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Presidential Documents

Title 3—

The President

Executive Order 13618 of July 6, 2012

Assignment of National Security and Emergency Preparedness Communications Functions

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy.* The Federal Government must have the ability to communicate at all times and under all circumstances to carry out its most critical and time sensitive missions. Survivable, resilient, enduring, and effective communications, both domestic and international, are essential to enable the executive branch to communicate within itself and with: the legislative and judicial branches; State, local, territorial, and tribal governments; private sector entities; and the public, allies, and other nations. Such communications must be possible under all circumstances to ensure national security, effectively manage emergencies, and improve national resilience. The views of all levels of government, the private and nonprofit sectors, and the public must inform the development of national security and emergency preparedness (NS/EP) communications policies, programs, and capabilities.

Sec. 2. *Executive Office Responsibilities.*

Sec. 2.1. Policy coordination, guidance, dispute resolution, and periodic in-progress reviews for the functions described and assigned herein shall be provided through the interagency process established in Presidential Policy Directive-1 of February 13, 2009 (Organization of the National Security Council System) (PPD–1).

Sec. 2.2. The Director of the Office of Science and Technology Policy (OSTP) shall: (a) issue an annual memorandum to the NS/EP Communications Executive Committee (established in section 3 of this order) highlighting national priorities for Executive Committee analyses, studies, research, and development regarding NS/EP communications;

(b) advise the President on the prioritization of radio spectrum and wired communications that support NS/EP functions; and

(c) have access to all appropriate information related to the test, exercise, evaluation, and readiness of the capabilities of all existing and planned NS/EP communications systems, networks, and facilities to meet all executive branch NS/EP requirements.

Sec. 2.3. The Assistant to the President for Homeland Security and Counterterrorism and the Director of OSTP shall make recommendations to the President, informed by the interagency policy process established in PPD–1, with respect to the exercise of authorities assigned to the President under section 706 of the Communications Act of 1934, as amended (47 U.S.C. 606). The Assistant to the President for Homeland Security and Counterterrorism and the Director of OSTP shall also jointly monitor the exercise of these authorities, in the event of any delegation, through the process established in PPD–1 or as the President otherwise may direct.

Sec. 3. *The NS/EP Communications Executive Committee.*

Sec. 3.1. There is established an NS/EP Communications Executive Committee (Executive Committee) to serve as a forum to address NS/EP communications matters.

Sec. 3.2. The Executive Committee shall be composed of Assistant Secretary-level or equivalent representatives designated by the heads of the Departments of State, Defense, Justice, Commerce, and Homeland Security, the Office of the Director of National Intelligence (DNI), the General Services Administration, and the Federal Communications Commission, as well as such additional agencies as the Executive Committee may designate. The designees of the Secretary of Homeland Security and the Secretary of Defense shall serve as Co-Chairs of the Executive Committee.

Sec. 3.3. The responsibilities of the Executive Committee shall be to: (a) advise and make policy recommendations to the President, through the PPD–1 process, on enhancing the survivability, resilience, and future architecture of NS/EP communications, including what should constitute NS/EP communications requirements;

(b) develop a long-term strategic vision for NS/EP communications and propose funding requirements and plans to the President and the Director of the Office of Management and Budget (OMB), through the PPD–1 process, for NS/EP communications initiatives that benefit multiple agencies or other Federal entities;

(c) coordinate the planning for, and provision of, NS/EP communications for the Federal Government under all hazards;

(d) promote the incorporation of the optimal combination of hardness, redundancy, mobility, connectivity, interoperability, restorability, and security to obtain, to the maximum extent practicable, the survivability of NS/EP communications under all circumstances;

(e) recommend to the President, through the PPD–1 process, the regimes to test, exercise, and evaluate the capabilities of existing and planned communications systems, networks, or facilities to meet all executive branch NS/EP communications requirements, including any recommended remedial actions;

(f) provide quarterly updates to the Assistant to the President for Homeland Security and Counterterrorism and the Director of OSTP, through the Co-Chairs, on the status of Executive Committee activities and develop an annual NS/EP communications strategic agenda utilizing the PPD–1 process;

(g) enable industry input with respect to the responsibilities established in this section; and

(h) develop, approve, and maintain a charter for the Executive Committee.

