISION	PART 422		PART 423	
	Subpart	Section	Subpart	Section
Clarify Payment Rules for Non-contract Providers	Subpart E	§422.214	N/A	N/A
Pharmacist Definition	N/A	N/A	Subpart A	§423.4
Prohibition on Part C and D Program Participation by Organizations Whose Owners, Directors, or Management Employees Served in a Similar Capacity with Another 0rganization that Terminated its Medicare Contract within the Previous 2 Years	Subpart K	§422.506 §422.508 §422.512	Subpart K	§423.507 §423.508 §423.510
Timely Transfer of Data and Files When CMS Terminates a Contract with a Part D Sponsor	N/A	N/A	Subpart K	§423.509
Review of Medical Necessity Decisions by a Physician or other Health Care Professional and the Employment of a Medical Director	Subpart M	§422.562 §422.566	Subpart M	§423.562 §423.566
Compliance Officer Training	Subpart K	§422.503	Subpart K	§423.504
Removing Quality Improvement Projects and Chronic Care Improvement Programs from CMS Deeming Process	Subpart D	§422.156	N/A	N/A
Definitions of Employment-Based Retiree Health Coverage and Group Health Plan for MA Employer/Union-Only Group Waiver Plans	Subpart C	§422.106	N/A	N/A

1. Clarify Payment Rules for Non-Contract Providers (§ 422.214)

Section 1866(a)(1)(O) of the Act and regulations at § 422.214(b) require that, when paid by an MA organization for services furnished to an MA plan enrollee, a non-contracting provider of services (for example, a hospital, skilled nursing facility or home health agency) must accept, as payment in full, the amounts that the provider could collect if the beneficiary were enrolled in Original Medicare. While this provision acts as a cap on what an MA organization is required to pay a non-contracting provider of services, if the provider of services bills the MA organization an amount that is less than the Original Medicare payment amount, the MA organization is only obligated to pay the amount billed.

Payment disputes have occurred in recent years for services provided on a non-contract basis to MA enrollees by providers of services that are paid under prospective payment (PPS) methodologies, such as hospitals and home health agencies. In several cases, MA organizations have interpreted requests for payment by such providers to be requests for amounts less than the amount that would be paid under Original Medicare. This is because, under PPS methodologies, providers are to submit estimated charges, which are then combined with diagnostic information in pricing software to determine the PPS payment rate for the service. Under Original Medicare, if these estimated charges are less than the PPS payment amount produced by the Medicare pricing software, the higher Medicare payment amount is paid. Because this is the method for requesting payment at the Original Medicare payment amount under the Original Medicare program, we believe that the same information should similarly be treated as a request for the full Medicare payment amount when submitted to an MA organization in a request for payment unless the provider has made clear that it intends to bill the MA organization less than the Original Medicare amount. Thus, if the provider of services notifies the MA organization in writing that it intends to bill less than the payment amount it would receive under Original Medicare, consistent with longstanding policy, the MA organization may pay the provider the lower amount that is billed.

In response to questions about this issue, CMS clarified its expectations for plans and out-of-network providers in its Out-of-Network Payment Guide released February 25, 2010. This guidance reflected CMS' longstanding policy that if a non-network facility such as a hospital, skilled nursing facility, or home health agency renders services which were not arranged by the plan, a non-private-fee-for-service MA organization may pay the lesser of the Original Medicare amount or a lower billed amount if it is clear that the provider is billing for less than the Original Medicare rate. However, the guide also clarified that when a provider of services that is paid under a PPS system under Original Medicare submits the same information to an MA organization that it would submit to Original Medicare for the services in question, this should be considered a bill for the PPS amount (and not the

"billed" or "charge" amount from the claim) that Original Medicare would pay in the case of the same submission.

We propose to reflect the policy set forth in our February 25, 2010 guidance in the regulations governing payment to non-contract providers by adding a new paragraph (c) to § 422.214 to provide that a request for payment from an MA organization by a non-contract provider paid under a PPS methodology under Original Medicare is deemed to be a request to be paid at the Original Medicare payment rate unless the provider has notified the MA organization in writing that it wishes to bill less than the Original Medicare payment amount.

We also think it is important to clarify in this proposed rule that MA organizations offering regional PPO MA plans must always pay non-contract providers the Original Medicare payment rate in those portions of their service area where they are meeting requirements for access to services by non-network means as described in § 422.111(b)(3)(ii). We believe this requirement is justified under Medicare access requirements at section 1852(a)(2)(A) of the Act, which specify that an MA plan may meet access requirements if it pays providers at the Original Medicare payment rate.

We propose adding a new paragraph (d) to § 422.214 clarifying that an MA organization must always pay non-contract providers at least the Original Medicare payment rate in those portions of its service area where it is meeting access to services requirements by non-network means under § 422.111(b)(3)(ii).

2. Pharmacist Definition (§ 423.4)

Pursuant to our authority under section 1860D–4(b)(3)(A)(i)and 1860D–4(c)(2)(A)(i) of the Act, we propose to codify our understanding that, for purposes of the Part D program, a pharmacist is an individual with a current, valid license to practice pharmacy issued by the appropriate regulatory authority of any of the states or territories of the United States or the District of Columbia (D.C.) (collectively referred to as "United States authorities"). We propose adding a definition for the word "pharmacist" to § 423.4 in Subpart A to reflect this understanding.

The proposed change is prompted by recent Medicare Part D sponsor audit findings in which CMS found that at least some Part D sponsors were relying on pharmacists not licensed by United States authorities to make clinical judgments associated with the administration of the Part D benefit. We believe that there are potential threats to beneficiary safety and access when decisions are made by clinicians who are not licensed by United States authorities. As Medicare provides coverage for services throughout the United States, beneficiaries should be able to expect that individuals making clinical decisions related to their access to pharmaceuticals are experts in United States pharmaceutical practice; make clinical decisions consistent with the Federal Drug Administration (FDA) prescribing information for products; and are knowledgeable about the range of pharmaceutical products available on the United States market, appropriate generic substitutions, and over-the-counter and behind-the-counter products. We believe that requiring pharmacists to be licensed by United States authorities will help guarantee that Part D sponsors meet these expectations.

3. Prohibition on Part C and D Program Participation by Organizations Whose Owners, Directors, or Management Employees Served in a Similar Capacity With Another Organization That Terminated Its Medicare Contract Within the Previous 2 Years (§ 422.506, § 422.508, § 422.512, § 423.507, § 423.508, and § 423.510)

In our final rule (75FR 19678) entitled "Policy and Technical Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs." that appeared in the April 15, 2010 **Federal Register**, we modified § 423.508 by adding a paragraph (e) stating that as a condition precedent to CMS' consent to a mutual termination, CMS requires language in the termination agreement prohibiting the sponsor from applying for new contracts or service area expansions for a period of up to 2 years, absent circumstances warranting special consideration. Similarly, in § 423.504(b), we added a new paragraph (b)(6) stating that as a necessary condition to contract as a Part D sponsor, an organization must not have terminated a contract by mutual consent and, as part of that consent, agreed not to apply for new contracts or service area expansions for a period of up to 2 years. Similar modifications were made for the MA regulations. Specifically, we modified § 422.508 by adding paragraph (c) and § 422.503(b) by adding a new paragraph (b)(7). These changes ensured consistency across all situations in which a sponsor elects—through non-renewal, termination, or mutual termination—to discontinue its participation in the Part C or D programs.

In this rule we are proposing to amend the 2-year new contract prohibition in both § 422.508 and § 423.507 by adding a new subsection entitled "Prohibition of Part C and D program participation by organizations whose owners, directors, or management employees served in a similar capacity with another organization that terminated its Medicare contract within the previous 2 years." We also propose adding similar clarifying language to the existing language at § 422.506, § 422.512, 423.508, and § 423.510. Under sections 1857(e)(1) and 1860D–12(b)(3)(D) of the Act, the Secretary may add terms to the contracts with MA and Part D sponsors including requiring the organization to provide the Secretary with such information as the Secretary may find necessary and appropriate. It is our belief that to carry out the intentions of the 2-year exclusion we need to ensure that new contracting organizations are not actually repackaged versions of the same organizations that elected to discontinue their participation in the Part C and D programs. In order to meet this goal we want to evaluate the new organization's management and ownership to detect a situation in which "ABC, Inc." applies for a new contract as "XYZ, Inc." Therefore, we are proposing a requirement which will allow us to determine whether the primary players in the organization submitting the new application are the same as those in an organization that has recently non-renewed, terminated, or mutually terminated a Medicare contract. We are proposing to develop standards and benchmarks regarding the percentage of ownership or management control that we would conclude is problematic.

This proposed requirement will assist CMS in prohibiting and preventing such organizations from gaming the Medicare program by reapplying for a contract as a new organization during the 2-year ban, when the applying organization has common ownership and management control. Since the start of the Medicare Advantage and Part D programs, we have seen MA organizations and Part D entities that terminated a contract for various reasons apply as a new organization with Medicare within the 2-year exclusion period with the same ownership and management structure as the previous organization. This proposed requirement will help ensure that the provisions of the 2-year application prohibition are given full effect.

Therefore, we are proposing that the 2-year ban on new Part C or D sponsor contracts to which non-renewing, terminating, or mutually terminating organizations are currently subject under the regulation be expanded to

include organizations owned or managed by an individual (referred to as a "covered person") who served in a similar capacity for a previously terminated or non-renewed Part C or D organization. Under this proposed regulation, we would then require as part of the contract application process that applicants supply CMS with full and complete information as to the identity of each "covered person" associated with the organization. For this proposal we are defining "covered persons" to include—

- All owners of applicant organizations who are natural persons (other than shareholders who: (1) Have an ownership interest of less than 5 percent; and (2) acquired the ownership interest through public trading). In addition, is a natural person who is an owner in whole or part interest in any mortgage, deed of trust, note or other obligation secured (in whole or in part) by the entity or any of the property assets thereof, which whole or part interest is equal to or exceeds 5 percent of the total property, and assets of the entity; or
- An officer or member of the board of directors or board of trustees of the entity, if the entity is organized as a corporation.

This standard for disclosure is modeled after the authority granted to the Secretary by section 1124(a) of the Act (42 U.S.C. 1320a–3) which provides for disclosure standards for, among other entities, Medicaid managed care organizations and Medicare carriers and fiscal intermediaries.

We solicit comments on whether plan sponsors, or other stakeholders consider the proposed definition of "5 percent or more" truly represents current market conditions. We are requesting comments on this section because we do not want to arbitrarily decide on the percentage of interest the above mentioned persons could have in an organization, especially if this percentage does not reflect standard business practices.

We are proposing to amend § 422.508 and § 423.507 to make the 2-year exclusion applicable to organizations for which any covered persons were also covered persons for the excluded organization. We are proposing to make similar amendments to § 422.506, § 422.512, § 423.508, and § 423.510.

4. Timely Transfer of Data and Files When CMS Terminates a Contract With a Part D Sponsor (§ 423.509)

Federal regulations at § 423.509(a)(1) through (a)(12) clearly defines the circumstances under which we have the authority to terminate a Part D sponsor's contract. When we terminate a contract, we must have assurances that the terminated Part D sponsor will maintain sufficient staff and operations to effectuate a smooth transition of the sponsor's enrollees to new Part D coverage in a fashion that facilitates continuity of care and fiscal responsibility. These responsibilities include providing timely documentation requested by CMS, retaining all documents for the periods specified in the Federal laws and CMS regulations (see § 423.505(d) and (e)) and otherwise providing the resources necessary for an orderly transition of Medicare beneficiaries to their newly assigned or selected plan.

In order for a timely and orderly transition to occur, the terminated Part D sponsor must provide us with certain critical Medicare beneficiary data including information to identify each affected beneficiary, pharmacy claims files, true out-of-pocket (TrOOP) cost balances, and information concerning pending grievances and appeals. Data such as TrOOP balances are necessary to correctly place the beneficiary in the benefit and provide the catastrophic level of coverage at the appropriate time. This list is an example of various required data and is not intended to be all inclusive of the data necessary to assure a timely and smooth transition for the Medicare beneficiary when leaving the terminated plan and enrolling in a new plan.

The requirement to provide such data and files is already clearly articulated for voluntarily non-renewing Part D plan sponsors (§ 423.507(a)(4)); for contracts terminated by mutual consent (§ 423.508(d)); and for contracts terminated by the plan sponsor for cause (§ 423.510(f)). However, the regulation is currently silent regarding contracts terminated by CMS. Therefore, in order to protect both Medicare beneficiaries and CMS and to ensure that the requirement to provide such data and files is clear for all types of contract non-renewals and terminations, we are proposing to add a new section (e) "Timely transfer of data and files" to § 423.509 (Termination of Contract by CMS) to state that should the Part D plan sponsor's contract be terminated by CMS, the Part D sponsor must ensure the timely transfer of any data or files. This language will inform Part D sponsors being terminated by CMS that they are required by Federal regulation to timely transfer all requested data and files to CMS or its designee for the required time as specified under § 423.505(d) and (e).

Sponsors that fail to provide the necessary data directly harm beneficiaries, as these individuals will likely be charged incorrect amounts for their medications when transferring to a new Part D sponsor. Specifically, beneficiaries may be forced to re-satisfy deductible requirements under the new plan, or prevented from moving into the catastrophic phase of the benefit (where there are minimal out-of-pocket costs) when otherwise eligible. Therefore, plans that do not comply with this section may be subject to a Civil Monetary Penalty as defined by § 422.752(c) and § 423.752(c).

5. Review of Medical Necessity Decisions by a Physician or Other Health Care Professional and the Employment of a Medical Director (§ 422.562, § 422.566, § 423.562, and § 423.566)

Pursuant to our authority under sections 1852(g) and 1860D–4(g) of the Act, which incorporates by reference paragraphs (1) through (3) of section 1852(g), CMS established procedures for making organization determinations and reconsiderations regarding health services under Part C, and coverage determinations and redeterminations regarding covered drug benefits under Part D. These requirements are codified in our regulations at part 422 subpart M part 423 subpart M, respectively.

Section 1852(g)(1)(A) of the Act gives us broad authority to determine how best to establish the procedures Part C organizations must follow for processing organization determinations. Furthermore, section 1852(g)(2)(B) of the Act requires Part C plan reconsiderations related to medical necessity determinations to be made by physicians with appropriate expertise in the applicable field of medicine, and that those physicians be different from a physician involved in the initial determination. Although § 422.590(g)(2) requires physician review of adverse organization determinations that involve medical necessity, we do not specify in this provision or elsewhere in part 422 subpart M who must conduct the initial medical necessity determinations. Given the language in § 422.590(g)(2), we believe Congress expected that appropriate health care professionals would review initial determinations involving medical necessity. Further, by requiring that all organization determinations and plan reconsiderations involving medical necessity be reviewed by an appropriate health care professional with sufficient medical and other expertise, including knowledge of the Medicare program, enrolled beneficiaries would be assured of consistent and accurate decisions by Part C organizations. We propose to modify our requirements in § 422.566 by

adding a new paragraph (d), which would require organization determinations that involve medical necessity to be reviewed by a physician or other appropriate health care professional with sufficient medical and other expertise, including knowledge of the Medicare program. We also propose to require the physician or other health care professional to have a current and unrestricted license to practice within the scope of his or her profession in a State, Territory, Commonwealth of the United States (that is, Puerto Rico), or the District of Columbia.

Consistent with the rationale for requiring organization determinations that involve medical necessity to be reviewed by a physician or other appropriate health care professional with sufficient medical and other expertise, including knowledge of the Medicare program, and pursuant to our authority under section 1857(e) of the Act to add additional terms to our contracts with MA organizations as necessary and appropriate, we also propose to revise § 422.562(a) by adding paragraph (4), which will require each MA organization to employ a medical director who is responsible for ensuring the clinical accuracy of all organization determinations and reconsiderations regarding medical necessity. Under our proposal, the Medical Director must be a physician with a current and unrestricted license to practice medicine in a State, Territory, Commonwealth of the United States (that is, Puerto Rico), or the District of Columbia. Because the requirement to employ a medical director will enhance the coordination and accountability of plan operations and strengthen quality assurance activities across the organization, we believe that this proposal strikes the appropriate balance between our interest in ensuring that plans are properly administering the Part C benefit, and the plans' interest in minimizing their administrative burden.

Section 1860D–4(g) of the Act requires Part D plan sponsors to meet the requirements for processing requests for coverage determinations and redeterminations in the same manner as such requirements apply to Part C organizations with respect to organization determinations and reconsiderations. As noted above, we are proposing a requirement that Part C organizations employ (1) physicians or other appropriate health care professionals with sufficient medical and other expertise, including knowledge of the Medicare program, to review organization determinations involving medical necessity; and (2) a medical director who is responsible for ensuring the clinical accuracy of all organization determinations and reconsiderations regarding medical necessity. Consistent with the proposed changes to the Part C organization determination process, we propose adding paragraph (d) to § 423.566, which will require Part D coverage determinations involving medical necessity to be reviewed by a physician or other appropriate health care professional with sufficient medical and other expertise, including knowledge of the Medicare program, and require the physician or other health care professional to have a current and unrestricted license to practice within the scope of his or her profession in a State, Territory, Commonwealth of the United States (that is, Puerto Rico), or the District of Columbia. Also, we propose revising § 423.562(a) by adding paragraph (5), which will require each Part D plan sponsor to employ a Medical Director who is responsible for ensuring the clinical accuracy of all coverage determinations and redeterminations that involve medical necessity issues, and who must be a physician with a current and unrestricted license to practice medicine in a State, Territory, Commonwealth of the United States (that is, Puerto Rico), or the District of Columbia. In addition to being consistent with the proposed changes to the Part C organization determination process, we believe that the proposed changes are necessary under Part D to prevent certain issues that have been discovered while auditing plan sponsors, such as: (1) Preventing enrollees who were stable on a protected-class drug from accessing that drug; (2) applying inappropriate prior authorization and step therapy criteria when adjudicating prescriptions; (3) issuing denials based on a lack of medically accepted indications when medically accepted indications were specified in at least one of the applicable compendia; and (4) failing to provide transition supplies for existing members who experienced formulary changes across plan years. We believe the proposed changes to § 423.562(a) and § 423.566 will enhance Part D plan sponsors' ability to ensure consistent formulary administration, application of plan coverage rules, and assist in the early identification and resolution of potential quality concerns.

6. Compliance Officer Training (§ 422.503 and § 423.504)

Pursuant to our authority under sections 1860D–4(c)(1)(D) and 1860D–12(b)(3)(C) of the Act which incorporates by reference section 1857(d) of the Act, we propose to clarify that MA organization and Part D sponsor compliance officers must complete annual MA and/or Part D compliance training starting in 2013. Organizations applying for the 2013 contract year that are new to the MA or Part D programs must have their compliance officers obtain training in 2012 to prepare for the upcoming contract year. We propose adding § 422.503(b)(4)(vi)(B)(1)(i) and (ii) to subpart K and § 423.504(b)(4)(vi)(B)(1)(i) and (ii) to subpart K to reflect this clarification.

Under § 422.503(b)(4)(vi)(B) and § 423.504(b)(4)(vi)(B), MA organizations and Part D sponsors (collectively referred to as plan sponsors) must designate a compliance officer to oversee the day-to-day operations of the compliance program. We are proposing these training clarifications because our reviews have found that many MA and Part D compliance officers lack basic knowledge about the requirements of the MA and Part D programs. Compliance officers are the individuals whom we expect to be among the most familiar of any sponsor's executives with basic program requirements. Our reviews have also found that many compliance officers do not seem to understand that we expect sponsors to actively ensure compliance with Medicare program requirements; that those requirements are distinct from any commercial health or drug plan benefits they may administer; and that they should not solely rely on subcontractors or CMS to identify and resolve Part C and D contract compliance matters for them.

We believe that requiring annual training for compliance officers will help to address these deficiencies by emphasizing the critical role of the compliance officer in maintaining and ensuring program compliance. Our expectations of Medicare plan sponsor compliance officers are different from what the expectations might be for a commercial health insurance compliance officer. We expect plan sponsors' compliance officers to have, at minimum, a basic, working knowledge of the MA and/or Part D programs and an awareness of the corresponding operational activities within their organizations. Program knowledge and operational awareness are necessary skills for a compliance officer, in addition to being able to implement an effective compliance program. We rely on the compliance officer to have the authority and resources needed to foster compliance-oriented organizational processes and effectuate changes needed to ensure sustained program

compliance. We will announce our expectations regarding the content and hours of annual training required in forthcoming guidance. At this time, we expect that one to two days of annual Medicare Part C and D specific compliance training offered by an entity with expertise in MA and Part D compliance will be sufficient. We are exploring the current programs available as well as considering offering CMS-sponsored training.

7. Removing Quality Improvement Projects and Chronic Care Improvement Programs From CMS Deeming Process (§ 422.156)

We have delegated our authority to evaluate whether an MA organization is in compliance with certain Medicare requirements to three private accrediting organizations. This evaluation method is known as "deeming," and is conducted as a part of the audit process. Currently, an MA organization may be deemed to meet requirements in the following areas:

- Quality improvement.
- Confidentiality and accuracy of enrollee records.
- Anti-discrimination.
- Access to services.
- Information on advance directives.
- Provider participation rules.
- Access to covered drugs.
- Drug utilization management, quality assurances measures and systems, medication therapy management, and a program to control fraud, waste, and abuse.
- Confidentiality and accuracy of enrollee prescription drug records.

We require all MA organizations to submit their quality improvement projects (QIPs) and chronic care improvement programs (CCIPs) on an annual basis. We propose to exclude the QIPs and CCIPs as components of the deeming process. Removing the QIPs and CCIPs from the deeming process avoids redundancy and reduces the burden for the MA organizations. Further, this process provides for improved consistency in the evaluation and assessment of the QIPs and CCIPS. Improved consistency in the assessment of the QIPs and CCIPs is important as these elements may be incorporated into future plan ratings. The QIPs and CCIPs will be reviewed and evaluated by CMS or an appropriate CMS contractor. Therefore, we propose to amend § 422.156 to specify that the deeming process should focus on evaluating and assessing the overall quality improvement (QI) program, but that QIPs and CCIPs will be excluded from the deeming process.

8. Definitions of Employment-Based Retiree Health Coverage and Group Health Plan for MA Employer/Union-Only Group Waiver Plans (§ 422.106)

As provided under section 1857(i) of the Act and as codified at § 422.106(d), we may waive or modify requirements that hinder the design of, the offering of, or the enrollment in, an MA plan offered by one or more employers, labor organizations, or combination thereof, or that is offered, sponsored, or administered by an entity on behalf of one or more employers or labor organizations, to furnish benefits to the employers' employees, former employees (or combination thereof) or members or former members (or combination thereof) of the labor organizations. The purpose of this authority is to facilitate the offering of MA plans under contracts between MA organizations and employers, labor organizations, or the trustees of a fund established by one or more employers or labor organizations (or combination thereof). Following implementation of the Medicare Modernization Act (MMA), similar authority was established with respect to Part D sponsors in relation to employment-based retiree health coverage at section 1860D–22(b) of the Act. In addition, unlike the original authority established for employment-based retiree health coverage under the MA program at section 1857(i) of the Act, section 1860D–22(c) of the Act establishes definitions of terms related to this authority, including of the terms "employment-based retiree health coverage" and "group health plan." The definition of "group health plan" at section 1860D–22(c)(3) of the Act refers to the definition of such term in section 607(1) of the Employee Retirement Income Security Act of 1974 (ERISA).

Since the enactment of the MMA, we have become concerned that MA organizations have been contracting with entities providing coverage that, in some instances, cannot properly be characterized as "employment-based" group health plan coverage—for example, with professional or group associations. Examples of existing employer contracts furnished through an association include a professional trade association representing employers and its employees within the builders association; a professional trade association representing new car and heavy-duty truck dealers; and a professional trade association representing physicians and medical students. As provided in our subregulatory guidance on MA employer group/union sponsored group health plans, Chapter 9 of the Medicare Managed Care Manual (*http://www.cms.gov/manuals/downloads/mc86c09.pdf*), entitled "Employer/Union Sponsored Group Health Plans," we restrict employer/union group health plan enrollment in EGWPs and individual MA plans to beneficiaries who are Medicare eligibles of an employer/union sponsored group health plan. Thus, a beneficiary's enrollment in one of these MA plans must be based on receiving "employment-based" health coverage from an employer/union group health plan sponsor that has entered into a contractual arrangement with an MA organization to provide coverage or that has contracted directly with CMS to provide coverage for its Medicare eligibles. In that guidance, we also note that coverage obtained through a professional or other type of group association would not make a beneficiary eligible for these kinds of plans, except to the extent that the coverage obtained through the association can properly be characterized as "employment-based" group health plan coverage. We are aware that some MA organizations have contracted with professional or group associations and offered coverage via EGWPs to individuals who are members, but not employees, of such associations. While there is no reference to the ERISA definition of group health plan in section 1857(i) of the Act, we believe Congress did not envision granting access to EGWP waivers based on membership in an association or any entity that did not meet the definition of a group health plan, as defined under ERISA.

In order to provide clarification with respect to our requirements for offering employment-based retiree health coverage via an MA plan, we propose to codify—under the general authority provided at section 1857(i) of the Act—definitions of the terms "employer-sponsored group MA plan, "employment-based retiree health coverage," and "group health plan" at § 422.106(d)(4) through (6). These proposed definitions are consistent with those provided for Part D sponsors at § 423.454 and § 423.882. We also propose to change the reference to an MA plan at § 422.106(d) to a reference to an employer-sponsored group MA plan.

We solicit comment on our proposals to revise these definitions.

D. Strengthening Beneficiary Protections

This section includes provisions aimed at strengthening beneficiary protections under Parts C and D. Some of the proposals affecting both Parts C

and D include requiring that MA organizations and Part D sponsors must provide interpreters for all non-English speaking and limited English proficient callers, and periodically disclose to each beneficiary specific data for enrollees to use to compare utilization and out-of-pocket costs in the current plan year to the following plan year.

Changes affecting Part C include our proposal to extend the mandatory maximum out-of-pocket (MOOP) amount requirements to regional PPOs, and prohibit the use of tiered cost sharing by MA organizations. Under Part D, we address the delivery of adverse coverage determinations.

In the area of Parts C and D marketing, proposals include requiring MA organizations' and Part D sponsors' agents and brokers to receive training and testing via a CMS endorsed or approved training program and extending the annual training and testing requirements to all agents and brokers marketing and selling Medicare products.

This information is detailed in Table 5.

TABLE 5: Provisions to Strengthen Beneficiary Protections

PROVISION	PART 422		PART 423	
	Subpart	Section	Subpart	Section
Agent and Broker Training Requirements	Subpart V	§422.2274	Subpart V	§423.2274
Call Center and Internet Website Requirements	Subpart C	§422.111	Subpart C	§423.128
Require Plan Sponsors to Contact Beneficiaries to Explain Enrollment by an Unqualified Agent/Broker	Subpart V	§422.2272	Subpart V	§423.2272
Customized Enrollee Data	Subpart C	§422.111	Subpart C	§423.128
Extending the Mandatory Maximum Out-of-pocket (MOOP) Amount Requirements to Regional PPOs	Subpart C	§422.100 §422.101	N/A	N/A
Prohibition on Use of Tiered Cost Sharing by MA Organizations	Subpart F	§422.262	N/A	N/A
Delivery of Adverse Coverage Determinations	N/A	N/A	Subpart M	§423.568
Extension of Grace Period for Good Cause and Reinstatement	Subpart B	§422.74	Subpart B	§423.44
Translated Marketing Materials	Subpart V	§422.2264	Subpart V	§423.2264

1. Agent and Broker Training Requirements (§ 422.2274 and § 423.2274)

a. CMS Approved or Endorsed Agent and Broker Training and Testing (§ 422.2274 and § 423.2274)

Section 1851(h)(2) of the Act requires us to establish marketing standards for Medicare Advantage organizations. Section 1860D–1(b)(1)(B)(vi) of the Act requires that we ensure that beneficiaries are not misled or provided inaccurate information by Part D sponsors. Additionally, section 1851(j)(2)(E) of the Act provides the Secretary the authority to establish limitations with respect to agent and broker training. Section 1860D–4(l)(2) of the Act applies the same requirements with respect to sales and marketing activities to Part D sponsors.

Our current regulations at § 422.2274(b) and (c) and § 423.2264(b) and (c), require MA plans and Part D sponsors to ensure agents selling Medicare products are trained and tested annually on Medicare rules and regulations specific to the plan products they intend to sell. Since the training and testing requirements were implemented following the enactment of MIPPA, MA organizations, and Part D sponsors conducted training and testing largely on their own or through third party vendors. We have reviewed some training programs upon request by third party vendors, but we do not routinely review MA organization, Part D sponsor, or third party vendor training programs to ensure their comprehensiveness or accuracy.

To develop a uniform understanding of the Medicare program requirements and further ensure beneficiary protection, we launched a pilot online training and testing module on July 31, 2009 for the CY 2010 marketing season. Twenty-six MA organizations and Part D sponsors volunteered to participate in the pilot, and about 3,700 agents and brokers were trained and tested. About 85 percent of trained agents and brokers passed the certification exam.

Based on our experience with the pilot, we have concluded that we should move toward greater standardization of agent and broker training and testing. We believe that it is in the best interest of beneficiaries who are educated about Medicare health plan options by plan agents and brokers that those agents and brokers be consistently and thoroughly trained on the fundamentals of Medicare regulations. More specifically, we believe that MA organizations' and Part D sponsors' agents and brokers not only should be annually trained and tested on Medicare rules and regulations specific to the products they intend to sell, as currently provided under § 422.2274(b) and (c) and § 423.2274(b) and (c), but that the training and testing vehicles MA organizations and Part D sponsors use meet our minimum standards.

To that end, we are proposing to revise § 422.2274(b) and (c) and § 423.2274(b) and (c) to require MA organizations' and Part D sponsors' agents and brokers to receive training and testing via a CMS-endorsed or approved training program. Following implementation of this proposal, we

would review and endorse or approve one or more entities to provide Medicare agents and brokers with their annual testing and training. We would review and approve or endorse proposed training programs for comprehensiveness and consistency with marketing rules and policies. We are considering implementing this requirement through a request for proposal (RFP) competitive process; however, we seek comments and suggestions about alternatives to using the RFP competitive process. We note that these proposed new requirements would also be applicable to section 1876 cost contract plans, since in our April 15, 2010 final rule (75 FR 19784 through 19785), we extended the Part 422 requirements regarding MA marketing to section 1876 cost contract plans by cross-referencing the MA marketing requirements at § 417.428.

We believe this proposed change would ensure that agents and brokers selling Medicare products have a comprehensive and consistent base of understanding of Medicare rules and would eliminate the duplication of training and testing requirements for agents and brokers who contract with multiple plans.

b. Extending Annual Training Requirements to All Agents and Brokers (§ 422.2274 and § 423.2274)

In addition to the proposed changes specified above to require that MA organization and Part D sponsor training and testing programs be CMS endorsed or approved, we propose a correction to our current regulations at § 422.2274(b) and (c) and § 423.2264(b) and (c), which require MA plans and Part D sponsors to ensure agents selling Medicare products are trained and tested annually on Medicare rules and regulations specific to the plan products they intend to sell. In our November 2008 interim final rule implementing the MIPPA agent/broker requirements (73 FR 67413), we inadvertently made a drafting error and applied the annual agent and broker training and testing requirements only to independent (such as, non-employee) brokers or agents. Our intent, which was initially stated in our September 2008 interim final rule (73 FR 54239), was to require that all agents and brokers, whether independent or employed by a plan, be subject to our annual training and testing requirements. We believe it is critical that all agents and brokers selling Medicare products receive training and testing on Medicare rules, regulations and the plan-specific products they intend to sell.

Consistent with our statutory authority at sections 1851(j)(2)(E) and 1860D–4(l)(2) of the Act, we are proposing to revise § 422.2274 and § 423.2274 to correctly apply these requirements to all agents and brokers marketing and selling Medicare products. We also note that these proposed new requirements would be applicable to section 1876 cost contract plans, since in our April 15, 2010 final rule (75 FR 19784 through 19785), we extended the Part 422 requirements regarding MA marketing to section 1876 cost contract plans by cross-referencing the MA marketing requirements at § 417.428.

2. Call Center and Internet Web Site Requirements (§ 422.111 and § 423.128)

a. Extension of Customer Call Center and Internet Web Site Requirements to MA Organizations (§ 422.111)

As provided in section 1852(c)(1)of the Act and as codified at § 422.111(b), MA organizations must disclose in a clear, accurate, and standardized form to each enrollee, at the time of enrollment and annually thereafter, detailed information about the MA plans they offer. Section 1860D–4(a)(1) of the Act provides similar authority for Part D sponsors, which is codified at § 423.128(b). Section 1860D–4(a)(3) of the Act provides additional authority to require that Part D sponsors provide specific plan information on a timely basis to plan enrollees upon request through a toll-free telephone number, and that they make available on timely basis through an Internet Web site information on specific formulary changes under Part D plans. This authority is codified at § 423.128(d)(1) and § 423.128(d)(2), which require that Part D sponsors operate a toll-free customer service that is open during usual business hours and provide such service in accordance with standard business practices, as well as an Internet Web site that, at a minimum, provides the information Part D sponsors are required to provide enrollees at the time of enrollment and annually thereafter under § 423.128(b).

Although similar call center and Internet Web site requirements were never codified for MA plans, we have required through subregulatory guidance (the Medicare Marketing Guidelines at *http://www.cms.gov/ManagedCareMarketing/Downloads/R91MCM.pdf*) that MA organizations comply with the same requirements regarding customer service call centers as Part D sponsors, and—for those offering Part D benefits through MA–PD plans—all Part D sponsor Internet Web site requirements.

We believe it is important to clarify that current and prospective enrollees of MA plans should have the same access to customer service call centers and information via an Internet Web site as current and prospective enrollees of a Part D plan in order to obtain more information about plan coverage and benefits. Furthermore, as a practical matter, most MA organizations must offer MA–PD plans in order to offer MA-only plans and are therefore already operating customer service call centers and Internet Web sites consistent with our regulatory and subregulatory requirements. Therefore, under our authority at section 1852(c) of the Act to require that MA organizations disclose MA plan information upon request, as well as our authority under section 1857(e) of the Act to specify additional contractual terms and conditions the Secretary may find necessary and appropriate, we propose to extend call center and Internet Web site requirements to MA organizations. Specifically, we propose to amend § 422.111 by adding a new paragraph (g) to expressly require MA organizations to operate a toll-free customer call center that is open during usual business hours and provides customer telephone service in accordance with standard business practices, as well as to provide current and prospective enrollees with information via an Internet Web site and in writing (upon request). We also propose deleting paragraph § 422.111(f)(12), which requires certain information—including the evidence of coverage, summary of benefits, and information about network providers—be posted to an Internet Web site in the event that an MA organization has a Web site or provides MA plan information through the internet and move these requirements to § 422.111(g)(2)(i).

b. Call Center Interpreter Requirements (§ 422.111 and § 423.128)

Pursuant to our authority under sections 1852(c)(1) and 1860D–4(a)(3)(A) of the Act to specify additional contractual terms and conditions the Secretary may find necessary and appropriate, we propose to clarify Medicare Part C and D requirements regarding current and prospective enrollee toll-free customer call centers. Specifically, we propose clarifying that MA organizations and Part D sponsors must provide interpreters for all non-English speaking and limited English proficient (LEP) callers. We propose adding new paragraphs § 422.111(g)(1)(iii) and

§ 423.128(d)(1)(iii), respectively, to reflect this clarification.

This proposed clarification is a result of findings from our call center monitoring, which revealed that a significant percentage of Medicare Part C and D sponsors were not providing foreign language interpreters for non-English speaking callers. For example, only 65 percent of Spanish speaking callers in our monitoring study were connected with an interpreter, and only 60 percent of Mandarin or Russian speaking callers were connected with an interpreter. The results varied widely among plan sponsors of all enrollment sizes. Some plan sponsors did not provide any interpreters at all. The preamble to our January 28, 2005 final rule (70 FR 4223) stated, "Call centers must be able to accommodate non-English speaking/reading beneficiaries. Plan sponsors should have appropriate individuals or translation services available to call center personnel to answer questions that beneficiaries may have concerning aspects of the drug benefit." Subsequently, the August 15, 2005 Medicare Marketing Guidelines contained this statement from the preamble. When we followed up with sponsors and discussed the lack of interpreters for LEP callers, many indicated they were unaware of the requirement to provide interpreters to LEP callers. This clarification addresses the problem by explicitly codifying the requirement to provide interpreters for LEP callers in regulations. The origin of this requirement to serve LEP individuals is Title VI of the Civil Rights Act of 1964, which, in part, prohibits discrimination in federal programs based upon national origin. Additionally, this clarification is consistent with fulfilling the goals of Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and with the HHS Secretary's implementation of the Executive Order as described in the Strategic Plan for Implementing Access to HHS Programs and Activities by LEP Persons and the CMS Language Access Plan. Providing interpreters for LEP beneficiaries is a key component of the CMS Language Access Plan and helps ensure that beneficiaries have access to all of the information they need to make appropriate decisions about their health care. Our rules do not require translation of marketing materials into all languages; therefore, call center interpreters are a safety net in geographic areas where only a few beneficiaries are LEP because interpreters can help answer questions and translate marketing materials over the phone. Compliance with the Civil Rights Act is included in plan sponsors' contractual requirements in accordance with § 422.503(h)(1) and § 423.505(h)(1).

3. Require Plan Sponsors To Contact Beneficiaries To Explain Enrollment by an Unqualified Agent/Broker (§ 422.2272 and § 423.2272)

The regulations implementing section 103 of MIPPA (§ 422.2268, § 422.2272, § 422.2274, § 422.2276, § 423.2268, § 423.2272, § 423.2274, and § 423.2276), included a number of provisions that prohibited or limited certain sales and marketing activities by MA organizations and PDPs. Specifically, § 422.2272 and § 423.2272 require plan sponsors that used independent agents and brokers for their sales and marketing to only use State licensed and appointed agents or brokers. Under these provisions, plan sponsors must also report the termination of agents or brokers to the State.

We have become aware through recent audits that when plan sponsors discover that an unlicensed agent has assisted with an enrollment, they are not notifying the beneficiary involved that the agent representing them was unlicensed. Beneficiaries rely heavily on information they receive from agents regarding plan benefits and costs and should have the opportunity to ask additional questions or reconsider their enrollment when they have been enrolled in a plan by an unlicensed agent. Therefore, we are proposing to revise § 422.2272(c) and § 423.2272(c) to require that MA organizations and Part D sponsors must terminate unlicensed agents upon discovery and notify any beneficiaries who were enrolled in their plans by an unlicensed agent in order to give them the option of confirming enrollment in the plan or making a plan change.

We believe that the proposed changes are consistent with the statute and with the beneficiary protections we specified in our regulations implementing MIPPA. We also note that these proposed requirements would be applicable to section 1876 cost contract plans, since in our April 15, 2010 final rule (75 FR 19784 and 19785), we extended the Part 422 requirements regarding MA marketing to section 1876 cost contract plans.

4. Customized Enrollee Data (§ 422.111 and § 423.128)

Section 1852(c) of the Act requires MA organizations to disclose a detailed plan description in a clear, accurate, and standardized form to each Medicare enrollee in a MA plan offered by the organization. The plan description is to be provided at the time of enrollment and annually thereafter and includes items such as service area, premium, benefits, plan providers and coverage. Additionally, section 1860D–1(c)(3) of the Act requires Part D sponsors to provide comparative information to beneficiaries about their qualified prescription drug benefits, premiums, cost sharing, quality and performance, and results of consumer satisfaction surveys. Specifically, the Part D plan description includes items such as service area, benefits, premium, formulary, network pharmacies, and coverage. These requirements are codified at § 422.111 and § 423.128 and are implemented through the annual notice of change (ANOC) and evidence of coverage (EOC) documents, which must be furnished to all plan enrollees at least 15 days before the annual open election period.

While the ANOC describes plan benefit and cost sharing changes for the coming year, we are concerned that this information alone may not be enough to prompt enrollees to actively evaluate their plans annually with respect to plan costs, benefits, and overall value. In addition, we have received requests from the beneficiary advocacy community that MA organizations and Part D sponsors provide enrollees with a personalized dollar estimate of their out-of-pocket costs in the coming contract year based on their use of services in the current contract year. Therefore, in accordance with authority cited above, we propose to also require MA organizations and Part D sponsors to periodically provide each enrollee with enrollee specific data to use to compare utilization and out-of-pocket costs in the current plan year to projected utilization and out-of-pocket costs for the following plan year. We propose to add new paragraphs (12) and (11) to § 422.111(b) and § 423.128(b), respectively, to specify this requirement. Plans would disclose this information to plan enrollees in each year, in which a minimum enrollment period has been met, in conjunction with the annual renewal materials (currently the ANOC and EOC).

We are considering several options for implementing this data disclosure requirement, and we note that this proposal would only specify our authority to require such a disclosure. As we contemplate implementation and model designs moving forward, we seek suggestions and comments from MA organizations, Part D sponsors, the beneficiary community, and other external stakeholders related to the design, content, and the cost calculations to assist us in

implementing these provisions. In addition, we are considering running a pilot program for CY 2012 with a few MA organizations and Part D sponsors to test approaches to conveying customized beneficiary data, based on the comments and suggestions that we receive.

One option we are considering is a customized statement of the beneficiary's estimated out-of-pocket costs in the following year based on utilization of the same health care services as in the prior year. We recognize that projecting past health care utilization as a predictor of future use would yield only an estimate of enrollee out-of-pocket costs. However, we believe that such an estimate, with appropriate caveats, would illustrate in real dollar terms how the member's costs are likely to change in the coming year, and what this means for them. Such a statement would enable plan members to better understand how the costs of their plan are changing in the upcoming contract year and what that means for them if they remain in the plan and use similar services. This customized out-of-pocket cost statement would supplement general plan information in the ANOC and EOC documents as well as enhance the currently available information through tools such as Medicare Options Compare (MOC) and the Medicare Prescription Drug Plan Finder (MPDPF), which provide general information about plan costs. For example, the MOC approximates out-of-pocket costs based on self-selected health status and a national cohort sample of information calculated using data from the Medicare Current Beneficiary Survey. MPDPF allows a beneficiary to select certain drugs and calculate annual out-of-pocket costs, based on their expected use of those drugs. We intend for any customized out-of-pocket cost statement to provide personal information to beneficiaries that would help them consider using other tools and resources, including MOC and MPDPF, to determine whether to select a new plan. Such a statement would also include information for accessing these tools.

We are considering several different designs for showing enrollees how their expenses would change in the following year, in addition to changes in the maximum out-of-pocket (MOOP) amount and network service area for the next year (see Tables 6 through 8). Options for categorizing services that we are considering include the following: (1) Premium; a summation of cost-sharing for all MA services; all prescription drug costs; and the total out-of-pocket costs for the enrollee; (2) premium; MA cost-sharing detailing inpatient care (Part A), outpatient care (Part B), and supplemental benefits; prescription drug costs; and total costs; and (3) premium; a more detailed breakdown of costs for services, including information specifying the top 5 services utilized by each individual enrollee; as well as prescription drug costs and total costs. We seek comments on the categorizations described above. We also seek comments on including mandatory and/or optional supplemental benefits in the document, given their variety for individual enrollees or plan and impact on the overall premium cost.

Since all MA organizations must currently track utilization and beneficiary responsibility related to the MOOP and, in some cases, catastrophic limits, we do not anticipate that they will have difficulty in determining at least 6 months of actual beneficiary out-of-pocket cost liability. Since this statement is intended to be distributed in conjunction with the other renewal materials each fall, we understand that MA organizations and Part D sponsors will have only partial year data on beneficiary costs. Moreover, we also understand that people tend to incur increased utilization of services during the second half of the year, adding another trending factor to a calculation of average monthly or yearly cost. Therefore, we also seek comment as to whether the customized statement of costs should include six months of actual costs for each category described, an average monthly cost for each category described, or an estimated yearly cost for each category. Regardless of the time period, we would require that any costs be represented as estimates and that the notice clearly indicate to enrollees the time period on which the estimates are based. Tables 6 through 8 describe possible types of service categorization, and each table includes a different option for representing the cost calculation (average monthly, actual 6 months, and yearly estimated costs). Dollar figures are for illustrative purposes only and do not reflect any decision on final document design or any calculation of actual beneficiary costs.

BILLING CODE 4120–01–P

TABLE 6:

	Average amount you have spent per month this year	If you use the very same health care services next year the amount you will spend per month
Premium Total	$50	$60
Medicare Cost Sharing Includes all Part A and B services; does not include supplemental benefits	$100	$75
Prescription Drug Costs	$25	$50
Total average per month **including** premium	$175	$185

TABLE 7:

	What you have spent between January – June 2011	If you use the very same health care services next year the amount you will spend between January-June 2012
Premium Total	$300	$250
Cost-Sharing		
Inpatient Care Includes services such as: inpatient hospital, skilled nursing facility, home health care	$0	$0
Outpatient Care Includes services such as: outpatient hospital services, physician office services, physical and occupational therapy, outpatient mental health services and durable medical equipment	$500	$700
Supplemental Services Includes services such as vision and dental services	$100	$150
Prescription Drug Costs	$200	$250
TOTAL Cost-sharing **NOT** including premium	$800	$1100

Table 8:

This table includes the services you have used most often this year	Your estimated costs this year	If you use the very same health care services next year the amount you would spend
Premium Total	$700	$800
Cost-Sharing		
Inpatient Care		
Inpatient Hospital Care	$1,600	$2,100
Home Health Care	$500	$750
Outpatient Care		
Outpatient Hospital Care	$900	$1200
Physician Office Services	$400	$300

This table includes the services you have used most often this year	Your estimated costs this year	If you use the very same health care services next year the amount you would spend
Physical, Occupational, and Speech Therapies	$200	$100
Durable Medical Equipment	$300	$300
Ambulance Services	$50	$100
Part D Drug Coverage	$1000	$2000
Total cost-sharing **NOT** including premium	$4,950	$6700*

*We estimate that if you use the same amount of services next year, the amount you pay will be capped by the maximum out-of-pocket cost limit for this plan. The $6,700 is the capped amount.

BILLING CODE 4120–01–C

Another, but potentially complementary, option would be to require a periodic EOB for MA plans, similar to the EOB that Part D sponsors provide to Part D enrollees. This EOB would include a specific list of services and the enrollee's utilization and out-of-pocket costs during a period of time to assist him or her in evaluating their options for the future. It would be furnished periodically throughout the contract year and could include current as well as cumulative data on utilization and costs for that period. It could also present data by service categories as a percentage of total costs. We also understand that there would be data collection and timing concerns for plans, and the frequency of the distribution of the EOB would affect the time period of the data collected. For example, an annual notice distributed at the end of the contract year would not arrive in sufficient time for a beneficiary to make determinations during an enrollment period. However, a notice furnished just prior to the open enrollment period could only contain partial year actual data, unless plans use 12 months of data over two contract years. An EOB as described above could be used in conjunction with a customized annual out-of-pocket cost statement to fine-tune an enrollee's search for another plan that might be a better fit for his or her particular health care needs. We seek comments and suggestions for implementing an EOB for MA enrollees, including suggestions for design, calculation of data and frequency of disclosure to enrollees.

We note that we are considering exempting dual eligible special needs plans (D–SNPs) from the requirement to provide such customized enrollee data through a customized out-of-pocket cost statement or an EOB, since enrollees in these plans generally do not incur out-of-pocket costs. We seek comment on exempting D–SNPs from this proposed requirement.

In summary, we seek comments and suggestions regarding our proposal to add to the current disclosure requirements in § 422.111 and § 423.128, a new requirement that MA organizations and Part D plan sponsors periodically disclose to each beneficiary specific data for enrollees to use to compare utilization and out-of-pocket costs in the current plan year to utilization and out-of-pocket costs for the following plan year. Such data would be disclosed to plan members periodically in conjunction with other annual plan renewal materials (currently the ANOC and EOC). In addition, we seek comments and suggestions on the topics discussed above, including the number of disclosures per year, document design models, categories of services included, calculation, and presentation of costs, and standardization of information.

5. Extending the Mandatory Maximum Out-of-Pocket (MOOP) Amount Requirements to Regional PPOs (§ 422.100 and § 422.101)

In our April 15, 2010 final rule (75 FR 19709 through 19711), we established a new mandatory maximum out-of-pocket (MOOP) requirement for local MA plans effective contract year 2011. As provided at § 422.100(f)(4), all local MA plans, including HMOs, HMOPOS, local PPO (LPPO) plans and PFFS plans, must establish an annual MOOP limit on total enrollee cost sharing liability for Parts A and B services, the dollar amount of which will be set annually by CMS. As provided at § 422.100(f)(5), effective for contract year 2011, LPPO plans are required to have a catastrophic limit inclusive of both in- and out-of-network cost sharing for all Parts A and B services, the dollar amount of which also will be set annually by CMS. All cost sharing (that is, deductibles, coinsurance, and copayments) for Parts A and B services must be included in plans' MOOPs. In our April 15, 2010 final rule (75 FR 19709 through 19711), we stated that for contract year 2011, we would implement a mandatory MOOP limit in accordance with the requirements at § 422.100(f)(4), as well as continue to allow MA organizations the option of adopting a lower, voluntary MOOP limit. MA organizations that adopt the lower voluntary MOOP are provided more flexibility in establishing cost sharing amounts for Parts A and B services than those that do not elect the voluntary MOOP. However, we did not include regional PPOs in the mandatory MOOP and catastrophic limit requirements, as discussed below.

Since implementation of the Medicare Modernization Act of 2003, RPPOs have been required under section 1858(b)(2) of the Act to establish a MOOP for in-network cost sharing and a catastrophic limit inclusive of both in- and out-of-network cost sharing for Parts A and B services; however, those amounts are currently at the discretion of MA organizations offering RPPO plans. Because the statutory MOOP requirement was already in effect with respect to RPPO plans, we applied the new mandatory MOOP requirement only to local MA plans in our final rule (75 FR 19711). We stated that for contract year 2011, RPPOs would continue to be permitted to establish their own in-network MOOP and catastrophic limits without a maximum limit set by CMS, but we encouraged them to adopt either the mandatory or voluntary MOOPs established in CMS guidance. We stated that, to the extent an RPPO sets its MOOP and catastrophic limits above the mandatory amounts set by CMS for other plan types, it may be subject to additional CMS review of its proposed Parts A and B services cost sharing amounts. However, we also stated that, while we believe RPPOs should be subject to the same requirements with respect to a MOOP as local PPO plans, we would address this discrepancy in future notice-and comment rulemaking, since our proposed rule did not give MA organizations offering RPPOs an opportunity to comment on such a proposal. We have concluded that, in order to make it easier for beneficiaries to understand and compare MA plans, RPPO plans should also be subject to the mandatory maximum MOOP requirements that currently apply to

local PPO plans. Therefore, we propose to extend the mandatory MOOP and catastrophic limit requirements to RPPO plans. Each RPPO plan would establish an annual MOOP limit on total enrollee cost sharing liability for Parts A and B services, the dollar amount of which would be set annually by CMS. All cost sharing (that is, deductibles, coinsurance, and copayments) for Parts A and B services would be included in RPPO plans' MOOPs. We propose to codify this requirement by revising § 422.100(f) (CMS review and approval of MA benefits and associated cost sharing), in paragraphs (f)(4) and (5) to include regional MA plans. In addition, we propose to revise paragraphs (d)(2) and (d)(3) of § 422.101(d) (Special cost-sharing rules for MA regional plans), to specify that the catastrophic limits set by RPPOs may not be greater than the annual limit set by CMS.

6. Prohibition on Use of Tiered Cost Sharing by MA Organizations (§ 422.262)

As provided in section 1854(c) of the Act and implemented at § 422.100(d)(2), an MA organization offering an MA plan must offer it to all Medicare beneficiaries residing in the service area of the MA plan at a uniform premium, with uniform benefits and levels of cost sharing throughout the plan's service area, or segment of the service area, as provided at § 422.262(c)(2). In spite of this regulatory guidance, we have become aware that an increasing number of plans are charging beneficiaries different amounts of cost sharing for services depending on, for example, which provider group the beneficiary selects, the plan's network of hospitals, or how frequently the beneficiary uses selected services.

Program experience has demonstrated that differential, or "tiered," cost sharing is simply not transparent and can be deceptive and misleading in terms of the cost to beneficiaries. We do not believe it is consistent with the intent of the uniformity requirement in section 1854(c) of the Act for MA organizations to impose such differential benefit cost sharing, or to differentially design in-network health care benefits, network access, or cost sharing for covered benefits in a manner that is not uniform or transparent to the beneficiary. We believe that MA organizations should impose uniform plan care, cost sharing and MA benefits throughout the plan's service area. Furthermore, we believe that tiered cost sharing in certain circumstances may deter beneficiaries from seeking care, otherwise negatively affect beneficiaries who are sicker, or impose greater cost sharing on beneficiaries who utilize services infrequently.

As a consequence of MA organizations' increasing and inappropriate imposition of differential or "tiered" cost sharing, we have become increasingly concerned and believe that revisions to the regulations are warranted. Accordingly, we propose to revise § 422.262 to stipulate that MA organizations cannot vary the level of cost sharing for basic or supplemental benefits for any reason, including based on provider groups, hospital network, or the beneficiary's utilization of services.

7. Delivery of Adverse Coverage Determinations (§ 423.568)

Section 1860D–4(g) of the Act requires Part D plan sponsors to establish procedures for processing requests for coverage determinations and redeterminations. Those procedures must apply to Part D plan sponsors in the same manner as they apply to MA organizations with respect to organization determinations and reconsiderations under Part C. Under § 422.568(d), an MA organization must provide written notice when it makes an unfavorable standard organization determination.

In accordance with section 1860D–4(g) of the Act, we created a parallel notice provision for unfavorable Part D standard coverage determinations in § 423.568(f). Neither § 422.568(d) nor § 423.568(f) allow an MA organization or Part D plan sponsor to make the initial notice of an adverse standard organization/coverage determination orally. However, for the reasons noted below, we propose to revise § 423.568(f) by allowing a Part D plan sponsor to first provide notice of an adverse standard coverage determination decision orally, so long as it also provides a written follow-up notice within 3 calendar days of the oral notification.

We believe that the proposed change is necessary because the timeframe for providing notice of an adverse standard determination is much shorter under Part D than under Part C. Under § 422.568(a) and (e), MA organizations provide enrollees with written notice of adverse standard organization determinations within 14 calendar days, but pursuant to § 423.568(a) and (c), Part D plan sponsors must provide written notice of adverse standard coverage determinations within 72 hours. While MA organizations are largely able to meet the 14-calendar day timeframe for providing written notice of adverse standard organization determinations, we believe many Part D plan sponsors are having difficulty providing written notice of adverse standard coverage determinations within the 72-hour timeframe given the significant number of coverage determination requests that are auto-forwarded to the Part D Independent Review Entity (IRE) because decisions were not issued timely. Thus, we believe plan sponsors need the ability to first provide oral notice in order to meet the very short 72-hour timeframe.

We also believe the proposed change is consistent with the Part C organization determination process. An MA organization is required under § 422.572(a) to make an expedited organization determination and provide notice of its decision within 72 hours after receiving a request. Consistent with § 422.572(c), an MA organization may choose to meet the 72-hour timeframe by providing oral notice of its decision within 72 hours, so long as it also sends a written follow-up notice within 3 calendar days after providing oral notice. Given that MA organizations are permitted under the regulations to meet the 72-hour timeframe by first providing oral notice and following up with written notice, we believe giving Part D plan sponsors the same option when required to provide notice within 72 hours is consistent with the Part C organization determination process and section 1860D–4(g) of the Act. Therefore, we propose to revise § 423.568(f) by allowing a Part D plan sponsor to provide initial notice of an adverse standard coverage determination decision orally, so long as it also provides a written follow-up notice within 3 calendar days of the oral notice.

8. Extension of Grace Period for Good Cause and Reinstatement (§ 422.74 and § 423.44)

Section 1851(g)(3)(B)(i) of the Act provides that MA plans may terminate the enrollment of individuals who fail to pay basic and supplemental premiums after a grace period established by the plan. Section 1860D–1(b)(1)(B) of the Act generally directs us to use disenrollment rules for Part D sponsors that are similar to those established for MA plans under section 1851 of the Act. Consistent with these sections of the Act, the Part C and D regulations set forth our requirements with respect to involuntary disenrollment procedures under § 422.74 and § 423.44, respectively.

Currently, § 422.74(d)(1)(i)(B) specifies that an MA organization must provide, at minimum, a 2-month grace period before disenrolling individuals for failure to pay the premium. Similarly, under current regulations at

§ 423.44(d)(1)(ii), Part D sponsors must also provide a 2-month minimum grace period before disenrolling individuals for failure to pay the premium. For both Part C and D, involuntary disenrollments are not mandatory and, thus, organizations may choose to implement longer grace periods or forgo involuntary disenrollments entirely as long as they apply their policy consistently.

Thus, MA and Part D plans that choose to disenroll beneficiaries for failure to pay premiums must notify the beneficiary of the delinquency and provide the beneficiary a period of no less than 2 months in which to resolve the delinquency. The plan must also be able to demonstrate to us that it has made reasonable efforts to collect the unpaid premium amounts.

Consistent with the provision for delinquent premium payments for Supplementary Medical Insurance (Part B of Medicare), we propose to permit reinstatement of enrollment in an MA or Part D plan for instances in which the individual was involuntarily disenrolled for failure to pay plan premiums but had demonstrated good cause for failing to submit the premium payment timely. We propose that good cause would be established only when an individual was prevented from submitting timely payment due to unusual and unavoidable circumstances beyond his or her control. For example, if an individual failed to pay plan premiums due to an unexpected and extended hospital stay, we would encourage a plan to consider reinstatement of the individual's enrollment on the basis that he or she had good cause for failing to submit the payment timely. However, we would not expect a plan to find good cause in instances where an individual's legal guardian or authorized representative was responsible for making premium payments but failed to do so in a timely manner. We would hold the beneficiary accountable for the actions, or inactions, of his or her representative. We also propose that good cause would not exist if the only basis for requesting reinstatement was a change in the individual's circumstances subsequent to the involuntary disenrollment resulting in his or her ability to pay the premiums.