Sec. 4. *Executive Committee Joint Program Office.*

Sec. 4.1. The Secretary of Homeland Security shall establish an Executive Committee Joint Program Office (JPO) to provide full-time, expert, and administrative support for the Executive Committee's performance of its responsibilities under section 3.3 of this order. Staff of the JPO shall include detailees, as needed and appropriate, from agencies represented on the Executive Committee. The Department of Homeland Security shall provide resources to support the JPO. The JPO shall be responsive to the guidance of the Executive Committee.

Sec. 4.2. The responsibilities of the JPO shall include: coordination of programs that support NS/EP missions, priorities, goals, and policy; and, when directed by the Executive Committee, the convening of governmental and nongovernmental groups (consistent with the Federal Advisory Committees Act, as amended (5 U.S.C. App.)), coordination of activities, and development of policies for senior official review and approval.

Sec. 5. *Specific Department and Agency Responsibilities.*

Sec. 5.1. The Secretary of Defense shall: (a) oversee the development, testing, implementation, and sustainment of NS/EP communications that are directly responsive to the national security needs of the President, Vice President, and senior national leadership, including: communications with or among

the President, Vice President, White House staff, heads of state and government, and Nuclear Command and Control leadership; Continuity of Government communications; and communications among the executive, judicial, and legislative branches to support Enduring Constitutional Government;

(b) incorporate, integrate, and ensure interoperability and the optimal combination of hardness, redundancy, mobility, connectivity, interoperability, restorability, and security to obtain, to the maximum extent practicable, the survivability of NS/EP communications defined in section 5.1(a) of this order under all circumstances, including conditions of crisis or emergency;

(c) provide to the Executive Committee the technical support necessary to develop and maintain plans adequate to provide for the security and protection of NS/EP communications; and

(d) provide, operate, and maintain communication services and facilities adequate to execute responsibilities consistent with Executive Order 12333 of December 4, 1981, as amended.

Sec. 5.2. The Secretary of Homeland Security shall: (a) oversee the development, testing, implementation, and sustainment of NS/EP communications, including: communications that support Continuity of Government; Federal, State, local, territorial, and tribal emergency preparedness and response communications; non-military executive branch communications systems; critical infrastructure protection networks; and non-military communications networks, particularly with respect to prioritization and restoration;

(b) incorporate, integrate, and ensure interoperability and the necessary combination of hardness, redundancy, mobility, connectivity, interoperability, restorability, and security to obtain, to the maximum extent practicable, the survivability of NS/EP communications defined in section 5.2(a) of this order under all circumstances, including conditions of crisis or emergency;

(c) provide to the Executive Committee the technical support necessary to develop and maintain plans adequate to provide for the security and protection of NS/EP communications;

(d) receive, integrate, and disseminate NS/EP communications information to the Federal Government and State, local, territorial, and tribal governments, as appropriate, to establish situational awareness, priority setting recommendations, and a common operating picture for NS/EP communications information;

(e) satisfy priority communications requirements through the use of commercial, Government, and privately owned communications resources, when appropriate;

(f) maintain a joint industry-Government center that is capable of assisting in the initiation, coordination, restoration, and reconstitution of NS/EP communications services or facilities under all conditions of emerging threats, crisis, or emergency;

(g) serve as the Federal lead for the prioritized restoration of communications infrastructure and coordinate the prioritization and restoration of communications, including resolution of any conflicts in or among priorities, in coordination with the Secretary of Defense when activities referenced in section 5.1(a) of this order are impacted, consistent with the National Response Framework. If conflicts in or among priorities cannot be resolved between the Departments of Defense and Homeland Security, they shall be referred for resolution in accordance with section 2.1 of this order; and

(h) within 60 days of the date of this order, in consultation with the Executive Committee where appropriate, develop and submit to the President, through the Assistant to the President for Homeland Security and Counterterrorism, a detailed plan that describes the Department of Homeland Security's organization and management structure for its NS/EP communications functions, including the Government Emergency Telecommunications Service, Wireless

Priority Service, Telecommunications Service Priority program, Next Generation Network Priority program, the Executive Committee JPO, and relevant supporting entities.

Sec. 5.3. The Secretary of Commerce shall: (a) provide advice and guidance to the Executive Committee on the use of technical standards and metrics to support execution of NS/EP communications;

(b) identify for the Executive Committee requirements for additional technical standards and metrics to enhance NS/EP communications;

(c) engage with relevant standards development organizations to develop appropriate technical standards and metrics to enhance NS/EP communications;

(d) develop plans and procedures concerning radio spectrum allocations, assignments, and priorities for use by agencies and executive offices;

(e) develop, maintain, and publish policies, plans, and procedures for the management and use of radio frequency assignments, including the authority to amend, modify, or revoke such assignments, in those parts of the electromagnetic spectrum assigned to the Federal Government; and

(f) administer a system of radio spectrum priorities for those spectrum-dependent telecommunications resources belonging to and operated by the Federal Government and certify or approve such radio spectrum priorities, including the resolution of conflicts in or among such radio spectrum priorities during a crisis or emergency.