Examples of circumstances that may establish good cause include, but are not limited to, the following: (1) Serious illness, such that the illness prevented the enrollee from making payment or contacting the plan by telephone, in writing, or through a friend, relative, or other person; (2) a government employee, government contractor (for example, 1–800–MEDICARE representative), or plan representative gave the enrollee incorrect or incomplete information about when premium payments were due and how to make payments; (3) the enrollee did not receive premium billing statements and/or delinquency notices due to an error on the part of the plan or the U.S. Post Office; or (4) premium payments were sent, or requested by the enrollee to be sent, but were not received by the plan due to an error on the part of the U.S. Post Office or the enrollee's financial institution.

Since a beneficiary who is disenrolled from an MA or Part D plan for failure to pay premiums is not eligible for a special enrollment period, the beneficiary's only opportunity to enroll in another plan is during the annual election period in the fall. As a result, these beneficiaries may lose their prescription drug coverage for the remainder of the year, and may incur a late enrollment penalty if they subsequently choose to re-enroll in Part D. Therefore, we are proposing to amend the regulations at § 422.74(d)(1) and § 423.44(d)(1) regarding disenrollment for non-payment of premiums to allow for the reinstatement of enrollment for good cause subsequent to an involuntary disenrollment associated with the failure to pay premiums within the grace period. A reinstatement of enrollment would remove the involuntary disenrollment from the enrollment record, resulting in continuous coverage as if the disenrollment never occurred. Further, before such reinstatement could occur, we would require an individual to pay in full all premium arrearages on which the disenrollment was based, as well as all other premiums that would have been due since the disenrollment. Consistent with the provision for delinquent premium payments for Supplementary Medical Insurance (Part B of Medicare), the disenrolled individual would have a maximum of 3 months from the disenrollment date in which to request the good cause reinstatement and resolve all premium delinquencies.

9. Translated Marketing Materials (§ 422.2264 and § 423.2264)

Pursuant to our authority under sections 1851(d)(2)(C), 1860D–1(c), and 1860D–4(a) of the Act, we propose to clarify MA and Part D requirements for marketing materials in markets with a significant non-English speaking population or large percentage of limited English proficient (LEP) individuals. We propose to clarify that plan sponsors must provide translated marketing materials in any language that is spoken by more than 10 percent of the general population in a plan benefit package (PBP) service area. We propose revising § 422.2264(e) of Subpart V and § 423.2264(e) of Subpart V to reflect this clarification.

The proposed clarification codifies existing guidance regarding translated marketing materials. We are codifying this guidance as a result of frequent complaints to CMS from beneficiaries and advocacy organizations that revealed plan sponsors were not providing translated marketing materials upon request in languages spoken by more than 10 percent of the general population of a particular PBP service area. The August 15, 2005 version of the Medicare Marketing Guidelines and every version thereafter, included language stating, "Organizations/plan sponsors should make marketing materials available in any language that is the primary language of more than 10 percent of a plan's geographic service area." Nevertheless, plan sponsors have indicated they were uncertain whether translating marketing materials were required. For example, plan sponsors we talked to were confused whether the 10 percent threshold applied to a specific age group (for example, only those 65+, which does not take into account younger beneficiaries who are Medicare-eligible based on disability). Other plan sponsors assumed they did not have to conduct a language analysis for their plan because they were not aware of any LEP enrollees in their plans. This clarification addresses the problem by explicitly codifying the requirement to translate marketing materials for LEP individuals. The origin of the requirement to provide translated materials is derived from Title VI of the Civil Rights Act of 1964, which prohibits discrimination in federal programs based upon national origin. Compliance with the Civil Rights Act is included in plan sponsors' contractual requirements under § 422.503(h)(1)and § 423.505(h)(1). Additionally, this clarification is consistent with fulfilling the goals of Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and with the HHS Secretary's implementation of the Executive Order as described in the Strategic Plan for Implementing Access to HHS Programs and Activities by LEP Persons and the CMS Language Access Plan. Providing translated materials for LEP beneficiaries is a key component of the CMS Language Access Plan and helps ensure that beneficiaries have

access to all of the information they need to make appropriate decisions about their health care.

E. Strengthening Our Ability To Distinguish for Approval Stronger Applicants for Part C and Part D Program Participation and To Remove Consistently Poor Performers

This section addresses a number of proposals designed to strengthen our ability to approve strong applicants and remove poor performers in the Part C and D programs. Since the implementation of revisions to the MA and initial implementation of the prescription drug programs in January 2006 as a result of the MMA, we have steadily enhanced our ability to measure MA organization and PDP sponsor performance through efforts such as the analysis of data provided routinely by sponsors and by our contractors, regular review of beneficiary complaints, marketing surveillance activities, and routine audits. This information, combined with feedback we have received from beneficiary satisfaction surveys, HEDIS data, and information from MA organizations and PDP sponsors themselves, has enabled us to develop a clearer sense of what constitutes a successful Medicare organization capable of providing quality Part C and D services to beneficiaries. This information has also allowed us to identify and take appropriate action against organizations that are not meeting program requirements and not meeting the needs of beneficiaries.

As our understanding of Part C and D program operations has deepened since implementation of the MMA, our use of our authority to determine which organizations are qualified to offer MA and PDP sponsor contracts, evaluate their compliance with Part C and D requirements, and make determinations concerning intermediate sanctions, contract nonrenewals and contract terminations has evolved as well. The changes we propose below will further allow us to make these determinations more effectively. These provisions are described in detail in Table 9.

TABLE 9: Provisions to Strengthen Our Ability to Distinguish for Approval Stronger Applicants for Part C and Part D Program Participation and to Remove Consistently Poor Performers

PROVISION	PART 422		PART 423	
	Subpart	Section	Subpart	Section
Expand Network Adequacy Requirements to Additional MA Plan Types	Subpart C	§422.112	N/A	N/A
Maintaining a fiscally sound operation	Subpart A Subpart K	§422.2 §422.504	Subpart A Subpart K	§423.4 §423.505
Release of Part C and Part D Payment Data	N/A	N/A	N/A	N/A
Required Use of Electronic Transaction Standards for Multi-Ingredient Drug Compounds; Payment for Multi-Ingredient Drug Compounds	N/A	N/A	Subpart C	§423.120
Denial of Applications Submitted by Part C and D sponsors with Less than 14 months Experience Operating their Medicare Contracts	Subpart K	§422.502	Subpart K	§422.503

1. Expand Network Adequacy Requirements to Additional MA Plan Types (§ 422.112)

In our April 15, 2010 final rule (75 FR 19678 through 19826), we established criteria that Medicare Advantage (MA) coordinated care (CCP) plans and Private Fee-for-Service (PFFS) plans must meet so that we can ensure that the network availability and accessibility requirements specified in section 1852(d)(1) of the Act are met. We focused on specifying benchmarks in community patterns of health care delivery that we would use to evaluate any proposed MA plan health care delivery networks. As provided under § 422.112(a)(10) these benchmarks include, but are not limited to—

- The number and geographical distribution of eligible health care providers available to potentially contract with an MA organization to furnish plan-covered services in the proposed area of the MA plans;
- The prevailing market conditions in the service area of the MA plan—specifically, the number and distribution of health care providers contracting with other health care plans (both commercial and Medicare) operating in the service area of the plan;
- Whether the service area is comprised of rural or urban areas or some combination of the two;
- Whether the MA plan's proposed provider network meets Medicare time and distance standards for member access to health care providers including specialties; and
- Other factors that we determine to be relevant in setting a standard for an acceptable health care delivery network in a particular service area.

As noted in our April 15, 2010 final rule, our operational experience has demonstrated that community patterns of health care delivery provide useful benchmarks for measuring a proposed provider network, permitting varying geographical and regional conditions to be taken into consideration when determining "reasonable" access in a given area. Our final rule provides a detailed discussion of our proposal and the response to public comments on the factors making up community patterns

of care that we established as benchmarks for evaluating proposed MA plan health care delivery networks.

We did not include MA MSAs in the regulation proposal initially because MSA plans historically have not had networks and enrollees in a MSA plan thus were able to may see any provider. However, MSA plans are not prohibited from having networks as long as enrollee access is not restricted to network providers. While there are currently no Medicare MSA network plans, we are aware of possible interest in offering such plans. As a result, we want to ensure that any MA plan that meets Medicare access and availability requirements through direct contracting network providers does so consistent with the requirements at § 422.112(a)(10). Therefore, we are proposing to apply the network adequacy standards at § 422.112(a)(10) to all MA plans that meet Medicare access and availability requirements through direct contracting network providers, including MSAs, should MSAs choose to develop contracted networks of providers. This proposed change would put all MA plans with contracted networks, and their enrollees, on a level playing field with respect to network access.

2. Maintaining a Fiscally Sound Operation (§ 422.2, § 422.504, § 423.4, and § 423.505)

Sections 1857(d)(4)(A)(i) and 1860D–12(b)(3)(C) of the Act establish requirements for MA organizations and PDP sponsors to report financial information demonstrating that the organization has a fiscally sound operation. This reporting requirement is separate from the requirement that MA organizations and PDP sponsors must be organized and licensed under State law as a risk-bearing entity eligible to offer health insurance or health benefits coverage in each State in which it offers a Medicare product.

The authority to license an MA organization or PDP sponsor and set solvency standards rests with the State licensing authority (sections 1856(b)(3) and 1860D–12(g) of the Act). Sections 1855(a)(3) and 1860D–12(e) of the Act, however, establish that licensure does not substitute for or constitute certification. Specifically, licensure does not deem the organization to meet other requirements imposed on the organization under Part C or Part D.

Furthermore, sections 1857(d)(2)(B) and 1860D–12(b)(3)(C) of the Act grant us the authority to audit and inspect any books and records of the "* * * organization that pertain (i) to the ability of the organization to bear the risk of potential financial losses, or (ii) to services performed or determinations of amounts payable under the contract."

The States' oversight and enforcement of financial solvency of MA organizations and PDP sponsors provides an important protection for Medicare beneficiaries enrolled in MA and Part D plans. We consult regularly with state insurance regulators to ensure that sponsoring organizations are meeting state reserve requirements and solvency standards required for state licensure, as this is a key component of the organization or sponsor's contract with CMS. However, we interpret the requirement for plans to report financial information demonstrating that the organization has a fiscally sound operation and CMS' authority to audit and inspect any books and records, as described above, as an indication that we have an interest in the organization maintaining a fiscally sound operation and that this interest is separate and apart from the State licensure requirements for an organization.

We are concerned that some organizations or sponsors may not have a positive net worth, may be fiscally unsound, and may be therefore unable or unwilling to expend resources necessary to continue to provide adequate care and services to their members. However, we have historically been limited in our ability to take compliance and enforcement action against an organization solely on the basis of these financial problems if the organization is still licensed by the state and is not otherwise out of compliance with CMS requirements. In some cases, we have been aware that an organization would inevitably lose its state licensure because of its poor financial condition, but we were unable to take action to terminate the organization's contract and ensure that beneficiaries were smoothly transitioned to a new organization or sponsor, rather than waiting for the state to act. We believe that an organization's failure to maintain a fiscally sound operation constitutes a failure to substantially carry out the terms of its contract with CMS.

Therefore, we are proposing to modify the definitions at § 422.2 and § 423.4 to define a fiscally sound operation as one which, at the very least, maintains a positive net worth (total assets exceed total liabilities). In addition, sections 1857(e)(1) and 1860D–12(b)(3)(D) of the Act afford the Secretary the authority to include terms and conditions in the contract that are necessary and appropriate. Thus, we are proposing to add a contract provision at § 422.504(a) and § 423.505(b)(23), under which the MA organization or Part D sponsor agrees to maintain a fiscally sound operation by at least maintaining a positive net worth (total assets exceed total liabilities).

We believe these changes will ensure that we have the authority to take the steps necessary to protect beneficiaries enrolled in organizations or sponsors that encounter financial difficulties.

3. Release of Part C and Part D Payment Data

This proposed rule would allow the Secretary to release Part C and D summary payment data for research, analysis, and public information functions. The Secretary believes these data should be made available because other publicly available data are not, in and of themselves, sufficient for the studies and operations that researchers want to undertake to analyze the Medicare program and federal expenditures, and to inform the public on how their tax dollars are spent.

In keeping with the President's January 21, 2009, Memorandum on Transparency and Open Government (74 FR 26277), CMS is proposing to routinely release Part C and Part D payment data. These data would be routinely released on an annual basis in the year after the year for which payments were made. The data release would occur after final risk adjustment reconciliation has been completed for the payment year in question and, for Part D, after final payment reconciliation of the various subsidies. Thus, we would release data for payment year 2010 in the fall of 2011.

This timeframe would not apply to the release of RDS payment data, since we do not reconcile RDS payment amounts until 15 months following the end of the plan year. The majority of our sponsors provide retiree drug coverage on a calendar year basis. If an applicable plan year ended December 31, 2010, the payment reconciliation would not be due until March 31, 2012, which would be after the fall 2011 target for other Part C and D payment data. We propose to release the most current RDS payment data available at the time Part C and D payment reconciliation has been completed and those data are compiled and released.

For Part C, we are proposing the release of payment data summarized at the plan benefit package level. Specifically, we would release average per member per month (PMPM) payments for A/B (Medicare covered) benefits and average PMPM rebate amounts for each MA plan. These payments and amounts would be standardized to the 1.0 (average risk

score) beneficiary. Given that we already make Part C enrollment data publicly available, interested parties could readily calculate gross Part C payments to MA organizations and for the specific plan benefit packages offered by these organizations. As part of the annual release, we would also release the average Part C risk score for each plan benefit package for the payment year in question. In addition, we would also release aggregated Part C payment data by county. Specifically, we would release county-level average PMPM payment amounts for A/B benefits and average rebate amounts at the MA plan type level (that is, HMO, PPO, etc.) for each county in which such plan types are represented.

TABLE 10: Part C Payment Data by Plan

MA organization/Plan	Average PMPM A/B Payment	Average PMPM Rebate	Average Risk Score
H0001/Plan001	$XXX.xx	$XXX.xx	X.xxxx
H0001/Plan002	$XXX.xx	$XXX.xx	X.xxxx
H0002/Plan001	$XXX.xx	$XXX.xx	X.xxxx
H0003/Plan001	$XXX.xx	$XXX.xx	X.xxxx

TABLE 11: Part C Payment Data by MA Plan Type and County

State County	HMO A/B	HMO Rebate	PPO A/B	PPO Rebate	PFFS A/B	PFFS Rebate	RPPO A/B	RPPO Rebate
State 1 County 1	$XXX.xx	$XX.xx	$XXX.xx	$XX.xx	$XXX.xx	$XX.xx	$XXX.xx	$XX.xx
State 1 County 2	$XXX.xx	$XX.xx	$XXX.xx	$XX.xx	$XXX.xx	$XX.xx	$XXX.xx	$XX.xx
State 1 County 3	$XXX.xx	$XX.xx	$XXX.xx	$XX.xx	$XXX.xx	$XX.xx	$XXX.xx	$XX.xx
State 2 County 1	$XXX.xx	$XX.xx	NA	NA	$XXX.xx	$XX.xx	$XXX.xx	$XX.xx
State 2 County 2	$XXX.xx	$XX.xx	NA	NA	$XXX.xx	$XX.xx	$XXX.xx	$XX.xx

For Part D, we are also proposing the release of payment data summarized at the plan benefit package level. Specifically, we would release average per member per month (PMPM) payments for the direct subsidy, the low-income cost sharing subsidy, and the Federal reinsurance subsidy. Given that we already make Part D enrollment data publicly available, with these new data interested parties could readily calculate gross Part D payments to Part D sponsors and for the specific plan benefit packages offered by these sponsors. In addition, as part of the annual release, we would release the average Part D risk score for each plan benefit package for the payment year in question.

TABLE 12: Part D

PART D/Plan	Avg. PMPM Part D Payment	Avg. Risk Score
S0001/Plan001	$XXX.xx	X.xxxx
S0001/Plan002	$XXX.xx	X.xxxx
S0002/Plan001	$XXX.xx	X.xxxx
H0003/Plan001	$XXX.xx	X.xxxx

CMS makes monthly prospective payments to sponsors for providing prescription drug coverage to Medicare beneficiaries. These payments are based on estimates that sponsors provide in their approved bids prior to the beginning of the plan year. CMS makes prospective payments to sponsors for three subsidies based on sponsors' approved bids. These subsidies are: (1) The direct subsidy which, together with beneficiary premiums, is designed to cover the sponsor's cost of providing the benefit; (2) the reinsurance subsidy, which covers the Federal Government's share of drug costs for beneficiaries who have reached catastrophic coverage; and (3) the low-income cost-sharing subsidy, which covers the Federal Government's portion of the cost-sharing payments for certain low-income beneficiaries.

After the close of the plan year, CMS must reconcile these prospective payments with sponsors' actual costs to determine whether sponsors owe money to Medicare or Medicare owes money to sponsors. In 2007 and 2008 (for Part D plan years 2006 and 2007) CMS published Part D reconciliation payment data. See, for instance, *https://www.cms.gov/MCRAdvPartDEnrolData/Downloads/Part_D_2007_Reconciliation.pdf* and *https://www.cms.gov/MCRAdvPartDEnrolData/Downloads2006_Part_D_Payment_Recon.pdf* CMS is proposing to resume this disclosure in the late summer/early fall of 2011, for payment data related to Part D reconciliation payments/recoveries for CY 2010. These data are different than the Part D data discussed above since they represent final end of year adjustments to the prospective payments made to a Part D plan sponsor based on the difference between the plan's estimated revenue needs and it's actual revenue needs. The prospective Part D payment amounts we propose to

report above are different from the reconciliation data proposed to be reported here in the sense that these specific reconciliation data provide a summary of a Part D plan sponsor's ability to accurately predict Part D costs.

Finally, we are proposing to release retiree drug subsidy (RDS) data. These data will be released as a dollar amount of the gross aggregate subsidy amount paid to the eligible sponsors of qualified retiree prescription drug coverage and the total number of unduplicated Medicare eligible retirees for each sponsor.

TABLE 13: RDS

EGHP	Gross Subsidy	Number of RTs
E0001	$XX,XXX,XXX.xx	XX,XXX
E0002	$XX,XXX,XXX.xx	XX,XXX
E0003	$XX,XXX,XXX.xx	XX,XXX
E0004	$XX,XXX,XXX.xx	XX,XXX

We are not proposing to release detailed data that have been provided to CMS by MA organizations or Part D sponsors as part of their annual bids. The payment data we will release are quite different than the bid data plans submit. Furthermore, the gross payment data we are proposing to disclose cannot be disaggregated to derive the components of plan bids, nor can it be used to generate meaningful estimates of any nominally proprietary bid component such as profitability, administrative load, medical expenses, and projected utilization. By releasing payment data at an aggregate level, we believe we are protecting not only the proprietary interests of MA and Part D plan sponsors, but that we are also protecting the privacy rights of individual MA plan enrollees.

The differences between bidding data, which MA organizations and Part D sponsors submit to CMS, and payment data, which CMS computes and from which it makes payments to plan sponsors, are meaningful and significant in the context of this proposal for two basic reasons. The first is that since CMS is not releasing data provided by plan sponsors, the release of proprietary information provided by plan sponsors in the course of bidding is not implicated. The second is that we are releasing payment data in such a way that individual components of plan bids cannot be derived. We are not providing information in sufficient detail to allow others to disaggregate the information we are providing in such a way as to compromise information provided by plan sponsors in the course of bidding.

Under the Act, the Secretary has the authority to include in MA organization and Part D sponsor contracts any terms or conditions the Secretary deems necessary and appropriate. (See section 1857(e)(1) of the Act and 1860D–12(b)(3)(D) of the Act, which incorporates section 1857(e) into Part D.) Our regulations at § 422.504(j) and § 423.505(j) also permit us to include other terms and conditions in these contracts that we find necessary and appropriate to implement the Part C and D programs. Similarly, under § 423.884(c)(3)(i), RDS sponsors agree to comply with the terms and conditions for eligibility for a subsidy payment in our regulations and in related CMS guidance. Accordingly, we propose to amend Part C and Part D contracts (and, in the case of RDS sponsors, agreements) to include a statement informing such sponsors that CMS payment data, as discussed in this notice, will be released as indicated above for research, analysis, and public information purposes. The purposes underlying such release include allowing public evaluation of the MA, prescription drug benefit, and RDS programs, including their effectiveness, and reporting to the public regarding expenditures and other statistics involving these programs.

In addition, we believe the availability of the payment data we are proposing to release would permit potential plan sponsors to better evaluate their participation in the Part C and D programs, as well as facilitate the entry into new markets of existing plan sponsors. In other words, we believe the availability of plan payment data will enhance the competitive nature of these programs. In knowing the per member per month payment amounts and other components of plan payment (plan rebates and risk scores), new business partners might emerge, and better business decisions might be made by existing partners. As a result, we believe including a provision in our contracts with plan sponsors regarding the release of payment information is both necessary and appropriate for the effective operation of these programs.

We note that because this proposed rule would apply to all Part C and Part D sponsors, it would apply to any entity offering either Part C or Part D plans, including MA organizations offering and not offering prescription drug plans, as well as all Part D drug plan sponsors. It would also apply to sponsors entitled to federal RDS subsidies.

We solicit comment generally on the public release of Part C and Part D payment data as outlined above. We also specifically solicit comment on whether any of the Part C and Part D payment data we propose to release contain proprietary information, and if they do, what safeguards might be appropriate to protect those data.

4. Required Use of Electronic Transaction Standards for Multi-Ingredient Drug Compounds; Payment for Multi-Ingredient Drug Compounds (§ 423.120)

Section 1860D–4(b)(2)(A) of the Act, as codified in § 423.120(c), requires Part D sponsors to issue (and reissue, as appropriate) a card or other technology that may be used by an enrollee to assure access to negotiated prices under section 1860D–2(d) of the Act. Section 1860D–4(b)(2)(B) of the Act requires CMS to provide for the development, adoption, or recognition of standards relating to a standardized format for the card or other technology that are compatible with the HIPAA administrative simplification requirements of part C of Title XI of the Act and to consult with the NCPDP and other standard setting organizations, as appropriate. Pursuant to this authority, we recently added a new paragraph (c)(2) to § 423.120 to codify existing guidance that Part D sponsors utilize standard electronic transactions established by 45 CFR 162.1102 for processing Part D claims (75 FR 19726). We noted that we routinely work with the NCPDP and industry representatives in arriving at recommendations relating to the use of the HIPPA standard

transactions when necessary to improve administration of the Part D benefit.

The NCPDP Telecommunications Standard Version D.0 (Version D.0) is an updated version of the HIPAA standard for retail pharmacy drug claims transactions. Version D.0 was adopted as the HIPAA standard that must be used by HIPAA covered entities for retail pharmacy drug claims on and after January 1, 2012. Version D.0 includes a modification from the current version of the standard to standardize the claims processing for compounded drugs. Unlike the current version of the standard, all components of drug compounds will now be reflected on a pharmacy claim. Since under § 423.120(c)(2) Part D sponsors will be required to adhere to the new standard, we are undertaking additional rulemaking in order to provide further guidance to Part D sponsors on how to appropriately treat compounded products under the Part D program.

Historically, compounds have filled an important role in pharmacy practice by providing medically necessary drug therapies that would otherwise be unavailable to patients. We believe the main use of compounded products under Part D has been associated with home infusion therapy. The appropriate role of compounded products is less clear to us when compounds are used outside of home infusion therapy. With this proposed rule, it is not our intent to incentivize the use of compounded drug products as a substitute for FDA approved products.

Under Part D, compounded products as a whole generally do not satisfy the definition of a Part D drug. Under section 10.4 of Chapter 6 of the Medicare prescription Drug Benefit Manual (*http://www.cms.gov/PrescriptionDrugCovContra/Downloads/Chapter6.pdf*), CMS clarified that only those costs associated with those components of a compounded product that satisfy the definition of a Part D drug are allowable costs under Part D. Since pharmacy transactions up to this point have not captured all components of a billed compounded drug, our policy clarification has generally resulted in Part D plans' paying for the most expensive Part D drug component in a compound and submitting that component on the prescription drug event record transmitted to CMS for Part D payment reconciliation purposes. Generally, our policy guidance has been limited to clarifying that the dispensing fee may include the labor costs associated with mixing the compounded product (provided that at least one component of the compound was a Part D drug) and to providing guidance on appropriate cost-sharing that may be charged. With respect to the latter, we have specified that in the case of a compounded product that contains all generic products, the generic cost-sharing should be applied. However, if a compounded product contains any brand name products, the Part D sponsor may apply the higher brand name cost-sharing to the entire compound. Beyond these requirements, we have not provided more explicit guidance.

As noted above, the adoption under HIPAA of Version D.0 for retail pharmacy claims transactions will require the inclusion of individual components that make up a compounded product. Because, as a result, plan sponsors will have access to more complete information regarding the components of a compound, we believe it is appropriate to provide additional clarification with respect to the treatment under Part D of compounds in general and with respect to the treatment of compounded products that include non-Part D drugs in particular.

First, we propose to codify our existing guidance—which will comprise the general rule—that only compounded products that contain at least one component that independently meets the definition of a Part D drug may be covered under Part D. Such compounded products may, for example, contain all Part D drug components or some Part D components. Consistent with our current policy, we propose to clarify that sponsors may cover the Part D components even if the compounded product as a whole does not satisfy the definition of a Part D drug (subject to the exception for Part B drug compounds described below). For purposes of this preamble, these compounds are referred to as "Part D compounds." As specified in our existing guidance, and consistent with the statute, however, components of a Part D compound that do not independently meet the definition of Part D drug are not allowable costs under Part D, so, non-Part D drug components of these compounds are not covered under Part D.

An exception to our general policy will apply to those compounds that include a drug component that is covered under Part B. If a compound includes a Part B drug component, no components of the compound may be covered under Part D, even if one or more components of the compound would meet the definition of Part D drug if the component were dispensed or administered separately. This exception to the general rule is based both on current Part B payment policy and Section 1860D–2(e)(2)(B) of the Act. Section 1860D–2(e)(2)(B) specifies that a drug prescribed to a Part D eligible individual cannot be considered a Part D drug if payment for such drug, as prescribed and dispensed or administered to the beneficiary, is available under Medicare Part A or B. In general under Part B, when a compounded product meets the definition of a drug in section 1861(t)(1) of the Act, fits within a Part B benefit category, and otherwise meets coverage requirements, then payment is available for that compounded product. Therefore, in our view, when a compound that otherwise would be a Part D compound contains a Part B component that meets the above requirements, the exclusion of section 1860D–2(e)(2)(B) of the Act applies—in other words, because payment for such a compound is available under Part B, the compound as a whole is excluded from Part D. We propose to codify this exception to the general rule for Part D compounds.

We also propose a requirement that the Part D sponsor make a determination as to which copayment or coinsurance applies to a Part D compound. In making this determination, we propose that a flat copay amount submitted and approved under § 423.104, must represent the copay of the tier for the most expensive Part D ingredient and a coinsurance amount, submitted and approved under § 423.104, must be applied to the cost of all Part D ingredients of the Part D compound. In either case, we are proposing to applying the cost sharing to the whole amount of the claim, having selected the cost sharing amount based on the tier of the most expensive ingredient. In the case of low income subsidy (LIS) beneficiaries, the cost-sharing amount (either copayment or coinsurance) is based on whether the most expensive Part D component is a generic or brand drug (as described under § 423.782). In the case of non-Part D components that could otherwise be covered under a supplemental benefit for excluded drugs as described under 423.104(f)(1)(ii)(A), we clarify that the sponsor may not apply cost-sharing for these covered excluded drug components in addition to the most expensive Part D components.

An underlying premise of our policy is that if a compound as a whole is considered by a Part D sponsor to be on-formulary at the time of adjudication, for the sake of consistency, then all Part D components of that compound should be considered on-formulary, even if

individual Part D components would be considered nonformulary as a single drug claim. Accordingly, we propose that if a Part D compound as a whole is considered by a Part D sponsor to be on-formulary, the Part D sponsor must adjudicate the Part D components as formulary drugs. Alternatively, if a Part D compound as a whole is considered by the Part D sponsor to be non-formulary, but is later approved for a beneficiary under a coverage redetermination or appeal, we propose that the Part D sponsor must apply CMS transition rules such that all Part D components in the compound are covered in the event of a transition fill under § 423.120(b)(3) of the compound.

We note that while Part D sponsors may elect to contract with pharmacies to pay the additional ingredient costs of Part D compounds that are not Part D drugs and are not reimbursable by the government, they are not required to do so. Thus, the majority of the compounded ingredients may not be reimbursable to pharmacies in accordance with payment terms between sponsors and pharmacies. We propose to clarify that for a Part D compound otherwise determined to be payable under Part D, the sponsor may either contract with the pharmacy to pay for the non-Part D components without charging the beneficiary for these amounts or reporting these costs to CMS; deny payment to the pharmacy for any non-Part D components, but allow these components to be balance billed by the pharmacy to the beneficiary; or deny payment to the pharmacy for any non-Part D components and prohibit these components from being balance billed by the pharmacy. In proposing these requirements, we are considering whether the financial impact of unreimbursed compound components may deter pharmacies from continuing to provide compounding services, subsequently affecting beneficiary access to drugs. We invite comment on whether this policy is technically feasible at point-of-sale and/or otherwise appropriate.

We note that we will separately issue guidance on the treatment of PDEs in light of Version D.0. We expect that, consistent with the treatment of compounds under current guidance, Part D sponsors will likely continue reporting the National Drug Code (NDC) and quantity associated with the most expensive Part D ingredient on the PDE. However, we envision that the total cost will represent the sum of the individual Part D components that make up the compounded product.

Based on the preceding, we propose to add a new paragraph (d) to § 423.120 to clarify the aforesaid proposals effective January 1, 2012.

5. Denial of Applications Submitted by Part C and D Sponsors With Less Than 14 Months Experience Operating their Medicare Contracts (§ 422.502 and § 423.503)

Pursuant to § 422.502(b) and § 423.503(b) applicants with current or prior contracts with CMS are subject to CMS denial of their applications if they fail during the preceding 14 months to comply with the requirements of the Part D program even if their applications otherwise demonstrate that they meet all of the Part D sponsor qualifications. In the final rule, entitled "Policy and Technical Changes to the Medicare Advantage and the Medicare Prescription Drug Programs" (75 FR 19678), that appeared in the April 15, 2010 **Federal Register**, we modified existing provisions at § 422.502(b) and § 423.503(b) concerning our ability to deny an application for a Part C or Part D contract or service area expansion based on the applicant's failure to comply with the requirements of the Part C or Part D program under any current or prior contract with CMS. The two modifications we made to the prior language concerned: (1) Revising the language to refer to "any current or prior contract" held by the organization, instead of the former language referring to a "previous year's contract;" and (2) clarifying that the period that will be examined for past performance problems will be limited to those identified by us during the 14 months prior to the date by which organizations must submit contract qualification applications to CMS.

At this time, we are proposing to further refine our intended approach to using past performance in making application determinations. Specifically, we are concerned about entities submitting applications to us where the entity has operated its contract(s) with us for less than 14 months at the time it submits a new application or service area expansion request. Practically speaking, an entity contracting with us for the first time would have merely 2 months experience before applications would be due for the following contract year. Two months is an inadequate amount of time for the entity to demonstrate its ability to comply with all Part C and/or Part D requirements.

As such, we are faced with two options—either to assume full compliance and exempt the entity from the past performance review, or to deny additional applications from such entities until the applicant has accumulated 14 months experience during which it complied fully with the requirements of the Part C and/or Part D programs.

Our interest in protecting Medicare beneficiaries and limiting program participants to the best performing organizations possible strongly suggests that we take the latter approach. The practical effect of denying applications from entities with less than 14 months experience operating a Medicare contract is that new entrants to the Part C or Part D programs would not be permitted to expand their operations (either via a new contract or a service area expansion of an existing contract) until the beginning of their third year of experience with CMS. As an example, an entity that submits an application for its first Part C or Part D contract in February 2010 is approved and begins delivering Part C or D services on January 1, 2011. Because 2012 applications would be due in February 2011, when the applicant has only two months experience with the Part C or Part D programs, its applications would be denied. The next opportunity to submit a viable application would be in February 2012 for the 2013 contract year. At that point, the entity would have exactly 14 months performance history for CMS to consider in making application determinations.

By making this change, we will ensure that new entrants to the Part C or Part D program can fully manage their current contracts and books of business before further expanding. This change will also require that entities rightfully focus their attention on launching their new Medicare contracts in a compliant and responsible manner, rather than focusing attention almost immediately on further expansions.

Therefore, we propose to modify § 422.502(b) and § 423.503(b) by adding additional language at § 422.502(b)(2) and § 423.503(b)(2) that in the absence of 14 months performance history, we may deny an application based on a lack of information available to determine an applicant's capacity to comply with the requirements of the Part C or Part D program, respectively.

F. Other Clarifications and Technical Changes

We propose seven technical changes in this section, affecting as noted in Table 14 below, cost contract plans, MA plans, or Part D plans.

TABLE 14—Provisions on Other Clarifications and Technical Changes

PROVISION	PART 417/422		PART 423	
	Subpart	Section	Subpart	Section
Clarification of the Expiration of the Authority to Waive the State Licensure Requirement for Provider-Sponsored Organizations	Subpart A	§422.4	N/A	N/A
Cost Plan Enrollment Mechanisms	Subpart K	§417.430	N/A	N/A
Fast-track Appeals of Service Terminations to Independent Review Entities (IREs)	Subpart M	§422.626	N/A	N/A
Part D Transition Requirements	N/A	N/A	Subpart C	§423.120
Revision to Limitation on Charges to Enrollees for Emergency Department Services	Subpart C	§422.113	N/A	N/A
Clarify Language Related to Submission of a Valid Application	Subpart K	§422.502	Subpart K	§423.503
Modifying the Definition of Dispensing Fees	N/A	N/A	Subpart C	§423.100

1. Clarification of the Expiration of the Authority To Waive the State Licensure Requirement for Provider-Sponsored Organizations (§ 422.4)

We propose to clarify in this section that we will no longer waive the state licensure requirement for organizations seeking to offer a provider-sponsored organization (PSO) because, under section 1855(a)(2)(A) of the Act and § 422.370 of our regulations, we had the authority to waive the state licensure requirement for PSOs only for requests for waivers submitted prior to November 1, 2002. While we currently contract with organizations that have previously met the conditions for becoming a PSO and will continue to contract with these organizations, organizations that do not meet state licensure requirements can no longer offer new PSOs because waiver of state licensure laws is necessary in order to offer a PSO.

Section 1851(a)(2)(A) of the Act allows for the participation of a PSO in the MA program as a coordinated care plan. A PSO is defined in section 1855(d) of the Act and codified in § 422.350 as a public or private entity that—

- Is established or organized, and operated, by a provider or group of affiliated providers;
- Provides a substantial proportion (as defined in § 422.352) of the health care services under the MA contract directly through the provider or affiliated group of providers; and
- When it is a group, is composed of affiliated providers who share, directly or indirectly, substantial financial risk, as determined under § 422.356, for the provision of services that are the obligation of the PSO under the MA contract, and have at least a majority financial interest in the PSO.

As provided under § 422.352, an organization is considered a PSO for purposes of a MA contract if the organization—

- Has obtained a waiver of State licensure as provided for under § 422.370;
- Meets the definition of a PSO set forth in § 422.350 and other applicable requirements of this subpart; and
- Is effectively controlled by the provider or, in the case of a group, by one or more of the affiliated providers that established and operate the PSO.

Section 1855(a)(1) of the Act requires that MA organizations be licensed as risk-bearing entities under the laws of the state, but section 1855(a)(2)(A) of the Act establishes an exception to this requirement by allowing PSOs to obtain a Federal waiver of the state licensure requirement from the Secretary under certain circumstances. Accordingly, we specified in § 422.370 that CMS may waive the state licensure requirement for PSOs if the organization requests a waiver no later than November 1, 2002, and we determine there is a basis for a waiver under § 422.372.

Even though the authority to waive the state licensure requirement for PSOs expired on November 1, 2002, and we have not granted waivers of state licensure requirements since that time, we are taking the opportunity to clarify this policy in this proposed rule because of questions we have received. Accordingly, we propose to revise paragraph (a) of § 422.4 to clarify that we no longer have the authority to waive the state licensure requirement for PSOs.

2. Cost Plan Enrollment Mechanisms (§ 417.430)

As part of the enrollment process, § 417.430 requires that application forms be submitted to an HMO or CMP and must include a beneficiary's signature. The organization must provide the beneficiary with written notice of acceptance or rejection of the application. We are proposing changes to § 417.430(a)(1) that would allow us to approve other enrollment mechanisms for cost plans in addition to paper forms, such as electronic enrollment.

We are also proposing to streamline § 417.430(b)(3) and § 417.430(b)(4)(i) to allow for notice delivery options other than the traditional mailing of documents. These proposed changes take into consideration the advancement of communication technology and comport with revisions we made with respect to the MA program under § 422.50(a)(5) and § 422.60(e).

3. Fast-Track Appeals of Service Terminations to Independent Review Entities (IREs) (§ 422.626)

To correct a typographical error in § 422.626(f)(3), we propose removing the word "to" before the word "may."

4. Part D Transition Requirements (§ 423.120)

Pursuant to our authority under section 1860D–11(d)(2)(B) of the Act, we previously codified plan transition policies at § 423.120(b)(3). For enrollees residing in a long-term care (LTC) facility, a Part D sponsor is required to provide a LTC resident enrolled in its Part D plan at least a 31 day supply of a prescription when presenting in the first 90 days of enrollment (unless the prescription is written for less) with refills provided, if needed, up to a 93 day supply. As a result of section 3310 of the ACA and the proposed rule at § 423.154 for dispensing brand-name medications in increments of 7 days or less, we are proposing to revise the existing transition policy for LTC facilities to be more consistent with 7 day or less dispensing. Consistent with our proposed rule that would require Part D sponsors to require all pharmacies servicing LTC facilities to dispense no more than a seven-day supply of brand-name medication when dispensing covered Part D drugs to enrollees who reside in LTC facilities, with certain exceptions for specific types of drugs and certain waivers of the requirement for specific types of pharmacies, we propose revising the transition fill supply from 93 days to 91 days to accommodate multiple fillings of 7 days or less in the LTC setting whenever § 423.154 (a) applies to drugs dispensed in 7-day-or-less supplies. The proposed change to a 91-day supply would permit exactly 13 weeks of 7-day transition fills. Under this revised requirement, a Part D sponsor would be required to provide a LTC resident enrolled in its Part D plan a temporary supply of a prescription when presenting in the first 90 days of enrollment up to a 91-day supply, with supply increments consistent with § 423.154 (unless the prescription is written for less), with refills provided, if needed.

We also propose to amend § 423.120(b)(3)(iii) to clarify transition notice requirements that must be sent to beneficiaries within 3 business days of adjudication of a temporary fill. Upon review of the regulatory language, we believe revisions are needed in the case of multiple dispensing of 7 days or less of a single prescription. While we continue to believe that written notice must be sent to each affected enrollees, in the case of a LTC enrollee impacted by the 7-day-or-less dispensing requirement, we believe that the written notice should be sent within 3 business days after adjudication of the first transition fill. Otherwise, we are persuaded based on feedback from the LTC industry that beneficiaries may be confused when receiving multiple transition notices within 7 to 10 days of each 7-day or-less dispensing. We solicit comments on this proposed revision.

Accordingly, based on the preceding, we have proposed revisions to 423.120(b)(3)(iii)(B) and (iv) to be consistent with the proposed requirements related to dispensing brand-name medications in 7-day-or-less increments effective January 1, 2012.

5. Revision to Limitation on Charges to Enrollees for Emergency Department Services (§ 422.113)

As provided under section 1852(d)(1) of the Act and codified at § 422.113(b)(2)(v), MA organizations are financially responsible for emergency and urgently needed services, with a limit on charges to enrollees for emergency department services of $50 or what an MA organization would charge an enrollee if he or she obtained the services through the MA organization, whichever is less. The limit on cost sharing at the lesser of $50 or what the plan would charge the enrollee if he or she obtained the services through the organization was first included in the regulations at § 422.112(b)(4) in the June 26, 1998 interim final rule (63 FR 35081) as the cost sharing limit for emergency services received out-of-network. Subsequently, new section § 422.113 was added to the regulations in the June 29, 2000 final rule (65 FR 40322) and required that same limit on cost sharing for emergency services regardless of whether they were received in- or out-of-network.

We are proposing to revise the regulations to remove the $50 cost sharing amount for CY 2012 because we believe that it is outdated considering the increasingly higher costs of emergency care during the past decade. The relatively low cost-sharing limit for emergency department services has constrained MA organizations' ability to control unnecessary use of emergency departments. We believe that we are in a position to evaluate the cost-sharing limit for emergency care as part of our annual benefits review process to strike a balance between reasonable cost-sharing amounts and MA organizations' ability to appropriately control utilization and costs.

Therefore, we propose revising § 422.113(b)(2)(v) to remove the $50 amount and replace it with language indicating that we will evaluate and determine the appropriate enrollee cost-sharing limit for emergency department services. We would annually evaluate the emergency department cost sharing limit and inform MA organizations of any changes to the limit in annual guidance, such as the Call Letter.

6. Clarify Language Related to Submission of a Valid Application (§ 422.502 and § 423.503)

Since the enactment of the MMA in 2005, we have adapted our processes for reviewing applications for qualification for contracts to operate as Medicare Part C or D sponsoring organizations to accommodate the timely review of large numbers of applications each year. That adaptation has included the establishment of strict deadlines for the initial submission of applications and the resubmission of materials needed to cure identified deficiencies. We do not review applications that are submitted after the established deadline, meaning that an organization that misses the deadline would not receive a Part C or D sponsor contract for the following benefit year. Because we do not review such applications, we do not provide a notice of intent to deny under § 422.502(c)(2) or § 423.503(c)(2), nor is the organization entitled to a hearing under § 422.660 or § 423.650.

To avoid the consequences of missing the initial submission deadline, some organizations have submitted applications that we considered so lacking in required information or correct detail as to fail to constitute a valid, timely submission. We suspect that in many instances, these organizations expected to take advantage of our policy of affording applicants two later opportunities during the review process (including the 10-day cure period following the issuance of a notice of intent to deny an application issued under § 422.502(c)(2) and § 423.503(c)(2)) to make their applications complete by providing information that had been omitted from the initial submission. We established the submission deadline to ensure that all organizations had the same amount of time in which to develop their materials and that the agency could provide each applicant a fair and timely review of its application. Our adoption of a policy of strict enforcement of application submission deadlines is entirely consistent with our regulatory authority, stated at § 422.501(b) and

§ 423.502(b), to require organizations to submit applications in a form and manner required by CMS. Organizations that provide substantially incomplete applications are effectively submitting "placeholders" designed to save their eligibility to participate in the application review process until they can produce all the required materials. We find this practice to be an abuse of the application review process that defeats the purpose of the established deadline. As a result, in the CY 2010 Call Letter, we informed all current and potential Part C and D organizations that we would not review any application for contract qualification that amounted to a "placeholder" application. We inadvertently stated in the Call Letter that we would deny such applications pursuant to § 423.503(c), which could have been interpreted to mean that we were providing an opportunity for an administrative appeal. This was not our intent as we do not accept invalid applications, and where there is no valid application, we have no obligation to issue a notice of intent to deny or a right to appeal under § 422.660 or § 423.650.

In addition, we believe that confusion about our authority to enforce the application deadline may be created by the provisions of § 422.502(c)(2)(i) and § 423.503(c)(2)(i), which state that we will provide an applicant a notice of intent to deny when the organization "has not provided enough information to evaluate the application." We intended this language to afford an organization that had made a good faith effort to complete a contract qualification application the opportunity to provide the materials necessary to cure a discrete application deficiency. It now appears that this language could provide an unintended protection to an organization that circumvented our established application deadline by submitting a "placeholder" application.

We believe that the language in § 422.502(c)(2)(i) and § 423.503(c)(2)(i), stating that the agency will issue a notice of intent to deny if CMS finds that the applicant does not appear qualified to contract as a Part C or D sponsor, combined with the language of § 422.502(c)(2)(ii) and § 423.503(c)(2)(ii) allowing the organization to "revise its application to remedy any defects CMS identified" is sufficient to authorize us to consider additional curing materials submitted by a good faith applicant. Therefore, to remove all ambiguity that may exist concerning our authority to decline to accept or review substantially incomplete applications, we propose to revise the provisions of § 422.502(c)(2)(i) and § 423.503(c)(2)(i) to delete the phrase, "and/or has not provided enough information to evaluate the application."

7. Modifying the Definition of Dispensing Fees (§ 423.100)

As stated in our August 3, 2004 proposed rule, MMA does not define the term "dispensing fee," although the terms "dispensing fee" and "dispense" appear several times throughout the Act. Because the statute is ambiguous on the meaning of "dispensing fee," in the August 3, 2004 proposed rule we offered three options and sought comments on the proposed definitions. "Dispensing fees" as defined in our final rule, January 28, 2005, distinguished between pharmacies owned and operated by a Part D plan itself and all other pharmacies.

"Dispensing fees," as defined in the final rule issued January 28, 2005, implied that the salaries of pharmacists and other pharmacy workers were reasonable pharmacy costs only for pharmacies owned and operated by a Part D plan itself. We propose to clarify that the salaries of pharmacists and other pharmacy workers may be reasonable pharmacy costs for any pharmacy. Consistent with that clarification, we simplify the definition of "dispensing fees" and remove reference to "pharmacies owned and operated by a Part D plan itself."

We propose to modify the definition of "dispensing fee" under § 423.100 to include costs associated with the acquisition and maintenance of technology to maintain reasonable pharmacy costs. We also propose to add to the definition of "dispensing fees" a restocking fee associated with return for credit and reuse in long-term care pharmacies when return for credit and reuse is permitted under state law and is allowed under the contract between the Part D sponsor and the pharmacy. Although it is not our intent to include all activities that are "reasonable costs" in the definition of "dispensing fees," in light of the statutory requirements regarding LTC pharmacy dispensing, we believe that it is particularly important to highlight the potential pharmacy costs aimed at reducing waste and increasing efficiency of dispensing. We also believe dispensing fees should differentiate among the costs associated with different dispensing methodologies and appropriately address costs that are incurred to offset waste.

We now propose to simplify and clarify the definition of "dispensing fees" by modifying § 423.100 and eliminating the distinction between pharmacies owned and operated by a Part D plan itself and all other pharmacies. We also propose modifying § 423.100 by adding to the definition that dispensing fees should take into consideration the number of dispensing events in a billing cycle, the incremental costs associated with the type of dispensing methodology, and with respect to Part D drugs dispensed in LTC facilities, the techniques to minimize the dispensing of drugs that go unused. Dispensing fees may also take into account restocking fees associated with return for credit and reuse in long-term care pharmacies, when return for credit and reuse is permitted under State law and is allowed under the contract between the Part D sponsor and the pharmacy.

III. 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. In order 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.

The following sections of this document contain paperwork burden but not all of them are subject to the information collection requirements (ICRs) under the PRA for reasons noted.

A. ICRs Regarding Cost Sharing for Specified Services at Original Medicare Levels (§ 417.101 and § 422.100)

Under proposed § 417.101(g) and § 422.100(g) and (h), we would clarify that MA organizations may not impose cost sharing that exceeds that required under Original Medicare. We would evaluate the following services annually to ensure that MA plans are charging cost sharing in the upcoming contract year that does not exceed cost sharing in Original Medicare. Specifically, chemotherapy administration services that include chemotherapy drugs and radiation therapy integral to the treatment regimen, renal dialysis as

defined at section 1881(b)(14)(B) of the Act, and skilled nursing care defined as services provided during a covered stay in a skilled nursing facility would be subject to this limitation. The burden associated with this proposed requirement is the time and effort necessary for MA organizations and section 1876 cost contracts to submit their benefit designs, including cost-sharing amounts, via the Plan Benefit Package (PBP) software. While this proposed requirement is subject to the PRA, the burden associated with it is currently approved under OMB control number (OCN) 0938–0763 with a May 31, 2011, expiration date.

B. ICRs Regarding SNP Provisions (§ 422.101, § 422.107, and § 422.152)

1. Dual-Eligible SNP Contracts With State Medicaid Agencies (§ 422.107)

Proposed § 422.107(d)(ii) would extend the time allowed for the continuance of existing SNPs that do not have contracts with the State Medicaid agencies in which they operate. For new and existing dual eligible SNPs seeking to expand in contract years 2011 through 2013, the burden associated with this requirement is the time and effort put forth by each dual eligible SNP to confer and develop a contract with the State Medicaid agency. While this requirement is subject to the PRA, we do not expect the burden to change from the existing burden estimate, as currently approved, under OCN 0938–0753, with a November 30, 2011, expiration date.

2. ICRs Regarding NCQA Approval of SNPs (§ 422.101 and § 422.152)

Proposed § 422.101 and § 422.152 provide for the approval of all SNPs, existing and new, by the National Commission for Quality Assurance (NCQA) beginning in 2012. The burden associated with this requirement is the time and effort put forth by MA organizations offering SNPs to submit their overall quality improvement (QI) program and the model of care (MOC) to CMS for NCQA evaluation and approval as per CMS guidance. Although the submission of the MOC and the QI program documents is already part of the application process, scrutiny of these documents by NCQA for approval is a new requirement. Additionally, in the past all SNPs were not required to complete the SNPs proposal portion of the application each year, resulting now in all SNPs, (that is, all of the SNP plans offered by an MA organization) being required to complete the SNPs proposal within the application and possibly provide documentation external to the existing electronic application process. It is estimated that it will take each SNP plan 40 hours to complete the annual application. Within those 40 hours, the SNP portion of the burden is 6 hours. For the existing 544 SNPs, the burden associated with completing the SNP section only is estimated to be 3,264 hours.

The number of new plans each year will vary and cannot easily be predicted. However, based on the number of new plans that submitted SNP Proposals during the application period in February 2010 for operation in 2011, we estimate that approximately 15 new applications will be submitted annually. Thus, for 15 new plans at 40 hours each, we estimate the total annual burden hours to be 600. The burden associated with the proposed requirement for the new plans is currently approved under OCN 0938–0935 with a January 21, 2011 expiration date.

C. ICRs Regarding Voluntary De Minimis Policy for Subsidy Eligible Individuals (§ 423.34 and § 423.780)

Our proposed regulatory modifications pursuant to section 3303 of the ACA ensure that our regulations reflect the new statutory prohibition on reassigning low-income subsidy (LIS) beneficiaries from Part D plans that waive a *de minimis* amount of their premium. Further, the proposed regulatory modifications reflect statutory discretion for us to autoenroll or reassign LIS beneficiaries to Part D plans that waive the *de minimis* amount of the premium. The proposed modifications to § 423.34 do not by themselves impose any new information collection requirements on any external entity.

However, related proposals to modify § 423.780 do impose new information collection requirements. Specifically, the proposed modifications provide for the process for a Part D plan to volunteer to waive a *de minimis* amount over the monthly beneficiary premium for certain low income subsidy eligible (LIS) individuals. As specified in proposed changes to § 423.34, we are prohibited from reassigning LIS beneficiaries from Part D plans that waive the *de minimis* amount of the premium based on the fact that their premiums exceed the LIS benchmark premium amount, and we may choose to autoenroll or reassign LIS beneficiaries to such plans.

The burden associated with this requirement is the time and effort necessary for a Part D plan to submit data to us indicating its decision to volunteer to waive the *de minimis* amount. Since we will collect this information as part of an already established system, we estimate that annually, it will take an additional 10 minutes for plans to read the instructions, select an online check box, and submit the information. The *de minimis* amount will be established each year, and the amount may vary among years. For purposes of estimating the burden, we assume that the *de minimis* amount will be $1.00, and that all Part D plans with premiums within the *de minimis* amount over the regional LIS benchmark will volunteer to waive it. We estimate 150 Part D plans will qualify for *de minimis* in a given fiscal year. For 150 plans at 10 minutes each fiscal year, we estimate the total annual burden hours to be 25. We assume an hourly wage of $23.92 for a compliance officer, resulting in a total annual labor cost of $598.

D. ICRs Regarding Increase in Part D Premiums Due to the Income Related Monthly Adjustment Amount (D—IRMAA) (§ 423.44)

Proposed § 423.44(e)(4) would require PDPs to provide Part D enrollees with a notice of termination in a form and manner determined by CMS. We estimate that approximately 1.05 million of the 29.2 million Medicare beneficiaries enrolled in the Part D program will exceed the minimum income threshold amount and will be assessed an income related monthly adjustment amount. We also estimate that approximately 80,000 beneficiaries will be directly billed for the Part D—IRMAA because they are not receiving monthly benefit payments from SSA, the Office of Personnel Management, or the Railroad Retirement Board, or the monthly benefit payment is not sufficient to have the Part D—IRMAA withheld.

Of the 80,000 Part D enrollees who will be directly billed for the Part D—IRMAA, CMS cannot estimate how many might accrue Part D—IRMAA arrearages and be subsequently terminated. However, in the event that the 80,000 Part D enrollees who pay the Part D—IRMAA through direct billing become delinquent, PDPs would be required to send all 118,000 enrollees a notice of termination in accordance with § 423.44(e)(4), and the burden associated with this requirement would be the time and effort that it takes a PDP to populate the notice with a beneficiary's information. Termination notices are generally automated; therefore, CMS estimates that it will take 1 minute to generate a termination notice. As such, the total maximum

annual hourly burden associated with this requirement is 1,333 hours (1 minute multiplied by 80,000 enrollees, divided by 60 minutes). We estimate that the hourly wage paid to an individual tasked with generating the automated letters is $40 (based on U.S. Department of Labor statistics for hourly wages for administrative support). The associated burden amount for this work is $53,320. Additionally, Part D plan sponsors will have to retain a copy of the notice in the beneficiary's records. We estimate 5 minutes multiplied by 80,000 enrollees divided by 60 minutes. This equates to 6,666 hours at approximately $40 an hour (based on U.S. Department of Labor statistics for hourly wages for administrative support). This associated burden amount is $266,640. We estimate the total maximum annual burden for all Part D plan sponsors resulting from this proposed provision to be $319,960.

E. ICRs Regarding Elimination of Medicare Part D Cost-Sharing for Individuals Receiving Home and Community-Based Services (§ 423.772 and § 423.782)

We proposed to amend § 423.772 and § 423.782 in accordance with section 3309 of the ACA. Specifically, the proposed changes provide for a definition of an individual receiving home and community based services, and for zero cost-sharing for Medicare Part D prescriptions filled by full-benefit dual eligible beneficiaries receiving such services.

To carry out these provisions, we would require State Medicaid Agencies to submit data at least monthly identifying these individuals. There is an already established data exchange for States to identify their dual eligible individuals to CMS at least monthly. We would leverage that data exchange by adding a new value for the existing institutional field, which also prompts CMS to set a zero copayment liability for full benefit dual eligible beneficiaries. The estimated size of the population to be reported as being full benefit dual eligible and receiving home and community-based services is 600,000.

The burden associated with the requirement for States to provide CMS with the specified information is estimated to include a one-time development cost as well as ongoing annual costs. The startup development effort is estimated at 20 hours per State, or an additional 1,020 hours for all 51 State Medicaid Agencies (50 states and the District of Columbia), in the fiscal year prior to the effective date of this provision. Assuming an hourly salary of $34.10 for computer programmers, this results in a development cost of $34,782. Once implemented, the information collection burden is estimated to be 1 hour each month, or 612 hours in each fiscal year for 51 State Medicaid Agencies. Assuming an hourly salary of $34.10 for computer programmers, we estimate an ongoing cost of $20,862 per fiscal year.

F. ICRs Regarding Appropriate Dispensing of Prescription Drugs in Long-term Care Facilities under PDPs and MA–PD plans (§ 423.154) and Dispensing Fees (§ 423.100)

Under § 423.154(a), we propose to implement provisions of section 3310 of the ACA, which require Part D sponsors to use specific, uniform dispensing techniques such as weekly, daily, or automated dose dispensing when dispensing covered Part D drugs to enrollees who reside in long-term care facilities in order to reduce waste associated with 30-day fills. The collection burden associated with this proposed provision is the reporting requirement and re-negotiation of contracts.

We are proposing a new requirement under § 423.154(a)(3) for Part D sponsors to collect and report to CMS the method of dispensing technique used for each dispensing event described under § 423.154(a). We anticipate a billing standard that incorporates the collection of this information. While the requirements under this proposed section are subject to the PRA, should the rule be finalized, the reporting requirement will be proposed under currently approved OCN 0938–0992.

The proposed requirements will necessitate the renegotiation of contracts between Part D sponsors and the pharmacies servicing LTC facilities. We anticipate dispensing fees will increase, consistent with our proposed change in the definition of dispensing fees (§ 423.100), with the relative investment in the dispensing technologies and corresponding dispensing efficiencies associated with the dispensing technologies used in § 423.154.

We estimate that the total annual hourly burden for negotiating a contract between the Part D sponsors and entity contracting with the pharmacies servicing long-term care facilities (for example, PBM) to be equal to the number of Part D sponsors (731) multiplied by the average estimated hours per sponsor (10), equaling 7,310 hours. We estimate the number of entities contracting with pharmacies servicing long-term care facilities to be 40 (28 processors and 12 other entities). We estimate the total annual hourly burden for negotiating a contract between the entity described above and the pharmacies servicing long-term care facilities to be the number of entities (40) multiplied by the average estimated hours per entity (80), which is 3,200 hours. The total number of hours for contract renegotiation is estimated to be 10,510 hours (7,310 hours + 3,200 hours). The estimated hourly labor cost for reporting is $150.20. The total estimated cost associated with these requirements is $1,578,602. This is a one-time contract negotiation cost.

G. ICRs Regarding Complaint System for Medicare Advantage Organizations and PDPs (§ 422.504 and § 423.505)

Under proposed § 422.504(a) and § 423.505(b) we would require MA organization and Part D sponsors to address and resolve all complaints in the CMS complaint tracking system and to include a link to the electronic complaint form at *http://www.medicare.gov* on their main Web page. This requirement would allow thorough monitoring of complaints through the tracking system by identifying how plan sponsors resolve and close complaints and allow members to access complaint forms electronically on *http://www.medicare.gov.*

The burden associated with this proposed provision is the time and effort of the MA organizations and Part D sponsors in recording complaint closure documentation in the CTM and training staff, as well as posting and maintaining a link from their Web site to the electronic complaint form at the Medicare.gov Internet Web site. While this requirement is subject to the PRA, we believe this burden is exempt as defined in 5 CFR 1320.3(b)(2). That is, the time, effort, and financial resources necessary to comply with the requirement would be incurred by the Part D sponsors in the normal course of their business activities.

H. ICRs Regarding Uniform Exceptions and Appeals Process for Prescription Drug Plans and MA–PD Plans (§ 423.128 and § 423.562)

In accordance with the new section 1860D–4(b)(3)(H) of the Act, we propose to revise § 423.128 at paragraphs (b)(7) and (d) to specifically provide three mechanisms that plan sponsors must have in place in order to meet the uniform appeals requirements of 1860D–4(b)(3)(H) of the Act.

At § 423.128(b)(7), we proposed adding paragraph (i) to require that plan sponsors make available standard forms to request coverage determinations and

redeterminations (should this be determined feasible and to the extent that standard request forms have been approved for use by CMS).

We also propose to add paragraph (ii) to § 423.128(b)(7), which would require sponsors to develop a Web-based electronic interface that allows an enrollee (or an enrollee's prescriber or representative) to immediately request a coverage determination or redetermination via a plan's secure Web site. The interface would be the "electronic equivalent" of the paper coverage determination and appeals forms proposed at § 423.128(b)(7)(i). Similarly, we propose to revise § 423.128(d) by requiring sponsors to provide a toll-free telephone line for requesting coverage determinations and redeterminations. The burden associated with these proposed requirements involves collecting the coverage determination request information submitted through the various proposed processes.

We estimate that all 731 plan sponsors will receive a total of 484,468 coverage determination requests submitted by mail, with some using the standardized coverage determination request form if available, and that it will take 10 minutes to enter the information submitted from each request into a claims processing system, for a potential total annual burden of 80,745 hours. We also estimate that all plan sponsors will receive a total of 52,086 coverage determination requests submitted through secure websites, but that this process will not create an additional burden for plan sponsors beyond that required for requests submitted by mail because enrollees will enter information into a claims processing system themselves. Finally, we estimate that all plan sponsors will receive a total of 690,064 coverage determination requests submitted by telephone, and it will take 10 minutes to enter the information submitted by phone into the claims processing system, for a total annual burden of 115,011 hours. The burden associated with the redetermination process is exempt under 5 CFR 1320.4(a)(2) because a redetermination is an administrative action and information collected when conducting an administrative action is not subject to the PRA.

We also proposed to require Part D sponsors to modify their electronic transactions to pharmacies so that they can transmit codes instructing pharmacies to distribute notices at the point-of-sale (POS). That is, pharmacies and processors will be required to program their systems to relay the message at the pharmacy to distribute the appeal notice. In cases when a prescription cannot be filled as written, Part D sponsors are required under § 423.562(a)(3) to arrange with their network pharmacies to distribute a pharmacy notice advising the enrollee of his or her right to contact the plan to request a coverage determination. We estimate that the burden on processors will be the programming to send the code or billing response to the pharmacy, as well as revisions to the contract requirement with the pharmacy. We estimate that the number of hours for each processor (28 PBMs and 12 plan organizations) to perform these tasks will be 40 hours per processor, for a total one-time burden of 1,600 hours. The estimated one-time cost associated with the processor tasks is $64,000 (1600 hours × $40). Each pharmacy will need to program to receive the code and print the response. Programming by the pharmacies (40 pharmacy software vendors) in order to receive the code by each pharmacy will be 10 hours, for a total of 400 hours. The estimated one-time cost associated with the processor tasks is $16,000 (400 hours × $40).

We estimated that the average time to process a coverage determination is 10 minutes (0.167 hours) and that the average number of coverage determination requests received by mail or secure Web site processed for each respondent (n=731) was 734. Requiring plan sponsors to process the information submitted in standardized coverage determination requests forms (§ 423.128(b)(7)(i)) is, therefore, estimated to result in an annual burden of 89,605 hours (731 entities × 734 contracts per entity × .167 hours per contract to process). At an estimated cost of $40.00 per hour, the estimated total annual cost of this change is $3.2 million. We estimated that processing coverage determination requests that are received by telephone (§ 423.128(d)) will take an average of 10 minutes (0.167 hours) per request and that entities (n = 731) would process on average 944 coverage determination requests. This is estimated to result in an annual burden of 115,240 hours (731 entities × 944 determination requests per entity × 0.167 hours per determination request). At an estimated cost of $40.00 per hour, the estimated total annual cost of this change is $4.6 million (115,240 hours × $40.00 per hour). We estimated that contacting entities (n = 731) would distribute an average of 2,200 pharmacy notices.

Therefore, requiring plan sponsors to arrange with their network pharmacies to distribute pharmacy notices at the point-of-sale when prescriptions cannot be filled as written (§ 423.562(a)(3)) is estimated to result in an annual burden of 53,071 hours (2 minutes or 0.033 hours at point-of-sale × 731 contracts × 2200 pharmacy notices per contract). At an estimated cost of $40.00 per hour, the estimated total annual cost of this change is $2.1228 million.

I. ICRs Regarding Including Costs Incurred by AIDS Drug Assistance Programs and the Indian Health Service Toward the Annual Part D Out-of-Pocket Threshold (§ 423.100 and § 423.464)

Our revised definition of "incurred cost" at § 423.100 to include the costs associated with IHS/ADAPs as a cost that counts towards TrOOP does not impose new information collection for CMS' COB contractor or ADAPs. The COB contractor currently collects data-sharing agreements from ADAPs under the MSP information collection process. The burden associated with this collection is accounted for under OMB 0938–0214.

J. ICRs Regarding Improvements to Medication Therapy Management Programs (§ 423.153)

We propose to amend § 423.153(vii) to require the Part D sponsor use a standardized format for the action plan and summary resulting from the annual comprehensive medication review, permit the use of telehealth technology in the conduct of the CMR, and require sponsors to contract with LTC facilities to utilize independent consultant pharmacists to perform the targeted medication reviews that are required at least quarterly.

The burden associated with a number of the new MTM program requirements in the ACA, including the requirement for a written summary of the CMR, was summarized in our April 2010 final rule (75 FR 19678 through 19826) and approved under OCN 0938–0964 with an expiration date of September 30, 2012). We believe the burden associated with requirement in § 423.153(d)(1)(vii)(D) to provide an action plan and summary in a standardized format is generally part of that burden; therefore, no additional burden is estimated. Further, since the use of telehealth technology to conduct the CMR is permitted but not required, there is no burden associated with this change.

The proposed rule also requires Part D sponsors to coordinate MTM program quarterly medication reviews with LTC consultant pharmacist monitoring for Part D enrollees in LTC facilities. The ICR burden associated with this requirement is related to developing and

executing contracts with all the LTC facilities in which Part D enrollees reside to provide appropriate MTM services in coordination with LTC consultant pharmacist evaluation and monitoring. Although all Part D plan sponsors would need to contract with all the LTC facilities in which their enrollees reside, for purposes of determining the ICR burden, we assume that the contracts would be negotiated, drafted and executed by the sponsors' parent organization on behalf of all the parent's Part D contracts. In the absence of a parent organization, the sponsor would undertake the contracting activity directly. We expect a total of 240 parent organizations and sponsors would have a contract with an average of 802 LTC facilities.

We expect that complying with this requirement would primarily require the involvement of the parent organization's or the sponsor's general counsel to negotiate, draft and execute the contract. We estimate that complying with this requirement would require 4,812 burden hours (6 burden hours × 802 LTC facilities) for each parent organization or sponsor to execute a contract with a average of 802 LTC facilities at an estimated cost of $402,957 (4,812 burden hours × $83.74 estimated hourly cost). Thus, it would require 1,154,880 hours (4,812 burden hours per parent organization or sponsor × 240 parent organizations or sponsors with Part D LTC residents) for all Part D sponsors to comply with this requirement at an estimated cost of $96,709,680 ($402,957 estimated cost per parent organization or sponsor × 240 parent organizations or sponsors with Part D LTC residents).

After the first fiscal year, we estimate that continued compliance with this requirement would require 1,604 burden hours in each fiscal year (2 hours × 802 LTC facilities) per parent organization or sponsor general counsel to review the contract and, if necessary, execute updated contracts with the LTC facilities at an estimated cost of $134,319 per parent organization or sponsor. Thus, it would require 384,960 burden hours per fiscal year (1,604 annual burden hours per parent organization or sponsor × 240 parent organizations or sponsors with Part D LTC residents) for all Part D sponsors with Part D LTC residents to comply with this requirement at an estimated cost of $32,236,560 ($134,319 estimated cost per parent organization or sponsor × 240 parent organizations or sponsors with Part D LTC residents).

K. ICRs Regarding Changes To Close the Part D Coverage Gap (§ 423.104 and § 423.884)

Proposed § 423.104(d)(4) would require the approximately 40 pharmacy claims processors currently responsible for adjudication of pharmacy benefits to identify the applicable Part D covered drugs in their systems and apply a different cost-sharing percentage when processed in the coverage gap than the percentage applied to non-applicable drugs. We estimate a one-time burden to be 12,000 hours per processor to make the initial coding changes necessary to implement this requirement and an annual burden of 250 hours per processor to perform periodic updates of the applicable drugs in their systems. There are an estimated 40 processors. At an average labor cost of $105 per hour for a senior computer programmer, we estimate the first fiscal year annual burden associated with this requirement to be 480,000 hours (12,000 hours × 40 processors) at an estimated total cost of $50.4 million. After the first fiscal year, the estimated burden associated with this requirement would be 10,000 hours (250 hours × 40 processors) at an estimated total annual cost of $1,050,000.

L. ICRs Regarding Medicare Advantage Benchmark, Quality Bonus Payments, and Rebate (§ 422.252, § 422.258 and § 422.266)

Under § 422.258(d)(6) we propose to base the 5-star rating system for quality bonus payments on a modified version of the plan ratings published each fall on *http://www.medicare.gov.* The 5 star rating system for quality bonus payment will require no additional burden. The data collection for the 5 star rating is currently approved under the following OCNs.

OCNs Associated With the 5-Star Rating System for Quality Bonus Payments

OCN	Expiration date
0938–1028	November 30, 2011.
0938–0732	November 30, 2010.
0938–0701	August 31, 2010.

We have also proposed new calculations for the benchmarks and rebates in § 422.252, § 422.258, and § 422.266. The burden associated with the bid data used in these calculations is included in the burden estimate associated with the Bid Pricing Tool which is currently approved under OCN 0938–0944 with a May 31, 2011, expiration date.

M. ICRs Regarding Quality Bonus Appeals § 422.260

We propose to add a new § 422.260 to state that each MA organization is afforded the right to request an administrative review of CMS' determination concerning the organization's qualification for a quality bonus payment. The burden associated with this proposed provision is the time and effort of the MA organizations in developing and presenting their case to a CMS official and, ultimately, the CMS Administrator, to demonstrate that they in fact should qualify for the quality bonus payment. Eligibility for quality bonus payments will be based largely on CMS' application of a publicized methodology for assigning star ratings to MA organizations. These star ratings will be calculated using a combination of the MA organization's performance scores across a variety of quality assessment measures. MA organizations will have the opportunity to challenge CMS' application of the methodology to their performance.

We estimate that the total hourly burden in a fiscal year for developing and presenting a case to us for review is equal to the number of organizations likely to request an appeal multiplied by the number of hours for the attorneys of each appealing MA organization to research, draft, and submit their arguments to CMS. Based on the star rating distributions of previous contract years, out of the approximately 350 MA contracts that are subject to star rating analysis (that is, those not excluded from analysis because of low enrollment, contract type not required to report data, or new contract with no performance history), approximately 250 may receive less than a four-star rating. We estimate that 10 percent of those contracts (25) will request an appeal of their rating under the proposed rule. We further estimate that one attorney working for 8 hours could complete the documentation to be submitted to CMS for each contract, resulting in a total burden estimate of 200 hours (8 hours × 25 contracts = 200 hours). The estimated fiscal year cost to MA organizations associated with this provision (assuming an attorney billing rate of $250 per hour) is $50,000 (200 hours × $250).

N. ICRs Regarding Timely Transfer of Data and Files When CMS Terminates a Contract With a Part D Sponsor (§ 423.509)

We propose to amend § 423.509 to state when CMS terminates a contract with a Part D plan sponsor, the Part D plan sponsor must ensure the timely

transfer of any data or files. Our intent is to ensure that terminated Part D plan sponsors transfer to CMS the necessary data to provide a smooth transition for beneficiaries into a new Part D plan similar to when the Part D sponsor terminates the contract or CMS and the Part D plan sponsor mutually terminate the contract. The burden associated with this proposed provision is the time and effort that Part D plan sponsors must undertake to transfer the requisite data and files to CMS. We have not developed a burden estimate for this requirement because we do not believe that we will exceed the PRA threshold of 9 organizations per any 12-month period.

O. ICRs Regarding Compliance Officer Training (§ 422.503 and § 423.504)

The proposed § 422.503(b)(4)(vi)(B)(1)(b) and § 423.504(b)(4)(vi)(B)(1)(b) regarding compliance officer training will clarify existing requirements by providing additional guidance with respect to the particular training requirements. The burden associated with this requirement is the time and effort put forth by the plan sponsor to train a compliance officer to meet the existing training requirements of this section. The proposed clarification is related only to the content and timing of the existing training requirement. While these requirements are subject to the PRA, the burden associated with them is currently approved under OCN 0938–1000 with an expiration date of February 28, 2010.

P. ICRs Regarding Agent and Broker Training Requirements (§ 422.2274 and § 423.2274)

Proposed § 422.2274(b) and (c) and § 423.2274(b) and (c) would require MA organizations' and Part D sponsors' agents and brokers to receive training and testing via a CMS endorsed or approved training program. We are considering implementing this requirement through a Request for Proposal (RFP) competitive process. The burden associated with this requirement is the time and effort put forth by plan sponsors and/or third party vendors to submit their proposals for CMS review. We estimate that about 12 entities (plan sponsors and/or third party vendors) will submit a proposal and the average estimated hours per entity to complete the proposal is 100 hours. The total estimated hourly burden associated with this requirement is equal to the estimated number of entities (12) multiplied by the estimated hours per entity (100) resulting in a total of 1200 hours. We estimate the hourly labor cost for the preparer of the proposal will be $59.20 (based on hourly wages for management analysts reported by the U.S. Department of Labor Bureau of Labor Statistics). The total annual labor cost of this proposal preparation is estimated to be $71,040 ($59.20 × 1200 hours) per fiscal year.

Also at § 422.2274 and § 423.2274, we propose to clarify that the annual agent and broker training requirements apply to all agents and brokers selling Medicare products and not just independent agents and brokers. The burden associated with this requirement is the time and effort put forth by the MA organization or Part D sponsor to ensure all agents and brokers selling Medicare products are trained and tested training annually. While this requirement is subject to the PRA, we burden is exempt as defined in 5 CFR 1320.3(b)(2). The time, effort, and financial resources necessary to comply with the requirement would be incurred by persons in the normal course of their business activities.

Q. ICRs Regarding Call Center and Internet Web Site Requirements (§ 422.111 and § 423.128)

We propose in § 422.111(g)(1)(2)(3) to require MA organizations to operate a toll-free customer call center that is open during usual business hours and provides customer telephone service in accordance with standard business practices, as well as to provide current and prospective enrollees with information via an Internet Web site and in writing (upon request). We propose in § 422.111(g)(1)(iii) and § 423.128(d)(1)(iii) to codify provisions from the Medicare Marketing Guidelines (August 15, 2005 version and all subsequent versions) that require plan sponsors to provide call center interpreters for non-English and limited English proficient (LEP) beneficiaries. The burden associated with this proposed requirement is the time and effort necessary to maintain a customer call center and Internet Web site, to provide information to beneficiaries in writing upon request, and to provide call center interpreters. While this requirement is subject to the PRA, we believe this burden is exempt as defined in 5 CFR 1320.3(b)(2). The time, effort, and financial resources necessary to comply with the requirement would be incurred by persons in the normal course of their business activities.

R. ICRs Regarding Requiring Plan Sponsors To Contact Beneficiaries To Explain Enrollment by an Unqualified Agent/Broker (§ 422.2272 and § 423.2272)

Proposed § 422.2272(e) and § 423.2272(e) would require MA organizations and Part D sponsors, respectively, to notify Medicare beneficiaries upon discovery that they were enrolled in a plan by an unqualified agent. While this requirement is subject to the PRA, we burden is exempt as defined in 5 CFR 1320.3(b)(2). The time, effort, and financial resources necessary to comply with the requirement would be incurred by persons in the normal course of their business activities.

S. ICRs Regarding Customized Enrollee Data (§ 422.111 and § 423.128)

Proposed § 422.111(b)(11) and § 423.128(b)(12) would require MA organizations and PDP sponsors to periodically provide each enrollee with enrollee specific data to use to compare utilization and out-of-pocket costs in the current plan year to projected utilization and out-of-pocket costs for the following plan year. Plans would disclose this information to plan enrollees in each year in which a minimum enrollment period has been met, in conjunction with the annual renewal materials (currently the ANOC and EOC).

Plan sponsors already collect enrollee utilization and cost-sharing information as part of their claims processing operations. Therefore, the burden associated with this proposed requirement is the time and effort necessary for a plan sponsor to complete program development and testing, and to disclose (print and mail) this information to each beneficiary. We anticipate that it would take 30 hours per MA organization and 20 hours per Part D sponsor to develop and submit the required information. This includes 2 hours for reading CMS' published instructions, 20 hours per MA organization and 10 hours per Part D sponsor generating the document or documents, and 8 hours printing and disclosing to beneficiary. We developed this burden estimate using our burden estimates for the ANOC/EOC documents under OCN 0928–1051 as a baseline, then expanding on that baseline, and factoring in expected programming and development costs to provide beneficiary specific information. We estimate 564 MA organizations and 85 Part D sponsors would be affected annually by this requirement. The total annual burden associated with this requirement is 18,620 hours in a fiscal

year. In subsequent years, the burden associated with this proposed requirement is the time and effort necessary for a plan sponsor to disclose (print and mail) this information to each beneficiary. We anticipate that it would take 20 hours per MA organization and 15 hours per Part D sponsor to develop and submit the required information. This includes 1 hour for reading CMS' published instructions, 10 hours per MA organization and 5 hours per Part D sponsor generating the document or documents, and 6 hours printing and disclosing to beneficiary. We estimate 564 MA organizations and 85 Part D sponsors would be affected annually by this requirement. The total annual burden associated with this requirement is 12,555 hours in a fiscal year (20 hours for each of the 564 MA organizations + 15 hours for each of the 85 Part D sponsors).

T. ICRs Regarding Extending the Mandatory Maximum Out-of-Pocket (MOOP) Amount Requirements to Regional PPOs (§ 422.100(f) and § 422.101(d))

We propose at § 422.100(f) and § 422.101(d) to extend the mandatory MOOP and catastrophic limit requirements to RPPO plans. Each RPPO plan would establish an annual MOOP limit on total enrollee cost sharing liability for Parts A and B services, the dollar amount of which would be set annually by CMS. All cost sharing (that is, deductibles, coinsurance, and copayments) for Parts A and B services would be included in RPPO plans' MOOPs. Our proposal would not result in an additional data collection burden for RPPOs since they already collect this data to establish their own in-network MOOP and catastrophic limits under § 422.101(d)(4). While this requirement is subject to the PRA, the burden is exempt as defined in 5 CFR 1320.3(b)(2). The time, effort, and financial resources necessary to comply with the requirement would be incurred by persons in the normal course of their business activities.

U. ICRs Regarding Prohibition on Use of Tiered Cost Sharing by MA Organizations (§ 422.100 and § 422.262)

Under our proposed revision to § 422.262, we would clarify that MA organizations may not impose cost sharing that varies across enrollees for any reason, including provider group, hospital network or enrollees' utilization of services. The burden associated with this proposed revision is the time and effort necessary for MA organizations and section 1876 cost contracts to submit their benefit designs, including cost-sharing amounts, via the Plan Benefit Package (PBP) software. While this proposed requirement is subject to the PRA, the burden associated with it is currently approved under OCN 0938–0763 with a May 31, 2011 expiration date.

V. ICRs Regarding Translated Marketing Materials (§ 422.2264 and § 423.2264)

This proposed clarification at § 422.2264(e) and § 423.2264(e) does not impose any additional burden upon MA organizations because they have been required to provide translated marketing materials pursuant to § 422.2264(e) and § 423.2264(e) (previously numbered § 422.80(c)(5) and § 423.50(d)(5)). We believe the burden associated with these proposed requirements is exempt from the requirements of the Paperwork Reduction Act of 1995 (PRA) as defined in 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with the requirement would be incurred by persons in the normal course of their activities.

W. ICRs Regarding Expanding Network Adequacy Requirements to Additional MA Plan Types (§ 422.112)

Our proposed amendment to § 422.112(a)(10) would ensure that any MA plan that meets Medicare access and availability requirements through direct contracting network providers does so consistent with the requirements at § 422.112(a)(10). We did not include MA MSAs in § 422.112(a)(10) because MSA plans historically have not had networks and enrollees in MSA plans may see any provider. However, MSA plans are not prohibited from having networks as long as enrollee access is not restricted to network providers. While there are currently no MA MSA network plans, we are aware of possible interest in offering such plans.

The burden associated with this requirement is the time and effort required by MA organizations to submit network adequacy data to CMS for review and approval as part of the application process. This burden is already accounted for under OCN 0938–0935. However, since this proposal would extend the current network adequacy requirements only to Medicare MSA plans and there is currently only one Medicare MSA contract (which does not use a network of providers), we believe that fewer than 10 applications would be subject to this proposed requirement in each fiscal year.

X. ICRs Regarding Maintaining a Fiscally Sound Operation (§ 422.2, § 422.504, § 423.4, and § 423.505)

Proposed § 422.504(a) and § 423.505(b) would add a contract term under which an MA organization or PDP sponsor agrees to maintain a fiscally sound operation by at least maintaining a positive net worth. A determination of whether there is a positive net worth will be made from the financial reports submitted under the current financial reporting requirements. The burden associated with this proposed requirement is the time and effort necessary to submit these financial reports. While this proposed requirement is subject to the PRA, the associated burden is currently approved under OCN 0938–0469 with an expiration date of April 30, 2013.

Y. ICRs Regarding Release of Part C and Part D Payment Data (Parts 422 and 423, Subpart K)

This proposed rule would allow the Secretary to release Part C and D summary payment data for research, analysis, and public information functions. The Secretary believes these data should be made available because other publicly available data are not, in and of themselves, sufficient for the studies and operations that researchers want to undertake to analyze the Medicare program and Federal expenditures, and to inform the public on how their tax dollars are spent.

These data would be routinely released on an annual basis in the year after the year for which payments were made. The data release would occur after final risk adjustment reconciliation has been completed for the payment year in question and, for Part D, after final payment reconciliation of the various subsidies. Thus, we would release data for payment year 2010 in the fall of 2011. This timeframe would not apply to the release of RDS data, since we do not reconcile RDS payment amounts until 15 months following the end of the plan year. The majority of our sponsors provide retiree drug coverage on a yearly basis. If an application plan year ended December 31, 2010, the payment reconciliation is not due until March 31, 2012, which would be after the fall 2011 target for other Part C and D payment data. We proposed to release the most current RDS payment data available at the time Part C and D payment reconciliation has been completed and those data are compiled and released.

Since we are not seeking additional information from MA organizations or from Part D sponsors, there are no PRA

implications. Payment data are quite different than the bid data plans submit and for which we have existing OMB authority for collection (OCN 0938–0944). The gross payment data we are proposing to disclose are not derived from information plans submitted to us, but rather are compiled and derived solely from CMS internal payment files.

Z. ICRs Regarding Revision to Limitation on Charges to Enrollees for Emergency Department Services (§ 422.113)

We are proposing at § 422.113(b)(2)(v) to eliminate the current $50 cost-sharing limit on emergency department services and, instead, to require CMS to evaluate and determine the appropriate enrollee cost sharing limit for emergency department services on an annual basis. The burden associated with this proposed requirement is the time and effort necessary to for MA organizations to submit their benefit designs, including cost-sharing amounts, via the Plan Benefit Package (PBP) software. While this proposed requirement is subject to the PRA, the associated burden is currently approved under OCN 0938–0763 with an expiration date of May 31, 2011.

BILLING CODE 4120–01–P

Table 15: Estimated Fiscal Year Reporting Recordkeeping and Cost Burdens

Regulation Sections	OMB Control No.	Respondents	Responses	Burden per Response (hours)	Total Annual Burden (hours)	Hourly Labor Cost of Reporting3 ($)	Total Labor Cost	Total Capital/ Maintenance Costs ($)	Total Cost ($)
§422.101 and §422.152	0938-0935	544	544	6	3,264	55.46	181, 021	0	181, 021
§423.780(f)	0938-New	150	150	0.167	25	23.92	598	0	598
§423.44	0938-New	80,000 731	80,000 80,000	0.017 0.083	1,333 6,666	40.00 40.00	53,320 266,640	0	53,320 266,640
§423.772 and §423.782 (Start-up)	0938-New	51	51	20	1020	34.10	34,782	0	34,782
§423.772 and §423.782 (Annual)	0938-New	51	51	12	612	34.10	20,869	0	20,869
§423.154 and §423.100	0938-0992	731 40	731 40	10 80	7,310 3,200	150.20 150.20	1,097,962 480,640	0 0	1,097,962 480,640
§423.128(b)(7)(i)	0938-New	731	536,554	0.167	89,605	40.00	3,584,200	0	3,584,200
§423.128(d)	0938-New	731	690,064	0.167	115,011	40.00	4,600,440	0	4,600,440
§423.562(a)(3)	0938-New	731 40 40	1,608,200 40 40	0.033 40 10	53,071 1,600 400	40.00 40.00 40.00	2,122,840 64,000 16,000	0 0 0	2,122,840 64,000 16,000
§423.153(vii) (Start-up)	0938-New	240	802	6	1,154,880	83.74	96,709,651	0	96,709,651
§423.153(vii) (Annual)	0938-New	240	802	2	384,960	83.74	32,236,550	0	32,236,550
§423.104(d) (Start-up)	0938-New	40	40	12,000	480,000	105.00	50,400,000	0	50,400,000
§423.104(d) (Annual)	0938-New	40	40	250	10,000	105.00	1,050,000	0	1,050,000
§422.260	0938-New	25	25	8	200	250	50,000	0	50,000

3 Bureau of Labor Statistics, U.S. Department of Labor, *National Compensation Survey: Occupational Earnings in the United States, 2009*. United States Government Printing Office. July 2009. Retrieved from http://www.bls.gov/ncs/ncswage2009.htm

Regulation Sections	OMB Control No.	Respondents	Responses	Burden per Response (hours)	Total Annual Burden (hours)	Hourly Labor Cost of Reporting3 ($)	Total Labor Cost	Total Capital/ Maintenance Costs ($)	Total Cost ($)
§422.2274 and §423.2274	0938-New	12	12	100	1,200	59.20	71,040	0	71,040
§422.111 and	0938-New	564	564	20	11,280	27.24	307,267	0	307,267
§423.128		85	85	15	1,275	27.24	34,731	0	34,731
Total		81,810	2,998,835		2,326,912		192,201,530		193,201,530

BILLING CODE 4120–01–C

V. Regulatory Impact Analysis

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 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 Order 12866 directs 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). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year).

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 organizations, 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 (having revenues of less than $7.0 million to $34.5 million in any 1 year). Individuals and States are not included in the definition of a small entity.

MA organizations and Part D sponsors, the entities that will largely be affected by the provisions of this rule, are not generally considered small business entities. They must follow minimum enrollment requirements (5,000 in urban areas and 1,500 in nonurban areas) and because of the revenue from such enrollments, these entities are generally above the revenue threshold required for analysis under the RFA. While a very small rural plan could fall below the threshold, we do not believe that there are more than a handful of such plans. A fraction of MA organizations and sponsors are considered small businesses because of their non-profit status. HHS uses as its measure of significant economic impact on a substantial number of small entities, a change in revenue of more than 3 to 5 percent. We do not believe that this threshold would be reached by the proposed requirements in this proposed rule because this proposed rule will have minimal impact on small entities. Therefore, an analysis for the RFA will not be prepared because the Secretary has determined that this proposed 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 an 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. We are not preparing an analysis for section 1102(b) of the Act because the Secretary has determined that this rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

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 by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million in 1995 dollars, updated annually for inflation. In 2010, that threshold is approximately $135 million. This proposed rule is expected to reach this spending threshold.

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. Based on CMS Office of the Actuary estimates, we do not believe that this proposed rule imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We note that we have estimated that our proposal to eliminate, pursuant to section 3309 of the ACA, Medicare Part D cost-sharing for full-benefit dual eligible individuals receiving home and community based services at § 423.772 and § 423.782 will have a very small cost impact on States resulting from the need to identify eligible individuals and provide data to CMS. As discussed elsewhere in this RIA, we estimate the annual cost associated with the requirement for States to provide CMS with this data to be $34,782 in the first year and $20,869 for subsequent years.

The CMS Office of the Actuary has estimated savings and costs to the Federal government as a result of various provisions of this proposed rule. As detailed in Table 17, we expect savings to the Federal government of approximately $83.75 billion for fiscal years (FYs) 2011 through 2016 as a result of the implementation of the following provisions:

Payment Changes Related to MA benchmarks, Quality Bonus Payments, Rebates, and Application of Coding Adjustment.	$76.47 billion.
Increase in Part D premiums Due to Income Related Monthly Adjustment Amount (D—IRMAA)	$4.77 billion.
Appropriate Dispensing of Prescription Drugs in Long-term Care Facilities under PDPs and MA–PD plans and Dispensing Fees.	$2.33 billion.
Elimination of the Stabilization Fund	$181 million.

In Table 16, we present Federal transfers, as well as total costs to the States, Part D sponsors, MA organizations, and other private sector entities, in the aggregate, as a result of various provisions of this proposed rule. As detailed in Table 16, we expect costs of approximately $5.57 billion for FYs 2011 through 2016 as a result of the implementation of various additional provisions of this proposed rule. Following are the provisions with the most significant costs (that is, costs greater than $100 million between FY 2011 and FY 2016) in this proposed rule:

Changes to Close the Part D Coverage Gap	$3.67 billion.
Determination of Part D Low-Income Benchmark Premium	$770 million.
Including Costs Incurred by AIDS Drug Assistance Programs (ADAPs) and the Indian Health Service (IHS) Toward the Annual Part D Out-of-Pocket Threshold.	$460 million.
Voluntary De Minimis Policy for Subsidy Eligible Individuals	$170 million.
Cost-Sharing for Medicare Covered Preventive Services	$148 million.

Tables 17, 18, and 19 detail the breakdown of costs by cost-bearing entity. Specifically, Table 17 describes costs and savings to the Federal government, Table 18 describes estimated administrative costs to MA organizations and/or PDP sponsors and third party entities, and Table 19 describes costs to States.

Taking into account both costs and savings estimated in this RIA, we estimate a net savings of $78.18 billion as a result of the provisions in this proposed rule over FYs 2011 to 2016. Therefore, this proposed rule is "economically significant" as measured by the $100 million threshold, and is a major rule under the Congressional Review Act. Accordingly, we have prepared an RIA that details anticipated effects (costs, savings, and expected benefits), and alternatives considered by proposed requirement. For collection of information burden associated with our proposed requirements and the bases for our estimates, refer to of the collection of information section of this proposed rule.

B. Anticipated Effects Associated With This Proposed Rule

1. Cost Sharing for Specified Services at Original Medicare Levels (§ 417.101 and § 422.100)

We estimate that our proposed implementation of section 3202 of the ACA will result in minimal additional program costs. In addition to our proposal to implement the ACA-required limits on cost sharing in MA plans for chemotherapy services, renal dialysis services, and skilled nursing facility care, we also are proposing to require the same cost sharing limits for in-network home health services provided under MA plans. We estimate that the Federal fiscal year 2012 (FY 2012) costs to Medicare of limiting cost sharing in MA plans for the three service categories specified in the ACA (that is, chemotherapy services, renal dialysis, and skilled nursing facility care) will be zero because we already require plans to charge in-network cost sharing for these three service categories that reflects, or is equivalent to, cost sharing under Original Medicare. In fact, we believe that Congressional intent was to require that CMS maintain the limits on in-network cost sharing that we had already implemented for SNF care, renal dialysis services, and Part B chemotherapy services. Thus, we expect that there will be no effect on plans or beneficiaries as a result of our proposed implementation of the cost sharing limits specified in section 3202 of the ACA.

We estimate that the cost of our proposal to also limit MA plan cost sharing for in-network home health services so that it does not exceed that required under Original Medicare will not be significant. Cost sharing for home health services under Original Medicare is zero. In previous years, we have allowed increased flexibility in benefit package design for MA plans that establish a maximum out-of-pocket limit on beneficiary cost sharing for Parts A and B services (for example, $3,400 or less for contract year 2010). As a result, in contract year 2010, of the 2535 MA plans, 167 charged some beneficiary cost sharing (usually $15) for home health services. Those plans enrolled less than 4 percent of all MA enrollees. Given that, on average, home health visits account for less than 5 percent of total MA expenditures, only a small share (about 0.2 percent) of MA expenditures will be subject to the home health cost sharing prohibition.

For two reasons, we believe that the proposed home health policy will have a negligible impact on MA plans. First, as mentioned above, only a small share of expenditures will be subject to the cost sharing prohibition so that any increase in plan costs related to this provision can be absorbed through modest increases in cost sharing for other services, administrative efficiencies, and/or small increases in the plan premium. Also, as evidenced by the large proportion of plan enrollees not subject to home health cost sharing in contract year 2010, MA organizations should be able to adequately manage the use of home health services absent enrollee cost sharing.

To estimate the cost to the MA program for the loss of beneficiary cost sharing for home health services, we assumed that the enrolled beneficiaries' utilization of home health services is lower than that of the Medicare population in general due to the required copayment, and used $15 as the estimated copayment amount. Approximately 9 percent of Original Medicare beneficiaries use home health services, and the average number of visits per user is 37, resulting in 3.3 visits per beneficiary per year. We assume that utilization of home health services by enrollees in the MA plans that charge cost sharing is one-third of that for beneficiaries under Original Medicare, or 1.1 visits per MA enrollee. The resulting FY 2012 estimated cost to the MA program is $6.8 million, which is derived using the assumptions of $15 copayment for the 1.1 visits per beneficiary for the 414,000 MA enrollees subject to in-network home health cost sharing in contract year 2010. However, we estimate that the impact of having to provide home health services without cost sharing would be minimal because we expect that the costs would be reallocated across other plan benefits. We believe that the affected plans would accomplish that reallocation without affecting their actuarial equivalence relative to Original Medicare and that there would be no impact on these MA plans for FY 2012. Consequently, because we estimate that there would be only minor reallocation of the costs and zero impact on MA plans for FY 2012, we estimate zero impact for MA plans in all subsequent years.

2. Approval of SNPs by NCQA (§ 422.4, § 422.101, and § 422.152)

The burden associated with this requirement is the time and effort put forth by MA organizations offering SNPs to submit their overall quality improvement (QI) program and the model of care (MOC) to CMS for NCQA evaluation and approval as per CMS guidance. Although the submission of the MOC and the QI program documents is already part of the application process, scrutiny of these documents by NCQA for approval is a new requirement. This requirement is for all SNPs, new and existing. We estimate that it will take each SNP plan 40 hours to complete the annual application. Within, those 40 hours, we estimate the SNP portion of the burden is 6 hours. Currently, there are 544 existing SNP plans. For the existing plans to complete the SNP sections only, the burden associated with this new requirement is 3,264 hours.

The estimated costs associated with the burden hours are summarized in Tables 16 through 18. The costs in Table 17 reflect the contract award to NCQA for $1 million and a contract award at the level of $500,000 for years 2012 to 2016. The additional costs incurred in this table are for the Federal salaries for two GS–13 step 10 analysts and a GS–15 manager. Table 18 contains the projected administrative costs to the SNPs for preparing the SNP sections of the application. These costs are primarily labor costs for staff employed by the plans to complete the required materials. The salaries are proposed equivalent to that of one GS–13 step-10 analyst at a salary of $55.46 an hour.

3. Determination of Part D Low-Income Benchmark Premium (§ 423.780)

Beginning in 2011, section 1860D–14(b)(3)(B)(iii) of the Act requires CMS to calculate the LIS benchmarks using basic Part D premiums before the application of Part C rebates each year. This proposed rule would update our regulations at § 423.780(b)(2)(ii)(C) to codify this provision. This provision will decrease the number of reassignments of low-income beneficiaries from plans that are above the low-income benchmark because it will increase the benchmark, thereby producing more zero-premium plans. We believe this proposal will lead to additional costs to the Federal government of approximately $90 million for FY 2011. The estimated cost to the Federal government between FY 2011 and FY 2016 is $770 million. The year-by-year impacts in millions of dollars are shown in Tables 16 through 18. Table 17 shows that the bulk of this total cost is due to increased Federal premium subsidy payments, which are the result of generally increasing the low-income benchmarks. The higher benchmarks allow a greater number of low-income beneficiaries to remain in their current plan, rather than reassigning them to a lower cost plan. In each region, the low-income benchmark essentially functions as a ceiling for the Federal premium subsidy for low-income beneficiaries. That is, the Federal premium subsidy covers the full cost of the plan's basic Part D premium for a full-subsidy beneficiary, up to the low-income benchmark amount.

This approach maintains a strong incentive to bid low to keep and possibly add LIS beneficiaries. Absent the provision, there may be a "winner take all" outcome in certain regions with one organization acquiring all of the LIS beneficiaries in the region. It is difficult to predict what will happen in the absence of this provision, but we expect some organizations will be induced to bid even lower, while other organizations will give up on this population and bid higher.

We expect this rule will reduce the administrative costs for plan sponsors associated with the reassignment of LIS beneficiaries. These costs include the production of new member informational materials by the new plan, increased staffing of call centers to field beneficiary questions, and costs associated with implementing transition benefits for new enrollees. The cost estimate for the LIS benchmark methodology change in Table 16 does not include a projection for administrative savings.

4. Voluntary De Minimis Policy for Subsidy Eligible Individuals (§ 423.34 and § 423.780)

The proposed new voluntary *de minimis* provisions in § 423.34(d) and § 423.780(f) would permit Part D plans to volunteer to waive a *de minimis* amount of the Part D premium above the LIS benchmark. We expect that the only Part D plans that will volunteer to do so would be those PDPs that would otherwise lose LIS beneficiaries to reassignment. We will establish a new *de minimis* amount in August of each year, and the *de minimis* amount may vary by year. For purposes of illustration, if the *de minimis* amount were $1.00, we would estimate 800,000 LIS beneficiaries would have an average of $0.50 per month waived by Part D plans, resulting in a total annual cost to all *de minimis* plans of $5 million per year. Table 18 shows that this would result in a total cost of $30 million to PDPs during from FY 2011 to 2016. If the *de minimis* amount were $2.00, we would estimate that 1,200,000 LIS beneficiaries would have an average of $0.93 per month waived by Part D plans, resulting in a total annual cost to all *de minimis* plans of $10 million per year.

Our proposed voluntary *de minimis* provisions are estimated (based on the assumption of a $1.00 *de minimis* amount) to cost the Medicare Trust Fund $140 million over the 6-year period from FY 2011 to FY 2016. Tables 17 and 18 illustrate how these costs are borne by the Federal government and PDPs, respectively. PDPs that volunteer to waive a *de minimis* amount will not have their LIS beneficiaries reassigned to a zero premium plan. The additional costs are attributable to low-income beneficiaries staying in higher cost plans. The result of staying in higher cost plans is that Medicare's low-income cost-sharing subsidy and reinsurance payments will be greater than would have been the case if CMS reassigned these beneficiaries to lower-cost plans.

5. Increase In Part D Premiums Due to the Income Related Monthly Adjustment Amount (D—IRMAA) (§ 423.44)

Proposed § 423.44(e)(3) would require PDPs to provide Part D enrollees with a notice of disenrollment in a form and manner determined by CMS. PDPs will provide disenrollment notices to enrollees who were required to pay the Part D—IRMAA because their modified adjusted gross income exceeded the income threshold amounts set forth in 20 CFR 418, but failed to pay it after a grace period and appropriate notice has been provided.

Consistent with data from individuals paying the Part B IRMAA (1.8 million) and enrolled in a Part D plan, we estimate that approximately 1.05 million of the 29.2 million Medicare beneficiaries enrolled in the Part D program will exceed the minimum income threshold amount and will be assessed an income related monthly adjustment amount. Out of the 1.05 million affected beneficiaries, we estimate that 0.22 million will drop the Part D coverage in 2011. Under Part B, approximately 122,000 (14.8 percent) of the 1.8 million beneficiaries assessed an IRMAA are billed directly. This constitutes 5.17 percent of the Medicare population. We estimate that approximately 80,000 (7.6 percent) of the 1.05 million beneficiaries enrolled in Part D who must pay the Part D—IRMAA will be directly billed for the Part D—IRMAA either because they are not receiving monthly benefit payments from SSA, OPM, or the RRB, or the monthly benefit payment is not sufficient to have the Part D—IRMAA withheld.

Of the 80,000 Part D enrollees who will be directly billed for the Part D—IRMAA, we cannot estimate how many might accrue Part D—IRMAA arrearages and be subsequently terminated. However, in cases where the PDP is required to send an enrollee a notice of termination in accordance with § 423.44(e)(4), and all 80,000 Part D enrollees that have a Part D—IRMAA become delinquent, the burden associated with this requirement would be the time and effort it takes the PDP to populate the notice. Termination notices are generally automated; therefore, we estimate 1 minute × 80,000 enrollees divided by 60 minutes. This equates to an annual burden for PDP sponsors of 1,333 hours at approximately $40/hour (based on U.S. Department of Labor statistics for hourly

wages for administrative support). The associated burden amount for this work is $53,320. Additionally, Part D plan sponsors would have to retain a copy of the notice in the beneficiary's records. We estimate 5 minutes × 80,000 enrollees divided by 60 minutes. This equates to 6,666 hours at approximately $40/hour (based on U.S. Department of Labor statistics for hourly wages for administrative support). This associated burden amount is $266,640. We estimate the total maximum annual burden for all Part D plan sponsors resulting from this proposed provision to be $319,960. Therefore, as shown in Table 18, we estimate this proposed provision to result in a maximum burden cost, to PDP sponsors, in the amount of $1.92 million for FYs 2011 through 2016. We believe this proposal will lead to Federal government savings of approximately $4.77 billion from FY 2011 through FY 2016 from increased premium payments by Medicare beneficiaries. We describe these savings to the Federal government in Table 17. Also, because the income thresholds do not increase between 2011 and 2019, we anticipate that more beneficiaries will be affected by the IRMAA provision over time and this, in turn, will produce significant growth in the savings associated with this program.

6. Elimination of Medicare Part D Cost-Sharing for Individuals Receiving Home and Community-Based Services (§ 423.772 and § 423.782)

We propose amending § 423.772 and § 423.782 pursuant to section 3309 of the ACA. Specifically, the proposed changes provide for a definition of an individual receiving home and community based services, and for zero cost-sharing for Medicare Part D prescriptions filled by full-benefit dual eligible beneficiaries receiving such services. As illustrated in Table 18, this provision will not increase administrative costs for MA organizations or PDP sponsors. The affected beneficiaries already have LIS as full duals and are, therefore, low-income individuals. Their Part D copayment level is likely to be low prior to the elimination of copayments. The elimination of copayments will allow them additional disposable income for other expenses. The reduction in the copayments to zero will be fully offset by increasing low income subsidy cost sharing subsidy payments we make to their Part D plans. We believe the impact on the Federal government will be minimal given that most of the impacted individuals are already at a low copayment level and the shift from the low copayment level to zero copayment is small.

This provision will impact States, as they will have to identify eligible individuals and provide data to CMS. They will send the new data on an existing monthly data exchange already used to identify dual eligible beneficiaries. We estimate the cost for States to comply with this requirement to include a one-time development cost of $34,782 in FY 2011, and as well as an ongoing annual cost of $20,869 starting in FY 2012.

7. Appropriate Dispensing of Prescription Drugs in Long-Term Care Facilities Under PDPs and MA–PD Plans (§ 423.154) and Dispensing Fees (§ 423.100)

In our discussions with the industry, we learned that 75 percent to 80 percent of the cost related to drug waste arises from 20 percent of the drugs. That 20 percent is made up of brand name medications. In an effort to target the drugs resulting in the most financial waste and to lessen burden for facilities transitioning from 30-day supplies to 7-day supplies, we propose initially limiting 7-day-or-less dispensing to brand name drugs as defined in § 423.4.

Pharmacies servicing LTC facilities may have the upfront costs associated with software upgrades, packaging and hardware changes, and ongoing costs of transaction fees, and additional deliveries. These costs are not reflected in Table 16, and we are soliciting comment on these costs. We expect some of these expenses to be offset by an increase in dispensing fees consistent with § 423.100. In addition, a decrease in volume of drugs dispensed may result in lower revenues and rebates.

We learned from the industry that many pharmacies already have 7-day-or-less dispensing techniques in place for their Part A population. Most pharmacies not already using a 7-day-or-less dispensing technique will generally be converting from their existing 14- or 30-day dispensing technique down to a 7-day-or-less dispensing technique. Based on discussions with the industry, we expect most pharmacies to initially convert from a 14- or 30-day punch card system to a 7-day punch card system. Our conversations with manufacturers of the 30-day punch card systems have indicated that there is minimal capital investment conversion needed for the transition from 30-day to 7-day packaging. We expect only a small number of pharmacies will convert to an automated dose dispensing system in the short-term. The industry tells us that the major barrier to adopting is automated dose dispensing technologies cost approximately $100,000 to $150,000 in capital acquisition costs per machine.

Regardless of the dispensing technique used, pharmacies will likely have to change or update software. There will be a cost associated with the change in software and training of pharmacy staff associated with the change. We are soliciting comment on these costs.

We expect some pharmacies to incur a small additional expense related to the number of deliveries required to service a facility with a 7-day-or-less dispensing technique. However, given the existing widespread agreements between pharmacies and skilled nursing facilities to dispense in 7-day-or-less packages for Part A residents and the pharmacy's responsibility to deliver at least 5 to 6 days a week to accommodate new residents, emergency supplies and changes in therapy, we expect only a small number of pharmacies to be adversely effected.

LTC facilities will need to accommodate 7-day-or-less dispensing techniques for their Part D population. We anticipate LTC facilities will be impacted by an increase in the number of medication check-ins for those facilities and pharmacies not already using automated dispensing technologies. Based on conversations with the industry, we also anticipate that the LTC facility staff will require varying amounts of additional training. Training time will vary based on the extent to which the dispensing technique changes to accommodate 7-day-or-less dispensing.

The costs associated with this proposed provision is the additional costs of dispensing fees to account for software upgrades, packaging and hardware changes, transaction fees, additional deliveries, and the time and effort of Part D sponsors to re-contract with entities (for example, pharmacy benefit managers) which contract with pharmacies servicing LTC facilities.

We anticipate that dispensing fees will be developed to take into account of the marginal costs associated with additional dispensing events in a single billing cycle for a single prescription and consider costs undertaken to acquire and maintain technology aimed at reducing waste. Part D plans have the flexibility to vary the actual dispensing fees paid to pharmacies. We project dispensing fees to pharmacies servicing LTC facilities to be between 50 percent and 100 percent higher for contract year 2012 than in previous contract years, with increases in the lower end for the large majority of the claims. For

example, we would expect dispensing fees to be greater when a Part D drug is dispensed using automated dose dispensing technology as opposed to a Part D drug dispensed via a 7-day blister pack.

We estimate the total yearly burden for negotiating a contract between the Part D sponsor and the entity (for example, PBM) contracting with the pharmacies servicing LTC facilities to be equal to the number of the Part D sponsors (731) × the average estimated hours per sponsor (10). This equals 7,310 hours. We estimate the number of entities contracting the pharmacies servicing LTC facilities to be 40 (28 processors and 12 sponsors). We estimate the total yearly hourly burden for negotiating a contract between the entity described above and the pharmacies servicing LTC facilities to be the number of entities (40) × the average estimated hours per entity (80). This is 3200 hours. The total number of hours for contract negotiation is estimated to be 10,510 hours. The estimated hourly labor cost for reporting is $150.20. This estimate is a compilation of the hourly rate for a lawyer and support staff from the Bureau of Labor Statistics. The total estimated cost associated with these requirements is $1,578,602 ($150.20 × (3,200 + 7,310 hours) = $1,578,602) and is described in Table 18. This is a one-time contract negotiation cost.

We anticipate that the initial upfront costs to convert to a 7-day-or-less dispensing technique will eventually be more than offset by the savings to the Federal government associated with dispensing. Initial industry estimates suggest that approximately 10 percent of the total LTC drug costs could be avoided through the adoption of 7-day-or-less dispensing methodologies. One 7-month analysis using data from 36 skilled nursing facilities suggested at least a 17 percent to 25 percent savings with 7-day dispensing and almost 26 percent savings associated with automated dose dispensing when compared to 30-day dispensing for Part D drugs.[4] Given that we are not aware of additional studies to determine the cost savings, we conservatively estimate a 10 percent savings for overall costs, and therefore estimate an overall savings associated with this provision (*see* Table 16 for estimates of the year-by-year savings). We solicit comments on this estimate.

[4] James W. Moncrief, Advanced Pharmacy, data from a seven month study of 36 LTC facilities presented at the NCPDP Dispensing Meeting. Sheraton Hotel BWI, March 19, 2010.

8. Complaint System for Medicare Advantage Organizations and PDPs (§ 422.504 and § 423.505)

The burden associated with this proposed provision is the time and effort of the MA organizations and Part D sponsors in training staff and recording complaint closure documentation in the CTM, as well as posting and maintenance of a link from their Web site to the electronic complaint form at *http://www.medicare.gov.* We estimate that the total annual hourly burden for training staff and recording complaint closure in the CTM is equal to the average estimated hours per sponsor for documentation for each complaint closure (.25) × the average number of complaints per sponsor (102) plus the average estimated hours per sponsor for training (8 hours), multiplied by the average cost of a technical health care worker ($15) × the number of Part C and D contracts (757). We also estimate that the total annual hourly burden for posting and continued maintenance of a link is 20 hours × the average cost of a Web site developer ($34) × the number of Part C and D contracts (757). We estimate the annual burden associated with all these changes equals 40,500 hours. The average cost per hour is approximately $22.10. The estimated annual cost associated with these requirements is $895,160.

9. Uniform Exceptions and Appeals Process for Prescription Drug Plans and MA–PD Plans § 423.128 and § 423.562)

We expect that streamlining the appeals and exceptions process will allow beneficiaries to access appeals more quickly and will ensure beneficiaries have access to covered medications in a timely manner MA organizations and Part D sponsors will be required to process coverage determination requests submitted by mail or via an internet Web site (§ 423.128(b)(7)(i) and (ii)), which is estimated to result in an annual burden of 80,745 hours. At an estimated cost of $40.00 per hour, the estimated total annual cost of this requirement is $3.23 million. Also, processing coverage determination requests that are received by telephone (§ 423.128(d)) is estimated to result in an annual burden of 115,010 hours. At an estimated cost of $40.00 per hour, the estimated total annual cost of this requirement is $4.6 million.

In cases when a prescription cannot be filled as written, Part D sponsors are required under § 423.562(a)(3) to arrange with their network pharmacies to distribute a pharmacy notice advising the enrollee of his or her right to contact the plan to request a coverage determination. Under this proposal, Part D sponsors would be required to modify their electronic transactions to pharmacies so that they can transmit codes instructing pharmacies to distribute notices at the point-of-sale (POS). That is, pharmacies and PBMs will be required to program their systems to relay the message at the pharmacy to distribute the appeal notice.

We estimate the burden on plan processors will be the programming to send the code or billing response to the pharmacy, as well as revising the terms of their contracts with pharmacies. We estimate that the number of hours for each processor (28 PBMs and 12 plan organizations) to perform these tasks will be 40 hours per processor, for a total one-time burden of 1600 hours. The estimated one-time cost associated with the processor tasks is $64,000 (1600 hours × $40). Each pharmacy will need to program to receive the code and print the response. Programming by the pharmacies (40 pharmacy software vendors) in order to receive the code by each pharmacy will be 10 hours, for a total of 400 hours. The estimated one-time cost associated with the processor tasks is $16,000 (400 hours × $40).

We estimate that the 731 contracting entities would distribute an average of 2,200 pharmacy notices. Therefore, requiring plan sponsors to arrange with their network pharmacies to distribute pharmacy notices at the point-of-sale when prescriptions cannot be filled as written (§ 423.562(2)(3)) would result in an annual burden of 53,071 hours (2 minutes or 0.033 hours at point-of-sale × 731 contractors × 2,200 pharmacy notices per contract). At an estimated cost of $40.00 per hour, the estimated total annual cost of this change would be $2.14 million.

10. Including Costs Incurred by the AIDS Drug Assistance Program (ADAP) and the Indian Health Services (IHS) Toward the Annual Part D Out-of-Pocket Threshold (§ 423.100 and § 423.464)

This proposed requirement would allow Part D sponsors to count ADAP and IHS costs towards a beneficiary's TrOOP costs, allowing the beneficiary to move through the coverage gap portion of the benefit and into catastrophic coverage phase. There is no burden on IHS facilities since claims will be identified as IHS provider claims by the National Provider Identifier (NPI). However, ADAPs will be requested to submit information to CMS Coordination of Benefits (COB) contractor via a voluntary data sharing

agreement (VDSA), which will be sent to the TrOOP facilitator to ensure proper calculation of the TrOOP amounts. Several ADAPs already participate in the COB file exchange and have submitted their VDSAs. The approximate cost associated with this submission is 30 minutes to complete the VDSA per entity. We estimate a one-time annual cost of $1,000 (50 entities (ADAPs that require VDSAs) × 5 hours × $40.00/hour = $1,000.

The burden associated with this proposed provision is not expected to impact sponsor organization costs, with the exception of up-front programming costs, which we estimate will be 1 hour per sponsor for an approximate cost of $40 per sponsor. Including these costs toward TrOOP impacts how fast a beneficiary will reach the catastrophic limit, which is largely funded by the Federal government, with the exception of relevant beneficiary copays. Sponsors will not incur additional costs due to this requirement. The Federal cost impact is estimated at $460 million from FY 2011 to FY 2016. The additional cost to the Federal government (Medicare program) is due to more individuals reaching the catastrophic coverage phase under the Part D benefit.

11. Cost Sharing for Medicare Covered Preventive Services (§ 417.101 and § 422.100)

We estimate that our proposed implementation of sections 4103, 4104, and 4105 of the ACA will result in additional program costs as beneficiaries will pay no portion of the costs for the Personalized Prevention Plan Services, the Initial Preventive Physical Exam and Medicare-covered preventive services for which cost sharing is waived under Original Medicare (§ 417.101 and § 422.100). We estimate that the FY 2012 costs to Medicare for increasing access to clinical preventive services in accord with sections 4103, 4104, and 4105 of ACA will be $410 million.

Although slightly less than 30 percent of Medicare expenditures for Parts A and B are for MA enrollees, we estimate that the cost to the MA program of increasing access to clinical preventive services as described by sections 4103, 4104, and 4105 of the ACA will be significantly less than 30 percent of the estimated cost to the Medicare program for implementation of these provisions. In contrast to the Original Medicare program, most MA plans already provide some in-network preventive services without charging beneficiary cost sharing. In contract year 2010, at least 78 percent of plans provide many, or all, of the Medicare-covered preventive services without charging beneficiary cost sharing. In fact, almost all MA plans currently provide a few of the Medicare-covered preventive benefits without cost sharing. Therefore, we estimate that our proposal to require MA plans to provide the Medicare-covered preventive services without beneficiary cost sharing will not increase plan costs by a significant amount.

Based on our finding that 78 percent of plans provide some preventive benefits without cost sharing in contract year 2010, we estimate that for FY 2012 plans will incur approximately $27.1 million in costs by providing in-network Medicare preventive services without charging beneficiary cost sharing. Over time, we estimate that the relative cost to the MA program for provision of improved access to Medicare-covered preventive services will be consistent with the estimated cost for Medicare, which increases with growth in the Medicare population. We estimate the total cost of this provision to be $147.9 million between FYs 2011 and 2016.

Further, although not included in our estimates, we believe that the increased emphasis on provision of preventive services may also result in improved beneficiary well-being and subsequently decrease their need for, and utilization of, more costly medical and surgical interventions and may decrease overall program costs.

12. Elimination of the Stabilization Fund (§ 422.458)

Section 10327(c) of the ACA repealed section 1858(e) of the ACA, eliminating the stabilization fund. Therefore, we are proposing to delete paragraph (f) from § 422.458, since the statutory basis for the Fund no longer exists. The elimination of the stabilization fund will have the effect of savings for the Federal government, but will also result in a loss of financial incentives for regional plans to operate in regions with no or low MA penetration.

We expect the Federal government to save approximately $181.2 million for the fiscal years 2011 through 2016 from the implementation of this provision. The savings are a result of the elimination of the national bonus payment and recruitment and retention bonus payments to MA plans that would operate in regions with no or low MA penetration.

The fund will no longer offer a financial incentive for regional organizations to offer plans in regions with low or no MA penetration. The funds have never been accessible, however, because, since the fund's inception, payments have been delayed through legislation. Therefore, the formal elimination of the fund will have little or no impact on the current operation of the MA program.