Sec. 5.4. The Administrator of General Services shall provide and maintain a common Federal acquisition approach that allows for the efficient centralized purchasing of equipment and services that meet NS/EP communications requirements. Nothing in this section shall be construed to impair or otherwise affect the procurement authorities granted by law to an agency or the head thereof.

Sec. 5.5. With respect to the Intelligence Community, the DNI, after consultation with the heads of affected agencies, may issue such policy directives and guidance as the DNI deems necessary to implement this order. Procedures or other guidance issued by the heads of elements of the Intelligence Community shall be in accordance with such policy directives or guidelines issued by the DNI.

Sec. 5.6. The Federal Communications Commission performs such functions as are required by law, including: (a) with respect to all entities licensed or regulated by the Federal Communications Commission: the extension, discontinuance, or reduction of common carrier facilities or services; the control of common carrier rates, charges, practices, and classifications; the construction, authorization, activation, deactivation, or closing of radio stations, services, and facilities; the assignment of radio frequencies to Federal Communications Commission licensees; the investigation of violations of pertinent law; and the assessment of communications service provider emergency needs and resources; and

(b) supporting the continuous operation and restoration of critical communications systems and services by assisting the Secretary of Homeland Security with infrastructure damage assessment and restoration, and by providing the Secretary of Homeland Security with information collected by the Federal Communications Commission on communications infrastructure, service outages, and restoration, as appropriate.

Sec. 6. *General Agency Responsibilities.* All agencies, to the extent consistent with law, shall: (a) determine the scope of their NS/EP communications requirements, and provide information regarding such requirements to the Executive Committee;

(b) prepare policies, plans, and procedures concerning communications facilities, services, or equipment under their management or operational control to maximize their capability to respond to the NS/EP needs of the Federal Government;

(c) propose initiatives, where possible, that may benefit multiple agencies or other Federal entities;

(d) administer programs that support broad NS/EP communications goals and policies;

(e) submit reports annually, or as otherwise requested, to the Executive Committee, regarding agency NS/EP communications activities;

(f) devise internal acquisition strategies in support of the centralized acquisition approach provided by the General Services Administration pursuant to section 5.4 of this order; and

(g) provide the Secretary of Homeland Security with timely reporting on NS/EP communications status to inform the common operating picture required under 6 U.S.C. 321(d).

Sec. 7. *General Provisions.* (a) For the purposes of this order, the word ''agency'' shall have the meaning set forth in section 6.1(b) of Executive Order 13526 of December 29, 2009.

(b) Executive Order 12472 of April 3, 1984, as amended, is hereby revoked.

(c) Executive Order 12382 of September 13, 1982, as amended, is further amended by striking the following language from section 2(e): ''in his capacity as Executive Agent for the National Communications System''.

(d) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an agency, or the head thereof; or

(ii) the functions of the Director of the OMB relating to budgetary, administrative, or legislative proposals.

(e) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(f) 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,

Washington, July 6, 2012.

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Filed 7–10–12; 8:45 am]

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Rules and Regulations

Federal Register

Vol. 77, No. 133

Wednesday, July 11, 2012

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DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1980

RIN 0575–AC90

Single Family Housing Guaranteed Loan Program

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements a change in the regulations for the United States Department of Agriculture (USDA), Rural Housing Service (RHS) Section 502 Single Family Housing Guaranteed Loan Program (SFHGLP) (also referred to as ''Agency'') by requiring an annual fee for all loan obligations. This action is taken to implement authorities granted the Secretary of the USDA, in Sec. 102 of the Supplemental Appropriations Act, 2010 to collect from the lender an annual fee not to exceed 0.5 percent of the outstanding principal balance of the loan for the life of the loan. The primary intent of the annual fee is to make the SFHGLP subsidy neutral when used in conjunction with the one-time up-front guarantee fee, thus eliminating the need for taxpayer support of the program at its current loan level.

DATES: *Effective Date:* July 11, 2012.