13. Improvements to Medication Therapy Management Programs (§ 423.153)

We estimate first year costs associated with the requirement for Part D sponsors to contract with all LTC facilities in which their Part D enrollees reside to provide appropriate MTM services in coordination with independent consultant pharmacist evaluation and monitoring is $96,709,680 ($402,957 estimated cost per parent organization or sponsor × 240 parent organizations or stand alone sponsors with Part D LTC residents = $96,709,680 estimated cost). We estimate annual costs for updating the contracts for subsequent years to be $32,236,560 ($134,319 estimated cost per parent organization or sponsor × 240 parent organizations or sponsors with Part D LTC residents = $32,236,560 estimated cost).

We expect Part D beneficiaries meeting the target criteria for MTM services will have improved access to these services both through the use of telehealth technologies and for those beneficiaries who are also LTC residents through the coordination of their MTM services with the monthly drug regimen reviews.

14. Changes To Close the Part D Coverage Gap (§ 423.104 and § 423.884)

With the implementation of proposals related to closing of the Part D coverage gap, Medicare beneficiaries will have improved access to the prescription drugs in the coverage gap and enter the catastrophic phase of the benefit earlier in the benefit year as a result of our proposed changes to close the Part D coverage gap. Beneficiary cost sharing in the coverage gap would be determined on the basis of whether the covered Part D drug is considered an applicable drug under the Medicare coverage gap discount program. Different cost sharing levels will apply during the coverage gap to the drugs that are applicable and not applicable under the coverage gap discount program. In addition to the cost sharing changes, the rate of growth of the annual Part D out-of-pocket threshold would be reduced from FY 2014 to FY 2016. Further, in attesting to the actuarial equivalence of qualified retiree prescription drug plans to the standard Medicare Part D coverage, sponsors would not take into account the value of any discount or coverage provided during the coverage gap.

For changes associated with closing the Part D coverage gap, we estimated a one-time total cost of $50,400,000 (12,000 burden hours for each processor × 40 processors × $105 for the average labor cost of a senior programmer based on data from the Bureau of Labor Statistics) in the first year for the 40 pharmacy claims processors to implement systems changes. In subsequent years, the estimated total annual cost is $1,050,000 (250 burden hours per processor × 40 processors × $105 for the full cost of labor of a senior programmer) to identify changes to the applicable drugs under the Medicare coverage gap discount program and update systems with this information each month. The total estimated costs to the Medicare program for the adjustments to beneficiary cost sharing in the coverage gap are $130,400,000 in the first year (FY 2011), increasing in subsequent years as the coverage gap closes and the Part D enrollment increases. The estimated annual cost to the Medicare program associated with decreasing the rate of annual growth in the Part D out-of-pocket threshold is $40,000,000 in FY 2014, increasing in subsequent years as the Medicare Part D enrollment increases and the coverage gap closes.

15. Medicare Advantage Benchmark, Quality Bonus Payments, and Rebate and Application of Coding Adjustment (§ 422.252, § 422.258, § 422.266, and § 422.308)

Prior to enactment of the ACA, MA payment benchmarks (county rates) were established only partially in relationship to average fee-for-service costs in a county. Section 1102 of reconciliation amendments links all county benchmarks to FFS costs, effective 2012. As a transition, the ACA sets the 2011 MA benchmarks equal to the benchmarks for 2010; for subsequent years it specifies that, ultimately, the benchmarks will be equal to a percentage (95, 100, 107.5, or 115 percent) of the fee-for-service rate in each county. During a transition period, the benchmarks will be based on a blend of the pre-ACA and post-ACA benchmarks. The phase-in schedule for the new benchmarks will occur over 2 to 6 years, with the longer transitions for counties with the larger benchmark decreases under the new method.

The ACA, as amended, also introduces MA bonuses and rebate levels that are tied to the plans' quality ratings. Beginning in 2012, benchmarks will be increased for plans that receive a 4-star or higher rating on a 5-star quality rating system. The bonuses will be 1.5 percent in 2012, 3.0 percent in 2013, and 5.0 percent in 2014 and later; these bonuses increase the new benchmark portion of the blended benchmark until all transitions are complete. An additional county bonus, which is equal to the plan bonus, will be provided on behalf of beneficiaries residing in specified counties. The percentage of the "benchmark minus bid" savings provided as a rebate, which historically has been 75 percent, will also be tied to a plan's quality rating. In 2014, when the provision is fully phased in, the rebate share will be 50 percent for plans with a quality rating of less than 3.5 stars; 65 percent for a quality rating of 3.5 to 4.49; and 70 percent for a quality rating of 4.5 or greater. This provision will provide incentives for plan quality to increase. Plans will be paid based on quality performance rather than just the specific services they provide. However, the rules for determining quality bonus payments for CY 2012 through 2014 will be modified under the terms of the national quality bonus payment demonstration project.

The ACA amended the statutory provision that requires us to make an adjustment to MA risk scores for differences in coding patterns between MA and FFS. The ACA made four modifications to this requirement: The analysis must be conducted annually; the data used in the analysis is to be updated as appropriate; the results of the analysis are to be incorporated into risk scores on a timely basis; and the application of an adjustment for differences in coding patterns was extended past 2010 indefinitely. Further, the ACA provides for minimum adjustments for MA coding in future years.

Our proposed changes to § 422.252, § 422.258, and § 422.266 codify section 1102 of the ACA, which links county benchmarks to FFS costs and provides eligible plans with a quality bonus. These provisions will lower payments from us, bringing MA payments in line with FFS payments. The new provisions will also generally reduce MA rebates and benchmarks for plans and thereby result in less generous benefit packages. We estimate that the Federal government will save approximately $40.56 billion from FY 2011 to FY 2014. The Federal government will save approximately $76.470 billion from FY 2011 to FY 2016. The year-by-year savings in millions of dollars are shown in Table 16. We estimate that in 2017, when the MA provisions will be fully phased in, enrollment in MA plans will be lower by about 50 percent (from its projected level of 14.8 million under the prior law to 7.4 million under the new law).

16. Quality Bonus Appeals (§ 422.260)

We estimate a minimal overall impact as a result of this provision, as we expect only a minority of MA organizations to take advantage of the opportunity to appeal CMS' annual quality rating. Of those organizations that do appeal their rating, a minimal number of professional staff working over a short period of time would be required to prepare and present an organization's appeal.

We estimate that the total annual hourly burden for developing and presenting a case to us for review is equal to the number of organizations likely to request an appeal multiplied by the number of hours for the attorneys of each appealing MA organization to research, draft, and submit their arguments to CMS. Based on the star rating distributions of previous contract years, out of the approximately 350 MA contracts that are subject to star rating analysis (that is, those not excluded from analysis because of low enrollment, contract type not required to report data, or new contract with no performance history), approximately 250 may receive less than a four-star rating. We estimate that 10 percent of those contracts (25) will request an appeal of their rating under the proposed rule. We further estimate that one attorney working for eight hours could complete the documentation to be submitted to us for each contract, resulting in a total burden estimate of 200 hours (8 hours × 25 contracts = 200 hours). The estimated annual cost to MA organizations associated with this provision (assuming an attorney billing rate of $250 per hour) is $50,000 (200 hours × $250 = $50,000).

17. Timely Transfer of Data and Files When CMS Terminates a Contract With a Part D Sponsor (§ 423.509)

We anticipate minimal financial impact from our proposal to require terminated Part D plan sponsors to effectuate a smooth transition by providing CMS with Medicare beneficiary data including information to identify each affected beneficiary, pharmacy claims files, true out-of-pocket (TrOOP) cost balances, and information concerning pending grievances and appeals.

We estimate that the total annual burden for this proposal to be the cost of maintaining sufficient staff to transfer the data required under § 423.509. As a result, we estimate the total annual burden to be the number of Part D sponsors we anticipate terminating in a

contract year (2) × the hourly rate of staff to transfer the required data ($75/hour) × the number of hours required to provide data to us (20 hours). Therefore, the estimated annual cost associated with these requirements is $3,000.

18. Review of Medical Necessity Decisions by a Physician or Other Health Care Professional and the Employment of a Medical Director (§ 422.562, § 422.566, § 423.562, and § 423.566)

We estimate that 95 percent of MA organizations and Part D sponsors already have a medical director overseeing decisions of medical necessity. Therefore, we believe that there will be no increase in cost for the majority of MA organizations and Part D sponsors. We anticipate that 5 percent of MA organizations and Part D sponsors will incur a financial impact as a result of this proposed provision.

Of the 5 percent of MA organization and Part D sponsors that do not currently employ a medical director, we estimate that the total annual burden for employing a medical director is equal to 5 percent of the number of MA organization and Part D sponsors (757), which equals 38 organizations and sponsors, at a salary of $250,000 per year. Therefore, the estimated annual cost associated with these requirements is $9,500,000.

We believe our proposed provisions to require review of medical necessity decisions by a physician or other health care professional and the employment of a medical director will help to prevent: (1) Failure to provide access to drugs for enrollees who are stable on a protected class drug; (2) application of inappropriate prior authorization and step therapy criteria when adjudicating prescriptions; (3) issuance of denials based on a lack of medically accepted indications when medically accepted indications are specified in at least one of the applicable compendia; and (4) failure to provide transition supplies for existing members who experience formulary changes across plan years.

19. Compliance Officer Training (§ 422.503 and § 423.504)

Starting in 2013 for existing sponsors and 2012 for new applicants, we would require sponsors to annually pay for travel expenses and training registration fees for each compliance officer associated with a MA or Part D contract to attend compliance officer training offered by an entity with expertise in Part D. With expected travel costs of $1,000 and registration fees of $700, the increase in costs for a single contract would be $1,700. In 2012, only new applicants would have to train their compliance officers. The average number of new applicants at the parent organization level over the past 2 years has been 8. We have reason to believe there will be a similar number of new applicants for 2012; therefore, we estimate the cost for compliance officer training in 2012 would be $13,600. For 2013 and subsequent years, based on the current 316 compliance officers associated with all 2010 contracts, we estimate the annual cost associated with this requirement would be $537,200.

The anticipated effect of requiring annual compliance officer training is that compliance officers will be more knowledgeable about the MA and Part D programs which should translate into more efficient internal plan oversight. As internal plan oversight increases, we anticipate a decrease in the volume and severity of compliance issues because compliance officers will be able to identify small problems before they become large problems with significant beneficiary impact. As a result, beneficiaries will be more likely to receive benefits consistent with plan sponsors' bids and CMS requirements.

20. Agent and Broker Training Requirements (§ 422.2274 and § 423.2274)

Proposed § 422.2274(b) and (c) and § 423.2274(b) and (c) would require MA organizations' and Part D sponsors' agents and brokers to receive training and testing via a CMS endorsed or approved training program. We are considering implementing this requirement through a Request for Proposal (RFP) competitive process. The burden associated with this proposed requirement is the time and effort put forth by plan sponsors and/or third party vendors to develop and submit their proposals for CMS review. We estimate that about 12 entities (plan sponsors and/or third party vendors) will submit a proposal annually and that the average estimated hours per entity to complete the proposal is 100 hours. The total estimated hourly burden associated with this requirement is equal to the estimated number of entities (12) × the estimated hours per entity (100) = 1,200 hours. We estimate the hourly labor cost for the preparer of the proposal will be $59.20 (based on the U.S. Department of Labor statistics for hourly wages for management analysts). The annual cost of proposal preparation is estimated to be $71,040 ($59.20 × 1200 hours).

The anticipated effect of our proposed provision to require all agents and brokers to receive training and testing via a CMS-endorsed or approved training program would be beneficiary access to agents and brokers who are thoroughly and consistently trained on the fundamentals of Medicare regulations. We believe that such thorough and consistent training will help ensure that beneficiaries receive accurate information about their Medicare health care options.

21. Call Center Interpreter Requirements (§ 422.111 and § 423.128)

We estimate the cost for our proposed call center requirements at the parent organization level because most parent organizations have one call center for all of their contracts. For the parent organizations that currently and consistently provide interpreters, their costs will not increase. Organizations that provide interpreters, but not consistently, will need to train their CSRs on how to use the interpreter service, which can be included in regularly scheduled training meetings at no increased cost. Lastly, we expect the cost for each of the two parent organizations that currently do not provide interpreters to increase by $9,933 per year. This estimated cost is based on 1–800–MEDICARE foreign language interpreter use, which is 4.5 percent of all calls. If 4.5 percent of calls could require an interpreter over the course of a standard 12-hour call center day, this would translate into using interpreter services for 33 minutes each day. Over the course of a year for the 301 days a call center is required to be open, and at a rate of $1.00 per minute, based on CMS market research in for interpreter costs, the cost for each of the two parent organizations would increase by $9,933 per year, which is $19,866 for both in FY 2012.

22. Customized Enrollee Data (§ 422.111 and § 423.128)

Proposed § 422.111(b)(11) and § 423.128(b)(12) would require MA organizations and PDP sponsors to periodically provide each enrollee with enrollee-specific data to use to compare utilization and out-of-pocket costs in the current plan year to projected utilization and out-of-pocket costs for the following plan year. Plans would disclose this information to plan enrollees in each year in which a minimum enrollment period has been met, in conjunction with the annual renewal materials (currently the annual notice of change and evidence of coverage documents).

Plan sponsors already collect enrollee utilization and cost-sharing information as part of their claims processing operations and for calculating MOOP limits. Therefore, we estimate the initial year burden associated with this

proposed requirement is the time and effort necessary for a plan sponsor to complete program development and testing, and to disclose (print and mail) this information to each beneficiary. We developed this burden estimate using our experience with burden estimates for the ANOC/EOC documents under OCN 0928–1051as a baseline, then expanding on that baseline, and factoring in expected programming and development costs to provide beneficiary specific information. We estimate the total annual burden hours associated with this provision at 18,620 hours for the 564 MA organizations and 85 Part D sponsors that would be affected annually by this requirement. Using the same wage/cost estimate as the ANOC/EOC documents, we applied an hourly wage cost for GS–10, step 1 analyst at an estimated cost of $27.24 per hour. Therefore, the estimated total initial year cost of this proposed requirement is approximately $507,208.00.

In subsequent years, the burden associated with this proposed requirement is the time and effort necessary for a plan sponsor to disclose (print and mail) this information to each beneficiary. We estimate the total annual burden hours associated with this provision at 12,555 hours for the 564 MA organizations and 85 Part D sponsors that would be affected annually by this requirement. At an estimated cost of $27.24 per hour, the estimated total initial year cost of this proposed requirement is approximately $342,000.

The anticipated effect of our proposed provision to require MA organizations and PDP sponsors to provide customized enrollee data would be greater access to individualized information for beneficiaries to use in making decisions about their enrollment and their health care options. While this proposed new requirement would result in cost burden for MA organizations and Part D sponsors to calculate, compile and disclose beneficiary-specific data, plans should already have the systems in place to collect the required information as part of their claims processing operations and for calculating MOOP limits; over time, therefore, we anticipate that plans would continue to refine and work to make their processes for disclosing this information as well as the annual notice of change, evidence of coverage, and other plan documents more efficient, thereby mitigating the burden over time.

23. Extending the Mandatory Maximum Out-of-Pocket (MOOP) Amount Requirements to Regional PPOs (§ 422.100 and § 422.101)

Proposed § 422.100(f) and § 422.101(d) would extend the mandatory MOOP and catastrophic limit requirements to RPPO plans. Each RPPO plan would establish an annual MOOP limit on total enrollee cost sharing liability for Parts A and B services, the dollar amount of which would be set annually by CMS. All cost sharing (that is, deductibles, coinsurance, and copayments) for Parts A and B services would be included in RPPO plans' MOOPs. In the April 15, 2010 final rule implementing policy and technical changes to the Medicare Advantage and prescription drug benefit programs (72 FR 19799 through 19800), we discussed the anticipated effects of our policy to require local MA plans to have a MOOP limit on members' out-of-pocket cost sharing. While this proposed change is significant in that it will help beneficiaries to understand and anticipate their possible health care expenditures, as with the requirement to establish a mandatory MOOP for local MA plans, we do not believe that this proposed change would by itself have a significant cost impact on RPPO plan participation or plan costs.

We believe any impact on enrollee premiums will be very limited for several reasons. First, since implementation of the MMA, RPPOs have been required under section 1858(b)(2) of the Act to establish a MOOP for in-network cost sharing and a catastrophic limit inclusive of both in- and out-of-network cost sharing for Parts A and B services. The MOOP amounts are currently at the discretion of MA organizations offering RPPO plans. For FY 2011, we encouraged RPPO plans to adopt either the mandatory or voluntary MOOPs established in CMS guidance. For FY 2011, the voluntary MOOP limits for local PPO plans were set at $3,400 in-network and $5,100 catastrophic (in- and out-of-network), and the mandatory MOOP limits for local PPO plans were set for FY 2011 at $6,700 in-network and $10,000 catastrophic (in- and out-of-network). In guidance following publication of our April 15, 2010 final rule, we stated that, to the extent an RPPO sets its MOOP and catastrophic limits above the mandatory amounts set by us for other plan types, it may be subject to additional CMS review of its proposed Parts A and B services cost-sharing amounts. Based on data for FY 2011 submitted (but not yet approved) bids, we have found that of the 78 regional PPO plans, 25 (32 percent) met or exceeded the voluntary MOOP limits set by us and 47 (60 percent) regional PPO plans met or exceeded the mandatory maximum limits. Therefore, only five (8 percent) RPPO plans did not submit an in-network or catastrophic maximum out-of-pocket limit did not meet either the voluntary or mandatory limits for FY 2010. Based on this information, it is our expectation that the impact on RPPO plans would be very small.

Second, as we described in our April 15, 2010 final rule, it is our intention to continue setting both the MOOP and Parts A and B cost-sharing thresholds at levels that, while affording reasonable financial protection for those beneficiaries with high health care needs, do not result in significant new operating costs for MA plans or increased out-of-pocket costs for beneficiaries to the extent that MA plans pass along any increased costs to their enrollees in the form of premium increases. Given a competitive marketplace and Medicare beneficiary sensitivity to premium amounts, we believe that MA plans may choose instead to modify their benefit packages to reduce costs elsewhere. Furthermore, we estimate that beneficiaries in regional PPO plans that currently offer the FY 2011 voluntary or mandatory MOOP limits (about 92 percent of RPPO plans) will experience no cost increases as a result of these provisions. In our April 15, 2010 final rule, we estimated that the maximum impact of these requirements on beneficiary premiums for those plans that currently have no MOOP limit of any kind (8 percent of all prospective FY 2011 RPPO plans) would average $5 in the absence of other adjustments to benefit packages to account for the annual MOOP requirements. However, in this case, the RPPO plans offer MOOP and catastrophic limits, so we believe any premium impact would be less than $5.

Finally, we believe that the many advantages for beneficiaries as a result of the new MOOP and cost-sharing threshold requirements will outweigh any small premium increases that may result. All regional PPO plan enrollees will be protected against high out of pocket costs, and will be better able to compare plans by focusing on differences in premium and plan quality. As we have explained previously, our goal is to set cost-sharing limits at a level that should not result in significant new costs for MA plans or beneficiaries.

24. Translated Marketing Materials (§ 422.2264 and § 423.2264)

Our proposed translated marketing materials requirements codify existing subregulatory guidance, so the impact to plan sponsors (MA organizations and PDP sponsors) depends upon whether they are currently translating marketing materials, and if so, to what extent. For 2010, there are 307 sponsors that need to provide translated marketing materials. Our translated marketing material monitoring study, which only has preliminary findings, revealed that some sponsors have produced a few materials, but we do not know the numbers of sponsors that are and are not providing all translated materials. In the event sponsors are not translating materials, our research that indicates the average translation cost is 20 cents per word. We estimate that for a sponsor to produce all of the required plan materials in one language for the first year would cost approximately $18,325 because there are approximately 17 documents containing 91,623 words for translation. In subsequent years, sponsors would only need to edit existing documents with the new data and any changes required by CMS, which could result in approximately 5 percent of the documents being changed. As a result, after the first year of translating all required documents, plan sponsors would need to spend $916 updating translated materials. Because we do not have final data from our translated materials study, we do not know what proportion of sponsors would need to translate for the first year and what proportion would only need to update existing documents. Not all required translated marketing materials are plan benefit package (PBP) specific. Therefore, if a plan sponsor translates the document for one PBP, it could use the document for all PBPs offered that year. For the purpose of this analysis, we assumed that all 307 sponsors would have to translate all materials for the first year at a total cost of $5,625,775. In subsequent years, sponsors would only need to edit existing translated documents, which would be a total cost of $281,212 annually for all sponsors.

BILLING CODE 4120–01–P

Table 16: Estimated Aggregate Costs, Savings, and Transfers by Provision for Fiscal Years 2011 Through 2016 ($ in millions)[5]

Provision(s)	Regulation Section(s)	Fiscal Year 2011	2012	2013	2014	2015	2016	Total ($ in millions) (FYs 2011-2016)
Cost Sharing for Specified Services at Original Medicare Levels	§417.101 and §422.100	0.00	6.80	0.00	0.00	0.00	0.00	6.80
Approval of SNPs by NCQA	§422.4 §422.101 and §422.152	1.75	1.24	1.24	1.24	1.24	1.24	7.95
Determination of Part D Low-Income Benchmark Premium	§423.780	90.00	120.00	130.00	140.00	140.00	150.00	770.00
Voluntary De Minimis Policy for Subsidy Eligible Individuals	§423.34 and §423.780	25.00	25.00	25.00	25.00	35.00	35.00	170.00
Increase In Part D Premiums Due to the Income Related Monthly Adjustment Amount (D-IRMAA)6	§423.44	-269.68	-269.68	-649.64	-899.61	-1139.60	-1349.59	-4,767.78
Elimination of Medicare Part D Cost-Sharing for Individuals Receiving Home and Community-Based Services	§423.772 and §423.782	0.03	0.02	0.02	0.02	0.02	0.02	0.14
Appropriate Dispensing of Prescription Drugs in Long-term Care Facilities Under PDPs and MA-PD Plans	§423.154	1.58	-300.00	-430.00	-480.00	-530.00	-590.000	-2,328.42
Complaint System for Medicare Advantage Organizations and PDPs	§422.504 and §423.505	0.00	0.90	0.90	0.90	0.90	0.90	4.48
Uniform Exceptions and Appeals Process for Prescription Drug Plans and MA-PD Plans	§423.128(b)(7)(i)	0.00	3.23	3.23	3.23	3.23	3.23	16.15
	§ 423.128(d)	0.00	4.60	4.60	4.60	4.60	4.60	23.05
	§423.562(a)(3)	0.00	2.20	2.12	2.12	2.12	2.12	10.68
Including Costs Incurred by the AIDS Drug Assistance Program (ADAP) and the Indian Health Services (IHS) toward the Annual Part D Out-of-Pocket Threshold	§423.100 and §423.464	50.00	70.00	70.00	80.00	90.00	100.00	460.00
Cost Sharing for Medicare Covered Preventive Services	§417.101 and §422.100	0.00	27.10	27.10	28.40	31.00	34.30	147.90
Elimination of the Stabilization Fund	§422.458	0.00	0.00	0.00	-43.50	-63.40	-74.30	-181.20
Improvements to Medication Therapy Management Programs	§423.153	0.00	96.71	32.20	32.20	32.24	32.24	225.67
Changes to Close the Part D Coverage Gap	§423.104 and §423.884	130.40	171.05	381.05	601.05	931.05	1,451.05	3,665.65

5 Estimates of costs and savings reflect scoring by the Centers for Medicare and Medicaid Services, Office of the Actuary, and 2009 wage data from the United States Department of Labor, Bureau of Labor and Statistics.

6 Estimated total savings includes annual cost burden to all Part D sponsors (see section V.B.5. of this proposed rule).

Provision(s)	Regulation Section(s)	Fiscal Year 2011	2012	2013	2014	2015	2016	Total ($ in millions) (FYs 2011-2016)
Medicare Advantage Benchmark, Quality Bonus Payments, and Rebate and Application of Coding Adjustment	§422.252 §422.258 §422.266 and §422.308	-5,260.00	-8,570.00	-11,890.00	-14,840.00	-16,860.00	-19,050.00	-76,470.00
Quality Bonus Appeals	§422.260	0.00	0.05	0.05	0.05	0.05	0.05	0.25
Timely Transfer of Data and Files When CMS Terminates a Contract with a Part D Sponsor	§423.509	0.00	0.007	0.008	0.009	0.0010	0.00	0.02
Review of Medical Necessity Decisions by a Physician or other Health Care Professional and the Employment of a Medical Director	§422.562, §422.566, §423.562 and §423.566	0.00	9.50	9.50	9.50	9.50	9.50	47.50
Compliance Officer Training	§422.503 and §423.504	0.00	0.01	0.54	0.54	0.54	0.54	2.16
Agent and Broker Training Requirements	§422.2274 and §423.2274	0.00	0.07	0.07	0.07	0.07	0.07	0.36
Call Center Interpreter Requirements	§422.111 and §423.128	0.02	0.00	0.00	0.00	0.00	0.00	0.02
Customized Enrollee Data)	§422.111 and §423.128	0.00	0. 51	0.34	0.34	0.34	0.34	1.88
Translated Marketing Materials	§422.2264 and §423.2264	5.63	0.28	0.28	0.28	0.28	0.28	7.03
Total		-5,225.27	-8,790.39	-12,281.36	-15,333.53	-17,310.82	-19,238.41	-78,179.78

7 Costs appear as zero due to rounding. CMS estimates actual costs of 0.003 million.
8 Costs appear as zero due to rounding. CMS estimates actual costs of 0.003 million.
9 Costs appear as zero due to rounding. CMS estimates actual costs of 0.003 million.
10 Costs appear as zero due to rounding. CMS estimates actual costs of 0.003 million.

Table 17: Estimated Costs and Savings to the Federal Government by Provision for Fiscal Years 2011 through 2016 ($ in millions)[11]

Provision(s)	Regulation Section(s)	Fiscal Year 2011	2012	2013	2014	2015	2016	Total ($ in millions) (FYs 2011-2016)
Cost Sharing for Specified Services at Original Medicare Levels	§417.101 and §422.100	0.00	6.80	0.00	0.00	0.00	0.00	6.80
Approval of SNPs by NCQA	§422.4 §422.101 and §422.152	1.40	0.89	0.89	0.89	0.89	0.89	5.85
Determination of Part D Low-Income Benchmark Premium	§423.780	90.00	120.00	130.00	140.00	140.00	150.00	770.00
Voluntary De Minimis Policy for Subsidy Eligible Individuals	§423.34 and §423.780	20.00	20.00	20.00	20.00	30.00	30.00	140.00
Increase In Part D Premiums Due to the Income Related Monthly Adjustment Amount (D-IRMAA)	§423.44	-270.00	-459.98	-649.96	-899.93	-1,139.92	-1,349.91	-4,769.70
Elimination of Medicare Part D Cost-Sharing for Individuals Receiving Home and Community-Based Services	§423.772 and §423.782	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Appropriate Dispensing of Prescription Drugs in Long-term Care Facilities Under PDPs and MA-PD Plans	§423.154	0.00	300.00	430.00	480.00	530.00	590.00	-2,330.00
Complaint System for Medicare Advantage Organizations and PDPs	§422.504 and §423.505	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Uniform Exceptions and Appeals Process for Prescription Drug Plans and MA-PD Plans	§423.128(b)(7)(i)	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	§ 423.128(d)	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	§423.562(a)(3)	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Including Costs Incurred by the AIDS Drug Assistance Program (ADAP) and the Indian Health Services (IHS) toward the Annual Part D Out-of-Pocket Threshold	§423.100 and §423.464	50.00	70.00	70.00	80.00	90.00	100.00	460.00
Cost Sharing for Medicare Covered Preventive Services	§417.101 and §422.100	0.00	27.10	27.10	28.40	31.00	34.30	147.90
Elimination of the Stabilization Fund	§422.458	0.00	0.00	0.00	-43.50	-63.40	-74.30	-181.20
Improvements to Medication Therapy Management Programs	§423.153	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Changes to Close the Part D Coverage Gap	§423.104 and §423.884	80.00	170.00	380.00	600.00	930.00	1,450.00	3,610.00
Medicare Advantage Benchmark, Quality Bonus Payments, and Rebate and Application of Coding Adjustment	§422.252 §422.258 §422.266 and §422.308	-5,260.00	-8,570.00	-11,890.00	-14,840.00	-16,860.00	-19,050.00	-76,470.00
Quality Bonus Appeals	§422.260	0.00	0.00	0.00	0.00	0.00	0.00	0.00

11 Estimates of costs and savings reflect scoring by the Centers for Medicare and Medicaid Services, Office of the Actuary, and 2009 wage data from the United States Department of Labor, Bureau of Labor and Statistics.

Provision(s)	Regulation Section(s)	Fiscal Year						Total ($ in millions) (FYs 2011-2016)
		2011	2012	2013	2014	2015	2016	
Timely Transfer of Data and Files When CMS Terminates a Contract with a Part D Sponsor	§423.509	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Review of Medical Necessity Decisions by a Physician or other Health Care Professional and the Employment of a Medical Director	§422.562, §422.566, §423.562 and §423.566	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Compliance Officer Training	§422.503 and §423.504	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Agent and Broker Training Requirements	§422.2274 and §423.2274	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Call Center Interpreter Requirements	§422.111 and §423.128	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Customized Enrollee Data)	§422.111 and §423.128	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Translated Marketing Materials	§422.2264 and §423.2264	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total		-5,288.60	-8,915.19	-12,341.97	-15,394.14	-17,371.43	-19,299.02	-78,610.35

Table 18: Estimated Administrative Costs to MA Organizations and Part D Sponsors by Provision for Fiscal Years 2011 Through 2016 ($ in millions)[12]

Provision(s)	Regulation Section(s)	Fiscal Year 2011	2012	2013	2014	2015	2016	Total ($ in millions) (FYs 2011-2016)
Cost Sharing for Specified Services at Original Medicare Levels	§417.101 and §422.100	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Approval of SNPs by NCQA	§422.4 §422.101 and §422.152	0.35	0.35	0.35	0.35	0.35	0.35	2.10
Determination of Part D Low-Income Benchmark Premium	§423.780	0.0013	0.0014	0.0015	0.0016	0.0017	0.0018	0.0019
Voluntary De Minimis Policy for Subsidy Eligible Individuals	§423.34 and §423.780	5.00	5.00	5.00	5.00	5.00	5.00	30.00
Increase In Part D Premiums Due to the Income Related Monthly Adjustment Amount (D-IRMAA)	§423.44	0.32	0.32	0.32	0.32	0.32	0.32	1.92
Elimination of Medicare Part D Cost-Sharing for Individuals Receiving Home and Community-Based Services	§423.772 and §423.782	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Appropriate Dispensing of Prescription Drugs in Long-term Care Facilities Under PDPs and MA-PD Plans	§423.154	1.58	0.00	0.00	0.00	0.00	0.00	1.58
Complaint System for Medicare Advantage Organizations and PDPs	§422.504 and §423.505	0.00	0.90	0.90	0.90	0.90	0.90	4.48
Uniform Exceptions and Appeals Process for Prescription Drug Plans and MA-PD Plans	§423.128(b)(7)(i)	0.00	3.23	3,23	3.23	3.23	3.23	16.15
	§ 423.128(d)	0.00	4.60	4.60	4.60	4.60	4.60	23.00
	§423.562(a)(3)	0.00	2.20	2.12	2.12	2.12	2.12	10.68
Including Costs Incurred by the AIDS Drug Assistance Program (ADAP) and the Indian Health Services (IHS) toward the Annual Part D Out-of-Pocket Threshold	§423.100 and §423.464	0.00	0.00	0.00	0.00	0.00	0.00	0.00

12 Estimates of costs and savings reflect scoring by the Centers for Medicare and Medicaid Services, Office of the Actuary, and 2009 wage data from the United States Department of Labor, Bureau of Labor and Statistics.

13 Costs appear as zero due to rounding. CMS estimates actual costs of 0.0006 million

14 Costs appear as zero due to rounding. CMS estimates actual costs of 0.0006 million

15 Costs appear as zero due to rounding. CMS estimates actual costs of 0.0006 million

16 Costs appear as zero due to rounding. CMS estimates actual costs of 0.0006 million

17 Costs appear as zero due to rounding. CMS estimates actual costs of 0.0006 million

18 Costs appear as zero due to rounding. CMS estimates actual costs of 0.0006 million

19 Costs appear as zero due to rounding. CMS estimates actual costs of 0.0036 million

Provision(s)	Regulation Section(s)	Fiscal Year						Total ($ in millions) (FYs 2011-2016)
		2011	2012	2013	2014	2015	2016	
Cost Sharing for Medicare Covered Preventive Services	§417.101 and §422.100	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Elimination of the Stabilization Fund	§422.458	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Improvements to Medication Therapy Management Programs	§423.153	0.00	96.71	32.24	32.24	32.24	32.24	225.67
Changes to Close the Part D Coverage Gap	§423.104 and §423.884	50.40	1.05	1.05	1.05	1.05	1.05	55.65
Medicare Advantage Benchmark, Quality Bonus Payments, and Rebate and Application of Coding Adjustment	§422.252 §422.258 §422.266 and §422.308	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Quality Bonus Appeals	§422.260	0.00	0.05	0.05	0.05	0.05	0.05	0.25
Timely Transfer of Data and Files When CMS Terminates a Contract with a Part D Sponsor	§423.509	0.00	0.00	0.00	0.00	0.00	0.00	0.02
Review of Medical Necessity Decisions by a Physician or other Health Care Professional and the Employment of a Medical Director	§422.562, §422.566, §423.562 and §423.566	0.00	9.50	9.50	9.50	9.50	9.50	47.50
Compliance Officer Training	§422.503 and §423.504	0.00	0.01	0.54	0.54	0.54	0.54	2.16
Agent and Broker Training Requirements	§422.2274 and §423.2274	0.00	0.07	0.07	0.07	0.07	0.07	0.36
Call Center Interpreter Requirements	§422.111 and §423.128	0.02	0.00	0.00	0.00	0.00	0.00	0.02
Customized Enrollee Data	§422.111 and §423.128	0.00	0.51	0.34	0.34	0.34	0.34	1.88
Translated Marketing Materials	§422.2264 and §423.2264	5.63	0.28	0.28	0.28	0.28	0.28	7.03
Total		63.30	124.78	60.59	60.59	60.59	60.59	430.43

Table 19: Estimated Costs and Savings to States by Provision for Fiscal Years 2011 Through 2016
($ in millions)

Provision (s)	Regulation Section(s)	Fiscal Year						Total ($ in millions) (FYs 2011-2016)
		2011	2012	2013	2014	2015	2016	
Elimination of Medicare Part D Cost-Sharing for Individuals Receiving Home and Community-Based Services	§423.772 and §423.782	0.03	0.02	0.02	0.02	0.02	0.02	0.14

BILLING CODE 4120–01–C

C. Expected Benefits

1. Cost Sharing for Specified Services at Original Medicare Levels (§ 417.101 and 422.100)

We believe that the addition of home health services to the list of service categories for which MA plan cost sharing may not exceed that required under Original Medicare will provide additional transparency and predictability for beneficiaries as they evaluate their health plan options, and also will strengthen the beneficiary protections against discriminatory cost sharing and benefit designs. Even with the additional restriction on cost sharing for home health services, we believe MA organizations will continue to have adequate flexibility to design plan benefits that are responsive to beneficiary needs and preferences while providing access to high quality and affordable health care.

2. Determination of Part D Low-Income Benchmark Premium (§ 423.780)

This proposed rule would have an effect on the number of reassignments, and the number of zero-premium plans available to full-subsidy eligible individuals in each region. This proposed rule would reduce the number of reassignments and increase the number of zero premium organizations available to beneficiaries. This is because, under the higher benchmarks, more PDPs are likely to have premiums that are equal to or less than the low-income benchmark and, as a result, will be fully covered by the premium subsidy. Low-income subsidy beneficiaries would be able to remain in these PDPs and would not be reassigned to other lower-premium PDPs. Under the current framework we would expect 1.9 million reassignments. Under the proposed formula for calculating benchmarks we would expect 900,000 reassignments, or approximately one million fewer reassignments. We expect the proposed formula to increase the number of zero premium organizations available to beneficiaries in 21 of the 34 PDP regions.

Although there is no quantifiable monetary value to CMS to reducing reassignments, we believe this benefit is important as it will increase program stability and continuity of care. This proposed rule supports pharmacy and formulary consistency for the beneficiary. Particularly in regions with high MA–PD penetration, this proposed rule would reduce the year-to-year volatility in reassignments of LIS beneficiaries and would help avoid the disruption that is inherent anytime a beneficiary is switched from one plan to another.

3. Voluntary De Minimis Policy for Subsidy Eligible Individuals (§ 423.34 and § 423.780)

The proposed voluntary *de minimis* provisions would permit Part D plans to volunteer to waive a *de minimis* amount of the Part D premium above the low income benchmark and, thus, avoid losing LIS beneficiaries to reassignment. We perform reassignments to ensure that beneficiaries whom we originally assigned to a zero premium plan will not incur a new premium liability when their current plan's premium goes above the LIS benchmark in the following year. The number of reassignments has ranged between 1 and 2 million over each of the past 4 years. While reassignments are effective at avoiding new premium liabilities, they can create confusion and disrupt continuity of care. We expect reassignments will be reduced by the *de minimis* provisions in the regulation.

4. Increase in Part D Premiums Due to the Income Related Monthly Adjustment Amount (D—IRMAA) (§ 423.44, § 423.286, § 423.293)

Beginning in CY 2011, we estimate that approximately 1.05 million of the 29.2 million Medicare beneficiaries enrolled in the Part D program will exceed the minimum income threshold amount and will be assessed an income related monthly adjustment amount. During coverage year 2011, we expect that implementation of the Part D—IRMAA provisions, as proposed at § 423.286(d)(4) and § 423.293(d), will increase the Medicare Trust Fund by $270 million, with a net increase to the Medicare Trust Fund over a 5-year period from FY 2011 through FY 2016 of $4.77 billion.

5. Elimination of Medicare Part D Cost-Sharing for Individuals Receiving Home and Community-Based Services (§ 423.772 and § 423.782)

The expected benefit of the elimination of the Medicare Part D cost-sharing for individuals receiving home and community based services provision is greater access to prescription drug coverage for a population that traditionally has high medical needs. These individuals are already eligible for the full low income subsidy, and likely qualify for the $1.10/$3.30 copayment level now. The elimination of the copayment will provide financial relief for those who are able to pay at that level and greater access for those who are not.

6. Appropriate Dispensing of Prescription Drugs in Long-Term Care Facilities Under PDPs and MA–PD Plans (§ 423.154) and Dispensing Fees (§ 423.100)

This provision is expected to lead to a reduction in Part D program expense, pharmaceutical waste, environmental disposal costs impact, and the risk of pharmaceutical diversion associated with unused drugs in 30-day fills.

7. Complaint System for Medicare Advantage Organizations and PDPs (§ 422.504(a) and § 423.505(b))

This provision is expected to reduce the volume of calls using 1–800–MEDICARE as members will have online access to the complaint tracking system to file complaints regarding their prescription benefit plan.

8. Uniform Exceptions and Appeals Process for Prescription Drug Plans and MA–PD Plans (§ 423.128, and § 423.562)

We expect that as a result of implementation of this provision, beneficiaries and the healthcare providers or representatives that assist them will benefit from a more streamlined approach to the exceptions and appeals process than what is in place currently. They will have access to the appeals process via a Web site or a customer call center, if their plan sponsor has not already adopted this approach. Furthermore, a standard appeals form will be utilized by all Part D sponsors.

9. Including Costs Incurred by the AIDS Drug Assistance Program (ADAP) and the Indian Health Services (IHS) Toward the Annual Part D Out-of-Pocket Threshold (§ 423.100 and § 423.464)

This provision is expected to reduce the costs to ADAPs and IHS, since beneficiaries will be able to reach the catastrophic limit and relieve the ADAPs and IHS from incurring excessive prescription costs because beneficiaries in both programs had difficulty reaching the catastrophic phase of the Part D benefit.

10. Cost Sharing for Medicare Covered Preventive Service (§ 417.101 and § 422.100)

We believe that our proposal to require MA organizations and section 1876 cost plans to provide in-network Medicare-covered preventive benefits at zero cost sharing puts MA enrollees on a level playing field with enrollees in Original Medicare. Furthermore, we believe that the increased emphasis on provision of preventives services will result in improved beneficiary well-being and subsequently decrease their

need for, and utilization of, more costly medical and surgical interventions, and possibly in decreased overall program costs.

11. Elimination of the Stabilization Fund (§ 422.458)

As discussed elsewhere in this RIA, the elimination of the stabilization fund is expected to result in savings to the Federal government.

12. Improvements to Medication Therapy Management Programs (§ 423.153)

Under this proposed provision, beneficiaries receiving the standardized Comprehensive Medication Review documents would have a better understanding of the review findings and recommendations. The opportunity for sponsors to use telehealth technology would improve access to MTM services for beneficiaries, particularly those in remote locations or unable to travel. The proposed change requiring coordination of MTM services with LTC consultant pharmacist services would enable beneficiaries to receive the full benefits of the sponsor's MTM program and the coordinated assessments would more likely uncover evidence of adverse side effects and medication overuse.

13. Changes To Close the Part D Coverage Gap (§ 423.104 and § 423.884)

Under these proposed provisions to close the Part D coverage gap, beneficiaries would pay less for drugs in the coverage gap, and would reach the out-of-pocket threshold earlier in the benefit year. We expect that, because beneficiaries should find their prescription drugs more affordable, there would be greater adherence to drug therapies and fewer instances of adverse health outcomes arising from failure to take medications as prescribed.

14. Medicare Advantage Benchmark, Quality Bonus Payments, and Rebate and Application of Coding Adjustment (§ 422.252, § 422.258 and § 422.266, and § 422.308)

Our proposed revisions will result in government savings and will bring MA payments in line with FFS payments. The MA benchmarks, which are the ceiling for per member per month MA payment to a plan before risk adjustment, will now be linked to FFS costs. These provisions also provide incentives for MA organizations to maintain or increase the quality of their plans, as organizations with 4 stars or more will receive a quality bonus.

15. Quality Bonus Appeals (§ 422.260)

Our intent in implementing this provision is to ensure that MA organizations are afforded the benefit of reasonable opportunity to challenge CMS determinations that ultimately affect an organization's payments from the Medicare Trust Fund. Granting organizations an avenue to challenge CMS' determinations will enhance the transparency and credibility of the process CMS uses to determine the recipients of quality bonus payments.

16. Timely Transfer of Data and Files When CMS Terminates a Contract With a Part D Sponsor (§ 423.509)

Our intent in implementing this provision is to ensure that terminated Part D plan sponsors transfer to CMS the necessary data to provide a smooth transition for beneficiaries into a new Part D plan similar to when the Part D sponsor terminates the contract or CMS and the Part D plan sponsor mutually terminate the contract. We do not anticipate a financial benefit to the terminated Part D sponsor.

17. Review of Medical Necessity Decisions by a Physician or Other Health Care Professional and the Employment of a Medical Director (§ 422.562, § 422.566, § 423.562, and § 423.566)

By requiring that all organization determinations, coverage determinations, and plan reconsiderations and redeterminations involving medical necessity be reviewed by a medical professional with expertise in the field of medicine appropriate for the services at issue, enrolled beneficiaries would be assured of consistent and medically accurate decisions by Part C organizations and Part D sponsors. We believe that the proposal to require plans to employ a medical director to ensure the clinical accuracy of such decisions strikes the appropriate balance between our interest in ensuring that plans are properly administering the Part C and Part D benefit, and the plans' interest in minimizing their administrative burden.

18. Compliance Officer Training (§ 422.503 and § 423.503)

The benefit to requiring annual compliance officer training is that beneficiaries will be more likely to receive benefits consistent with plan sponsors' bids and CMS requirements. Compliance officers will be more knowledgeable about the MA and Part D programs which should translate into more efficient internal plan oversight. As internal plan oversight increases, CMS anticipates a decrease in the volume and severity of compliance issues because compliance officers will be able to identify small problems before they become large problems with significant beneficiary impact.

19. Agent and Broker Training Requirements (§ 422.2274 and § 423.2274)

Requiring all agents and brokers to receive training and testing via a CMS endorsed or approved training program will further ensure that beneficiaries are educated about Medicare health plan options by plan agents and brokers who are thoroughly and consistently trained on the fundamentals of Medicare regulations. Furthermore, this proposal would reduce or eliminate the duplication of training and testing requirements for agents and brokers who contract with multiple plans with different training and testing requirements.

20. Call Center Interpreter Requirements (§ 422.111 and § 423.128)

The expected benefit of our proposed call center interpreter requirements is that all beneficiaries, regardless of language spoken, will have access to all the information they need to make appropriate decisions about their health care to utilize their Medicare benefits most effectively.

21. Customized Enrollee Data (§ 422.111 and § 423.128)

We believe that our proposed requirement that plans provide customized enrollee data to plan enrollees at least annually after initial enrollment in conjunction with the annual renewal materials (currently the annual notice of change and evidence of coverage documents) would enable plan members to better understand their utilization and out-of-pocket costs during a period of time, as well as how the costs of their plan are changing in the upcoming contract year and what that means for them if they remain in the plan and use similar services. We intend for any EOB or customized out-of-pocket cost statement to provide personal information to beneficiaries that would help them consider using other tools and resources, including MOC and the MPDPF, to determine whether to select a new plan.

22. Extending the Mandatory Maximum Out-of-Pocket (MOOP) Amount Requirements to Regional PPOs (§ 422.100 and § 422.101)

We believe extending the mandatory MOOP requirement to RPPOs will provide significant protection for MA enrollees from out of pocket costs so

that beneficiaries will better understand and anticipate their out-of-pocket expenditures. We set the parameters for the annual mandatory MOOP limit, and this should make it easier for plans to compete on a level playing field, as well as increase transparency for beneficiaries. This proposed requirement would ensure all regional PPO plan enrollees are protected against high out of pocket costs and are better able to compare plans by focusing on differences in premium and plan quality.

23. Translated Marketing Materials (§ 422.2264 and § 423.2264)

The expected benefit of our proposed requirement to codify existing subregulatory guidance with respect to translated marketing materials is that all beneficiaries, regardless of language spoken and national origin, will have access to all the information they need to make appropriate decisions about their health care to utilize their Medicare benefits most effectively.

D. Alternatives Considered

We did not consider alternatives for the following provisions, as their implementation was mandated by the ACA:

- Approval of SNPs by NCQA (§ 422.4, § 422.101, and § 422.152)
- Determination of Part D Low-Income Benchmark Premium (§ 423.780)
- Voluntary De Minimis Policy for Subsidy Eligible Individuals (§ 423.34 and § 423.780)
- Increase in Part D Premiums Due to the Income Related Monthly Adjustment Amount (D—IRMAA) (§ 423.44, § 423.286, and § 423.293)
- Elimination of Medicare Part D Cost-Sharing for Individuals Receiving Home and Community-Based Services (§ 423.772 and § 423.782)
- Appropriate Dispensing of Prescription Drugs in Long-Term Care Facilities Under PDPs and MA–PD plans (§ 423.154) and Dispensing Fees (§ 423.100)
- Complaint System for MA Organizations and PDPs (§ 422.504(a) and § 423.505(b))
- Uniform Exceptions and Appeals Process for Prescription Drug Plans and MA–PD Plans (§ 423.128(b)(7)(i), § 423.128(d), and § 423.562(a)(3))
- Including Costs Incurred by the AIDS Drug Assistance Program (ADAP) and the IHS Toward the Annual Part D Out-of-Pocket Threshold (§ 423.100, and § 423.464)
- Elimination of the Stabilization Fund (§ 422.458)
- Improvements to Medication Therapy Management Programs (153)
- Changes To Close the Part D Coverage Gap (§ 423.104 and § 423.884)
- MA Benchmark, Quality Bonus Payments, and Rebate and Application of Coding Adjustment (§ 422.252, § 422.258, § 422.266, and § 422.308)

Alternatives considered for other proposals are summarized below.

1. Cost Sharing for Specified Services at Original Medicare Levels (§ 417.101 and § 422.100)

We considered implementing the provisions of section 3202 to limit cost sharing under MA plans to that required under Original Medicare without using our authority, granted by this same section of the ACA, to also limit cost sharing for any additional service categories. We believe it is preferable to restrict our implementation of section 3202 to the specified service categories, allowing ourselves time to evaluate the effects of those provisions, as well as other recently-established policy changes before adopting the cost sharing limits on an expanded list of service categories.

We believe that the addition of home health services to the list of service categories subject to cost sharing levels that may not exceed those required under Original Medicare was an appropriate additional service category as described in the ACA for the reasons specified elsewhere in this preamble and that adding those services would enhance beneficiary protections and would not impose a significant cost burden on the MA program.

2. Cost Sharing for Medicare-Covered Preventive Services (§ 417.101 and § 422.100)

We are proposing to implement regulations to require MA organizations and 1876 cost plans to provide in-network Medicare-covered preventive benefits at zero cost sharing, consistent with the new regulations for Original Medicare-covered preventive benefits. More specifically, we propose requiring that all MA organizations provide Medicare-covered preventive services, as specified by CMS, without enrollee cost sharing charges.

We considered allowing plans to charge cost sharing for Medicare-covered preventive services or to voluntarily adopt zero cost sharing for preventive services. We determined that in light of the importance of preventive services in managed and coordinated care, and the requirements at section 1852(a)(1)(A) of the Act (except as provided in section 1859(b)(3) of the Act for MSA plans and in section 1852(a)(6) of the Act for MA regional plans) that each MA plan must provide to its members all Parts A and B benefits included under the Original Medicare fee-for-service program as defined at section 1852(a)(1)(B) of the Act, that requiring the same level of cost sharing for enrollees of Medicare health plans as required under Original Medicare would be the more appropriate policy.

3. Quality Bonus Appeals (§ 422.260)

We considered not affording bonus payment appeal rights to MA organizations. We rejected this option partly in recognition of the obligation the law generally imposes on us to afford entities affected by CMS determinations concerning contract performance or payment to have an opportunity to challenge such determinations. We also believe, as noted above, that the appeals process promotes fairness in and enhances the credibility of the bonus payment determination process.

4. Timely Transfer of Data and Files When CMS Terminates a Contract With a Part D Sponsor (§ 423.509)

We did not consider alternatives to our proposal regarding the timely transfer of data and files following the CMS termination of a Part D sponsor's contract. These data are necessary for the proper adjudication of all Part D benefits when a beneficiary changes plans, such as calculating the true out-of-pocket cost and determining whether the beneficiary has any outstanding claims for which the terminating contract is responsible. Because of these important beneficiary protections we did not consider alternatives to these proposed requirements.

5. Review of Medical Necessity Decisions by a Physician or Other Health Care Professional and the Employment of a Medical Director (§ 422.562, § 422.566, § 423.562, and § 423.566)

We did not consider alternatives to our proposals regarding review of medical necessity decisions by a physician or other health care professional and employment of a medical director, as a majority of MA organizations and Part D sponsors already employ a medical director to overseeing decisions of medical necessity.

6. Compliance Officer Training (§ 422.503 and § 423.504)

We considered requiring compliance officers to become certified through an existing or CMS-developed certification process. However, because training opportunities, especially the possibility

of free training opportunities offered by CMS, are available outside of a certification process, we chose only to propose requiring training. In the event that requiring annual compliance officer training does not result in the expected increase in knowledge and decrease in compliance issues, we will reevaluate whether compliance officer certification may be necessary. In contrast to training, requiring compliance officer certification would likely cost more; therefore, we chose to test the less costly option first.

7. Agent and Broker Training Requirements (§ 422.2274 and § 423.2274)

Proposed § 422.2274(b) and (c) and § 423.2274(b) and (c) would require MA organizations' and Part D sponsors' agents and brokers to receive training and testing via a CMS-endorsed or -approved training program. The alternative we considered to this proposal was to continue to allow plans to conduct training and testing on their own or through third party vendor(s) and for CMS to continue to review some of these training programs upon request by third party vendors for comprehensiveness and accuracy. However, we believe that it is in the best interest of beneficiaries who are educated about Medicare health plan options by plan agents and brokers that those agents and brokers be consistently and thoroughly trained on the fundamentals of Medicare regulations. We believe the best method to achieve this end is to require agents and brokers to receive training and testing through one or more CMS-endorsed or -approved training programs.

8. Call Center Interpreter Requirements (§ 422.111 and § 423.128)

Compliance with Title VI of the Civil Rights Act of 1964 to serve all individuals regardless of national origin is a contractual requirement for MA and Part D sponsors; therefore, we did not consider any other alternatives to our proposed call center interpreter requirements.

9. Customized Enrollee Data (§ 422.111 and § 423.128)

The alternative considered to our proposed provision to require provision of customized enrollee data was for MA organizations and Part D sponsors to continue to provide beneficiaries with the information already required by regulation through the ANOC and EOC documents, which must be furnished to all plan enrollees at least 15 days before the annual open election period. Beneficiaries would also continue to have access to information through tools such as Medicare Options Compare (MOC) and the Medicare Prescription Drug Plan Finder (MPDPF), which provide more general information about plan costs. We did not choose this option because we are concerned that the current available options alone may not be enough to prompt enrollees to actively evaluate their plans annually with respect to plan costs, benefits, and overall value. Therefore, we expect that this customized enrollee data will be another more specific tool for beneficiaries to use, in addition to the general tools already in place, for enrollees to understand their utilization and out-of-pocket costs during a period of time, as well as how they may be affected by specific plan changes, and to assist them in evaluating their options for the future.

10. Extending the Mandatory Maximum Out-of-Pocket (MOOP) Amount Requirements to Regional PPOs (§ 422.100 and § 422.101)

The alternative we considered to this proposal was not extending the mandatory MOOP and catastrophic limit requirements to RPPO plans, but instead to permit plans to continue to establish their own in-network MOOP and catastrophic limits without a maximum limit set by CMS while encouraging them to adopt either the mandatory or voluntary MOOPs established in CMS guidance. However, as we discussed in our April 15, 2010 final rule, (75 FR 19711), we believe RPPOs should be subject to the same requirements with respect to a MOOP as local PPO plans. As discussed elsewhere in this preamble, we believe that the alternative chosen will make it easier for beneficiaries to understand and compare MA plans and will provide significant protection for MA enrollees from out of pocket costs.

11. Translated Marketing Materials (§ 422.2264 and § 423.2264)

Compliance with Title VI of the Civil Rights Act of 1964 to serve all individuals regardless of national origin is a contractual requirement for MA and Part D sponsors. Therefore, we did not consider any other alternatives to our proposed translated marketing materials requirements.

12. Increases to the Applicable Percentage for Quality (§ 422.258(d))

The legislation requires a 5 star rating system. We considered whether the 5 star rating system should be consistent with the current 5 star rating system in place for beneficiary choice or should be a separate system. We believe that plans should be rated the same for consumer choice and payment. There should not be two different systems to rate the quality and performance of MA plans. Thus, the plan ratings are the basis for the star rating system for quality bonus payments.

E. Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf*), in Table 20, we have prepared an accounting statement showing the classification of the costs and benefits associated with the provisions of this proposed rule. The accounting statement is based on estimates provided in Tables 16, 17, 18, and 19 (our best estimate of the costs and savings as a result of the changes) and discounted at 7 percent and 3 percent for the time period of FY 2011 through FY 2016.

TABLE 20—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED COSTS AND SAVINGS, FROM FY 2011 TO FY 2016

[$ in Millions]

Category	Year dollar	Units discount rate		Period covered
		7%	3%	
Transfers				
Annualized Monetized Tranfers	2010	−$12,544.46	−$12,858.60	FYs 2011–2016
From Whom To Whom?	Federal Government to MA organizations and Part D Sponsors.			

TABLE 20—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED COSTS AND SAVINGS, FROM FY 2011 TO FY 2016—Continued

[$ in Millions]

Category	Year dollar	Units discount rate		Period covered
		7%	3%	
Costs (All other provisions)				
Annualized Costs to MA organizations and Part D Sponsors	2010	$72.88	$72.24	FYs 2011–2016
Annualized Costs to States	2010	$0.02	$0.02	FYs 2011–2016

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 417

Administrative practice and procedure, Grant programs—health, Health care, Health insurance, Health maintenance organizations (HMO), Loan programs—health, Medicare, and Reporting and recordkeeping requirements.

42 CFR Part 422

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Medicare, Penalties, Privacy, and Reporting and recordkeeping requirements.

42 CFR Part 423

Administrative practice and procedure, Emergency medical services, Health facilities, Health maintenance organizations (HMO), Health professionals, Medicare, Penalties, Privacy, and Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as set forth below:

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

1. The authority citation for part 417 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), secs. 1301, 1306, and 1310 of the Public Health Service Act (42 U.S.C., 300e, 300e–5, and 300e–9), and 31 U.S.C. 9701.

Subpart B—Qualified Health Maintenance Organizations; Services

2. Section 417.101 is amended by adding new paragraphs (f) and (g) to read as follows:

§ 417.101 Health benefits plan: Basic health services.

* * * * *

(f) An HMO may not charge deductibles, copayments, or coinsurance for in-network Medicare-covered preventive services as specified by CMS annually.

(g) *Services for which cost sharing may not exceed cost sharing under Original Medicare.* On an annual basis, CMS will evaluate whether there are service categories for which MA plan's cost sharing may not exceed that required under Original Medicare and specify in regulation which services are subject to that cost sharing limit. The following services are subject to this limit on cost sharing:

(1) Chemotherapy administration services to include chemotherapy drugs and radiation therapy integral to the treatment regimen.

(2) Renal dialysis services as defined at section 1881(b)(14)(B) of the Act.

(3) Skilled nursing care defined as services provided during a covered stay in a skilled nursing facility during the period for which cost sharing would apply under Original Medicare.

(4) Home health services provided in accordance with § 424.22.

Subpart J—Qualifying Conditions for Medicare Contracts

3. Section 417.402 is amended by revising paragraph (c) introductory text to read as follows:

§ 417.402 Effective date of initial regulations.