FOR FURTHER INFORMATION CONTACT: Cathy Glover, Senior Loan Specialist, Single Family Housing Guaranteed Loan Division, USDA Rural Development, Room 2241, STOP 0784, 1400 Independence Ave. SW., Washington, DC 20250, Telephone: (202) 720–1460, Email: *cathy.glover@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Classification

This final rule has been determined to be non-significant by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Except where specified, all State and local laws and regulations that are in direct conflict with this rule will be preempted. Federal funds carry Federal requirements. No person is required to apply for funding under this program, but if they do apply and are selected for funding, they must comply with the requirements applicable to the Federal program funds. This rule is not retroactive. It will not affect agreements entered into prior to the effective date of the rule. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR part 11 must be exhausted.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effect of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Agency generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million, or more, in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' It is the determination of the Agency that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.,* neither an Environmental Assessment nor an Environmental Impact Statement is required.

Federalism—Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the undersigned has determined and certified by signature of this document that this rule change will not have a significant impact on a substantial number of small entities. This rule does not impose any significant new requirements on Agency applicants and borrowers, and the regulatory changes affect only Agency determination of program benefits for guarantees of loans made to individuals. Changes impacting lenders will impact all approved lenders doing business under this program. There is no distinction made between small and large lenders.

Intergovernmental Consultation

This program/activity is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. (See the Notice related to 7 CFR part 3015, subpart V, at 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985).

Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 imposes requirements on Rural Development in the development of regulatory policies

that have tribal implications or preempt tribal laws. Rural Development has determined that the proposed rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian tribes. Thus, this final rule is not subject to the requirements of Executive Order 13175. If a tribe determines that this rule has implications of which Rural Development is not aware and would like to engage in consultation with Rural Development on this rule, please contact Rural Development's Native American Coordinator at (720) 544–2911 or *AIAN@wdc.usda.gov.*

Programs Affected

This program is listed in the Catalog of Federal Domestic Assistance under Number 10.410, Very Low to Moderate Income Housing Loans (Section 502 Rural Housing Loans).

Paperwork Reduction Act

The information collection and record keeping requirements contained in this regulation have been approved by OMB in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The assigned OMB control number is 0575–0078.

E-Government Act Compliance

The Rural Housing Service is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Non-Discrimination Statement

The USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Assistant Secretary for Civil Rights, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., STOP 9410, Washington, DC 20250–9410, or call toll-free at (800) 632–9992 (English) or (800) 877–8339 (TDD) or (866) 377–8642 (English Federal-relay) or (800) 845–6136 (Spanish Federal-relay). USDA is an equal opportunity provider and employer.

Background

Public Law (Pub. L.) 111–212, ''Supplemental Appropriations Act, 2010,'' enacted on July 29, 2010, amended Section 502(h)(8) of the Housing Act of 1949 (42 U.S.C. 1472 (h)(8)), as follows: ''(8) Fees.—Notwithstanding paragraph (14)(D), with respect to a guaranteed loan issued or modified under this subsection, the Secretary may collect from the lender—(A) at the time of guarantee or modification, a fee not to exceed 3.5 percent of the principal obligation of the loan; and (B) an annual fee not to exceed 0.5 percent of the outstanding balance of the loan for the life of the loan.'' As a result of Public Law 111–212, a proposed rule was published in the **Federal Register** on October 28, 2011 (76 FR 66860).

The annual fee provision is applicable to purchase and refinance loan transactions. The primary intent of the annual fee is to make the SFHGLP subsidy neutral, thus eliminating the need for taxpayer funding of the program at its current loan level from Congress. The annual fee will be charged in addition to the up-front guarantee fee. For fiscal year (FY) 2012, an annual fee of 0.3 percent is required for all loan obligations. Future changes to the annual fee will be published in Exhibit K, of RD Instruction 440.1 (available in any RD office).

The annual fee for loans guaranteed under the SFHGLP will be calculated based on the average annual scheduled unpaid principal balance of the loan for the life of the loan. The annual fee will be calculated when the loan is closed and every 12 months thereafter until the loan is paid in full or no longer outstanding and the guarantee canceled or expired.

Accrual of the annual fee will begin on the first of the month, following the month in which the loan closed. For example, if the loan closes on October 25, 2012, accrual of the annual fee will begin on November 1, 2012. An RHS ''Guarantee Fee and Annual Fee Calculator'' and a Guarantee Fee (GAF) Implementation Guide is available on the USDA LINC Training and Resource Library Web site as follows: *https://usdalinc.sc.egov.usda.gov/USDALincTrainingResourceLib.do.* Additional guidance will also be posted to the above Web site at it becomes available.