* * * * *

(c) *Mandatory HMO or CMP and contract non-renewal or service area reduction.* CMS will non-renew all or a portion of an HMO's or CMP's contracted service area using procedures in § 417.492(b) and § 417.494(a) for any period beginning on or after January 1, 2013, where—

* * * * *

Subpart K—Enrollment, Entitlement, and Disenrollment Under Medicare Contract

4. Section 417.430 is amended as follows:

A. Revising the paragraph heading for paragraph (a).

B. Revising paragraphs (a)(1), (b)(3), and (b)(4).

§ 417.430 Application procedures.

(a) *Application forms and other enrollment mechanisms.* (1) The application form must comply with CMS instructions regarding content and format and be approved by CMS. The application must be completed by an HMO or CMP eligible (or soon to become eligible) individual and include authorization for disclosure between the HHS and its designees and the HMO or CMP.

* * * * *

(b) * * *

(3) The HMO or CMP gives the beneficiary prompt notice of acceptance or denial in a format specified by CMS.

(4) The notice of acceptance. If the HMO or CMP is currently enrolled to capacity, explains the procedures that will be followed when vacancies occur.

* * * * *

PART 422—MEDICARE ADVANTAGE PROGRAM

5. The authority citation for part 422 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart A—General Provisions

6. Section 422.2 is amended by adding in alphabetical order the definitions of "fiscally sound operation," "fully integrated dual-eligible special needs plan," and "senior housing facility plan" in alphabetical order to read as follows:

§ 422.2 Definitions.

* * * * *

Fiscally sound operation means an operation which at least maintains a

positive net worth (total assets exceed total liabilities).

* * * * *

Fully integrated dual eligible special needs plan means a CMS approved MA–PD dual-eligible special needs plan that—

(1) Provides dual-eligible beneficiaries access to Medicare and Medicaid benefits under a single managed care organization;

(2) Has a capitated contract with a State Medicaid agency that includes coverage of specified primary, acute, and long-term care benefits and services, consistent with State policy;

(3) Coordinates the delivery of covered Medicare and Medicaid health and long-term care services using aligned care management and specialty care network methods for high-risk beneficiaries; and

(4) Employs policies and procedures approved by CMS and the State to coordinate or integrate member materials, including enrollment, communications, grievance and appeals, and quality assurance.

* * * * *

Senior housing facility plan means an MA coordinated care plan that—

(1) Restricts enrollment to individuals who reside in a continuing care retirement community as defined in § 422.133(b)(2);

(2) Provides primary care services onsite and has a ratio of accessible physicians to beneficiaries that CMS determines is adequate consistent with prevailing patterns of community health care referenced at § 422.112(a)(10);

(3) Provides transportation services for beneficiaries to specialty providers outside of the facility; and

(4) Was participating as of December 31, 2009 in a demonstration established by CMS for not less than 1 year.

* * * * *

7. Section 422.4 is amended by:

A. Revising paragraphs (a)(1)(iii) and (a)(1)(iv).

B. Adding paragraph (a)(1)(vi).

The revisions and additions read as follows:

§ 422.4 Types of MA plans.

* * * * *

(a) * * *

(1) * * *

(iii) Coordinated care plans include plans offered by any of the following:

(A) Health maintenance organizations (HMOs);

(B) Provider-sponsored organizations (PSOs), subject to paragraph (a)(1)(vi) of this section.

(C) Regional or local preferred provider organizations (PPOs) as specified in paragraph (a)(1)(v) of this section.

(D) Other network plans (except PFFS plans).

(iv) A specialized MA plan for special needs individuals (SNP) includes any type of coordinated care plan that meets CMS's SNP requirements and exclusively enrolls special needs individuals as defined by § 422.2 of this subpart. All MA plans wishing to offer a SNP will be required to be approved by the National Commission on Quality Assurance (NCQA) effective January 1, 2012. This approval process applies to existing SNPs as well as new SNPs joining the program. All SNPs must submit their overall quality improvement (QI) program and the model of care (MOC) to CMS for NCQA evaluation and approval as per CMS guidance.

* * * * *

(vi) In accordance with § 422.370, CMS does not waive the State licensure requirement for organizations seeking to offer a PSO.

* * * * *

Subpart B—Eligibility, Election, and Enrollment

8. Add § 422.53 to read as follows:

§ 422.53 Eligibility to elect an MA plan for senior housing facility residents.

(a) Basic eligibility requirements. To be eligible to elect an MA senior housing facility plan, the individual must meet both of the following:

(1) Be a resident of an MA senior housing facility defined in § 422.2; and

(2) Be eligible to elect an MA plan under § 422.50.

(b) Restricting enrollment. An MA senior housing facility plan must restrict enrollment to only those individuals who reside in a continuing care retirement community as defined at § 422.133(b)(2).

(c) Establishing eligibility for enrollment. An MA senior housing facility plan must verify the eligibility of each individual enrolling in its plan using a CMS approved process.

9. Section 422.62 is amended by:

A. Revising paragraphs (a)(2)(i), (iii), and (iv), and (a)(5).

B. Add new paragraph (a)(7).

The revisions and addition read as follows:

§ 422.62 Election of coverage under an MA plan.

(a) * * *

(2) *Annual coordinated election period.* (i) For 2002 through 2010, except for 2006, the annual coordinated election period for the following calendar year is November 15 through December 31.

(ii) * * *

(iii) Beginning in 2011, the annual coordinated election period for the following calendar year is October 15 through December 7.

(iv) During the annual coordinated election period, an individual eligible to enroll in an MA plan may change his or her election from an MA plan to Original Medicare or to a different MA plan, or from Original Medicare to an MA plan. If an individual changes his or her election to Original Medicare, he or she may also elect a PDP.

* * * * *

(5) *Open enrollment and disenrollment from 2007 through 2010.* (i) Open enrollment period. For 2007 through 2010, except as provided in paragraphs (a)(5)(ii), (a)(5)(iii), and (a)(6) of this section, an individual who is not enrolled in an MA plan but is eligible to elect an MA plan may make an election into an MA plan once during the first 3 months of the year.

(ii) *Newly eligible MA individual.* An individual who becomes MA eligible in 2007 through 2010 may elect an MA plan or change his or her election once during the period that begins the month the individual is entitled to both Part A and Part B and ends on the last day of the third month of the entitlement, or on December 31, whichever is earlier, subject to the limitations in paragraphs (a)(5)(i)(A) and (a)(5)(i)(B) of this section.

(iii) Single election limitation. The limitation to one election or change in paragraphs (a)(5)(i) and (a)(5)(ii) of this section does not apply to elections or changes made during the annual coordinated election period specified in paragraph (a)(2) of this section, or during a special election period specified in paragraph (b) of this section.

* * * * *

(7) *Annual 45-day period for disenrollment from MA plans to Original Medicare.* For 2011 and subsequent years, at any time from January 1 through February 14, an individual who is enrolled in an MA plan may elect Original Medicare once during this 45-day period. An individual who chooses to exercise this election may also make a coordinating election to enroll in a PDP as specified in § 423.38(d).

* * * * *

10. Section 422.68 is amended by adding paragraph (f) to read as follows:

§ 422.68 Effective dates of coverage and change from coverage.

* * * * *

(f) *Annual 45-day period for disenrollment from MA plans to Original Medicare.* Beginning in 2011, an election made from January 1 through February 14 to disenroll from an MA plan to Original Medicare, as described in § 422.62(a)(7), is effective the first day of the first month following the month in which the election is made.

11. Section 422.74 is amended by adding paragraphs (d)(1)(v) and (vi) to read as follows:

§ 422.74 Disenrollment by the MA organization.

* * * * *

(d) * * *

(1) * * *

(v) *Extension of grace period for good cause and reinstatement.* When an individual is disenrolled for failure to pay the plan premium, CMS may reinstate enrollment in the MA plan, without interruption of coverage, if the individual shows good cause for failure to pay within the initial grace period, and pays all overdue premiums within 3 calendar months after the disenrollment date. The individual must establish by a credible statement that failure to pay premiums within the initial grace period was due to circumstances for which the individual had no control, or which the individual could not reasonably have been expected to foresee.

(vi) *No extension of grace period.* A beneficiary's enrollment in the MA plan may not be reinstated if the only basis for such reinstatement is a change in the individual's circumstances subsequent to the involuntary disenrollment for non-payment of premiums.

* * * * *

Subpart C—Benefits and Beneficiary Protections

12. Section 422.100 is amended by:

A. Revising paragraph (d)(2).

B. Adding new paragraphs (j) and (k).

The revision and additions read as follows.

§ 422.100 General requirements.

* * * * *

(d) * * *

(2) At a uniform premium, with uniform benefits and level of in-network cost-sharing throughout the plan's service area, or segment of service area as provided in § 422.262(c)(2).

* * * * *

(j) *Services for which cost sharing may not exceed cost sharing under Original Medicare.* On an annual basis, CMS will evaluate whether there are service categories for which MA plans' cost sharing may not exceed that required under Original Medicare and specify in regulation which services are subject to that cost sharing limit. The following services are subject to this limit on cost sharing:

(1) Chemotherapy administration services to include chemotherapy drugs and radiation therapy integral to the treatment regimen.

(2) Renal dialysis services as defined at section 1881(b)(14)(B) of the Act.

(3) Skilled nursing care defined as services provided during a covered stay in a skilled nursing facility during the period for which cost sharing would apply under Original Medicare.

(4) Home health services provided in accordance with § 424.22.

(k) *Cost sharing for in-network preventive services.* MA organizations may not charge deductibles, copayments, or coinsurance for in-network Medicare-covered preventive services, as specified by CMS annually.

13. Section 422.101 is amended by:

A. Revising paragraphs (d)(2) and (3).

B. Adding a new paragraph (f)(2)(vi).

The revisions and addition read as follows.

§ 422.101 Requirements relating to basic benefits.

* * * * *

(d) * * *

(2) *Catastrophic limit.* MA regional plans are required to provide for a catastrophic limit on beneficiary out-of-pocket expenditures for in-network benefits under the Original Medicare fee-for-service program (Part A and Part B benefits) that is no greater than the annual limit set by CMS.

(3) *Total catastrophic limit.* MA regional plans are required to provide a total catastrophic limit on beneficiary out-of-pocket expenditures for in-network and out-of-network benefits under the Original Medicare fee-for-service program. This total out-of-pocket catastrophic limit, which would apply to both in-network and out-of-network benefits under Original Medicare, may be higher than the in-network catastrophic limit in paragraph (d)(2) of this section, but may not increase the limit described in paragraph (d)(2) of this section and may be no greater than the annual limit set by CMS.

* * * * *

(f) * * *

(2) * * *

(vi) All MAOs wishing to offer or continue to offer a SNP will be required to be approved by the National Committee for Quality Assurance (NCQA) effective January 1, 2012 and subsequent years. All SNPs must submit their overall quality improvement (QI) program and the model of care (MOC) to CMS for NCQA evaluation and approval in accordance with CMS guidance.

14. Section 422.106 is amended by:

A. Revising paragraph (d)(1).

B. Adding paragraphs (d)(4) through (6).

The revision and additions read as follows.

§ 422.106 Coordination of benefits with employer or union group health plans and Medicaid.

* * * * *

(d) * * *

(1) CMS may waive or modify any requirement in this part or Part D that hinders the design of, the offering of, or the enrollment in, an employer-sponsored group MA plan (including an MA–PD plan) offered by one or more employers, labor organizations, or the trustees of a fund established by one or more employers or labor organizations (or combination thereof), or that is offered, sponsored or administered by an entity on behalf of one or more employers or labor organizations, to furnish benefits to the employers' employees, former employees (or combination thereof) or members or former members (or combination thereof) of the labor organizations. Any entity seeking to offer, sponsor, or administer such an MA plan described in this paragraph may request, in writing, from CMS, a waiver or modification of requirements in this part that hinder the design of, the offering of, or the enrollment in, such MA plan.

* * * * *

(4) An employer-sponsored group MA plan means MA coverage offered to retirees who are Medicare eligible individuals under employment-based retiree health coverage, as defined in paragraph (d)(5) of this section, approved by CMS as an MA plan.

(5) Employment-based retiree coverage means coverage of health care costs under a group health plan, as defined in paragraph (d)(6) of this section, based on an individual's status as a retired participant in the plan, or as the spouse or dependent of a retired participant. The term includes coverage provided by voluntary insurance coverage, or coverage as a result of a statutory or contractual obligation.

(6) Group health plans include plans as defined in section 607(1) of ERISA, (29 U.S.C. 1167(1)). They also include the following plans:

(i) A Federal or State governmental plan, which is a plan providing medical care that is established or maintained for its employees by the Government of

the United States, by the government of any State or political subdivision of a State (including a county or local government), or by any agency or instrumentality or any of the foregoing, including a health benefits plan offered under 5 U.S.C. 89 (the Federal Employee Health Benefit Plan (FEHBP)).

(ii) A collectively bargained plan, which is a plan providing medical care that is established or maintained under or by one or more collective bargaining agreements.

(iii) A church plan, which is a plan providing medical care that is established and maintained for its employees or their beneficiaries by a church or by a convention or association of churches that is exempt from tax under section 501 of the Internal Revenue Code of 1986 (26 U.S.C. 501).

(iv) Any of the following plans:

(A) An account-based medical plan such as a Health Reimbursement Arrangement (HRA) as defined in Internal Revenue Service Notice 2002–45, 2002–28 I.R.B. 93.

(B) A health Flexible Spending Arrangement (FSA) as defined in Internal Revenue Code (Code) section 106(c)(2).

(C) A health savings account (HSA) as defined in Code section 223.

(D) An Archer MSA as defined in Code section 220, to the extent they are subject to ERISA as employee welfare benefit plans providing medical care (or would be subject to ERISA but for the exclusion in ERISA section 4(b), 29 U.S.C. 1003(b), for governmental plans or church plans).

15. Section 422.107 is amended by revising paragraph (d)(1)(ii) to read as follows:

§ 422.107 Special needs plans and dual-eligibles: Contract with State Medicaid Agency.

* * * * *

(d) * * *

(1) * * *

(ii) Existing dual-eligible SNPs that do not have a State Medicaid agency contract—

(A) May continue to operate through the 2012 contract year provided they meet all other statutory and regulatory requirements.

(B) May not expand their service areas during contract years 2010 through 2012.

* * * * *

16. Amend § 422.111 by:

A. Adding a new paragraph (b)(12).

B. Removing paragraph (f)(12).

C. Adding paragraph (h).

The additions read as follows.

§ 422.111 Disclosure requirements.

* * * * *

(b) * * *

(12) *Customized out-of-pocket cost statement.* CMS may require an MA organization to annually disclose to each enrollee a customized statement of the beneficiary's potential future out-of-pocket costs. This notice will be provided in each year, in which a minimum enrollment period has been met, in conjunction with the annual plan description described in paragraphs (b)(1) through (11) of this section.

* * * * *

(h) Provision of specific information. Each MA organization must have mechanisms for providing specific information on a timely basis to current and prospective enrollees upon request. These mechanisms must include all of the following:

(1) A toll-free customer service call center that meets all of the following:

(i) Is open during usual business hours.

(ii) Provides customer telephone service in accordance with standard business practices.

(iii) Provides interpreters for all non-English speaking and limited English proficient (LEP) individuals.

(2) An Internet Web site that includes, at a minimum the following:

(i) The information required in paragraph (b) of this section.

(ii) Copies of its evidence of coverage, summary of benefits, and information (names, addresses, phone numbers, and specialty) on the network of contracted providers. Such posting does not relieve the MA organization of its responsibility under § 422.111(a) to provide hard copies to enrollees.

(3) The provision of information in writing, upon request.

17. Section 422.112 is amended by revising paragraph (a)(10) introductory text to read as follows:

§ 422.112 Access to services.

(a) * * *

(10) *Prevailing patterns of community health care delivery.* MA plans that meet Medicare access and availability requirements through direct contracting network providers must do so consistent with the prevailing community pattern of health care delivery in the areas where the network is being offered. Factors making up community patterns of health care delivery that CMS will use as a benchmark in evaluating a proposed MA plan health care delivery network include, but are not limited to the following:

* * * * *

18. Amend § 422.113 by revising paragraph (b)(2)(v) as follows:

§ 422.113 Special rules for ambulance services, emergency and urgently needed services, and maintenance and post-stabilization care services.

* * * * *

(b) * * *

(2) * * *

(v) With a limit on charges to enrollees for emergency department services that CMS will determine annually, or what it would charge the enrollee if he or she obtained the services through the MA organization, whichever is less.

* * * * *

Subpart D—Quality Improvement

19. Amend § 422.152 by revising paragraph (g) introductory text to read as follows:

§ 422.152 Quality improvement program.

* * * * *

(g) *Special requirements for specialized MA plans for special needs individuals.* All special needs plans (SNPs) must be approved by the National Committee for Quality Assurance (NCQA) effective January 1, 2012 and subsequent years. SNPs must submit their overall quality improvement (QI) program and model of care (MOC) to CMS for NCQA evaluation and approval, in accordance with CMS guidance. A SNP must conduct a quality improvement program that—

* * * * *

20. Amend § 422.156 by revising paragraph (b)(1) to read as follows:

§ 422.156 Compliance deemed on the basis of accreditation.

* * * * *

(b) * * *

(1) *Quality improvement.* The deeming process should focus on evaluating and assessing the overall quality improvement (QI) program. However, the quality improvement projects (QIPs) and the chronic care improvement programs (CCIPs) will be excluded from the deeming process.

* * * * *

Subpart E—Relationships With Providers

21. Amend § 422.214 by adding paragraphs (c) and (d) to read as follows:

§ 422.214 Special rules for services furnished by noncontract providers.

* * * * *

(c) *Deemed request for Medicare payment rate.* A noncontract section 1861(u) of the Act provider of services that furnishes services to MA enrollees and submits the same information that

it would submit for payment under Original Medicare is deemed to be seeking to be paid the amount it would be paid under Original Medicare unless the provider expressly notifies the MA organization in writing that it is billing an amount less than such amount.

(d) *Regional PPO payments in non-network areas.* An MA Regional PPO must pay non-contract providers the Original Medicare payment rate in those portions of its service area where it is providing access to services by non-network means under § 422.111(b)(3)(ii) of this part.

Subpart F—Submission of Bids, Premiums, and Related Information and Plan Approval

22. Section 422.252 is amended by:

A. Adding in alphabetical order the definitions "low enrollment contract" and "new MA plan."

B. Revising the definition of "unadjusted MA area-specific non-drug monthly benchmark amount."

The additions and revision read as follows:

§ 422.252 Terminology.

* * * * *

Low enrollment contract means a contract that could not undertake Healthcare Effectiveness Data and Information Set (HEDIS) and Health Outcome Survey (HOS) data collections because of a lack of a sufficient number of enrollees to reliably measure the performance of the health plan.

* * * * *

New MA plan means a MA contract offered by a parent organization that has not had another MA contract in the previous 3 years.

* * * * *

Unadjusted MA area-specific non-drug monthly benchmark amount means, for local MA plans serving one county, the county capitation rate CMS publishes annually that reflects the nationally average risk profile for the risk factors CMS applies to payment calculations as set forth at § 422.308(c) of this part, (that is, a standardized benchmark). For local MA plans serving multiple counties it is the weighted average of county rates in a plan's service area, weighted by the plan's projected enrollment per county. The rules for determining county capitation rates are specific to a time period, as set forth at § 422.258(a). Effective 2012, the MA area-specific non-drug monthly benchmark amount is called the blended benchmark amount, and is determined according to the rules set forth under § 422.258(d) of this part.

* * * * *

23. Section 422.254 is amended by adding paragraph (a)(5) to read as follows:

§ 422.254 Submission of bids.

(a) * * *

(5) CMS may decline to accept any or every otherwise qualified bid submitted by an MA organization or potential MA organization.

* * * * *

24. Section 422.256 is amended by revising paragraph (a) to read as follows:

§ 422.256 Review, negotiation, and approval of bids.

(a) *Authority.* Subject to paragraphs (a)(2), (d), and (e) of this section, CMS has the authority to review the aggregate bid amounts submitted under § 422.252 and conduct negotiations with MA organizations regarding these bids (including the supplemental benefits) and the proportions of the aggregate bid attributable to basic benefits, supplemental benefits, and prescription drug benefits and may decline to approve a bid if the plan sponsor proposes significant increases in cost sharing or decreases in benefits offered under the plan.

* * * * *

25. Section 422.258 is amended by:

A. Revising paragraphs (a)(1) and (2).

B. In paragraph (c)(3)(i), removing the phrase "county capitation rate" and adding in its place the phrase "amount determined under paragraph (a) of this section for the year".

C. Adding a new paragraph (d).

The revisions and additions read as follows:

§ 422.258 Calculation of benchmarks.

(a) * * *

(1) For MA local plans with service areas entirely within a single MA local area:

(i) For years before 2007, one-twelfth of the annual MA capitation rate (described at § 422.306) for the area, adjusted as appropriate for the purpose of risk adjustment.

(ii) For years 2007 through 2010, one-twelfth of the applicable amount determined under section 1853(k)(1) of the Act for the area for the year, adjusted as appropriate for the purpose of risk adjustment.

(iii) For 2011, one-twelfth of the applicable amount determined under 1853(k)(1) for the area for 2010.

(iv) Beginning with 2012, one-twelfth of the blended benchmark amount described in paragraph (d) of this section, subject to paragraph (d)(8) of this section and adjusted as appropriate for the purpose of risk adjustment.

(2) For MA local plans with service areas including more than one MA local area, an amount equal to the weighted average of amounts described in paragraph (a)(1) of this section for the year for each local area (county) in the plan's service area, using as weights the projected number of enrollees in each MA local area that the plan used to calculate the bid amount, and adjusted as appropriate for the purpose of risk adjustment.

* * * * *

(d) *Determination of the blended benchmark amount.* (1) For the purpose of paragraphs (a) and (b) of this section, the term blended benchmark amount for an area for a year means the sum of two components: The applicable amount determined under section 1853(k)(1) of the Act and the specified amount determined under section 1853(n)(2) of Act. The weights for each component are based on the phase-in period assigned each area, as described in paragraphs (d)(8) and (d)(9) of this section. At the conclusion of an area's phase-in period, the blended benchmark for an area for a year equals the section 1853(n)(2) of the Act specified amount described in paragraph (d)(2) of this section. However, blended benchmark amount for an area for a year (which takes into account paragraph (d)(8) of this section), cannot exceed the applicable amount described in paragraph (d)(2) of this section that would be in effect but for the application of this paragraph.

(2) For the purpose of paragraphs (a) and (b) of this section, the applicable amount determined under section 1853(k)(1) of the Act for a year is—

(i) In a rebasing year (described at § 422.306(b)(2), an amount equal to the greater of the average FFS expenditure amount at § 422.306(b)(2) for an area and the minimum percentage increase rate at § 422.306(a) for an area.

(ii) In a year when the amounts at § 422.306(b)(2) are not rebased, the minimum percentage increase rate at § 422.306(a) for the area for the year.

(iii) In no case the blended benchmark amount for an area for a year, determined taking into account paragraph (d)(8) of this section, be greater than the applicable amount at paragraph (d)(2) of this section for an area for a year.

(iv) Paragraph (d) of this section does not apply to the PACE program under section 1894 of Act.

(3) For the purpose of paragraphs (a) and (b) of this section, the specified amount under section 1853(n)(2) of the Act is the product of the base payment amount for an area for a year (adjusted as required under § 422.306(c) multiplied by the applicable percentage

described in paragraph (d)(5) of this section for an area for a year.

(4) The base payment amount is as follows:

(i) For 2012, the average FFS expenditure amount specified in § 422.306(b)(2), determined for 2012.

(ii) For subsequent years, the average FFS expenditure amount specified in § 422.306(b)(2).

(5) *Applicable percentage.* Subject to paragraph (d)(7) of this section, the applicable percentage is one of four values assigned to an area based on Secretary's determination of the quartile ranking of the area's average FFS expenditure amount (described at § 422.306(b)(2) and adjusted as required at § 422.306(c)), relative to this amount for all areas.

(i) For the 50 States or the District of Columbia, a county with an average FFS expenditure amount adjusted under § 422.306(c) that falls in the—

(A) Highest quartile of such rates for all areas for the previous year receives an applicable percentage of 95 percent.

(B) Second highest quartile of such rates for all areas for the previous year receives an applicable percentage of 100 percent.

(C) Third highest quartile of such rates for all areas for the previous year receives an applicable percentage of 107.5 percent.

(D) Lowest quartile of such rates for all areas for the previous year receives an applicable percentage of 115 percent.

(ii) To determine the applicable percentages for a territory, the Secretary ranks such areas for a year based on the level of the area's § 422.306(b)(2) amount adjusted under § 422.306(c), relative to the quartile rankings computed under paragraph (d)(5)(i) of this section.

(6) *Additional rules for determining the applicable percentage.* (i) In a contract year when the average FFS expenditure amounts from the previous year were rebased (according to the periodic rebasing requirement at § 422.306(b)(2)), the Secretary must determine an area's applicable percentage based on a quartile ranking of the previous year's rebased FFS amounts adjusted under § 422.306(c).

(ii) If, for a year after 2012, there is a change in the quartile in which an area is ranked compared to the previous year's ranking, the applicable percentage for the area in the year must be the average of the applicable percentage for the previous year and the applicable percentage that would otherwise apply for the area for the year in the absence of this transitional provision.

(7) *Increases to the applicable percentage for quality.* Beginning with 2012, the blended benchmark under paragraphs (a) and (b) of this section will reflect the level of quality rating at the plan or contract level, as determined by the Secretary. The quality rating for a plan is determined by the Secretary according to a 5-star rating system (based on the data collected under section 1852(e) of the Act). Specifically, the applicable percentage under paragraph (d)(5) of this section must be increased according to criteria in paragraphs (d)(7)(i) through (v) of this section if the plan or contract is determined to be a qualifying plan or a qualifying plan in a qualifying county for the year.

(i) *Qualifying plan.* Beginning with 2012, a qualifying plan means a plan that had a quality rating of 4 stars or higher based on the most recent data available for such year. For a qualifying plan, the applicable percentage at paragraph (d)(5) of this section must be increased as follows:

(A) For 2012, by 1.5 percentage points.

(B) For 2013, by 3.0 percentage points.

(C) For 2014 and subsequent years, by 5.0 percentage points.

(ii) *Qualifying county.* (A) A *qualifying county* means a county that meets the following three criteria:

(*1*) Has an MA capitation rate that, in 2004, was based on the amount specified in section 1853(c)(1)(B) of the Act for a Metropolitan Statistical Area with a population of more than 250,000.

(*2*) Of the MA-eligible individuals residing in the county, at least 25 percent of such individuals were enrolled in MA plans as of December 2009.

(*3*) Has per capita fee-for-service spending that is lower than the national monthly per capita cost for expenditures for individuals enrolled under the Original Medicare fee-for-service program for the year.

(B) Beginning with 2012, for a qualifying plan serving a qualifying county, the increase to the applicable percentage described at paragraph (d)(7)(i) of this section must be doubled for the qualifying county.

(iii) MA organizations that fail to report data as required by the Secretary must be counted as having a rating of fewer than 3.5 stars at the plan or contract level, as determined by the Secretary.

(iv) *Application of applicable percentage increases to low enrollment plans.* (A) For 2012, for an MA plan that the Secretary determines is unable to have a quality rating because of low enrollment, the Secretary treats this plan as a qualifying plan under paragraph (d)(7)(i) of this section.

(B) For 2013 and subsequent years, the Secretary develops a methodology to apply to MA plans with low enrollment (as defined by the Secretary) to determine whether a low enrollment plan is a qualifying plan.

(v) *Application of increases in applicable percentage to new MA plans.* A new MA plan (as defined at § 422.252) that meets criteria specified by the Secretary must be treated as a qualifying plan under paragraph (d)(7)(i) of this section, except that the applicable percentage must be increased as follows:

(A) For 2012, by 1.5 percentage points.

(B) For 2013, by 2.5 percentage points.

(C) For 2014 and subsequent years, by 3.5 percentage points.

(8) *Determination of phase-in period for the blended benchmark amount.* For 2012 through 2016, the blended benchmark amount for an area for a year depends on the phase-in period assigned to that area. The Secretary assigns one of three phase-in periods to each area: 2-year, 4-year, or 6-year. The phase-in period assigned to an area is based on the size of the difference between the 2010 applicable amount at paragraph (d)(2) of this section and the projected 2010 benchmark amount defined at paragraph (d)(8)(i) of this section.

(i) The projected 2010 benchmark amount is calculated once for the purpose of determining the phase-in period for an area. It is equal to one-half of the 2010 applicable amount at paragraph (d)(2) of this section and one-half of the specified amount at paragraph (d)(3) modified to apply to 2010 (as described in (d)(8)(ii) of this section).

(ii) To assign a phase-in period to an area, the specified amount is modified as if it applies to 2010, and is the product of—

(A) The 2010 base payment amount adjusted as required under § 422.306(c) of this part; and

(B) The applicable percentage determined as if the reference to the "previous year" at paragraph (d)(5) of this section were deemed a reference to 2010 and increased as follows:

(1) The increase at paragraph (d)(7)(i) of this section for a qualifying plan in the area is applied as if the reference to a qualifying plan for 2012 were deemed a reference for 2010; and

(2) The increase at paragraph (d)(7)(ii) of this section is applied as if the determination of a qualifying county were made for 2010.

(iii) *Two-year phase-in.* An area is assigned the 2-year phase-in period if the difference between the applicable amount at paragraph (d)(2) of this section and the projected 2010 benchmark amount at paragraph (d)(8)(i) of this section is less than $30.

(iv) *Four-year phase-in.* An area is assigned the 4-year phase-in period if the difference between the applicable amount at paragraph (d)(2) of this section and the projected 2010 benchmark amount at paragraph (d)(8)(i) of this section is at least $30 but less than $50.

(v) *Six-year phase-in.* An area is assigned the 6-year phase-in period if the difference between the applicable amount at paragraph (d)(2) of this section and the projected 2010 benchmark amount at paragraph (d)(8)(i) of this section is at least $50.

(9) *Impact of phase-in period on calculation of the blended benchmark amount.* (i) *Weighting for the 2-year phase-in.* (A) For 2012, the blended benchmark is the sum of one-half of the applicable amount at paragraph (d)(2) of this section and one-half of the specified amount at paragraph (d)(3) of this section.

(B) For 2013 and subsequent years, the blended benchmark equals the specified amount.

(ii) *Weighting for the 4-year phase-in.* The blended benchmark is the sum of the applicable amount at paragraph (d)(2) of this section and the specified amount at paragraph (d)(2) of this section in the following proportions:

(A) For 2012, three-fourths of the applicable amount for the area for the year and one-fourth of the specified amount for the area and year.

(B) For 2013, one-half of the applicable amount for the area for the year and one-half of the specified amount for the area and year.

(C) For 2014, one-fourth of the applicable amount for the area for the year and three-fourths of the specified amount for the area and year.

(D) For 2015 and subsequent years, the blended benchmark equals the specified amount for the area and year.

(iii) *Weighting for the 6-year phase-in.* The blended benchmark is the sum of the applicable amount at paragraph (d)(2) and the specified amount at paragraph (d)(3) of this section in the following proportions:

(A) For 2012, five-sixths of the applicable amount for the area and year and one-sixth of the specified amount for the area and year.

(B) For 2013, two-thirds of the applicable amount for the area and year and one-third of the specified amount for the area and year.

(C) For 2014, one-half of the applicable amount for the area and year and one-half of the specified amount for the area and year.

(D) For 2015, one-third of the applicable amount for the area and year and two-thirds of the specified amount for the area and year.

(E) For 2016, one-sixth of the applicable amount for the area and year and five-sixths of the specified amount for the area and year.

(F) For 2017 and subsequent years, the blended benchmark equals the specified amount for the area and year.

25. Add § 422.260 to read as follows:

§ 422.260 Appeals of quality bonus payment determinations.

(a) *Scope.* The provisions of this section pertain to appeals of quality bonus payment status determinations based on section 1853(o) of the Act.

(b) *Definitions.* The following definitions apply to this section:

Quality bonus payment (QBP) means—(i) Enhanced CMS payments to MA organizations based on the organization's demonstrated quality of its Medicare contract operations; or

(ii) Increased beneficiary rebate retention allowances based on the organization's demonstrated quality of its Medicare contract operations.

Quality bonus payment (QBP) determination methodology means the formula CMS adopts for evaluating whether MA organizations qualify for an QBP.

Quality bonus payment (QBP) status means an MA organization's standing with respect to its qualification to—

(i) Receive a quality bonus payment, as determined by CMS; or

(ii) Retain a portion of its beneficiary rebates based on its quality rating, as determined by CMS.

(c) *Technical report on QBP status.* An MA organization may request a technical report from CMS which details the performance data and performance measures that CMS relied on in applying the quality bonus payment determination methodology and how CMS applied the methodology to such performance data.

(1) The MA organization must request a technical report concerning its QBP status within 5 days of CMS' issuance of notice of the QBP status determination.

(2) The technical report must be prepared by an independent contractor engaged by CMS to review the application of CMS' QBP payment determination methodology to the organization's performance for the most recent evaluation period.

(3) Within 30 days of CMS' receipt of the MA organization request, the independent contractor must issue the technical report to the MA organization and CMS in writing and by electronic mail.

(4) The independent contractor will not accept or consider materials submitted by the MA organization in advance of the technical report.

(d) *QBP status appeal process.* (1) *Hearing request.* An MA organization may request an appeal of its QBP status.

(i) The MA organization seeking an appeal of their QBP status must do so by providing written notice to CMS within 7 days of the issuance of the QBP technical report. The notice must specify the errors the MA organization asserts that CMS made in making the QBP determination and how correction of those errors would result in the organization's qualification for a QBP.

(ii) The MA organization may not request an appeal of its QBP status unless it has already requested and received a technical report in accordance with paragraph (c) of this section.

(2) *Designation of a hearing officer.* CMS designates a hearing officer to conduct the appeal of the QBP status. The officer must be an individual who did not directly participate in the initial QBP determination.

(3) *Hearing officer's review.* The hearing officer reviews the application of CMS' QBP determination methodology to the determination of the MA organization's QBP status.

(i) The hearing officer must consider whether CMS correctly applied its QBP determination methodology to the MA organization's performance, but may not consider the validity of the determination methodology itself.

(ii) The hearing officer may also consider the accuracy of the data related to individual performance measures used to arrive at a QBP determination where those performance measures have not been subject to an independent audit.

(iii) The hearing officer may not consider the accuracy of data related to individual performance measures which were subject to an independent audit prior to their use in arriving at the QBP determination.

(iv) The hearing is conducted by a CMS hearing officer on the record, unless the parties requested, subject to the hearing officer's discretion, a live or telephonic hearing.

(v) The hearing officer receives no testimony, but may accept written statements with exhibits from each party in support of their position in the matter.

(4) *Hearing officer's decision.* The hearing officer issues a decision on or

before May 15 of the year preceding the year in which the plans for which the QBP is to be applied will be offered. The hearing officer issues the decision by electronic mail to the MA organization and to CMS.

(5) *Effect of the hearing officer's decision.* The hearing officer's decision is final and binding.

(e) *Reopening of QBP determinations.* CMS may, on its own initiative, revise an MA organization's QBP status at any time after the initial release of the QBP determinations through April 1 of each year. CMS may take this action on the basis of any credible information, including the technical report issued in accordance with paragraph (c) of this section that demonstrates that the initial QBP determination was incorrect.

26. Amend § 422.262 by revising paragraph (c)(1) to read as follows:

§ 422.262 Beneficiary premiums.

* * * * *

(c) * * *

(1) *General rule.* (i) Except as permitted for supplemental premiums under § 422.106(d), for MA contracts with employers and labor organizations, the MA monthly bid amount submitted under § 422.254, the MA monthly basic beneficiary premium, the MA monthly supplemental beneficiary premium, the MA monthly prescription drug premium, and the monthly MSA premium of an MA organization may not vary among individuals enrolled in an MA plan (or segment of the plan as provided for local MA plans under paragraph (c)(2) of this section).

(ii) The MA organization cannot vary the level of cost-sharing charged for basic benefits or supplemental benefits (if any) among individuals enrolled in an MA plan (or segment of the plan). Cost sharing cannot vary across enrollees of a plan for any reason, including that based upon primary care provider group, specialist, hospital network or an enrollee's utilization of health care services.

* * * * *

27. Amend § 422.266 by revising paragraph (a) to read as follows:

§ 422.266 Beneficiary rebates.

(a) *Calculation of rebate.* (1) For 2006 through 2011, an MA organization must provide to the enrollee a monthly rebate equal to 75 percent of the average per capita savings (if any) described in § 422.264(b) for MA local plans and § 422.264(d) for MA regional plans.

(2) For 2012 and subsequent years, an MA organization must provide to the enrollee a monthly rebate equal to a specified percentage of the average per capita savings (if any) at § 422.264(b) for MA local plans and § 422.264(d) for MA regional plans. For 2012 and 2013, this percentage is based on a combination of the (a)(1) rule of 75 percent and the (a)(2)(ii) rules that set the percentage based on the plan's quality rating under a 5 star rating system, as determined by the Secretary under § 422.258(d)(6). For 2014 and subsequent years, this percentage is determined based only on the paragraph (a)(2)(ii) of this section rules.

(i) *Applicable rebate percentage for 2012 and 2013.* Subject to paragraphs (a)(2)(iii) and (iv) of this section, the transitional applicable rebate percentage is, for a year, the sum of two amounts as follows:

(A) *For 2012.* Two-thirds of the old proportion of 75 percent of the average per capita savings; and one-third of the new proportion assigned the plan under paragraph (a)(2)(ii) of this section, based on the quality rating specified in § 422.258(d)(7).

(B) *For 2013.* One-third of the old proportion of 75 percent of the average per capita savings; and two-thirds of the new proportion assigned the plan under paragraph (d)(2)(ii) of this section, based on the quality rating at § 422.258(d)(7).

(ii) *Final applicable rebate percentage.* For 2014 and subsequent years, and subject to paragraphs (d)(2)(iii) and (iv) of this section, the final applicable rebate percentage is as follows:

(A) In the case of a plan with a quality rating under such system of at least 4.5 stars, 70 percent of the average per capita savings;

(B) In the case of a plan with a quality rating under such system of at least 3.5 stars and less than 4.5 stars, 65 percent of the average per capita savings.

(C) In the case of a plan with a quality rating under such system of less than 3.5 stars, 50 percent of the average per capita savings.

(iii) *Treatment of low enrollment plans.* For 2012, in the case of a plan described at § 422.258(d)(7)(iv), the plan must be treated as having a rating of 4.5 stars for the purpose of determining the beneficiary rebate amount.

(iv) *Treatment of new MA plans.* For 2012 or a subsequent year, a new MA plan defined at § 422.252 that meets the criteria specified by the Secretary for purposes of § 422.258(d)(7)(v) must be treated as a qualifying plan under § 422.258(d)(7)(i), except that plan must be treated as having a rating of 3.5 stars for purposes of determining the beneficiary rebate amount.

* * * * *

Subpart G—Payments to Medicare Advantage Organizations

28. Amend § 422.308 by adding paragraphs (c)(4) through (6) to read as follows:

§ 422.308 Adjustments to capitation rates, benchmarks, bids, and payments.

* * * * *

(c) * * *

(4) *Authority to apply frailty adjustment under PACE payment rules for certain specialized MA plans for special needs individuals.* (i) For plan year 2011 and subsequent plan years, in the case of a plan described in paragraph (c)(4)(ii) of this section, the Secretary may apply the payment rules under section 1894(d) of the Act (other than paragraph (3) of such section) rather than the payment rules that would otherwise apply under this part, but only to the extent necessary to reflect the costs of treating high concentrations of frail individuals.

(ii) *Plan described.* A plan described in this paragraph is a fully integrated dual-eligible special needs plan, as defined at § 422.2, and has a similar average level of frailty (as determined by the Secretary) as the PACE program.

(5) *Application of coding adjustment.* (i) In applying the adjustment under paragraph (c)(1) of this section for health status to payment amounts, the Secretary ensures that such adjustment reflects changes in treatment and coding practices in the fee-for-service sector and reflects differences in coding patterns between MA plans and providers under Part A and B to the extent that the Secretary has identified such differences.

(ii) In order to ensure payment accuracy, the Secretary annually conducts an analysis of the differences described in paragraph (c)(5)(i) of this section.

(A) The Secretary completes such analysis by a date necessary to ensure that the results of such analysis are incorporated on a timely basis into the risk scores for 2008 and subsequent years.

(B) In conducting such analysis, the Secretary uses data submitted with respect to 2004 and subsequent years, as available and updated as appropriate.

(iii) In calculating each year's adjustment, the adjustment factor is as follows:

(A) For 2014, not less than the adjustment factor applied for 2010, plus 1.3 percentage points.

(B) For each of the years 2015 through 2018, not less than the adjustment factor applied for the previous year, plus 0.25 percentage points.

(C) For 2019 and each subsequent year, not less than 5.7 percent.

(iv) Such adjustment is applied to risk scores until the Secretary implements risk adjustment using MA diagnostic, cost, and use data.

(6) *Improvements to risk adjustment for special needs individuals with chronic health conditions.* (i) *General rule.* For 2011 and subsequent years, for purposes of the adjustment under paragraph (c)(1) of this section with respect to individuals described in paragraph (c)(6)(ii) of the section, the Secretary uses a risk score that reflects the known underlying risk profile and chronic health status of similar individuals. Such risk score is used instead of the default risk score for new enrollees in MA plans that are not specialized MA plans for special needs individuals (as defined in section 1859(b)(6) of the Act).

(ii) *Individuals described.* An individual described in this clause is a special needs individual described in section 1859(b)(6)(B)(iii) of the Act who enrolls in a specialized MA plan for special needs individuals on or after January 1, 2011.

(iii) *Evaluation.* For 2011 and periodically thereafter, the Secretary evaluates and revises the risk adjustment system under this paragraph in order to, as accurately as possible, account for—

(A) Higher medical and care coordination costs associated with frailty, individuals with multiple, comorbid chronic conditions, and individuals with a diagnosis of mental illness; and

(B) Costs that may be associated with higher concentrations of beneficiaries with the conditions specified in paragraph (c)(6)(iii)(A) of this section.

(iv) *Publication of evaluation and revisions.* The Secretary publishes, as part of an announcement under section 1853(b) of the Act, a description of any evaluation conducted under paragraph (c)(6)(iii) of this section during the preceding year and any revisions made under paragraph (c)(6)(iii) of this section as a result of such evaluation.

* * * * *

Subpart J—Special Rules for MA Regional Plans

§ 422.458 [Amended]

29. In § 422.458, paragraph (f) is removed.

Subpart K—Application Procedures and Contracts for Medicare Advantage Organizations

30. Amend § 422.502 by:

A. Redesignating paragraph (b) as paragraph (b)(1).

B. Adding paragraph (b)(2).

C. Revising paragraph (c)(2)(i).

The revisions read as follows:

§ 422.502 Evaluation and determination procedures.

* * * * *

(b) * * *

(2) In the absence of 14 months of performance history, CMS may deny an application based on a lack of information available to determine an applicant's capacity to comply with the requirements of the MA program.

(c) * * *

(2) * * *

(i) If CMS finds that the applicant does not appear to be able to meet the requirements for an MA organization, CMS gives the applicant notice of intent to deny the application and a summary of the basis for this preliminary finding.

* * * * *

31. Amend § 422.503 by:

A. Redesignating paragraph (b)(4)(vi)(B)(*1*) as paragraph (b)(4)(vi)(B)(*1*)(*i*).

B. Adding paragraph (b)(4)(vi)(B)(*1*)(*ii*).

The addition reads as follows.

§ 422.503 General provisions.

* * * * *

(b) * * *

(4) * * *

(vi) * * *

(B) * * *

(*ii*) Beginning in 2013, the compliance officer will complete annual MA compliance training offered by an entity with expertise in MA. New applicants must complete training by the last Friday in August prior to the start of the contract year.

* * * * *

32. Amend § 422.504 by:

A. Redesignating paragraph (a)(14) as paragraph (a)(16) and revising it.

B. Adding new paragraphs (a)(14) and (a)(15).

The additions and revision read as follows.

§ 422.504 Contract provisions.

(a) * * *

(14) Maintain a fiscally sound operation by at least maintaining a positive net worth (total assets exceed total liabilities).

(15) Address complaints received by CMS against the MAO by—

(i) Addressing and resolving complaints in the CMS complaint tracking system.

(ii) Displaying a link to the electronic complaint form on the Medicare.gov Internet Web site on the MA plan's main Web page.

(16) An MA organization's compliance with paragraphs (a)(1) through (15) and (c) of this section is material to performance of the contract.

* * * * *

33. Amend § 422.506 by adding paragraph (a)(5) to read as follows:

§ 422.506 Nonrenewal of contract.

(a) * * *

(5) During the same 2-year period as specified in paragraph (a)(4) of this section, CMS will not contract with an organization whose covered persons also served as covered persons for the non-renewing sponsor. A "covered person" as used in this paragraph means one of the following:

(i) All owners of nonrenewed or terminated organizations who are natural persons, other than shareholders who—

(A) Have an ownership interest of more than 5 percent; and

(B) Acquired the ownership through public trading.

(ii) An owner in whole or part interest in any mortgage, deed of trust, note or other obligation secured (in whole or in part) by the organization, or any of the property assists thereof, which whole or part interest is equal to or exceeds 5 percent of the total property, and assets of the organization.

(iii) An officer or member of the board of directors or board of trustees of the entity, if the organization is organized as a corporation.

* * * * *

34. Amend § 422.508 by adding paragraph (d) to read as follows:

§ 422.508 Modification or termination of contract by mutual consent.

* * * * *

(d) *Prohibition against Part C program participation by organizations whose owners, directors, or management employees served in a similar capacity with another organization that mutually terminated its Medicare contract within the previous 2 years.* During the same 2-year period, CMS will not contract with an organization whose covered persons also served as covered persons for the mutually terminating sponsor. A "*covered person*" as used in this paragraph means one of the following:

(1) All owners of nonrenewal or terminated organizations who are natural persons, other than shareholders who—

(i) Have an ownership interest of more than 5 percent; and

(ii) Acquired the ownership through public trading.

(2) An owner in whole or part interest in any mortgage, deed of trust, note or other obligation secured (in whole or in

part) by the organization, or any of the property assists thereof, which whole or part interest is equal to or exceeds 5 percent of the total property, and assets of the organization.

(3) An officer or member of the board of directors of the entity, if the organization is organized as a corporation.

35. Amend § 422.512(e) by:

A. Redesignating paragraph (e) as (e)(1).

B. Adding paragraph (e)(2) to read as follows:

§ 422.512 Termination of contract by the MA organization.

* * * * *

(e) * * *

(2) During the same 2-year period specified in paragraph (e)(1) of this section, CMS will not contract with an organization whose covered persons also served as covered persons for the terminating sponsor. A "covered person" as used in this paragraph means one of the following:

(i) All owners of nonrenewal or terminated organizations who are natural persons, other than shareholders who—

(A) Have an ownership interest of more than 5 percent; and

(B) Acquired the ownership through public trading.

(ii) An owner in whole or part interest in any mortgage, deed of trust, note or other obligation secured (in whole or in part) by the organization, or any of the property assists thereof, which whole or part interest is equal to or exceeds 5 percent of the total property, and assets of the organization.

(iii) An officer or member of the board of directors of the entity, if the organization is organized as a corporation.

Subpart M—Grievances, Organization Determinations, and Appeals

36. Amend § 422.562 by adding paragraph (a)(4) to read as follows:

§ 422.562 General provisions.

(a) * * *

(4) An MA organization must employ a medical director who is responsible for ensuring the clinical accuracy of all organization determinations and reconsiderations involving medical necessity. The medical director must be a physician with a current and unrestricted license to practice medicine in a State, Territory, Commonwealth of the United States (that is, Puerto Rico), or the District of Columbia.

* * * * *

37. Amend § 422.566 by adding paragraph (d) to read as follows:

§ 422.566 Organization determinations.

* * * * *

(d) *Who must review organization determinations.* When the issue involves medical necessity (or any substantively equivalent term used to describe the concept of medical necessity), the organization determination must be reviewed by a physician or other appropriate health care professional with sufficient medical and other expertise, including knowledge of the Medicare program. The physician or other health care professional must have a current and unrestricted license to practice within the scope of his or her profession in a State, Territory, Commonwealth of the United States (that is, Puerto Rico), or the District of Columbia.

38. Amend § 422.626 by revising paragraph (g)(3) to read as follows:

§ 422.626 Fast-track appeals of service terminations to independent review entities (IREs).

* * * * *

(g) * * *

(3) If the IRE reaffirms its decision, in whole or in part, the enrollee may appeal the IRE's reconsidered determination to an ALJ, the MAC, or a Federal court, as provided for under this subpart.

* * * * *

Subpart V—Medicare Advantage Marketing Requirements

39. Amend § 422.2264 by revising paragraph (e) to read as follows:

§ 422.2264 Guidelines for CMS review.

* * * * *

(e) For markets with a significant non-English speaking population, provide materials in the language of these individuals. Specifically, MA organizations must provide translated marketing materials in any language that is spoken by more than 10 percent of the general population in a plan benefit package (PBP) service area.

40. Amend § 422.2272 by adding paragraph (e) to read as follows:

§ 422.2272 Licensing of marketing representatives and confirmation of marketing resources.

* * * * *

(e) Terminate upon discovery any unlicensed agent or broker employed as a marketing representative and notify any beneficiaries enrolled by the unlicensed agent or broker of the agent's or broker's unlicensed status and of their options to confirm enrollment or make a plan change (including a special election period, as described in § 422.62(b)(3)(ii)).

41. Amend § 422.2274 by revising the introductory text and paragraphs (b) and (c) to read as follows:

§ 422.2274 Broker and agent requirements.

For purposes of this section "compensation" includes pecuniary or nonpecuniary remuneration of any kind relating to the sale or renewal of a policy including, but not limited to, commissions, bonuses, gifts, prizes, awards, and finder's fees. "Compensation" does not include the payment of fees to comply with State appointment laws, training, certification, and testing costs; reimbursement for mileage to, and from, appointments with beneficiaries; or reimbursement for actual costs associated with beneficiary sales appointments such as venue rent, snacks, and materials. If a Medicare Advantage organization markets through independent (that is, non-employee) brokers or agents, the requirements in paragraph (a) of this section must be met. The requirements in paragraphs (b) through (e) of this section must be met if a MA organization markets through any broker or agent, whether independent (that is, non-employee) or employed.

* * * * *

(b) It must ensure that all agents selling Medicare products are trained annually through a CMS endorsed or approved training program or as specified by CMS, on Medicare rules and regulations specific to the plan products they intend to sell.

(c) It must ensure agents selling Medicare products are tested annually by CMS endorsed or approved training program or as specified by CMS.

* * * * *

PART 423—MEDICARE PROGRAM; MEDICARE PRESCRIPTION DRUG PROGRAM

42. The authority citation for part 423 continues to read as follows:

Authority: Secs. 1102, 1860D–1 through 1860D–42, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395w–101 through 1395w–152, and 1395hh).

Subpart A—General Provisions

43. Amend § 423.4 by adding in alphabetical order the definitions of "fiscally sound operation" and "pharmacist" to read as follows:

§ 423.4 Definitions.

* * * * *

Fiscally sound operation means an operation which at least maintains a positive net worth (total assets exceed total liabilities).

* * * * *

Pharmacist means any individual who holds a current valid license to practice pharmacy in a State or territory of the United States or the District of Columbia.

* * * * *

Subpart B—Eligibility and Enrollment

44. Amend § 423.34 by:

A. Revising paragraphs (c) and (d)(1).

B. Adding paragraph (d)(4).

The revisions and addition read as follows:

§ 423.34 Enrollment of low income subsidy eligible individuals.

* * * * *

(c) *Reassigning low income subsidy eligible individuals.* (1) *General rule.* Notwithstanding § 423.32(e) of this subpart, during the annual coordinated election period, CMS may reassign certain low income subsidy eligible individuals in another PDP if CMS determines that the further enrollment is warranted, except as specified in paragraph (c)(2) of this section.

(2) *Part D prescription drug plans that waive a de minimis premium amount.* If a Part D plan offering basic prescription drug coverage in the area where the beneficiary resides has a monthly beneficiary premium amount that exceeds the low-income subsidy amount by a *de minimis* amount, and the Part D plan volunteers to waive that *de minimis* amount in accordance with § 423.780, then CMS does not reassign low income subsidy individuals who would otherwise be enrolled under paragraph (d)(1) of this section. A Part D plan that volunteers to waive such a *de minimis* amount agrees to do so for each month during the contract year for which a beneficiary qualifies for 100 percent low-income premium subsidy as provided in § 423.780(f).

(d) *Automatic enrollment rules.* (1) *General rule.* Except for low income subsidy eligible individuals who are qualifying covered retirees with a group health plan sponsor, as specified in paragraph (d)(3) of this section, CMS enrolls those individuals who fail to enroll in a Part D plan into a PDP offering basic prescription drug coverage in the area where the beneficiary resides that has a monthly beneficiary premium amount that does not exceed the low income subsidy amount (as defined in § 423.780(b) of this part). In the event that there is more than one PDP in an area with a monthly beneficiary premium at or below the low income premium subsidy amount, individuals are enrolled in such PDPs on a random basis.

* * * * *

(4) *Enrollment in PDP plans that voluntarily waive a de minimis premium amount.* CMS may include in the process specified in paragraph (d)(1) MA–PDs and PDPs that voluntarily waive a *de minimis* amount as specified in § 423.780, if CMS determines that such inclusion is warranted.

* * * * *

45. Amend § 423.38 by:

A. Revising paragraph (b).

B. Adding a new paragraph (d).

The revision and addition read as follows:

§ 423.38 Enrollment periods.

* * * * *

(b) *Annual coordinated election period.* (1) *For 2006.* This period begins on November 15, 2005 and ends on May 15, 2006.

(2) *For 2007 through 2010.* The annual coordinated election period for the following calendar year is November 15 through December 31.

(3) *For 2011 and subsequent years.* Beginning with 2011, the annual coordinated election period for the following calendar year is October 15 through December 7.

* * * * *

(d) *Enrollment period to coordinate with MA annual 45-day disenrollment period.* Beginning in 2011, an individual enrolled in an MA plan who elects Original Medicare from January 1 through February 14, as described in § 422.62(a)(7), may also elect a PDP during this time.

46. Amend § 423.40 by adding paragraph (d) to read as follows:

§ 423.40 Effective dates.

* * * * *

(d) *PDP enrollment period to coordinate with the MA annual disenrollment period.* Beginning in 2011, an enrollment made from January 1 through February 14 by an individual who has disenrolled from an MA plan as described in § 422.62(a)(7) will be effective the first day of the month following the month in which the enrollment in the PDP is made.

47. Amend § 423.44 by revising the section heading and adding paragraphs (d)(1)(vi), (d)(1)(vii), and (e) to read as follows:

§ 423.44 Involuntary disenrollment from Part D coverage.

* * * * *

(d) * * *

(1) * * *

(iv) *Extension of grace period for good cause and reinstatement.* When an individual is disenrolled for failure to pay the plan premium, CMS may reinstate enrollment in the PDP, without interruption of coverage, if the individual shows good cause for failure to pay within the initial grace period, and pays all overdue premiums within 3 calendar months after the disenrollment date. The individual must establish by a credible statement that failure to pay premiums within the initial grace period was due to circumstances for which the individual had no control, or which the individual could not reasonably have been expected to foresee.

(v) *No extension of grace period.* A beneficiary's enrollment in the PDP may not be reinstated if the only basis for such reinstatement is a change in the individual's circumstances subsequent to the involuntary disenrollment for non-payment of premiums.

* * * * *

(e) *Involuntary disenrollment by CMS.* (1) *General rule.* CMS will disenroll individuals who fail to pay the Part D income related monthly adjustment amount (Part D—IRMAA) specified in § 423.286(d)(4) and § 423.293(d) of this part.

(2) *Initial grace period.* For all Part D—IRMAA amounts directly billed to an enrollee in accordance with § 423.293(d)(2), the grace period ends with the last day of the third month after the billing month.

(3) *Extension of grace period for good cause and reinstatement.* When an individual is disenrolled for failing to pay the Part D—IRMAA within the initial grace period specified in paragraph (e)(2) of this section, CMS (or an entity acting on behalf of CMS) may reinstate enrollment in the PDP, without interruption of coverage, if the individual shows good cause as specified in § 423.44(d)(1)(iv), pays all Part D—income related monthly adjustment amount arrearages, and any overdue premiums due the Part D plan sponsor within three calendar months after the disenrollment date.

(4) *Notice of termination.* Where CMS has disenrolled an individual in accordance with paragraph (e)(1) of this section, the Part D plan sponsor must provide notice of termination in a form and manner determined by CMS.

(5) *Effective date of disenrollment.* After a grace period and notice of termination has been provided in accordance with paragraphs (e)(2) and (4) of this section, the effective date of disenrollment is the first day following the last day of the initial grace period.

Subpart C—Benefits and Beneficiary Protections

48. Amend § 423.100 by:

A. Adding in alphabetical order the definitions of "Applicable beneficiary," "Applicable drug under the Medicare coverage gap discount program," and "Coverage gap."

B. Revising "paragraph (2) of the definition of Dispensing fees" and paragraph (2)(ii) of the definition of "incurred costs."

The additions and revisions read as follows:

§ 423.100 Definitions.

* * * * *

Applicable beneficiary means an individual who, on the date of dispensing a covered Part D drug—

(1) Is enrolled in a prescription drug plan or an MA–PD plan;

(2) Is not enrolled in a qualified retiree prescription drug plan;

(3) Is not entitled to an income-related subsidy under section 1860D–14(a) of the Act;

(4) Has reached or exceeded the initial coverage limit under section 1860D–2(b)(3) of the Act during the year; and

(5) Has not incurred costs for covered part D drugs in the year equal to the annual out-of-pocket threshold specified in section 1860D–2(b)(4)(B) of the Act.