The annual fee will accrue on a prorated basis for each month the loan is outstanding, but will only be billed to the lender and collected by the Agency on an annual basis or at such time the loan is paid in full or otherwise terminated. Generally, the servicing lender of record will be billed retroactively for a 12 month period on the 3rd business day following the 15th calendar day in the anniversary month in which the loan closed, and will be due to RHS on the 1st day of the following month. Accrual of the annual fee will begin on the 1st day of the month following the month in which the loan was closed (this is a change from the proposed rule and is explained further below). For example, if the loan closed on October 25, 2012, the initial bill will be generated by RHS on October 18th 2013 (3 business days following October 15, 2013); and the initial annual fee payment will be due to RHS on November 1, 2013. For subsequent years that the loan remains outstanding, the annual fee will be due on November 1st of that year (i.e. November 1, 2014, November 1, 2015, etc.)

RHS may impose a late charge of 4% if the annual fee is not paid to RHS by the 15th day of the month in which it is due. For example, if the annual fee is due to RHS on November 1, 2013, a late charge will apply if the annual fee is not paid by November 15, 2013. Additional late charges will be assessed each month that the annual fee is past due. Future changes to the late charge will be published in Exhibit K of RD Instruction 440.1 (available in any RD office). Due to the new process and system changes associated with the annual fee, RHS will not impose late charges on the initial amount of annual fees due for loans obligated during FY 2012.

RHS will charge the annual fee to the lender, and the lender may pass this fee on to the borrower. The lender may collect the fee from the borrower on a monthly basis by collecting 1/12th of the annual fee amount in addition to the borrower's regular monthly mortgage payment of principal, interest, taxes and insurance (PITI). When a lender chooses to collect the annual fee from the borrower on a monthly basis, the 1/12th collection amount must be included when calculating the PITI ratio. The lender remains responsible for the timely collection and payment to the Agency of the annual fee.

Discussion of Public Comments Received on the October 28, 2011 Proposed Rule: The Agency received comments from five different sources in response to the Proposed Rule. These comments came from advocacy groups,

home mortgage companies, community bankers and potential home loan applicants.

Three commenters expressed support and appreciation of the importance of the SFHGLP to its targeted population of low-to-moderate income rural families. However, the same commenters and one additional commenter were concerned that the higher payments attributable to the new annual fee will negatively impact borrower affordability and potentially make eligible borrowers less willing to take out an SFHGLP loan, even when these loans would otherwise be the best product for them. For example, one commenter stated the intent of the program is to help people get into homes, not to make it more expensive.

The Agency acknowledges that the borrower's monthly payment may increase as a result of the annual fee. Based on the Agency's average loan amount of $135,000 at a 3.75 percent interest rate, the borrowers' payment will increase on average by $20 per month over the life of the loan. However, in order for the Agency to continue offering the SFHGLP at no cost to the taxpayers, both the up-front and annual fees are necessary. If the Agency were to seek taxpayer funding of the program from Congress, it is highly likely that funding levels will decrease dramatically because Congress has not authorized budget authority for the SFHGLP since FY 2010. Without budget authority and the fees, the Agency estimates that there would be approximately 182,000 fewer loans guaranteed through the SFHGLP.

Four commenters expressed understanding of the budgetary motivation for RHS shifting to an up-front and annual premium structure. However, only one of the four commenters was in favor of the Agency's proposal and believes it will be easier for the borrower to handle since the up-front guarantee fee to purchase a home will be less (lowered to 2% from 3.5%). The commenters that were not in favor of the annual fee believe budget neutrality can be achieved with a single up-front premium. For example, one commenter indicated subsidy neutrality could be achieved with a 4 percent up-front fee; and, another commenter provided an example that showed the average borrower will see a $19.25 increase in their monthly house payment because of the annual fee. The commenters that were not in favor of the annual fee, expressed concerns that the split premium may drive up the cost of home ownership for low- and moderate-income rural families, and therefore believe a higher single up-front fee structure is more beneficial to borrowers.

The Agency does not disagree with the commenters that subsidy neutrality could be achieved with a higher up-front single fee structure. However, as an initial matter, statutory authority exists for both fees, and there are limits for each fee that the Agency must manage. In addition, the Agency determines the up-front guarantee fee based in part on the program's subsidy score, which constantly changes. The up-front guarantee fee could potentially change at any time during a fiscal year, and these unexpected changes would cause confusion with a single fee structure. Separate fee structures will allow the Agency better flexibility to manage the fees and the availability of commitment authority for the program.