(6) Has a claim that—

(i) Straddles the initial coverage period and the coverage gap;

(ii) Straddles the coverage gap and the annual out-of-pocket threshold; or

(iii) Spans the coverage gap from the initial coverage period and exceeds the annual out-of-pocket threshold.

Applicable drug means a Part D drug that is—

(1)(i) Approved under a new drug application under section 505(b) of the Federal Food, Drug, and Cosmetic Act (FDCA), including authorized generics (as defined in 100.5 of this guidance); or

(ii) In the case of a biological product, licensed under section 351 of the Public Health Service Act (other than a product licensed under subsection (k) of such section 351); and

(2)(i) If the PDP sponsor of the prescription drug plan or the MA organization offering the MA–PD plan uses a formulary, which is on the formulary of the prescription drug plan or MA–PD plan that the applicable beneficiary is enrolled in;

(ii) If the PDP sponsor of the prescription drug plan or the MA organization offering the MA–PD plan does not use a formulary, for which benefits are available under the prescription drug plan or MA–PD plan that the applicable beneficiary is enrolled in; or

(iii) Is provided through an exception or appeal.

* * * * *

Coverage gap means the period in prescription drug coverage that occurs between the initial coverage limit and the out-of-pocket threshold. For purposes of applying the initial coverage limit, Part D sponsors must apply their plan specific initial coverage limit under basic alternative or actuarially equivalent Part D benefit designs.

* * * * *

Dispensing fees * * *

(2) Include only pharmacy costs associated with ensuring that possession of the appropriate covered Part D drug is transferred to a Part D enrollee. Pharmacy costs include, but are not limited to, any reasonable costs associated with a pharmacist's time in checking the computer for information about an individual's coverage, performing quality assurance activities consistent with § 423.153(c)(2), measurement or mixing of the covered Part D drug, filling the container, physically providing the completed prescription to the Part D enrollee, delivery, special packaging, and salaries of pharmacists and other pharmacy workers as well as the costs associated with maintaining the pharmacy facility and acquiring and maintaining technology and equipment necessary to operate the pharmacy. Dispensing fees should take into consideration the number of dispensing events in a billing cycle, the incremental costs associated with the type of dispensing methodology, and with respect to Part D drugs dispensed in LTC facilities, the techniques to minimize the dispensing of unused drugs. Dispensing fees may also take into account restocking fees associated with return for credit and reuse in long-term care pharmacies, when return for credit and reuse is permitted under the state in law and is allowed under the contract between the Part D sponsor and the pharmacy.

* * * * *

Incurred costs * * *

(2) * * *

(ii) Under a State Pharmaceutical Assistance Program (as defined in § 423.464); by the Indian Health Service (as defined in section 4 of the Indian Health Care Improvement Act), an Indian tribe or tribal organization, or an urban Indian organization (referred to as I/T/U pharmacy in § 423.464) or under an AIDS Drug Assistance Program (as defined in part B of title XXVI of the Public Health Service); or

* * * * *

49. Amend § 423.104 by:

A. Revising paragraphs (d)(2)(i) introductory text, (d)(2)(ii), (d)(3) introductory text, and (d)(4).

B. Redesignating paragraph (d)(5)(iii)(B) as (d)(5)(iii)(F).

C. Adding new paragraphs (d)(5)(iii)(B) through (d)(5)(iii)(E).

D. Revising newly redesignated paragraph (d)(5)(iii)(F).

E. Adding a new paragraph (d)(5)(v).

The additions and revisions read as follows:

§ 423.104 Requirements related to qualified prescription drug coverage.

* * * * *

(d) * * *

(2) * * *

(i) Subject to paragraph (d)(4) of this section, coinsurance for actual costs for covered Part D drugs covered under the Part D plan above the annual deductible specified in paragraph (d)(1) of this section, and up to the initial coverage limit under paragraph (d)(3) of this section, that is—

* * * * *

(ii) *Tiered copayments.* A Part D plan providing actuarially equivalent standard coverage may apply tiered copayments, provided that any tiered copayments are consistent with paragraphs (d)(2)(i)(B) and (d)(4) of this section and are approved as described in § 423.272(b)(2).

(3) *Initial coverage limit.* Except as provided in paragraphs (d)(4) and (d)(5) of this section, the initial coverage limit is equal to—

* * * * *

(4) *Cost-sharing in the coverage gap.* (i) Coinsurance in the coverage gap (as defined in § 423.100) for costs for covered Part D drugs that are not applicable drugs (as defined in § 423.100) under the Medicare coverage gap discount program that is—

(A) Equal to the generic gap coinsurance percentage described in paragraph (d)(4)(iii) of this section; or

(B) Actuarially equivalent to an average expected coinsurance for covered Part D drugs that are not applicable drugs under the Medicare coverage gap discount program, as determined through processes and methods established under § 423.265(c) and (d).

(ii) Coinsurance in the coverage gap for the actual cost minus dispensing fee for covered Part D drugs that are applicable drugs under the Medicare coverage gap discount program that is—

(A) Equal to the difference between the applicable gap coinsurance percentage described in paragraph (d)(4)(iv) of this section and the discount percentage determined under

the Medicare coverage gap discount program; or

(B) Actuarially equivalent to an average expected coinsurance for covered Part D drugs that are applicable drugs under the Medicare coverage gap discount program, as determined through processes and methods established under § 423.265(c) and (d).

(iii) *Generic gap coinsurance percentage.* The generic gap coinsurance percentage is equal to—

(A) For 2011, 93 percent.

(B) For years 2012 through 2019, the amount specified in this paragraph for the previous year, decreased by 7 percentage points.

(C) For 2020 and each subsequent year, 25 percent.

(iv) *Applicable gap coinsurance percentage.* The applicable gap coinsurance percentage is equal to—

(A) For 2013 and 2014, 97.5 percent.

(B) For 2015 and 2016, 95 percent.

(C) For 2017, 90 percent.

(D) For 2018, 85 percent.

(E) For 2019, 80 percent.

(F) For 2020 and subsequent years, 75 percent.

(5) * * *

(iii) * * *

(B) *For each year 2007 through 2013.* The amount specified in this paragraph for the previous year, increased by the annual percentage increase specified in paragraph (d)(5)(iv) of this section, and rounded to the nearest multiple of $50.

(C) *For years 2014 and 2015.* The amount specified in this paragraph for the previous year, increased by the annual percentage increase specified in paragraph (d)(5)(iv) of this section, minus 0.25 percentage point.

(D) *For each year 2016 through 2019.* The amount specified in this paragraph for the previous year, increased by the lesser of—

(*1*) The annual percentage increase specified in (d)(5)(v) of this section plus 2 percentage points; or

(*2*) The annual percentage increase specified in (d)(5)(iv) of this section.

(E) *For 2020.* The amount specified in this paragraph for 2013 increased by the annual percentage increases specified in paragraph (d)(5)(iv) of this section for 2014 through 2020, and rounded to the nearest $50.

(F) *For 2021 and subsequent years.* The amount specified in this paragraph for the previous year, increased by the annual percentage increase specified in paragraph (d)(5)(iv) of this section, and rounded to the nearest $50.

* * * * *

(v) *Additional annual percentage increase.* The annual percentage increase for each year is equal to the annual percentage increase in the consumer price index for all urban consumers (United States city average) for the 12-month period ending in July of the previous year.

* * * * *

50. Section 423.120 is amended by:

A. Revising paragraphs (b)(3)(iii)(B) and (b)(3)(iv).

B. Adding paragraph (d).

The revisions and addition read as follows.

§ 423.120 Access to covered Part D drugs.

* * * * *

(b) * * *

(3) * * *

(iii) * * *

(B) In the long-term care setting, the temporary supply of nonformulary Part D drugs (including Part D drugs that are on a sponsor's formulary but require prior authorization or step therapy under a sponsor's utilization management rules) must be for up to 91 days in 7-day-or-less supply increments whenever § 423.154(a) applies and up to 93 days in 31 day supply increments whenever § 423.154(a) does not apply, with refills provided, if needed, unless a lesser amount is actually prescribed by the prescriber.

(iv) Ensure written notice is provided to each affected enrollee within 3 business days after adjudication of the temporary fill. For LTC residents dispensed multiple supplies of a Part D drug, in increments of 7 days or less, consistent with the requirements under § 423.154, the written notice must be provided within 3 business days after adjudication of the first temporary fill.

* * * * *

(d) *Treatment of compounded drug products.* With respect to multi-ingredient compounds, a Part D sponsor must—

(1) Make a determination as to whether the compound is covered under Part D.

(i) A compound that contains at least one ingredient covered under Part B is considered a Part B compound, regardless of whether other ingredients in the compound are covered under Part B.

(ii) Only compounds that contain at least one ingredient that independently meets the definition of a Part D drug, and that do not meet the criteria under paragraph (d)(1)(i) of this section may be covered under Part D. For purposes of this section these compounds are referred to as Part D compounds.

(iii) For a Part D compound that is considered to be on-formulary, all ingredients that independently meet the definition of a Part D drug must be considered on-formulary (even if the particular Part D drug would be considered non-formulary if it were provided separately—that is, not as part of the Part D compound).

(iv) For a compound that is considered off-formulary—

(A) Transition rules apply such that all ingredients in the Part D compound that independently meet the definition of a Part D drug must become payable in the event of a transition fill under § 423.120(b)(3); and

(B) All ingredients that independently meet the definition of a Part D drug must be covered if an exception under § 423.578(b) is approved for coverage of the compound.

(2) Establish consistent rules for beneficiary payment liabilities for both ingredients of the Part D compound that independently meet the definition of a Part D drug and non-Part D ingredients.

(i) For ingredients of the Part D compound that independently meet the definition of a Part D drug, the copayment amount submitted and approved under § 423.104(d) must equal the copayment for the tier of the most expensive of such ingredients, except in the case of low income subsidy beneficiaries where the copayment amount is based on whether the most expensive ingredient that independently meets the definition of a Part D drug in the Part D compound is a generic or brand drug (as described under § 423.782).

(ii) For ingredients of the Part D compound that independently meet the definition of a Part D drug, the coinsurance submitted and approved under § 423.104(d) must be applied to the cost of all such ingredients, except in the case of full subsidy eligible individuals (as defined in § 423.783(b)) where the copayment amount is based on whether the most expensive ingredient that independently meets the definition of a Part D drug in the Part D compound is a generic or brand drug (as described under § 423.782).

(iii) For any non-Part D ingredient of the Part D compound (including drugs described under § 423.104(f)(1)(ii)(A)), the Part D sponsor may either contract with the pharmacy to—

(A) Make payment without charging the beneficiary for these amounts or reporting these costs to CMS;

(B) Deny payment, but allow the pharmacy to balance bill the beneficiary for the cost of these ingredients; or

(C) Deny payment and prohibit the pharmacy to balance bill the beneficiary for the cost of these ingredients.

51. Amend § 423.128 by:

A. Revising paragraph (b)(7).

B. Adding new paragraphs (b)(11), (d)(1)(iii), and (d)(1)(iv).

The revision and additions read as follows:

§ 423.128 Dissemination of Part D plan information.

* * * * *

(b) * * *

(7) *Grievance, coverage determination, and appeal procedures.* All grievance, coverage determination, and appeal rights and procedures required under § 423.562 et seq., including—

(i) Access to a standard form used to request a coverage determination under § 423.568 or § 423.570, and a standard form used to request a redetermination under § 423.582 or § 423.584, to the extent such standard coverage determination and redetermination request forms have been approved for use by CMS;

(ii) Immediate access to the coverage determination and redetermination processes via an Internet Web site; and

(iii) A system that transmits codes to network pharmacies so that the network pharmacy is notified to populate and/or provide a printed notice at the point-of-sale to an enrollee explaining how the enrollee can request a coverage determination by contacting the plan sponsor's toll free customer service line or by accessing the plan sponsor's internet Web site.

* * * * *

(11) *Customized out-of-pocket cost statement.* CMS may require a Part D sponsor to annually disclose to each enrollee a customized statement of the beneficiary's potential future out-of-pocket costs. This notice will be provided in each year in which a minimum enrollment period has been met, in conjunction with the annual plan description described in paragraphs (b)(1) through (10) of this section.

* * * * *

(d) * * *

(1) * * *

(iii) Provides interpreters for all non-English speaking and limited English proficient (LEP) individuals.

(iv) Provides immediate access to the coverage determination and redetermination processes.

* * * * *

Subpart D—Cost Control and Quality Improvement Requirements

52. Amend § 423.150 by:

A. Redesignating paragraphs (b) through (g) as paragraphs (c) through (h).

B. Adding a new paragraph (b) to read as follows:

§ 423.150 Scope.

* * * * *

(b) Appropriate dispensing of outpatient prescription drugs in long-term care facilities under PDPs and MA–PD plans.

* * * * *

53. Amending § 423.153 by:

A. Revising paragraph (d)(1)(vii)(B).

B. Adding paragraph (d)(1)(vii)(D).

C. Redesignating paragraph (d)(5) as (d)(7).

D. Adding a new paragraph (d)(5).

The revision and additions read as follows:

§ 423.153 Drug utilization management, quality assurance, and medication therapy management programs (MTMPs).

* * * * *

(d) * * *

(1) * * *

(vii) * * *

(B) *Annual comprehensive medication reviews with written summaries.* The comprehensive medication review must include an interactive, person-to-person, or telehealth consultation performed by a pharmacist or other qualified provider unless the beneficiary is in a long-term care setting and may result in a recommended medication action plan.

* * * * *

(D) Standardized action plans and summaries that comply with requirements as specified by CMS for the standardized format.

* * * * *

(5) Coordination with long term care consultant pharmacist monitoring. Part D sponsors must contract with all long term care facilities in which their Part D enrollees reside to provide appropriate MTM services in coordination with consultant pharmacist evaluation and monitoring.

* * * * *

54. Add § 423.154 to read as follows:

§ 423.154 Appropriate dispensing of prescription drugs in long-term care facilities under PDPs and MA–PD plans.

(a) *In general.* Except as provided in paragraphs (b) and (e) of this section, when dispensing covered Part D drugs to enrollees who reside in long-term care facilities, a Part D sponsor must—

(1) Require all pharmacies servicing long-term care facilities as defined in § 423.100 to—

(i) Dispense brand-name medications, as defined in § 423.4, to enrollees in such facilities in no greater than 7-day increments at a time;

(ii) Permit the use of uniform dispensing techniques for Part D drugs dispensed to enrollees in long-term care facilities under paragraph (a)(1)(i) of this section as defined by each of the long-term care facilities in which such enrollees reside; and

(2) Collect and report information, in a form and manner specified by CMS, on the dispensing methodology used for each dispensing event described by paragraph (a)(1) of this section, and on the nature and quantity of unused drugs returned to the pharmacy as required under paragraph (f) of this section.

(b) *Exclusions.* CMS excludes from the requirements under paragraph (a) of this section:

(1) Drugs difficult to dispense in supply increments of 7-day or less, such as drugs that must be dispensed in the original packaging including, but not limited to eye drops, nasal sprays, inhalational products, ear drops, reconstituted antibiotics and, in general, drugs with a parenteral route of administration, and topical preparations; or

(2) Drugs dispensed for acute illnesses including, but not limited to a 10- or 14-day course of antibiotics.

(c) *Waivers.* CMS waives the requirements under paragraph (a) of this section for pharmacies when they service intermediate care facilities for the mental retarded and developmentally disabled (ICFMRDD) and institutes for mental disease (IMDs) as defined in § 435.1010.

(d) *Effective date.* Except as provided in paragraph (e) of this section, the effective date for this section is January 1, 2012. Nothing precludes a Part D sponsor and network long-term care pharmacy from mutually agreeing to an earlier implementation date.

(e) *Extension.* A Part D sponsor may allow an independent community pharmacy that also contracts as a long-term care pharmacy to dispense up to a 14-day supply through December 31, 2012 if the following conditions are met:

(1) The independent community pharmacy is the primary provider of Part D drugs to one or more long-term care facilities with less than 80 beds; and

(2) The independent community pharmacy in its capacity as a long-term care pharmacy primarily services long-term care facilities in rural areas as defined by the Bureau of the Census.

(f) *Unused drugs returned to the pharmacy.* A Part D sponsor must include terms in its long-term care pharmacy contracts that—

(1) Require any unused drugs originally dispensed to its enrollees to be returned to the pharmacy and reported to the sponsor.

(2) Address contractual obligations for disposal in accordance with Federal and State regulations, as well as whether

return for credit and reuse is authorized where permitted under State law.

Subpart F—Submission of Bids and Monthly Beneficiary Premiums; Plan Approval

55. Amend § 423.265 by adding paragraph (b)(3) to read as follows:

§ 423.265 Submission of bids and related information.

* * * * *

(b) * * *

(3) CMS may decline to accept any or every bid submitted by a Part D sponsor or potential Part D sponsor.

* * * * *

56. Amend § 423.272 by adding paragraph (b)(4) to read as follows:

§ 423.272 Review and negotiation of bid and approval of plans submitted by potential Part D sponsors.

* * * * *

(b) * * *

(4) CMS may decline to approve a bid if the Part D sponsor proposes significant increases in cost sharing or decreases in benefits offered under the plan.

* * * * *

57. Amend § 423.286 by:

A. Revising paragraph (a).

B. Adding paragraph (d)(4).

The revision and addition read as follows:

§ 423.286 Rules regarding premiums.

(a) *General rule.* Except as provided in paragraphs (d)(3), (d)(4), and (e) of this section, and with regard to employer group waivers, the monthly beneficiary premium for a Part D plan in a PDP region is the same for all Part D eligible individuals enrolled in the plan. The monthly beneficiary premium for a Part D plan is the base beneficiary premium, as determined in paragraph (c) of this section, adjusted as described in paragraph (d) of this section for the difference between the bid and the national average monthly bid amount, any supplemental benefits and for any late enrollment penalties.

* * * * *

(d) * * *

(4) *Increase for income-related monthly adjustment amount (Part D—IRMAA).* Beginning January 1, 2011, Medicare beneficiaries enrolled in a Medicare prescription drug plan must pay an income-related monthly adjustment amount in addition to the Part D premium as determined under paragraph (c) of this section and adjusted under paragraph (d) of this section, if the enrollee's modified adjusted gross income exceeds the threshold amounts specified in 20 CFR 418.1115.

(i) *Social Security Administration determination.* (A) SSA determines which Part D enrollees are subject to the Part D—IRMAA and the amount each enrollee will have to pay.

(B) If an individual disagrees with SSA's determination that such individual is subject to the Part D—IRMAA, or about the amount the individual must pay, an individual may file an appeal or request a new initial determination consistent with 20 CFR part 418.

(ii) *Calculating the income-related monthly adjustment amount.* The income related monthly adjustment is equal to the product of the quotient obtained by dividing the applicable premium percentage specified in § 418.1120 (35, 50, 65, or 80 percent) that is based on the level of the Part D enrollee's modified adjusted gross income for the calendar year reduced by 25.5 percent; by 25.5 percent; and the base beneficiary premium as determined under paragraph (c) of this section.

* * * * *

58. Amend § 423.293 by:

A. Redesignating paragraphs (d) and (e) as (e) and (f), respectively.

B. Adding new paragraph (d).

§ 423.293 Collection of monthly beneficiary premium.

* * * * *

(d) *Collection of the income related monthly adjustment amount (Part D—IRMAA).* (1) *Collection through withholding.* Where the Social Security Administration has determined the income-related monthly adjustment amount for an individual whose income exceeds the income threshold amounts specified at 20 CFR 418.1115, the Part D—IRMAA must be paid through withholding from the enrollee's Social Security benefit payments, or benefit payments by the Railroad Retirement Board (RRB) or the Office of Personnel Management (OPM) in the manner that the Part B premium is withheld.

(2) *Collection through direct billing.* In cases where an enrollee's benefit payment check is not sufficient to have the Part D—IRMAA withheld, or if an enrollee is not receiving such benefits, the beneficiary must be billed directly for the Part D—IRMAA. The beneficiary will have the option of paying the amount through an electronic funds transfer mechanism (such as automatic charges of an account at a financial institution or a credit or debit card account) or according to other means that CMS may specify.

(3) *Failure to pay the income-related monthly adjustment amount: General rule.* CMS will terminate Part D coverage for any individual who fails to pay the Part D—IRMAA as determined by the Social Security Administration. CMS will terminate an enrollee's Part D coverage as specified in § 423.44(e).

* * * * *

Subpart J—Coordination Under Part D Plan With Other Prescription Drug Coverage

59. Amend § 423.464 by revising paragraph (f)(2) to read as follows:

§ 423.464 Coordination of benefits with other providers of prescription drug coverage.

* * * * *

(f) * * *

(2) *Treatment under out-of-pocket rule.* (i) For purposes of determining whether a Part D plan enrollee has satisfied the out-of-pocket threshold provided under § 423.104(d)(5)(iii), a Part D plan must—

(A) Include the enrollee's incurred costs (as defined in § 423.100); and

(B) Exclude expenditures for covered Part D drugs made by insurance or otherwise, a group health plan, or other third party payment arrangements, including expenditures by plans offering other prescription drug coverage. Excluded expenditures do not include payments made by the Indian Health Service (as defined in section 4 of the Indian Health Care Improvement Act), an Indian tribe or tribal organization, or an urban Indian organization (referred to as I/T/U pharmacy in § 423.464) or an AIDS Drug Assistance Program (as defined in part B of title XXVI of the Public Health Service).

(ii) A Part D enrollee must disclose all these expenditures to a Part D plan in accordance with requirements under § 423.32(b)(ii).

* * * * *

Subpart K—Application Procedures and Contracts With PDP Sponsors

60. Amend § 423.503 by:

A. Redesignating paragraph (b) as paragraph (b)(1).

B. Adding paragraph (b)(2).

C. Revising paragraph (c)(2)(i).

The revisions and addition read as follows:

§ 423.503 Evaluation and determination procedures for applications to be determined qualified to act as a sponsor.

* * * * *

(b) * * *

(2) In the absence of 14 months of performance history, CMS may deny an application based on a lack of

information available to determine an applicant's capacity to comply with the requirements of the Part D program.

(c) * * *

(2) * * *

(i) If CMS finds that the applicant does not appear qualified to contract as a Part D sponsor, it gives the applicant notice of intent to deny the application and a summary of the basis for this preliminary finding.

* * * * *

61. Amend § 423.504 as follows:

A. Redesignating paragraph (b)(4)(vi)(B)(*1*) as paragraph (b)(4)(vi)(B)(*1*)(*i*).

B. Adding paragraph (b)(4)(vi)(B)(*1*)(*ii*).

The revisions read as follows.

§ 423.504 General provisions.

(b) * * *

(4) * * *

(vi) * * *

(B) * * *

(*ii*) Beginning in 2013, the compliance officer will complete annual Part D compliance training offered by an entity with expertise in Part D. New applicants must complete training by the last Friday in August prior to the start of the contract year.

* * * * *

62. Amend § 423.505 by adding paragraphs (b)(22) and (23) to read as follows:

§ 423.505 Contract provisions.

* * * * *

(b) * * *

(22) Address complaints received by CMS against the Part D sponsor by—

(i) Addressing and resolving complaints in the CMS complaint tracking system.

(ii) Displaying a link to the electronic complaint form on the Medicare.gov Internet Web site on the Part D plan's main Web page.

(23) Maintain a fiscally sound operation by at least maintaining a positive net worth (total assets exceed total liabilities).

* * * * *

63. Amend § 423.507(a) by:

A. Redesignating paragraph (a)(4) as paragraph (a)(5).

B. Adding a new paragraph (a)(4) to read as follows:

§ 423.507 Nonrenewal of contract.

(a) * * *

(4) During the same 2-year period specified under paragraph (a)(3) of this section, CMS will not contract with an organization whose covered persons also served as covered persons for the non-renewing sponsor. A "covered person" as used in this paragraph means one of the following:

(i) All owners of nonrenewed or terminated organizations who are natural persons, other than shareholders who—

(A) Have an ownership interest of less than 5 percent; and

(B) Acquired the ownership through public trading.

(ii) An owner of a whole or part interest in a mortgage, deed of trust, note or other obligation secured (in whole or in part) by the organization, or by any of the property or assets thereof, which whole or part interest is equal to or exceeds 5 percent of the total property and assets of the organization.

(iii) An officer or member of the board of directors or board of trustees of the entity, if the organization is organized as a corporation;

* * * * *

64. Amend § 423.508 by adding paragraph (f) to read as follows:

§ 423.508 Modification or termination of contract by mutual consent.

* * * * *

(f) *Prohibition against Part D program participation by organizations whose owners, directors, or management employees served in a similar capacity with another organization that mutually terminated its Medicare contract within the previous 2 years.* During the 2-year period specified in paragraph (e) of this section, CMS will not contract with an organization whose covered persons also served as covered persons for the mutually terminating sponsor. A "covered person" as used in this paragraph means one of the following:

(1) All owners of nonrenewed or terminated organizations who are natural persons, other than shareholders who—

(i) Have an ownership interest of less than 5 percent; and

(ii) Acquired the ownership through public trading.

(2) An owner of a whole or part interest in a mortgage, deed of trust, note or other obligation secured (in whole or in part) by the organization, or any of the property or assets thereof, which whole or part interest is equal to or exceeds 5 percent of the total property, and assets of the organization.

(3) An officer or member of the board of directors or board of trustees of the entity, if the organization is organized as a corporation;

65. Amend § 423.509 by adding paragraph (e) to read as follows:

§ 423.509 Termination of contract by CMS.

* * * * *

(e) *Timely transfer of data and files.* If a contract is terminated under paragraph (a) of this section, the Part D plan sponsor must ensure the timely transfer of any data or files.

66. Amend § 423.510 by:

A. Redesignating paragraph (e) as (e)(1).

B. Adding paragraph (e)(2).

The addition reads as follows:

§ 423.510 Termination of contract by Part D sponsor.

* * * * *

(e) * * *

(2) During the same 2-year period specified in (e)(1) of this section, CMS will not contract with an organization whose covered persons also served as covered persons for the terminating sponsor. A "covered person" as used in this paragraph means one of the following:

(i) All owners of nonrenewed or terminated organizations who are natural persons, other than shareholders who—

(A) Have an ownership interest of less than 5 percent; and

(B) Acquired the ownership through public trading.

(ii) An owner of a whole or part interest in a mortgage, deed of trust, note or other obligation secured (in whole or in part) by the organization, or any of the property or assets thereof, which whole or part interest is equal to or exceeds 5 percent of the total property, and assets of the organization.

(iii) An officer or member of the board of directors or board of trustees of the entity, if the organization is organized as a corporation.

* * * * *

Subpart M—Grievances, Coverage Determinations, and Appeals

67. Amend § 423.562 by:

A. Redesignating paragraphs (a)(1)(ii) and (iii) as paragraphs (a)(1)(iii) and (iv), respectively.

B. Adding new paragraph (a)(1)(ii).

C. Revising paragraph (a)(3).

D. Adding a new paragraph (a)(5).

The revision and additions read as follows:

§ 423.562 General provisions.

(a) * * *

(1) * * *

(ii) Use a single, uniform exceptions and appeals process which includes, procedures for accepting oral and written requests for coverage determinations and redeterminations that are in accordance with § 423.128 (b)(7) and (d)(1)(iii).

* * * * *

(3) A Part D plan sponsor must arrange with its network pharmacies to distribute notices instructing enrollees

how to contact their plans to obtain a coverage determination or request an exception if they disagree with the information provided by the pharmacist. These notices must comply with the standards established in § 423.128(b)(7)(iii).

* * * * *

(5) A Part D plan sponsor must employ a Medical Director who is responsible for ensuring the clinical accuracy of all coverage determinations and redeterminations involving medical necessity. The Medical Director must be a physician with a current and unrestricted license to practice medicine in a State, Territory, Commonwealth of the United States (that is, Puerto Rico), or the District of Columbia.

* * * * *

68. Amend § 423.566 by adding paragraph (d) to read as follows:

§ 423.566 Coverage determinations.

* * * * *

(d) *Who must review coverage determinations.* When the issue involves medical necessity (or any substantively equivalent term used to describe the concept of medical necessity), the coverage determination must be reviewed by a physician or other appropriate health care professional with sufficient medical and other expertise, including knowledge of the Medicare program. The physician or other health care professional must have a current and unrestricted license to practice within the scope of his or her profession in a State, Territory, Commonwealth of the United States (that is, Puerto Rico), or the District of Columbia.

69. Amend § 423.568 by revising paragraph (f) to read as follows:

§ 423.568 Standard timeframe and notice requirements for coverage determinations.

* * * * *

(f) *Written notice for denials by a Part D plan sponsor.* If a Part D plan sponsor decides to deny a drug benefit, in whole or in part, it must give the enrollee written notice of the determination. The initial notice may be provided orally, so long as a written follow-up notice is mailed to the enrollee within 3 calendar days of the oral notification.

* * * * *

Subpart P—Premium and Cost-Sharing Subsidies for Low-Income Individuals

70. Section 423.772 is amended by adding in alphabetical order the definition of "Individual receiving home and community-based services" to read as follows:

§ 423.772 Definitions.

* * * * *

Individual receiving home and community-based services means a full-benefit dual-eligible individual who is receiving services under a home and community-based program authorized for a State in accordance with one of the following:

(1) Section 1115 of the Act.

(2) Section 1915(c) or (d) of the Act.

(3) State plan amendment under section 1915(i) of the Act.

(4) Services are provided through enrollment in a Medicaid managed care organization with a contract under section 1903(m) of the Act or section 1932 of the Act.

* * * * *

71. Amend § 423.780 by:

A. Revising paragraph (b)(2)(ii)(C).

B. Adding paragraph (f).

The revision and addition read as follows:

§ 423.780 Premium subsidy.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(C) The MA monthly prescription drug beneficiary premium (as defined under section 1854(b)(2)(B) of the Act) for a MA–PD plan and determined before the application of the monthly rebate computed under section 1854(b)(1)(C)(i) of the Act for that plan and year involved.

* * * * *

(f) *Waiver of de minimis premium amounts.* CMS will permit a Part D plan to waive a *de minimis* amount that is above the monthly beneficiary premium defined in § 423.780(b)(2)(ii)(A) or (B) for full subsidy individuals as defined in § 423.780(a) or § 423.780(d)(1), provided waiving the *de minimis* amount results in a monthly beneficiary premium that is equal to the established low income benchmark as defined in § 423.780(b)(2).

72. Amend § 423.782 by revising paragraph (a)(2)(ii) to read as follows:

§ 423.782 Cost-sharing subsidy.

(a) * * *

(2) * * *

(ii) Full-benefit dual-eligible individuals who are institutionalized or who are receiving home and community-based services have no cost-sharing for Part D drugs covered under their PDP or MA–PD plans.

* * * * *

Subpart R—Payments to Sponsors of Retiree Prescription Drug Plans

73. Amend § 423.884 by revising paragraphs (d)(1)(i), (d)(1)(ii), and (d)(5)(iii)(C) to read as follows:

§ 423.884 Requirements for qualified retiree prescription drug plans.

* * * * *

(d) *Actuarial attestation-general.* The sponsor of the plan must provide to CMS an attestation in a form and manner specified by CMS that the actuarial value of the retiree prescription drug coverage under the plan is at least equal to the actuarial value of the defined standard prescription coverage (as defined at § 423.100), not taking into account the value of any discount or coverage provided during the coverage gap (as defined at § 423.100). The attestation must meet all of the following standards:

(1) * * *

(i) The actuarial gross value of the retiree prescription drug coverage under the plan for the plan year is at least equal to the actuarial gross value of the defined standard prescription drug coverage under Part D for the plan year in question, not taking into account the value of any discount or coverage provided during the coverage gap.

(ii) The actuarial net value of the retiree prescription drug coverage under the plan for that plan year is at least equal to the actuarial net value of the defined standard prescription drug coverage under Part D for that plan year in question, not taking into account the value of any discount or coverage provided during the coverage gap.

* * * * *

(5) * * *

(iii) * * *

(C) The valuation of defined standard prescription drug coverage for a given plan year is based on the initial coverage limit cost-sharing and out-of-pocket threshold for defined standard prescription drug coverage under Part D in effect at the start of such plan year, not taking into account the value of any discount or coverage provided during the coverage gap.

* * * * *

Subpart V—Part D Marketing Requirements

74. Amend § 423.2264 by revising paragraph (e) to read as follows:

§ 423.2264 Guidelines for CMS review.

* * * * *

(e) For markets with a significant non-English speaking population, provide materials in the language of these

individuals. Specifically, Part D plan sponsors must provide translated marketing materials in any language that is spoken by more than 10 percent of the general population in a plan benefit package (PBP) service area.

75. Amend § 423.2272 by adding paragraph (e) to read as follows:

§ 423.2272 Licensing of marketing representatives and confirmation of marketing resources.

* * * * *

(e) Terminate upon discovery any unlicensed agent or broker employed as a marketing representative and notify any beneficiaries enrolled by the unlicensed agent or broker of the agent's or broker's unlicensed status and of their options to confirm enrollment or make a plan change (including a special election period, as described in § 423.38(c)(8)(i)(C)).

76. Amend § 423.2274 by revising the introductory text and paragraphs (b) and (c) to read as follows:

§ 423.2274 Broker and agent requirements.

For purposes of this section "compensation" includes pecuniary or nonpecuniary remuneration of any kind relating to the sale or renewal of a policy including, but not limited to, commissions, bonuses, gifts, prizes, awards, and finder's fees. "Compensation" does not include the payment of fees to comply with State appointment laws, training, certification, and testing costs; reimbursement for mileage to, and from, appointments with beneficiaries; or reimbursement for actual costs associated with beneficiary sales appointments such as venue rent, snacks, and materials. If a Part D sponsor markets through independent (that is, non-employee) brokers or agents, the requirements in paragraph (a) of this section must be met. The requirements in paragraphs (b) through (e) of this section must be met if a Part D sponsor markets through any broker or agent, whether independent (that is, non-employee) or employed.

* * * * *

(b) It must ensure that all agents selling Medicare products are trained annually, through a CMS endorsed or approved training program or as specified by CMS, on Medicare rules and regulations specific to the plan products they intend to sell.

(c) It must ensure agents selling Medicare products are tested annually by CMS endorsed or approved training program or as specified by CMS.

* * * * *

Authority: (Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program).

Dated: July 29, 2010.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

Approved: November 9, 2010.

Kathleen Sebelius,

Secretary.

[FR Doc. 2010–28774 Filed 11–10–10; 4:45 pm]

BILLING CODE 4120–01–P

Federal Register

Monday,
November 22, 2010

Part III

Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of Implementation Plans; State of California; 2007 South Coast State Implementation Plan for 1997 Fine Particulate Matter Standards; 2007 State Strategy; $PM_{2.5}$; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0366; FRL–9229–3]

Approval and Promulgation of Implementation Plans; State of California; 2007 South Coast State Implementation Plan for 1997 Fine Particulate Matter Standards; 2007 State Strategy; $PM_{2.5}$

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve in part and disapprove in part State implementation plan (SIP) revisions submitted by the State of California to provide for attainment of the 1997 annual and 24-hour $PM_{2.5}$ national ambient air quality standard (NAAQS) in the Los Angeles-South Coast Air Basin area (South Coast nonattainment area). The submitted SIP revisions are contained in the South Coast 2007 Air Quality Management Plan (South Coast 2007 AQMP) and portions of the 2007 State Strategy as revised in 2009. Specifically, EPA is proposing to approve the emissions inventories as meeting the requirements of the Clean Air Act (CAA) and EPA's fine particulate implementing regulations. EPA is also proposing to approve commitments to propose specific measures and meet specific aggregate emissions reductions by the South Coast Air Quality Management (District) and the California Air Resources Board (CARB) because the commitments strengthen the SIP. Finally, EPA is proposing to approve the air quality modeling demonstration as meeting the requirements of the CAA and EPA guidance. EPA is proposing to disapprove the attainment demonstration because it does not provide sufficient emissions reductions from adopted and EPA approved measures to provide for attainment of the NAAQS. As a result, EPA is also proposing to disapprove the reasonably available control measures/reasonably available control technology (RACM/RACT) and reasonable further progress (RFP) demonstrations and proposing not to grant California's request to extend to April 5, 2015 the deadline for the South Coast nonattainment area to attain the 1997 $PM_{2.5}$ NAAQS because these requirements are linked to approving the attainment demonstration under the 1997 $PM_{2.5}$ implementation rule. We are also proposing to disapprove the assignment of 10 tpd of NO_X to the federal government. Finally, EPA is proposing to disapprove $PM_{2.5}$ contingency measures and the motor vehicle emissions budgets (budgets) for the area's RFP years and attainment year. To the extent that the State can remedy the shortfall in emissions reductions for the attainment demonstration, which is the basis for the proposed disapproval of the attainment demonstration, EPA believes that many of the noted deficiencies could be addressed.

DATES: Any comments must arrive by January 21, 2011.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2009–0366, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.
- *E-mail: tax.wienke@epa.gov.*
- *Mail or deliver:* Marty Robin, Office of Air Planning (AIR–2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comments due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically on the *http://www.regulations.gov* Web site and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available at either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section below.

Copies of the SIP materials are also available for inspection at the following locations:

- California Air Resources Board, 2020 L Street, Sacramento, California 95812, and
- South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, California 91765.

The SIP materials are also electronically available at: *http://aqmd.gov/aqmp/07aqmp/index.html* and *http://www.arb.ca.gov/planning/sip/sip.htm.*

FOR FURTHER INFORMATION CONTACT: Wienke Tax, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, (415) 947–4192, *tax.wienke@epa.gov*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

Table of Contents

I. The $PM_{2.5}$ NAAQS and the South Coast $PM_{2.5}$ Nonattainment Area
II. California's State Implementation Plan Submittals to Address $PM_{2.5}$ Attainment in the South Coast Nonattainment Area
A. California's SIP Submittals
1. 2007 South Coast AQMP
2. 2007 State Strategy
3. Additional SIP Submittal Related to Motor Vehicle Emissions Budgets (Budgets)
B. CAA Procedural and Administrative Requirements for SIP Submittals
III. CAA and Regulatory Requirements for $PM_{2.5}$ Attainment SIPs
IV. Review of the South Coast 2007 AQMP and the South Coast Portion of the Revised 2007 State Strategy
A. Summary of EPA's Proposed Actions
B. Emission Inventories
1. Requirements for Emission Inventories
2. Emission Inventories in the South Coast 2007 AQMP
3. Proposed Action on the Emission Inventories
C. Reasonably Available Control Measures (RACM)/Reasonably Available Control Technology (RACT) and Adopted Control Strategy
1. Requirement for RACM/RACT
2. RACM/RACT Demonstration in the SIP
a. District's RACM/RACT Analysis and Adopted Control Strategy
b. CARB's RACM Analysis and Adopted Control Strategy
c. The Local Jurisdiction's RACM Analysis
3. Proposed Actions on RACM/RACT Demonstration and Adopted Control Strategy
D. Attainment Demonstration
1. Requirements for Attainment Demonstration
2. Air Quality Modeling in the South Coast 2007 AQMP
3. $PM_{2.5}$ Precursors Addressed in the South Coast 2007 AQMP
4. Extension of the Attainment Date

5. Attainment Demonstration
a. Enforceable Commitments
i. The Commitments Do Not Represent a Limited Portion of Required Reductions
ii. The State Is Capable of Fulfilling Its Commitment
iii. The Commitment Is for a Reasonable and Appropriate Period of Time
b. Federal Reductions
6. Proposed Action on the Attainment Demonstration
E. Reasonable Further Progress Demonstration
1. Requirements for RFP
2. RFP Demonstration in the South Coast 2007 AQMP
3. Proposed Action on the RFP Demonstration
F. Contingency Measures
1. Requirements for Contingency Measures
2. Contingency Measures in the South Coast 2007 AQMP
3. Proposed Action on the Contingency Measures
G. Motor Vehicle Emissions Budgets for Transportation Conformity
H. Mid-Course Review
V. EPA's Proposed Actions
A. EPA's Proposed Approvals and Disapprovals
B. CAA Consequences of a Final Disapproval
VI. Statutory and Executive Order Reviews

I. The $PM_{2.5}$ NAAQS and the South Coast $PM_{2.5}$ Nonattainment Area

On July 18, 1997 (62 FR 36852), EPA established new national ambient air quality standards (NAAQS) for $PM_{2.5}$, particulate matter with a diameter of 2.5 microns or less, including annual standards of 15.0 μg/m³ based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and 24-hour (or daily) standards of 65 μg/m³ based on a 3-year average of the 98th percentile of 24-hour concentrations. 40 CFR 50.7 EPA established the standards based on substantial evidence from numerous health studies demonstrating that serious health effects are associated with exposures to $PM_{2.5}$ concentrations above the levels of these standards.

Epidemiological studies have shown statistically significant correlations between elevated $PM_{2.5}$ levels and premature mortality. Other important health effects associated with $PM_{2.5}$ exposure include aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions, emergency room visits, absences from school or work, and restricted activity days), changes in lung function and increased respiratory symptoms, as well as new evidence for more subtle indicators of cardiovascular health. Individuals particularly sensitive to $PM_{2.5}$ exposure include older adults, people with heart and lung disease, and children. *See,* EPA, *Air Quality Criteria for Particulate Matter,* No. EPA/600/P–99/002aF and EPA/600/P–99/002bF, October 2004.

$PM_{2.5}$ can be emitted directly into the atmosphere as a solid or liquid particle ("primary" or "direct $PM_{2.5}$") or can be formed in the atmosphere as a result of various chemical reactions from precursor emissions of nitrogen oxides (NO_X), sulfur dioxide (SO_2), volatile organic compounds (VOC) and ammonia (NH_3) ("secondary $PM_{2.5}$"). *See* 72 FR 20586, 20589 (April 25, 2007)

Following promulgation of a new or revised NAAQS, EPA is required by CAA section 107(d) to designate areas throughout the United States as attaining or not attaining the NAAQS. On January 5, 2005, EPA published initial air quality designations for the 1997 $PM_{2.5}$ NAAQS, based on air quality monitoring data for three-year periods of 2001–2003 or 2002–2004. (70 FR 944). These designations became effective on April 5, 2005.

EPA designated the "Los Angeles-South Coast Air Basin" area (South Coast nonattainment area), including Orange County, the southwestern two-thirds of Los Angeles County, southwestern San Bernardino County, and western Riverside County as nonattainment for both the 1997 24-hour and the annual $PM_{2.5}$ standards. The South Coast $PM_{2.5}$ nonattainment area is home to about 17 million people, has a diverse economic base, and contains one of the highest-volume port areas in the world. For a precise description of the geographic boundaries of the South Coast $PM_{2.5}$ nonattainment area, *See* 40 CFR 81.305.[1] The local air district with primary responsibility for developing a plan to attain the $PM_{2.5}$ NAAQS in this area is the South Coast Air Quality Management District (District).

Ambient annual $PM_{2.5}$ levels in the South Coast are among the highest recorded in the United States at 18.8 μg/m³ for the 2007–2009 period.[2] In the South Coast, the levels and composition of $PM_{2.5}$ differ by geographic location, with higher $PM_{2.5}$ concentrations typically occurring in metropolitan Los Angeles and in the inland valley areas of San Bernardino and metropolitan Riverside Counties. The higher $PM_{2.5}$ concentrations in Los Angeles County are mainly due to secondary formation of particulates. *See* South Coast 2007 AQMP, pages 2–13.

II. California's State Implementation Plan Submissions to Address $PM_{2.5}$ Nonattainment in the South Coast Nonattainment Area

A. California's SIP Submittals

Designation of an area as nonattainment starts the process for a state to develop and submit to EPA a State implementation plan (SIP) under title 1, part D of the CAA. This SIP must include, among other things, a demonstration of how the NAAQS will be attained in the nonattainment area as expeditiously as practicable, but no later than the date required by the CAA. Under CAA section 172(b), a State has up to three years after an area's designation to nonattainment to submit its SIP to EPA. For the 1997 $PM_{2.5}$ NAAQS, these nonattainment SIPs were due no later than April 5, 2008.

California has made several SIP submittals to address $PM_{2.5}$ nonattainment in the South Coast nonattainment area. The two principal ones are the District's 2007 $PM_{2.5}$ Plan (South Coast 2007 AQMP) and the CARB's State Strategy for California's 2007 State Implementation Plan (2007 State Strategy).

1. 2007 South Coast AQMP

On November 28, 2007, the California Air Resources Board (CARB or State) submitted the "Final 2007 Air Quality Management Plan, June 2007."[3] This Plan was adopted by the District on June 1, 2007 and submitted to CARB on October 24, 2007.[4] The South Coast

[1] On October 17, 2006, EPA strengthened the 24-hour $PM_{2.5}$ NAAQS by lowering the level to 35 μg/m³. At the same time, we retained the level of the annual $PM_{2.5}$ standard at 15.0 μg/m³. 71 FR 61144. On November 13, 2009, EPA designated areas, including the South Coast, with respect to the revised 24-hour NAAQS. 74 FR 58688. California is now required to submit an attainment plan for the 35 μg/m³ standards by December 14, 2012. In this preamble, all references to the $PM_{2.5}$ NAAQS, unless otherwise specified, are to the 1997 24-hour $PM_{2.5}$ standards of 65 μg/m³ and annual standards of 15 μg/m³.

[2] *See* the Air Quality Subsystem (AQS) Preliminary Design Value Report dated August 26, 2010 in the docket for today's action. 18.8 μg/m³ is the highest design value in the South Coast nonattainment area. The design value is the three year average of annual means of a single monitoring site. (*See* 40 CFR 50 Appendix N Section 1(c)(1)).

[3] The South Coast 2007 AQMP is the first South Coast Plan to address $PM_{2.5}$. We have previously acted on numerous South Coast air quality plans for ozone, PM–10, carbon monoxide, and NO_2, such as the 1997/1999 AQMP. We approved the ozone portion of the 1997 South Coast AQMP, as amended in 1999, on April 10, 2000 (*See* 65 FR 18903). Our most recent action on a SIP addressing the CAA requirements for the South Coast ozone nonattainment area was our partial approval and partial disapproval of the 2003 AQMP (*See* 74 FR 10176, March 10, 2009). Because the District prepares integrated plans that address multiple pollutants, and also controls VOC and NO_X as precursors to $PM_{2.5}$, we will refer to control measures and control measure commitments from the 2003 AQMP further in this notice.

[4] *See* November 28, 2007 letter to Wayne Nastri, Regional Administrator, EPA Region 9, from James N. Goldstene, Executive Officer, CARB, with enclosures.

2007 AQMP includes a $PM_{2.5}$ attainment demonstration for the South Coast. In order to meet relevant CAA requirements for the $PM_{2.5}$ NAAQS, the South Coast 2007 AQMP includes base and projected year $PM_{2.5}$ emissions inventories for the South Coast nonattainment area; air quality monitoring data; short-, medium- and long-term District control measures; a summary of CARB's control measures; transportation control measures (TCMs); a demonstration of RFP; a modeled attainment demonstration; a demonstration of RACM/RACT; contingency measures for the 1997 $PM_{2.5}$ RFP and for attainment for the South Coast $PM_{2.5}$ nonattainment area; and a request to extend the attainment date for the 1997 $PM_{2.5}$ NAAQS to April 5, 2015.[5] The South Coast 2007 AQMP submittal also includes District Governing Board Resolution 07–9 adopting the final South Coast 2007 AQMP. The South Coast 2007 AQMP also contains documentation of the District's public process, including written responses to all public comments received.

2. 2007 State Strategy

To demonstrate attainment, the South Coast 2007 AQMP relies in part on measures in the 2007 State Strategy. The 2007 State Strategy was adopted by CARB on September 27, 2007 and submitted to EPA on November 16, 2007.[6] It discusses CARB's overall approach to addressing, in conjunction with local plans, attainment of both the 1997 $PM_{2.5}$ and 8-hour ozone NAAQS not only in the South Coast nonattainment area but also in California's other nonattainment areas such as the San Joaquin Valley and the Sacramento area. It also includes CARB's commitments to propose 15 defined State measures[7] and to obtain specific amounts of aggregate emissions reductions of direct $PM_{2.5}$, NO_X, VOC and SO_X in the South Coast from sources under the State's jurisdiction, primarily on- and off-road motor vehicles and engines.

On August 12, 2009, CARB submitted the "Status Report on the State Strategy for California's 2007 State Implementation Plan (SIP) and Proposed Revision to the SIP Reflecting Implementation of the 2007 State Strategy", dated March 24, 2009, adopted April 24, 2009 ("2009 State Strategy Status Report"),[8] which updates the 2007 State Strategy to reflect its implementation during 2007 and 2008.

In today's proposal, we are evaluating only those portions of the 2007 State Strategy as revised in 2009[9] that are relevant for attainment of the 1997 $PM_{2.5}$ standards in the South Coast.

3. Additional SIP Submittal Related to Motor Vehicle Emissions Budgets (Budgets)

In addition to the SIP submittals for the 1997 $PM_{2.5}$ NAAQS mentioned above, on April 4, 2008, the District Governing Board approved an alternative approach for transportation conformity motor vehicle emission budgets for the South Coast nonattainment area. This new approach was based on the 2007 SIP baseline emissions reflecting only the regulations adopted as of October 2006 for all milestone years up to the attainment years. The CARB Governing Board approved Resolution 08–27 itemizing the modifications to the South Coast nonattainment area transportation conformity emission budgets. The revised $PM_{2.5}$ motor vehicle emissions budgets were submitted as an amendment to the California SIP on April 30, 2008. We are acting on those budgets today.

B. CAA Procedural and Administrative Requirements for SIP Submittals

CAA sections 110(a)(1) and (2) and 110(l) require a state to provide reasonable public notice and opportunity for public hearing prior to the adoption and submittal of a SIP or SIP revision. To meet this requirement, every SIP submittal should include evidence that adequate public notice was given and a public hearing was held consistent with EPA's implementing regulations in 40 CFR 51.102.

Both the District and CARB have satisfied applicable statutory and regulatory requirements for reasonable public notice and hearing prior to adoption and submittal of the South Coast 2007 AQMP. The District conducted public workshops, provided public comment periods, and held public hearings prior to the adoption of the South Coast 2007 AQMP on June 1, 2007 (District Governing Board Resolution No. 07–9). CARB provided the required public notice and opportunity for public comment prior to its September 27, 2007 public hearing on the plan. *See* CARB Resolution No. 07–41.

CARB conducted public workshops, provided public comment periods, and held a public hearing prior to the adoption of the 2007 State Strategy on September 27, 2007. (CARB Resolution No. 07–28). CARB also provided the required public notice, opportunity for public comment, and a public hearing prior to its April 24, 2009 adoption of the 2009 State Strategy Status Report. *See* CARB Resolution 09–34, April 24, 2009.

The SIP submittals include proof of publication for notices of the District and CARB public hearings, as evidence that all hearings were properly noticed. We therefore find that the submittals meet the procedural requirements of CAA sections 110(a) and 110(l).

CAA section 110(k)(1)(B) requires EPA to determine whether a SIP submittal is complete within 60 days of receipt. This section also provides that any plan that EPA has not affirmatively determined to be complete or incomplete will become complete 6 months after the date of submittal by operation of law. EPA's SIP completeness criteria are found in 40 CFR part 51, Appendix V.

The South Coast 2007 AQMP became complete by operation of law on May 28, 2008. The November 16, 2007 submission of the 2007 State Strategy and the 2009 revisions to the Strategy became complete by operation of law on May 16, 2008 and February 12, 2010, respectively.

III. CAA and Regulatory Requirements for $PM_{2.5}$ Attainment SIPs

EPA is implementing the $PM_{2.5}$ NAAQS under Title 1, Part D, subpart 1 of the CAA, which includes section 172, "Nonattainment plan provisions." Section 172(a)(2) establishes the attainment date for a $PM_{2.5}$ nonattainment area "as expeditiously as practicable" but no later than five years after the area's designation as nonattainment. This section also allows EPA to grant up to a five-year extension of an area's attainment date based on the severity of the area's nonattainment and

[5] While the attainment date for $PM_{2.5}$ areas with a full five-year extension would be April 5 2015, reductions must be implemented by 2014 to achieve attainment by that date. *See* 40 CFR 51.1007(b). We refer, therefore, to 2014 as the "attainment year" and April 5, 2015 as the "attainment date."

[6] *See* CARB Resolution No. 07–28, September 27, 2007 with attachments and letter from James N. Goldstene, Executive Officer, CARB, to Wayne Nastri, Regional Administrator, EPA Region 9, November 16, 2007 with enclosures.

[7] The 2007 State Strategy also includes measures to be implemented by the California Bureau of Automotive Repair (Smog Check improvements) and the California Department of Pesticide Regulation (VOC reductions from pesticide use). *See* 2007 State Strategy, p. 64–65 and CARB Resolution 7–28, Attachment B, p. 8.

[8] *See* CARB Resolution No. 09–34, April 24, 2009 and letter, James N. Goldstene, Executive Officer, CARB to Wayne Nastri, Regional Administrator, EPA Region 9, August 12, 2009 with enclosures. Only pages 11–27 of the 2009 State Strategy Status Report are submitted as a SIP revision. The balance of the report is for informational purposes only. *See* Attachment A to CARB Resolution No. 09–34.

[9] We will also refer to the 2007 State Strategy as revised in 2009 as the "revised 2007 State Strategy."

the availability and feasibility of controls. EPA designated the South Coast as a nonattainment area effective April 5, 2005, and thus the applicable attainment date is no later than April 5, 2010 or, should EPA grant a full five-year extension, no later than April 5, 2015.

Section 172(c) contains the general statutory planning requirements applicable to all nonattainment areas, including the requirements for emissions inventories, RACM/RACT, attainment demonstrations, RFP demonstrations, and contingency measures.

On April 25, 2007, EPA issued the Clean Air Fine Particle Implementation Rule for the 1997 $PM_{2.5}$ NAAQS. 72 FR 20586, codified at 40 CFR part 51, subpart Z ($PM_{2.5}$ implementation rule). The $PM_{2.5}$ implementation rule and its preamble address the statutory planning requirements for emissions inventories, RACM/RACT, attainment demonstrations including air quality modeling requirements, RFP demonstrations, and contingency measures. This rule also addresses other matters such as which $PM_{2.5}$ precursors must be addressed by the State in its $PM_{2.5}$ attainment SIP, applicable attainment dates, and the requirement for mid-course reviews.[10] We will discuss each of these CAA and regulatory requirements for attainment plans in more detail below.

[10] In June 2007, a petition to the EPA Administrator was filed on behalf of several public health and environmental groups requesting reconsideration of four provisions in the $PM_{2.5}$ implementation rule. *See* EarthJustice, Petition for Reconsideration, "In the Matter of Final Clean Air Fine Particle Implementation Rule," June 25, 2007. These provisions are (1) the presumption that compliance with the Clean Air Interstate Rule satisfies the NO_X and SO_2 RACT requirements for electric generating units; (2) the deferral of the requirement to establish emission limits for condensable particulate matter (CPM) until January 1, 2011; (3) revisions to the criteria for analyzing the economic feasibility of RACT; and (4) the use of out-of-area emissions reductions to demonstrate RFP. These provisions are found in the $PM_{2.5}$ implementation rule and preamble at 20623–20628, 40 CFR 51.1002(c), 20619–20620, and 20636, respectively. On May 13, 2010, EPA granted the petition with respect to the fourth issue. Letter, Gina McCarthy, EPA, to David Baron and Paul Cort, Earthjustice, May 13, 2010. EPA is currently considering the other issues raised in the petition.

Neither the District nor the State relied on the first, third, or fourth of these provisions in preparing the South Coast 2007 AQMP or 2007 State Strategy. The District has deferred CPM limits in its rules. EPA does not believe that this deferral adversely affects the Plan's RACT or expeditious attainment demonstrations. *See* section II.D.3 of the TSD for this proposal. EPA will evaluate any rule adopted or revised by the District after January 1, 2011 to assure that it appropriately addresses CPM.

IV. Review of the South Coast 2007 AQMP and the South Coast Portion of the 2007 State Strategy

A. Summary of EPA's Proposed Actions

EPA is proposing to approve in part and disapprove in part those portions of the South Coast 2007 AQMP and those portions of the 2007 State Strategy as revised in 2009 specific to the 1997 $PM_{2.5}$ NAAQS in the South Coast. We are proposing to approve the base year and baseline emissions inventories in these SIP revisions as meeting the applicable requirements of the CAA and the $PM_{2.5}$ implementation rule. We are also proposing to approve the District's and CARB's commitments to propose specific measures and to meet specific aggregate emissions reductions in these revisions as strengthening the SIP, as well as the District's air quality modeling demonstration as meeting the applicable requirements of the CAA and EPA guidance.

We are proposing to disapprove the attainment demonstration, RACM/RACT analysis, RFP demonstration, and California's request to extend the attainment date to 2015 as not meeting the applicable requirements of the CAA and the $PM_{2.5}$ implementation rule because they are dependent on the approval of the attainment demonstration (*See* 40 CFR 51.1009 and 51.1010). For the attainment demonstration, we are proposing to approve the air quality modeling, but we are proposing to disapprove the overall demonstration because it relies too extensively on commitments to emissions reductions in lieu of fully adopted and submitted rules. Rules that have either not been adopted in final form or have not been submitted to EPA cannot be credited toward the attainment demonstration. We are proposing to disapprove the motor vehicle emissions budgets for the RFP milestone years and the attainment year, because they are derived from RFP and attainment demonstrations which we are proposing to disapprove. Finally, we are proposing to disapprove the RFP and attainment contingency measures as not meeting the applicable requirements of the CAA and the $PM_{2.5}$ implementation rule. To the extent that the State can remedy the shortfall in emissions reductions for the attainment demonstration, which is the basis for the proposed disapproval of the attainment demonstration, EPA believes that many of the noted deficiencies could be addressed.

EPA's analysis and findings are summarized below and are described in more detail in the technical support document (TSD) for this proposal, which is available on line at *http://www.regulations.gov* in the docket for this proposal (EPA–R09–OAR–2009–0366), or from the EPA contact listed at the beginning of this notice.

B. Emissions Inventories

1. Requirements for Emissions Inventories

CAA section 172(c)(3) requires states to submit a "comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant." The $PM_{2.5}$ implementation rule requires states to include direct $PM_{2.5}$ emissions and emissions of all $PM_{2.5}$ precursors in this inventory, even if it has determined that control of any of these precursors is not necessary for expeditious attainment. 40 CFR § 51.1008(a)(2) and 72 FR 20586, at 20648. Direct $PM_{2.5}$ includes condensable particulate matter. *See* 40 CFR 51.1000. $PM_{2.5}$ precursors are NO_X, SO_2, VOC, and ammonia (NH_3).[11] *Id.* The inventories should meet the data requirements of EPA's Consolidated Emissions Reporting Rule (codified at 40 CFR part 51 subpart A) and include any additional inventory information needed to support the SIP's attainment demonstration and (where applicable) RFP demonstration. 40 CFR 51.1008(a)(1) and (2).

A baseline emission inventory is required for the attainment demonstration and for meeting RFP requirements. As determined on the date of designation, the base year for this inventory should be the most recent calendar year for which a complete inventory was required to be submitted to EPA. The baseline emission inventory for calendar year 2002 or other suitable year should be used for attainment planning and RFP plans for areas initially designated nonattainment for the $PM_{2.5}$ NAAQS in 2005. 40 CFR 51.1008(b).

EPA has provided additional guidance for $PM_{2.5}$ emission inventories in "Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter NAAQS and Regional Haze Regulations," November 2005 (EPA–454/R–05–001).

2. Emissions Inventories in the South Coast 2007 AQMP

The baseline planning inventories for direct $PM_{2.5}$ and all $PM_{2.5}$ precursors for the South Coast nonattainment area together with additional documentation for the inventories are found in

[11] The District controls sulfur oxides (SO_X), which includes SO_2, and considers the two terms interchangeable for emissions purposes. We will use SO_X in this notice.

Appendix III of the South Coast 2007 AQMP. Average annual day baseline inventories are provided for the years 2002, 2005 (the reference year for the air quality modeling) and for the years 2008, 2010, 2011, and 2014. The baseline inventories incorporate reductions from federal, state, and District measures adopted prior to 2007 ("baseline measures"). South Coast 2007 AQMP, page 3–1. The District also provided both summer and winter planning inventories for $PM_{2.5}$ and $PM_{2.5}$ precursors. South Coast 2007 AQMP, Appendix III, page III–1–23.

Table 1 is a summary of the average annual day inventories for directly-emitted $PM_{2.5}$ and for the $PM_{2.5}$ precursors NO_X, VOC, and SO_X for the baseline modeling year of 2005 and the targeted attainment year of 2014 from the South Coast 2007 AQMP (derived from Appendix A, Table A–2). It is these inventories that provide the basis for the control measure analysis and the RFP and attainment demonstrations in the South Coast 2007 AQMP.

TABLE 1—SOUTH COAST NONATTAINMENT AREA EMISSIONS INVENTORY SUMMARY FOR $PM_{2.5}$ AND $PM_{2.5}$ PRECURSORS FOR THE 2005 BASELINE YEAR AND 2014 ATTAINMENT YEAR

[Annual average day emissions in tons per day] [a]

Emissions inventory category	NO_X		VOC		$PM_{2.5}$		SO_X		NH_3	
	2005	2014	2005	2014	2005	2014	2005	2014	2005	2014
Stationary/Areawide Sources	87	71	259	260	58	63	22	17	75	68
On-road Mobile Sources	526	287	264	159	20	17	4	2	29	15
Off-road Mobile Sources	360	293	208	157	22	18	37	25	n/a	n/a
Total	972	650	731	566	101	98	63	45	104	83

[a] Numbers may not add due to rounding.

As a starting point for the South Coast 2007 AQMP's inventories, the District used CARB's 2002 base year inventory. An example of this inventory and CARB's documentation for its inventories can be found in Appendices A and F, respectively, of the 2007 State Strategy. The 2002 inventory for the South Coast nonattainment area was projected to 2005 and future years using CARB's California Emission Forecasting and Planning Inventory System (CEFIS). South Coast 2007 AQMP, Appendix III, page III–1–1. Both base year and baseline inventories use the current version of California's mobile source emissions model approved by EPA for use in SIPs, EMFAC2007 V2.3, for estimating on-road motor vehicle emissions. 73 FR 3464 (January 18, 2008). Off-road inventories were developed using the CARB off-road model. Ammonia emissions estimates were provided separately by the District.[12]

3. Proposed Action on the Emission Inventories

We have reviewed the emissions inventories in the South Coast 2007 AQMP and the inventory methodologies used by the District and CARB for consistency with CAA requirements, the $PM_{2.5}$ implementation rule, and EPA's guidance. We find that the base year and projected baseline year inventories are comprehensive, accurate, and current inventories of actual or projected emissions of $PM_{2.5}$ and $PM_{2.5}$ precursors in the South Coast nonattainment area as of the date of their submittal. We therefore propose to approve these inventories as meeting the requirements of CAA section 172(c)(3), the $PM_{2.5}$ implementation rule and applicable EPA guidance. We provide more detail on our review of the inventories in section II.A. of the TSD for this proposal.

C. Reasonably Available Control Measures (RACM)/Reasonably Available Control Technology (RACT) and Adopted Control Strategy

1. Requirements for RACM/RACT

CAA section 172(c)(1) requires that each attainment plan "provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology), and shall provide for attainment of the national primary ambient air quality standards." EPA defines RACM as measures that a State finds are both reasonably available and contribute to attainment as expeditiously as practicable in its nonattainment area. Thus, what constitutes RACM/RACT in a $PM_{2.5}$ attainment plan is closely tied to that plan's expeditious attainment demonstration. 40 CFR 51.1010; 72 FR 20586 at 20612. States are required to evaluate RACM/RACT for direct $PM_{2.5}$ and all of its attainment plan precursors. 40 CFR 51.1002(c).

For $PM_{2.5}$ attainment plans, EPA is requiring a combined approach to RACM and RACT under subpart 1 of Part D of the CAA. Subpart 1, unlike subparts 2 and 4, does not identify specific source categories for which EPA must issue control technology documents or guidelines, or identify specific source categories for State and EPA evaluation during attainment plan development. 72 FR 20586, at 20610. Rather, under subpart 1, EPA considers RACT to be part of an area's overall RACM obligation. Because of the variable nature of the $PM_{2.5}$ problem in different nonattainment areas, which may require States to develop attainment plans that address widely disparate circumstances, EPA determined that states should have flexibility with respect to RACT and RACM controls but also that in areas needing significant emission reductions to attain the standards, RACT/RACM controls on smaller sources may be necessary to reach attainment as expeditiously as practicable. 72 FR 20586, at 20612, 20615. Thus, under the $PM_{2.5}$ implementation rule, RACT and RACM are those reasonably available measures that contribute to attainment as expeditiously as practicable in the specific nonattainment area. 40 CFR 51.1010; 72 FR 20586, at 20612. Specifically, the $PM_{2.5}$ implementation rule requires that attainment plans include the list of measures the state considered and information sufficient to show that a state met all requirements for the determination of what constitutes RACM/RACT in the specific nonattainment area. 40 CFR 51.1010(a). In addition, the rule requires that the state, in determining whether a particular emissions reduction measure or set of measures must be adopted as

[12] Electronic mail from Kathy Hsiao, SCAQMD to Wienke Tax, EPA Region 9, RE: NH_3 numbers for SCAB, dated October 29, 2010.

RACM/RACT, consider the cumulative impact of implementing the available measures and adopt as RACM/RACT any potential measures that are reasonably available considering technological and economic feasibility if, considered collectively, they would advance the attainment date by one year or more. Any measures that are necessary to meet these requirements that are not already either federally promulgated, part of the state's SIP, or otherwise creditable in SIPs must be submitted in enforceable form as part of a state's attainment plan for the area. 72 FR 20586, at 20614.

A more comprehensive discussion of the RACM/RACT requirement for $PM_{2.5}$ attainment plans and EPA's guidance for it can be found in the $PM_{2.5}$ implementation rule preamble at 20609–20633 and in section II.D. of the TSD for this proposal.

2. RACM/RACT Demonstration in the SIP

CARB and the District have rulemaking processes for development, adoption and implementation of RACM/RACT that have been in place for decades. Many of the measures being implemented in California and the South Coast nonattainment area are the most stringent in the nation and are often adopted for implementation in other areas. In addition, the State and District have adopted new measures since 2002, the base year for the South Coast 2007 AQMP, and included enforceable commitments for measures that are scheduled to be adopted in the future. The RACM/RACT analysis for the South Coast 2007 AQMP includes an evaluation of the State's, District's, and the Southern California Association of Governments' (SCAG's) new stationary, area and mobile sources measures that have been adopted since the base year and those that are being committed to for adoption in the future. *See* CARB Staff Report, "Proposed 2007 State Implementation Plan for the South Coast Air Basin—$PM_{2.5}$ Annual Average and 8–Hour ozone National Ambient Air Quality Standards" (September 21, 2007); South Coast 2007 AQMP, Appendix VI; and 2007 State Strategy, Appendix G. A more detailed discussion of the District, State and SCAG measures is provided below.

a. District's RACM/RACT Analysis and Adopted Control Strategy

The District's RACM/RACT analysis, which focuses on stationary and area source controls, is described in Chapter 6 and Appendix VI of the South Coast 2007 AQMP.

Since the 1970s, the District has adopted stationary source control rules that have resulted in significant improvement of air quality in the South Coast nonattainment area. When command and control rules were no longer within the limitations of economic efficiency, the District began using economic incentive approaches with programs such as the Regional Clean Air Incentives Market (RECLAIM) and the Carl Moyer program.[13] While the District still relies on command and control regulations, the District's control strategies are now supplemented by market incentive and compliance flexibility approaches where appropriate. These regulations and strategies have yielded significant emissions reductions from sources under the District's jurisdiction. In developing the South Coast 2007 AQMP, the District conducted a process to identify RACM for the South Coast that involved public meetings to solicit input, evaluation of EPA suggested RACM and RACT, and evaluation of other air agencies' regulations. *See* South Coast 2007 AQMP, Appendix VI.

To determine which measures would be feasible for the South Coast, the District looked at measures implemented in other nonattainment areas' plans (including the San Joaquin Valley, the San Francisco Bay Area, Sacramento, Ventura, Dallas-Fort Worth, the Houston-Galveston area, and by the Lake Michigan Air Directors Consortium, or LADCO), and held meetings with CARB, technical experts, local government representatives, and the public during development of the South Coast 2007 AQMP. The District sponsored an AQMP summit, which generated 200 potential control measures. In addition, the District reviewed the list of control measures in EPA's $PM_{2.5}$ implementation rule. The District also reevaluated all 82 District rules and regulations. The District then screened the identified measures and rejected those that affected few or no sources in the South Coast, had already been adopted as rules, or were in the process of being adopted. The remaining measures were evaluated using baseline inventories, available control technologies, and potential emission reductions as well as whether the measure could be implemented on a schedule that would contribute to attainment of the $PM_{2.5}$ standard assuming a 2015 deadline. South Coast 2007 AQMP, Appendix VI.

In general, EPA believes that the District's current rules and regulations are equivalent to or more stringent with respect to emissions of $PM_{2.5}$ and $PM_{2.5}$ precursors than those developed by other air districts, with a few exceptions where improvements are possible. The District is exploring several options for reducing emissions further. These include the feasibility of lowering emission limits and increasing levels of control in order to promote cleaner stationary source technologies; lowering the VOC content of coatings and solvents; establishing standards and test methods for generic equipment and lowering release or leak thresholds; improving leak detection, repair, inspection and maintenance; and adding best management practices to rules.

Based on its RACM/RACT evaluation for stationary and area sources under its jurisdiction, the District developed 37 stationary source control measures that contained all measures included in other districts' AQMPs, as well as some new innovative measures. The District determined that the few available measures that District staff did not include would not advance the attainment date or contribute to RFP due to the insignificant or unquantifiable emissions reductions they would potentially generate. Since submittal of the AQMP in 2007, the District has completed action on the majority of these rules and submitted them to EPA for approval into the SIP.

From October 2002 through June 2006, the District adopted approximately 17 rules to address its commitment to achieve the reductions committed to in the 2003 AQMP for the South Coast. These rules included controls on VOC emissions from refineries and chemical plants, co-composting operations, architectural coatings, solvent cleaning operations, oil and gas production wells, and livestock waste. Many of the adopted rules achieved more estimated reductions in VOC, NO_X and SO_X than were expected in the 2003 AQMP. A summary of these rules, which are included in the baseline emissions estimates for the South Coast 2007 AQMP, is provided in Table 1–2 of the South Coast 2007 AQMP. *See* South Coast 2007 AQMP, Chapter 1, Table 1–2 and Chapter 4, page 4–6, and Table B–1 in Appendix B of the TSD for today's action.

[13] The Carl Moyer Memorial Air Quality Standards Attainment Program ("Carl Moyer Program") provides incentive grants for engines, equipment and other sources of pollution that are cleaner than required, providing early or extra emission reductions. Eligible projects include cleaner on-road, off-road, marine, locomotive and stationary agricultural pump engines. The program achieves near-term reductions in emissions of NO_X, PM, and VOC or reactive organic gas (ROG) which are necessary for California to meet its clean air commitments under the SIP.

In addition to the rules adopted for 2003 AQMP, the District has also made new commitments in its South Coast 2007 AQMP to achieve further reductions from VOC, NO_X, SO_X and direct $PM_{2.5}$ sources in the South Coast Area. The District committed to adopt and submit measures that will achieve the following additional emissions reductions: 32 tpd NO_X, 10 tpd VOC, 4 tpd direct $PM_{2.5}$ and 3 tpd SO_X.[14] *See* CARB Staff Report on the South Coast 2007 AQMP, page ES–2 to ES–4. The District expects to meet its emissions reductions commitments for each of the pollutants by adopting new control measures and programs found in the Table 4–2A of the South Coast 2007 AQMP (*See* South Coast 2007 AQMP, page 4–10 and CARB Staff Report on South Coast 2007 AQMP, p. 18) and from additional actions summarized in the CARB Staff Report on the South Coast 2007 AQMP (*See* CARB Staff Report on South Coast 2007 AQMP, p. 17). The new control measures and additional actions are estimated to achieve more of the District's NO_X and VOC emission reduction commitments. They include new rules to regulate lubricants, consumer products, non-RECLAIM ovens, dryers and furnaces, space heaters, facility modernizations, livestock waste, residential wood burning, commercial cooking, and continuation of the Carl Moyer program. The South Coast 2007 AQMP also identifies 22 measures (beyond the new control measures and additional actions just discussed) for further review which may also yield additional reductions towards the District's commitments. As discussed above, the District's commitment is to achieve the estimated total tonnage reductions of each pollutant because specific control measures and actions as adopted may provide more or less reductions than estimated in the South Coast 2007 AQMP.

Finally, EPA notes that since the adoption of the South Coast 2007 AQMP, the District has already adopted and submitted several new rules that help fulfill the District's enforceable commitments for additional emission reductions of NO_X, VOC, direct $PM_{2.5}$ and SO_X in the South Coast area. Tables 2 and 3 below summarize the status of these new rules.

BILLING CODE 6560–50–P

[14] CARB uses the term ROG (reactive organic gases) where we use the term VOC. We will use the term "VOC" in this notice to refer to both ROG and VOC.

Table 2. Status of District Short- and Intermediate-Term Control Measures Credited in South Coast 2007 AQMP Attainment Demonstration

Control measure	Rule No.	Title	Emissions Reduction Commitment in South Coast 2007 AQMP	Emissions Reductions Achieved[a]
BCM-03	445	Woodburning fireplaces and wood stoves	1.0 tpd $PM_{2.5}$	1.0 tpd $PM_{2.5}$
CTS-01	1144	Vanishing oils and rust inhibitors	1.9 tpd VOC	2.7 tpd VOC
CTS-03	1143	Consumer Paint Thinners and Multi-Purpose Solvents	2.1 tpd VOC	Not yet submitted
CTS-04	1145	Plastic, Rubber, Leather and Glass Coatings		negligible
CMB-01	1147	NOx reductions from miscellaneous sources	3.5 tpd NOx	6.2 tpd NOx
CMB-02	2002	Further SOx reductions from RECLAIM	3.0 tpd SOx	
FUG - 04	1149	Storage Tank and Pipeline Cleaning and Degassing	None	1.3 tpd VOC
CMB-03	1111	Further NOx reductions from space heaters	0.8 tpd NOx	0.1 tpd NOx
MCS-01	1110.2	Liquid and gaseous fuels - stationary ICEs	1.6 tpd NOx 0.4 tpd $PM_{2.5}$ 2.0 tpd VOC	0.4 tpd NOx 0.3 tpd VOC
	1146	NOx from industrial, institutional, & commercial boilers, steam generators, and process heaters		
	1146.1	NOx from small ind, inst, & comm'l boilers, steam gens, and proc. Htrs		
MCS-05	1127	Livestock waste	0.8 tpd VOC	
FLX-02		Refinery pilot program	0.7 tpd VOC, 0.4 tpd $PM_{2.5}$	
MOB-04[b]		Carl Moyer funds	7.5 tpd NOx, 0.2 tpd $PM_{2.5}$	7.5 tpd NOx + 3 tpd NOx 0.2 tpd $PM_{2.5}$
MOB-05	2251	AB923 LDV high emitter program	0.8 tpd VOC, 0.4 tpd NOx	
MOB-06		AB923 MDV high emitter program	0.5 tpd VOC, 0.5 tpd NOx	
			Total achieved $PM_{2.5}$ reductions	1.2
			Total achieved VOC reductions	4.3
			Total achieved NOx reductions	14.5

[a] From SCAMQD Rule Evaluation Forms.
[b] The 2007 State Strategy credits the South Coast Moyer program with an additional 3 tpd of NOx. (See 2007 State Strategy, page 17).

BILLING CODE 6560–50–C

TABLE 3—SUBMITTAL AND APPROVAL STATUS OF DISTRICT RULES IN THE 2007 $PM_{2.5}$ PLAN

Rule 445—Woodburning fireplaces and wood stoves	SIP-approved	74 FR 27716, 6/11/09.
Rule 1144—Vanishing oils and rust inhibitors	SIP-approved	75 FR 40726, 07/14/10.
Rule 1143—Consumer Paint Thinners and Multi-Purpose Solvents	Not yet submitted—adopted 07/09/10.	New rule; no previous version approved into the SIP; District is revising rule.
Rule 1145—Plastic, Rubber, Leather and Glass Coatings	SIP-approved	75 FR 40726, 07/14/10.
Rule 1147—NO_X reductions from miscellaneous sources	SIP-approved	75 FR 46845, 08/04/10.
Rule 2002—Further SO_X reductions from RECLAIM	Not yet adopted	Most recent approval 08/29/06, 71 FR 51120.
Rule 1111—Further NO_X reductions from space heaters	SIP-approved	75 FR 46845, 08/04/10.
Rule 1110.2—Liquid and gaseous fuels—stationary ICEs	SIP-approved	74 FR 18995, 4/27/09.
Rule 1146—NO_X from industrial, institutional, commercial boilers, steam generators, and process heaters.	Submitted	Most recent approval—04/08/02, 67 FR 16640.
Rule 1146.1—NO_X from small industrial, institutional, commercial boilers, steam generators, and process heaters.	Submitted	Most recent approval—09/06/95, 60 FR 46220.
Rule 1127—Livestock Waste	Submitted to EPA on 10/05/06	Found complete on 10/25/06.
Refinery Pilot Program	Not yet adopted	N/A.

TABLE 3—SUBMITTAL AND APPROVAL STATUS OF DISTRICT RULES IN THE 2007 $PM_{2.5}$ PLAN—Continued

Rule 2301—Indirect Source Review	Not yet adopted	N/A.
Carl Moyer program	No rule associated with this measure.	Ongoing.
AB923 Light duty vehicle high emitter program	No rule associated with this measure.	N/A.
AB923 Light duty vehicle high emitter program	No rule associated with this measure.	N/A.

b. CARB's RACM Analysis and Adopted Control Strategy

Source categories for which CARB has primary responsibility for reducing emissions in California include most new and existing on- and off-road engines and vehicles, motor vehicle fuels, and consumer products. In addition, California has unique authority under CAA section 209 (subject to a waiver by EPA) to adopt and implement new emission standards for many categories of on-road vehicles and engines, and new and in-use off-road vehicles and engines.

Given the need for significant emissions reductions from mobile and area sources to meet the NAAQS in California nonattainment areas, the State of California has been a leader in the development of some of the most stringent control measures nationwide for on-road and off-road mobile sources and the fuels that power them. These standards have reduced new car emissions by 99 percent and new truck emissions by 90 percent from uncontrolled levels. 2007 State Strategy, p. 37. The State is also working with EPA on goods movement activities and is implementing programs to reduce emissions from ship auxiliary engines, locomotives, harbor craft and new cargo handling equipment. In addition, the State has standards for lawn and garden equipment, recreational vehicles and boats, and other off-road sources that require newly manufactured equipment to be 80–98% cleaner than their uncontrolled counterparts. *Id.* Finally, the State has adopted many measures that focus on achieving reductions from in-use mobile sources that include more stringent inspection and maintenance (I/M) or "Smog Check" requirements, truck and bus idling restrictions, and various incentive programs. Since 1994 alone, the State has taken more than 45 rulemaking actions and achieved most of the emissions reductions needed for attainment in the State's nonattainment areas. *See* 2007 State Strategy, pp. 36–40. As is noted in the 2007 State Strategy, EPA has approved California's mobile source program as representing best available control measures. *See* 2007 State Strategy, Appendix G, 69 FR 5412 (February 4, 2004), 69 FR 30006 (May 26, 2004) (proposed and final approval of San Joaquin Valley PM_{10} plan).

CARB developed its proposed 2007 State Strategy after an extensive public consultation process to identify potential SIP measures.[15] From this process, CARB identified and committed to propose 15 new defined measures. These measures focus on cleaning up the in-use fleet as well as increasing the stringency of emissions standards for a number of engine categories, fuels, and consumer products. Many, if not most, of these measures are being proposed for adoption for the first time anywhere in the nation. They build on CARB's already comprehensive program described above that addresses emissions from all types of mobile sources and consumer products, through both regulations and incentive programs. *See* Appendix A of the TSD. Table 4 below lists the new defined measures in the 2007 State Strategy that include one measure each from the California Bureau of Automotive Repair and the California Department of Pesticide Regulation.

TABLE 4—2007 STATE STRATEGY DEFINED MEASURES SCHEDULED FOR CONSIDERATION AND CURRENT STATUS

Defined state measure	Primary area (SC and/or SJV)	Adoption year	Current status
Smog Check Improvements	Both	2007–2008	Elements approved 75 FR 38023 (July 1, 2010).
Expanded Vehicle Retirement	Both	2008–2014	Adopted CARB June 2009; Bureau of Automotive Repair September 2010.
Revisions to Reformulated Gasoline Program	Both	2007	Approved, *See* 75 FR 26653 (May 2, 2010).
Cleaner In-use Heavy Duty Trucks	Both	2008	Adopted 2008, pending revisions.
Auxiliary Ship Cold Ironing and Other Clean Technologies.	SC	2007–2008	Adopted December 2007.
Cleaner Main Ship Engines and Fuels	SC	Fuel: 2007, Engines: 2009.	Adopted July 2007.
Port Truck Modernization	SC	2007–2008	Adopted December 2007 and December 2008.
Accelerated Introduction of Cleaner Locomotives.	Both	2007–2008	In progress.
Clean Up Existing Harbor Crafts	SC	2007	Adopted November 2007, revised June 2010.
Cleaner In-Use Off-Road Engines	Both	2007	Adopted 2007, pending revisions.
Cleaner In-Use Agricultural Equipment	SJV	2009	In progress using incentive funds.
New Emissions Standards for Recreational Boats.	Both	2009–2010	Partial adoption, 2008; additional regulation in public review.

[15] More information on this public process including presentations from the workshops and symposium that proceeded the adoption of the 2007 State Strategy can be found at *http://www.arb.ca.gov/planning/sip/2007sip/2007sip.htm.*

TABLE 4—2007 STATE STRATEGY DEFINED MEASURES SCHEDULED FOR CONSIDERATION AND CURRENT STATUS—Continued

Defined state measure	Primary area (SC and/or SJV)	Adoption year	Current status
Expanded Off-Road Recreational Vehicle Emissions Standards.	Both	By 2010	Adopted November 2008.
Enhanced Vapor Recovery for Above Ground Storage Tanks.	Both	2007	Adopted June 2007.
Additional Evaporative Emissions Standards	Both	By 2010	Partial adoption, 2008.
Consumer Products Program (I & II)	Both	2008 & 2010–2012	Phase I—Approved 74 FR 57074 (November 4, 2009).
Department of Pesticide Regulation	SJV	2008	Adopted 2008, amended 2009.

SC = South Coast nonattainment area; SJV = San Joaquin Valley. Source: 2009 State Strategy Status Report, p. 23 (footnotes in original not included).

Appendix A of the TSD includes a list of all measures adopted by CARB between 1990 and the beginning of 2007. These measures, reductions from which are reflected in the South Coast 2007 AQMP's baseline inventories, fall into two categories: Measures that are subject to a waiver of Federal preemption under CAA section 209 ("section 209 waiver measures" or "waiver measures") and those for which the State is not required to obtain a waiver ("non-waiver measures"). Emissions reductions from waiver measures are fully creditable in attainment and RFP demonstrations and may be used to meet other CAA requirements, such as contingency measures. *See* EPA's proposed approval of the San Joaquin Valley 1-hour ozone plan at 74 FR 33933, 33938 (July 14, 2009) and final approval at 75 FR 10420 (March 8, 2010). The State's baseline non-waiver measures have generally all been approved by EPA into the SIP and as such are fully creditable for meeting CAA requirements.

In addition to the State's commitments to propose defined new measures, the 2007 State Strategy includes enforceable commitments for direct $PM_{2.5}$, NO_X, VOC, and SO_X emissions reductions from mobile source categories that are that are crucial for attainment of the $PM_{2.5}$ NAAQS in the South Coast nonattainment area. For the South Coast nonattainment area, the revised 2007 State Strategy includes State commitments to achieve 152 tpd of NO_X, 46 tpd of VOC, 9 tpd of direct $PM_{2.5}$, and 20 tpd of SO_X (*See* 2007 State Strategy, p. 63 and CARB Resolution 07–28, Attachment B, p. 6). The 2007 State Strategy indicates that the State expects to achieve these emission reductions in the South Coast nonattainment area by the projected attainment year of 2014 from the measures listed in Table 4 or other similar measures. In the 2007 State Strategy, CARB provides an estimated emissions reduction for each measure to show that, when considered together, these measures can meet the total commitment. CARB states, however, that its enforceable commitment is to achieve the aggregate emissions reductions for each pollutant by the given dates and not for a specific level of reductions from any specific measure. *See* 2007 State Strategy, p. 58. A summary of the estimates from the proposed measures is provided in Table 5 below.

As mentioned above, CARB's commitment is also to propose specific new measures that are identified and defined in the 2007 Strategy State. *See* 2007 State Strategy, pp. 64–65 and 2009 State Strategy revisions, pp. 22–23. Table 5 below lists these defined measures. As shown in this table, the State has adopted many of the measures.

TABLE 5—EXPECTED EMISSIONS REDUCTIONS FROM DEFINED MEASURES IN THE 2007 STATE STRATEGY FOR THE SOUTH COAST (2014 TONS PER DAY)

Measure	2014 NO_X	2014 VOC	2014 Direct $PM_{2.5}$	2014 SO_X
Smog Check Improvements (BAR) [partial]	2.0	4.1		
Modifications to Reformulated Gasoline Program		4.4		
Cleaner In-Use Heavy-Duty Trucks	59.7	5.0	3.5	
Ship Auxiliary Engine Cold Ironing & Clean Technology	25.4	0.1	0.5	0.3
Cleaner Main Ship Engines and Fuel [fuel portion only]	1.3		1.9	17.0
Clean Up Existing Harbor Craft	2.4	0.1	0.1	
Cleaner In-Use Off-Road Equipment (> 25hp)	10.5	2.7	2.6	
Consumer Products Program [partial]		1.8		
Totals	101.3	18.2	8.6	17.3

Source: 2009 CARB Staff Report on the State Strategy, p. 5. Only defined measures with reductions in the South Coast nonattainment area are shown here.

c. The Local Jurisdiction's RACM Analysis

The local jurisdiction's RACM analysis was conducted by the metropolitan planning organization (MPO) for the South Coast region, the Southern California Association of Governments (SCAG). This analysis, which focused on transportation control measures (TCMs), and its results are described in Appendix IV–C of the South Coast 2007 AQMP. The TCMs in the South Coast 2007 AQMP are derived from TCM projects in the 2006 SCAG Regional Transportation Improvement Program (RTIP). This evaluation, described beginning on page 49 of Appendix IV–C of the South Coast 2007 AQMP, resulted in extensive local government commitments to implement

programs to reduce auto travel and improve traffic flow. South Coast 2007 AQMP page 6–6 and Appendix IV–C. SCAG also provided reasoned justifications for any measures that it did not adopt. Attachment A to Appendix IV–C contains an extensive list of TCMs in process and newly programmed TCMs. The enforceable commitment from SCAG and the transportation agencies was to fund and implement projects in the first two years of the 2006 Regional Transportation Improvement Program (RTIP).

3. Proposed Actions on RACM/RACT and Adopted Control Strategy

Under the $PM_{2.5}$ implementation rule, RACM/RACT are the set of measures necessary for expeditious attainment. The measures must address emissions of $PM_{2.5}$ and all $PM_{2.5}$ attainment plan precursors that are necessary to result in such expeditious attainment. In order for a $PM_{2.5}$ plan to demonstrate that it provides for RACM/RACT, it must also demonstrate that it provides for expeditious attainment. 72 FR 20586, p. 20612–20623. As discussed further below in section D.5., we are proposing to disapprove the $PM_{2.5}$ attainment demonstration for the South Coast nonattainment area because it relies too heavily on commitments to reduce emissions in lieu of fully adopted measures. Absent an approvable attainment demonstration, we are unable to propose to approve and must instead propose to disapprove the AQMP's RACM/RACT demonstration. It appears, however, that the District, State and local jurisdictions have identified and otherwise provided for the implementation of a comprehensive set of measures that are among the most stringent in the nation and, should the State correct the deficiencies in the attainment demonstration, we expect to be able to propose to approve the plan's RACM/RACT demonstration.

Because they will strengthen the California SIP, we are proposing to approve the District's commitments to the adoption and implementation schedule for specific control measures given in Table 7–3 in the South Coast 2007 AQMP, to the extent that these commitments have not yet been fulfilled, and to achieve specific aggregate emissions reductions of direct $PM_{2.5}$, NO_X, VOC, and SO_X by specific years as given in Table 4–10 of the South Coast 2007 AQMP.

We are also proposing to approve, as a SIP strengthening measure, CARB's commitments to propose certain defined measures, as given on page 23 of the 2009 State Strategy Status Report, to achieve aggregate emissions reductions of 152 tpd NO_X, 46 tpd VOC, 9 tpd $PM_{2.5}$, and 20 tpd SO_X in the South Coast by 2014.

D. Attainment Demonstration

1. Requirements for Attainment Demonstrations

CAA section 172 requires a State to submit a plan for each of its nonattainment areas that demonstrates attainment of the applicable ambient air quality standard as expeditiously as practicable but no later than the specified attainment date. Under the $PM_{2.5}$ implementation rule, this demonstration should consist of four parts:

(1) Technical analyses that locate, identify, and quantify sources of emissions that are contributing to violations of the $PM_{2.5}$ NAAQS;

(2) analyses of future year emissions reductions and air quality improvement resulting from already-adopted national, State, and local programs and from potential new State and local measures to meet the RACT, RACM, and RFP requirements in the area;

(3) adopted emissions reduction measures with schedules for implementation; and

(4) contingency measures required under section 172(c)(9) of the CAA.

See 40 CFR 51.1007; 72 FR 20586, at 20605.

The requirements for the first two parts are described in the sections on emissions inventories and RACM/RACT above and in the sections on air quality modeling, $PM_{2.5}$ precursors, extension of attainment date, and attainment demonstrations that follow immediately below. Requirements for the third and fourth parts are described in the sections on the control strategy and the contingency measures, respectively.

2. Air Quality Modeling in the South Coast 2007 AQMP

The procedures for modeling attainment of the $PM_{2.5}$ NAAQS as part of an attainment SIP are contained in EPA's "Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for the 8-Hour Ozone and $PM_{2.5}$ NAAQS and Regional Haze." [16] A brief description of the modeling used to support South Coast's attainment demonstration follows. For more detailed information about the modeling, please refer to the TSD associated with this rulemaking, which can be found in the docket for today's action.

Air quality modeling is used to establish emission attainment targets, a combination of emissions of $PM_{2.5}$ and $PM_{2.5}$ precursors that the nonattainment area can accommodate without exceeding the NAAQS, and to assess whether the proposed control strategy will result in attainment of the NAAQS by the applicable attainment date. Air quality modeling is performed for a base year and compared to air quality monitoring data to determine model performance. Once the performance is determined to be acceptable, future year emission inventory changes are simulated to determine the relationship between emission reductions and changes in ambient air quality throughout the nonattainment area.

The attainment demonstration for the South Coast nonattainment area is based on the CAMx model using the "one atmosphere" approach comprised of the carbon bond IV (CB–IV) gas phased chemistry and a static two-mode particle size aerosol.[17] CAMx annual average $PM_{2.5}$ modeling simulations were generated for 2005 and 2014 baseline emissions scenarios and for a 2014 controlled emissions scenario by the District. District staff compared the base year model output to speciated particulate data measured in 2005 as part of the Multiple Air Toxics III (MATES–III) program. Model specifications, such as boundary conditions, domain size, and resolution, meet EPA criteria and are discussed in the TSD. Model performance for total mass (the sum of specific individual species), as well as specific individual species, is adequate and is discussed in the TSD.

The District's attainment analysis follows EPA's guideline technique of applying component-specific relative response factors (RRF) to monitored data throughout the South Coast nonattainment area. A RRF is the ratio of the model's future to current (baseline) predictions at a monitor. Future $PM_{2.5}$ concentrations are estimated at existing monitoring sites by multiplying a modeled RRF at the grid cell locations of each monitor by the observation-based, monitor-specific, "baseline" design value. A separate RRF is calculated for each of the $PM_{2.5}$ precursors. Future $PM_{2.5}$ design values were estimated by District staff at existing monitoring sites throughout the South Coast nonattainment area by multiplying modeled RRFs for each

[16] The guidance is available at *http://www.epa.gov/ttn/scram/guidance_sip.htm* and in the docket for today's action.

[17] CAMx is the Comprehensive Air Quality Model with extensions, an Eulerian photochemical dispersion model that allows for integrated "one-atmosphere" assessments of gaseous and particulate air pollution (ozone, $PM_{2.5}$, PM_{10}, air toxics) over many scales ranging from sub-urban to continental.

monitor times the observed "component-specific design value". The future $PM_{2.5}$ design values were then compared to the annual and 24-hour NAAQS to demonstrate attainment at each site. The maximum 2014 predicted 24-hour $PM_{2.5}$ design value at any site is 56.6 μg/m³; this is lower than the 24-hour $PM_{2.5}$ NAAQS at 65 μg/m³. The maximum 2014 predicted $PM_{2.5}$ annual design value is 15.0 μg/m³; a predicted design value of 15.04 μg/m³ or lower is considered modeled attainment of the annual standard.

EPA guidance also recommends the use of supplemental data analyses to support the air quality modeling. The District used air quality trends and emission inventory trends as "weight of evidence" to support the air quality modeling for the attainment demonstration.

The District used its air quality modeling to establish emissions reduction targets to be used in developing the control strategy for the nonattainment SIP. Once a proposed control strategy was developed, the District then used the photochemical modeling to verify that the projected emissions reductions would result in attainment of the 1997 $PM_{2.5}$ standards throughout the South Coast nonattainment area by the target attainment date of 2014. The estimated carrying capacities for the South Coast nonattainment area are included in Table 7.[18] [19]

We are proposing to approve the air quality modeling demonstration in the South Coast 2007 AQMP as meeting the requirements of the CAA and EPA guidance. We provide further discussion in the TSD.

TABLE 6—EMISSIONS CARRYING CAPACITY ESTIMATES FOR THE SOUTH COAST NONATTAINMENT AREA FOR $PM_{2.5}$ ATTAINMENT

[Tons/day, based on planning inventory]

$PM_{2.5}$	NO_X	SO_X	VOC
87	454	19	469

[18] "Carrying capacity" is defined as the maximum level of emissions that enable the attainment and maintenance of an ambient air quality standard for a pollutant. (*See* South Coast 2007 AQMP, page 5–27.)

[19] The CARB Staff Report for the South Coast 2007 AQMP presents a slightly different emissions carrying capacity which relies more heavily on reductions of primary $PM_{2.5}$ and less heavily on reductions of precursors to $PM_{2.5}$. The Staff Report's emission carrying capacity estimates are $PM_{2.5}$—86 tons/day, NO_X—460 tons/day, SO_X—20 tons/day, and VOC—474 tons/day (*See* CARB Staff Report on the South Coast AQMP, page ES–3).

3. $PM_{2.5}$ Precursors Addressed in the South Coast 2007 AQMP

EPA recognizes NO_X, SO_2, VOCs, and ammonia as the main precursor gases associated with the formation of secondary $PM_{2.5}$ in the ambient air. These gas-phase $PM_{2.5}$ precursors undergo chemical reactions in the atmosphere to form secondary particulate matter. Formation of secondary $PM_{2.5}$ depends on numerous factors including the concentrations of precursors; the concentrations of other gaseous reactive species; atmospheric conditions including solar radiation, temperature, and relative humidity; and the interactions of precursors with preexisting particles and with cloud or fog droplets. 72 FR 20586, at 20589.

As discussed previously, a state must submit emissions inventories for each of the four $PM_{2.5}$ precursor pollutants. 72 FR 20586, at 20589 and 40 CFR § 51.1008(a)(1). However, the overall contribution of different precursors to $PM_{2.5}$ formation and the effectiveness of alternative potential control measures will vary by area. Thus, the precursors that a state should regulate to attain the $PM_{2.5}$ NAAQS could also vary to some extent from area to area. 72 FR 20586, at 20589.

In the $PM_{2.5}$ implementation rule, EPA did not make a finding that all potential $PM_{2.5}$ precursors must be controlled in each specific nonattainment area. *See* 72 FR 20586, at 20589. Instead, for the reasons explained in the rule, a state must evaluate control measures for sources of SO_2 in addition to sources of direct $PM_{2.5}$ in all nonattainment areas. 40 CFR § 51.1002(c) and (c)(1). A state must also evaluate control measures for sources of NO_X unless the State and/or EPA determine that control of NO_X emissions would not significantly reduce $PM_{2.5}$ concentrations in the specific nonattainment area. Id. at 40 CFR 51.1002(c)(2). EPA has determined in the $PM_{2.5}$ implementation rule that states do not need to address VOC and ammonia in an area unless the state and/or EPA determine that controls on such sources would significantly contribute to reducing $PM_{2.5}$ concentrations in the nonattainment area. Id. at 40 CFR 51.1002(c)(3) and (4). "Significantly contributes" in this context means that a significant reduction in emissions of the precursor from sources in the area would be projected to provide a significant reduction in $PM_{2.5}$ concentrations in the area. 72 FR 20586, at 20590.

In the South Coast nonattainment area, $PM_{2.5}$ can be directly emitted, such as from road dust, diesel soot, combustion products, and other sources ("primary particles"), or formed through atmospheric chemical reactions of precursor chemicals ("secondary particles"). Examples of secondary particles include sulfates, nitrates, and complex carbon compounds formed from reactions of NO_X, SO_X, VOCs, and ammonia. The attainment demonstration for the South Coast $PM_{2.5}$ nonattainment area addresses ammonium nitrate and ammonium sulfate because they represent a dominant fraction of $PM_{2.5}$ components in this area and are formed through secondary reactions of the precursors NO_X, SO_X, VOC and ammonia. The District's analysis indicates that SO_X reductions followed by directly-emitted $PM_{2.5}$ and NO_X reductions provide the greatest ambient $PM_{2.5}$ reductions. VOC reductions can also contribute to improving ambient $PM_{2.5}$ concentrations and will occur concurrently as a result of District's 8-hour ozone strategy.[20] Starting in 2011, the $PM_{2.5}$ implementation rule requires that states must also address condensable particulate matter (CPM), including estimates of CPM in emissions inventories, modeling, and control strategies.

4. Extension of the Attainment Date

CAA section 172(a)(2) provides that an area's attainment date "shall be the date by which attainment can be achieved as expeditiously as practicable, but no later than 5 years from the date such area was designated nonattainment * * *, except that the Administrator may extend the attainment date to the extent the Administrator determines appropriate, for a period no greater than 10 years from the date of designation as nonattainment considering the severity of nonattainment and the availability and feasibility of pollution control measures."

Because the effective date of designations for the 1997 $PM_{2.5}$ standards was April 5, 2005 (70 FR 944), the initial attainment date for $PM_{2.5}$ nonattainment areas is as expeditiously as practicable but not later than April 5, 2010. For any areas that are granted a full five-year attainment date extension under section 172, the attainment date would be no later than April 5, 2015.

Section 51.1004 of the $PM_{2.5}$ implementation rule addresses the attainment date requirement. Section 51.1004(b) requires a State to submit an

[20] *See* page 5–17 of Chapter 5 of the South Coast 2007 AQMP. We approved the South Coast RACT SIP on December 18, 2008 (*See* 73 FR 76947) as complying with the relevant CAA requirements for RACT SIPs for 8-hour ozone.

attainment demonstration justifying its proposed attainment date and provides that EPA will approve an attainment date when we approve that demonstration. Thus, the selection of the attainment date is dependent upon a demonstration showing expeditious attainment, and likewise dependent upon proper evaluation of what constitutes RACM/RACT level controls in the area.

States that request an extension of the attainment date under CAA section 172(a)(2) must provide sufficient information to show that attainment by April 5, 2010 is impracticable due to the severity of the nonattainment problem in the area and the lack of available and feasible control measures to provide for faster attainment. 40 CFR 51.1004(b). States must also demonstrate that all RACM and RACT for the area are being implemented to bring about attainment of the standard by the most expeditious alternative date practicable for the area. 72 FR 20586, at 20601. Thus, the proper evaluation of RACM/RACT controls is an integral part of justifying an extension of the attainment date.

For urban areas nationwide, the South Coast nonattainment area has the second highest average annual mean $PM_{2.5}$ concentration (ranking only behind the San Joaquin Valley in California for the 1997 $PM_{2.5}$ standards). $PM_{2.5}$ concentrations recorded over the last few years at the Riverside and Mira Loma monitoring sites continue to read well above the 1997 $PM_{2.5}$ NAAQS.[21] The $PM_{2.5}$ problem in the South Coast is complex, caused by both direct $PM_{2.5}$ and secondary $PM_{2.5}$, and compounded by the topographical and meteorological conditions for the area that are very conducive to the formation and concentration of $PM_{2.5}$ particles. South Coast 2007 AQMP, Chapter 4.

As discussed in section IV.C.3. above, the District's strategy for attaining the $PM_{2.5}$ standard relies on reductions of directly-emitted $PM_{2.5}$ as well as the $PM_{2.5}$ precursor pollutants NO_X, VOC, and SO_X. The South Coast nonattainment area needs significant reductions in $PM_{2.5}$, NO_X, VOC, and SO_X to demonstrate attainment. EPA believes that further reduction of these pollutants is challenging, because the State and local air pollution regulations already in place include most of the readily available $PM_{2.5}$, NO_X, VOC, and SO_X control measures. Moreover, attainment in the South Coast nonattainment area must also mitigate the emissions increases associated with the projected increases in population and emissions levels for this high-growth area.

The direct $PM_{2.5}$ reductions are achieved primarily from open burning and residential wood combustion control measures. These types of control measures present special implementation challenges (e.g., the large number of individuals subject to regulation and the difficulty of applying conventional technological control solutions). NO_X reductions come largely from District rules for fuel combustion sources, and from the State's mobile source rules. VOC reductions come from District rules governing the petroleum industry, as well as consumer products rules at both the State and local level. SO_X reductions identified in the plan come from District rules such as RECLAIM, and State measures related to ships.

Because of the necessity of obtaining additional emissions reductions from these source categories in the South Coast nonattainment area and the need to conduct significant public outreach if applicable control approaches are to be effective, EPA agrees with the District and CARB that the South Coast 2007 AQMP reflects expeditious implementation of the programs during the 2008–2014 time frame. EPA also agrees that the implementation schedule for enhanced stationary source controls is expeditious, taking into account the time necessary for purchase and installation of the required control technologies. Finally, we believe that it is not feasible at this time to accelerate the emission reduction schedule for the State and Federal mobile source requirements, which set aggressive compliance dates for new emission standards and which must rely on fleet turnover over the years to deliver the ultimate emission reductions. The District's control strategies are discussed in greater detail in Chapter 4 of the South Coast 2007 AQMP, and in section IV.C.2 above.

In addition, the State has adopted standards for many categories of on-road and off-road vehicles and engines, and gasoline and diesel fuels, and included commitments to develop rules for Smog Check Improvements, Cleaner In-Use Heavy-Duty Trucks, SIP Auxiliary Engines Cold Ironing and Clean Technology, Cleaner Main Ship Engines and Fuel, Cleaner In-Use Off-Road Equipment.

EPA believes that the District and State are implementing these rules and programs as expeditiously as practicable. We anticipate that the District will reevaluate this conclusion after completion of the mid-course review of the nonattainment SIP for this area, due in April 2011. EPA also expects that CARB and the District will continue to investigate opportunities to accelerate progress as new control opportunities arise, and that the agencies will promptly adopt and expeditiously implement any new measures found to be feasible in the future.

As discussed in section IV.C.6 above, however, we are not in a position at this time to approve, and therefore are proposing to disapprove, the RACM/RACT demonstration in the South Coast 2007 AQMP because we cannot approve the attainment demonstration. As stated in the $PM_{2.5}$ implementation rule, EPA cannot grant an extension of the attainment date beyond the initial five years provided by section 172(a)(2)(A) if the State has not adequately considered and evaluated the implementation of RACM and RACT for this area. (*See* 72 FR 20586, at 20601) Given the severity of the $PM_{2.5}$ nonattainment problem in the South Coast nonattainment area and the substantial progress the District has made to adopt and implement reduction strategies, an extension of the attainment date would most likely be appropriate and approvable if it were supported by the necessary analysis and a part of an attainment plan that meets the applicable statutory and regulatory requirements.

5. Attainment Demonstration

Table 7 below summarizes the measures that are relied upon in the South Coast 2007 AQMP's $PM_{2.5}$ attainment demonstration to achieve the target emissions estimates shown in Table 7. The District and State reduction levels reflect an agreement between CARB, the District, and SCAG which provides for more NO_X reductions than were identified as necessary for attainment in the South Coast 2007 AQMP. *See* CARB Staff Report for South Coast 2007 AQMP, ES–1, ES–3; November 28, 2007 letter to Wayne Nastri, EPA Region 9 Regional Administrator, Enclosure VI, CARB Resolution 07–41, adopting the 2007 South Coast nonattainment area revisions to the California SIP, September 27, 2007.

[21] *See* footnote 3.

TABLE 7—SUMMARY OF MEASURES NEEDED FOR SOUTH COAST'S $PM_{2.5}$ ATTAINMENT DEMONSTRATION

[tpd]

	NO_X	VOC	$PM_{2.5}$	SO_X
A. 2006 baseline (2007 State Strategy, p. 33)	972	732	101	63
B. 2014 baseline (ARB Staff Report for South Coast 2007 AQMP)	654	528	102	43
C. 2014 Attainment target (ARB staff Report for South Coast 2007 AQMP)	460	474	86	20
D. Reductions needed from "new" measures (B minus C)	194	54	16	23
E. Total reductions needed by 2014 (A minus C)	512	258	16	43
F. Reductions from "baseline" (pre-2007 measures) (A minus B)	318	204	0	20
G. New local/AQMD reductions	28	10	4	3
H. New State reductions	152	46	9	20
I. Federal reductions	10	.....	.....	.....
J. Additional local/AQMD reductions	4	.....	.....	.....
K. Total "new" reductions (G+H+I+J)	194	56	16	23
L. Total reductions (F+K)	512	260	16	43

Source: CARB staff report on the South Coast 2007 AQMP, 2009 State Strategy Status Report.

As shown in Table 7, the majority of emissions reductions the State projects are needed for $PM_{2.5}$ attainment in the South Coast nonattainment area by 2015 come from baseline reductions, i.e., from adopted measures that have generally been approved by EPA either through the SIP or the CAA section 209 waiver process. *See* Appendices A and B of the TSD. The remaining reductions needed for attainment are to be achieved through the District's and CARB's commitments to reduce emissions in the South Coast and from a federal assignment which EPA cannot approve, as discussed below. Since the submittal of the South Coast 2007 AQMP and 2007 State Strategy, the District and CARB have already adopted measures (summarized in Table 8 below) that can be credited toward reducing their aggregate emissions reduction in their enforceable commitments. For the State, adopted waiver measures [22] or EPA-approved measures since 2007 (Ship Auxiliary Engine Cold Ironing & Clean Technology; Clean Up Existing Harbor Craft; Modifications to Reformulated Gasoline Program—Phase 3; Consumer Products Program I) reduced emissions by 27.8 tpd of NO_X, 6.4 tpd of VOC, 0.6 tpd of $PM_{2.5}$ and 0.3 of SO_X (*See* Table 8 for a summary of these reductions). Emissions reductions from District measures approved by EPA since 2007 include 14.5 tpd of NO_X, 4.3 tpd of VOC, and 1.2 tpd of $PM_{2.5}$.

TABLE 8—SUMMARY OF ENFORCEABLE COMMITMENTS IN THE SOUTH COAST 2007 AQMP FOR $PM_{2.5}$ ATTAINMENT IN 2014

	2014 NO_X	2014 VOC	2014 $PM_{2.5}$	2014 SO_X
State Strategy Commitment (tpd)	152	46	9 [23]	20.
Less Reductions from Adopted Waiver Measures or EPA-approved measures Since 2007 (Ship Auxiliary Engine Cold Ironing & Clean Technology; Clean Up Existing Harbor Craft; Modifications to Reformulated Gasoline Program—Phase 3; Consumer Products Program I) [a].	27.8 tpd	6.4 tpd	0.6 tpd	0.3 tpd.
Remaining State Commitment	124.2	39.6	8.4	19.7.
District Commitment	32	10	4	3.
Less reductions from EPA approved District measures since 2007	14.5	4.3	1.2	0.
Remaining District Commitment	17.5	5.7	2.8	3.
Missing 3 tpd $PM_{2.5}$ (*See* footnote 23)	.....	.....	3	
Total remaining commitment (tpd) [b]	151.7	45.3	14.2	22.7.
Total remaining commitment (%) (compared to Line E of Table 7 above)	30%	18%	89% [c]	53%.

[a] Reductions from other adopted measures listed in the revised 2007 State Strategy on p. 5 (South Coast 2014) are not creditable in reducing the enforceable commitment because they have either not been submitted to EPA or approved (or proposed for approval) into the SIP. These measures include the Smog Check Improvements (to be adopted by the Bureau of Automotive Repair (BAR)), Cleaner In-Use Heavy-Duty Trucks, Cleaner In-Use Off-Road Equipment, and Cleaner Main Ship Engines and Fuel. *See* 2009 State Strategy revisions, p. 5.

[b] Includes federal assignment of 10 tpd NO_X.

[c] *See* footnote 23. This percentage assumes that total direct $PM_{2.5}$ reductions needed for attainment is 16 tpd, as indicated in Table 7.

a. Enforceable Commitments

As stated and shown above, measures already adopted by the District and CARB (both prior to and pursuant to the South Coast 2007 AQMP and revised 2007 State Strategy) provide the majority of emission reductions needed to demonstrate attainment in the nonattainment SIP as designed for this area. The balance of the needed reductions is in the form of enforceable commitments by CARB. This approach is consistent with past practice because the CAA allows approval of enforceable commitments that are limited in scope where circumstances exist that warrant the use of such commitments in place

[22] EPA allows emission reduction credit for measures that are subject to the CAA section 209 process. *See* EPA's proposed approval of the San Joaquin Valley 1-Hour Ozone Plan at 74 FR 33933, 33938 (July 14, 2009). The State's baseline non-waiver measures have generally all been approved by EPA into the SIP. *See* TSD, Appendix A.

[23] The 2007 State Strategy identifies 9 tpd of directly-emitted $PM_{2.5}$ as the aggregate State commitment by the 2015 attainment date (*See* 2009 State Strategy Status Report, page 20) but the CARB staff report for the South Coast 2007 AQMP indicates a 12 tpd commitment. (*See* 2007 staff report, page ES–3) It is unclear whether the State's commitment is for 9 tpd $PM_{2.5}$ or 12 tpd of direct $PM_{2.5}$.

of adopted measures.[24] Once EPA determines that circumstances warrant consideration of an enforceable commitment, EPA considers three factors in determining whether to approve the CAA requirement that relies on the enforceable commitment: (a) Does the commitment address a limited portion of the CAA requirement; (b) is the State capable of fulfilling its commitment; and (c) is the commitment for a reasonable and appropriate period of time.[25]

We believe that, in acting on the South Coast 2007 AQMP and revised 2007 State Strategy, circumstances warrant the consideration of enforceable commitments as part of the attainment demonstrations for this area. As shown in Table 8 above, the majority of emission reductions needed to demonstrate attainment and all of the emission reductions needed to demonstrate RFP come from rules and regulations that were adopted prior to the AQMP's submittal in November 2007, i.e., they come from the baseline measures.

As a result of these already-adopted State and District efforts, most sources in the South Coast nonattainment area were already subject to stringent rules prior to the development of the 2007 State Strategy and the South Coast 2007 AQMP, leaving fewer and more technologically challenging opportunities to reduce emissions. In the South Coast 2007 AQMP and the revised 2007 State Strategy, the District and CARB identified potential control measures that could achieve the additional emissions reductions needed for attainment (*See* CARB Staff Report on South Coast 2007 AQMP, pp. 17–20, and revised 2007 State Strategy, p. 17). However, the timeline needed to develop, adopt, and implement these measures went well beyond November 28, 2007, the submittal date of the South Coast's attainment plan. As discussed above and below, since 2007, the State and District have made progress meeting their commitments, but have not completely fulfilled them. Given these circumstances, the reliance on enforceable commitments in the South Coast 2007 AQMP and the 2007 State Strategy is warranted. We now consider the three factors EPA uses to determine whether enforceable commitments in lieu of adopted measures are approvable.

i. The Commitments Do Not Represent a Limited Portion of Required Reductions

First, we look to see if the commitment addresses a limited portion of a statutory requirement, such as the amount of emissions reductions needed in a nonattainment area. The remaining portion of the enforceable commitments in the South Coast 2007 AQMP and the revised 2007 State Strategy are 141.7 tpd NO_X, 45.3 tpd VOC, 11.2 tpd direct $PM_{2.5}$ and 22.7 tpd SO_X. When compared to the State's current estimate of the emissions reductions needed for $PM_{2.5}$ attainment in 2014, the remaining portion of the enforceable commitments represent approximately 30% of the needed NO_X reductions, 18% of the needed VOC reductions, 89% of the needed $PM_{2.5}$ reductions and 53% of the needed SO_X reductions. Historically, EPA has generally approved nonattainment area SIPs with enforceable commitments in the range of 10% or less of the total needed emissions reductions. *See,* e.g., approval of the San Joaquin Valley PM–10 SIP at 69 30005 (May 26, 2004), approval of the San Joaquin 1-hour ozone plan at 75 FR 10420 (March 8, 2010), and approval of the Houston-Galveston ozone SIP at 66 FR 57160, 57161 (November 14, 2001).

We note that there are significant emissions reductions tied to the Cleaner In-Use Heavy-Duty Trucks measure, and the Cleaner Main Ship Engines and Fuel measure listed in the 2009 State Strategy Status Report, page 5. EPA understands that the State is working on adopting and submitting these measures for EPA approval. It is possible that the reductions from these measures and several outstanding District rules will reduce the percentage of the remaining portion of the emissions reductions attributed to enforceable commitments to below 10% of the total needed reductions for each of the pollutants. However, until these (or other) measures are adopted, submitted to EPA and approved (as necessary), we believe that the percentages of enforceable commitments for NO_X, VOC, direct $PM_{2.5}$ and SO_X, relied upon by the South Coast 2007 AQMP and revised 2007 State Strategy are too high and not a limited portion of the total emissions reductions needed to meet the statutory requirement for attainment in the South Coast nonattainment area.

ii. The State is Capable of Fulfilling Its Commitment

The second factor to consider for enforceable commitments is whether the State and District are capable of fulfilling their commitments. As discussed above, following the adoption and submittal of the 2007 State Strategy, CARB adopted and submitted the 2009 State Strategy Status Report which shows the State's progress in achieving its enforceable commitments for the South Coast and several other nonattainment areas in California. The revised 2007 State Strategy shows that during 2007 and 2008, the State adopted rules for 10 control measures identified in the 2007 State Strategy and 3 control measures that were not identified in the 2007 State Strategy that will contribute to the needed $PM_{2.5}$ reductions. *See* 2009 Status Report on State Strategy, p. 1, Highlights. While progress has been made by the State to achieve its enforceable commitments for reductions of NO_X, VOC, direct $PM_{2.5}$ and SO_X, there are still significant reductions that must be addressed in order to satisfy the commitments. As discussed above, the remaining portion of the enforceable commitments is anywhere from 18–89% for the relevant pollutants. The revised 2007 State Strategy includes a table with estimates of the measures that may fulfill the whole commitment. *See* 2009 Status Report on State Strategy, p. 17. While the percentage of remaining commitments is too high for EPA to accept as part of an approvable attainment demonstration, EPA believes that the State and District have made good progress in meeting their

[24] Commitments approved by EPA under section 110(k)(3) of the CAA are enforceable by EPA and citizens under, respectively, sections 113 and 304 of the CAA. In the past, EPA has approved enforceable commitments and courts have enforced these actions against states that failed to comply with those commitments: *See, e.g., American Lung Ass'n of N.J.* v. *Kean,* 670 F. Supp. 1285 (D.N.J. 1987), aff'd, 871 F.2d 319 (3rd Cir. 1989); *NRDC, Inc.* v. *N.Y. State Dept. of Env. Cons.,* 668 F. Supp. 848 (S.D.N.Y. 1987); *Citizens for a Better Env't* v. *Deukmejian,* 731 F. Supp. 1448, recon. granted in par, 746 F. Supp. 976 (N.D. Cal. 1990); *Coalition for Clean Air* v. *South Coast Air Quality Mgt. Dist.,* No. CV 97–6916–HLH, (C.D. Cal. Aug. 27, 1999). Further, if a state fails to meet its commitments, EPA could make a finding of failure to implement the SIP under CAA Section 179(a), which starts an 18-month period for the State to correct the non-implementation before mandatory sanctions are imposed.

CAA section 110(a)(2)(A) provides that each SIP "shall include enforceable emission limitations and other control measures, means or techniques * * * as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirement of the Act." Section 172(c)(6) of the Act, which applies to nonattainment SIPs, is virtually identical to section 110(a)(2)(A). The language in these sections of the CAA is quite broad, allowing a SIP to contain any "means or techniques" that EPA determines are "necessary or appropriate" to meet CAA requirements, such that the area will attain as expeditiously as practicable, but no later than the designated date. Furthermore, the express allowance for "schedules and timetables" demonstrates that Congress understood that all required controls might not have to be in place before a SIP could be fully approved.

[25] The U.S. Court of Appeals for the Fifth Circuit upheld EPA's interpretation of CAA sections 110(a)(2)(A) and 172(c)(6) and the Agency's use and application of the three factor test in approving enforceable commitments in the 1-hour ozone SIP for Houston-Galveston. *BCCA Appeal Group et al.* v. *EPA et al.,* 355 F.3d 817 (5th Cir. 2003).

enforceable commitments in the past. Given the evidence of the State's and District's efforts to date and their continuing program to adopt controls, we believe that the State and District are capable of meeting their enforceable commitments to achieve the necessary reductions in the South Coast nonattainment area by 2014.

iii. The Commitment Is for a Reasonable and Appropriate Timeframe

Finally, the third factor we consider is whether the commitment is for a reasonable and appropriate period of time. In order to meet the commitment to achieve the needed reductions by 2014, the South Coast 2007 AQMP and the 2007 State Strategy projected an ambitious rule development, adoption, and implementation schedule. EPA considers this projected schedule as providing sufficient time to achieve the committed reductions by 2014. As we noted previously, many of the scheduled measures have been adopted. *See* Tables 2, 3, 5 and 6 above and the 2009 State Strategy Status Report, pp. 4, 17 & 23. The State and District are continuing to evaluate their adopted measures and the need for additional emissions reductions from new measures in this area. *See* District Board Resolution 07–9 and the 2009 State Strategy Status Report, p. 24. While we believe the State and District have provided a reasonable and appropriate schedule for achieving their commitments by 2014, as discussed above, EPA is not proposing to approve the attainment date extension for the South Coast nonattainment area. Thus we cannot currently conclude that the third factor is satisfied.

b. Federal Reductions

As shown in Table 7, the South Coast 2007 AQMP assigns 10 tons per day of NO_X reductions to the Federal government. The CAA does not authorize a State to assign responsibility to the Federal government for meeting SIP requirements. However, we agree that we have both the authority and the responsibility under the Act for regulating certain nationwide sources of air pollution. The 1990 CAA Amendments extended EPA's authority to regulate nonroad vehicles and engines and expressly required EPA to evaluate nonroad engine emissions, determine whether these emissions contribute significantly to ozone or CO in areas which have failed to attain the ozone or CO NAAQS, and regulate these emissions categories if found to be significant. EPA agrees with the State that national mobile source emissions are increasingly significant contributors to $PM_{2.5}$ and ozone pollution, particularly in the South Coast. The federal government has adopted a variety of national measures that have reduced emissions in the South Coast and will continue to explore future reduction opportunities. South Coast may take credit for these reductions in its attainment plans. The District may not, however, assign a reduction target to the federal government as it has done in the 2007 AQMP.

In May 2004, as part of the Clean Air Nonroad Diesel Rule, EPA finalized new requirements for nonroad diesel fuel that decreased the allowable levels of sulfur in fuel used in locomotives by 99 percent.[26] The requirement for locomotives to use ultra-low sulfur diesel takes effect in 2012. These fuel improvements have created and will continue to result in significant environmental and public health benefits by reducing $PM_{2.5}$ from existing engines. In addition, in March 2008, EPA finalized a three-part program that reduces emissions from diesel locomotives of all types—line-haul, switch, and passenger rail.[27] The Locomotive and Marine Diesel Engine rule cuts $PM_{2.5}$ emissions from these engines by as much as 90 percent and NO_X emissions by as much as 80 percent when fully implemented. This rule sets new emission standards for existing locomotives when they are remanufactured. The rule also includes Tier 3 emission standards for newly-built locomotives, provisions for clean switch locomotives, and idle reduction requirements for new and remanufactured locomotives. The Tier 3 emissions standards for locomotives started to phase-in in 2009. Finally, the Locomotive and Marine Diesel Engine rule establishes long-term, Tier 4, standards for newly-built engines based on the application of high-efficiency catalytic after treatment technology, beginning in 2015. *See* 73 FR 37096. To the extent that these and other Federal programs yield additional reductions in the South Coast by 2014, the South Coast 2007 AQMP and State Strategy can be revised to reflect these reductions.

However, as stated above, because the CAA does not authorize States to assign responsibility for meeting emission reduction requirements to the EPA, we are proposing to disapprove the 10 tpd NO_X emissions reductions the District and State assigned to the Federal government in the South Coast 2007 AQMP.

5. Proposed Action on Attainment Demonstrations

In order to approve a SIP's attainment demonstration, EPA must make several findings and approve the plan's proposed attainment date.

First, we must find that the demonstration's technical bases, including the emissions inventories and air quality modeling, are adequate. As discussed above in section IV.B and IV.D, we are proposing to approve these portions of the South Coast 2007 AQMP.

Second, we must find that the SIP submittal provides for expeditious attainment through the implementation of all RACM and RACT. As discussed above in section IV.C., we are proposing to disapprove the RACM/RACT demonstration in the South Coast South Coast 2007 AQMP.

Third, EPA must find that the emissions reductions that are relied on for attainment are creditable. As discussed above in section IV.D.5.a., the South Coast 2007 AQMP relies on enforceable commitments for almost 27 percent of the State's current estimate of the total emissions reductions needed in this area. *See* Table 8. While EPA has previously accepted enforceable commitments in lieu of adopted control measures in attainment demonstrations, EPA has done so only when the circumstances warranted it and the commitments met three criteria. We believe that circumstances here warrant the consideration of enforceable commitments. We also believe that both the State and the District have demonstrated their capability to meet their commitments. However, the commitments do not constitute a limited portion of the required emissions reductions, and are not for an appropriate timeframe. The State's and District's unfulfilled commitments currently represent 30 percent of the NO_X reductions, 18 percent of the VOC reductions, 89 percent of the $PM_{2.5}$ reductions, and 53 percent of the SO_X emissions reductions currently estimated to be required for attainment of the 1997 $PM_{2.5}$ NAAQS in the South Coast nonattainment area. These percentages are well above the 10 percent figure of total reductions needed for attainment generally accepted by EPA to approve an attainment demonstration that relies in part on enforceable commitments. The timeframe of 2014 is not currently appropriate since we are not proposing

[26] *See* 69 FR 38957, "Control of Emissions of Air Pollution from Nonroad Diesel Engines", also referred to as the "Clean Air Nonroad Diesel Rule", June 29, 2004.

[27] *See* 73 FR 37095, "Control of Emissions of Air Pollution from Locomotives and Marine Compression-Ignition Engines Less than 30 Liters per Cylinder," also referred to as the "Locomotive and Marine Diesel Engine Rule," June 30, 2008.

to grant the State's request for the full attainment date extension to 2015.

Finally, for $PM_{2.5}$ nonattainment areas that demonstrate that they cannot attain within five years of designation as nonattainment, EPA must grant an extension of the attainment date in order to approve the attainment demonstration for the area. As discussed above in section IV.D.4., we are proposing not to grant the State's request to extend the attainment date in the South Coast nonattainment area to April 5, 2015 because we cannot at this time approve the attainment demonstration.

For the foregoing reasons, we are proposing to disapprove the attainment demonstration in the South Coast 2007 AQMP. As noted above, however, we believe that the State and District are in a position to address these issues in the relatively near term, before we take final action. We look forward to working with the State and District in the coming months.

E. RFP Demonstration

1. Requirements for Reasonable Further Progress

CAA Section 172(c)(2) requires that plans for nonattainment areas shall provide for reasonable further progress (RFP). RFP is defined in section 171(1) as "such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable [NAAQS] by the applicable date."

The $PM_{2.5}$ implementation rule requires submission of a specific RFP demonstration at the same time as the attainment demonstration for any area for which the State justifies an extension of the attainment date beyond 2010. For areas seeking an attainment date extension to 2015 such as the South Coast, the RFP demonstration must show that in the applicable milestone years of 2009 and 2012, emissions in the area will be at a level consistent with generally linear progress in reducing emissions between the base year and the attainment year. *See* 40 CFR 51.1009(d). States may demonstrate this by showing that emissions for each milestone year are roughly equivalent to benchmark emission levels for direct $PM_{2.5}$ emissions and each $PM_{2.5}$ attainment plan precursor addressed in the plan. The steps for determining the benchmark emissions levels to demonstrate generally linear progress are given in the $PM_{2.5}$ implementation rule in 40 CFR 51.1009(f).

The RFP plan must describe the control measures that provide for meeting the reasonable further progress milestones for the area, the timing of implementation of those measures, and the expected reductions in emissions of directly-emitted $PM_{2.5}$ and $PM_{2.5}$ attainment plan precursors. *See* 40 CFR § 51.1009(c).

2. RFP Demonstration in the South Coast 2007 AQMP

The RFP demonstration is in Chapter 6 of the South Coast 2007 AQMP. The demonstration addresses direct $PM_{2.5}$, NO_X, VOC, and SO_X emissions and uses the 2002 annual average inventory as the baseline year inventory and 2014 as the attainment year. Table 9 below summarizes the South Coast $PM_{2.5}$ RFP demonstration. *See* South Coast 2007 AQMP, Table 6–3A.

TABLE 9—SOUTH COAST RFP DEMONSTRATION

Pollutant	NO_X	VOC	$PM_{2.5}$	SO_X
2002 baseline inventory (tpd)	1,093	844	99	53
Annual percentage change needed to show linear progress (%)	4.87	3.7	1.01	5.35
2009 target needed to show linear progress (tpd)	720	625	92	33
2009 remaining emissions with plan (tpd)	813	578	99	28
Projected shortfall (tpd)	93	0	7	0
2012 target needed to show linear progress (tpd)	561	532	89	25
2012 remaining emissions with plan (tpd)	565	505	92	21
Projected shortfall (tpd)	4	0	3	0
2014 remaining emissions with plan (tpd)	459	464	87	19

As discussed above, the District's modeling demonstration indicated that for attainment of the 1997 $PM_{2.5}$ NAAQS, SO_X reductions are the most effective, followed by directly-emitted $PM_{2.5}$, and then NO_X and VOC. Therefore, the District's proposed control strategy maximizes reductions of direct $PM_{2.5}$ and SO_X to the extent possible. The RFP demonstration for 2009 shows a shortfall of 7 tpd of directly-emitted $PM_{2.5}$ and 93 tpd of NO_X while the SO_X and VOC reductions exceed their linear targets. The RFP demonstration for 2012 indicates a slight shortfall in meeting the 2012 milestones for directly-emitted $PM_{2.5}$ and for NO_X, although SO_X and $PM_{2.5}$ targets are not only met but surpassed. While the shortfall of 93 tpd for NO_X in 2009 is significant, this shortfall is almost completely made up by the reductions estimated for 2012. We note that the shortfall in 2012 for $PM_{2.5}$ is only about 3% of the 2002 baseline inventory, and the shortfall in NO_X reductions is less than 1%, while SO_X and VOC reduction milestones are exceeded by more than 4% and 3% respectively. Thus, we find that the RFP demonstration for 2012 meets the "generally linear" test for RFP requirements for 2012 and addresses the shortfall of NO_X in 2009.

3. Proposed Action on the RFP Demonstration

While we believe the District has demonstrated generally linear progress towards attainment by 2015, we are not proposing to approve the attainment date extension to 2015 and therefore cannot propose to approve the RFP demonstration. We believe, however, that if the deficiencies identified with the attainment demonstration are addressed, we may then be able to propose to approve the attainment date extension and RFP demonstration. *See* 40 CFR 51.1009.

F. Contingency Measures

1. Requirements for Contingency Measures

Under CAA section 172(c)(9), all $PM_{2.5}$ attainment plans must include contingency measures to be implemented if an area fails to meet RFP ("RFP contingency measures") and contingency measures to be implemented if an area fails to attain the $PM_{2.5}$ NAAQS by the applicable attainment date ("attainment contingency measures"). These

contingency measures must be fully adopted rules or control measures that are ready to be implemented quickly without significant additional action by the State. 40 CFR 51.1012. They must also be measures not relied on in the plan to demonstrate RFP or attainment and should provide SIP-creditable emissions reductions equivalent to one year of RFP. Finally, the SIP should contain trigger mechanisms for the contingency measures and specify a schedule for their implementation. 72 FR 20586, p. 20642.

Contingency measures can include Federal measures and local measures already scheduled for implementation that provide emissions reductions in excess of those needed to provide for RFP or expeditious attainment. EPA has approved numerous SIPs under this interpretation. *See,* e.g., 62 FR 15844, April 3, 1997; 62 FR 66279, December 18, 1997; 66 FR 30811, June 8, 2001; 66 FR 586 and 66 FR 634, January 3, 2001.

2. Contingency Measures in the South Coast 2007 AQMP

The attainment plan for the South Coast nonattainment area includes contingency measures to be implemented if the area fails to attain by its attainment date or fails to meet RFP requirements. The contingency measures for the South Coast nonattainment area are described in Chapter 9 of the South Coast 2007 AQMP and discussed in more detail in Appendix IV–A, section 2 of the AQMP. They are described below.

The South Coast 2007 AQMP describes the contingency measures in the following way, "Although implementation of these measures is expected to reduce emissions, there are issues that limit the viability of these measures as AQMP control measures at this time. Issues surrounding these measures include, but are not limited to availability of District resources to implement and enforce the measure, cost-effectiveness of the measure, potential adverse environmental impacts, potential economic impacts, effectiveness of emissions reductions, and availability of methods to quantify emissions reductions." South Coast 2007 AQMP, page 9–1. The contingency measures do not meet the requirements of the CAA, namely the requirements for these contingency measures to be fully adopted or otherwise ready for quick implementation, for trigger mechanisms and an implementation schedule, and the AQMP does not provide for quantification of emissions reductions demonstrating the equivalent of one year of RFP.

CTY–01—Offsetting potential emissions increase due to change in natural gas specifications—This proposed contingency measure requires RECLAIM facilities that use natural gas of a quality that creates more emissions to offset these emissions for all pollutants. The measure is listed as a "Remaining 2003 AQMP Revision Control Measure" and thus was relied on in the 2003 AQMP for attainment. In addition, the reductions are not quantified, and may be zero, since the proposed measure may only reduce future emissions increases rather than provide net reductions. The measure is not triggered by failure to meet RFP or attainment and there is no defined implementation schedule. For these reasons, this proposed measure does not meet CAA requirements for contingency measures.

CTY–02—Clean Air Act Emission Fees for Major Stationary Sources—This proposed contingency measure would use fees generated from the District's Rule 317, Clean Air Act Nonattainment Fees, to achieve emissions reductions. The implementation of Rule 317 is triggered by a failure of the South Coast to attain the 1-hour standard by its applicable attainment date (which can occur no earlier than November 15, 2010) and not by any failure to make RFP or to attain the $PM_{2.5}$ NAAQS, a minimum requirement for contingency measures for $PM_{2.5}$ SIPs. There is no implementation schedule provided, and the AQMP does not quantify the reductions associated with this measure. For these reasons, this proposed measure does not meet CAA requirements for contingency measures.

CTY–03—Banning pre-Tier 3 off road diesel engines on High Pollution Advisory (HPA) days—This proposed contingency measure would complement a CARB rule which proposed to establish declining fleet average emissions levels for off-road equipment over 25 horsepower (hp). The District proposed a complementary measure, SC–OFFRD–1, that would ban the use of pre-Tier 3 off-road diesel engines after 2023 on HPA days should the South Coast nonattainment area fail to meet the 8-hour ozone standard. This proposed contingency measure would require additional rulemaking at the District level, as it is not currently adopted. It also would be implemented too late in time to provide for RFP or contingency reductions for $PM_{2.5}$ RFP or attainment. In addition, the AQMP does not quantify the reductions associated with this measure. For these reasons, this proposed measure does not meet CAA requirements for contingency measures.

CTY–04—Accelerated implementation of CARB's mobile source measures—This proposed contingency measure, which could function as both an RFP and an attainment contingency measure, requires the District's Board to request that CARB accelerate the adoption and/or implementation of the remaining control measures that have not been adopted or fully implemented by one year. South Coast 2007 AQMP, page 9–3. Under CAA section 172(c)(9) and EPA's long-standing policies interpreting this section, contingency measures must require minimal additional rulemaking by the State and take effect within a few months of a failure to make RFP or to attain. This proposed contingency measure would require additional rulemaking at the District level and potentially substantial and lengthy additional rulemaking at the State level to be implemented. There is no trigger mechanism or implementation schedule provided, and the AQMP does not quantify the reductions associated with this measure. For these reasons, this proposed measure does not meet CAA requirements for contingency measures.

Post-Attainment-Year Emissions Reductions. We note that we are not proposing to approve the attainment date extension. However, even if it were approved, excess reductions in 2015/2016 from CARB mobile source measures do not fully address the contingency measure requirement for the $PM_{2.5}$ attainment year. There is no calculation of the emissions reductions equivalent of one year's work of RFP in the South Coast 2007 AQMP. However, from information in the Plan, we calculate one year's worth of RFP to be 1.08 tpd $PM_{2.5}$, 52.8 tpd NO_X, 30.8 tpd of VOC, and 2.75 tpd SO_2. *See* TSD, section II.H, and CARB Staff Report on the 2007 South Coast AQMP, Appendix A. However, CARB's mobile source measures do not provide sufficient NO_X reductions to meet one year's worth of RFP; therefore, post-attainment-year emissions reductions cannot be used to meet the CAA contingency measure requirement.

3. Proposed Action on the Contingency Measures

The South Coast 2007 AQMP includes suggestions for several measures that do not meet the CAA's minimum requirements (e.g., no additional rulemaking, surplus to attainment and RFP needs). The AQMP, however, indicates that the measures proposed by the District are not adopted, and does not quantify the expected emissions reductions in order to gauge whether

they provide reductions equivalent to one year's worth of RFP. For the reasons stated above, we are proposing to disapprove the District's contingency measure provisions in the South Coast 2007 AQMP for $PM_{2.5}$.

G. Motor Vehicle Emissions Budgets for Transportation Conformity

Transportation conformity is required by section 176(c) of the CAA. Our transportation conformity rule (codified in 40 CFR part 93, subpart A) requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they do so. Conformity to the SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards or any interim milestone.

Control strategy SIP submittals (such as RFP and attainment SIP submittals) must specify the maximum emissions of transportation-related emissions allowed in the RFP years and attainment year, i.e., the motor vehicle emissions budgets ("budgets"). The submittal must also demonstrate that these emissions levels, when considered with emissions from all other sources, are consistent with RFP or attainment of the NAAQS, whichever is applicable. In order for us to find these emissions levels or "budgets" adequate and/or approvable, the submittal must meet the conformity adequacy provisions of 40 CFR 93.118(e)(4) and (5). Additionally, motor vehicle emissions budgets cannot be approved until EPA completes a detailed review of the entire SIP and determines that the SIP and the budgets will achieve their intended purpose (i.e., RFP, attainment or maintenance). For more information on the transportation conformity requirement and applicable policies on budgets, please visit our transportation conformity Web site at: *http://www.epa.gov/otaq/stateresources/transconf/index.htm.*

As submitted on November 28, 2007, the 2007 South Coast AQMP included a set of $PM_{2.5}$ budgets for RFP years 2009 and 2012, the attainment year 2014, and analysis years 2023 and 2030. *See* CARB Resolution 07–05, which revised the budgets in the 2007 South Coast AQMP as adopted by the District, and which was included in the November 28, 2007 submittal. We refer herein to these budgets as the "original" budgets. On April 30, 2008, CARB submitted a SIP revision that replaces the original set of $PM_{2.5}$ budgets with two new sets of budgets (herein, "replacement" budgets). One set of the replacement budgets is referred to as "SIP-based" budgets, and the other set is referred to as "baseline" budgets. In its April 30, 2008 submittal, CARB requests that EPA give primary consideration to the "SIP-based" budgets and only find the "baseline" budgets to be adequate if EPA cannot find the "SIP-based" budgets adequate in their entirety.

The replacement budgets submitted on April 30, 2008 differ from the original budgets in that they reflect the EPA-approved EMFAC2007 motor vehicle emissions factor model (*See* 73 FR 3464, January 18, 2008) rather than District's CEPA emission factor model, which had been used for the original budgets. The "SIP-based" budgets reflect emissions reductions from rules adopted by October 2006 and also from control measures CARB expects to adopt in regulatory form in the future. The "baseline" budgets differ from the "SIP-based" budgets by excluding emission reductions from control measures in the 2007 State Strategy that had not been adopted in regulatory form by October 2006.[28] Moreover, the "baseline" budgets are only established for RFP years 2009 and 2012 whereas the "SIP-based" budgets are established for the RFP years, the attainment year, and analysis years 2023 and 2030. The two sets of $PM_{2.5}$ budgets (i.e., the replacement budgets) are shown in Tables 10 and 11, below.

TABLE 10—"SIP-BASED" $PM_{2.5}$ MOTOR VEHICLE EMISSIONS BUDGETS

[Annual average tons per day]

Budget year	VOC	NO_X	$PM_{2.5}$
2009	196	413	38
2012	139	276	37
2014	122	201	33
2023	89	131	37
2030	75	121	39

TABLE 11—"BASELINE" $_{2.5}$ MOTOR VEHICLE EMISSIONS BUDGETS

[Annual average tons per day]

Budget year	VOC	NO_X	$PM_{2.5}$
2009	196	413	38
2012	163	337	38

On August 12, 2009, CARB submitted a SIP revision that updates certain portions of the 2007 State Strategy to account for emission reductions from regulations adopted in 2007 and 2008, some of which relate to on-road sources, such as modifications to the reformulated gasoline program, smog check improvements, and cleaner in-use heavy duty trucks. CARB's August 12, 2009 SIP revision did not revise the budgets but documents the extent to which control measures for which credit had been taken in the "SIP-based" budgets, but not in the "baseline" budgets, have now been adopted in regulatory form.

EPA generally first reviews budgets submitted with an attainment, RFP, or maintenance plan for adequacy, prior to taking action on the plan itself, and did so with respect to the $PM_{2.5}$ budgets in the 2007 South Coast AQMP. The availability of the original budgets was announced for public comment on EPA's adequacy Web page on February

[28] With respect to the "SIP-based" budget for RFP year 2009, however, CARB did exclude the emissions reductions from measures not adopted by October 2006. Thus, the "SIP-based" $PM_{2.5}$ budget for 2009 is the same as the "baseline" $PM_{2.5}$ budget for that year.

12, 2008 and the availability of the replacement (then available in draft form) was announced for public comment on March 27, 2008. EPA received comments from the public in response to both postings.

On May 6, 2008, we found the "SIP-based" $PM_{2.5}$ budgets for the 2007 South Coast AQMP, as revised on April 30, 2008, to be inadequate for transportation conformity purposes. *See* the letter and enclosures dated May 6, 2008 from Deborah Jordan, Director, Air Division, EPA Region IX to James Goldstene, Executive Officer, CARB (a copy of which has been placed in the docket for this rulemaking). However, in our May 2008 adequacy determination, we found the "baseline" $PM_{2.5}$ budgets for RFP years 2009 and 2012 to be adequate. Generally, we found the "SIP-based" budgets to be inadequate because they reflected control measures not yet adopted in regulatory form and thus not adequately quantified or supported by the plan. In contrast, we found the "baseline" $PM_{2.5}$ budgets to be consistent with the plan's RFP demonstration and to be based on adopted mobile source regulations that have already been implemented. Our notice of adequacy/inadequacy of the budgets was published on May 15, 2008 at 73 FR 28110 (corrected on June 18, 2008 at 73 FR 34837), and was effective on May 30, 2008.

The criteria by which we determine whether a SIP's budgets are adequate and approvable for conformity purposes are outlined in 40 CFR 93.118(e)(4) and (5). The following paragraphs provide our review of the "SIP-based" and "baseline" $PM_{2.5}$ budgets for the 2007 South Coast AQMP against our adequacy criteria and provide the basis for our proposed action relative to the budgets. Since the criteria for evaluation purposes are the same for adequacy or inadequacy as for approval or disapproval of budgets, we incorporate by reference our earlier determination of adequacy/inadequacy, and focus in the following paragraphs on those considerations that have changed since the time of our May 2008 adequacy/inadequacy determination.

Under 40 CFR 93.118(e)(4)(i), we review a submitted plan to determine whether the plan was endorsed by the Governor (or designee) and was subject to a public hearing. As documented in our May 2008 adequacy/inadequacy determination, the 2007 South Coast AQMP and 2007 State Strategy, and April 2008 replacement budgets, were all submitted under cover of letters signed by CARB's Executive Officer, the Governor's designee. Likewise, CARB's August 12, 2009 SIP revision was submitted under cover of a letter sent by CARB's Executive Officer and includes documentation of a public hearing held on April 23–24, 2009. Therefore, we propose that the submitted plan and related "SIP-based" and "baseline" budgets meet the criterion under 40 CFR 93.118(e)(4)(i).

Under 40 CFR 93.118(e)(4)(ii), we review a submitted plan to determine whether the plan was developed through consultation with Federal, State and local agencies and whether full implementation plan documentation was provided to EPA and EPA's stated concerns, if any, were addressed. As documented in our May 2008 adequacy/inadequacy determination, the 2007 South Coast AQMP and 2007 State Strategy, and April 2008 replacement budgets, were all developed through consultation with Federal, State and local agencies and included documentation of adequate responses to EPA's concerns. Moreover, CARB's August 12, 2009 SIP revision was developed to meet EPA's requests for additional information to aid in our review of the 2007 South Coast AQMP and 2007 State Strategy. We propose that the submitted plan, and related "SIP-based" and "baseline" budgets, were developed through sufficient consultation with Federal, State and local agencies and thereby meet the criterion under 40 CFR 93.118(e)(4)(ii).

Under 40 CFR 93.118(e)(4)(iii), we review a submitted plan to determine whether the budgets are clearly identified and precisely quantified. Both the "SIP-based" and "baseline" budgets are clearly identified. As noted in our May 2008 adequacy/inadequacy determination, the budgets are shown in attachments 1 ("SIP-based" budgets) and 2 ("baseline" budgets) to CARB Resolution 08–27, which was included in the SIP revision submitted by CARB on April 30, 2008. The "SIP-based" budgets are not precisely quantified because the new emission reductions do not result from adequately specified control measures. In contrast, the "baseline" budgets reflect control measures that are already implemented and do not include new emission reductions attributed to general commitments; therefore, these budgets are precisely quantified. We propose that the "SIP-based" budgets do not meet the criterion under 40 CFR 93.118(e)(4)(iii) but the "baseline" budgets do.

Under 40 CFR 93.118(e)(4)(iv), we review a submitted plan to determine whether the budgets, when considered together with all other emissions sources, are consistent with applicable requirements for reasonable further progress, attainment, or maintenance (whichever is relevant to a given SIP submission). Based on our proposed disapproval of the RFP and attainment demonstrations (*See* sections IV.D and IV.E of this document), EPA proposes that all of the "SIP-based" and the "baseline" budgets, when considered together with all other emission sources, are not consistent with the requirement to demonstrate attainment or RFP of the $PM_{2.5}$ NAAQS by 2014.

Because we are proposing to disapprove the RFP demonstrations for years 2009 and 2012, we do encourage CARB to submit revised budgets to lock in the benefit of the new regulations and thereby avoid the chance that increases in vehicle activity will increase the overall challenge of attaining the NAAQS. For the reasons stated above, we propose that the "baseline" and "SIP-based" budgets do not meet the criterion under 40 CFR 93.118(e)(4)(iv).

Under 40 CFR 93.118(e)(4)(v), we review a plan to determine whether the budgets are consistent with and clearly related to the emissions inventory and the control measures in the submitted control strategy plan or maintenance plan. The plan, as supplemented by the SIP revision dated August 12, 2009, does not show a clear relationship between the "SIP-based" budgets and the emissions inventory and control measures. The "SIP-based" budgets incorporate new emission reductions from the State's strategy that result, in part, from specified control measures that have not been adopted in regulatory form (or have been adequately supported as a voluntary measure). As noted above, more control measures have been adopted by CARB in regulatory form than was the case when the "SIP-based" budgets were adopted and submitted by CARB to EPA, but a portion of the emission reductions included in the "SIP-based" budgets remains unsupported by regulations or as a voluntary measure. In contrast, as discussed further in our May 2008 adequacy/inadequacy determination, the plan does show a clear relationship between the "baseline" budgets, control measures, and the total emissions inventory. Thus, we propose that the submitted plan's "SIP-based" budgets do not meet this criterion for adequacy and approval and the "baseline" budgets do.

Under 40 CFR 93.118(e)(4)(vi), we review a submitted plan to determine whether revisions to previously submitted plans explain and document any changes to previously submitted budgets and control measures; impacts on point and area source emissions; any changes to established safety margins; and reasons for the changes (including

the basis for any changes related to emissions factors or estimates of vehicle miles traveled and changes in control measures). As noted in our May 2008 adequacy/inadequacy determination, the SIP revision submitted on April 30, 2008 explains and documents all changes to previously submitted budgets. Thus, we propose that the submitted plan meets this criterion for adequacy and approval with respect to both the "SIP-based" and "baseline" budgets.

Under 40 CFR 93.118(e)(5), we review the State's compilation of public comments and response to comments that are required to be submitted with any SIP revision. As noted in our May 2008 adequacy/inadequacy determination, District compiled public comments submitted during the June 1, 2007 public hearing and during the public comment periods and we reviewed this compilation and found that District's and CARB's responses were acceptable. No issues that might have affected our adequacy findings remain unanswered. Thus, we propose that the plan meets this criterion for adequacy and approval with respect to both the "SIP-based" and "baseline" budgets.

For the reasons described in the May 6, 2008 letter from Deborah Jordan to James Goldstene, we found that the "SIP-based" budgets for the 2007 South Coast AQMP, as submitted on April 30, 2008, do not meet certain adequacy requirements under 40 CFR 93.118(e)(4) and (5) and concluded that they were inadequate for transportation conformity purposes. Now that we have completed a thorough review of the entire South Coast $PM_{2.5}$ SIP, which is described above in this proposal, we have concluded that the "SIP-based" budgets are not precisely quantified because the new emission reductions do not result from adequately specified control measures, and that the plan as a whole will not ensure RFP and attainment of the $PM_{2.5}$ NAAQS and does not show a clear relationship between the "SIP-based" budgets and the emissions inventory and control measures. Thus, we propose to disapprove both the "baseline" and the "SIP-based" $PM_{2.5}$ budgets (shown in Table 11 above) for transportation conformity purposes. SCAG and the U.S. Department of Transportation are not currently using the "SIP-based" budgets in transportation conformity determinations due to the inadequacy finding made in 2008. If the proposed disapproval of the budgets is finalized, then neither the "baseline" nor "SIP-based" budgets could be used in transportation conformity determinations after the effective date of the disapproval.

In summary, for the reasons discussed above, we are now proposing disapproval of the $PM_{2.5}$ budgets that we previously had determined to be inadequate. Because we are proposing to disapprove the RFP demonstration, we are proposing to disapprove the $PM_{2.5}$ budgets we previously found adequate as well.

I. Mid Course Review

Any State that submits to EPA an approvable attainment plan for a $PM_{2.5}$ nonattainment area justifying an attainment date of nine or ten years from the date of designation also must submit to EPA a mid-course review six years from the date of designation, or by April 2011. 40 CFR 51.1011. The mid-course review for an area must include: (1) A review of emissions reductions and progress made in implementing control measures to reduce emissions of direct $PM_{2.5}$ and $PM_{2.5}$ attainment plan precursors contributing to $PM_{2.5}$ concentrations in the area; (2) an analysis of changes in ambient air quality data for the area; (3) a revised air quality modeling analysis to demonstrate attainment; (4) any new or revised control measures adopted by the State, as necessary to ensure attainment by the attainment date in the approved SIP of the nonattainment area. We anticipate receiving this midcourse review from the District and CARB by April 2011.

V. EPA's Proposed Actions

A. EPA's Proposed Approvals and Disapprovals

For the reasons discussed above, EPA is proposing to approve in part and disapprove in part California's attainment SIP for the South Coast nonattainment area for the 1997 $PM_{2.5}$ NAAQS. This SIP submittal consists of the portions of the District's South Coast 2007 AQMP and the South Coast nonattainment area-specific portions of CARB's revised 2007 State Strategy addressing CAA and EPA regulations for attainment of the 1997 $PM_{2.5}$ NAAQS for the South Coast nonattainment area.

EPA is proposing to approve under CAA section 110(k)(3) the following elements of the South Coast $PM_{2.5}$ attainment SIP:

1. The SIP's base year and baseline emissions inventories as meeting the requirements of CAA section 172(c)(3) and 40 CFR § 51.1008;

2. the District's commitments for the adoption and implementation schedule for specific control measures listed in Table 7–3 in the South Coast 2007 AQMP to the extent that these commitments have not yet been fulfilled, and to achieve specific aggregate emission reductions of 32 tpd of NO_X, 10 tpd of VOC, 4 tpd of direct $PM_{2.5}$, and 3 tpd of SO_X by 2014 as listed in Table 4–10 of the South Coast 2007 AQMP and the CARB Staff Report for the South Coast 2007 AQMP, page 17, as SIP-strengthening;

3. CARB's commitments to propose certain defined measures, as listed on page 23 of the 2009 State Strategy Status Report; and to achieve aggregate emission reductions of 152 tpd of NO_X, 9 tpd of direct $PM_{2.5}$, 46 tpd of VOC, and 20 tpd of SO_X in the South Coast nonattainment area by 2014 as provided, as SIP-strengthening; and

4. the air quality modeling in the South Coast 2007 AQMP as meeting the requirements of the CAA and EPA guidance.

EPA is proposing to disapprove under CAA section 110(k)(3) the following elements of the South Coast $PM_{2.5}$ attainment SIP:

1. The attainment demonstration for failing to meet the requirements of CAA section 172(c)(1) and 40 CFR 51.1007 due to insufficient adopted and EPA-approved rules needed to support the determination that the South Coast nonattainment area will attain by the State's proposed attainment date. As a result, we are also proposing to disapprove the RACM/RACT demonstration, the State's request for an attainment date extension to April 5, 2015, and the RFP demonstration, because they are dependent on the approval of an attainment demonstration under the $PM_{2.5}$ implementation rule (*See* 40 CFR 51.1009, 51.1010, and 51.1004);

2. The motor vehicle emissions budgets for the RFP milestone years of 2009 and 2012, and for the attainment year, because they are derived from RFP and attainment demonstrations which we are proposing to disapprove;

3. The contingency measures for failing to meet the requirements of CAA section 172(c)(9) and 40 CFR 51.1012; and

4. The assignment of 10 tpd of NO_X to the federal government.

B. CAA Consequences of a Final Disapproval

EPA is committed to working with the District, CARB and SCAG to resolve the identified problems that make the current South Coast 2007 AQMP for the South Coast nonattainment area for the 1997 $PM_{2.5}$ NAAQS not fully approvable under the CAA. We firmly believe that such solutions are available and that expeditious attainment of the 1997

$PM_{2.5}$ standards in the South Coast is achievable.

However, should we finalize the disapprovals as proposed here, a conformity freeze would take effect once the action becomes effective (usually 30 days after publication of the final action in the **Federal Register**). A conformity freeze means that only projects in the first four years of the most recent conforming Regional Transportation Plan (RTP) and Transportation Improvement Program (TIP) can proceed. During a freeze, no new RTPs, TIPs or RTP/TIP amendments can be found to conform. *See* 40 CFR 93.120.

In addition to the effect on conformity, should we finalize the disapprovals proposed here, the offset sanction in CAA section 179(b)(2) would apply in the South Coast $PM_{2.5}$ nonattainment area 18 months after the effective date of a final disapproval. The highway funding sanctions in CAA section 179(b)(1) would apply in the area six months after the offset sanction is imposed. Neither sanction will be imposed if California submits and we approve prior to the implementation of the sanctions, SIP revisions that correct the problems identified in EPA's final action on the South Coast 2007 AQMP and applicable portions of the revised 2007 State Strategy that are the basis for any disapprovals.

In addition to the sanctions, CAA section 110(c)(1) provides that EPA must promulgate a federal implementation plan addressing the deficient elements in the $PM_{2.5}$ attainment SIP for the South Coast, two years after the effective date of any disapproval should we not be able to approve a revised SIP revision before that date.

VI. 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 proposes to partially approve and partially disapprove state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law.

A. Executive Order 12866, Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* because this proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new information collection burdens but simply disapproves certain State requirements for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new requirements but simply disapproves certain State requirements for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the Clean Air Act prescribes that various consequences (e.g., higher offset requirements) may or will flow from this disapproval does not mean that EPA either can or must conduct a regulatory flexibility analysis for this action. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector." EPA has determined that the proposed disapproval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This action proposes to disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely disapproves certain State requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175, Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP EPA is proposing

to disapprove would not 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. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new regulations but simply disapproves certain State requirements for inclusion into the SIP.

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

This proposed rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

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

The EPA believes that this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the Clean Air Act.

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

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this proposed action. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the Clean Air Act. Accordingly, this action merely proposes to disapprove certain State requirements for inclusion into the SIP under section 110 and subchapter I, part D of the Clean Air Act and will not in-and-of itself create any new requirements. Accordingly, it 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: November 8, 2010.

Jared Blumenfeld,

Regional Administrator, EPA Region IX.

[FR Doc. 2010–29235 Filed 11–19–10; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Monday,
November 22, 2010

Part IV

The President

Executive Order 13559—Fundamental Principles and Policymaking Criteria for Partnerships With Faith-Based and Other Neighborhood Organizations

Federal Register
Vol. 75, No. 224
Monday, November 22, 2010

Presidential Documents

Title 3—

The President

Executive Order 13559 of November 17, 2010

Fundamental Principles and Policymaking Criteria for Partnerships With Faith-Based and Other Neighborhood Organizations

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to guide Federal agencies in formulating and developing policies with implications for faith-based and other neighborhood organizations, to promote compliance with constitutional and other applicable legal principles, and to strengthen the capacity of faith-based and other neighborhood organizations to deliver services effectively to those in need, it is hereby ordered:

Section 1. *Amendments to Executive Order 13279.* Executive Order 13279 of December 12, 2002 (Equal Protection of the Laws for Faith-Based and Community Organizations), as amended, is hereby further amended:

(a) in section 1, by striking subsection (e), and inserting in lieu thereof the following:

"(e) 'Specified agency heads' means:

(i) the Attorney General;

(ii) the Secretary of Agriculture;

(iii) the Secretary of Commerce;

(iv) the Secretary of Labor;

(v) the Secretary of Health and Human Services;

(vi) the Secretary of Housing and Urban Development;

(vii) the Secretary of Education;

(viii) the Secretary of Veterans Affairs;

(ix) the Secretary of Homeland Security;

(x) the Administrator of the Environmental Protection Agency;

(xi) the Administrator of the Small Business Administration;

(xii) the Administrator of the United States Agency for International Development; and

(xiii) the Chief Executive Officer of the Corporation for National and Community Service.";

(b) by striking section 2, and inserting in lieu thereof the following: "**Sec. 2.** *Fundamental Principles.* In formulating and implementing policies that have implications for faith-based and other neighborhood organizations, agencies that administer social service programs or that support (including through prime awards or sub-awards) social service programs with Federal financial assistance shall, to the extent permitted by law, be guided by the following fundamental principles:

(a) Federal financial assistance for social service programs should be distributed in the most effective and efficient manner possible.

(b) The Nation's social service capacity will benefit if all eligible organizations, including faith-based and other neighborhood organizations, are able to compete on an equal footing for Federal financial assistance used to support social service programs.

(c) No organization should be discriminated against on the basis of religion or religious belief in the administration or distribution of Federal financial assistance under social service programs.

(d) All organizations that receive Federal financial assistance under social service programs should be prohibited from discriminating against beneficiaries or prospective beneficiaries of the social service programs on the basis of religion or religious belief. Accordingly, organizations, in providing services supported in whole or in part with Federal financial assistance, and in their outreach activities related to such services, should not be allowed to discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

(e) The Federal Government must implement Federal programs in accordance with the Establishment Clause and the Free Exercise Clause of the First Amendment to the United States Constitution, as well as other applicable law, and must monitor and enforce standards regarding the relationship between religion and government in ways that avoid excessive entanglement between religious bodies and governmental entities.

(f) Organizations that engage in explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) must perform such activities and offer such services outside of programs that are supported with direct Federal financial assistance (including through prime awards or sub-awards), separately in time or location from any such programs or services supported with direct Federal financial assistance, and participation in any such explicitly religious activities must be voluntary for the beneficiaries of the social service program supported with such Federal financial assistance.

(g) Faith-based organizations should be eligible to compete for Federal financial assistance used to support social service programs and to participate fully in the social service programs supported with Federal financial assistance without impairing their independence, autonomy, expression outside the programs in question, or religious character. Accordingly, a faith-based organization that applies for, or participates in, a social service program supported with Federal financial assistance may retain its independence and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use direct Federal financial assistance that it receives (including through a prime award or sub-award) to support or engage in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization), or in any other manner prohibited by law. Among other things, faith-based organizations that receive Federal financial assistance may use their facilities to provide social services supported with Federal financial assistance, without removing or altering religious art, icons, scriptures, or other symbols from these facilities. In addition, a faith-based organization that applies for, or participates in, a social service program supported with Federal financial assistance may retain religious terms in its name, select its board members on a religious basis, and include religious references in its organization's mission statements and other chartering or governing documents.

(h) Each agency responsible for administering or awarding Federal financial assistance for social service programs shall offer protections for beneficiaries of such programs pursuant to the following principles:

(i) *Referral to an Alternative Provider.* If a beneficiary or prospective beneficiary of a social service program supported by Federal financial assistance objects to the religious character of an organization that provides services under the program, that organization shall, within a reasonable time after the date of the objection, refer the beneficiary to an alternative provider.

(ii) *Agency Responsibilities.* Each agency responsible for administering a social service program or supporting a social service program with

Federal financial assistance shall establish policies and procedures designed to ensure that (1) appropriate and timely referrals are made to an alternative provider; (2) all referrals are made in a manner consistent with all applicable privacy laws and regulations; (3) the organization subject to subsection (h)(i) notifies the agency of any referral; (4) such organization has established a process for determining whether the beneficiary has contacted the alternative provider; and (5) each beneficiary of a social service program receives written notice of the protections set forth in this subsection prior to enrolling in or receiving services from such program.

(i) To promote transparency and accountability, agencies that provide Federal financial assistance for social service programs shall post online, in an easily accessible manner, regulations, guidance documents, and policies that reflect or elaborate upon the fundamental principles described in this section. Agencies shall also post online a list of entities that receive Federal financial assistance for provision of social service programs, consistent with law and pursuant to guidance set forth in paragraph (c) of section 3 of this order.

(j) Decisions about awards of Federal financial assistance must be free from political interference or even the appearance of such interference and must be made on the basis of merit, not on the basis of the religious affiliation of a recipient organization or lack thereof.";

(c) by striking section 3, and inserting in lieu thereof the following:

"**Sec. 3.** *Ensuring Uniform Implementation Across the Federal Government.*

In order to promote uniformity in agencies' policies that have implications for faith-based and other neighborhood organizations and in related guidance, and to ensure that those policies and guidance are consistent with the fundamental principles set forth in section 2 of this order, there is established an Interagency Working Group on Faith-Based and Other Neighborhood Partnerships (Working Group).

(a) *Mission and Function of the Working Group.* The Working Group shall meet periodically to review and evaluate existing agency regulations, guidance documents, and policies that have implications for faith-based and other neighborhood organizations. Where appropriate, specified agency heads shall, to the extent permitted by law, amend all such existing policies of their respective agencies to ensure that they are consistent with the fundamental principles set forth in section 2 of this order.

(b) *Uniform Agency Implementation.* Within 120 days of the date of this order, the Working Group shall submit a report to the President on amendments, changes, or additions that are necessary to ensure that regulations and guidance documents associated with the distribution of Federal financial assistance for social service programs are consistent with the fundamental principles set forth in section 2 of this order. The Working Group's report should include, but not be limited to, a model set of regulations and guidance documents for agencies to adopt in the following areas:

(i) prohibited uses of direct Federal financial assistance and separation requirements; (ii) protections for religious identity; (iii) the distinction between "direct" and "indirect" Federal financial assistance; (iv) protections for beneficiaries of social service programs; (v) transparency requirements, consistent with and in furtherance of existing open government initiatives; (vi) obligations of nongovernmental and governmental intermediaries; (vii) instructions for peer reviewers and those who recruit peer reviewers; and (viii) training on these matters for government employees and for Federal, State, and local governmental and nongovernmental organizations that receive Federal financial assistance under social service programs. In developing this report and in reviewing agency regulations and guidance for consistency with section 2 of this order, the Working Group shall consult the March 2010 report and recommendations prepared by the President's Advisory Council on Faith-Based and Neighborhood Partnerships on the topic of reforming the Office of Faith-Based and Neighborhood Partnerships.

(c) *Guidance.* The Director of the Office of Management and Budget (OMB), following receipt of a copy of the report of the Working Group, and in coordination with the Department of Justice, shall issue guidance to agencies on the implementation of this order, including in particular subsections 2(h)–(j).

(d) *Membership of the Working Group.* The Director of the Office of Faith-Based and Neighborhood Partnerships and a senior official from the OMB designated by the Director of the OMB shall serve as the Co-Chairs of the Working Group. The Co-Chairs shall convene regular meetings of the Working Group, determine its agenda, and direct its work. In addition to the Co-Chairs, the Working Group shall consist of a senior official with knowledge of policies that have implications for faith-based and other neighborhood organizations from the following agencies and offices:

(i) the Department of State;

(ii) the Department of Justice;

(iii) the Department of the Interior;

(iv) the Department of Agriculture;

(v) the Department of Commerce;

(vi) the Department of Labor;

(vii) the Department of Health and Human Services;

(viii) the Department of Housing and Urban Development;

(ix) the Department of Education;

(x) the Department of Veterans Affairs;

(xi) the Department of Homeland Security;

(xii) the Environmental Protection Agency;

(xiii) the Small Business Administration;

(xiv) the United States Agency for International Development;

(xv) the Corporation for National and Community Service; and

(xvi) other agencies and offices as the President, from time to time, may designate.

(e) *Administration of the Initiative.* The Department of Health and Human Services shall provide funding and administrative support for the Working Group to the extent permitted by law and within existing appropriations."; and

(d) by striking in the title, preamble, and section 1(c), "community" and inserting in lieu thereof "other neighborhood".

Sec. 2. *General Provisions.*

(a) This order amends the requirements contained in Executive Order 13279. This order supplements, but does not supersede, the requirements contained in Executive Orders 13198 and 13199 of January 29, 2001, and Executive Order 13498 of February 5, 2009.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to an executive department, agency, or the head thereof; or

(ii) functions of the Director of the OMB relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

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

THE WHITE HOUSE,
November 17, 2010.

[FR Doc. 2010–29579
Filed 11–19–10; 11:15 am]
Billing code 3195–W1–P

Reader Aids

Federal Register

Vol. 75, No. 224

Monday, November 22, 2010

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal__register**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

Reminders. Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, no longer appear in the Reader Aids section of the Federal Register. This information can be found online at **http://www.regulations.gov.**

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, NOVEMBER

67011–67200 1
67201–67588 2
67589–67896 3
67897–68168 4
68169–68404 5
68405–68674 8
68675–68940 9
68941–69330 10
69331–69570 12
69571–69850 15
69851–70082 16
70083–70570 17
70571–70810 18
70811–71004 19
71005–71324 22

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

301 68941

2 CFR

1401 71007

3 CFR

Proclamations:
8590 67897
8591 67899
8592 67901
8593 67903
8594 67905
8595 67907
8596 68153
8597 68167
8598 69329
8599 69571
8600 71001
8601 71003
8602 71005

Executive Orders:
13279 (amended by 13559) 71319
13481 (revoked by 13557) 68679
13556 68675
13557 68679
13558 69573
13259 71319

Administrative Orders:
Memorandums:
Memorandum of September 20, 2010 67023
Memorandum of September 23, 2010 67025
Memorandum of May 7, 2008 (revoked by EO 13556) 68675
Notices:
Notice of November 1, 2010 67587
Notice of November 4, 2010 68673
Notice of November 10, 2010 69569
Presidential Determinations:
No. 2010-11 of August 10, 2010 67011
No. 2010-11 of August 10, 2010 (correction) 68405
No. 2010-12 of August 26, 2010 67013
No. 2010-12 of August 26, 2010 (correction) 68407
No. 2010-14 of September 3, 2010 67015
No. 2010-14 of September 3, 2010 (correction) 68409
No. 2010-15 of September 10, 2010 67017
No. 2010-15 of September 10, 2010 (correction) 68411
No. 2010-16 of September 15, 2010 67019
No. 2010-16 of September 15, 2010 (correction) 68413

5 CFR

302 67589
330 67589
335 67589
337 67589
410 67589
1601 68169

Proposed Rules:
532 70616
630 70845
731 68222
1206 70617
1600 69026
1604 69026
1651 69026
1690 69026

6 CFR

5 67909

Proposed Rules:
5 .....69603, 69604

7 CFR

301 .....68942, 70811
319 68945
352 68945
360 68945
361 68945
701 70083
920 67605
983 68681
987 70571
993 67607
1215 67609
1221 70573
1405 70811
3430 70578

Proposed Rules:
205 68505
457 70850
924 68510
1214 .....68512, 68529
1245 68728

8 CFR

103 69851

9 CFR

94 69851
310 69575

10 CFR

Proposed Rules:
30 70618
40 70618
70 70618
73 67636
170 70618
171 70618
431 67637,70852

12 CFR

330 69577
1101 71012
1208 68956
1704 68956
Proposed Rules:
226 67458
612 70619
615 68533
620 70619
630 70619
965 68534
966 68534
969 68534
987 68534
1270 68534

14 CFR

25 ....67201, 69746, 70090, 70092
26 69746
39 ....67611, 67613, 68169, 68172, 68174, 68177, 68179, 68181, 68185, 68682, 68684, 68686, 68688, 68690, 69693, 68695, 68698, 69858, 69860, 69861, 69862, 70096, 70098, 70101, 70102, 70104, 70106, 70109, 70812
71 ....67910, 67911, 68415, 68416, 68701, 69864
73 68970
95 67210
97 ....69331, 69332
121 ....68189, 69746
129 69746
Proposed Rules:
5 68224
25 70854
39 ....67253, 67637, 67639, 68245, 68246, 68543, 68548, 68728, 68731, 69030, 69606, 69609, 69611, 69612, 70150, 70623, 70861, 70863, 70868
61 70871
65 68249
71 ....68551, 68552, 68554, 68555, 68556, 68557, 68558, 69905, 71046
119 68224
183 70871

15 CFR

748 67029
902 68199

16 CFR

1 68416
305 67615
Proposed Rules:
437 68559
1512 67043
1632 67047

17 CFR

240 69792
242 68702
Proposed Rules:
Ch. I 67301
1 ....67254, 67642, 70152
3 70881
4 67254
15 67258
20 67258
30 67642
39 67277
40 67282
48 70974
140 67277
180 67657
240 ....68560, 70488
249 70488

19 CFR

4 69583
10 69583

20 CFR

Proposed Rules:
655 67662

21 CFR

510 ....68972, 69585
516 69586
520 ....67031, 69585
526 71016
878 ....68972, 70112
892 68200
Proposed Rules:
516 69614
1141 69524
1308 67054

23 CFR

511 68418

24 CFR

905 70582
Proposed Rules:
200 69363
207 69363

26 CFR

54 70114
Proposed Rules:
54 70159

27 CFR

9 67616
Proposed Rules:
4 ....67663, 67666, 67669
5 67669
7 67669

28 CFR

0 ....69870, 70122

29 CFR

1635 68912
1926 68429
2590 70114
4003 68203
4022 69588
4903 68203
Proposed Rules:
1910 69369
2520 70625
2590 70160

30 CFR

201 70814
202 70814
203 70814
204 70814
206 70814
207 70814
208 70814
210 70814
212 70814
217 70814
218 70814
219 70814
220 70814
227 70814
228 70814
229 70814
241 70814
243 70814
290 70814
1201 70814
1202 70814
1203 70814
1204 70814
1206 70814
1207 70814
1208 70814
1210 70814
1212 70814
1217 70814
1218 70814
1219 70814
1220 70814
1227 70814
1228 70814
1229 70814
1241 70814
1243 70814
1290 70814
3020 70124
Proposed Rules:
70 69617
71 69617
72 69617
75 69617
90 69617

31 CFR

510 67912
363 70814
Proposed Rules:
29 71047

32 CFR

239 69871
706 68213

33 CFR

100 67214
117 ....68704, 68974, 69878, 69879, 70817, 71017
165 ....67032, 67216, 67618, 67620, 70126
167 70818
Proposed Rules:
117 ....69906, 71061
165 ....67673, 69371
167 68568
334 ....69032, 69034

34 CFR

600 67170
668 67170
682 67170
685 67170

37 CFR

Proposed Rules:
1 69828
41 69828

38 CFR

17 69881
62 68975
Proposed Rules:
3 70162

39 CFR

20 69334
111 ....68430, 70128, 70132

40 CFR

1 69348
9 70583
21 69348
52 ....67623, 68447, 68989, 69002, 69589, 69883, 69884, 69889, 70140, 71018, 71023, 71029
59 69348
60 69348
61 69348
62 69348
63 ....67625, 69348
65 69348
81 ....67220, 71033
86 68448
180 ....68214, 69005, 69353, 70143
194 70584
450 68215
707 69348
721 70583
763 69348
1033 68448
1039 68448
1042 68448
1045 68448
1054 68448
1065 68448
Proposed Rules:
49 69373
52 ....68251, 68259, 68265, 68272, 68279, 68285, 68291, 68294, 68570, 69909, 69910, 70654, 70657, 70888, 71294
58 69036
60 68296
63 67676
80 68044
81 ....67303, 68733, 68736
85 67059
86 ....67059, 68575
136 70664
152 68297
260 70664
261 67919
423 70664
430 70664
435 70664
450 68305
721 ....68306, 70665
1033 68575
1036 67059
1037 67059
1039 68575
1042 68575
1045 68575

1054 68575
1065 ....67059, 68575
1066 67059
1068 67059

41 CFR

300-3 67629
Ch. 301 67629
301-30 67629
301-31 67629
302-3 67629
302-4 67629
302-6 67629
303-70 67629

42 CFR

409 70372
418 70372
424 70372
447 69591
482 70831
484 70372
485 70831
489 70372
Proposed Rules:
5 67303
Ch. IV 70165
417 ....71064, 71190
422 ....71064, 71190
423 ....71064, 71190
433 68583
455 69037

43 CFR

4 68704
43 71007

44 CFR

64 68704
67 ....68710, 68714, 69892
Proposed Rules:
67 ....67304, 67310, 67317, 68738, 68744

45 CFR

147 70114
Proposed Rules:
147 70160

46 CFR

45 70595

47 CFR

20 70604
54 70149
73 71044
74 67227
78 67227
Proposed Rules:
0 69374
1 ....67060, 69374, 70166
9 67321
17 70166
20 67321
25 71064
54 69374
64 67333
73 67077
79 70168

48 CFR

216 69360
237 67632
252 ....67632, 69360
919 69009
922 69009
923 69009
924 69009
925 69009
926 69009
952 69009
970 68217

49 CFR

39 68467
225 68862
325 67634
393 67634
571 67233
Proposed Rules:
192 69912
195 69912
242 69166
523 ....67059, 68312
534 ....67059, 68312
535 ....67059, 68312
571 70670

50 CFR

17 ....67512, 68719
218 69296
229 68468
300 68725
600 67247
622 67247
635 67251
648 ....69014, 69903
660 67032
665 ....68199, 69015
679 ....68726, 69016, 69361, 69597, 69598, 69599, 69600, 69601, 70614, 71045
Proposed Rules:
17 ....67341, 67552, 67676, 67925, 69222
224 70169
648 ....70187, 70192
660 67810

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 3619/P.L. 111–281

Coast Guard Authorization Act of 2010 (Oct. 15, 2010; 124 Stat. 2905)

S. 1510/P.L. 111–282

United States Secret Service Uniformed Division Modernization Act of 2010 (Oct. 15, 2010; 124 Stat. 3033)

S. 3196/P.L. 111–283

Pre-Election Presidential Transition Act of 2010 (Oct. 15, 2010; 124 Stat. 3045)

S. 3802/P.L. 111–284

Mount Stevens and Ted Stevens Icefield Designation Act (Oct. 18, 2010; 124 Stat. 3050)

Last List October 18, 2010

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.