One commenter expressed concerns that refinance borrowers who took out SFHGLP loans with the expectation that they would only be responsible for payment of a single upfront guarantee fee will now be subject to additional costs over the life of their loan. The commenter was concerned that refinance borrowers may ultimately see their payments actually increase despite the lower interest rate.

The Agency acknowledges that the refinance option might not be advantageous for all SFHGLP borrowers depending on their financial circumstances. However, the Agency does not impose a mandatory refinance requirement for SFHGLP borrowers. Therefore, if refinancing with an SFHGLP does not provide positive benefits for the borrowers, the Agency believes the borrower will continue with their current loan or find another funding source to refinance their SFHGLP loan. If the commenter was concerned that a borrower who already refinanced a loan before the implementation of the annual fee would now see increases in current loan payments due to the annual fee, the Agency repeats that this rule is not retroactive.

All five commenters expressed strong disagreement with the Agency's proposal to make the annual fee mandatory for the ''life of the loan.'' The commenters were concerned that the ''life of the loan'' provision will impose unnecessary burden on borrowers as the annual fee will continue even as the loan balance declines. Further, the commenters pointed out the ''life of the loan'' provision is significantly different from that of the Federal Housing Administration (FHA) insured loans, and conventional loan products that require mortgage insurance. The commenters strongly urged the Agency to reconsider the ''life of the loan'' provision by eliminating the annual fee when a 78 percent loan-to-value (LTV) is achieved, as FHA does with monthly mortgage insurance premiums (MIPs).

Since several commenters compared RHS to FHA, the Agency conducted an analysis comparing RHS and FHA fee structures. The results, when comparing an RHS purchase loan that requires an annual fee for the ''life of the loan'' to an FHA 203b purchase loan that requires monthly MIP until 78 percent LTV is achieved, overall housing expenses are significantly less for RHS borrowers. This is due to the fact that the Agency's current annual fee (0.3 percent FY 2012) is much less than the monthly MIP for an FHA loan (115 basis points (bps) as of April 18, 2011 and subject to change). Even, if RHS were to increase the annual fee to the maximum allowed (0.5 percent), it would still be significantly less than the current FHA MIP.

The chart below (Chart 1—RHS/FHA Comparison) compares a RHS purchase loan to a FHA 203b purchase loan, and assumes the following: A Purchase Price of $135,000; a Term of 30 Years; an Interest Rate of 3.75 percent; and, as applicable, that the Up-front Guarantee Fee or Up Front Mortgage Insurance Premium (UFMIP) is financed into the loan. In this scenario, the SFHGLP borrower will pay $7,352.87 in annual fees over the life of the loan, while the FHA borrower will pay $12,655.45 in MIP until the LTV reaching 78 percent, which equates to approximately 10 years and 3 months.

CHART 1—RHS PURCHASE LOAN/FHA 203b PURCHASE LOAN COMPARISONS

Loan type	RHS SFHGLP	FHA 203b loan
Purchase Price	$135,000	$135,000.
Interest Rate	3.75%	3.75%.
Loan Term	30 Years	30 Years.
Down-payment Required	$0	$4,725.

CHART 1—RHS PURCHASE LOAN/FHA 203b PURCHASE LOAN COMPARISONS—Continued

Loan type	RHS SFHGLP	FHA 203b loan
Base Loan Amount	$135,000	$130,275.
Up-front Guarantee fee	$2,755.10	N/A.
UFMIP	N/A	$1,302.75.
Total Loan Amount	$137,755.00	$131,577.75.
Total Monthly Payment (includes annual fee or MIP as applicable).	$672.12 (P&I $637.97 + monthly annual fee $34.15).	$734.19 (P&I $609.35 + MIP $124.84).
Annual Fee Life of Loan	$7,352.87	N/A.
Monthly MIP—Until LTV Reaches 78%	N/A	$12,655.45.

In addition to the illustration in Chart 1 which compares RHS and FHA fee structures, the Agency's analysis of the SFHGLP Portfolio reveals that by 10 years and 3 months (when the LTV reaches 78 percent), approximately 55 percent of SFHGLP borrowers will have already paid their loan in full and/or the guarantee will have been terminated. Using the example in Chart 1, by the time most RHS borrowers pay their loans off (10 years and 3 months), the Agency calculates that they would have paid $4,101.05 in annual fees compared to an FHA insured borrower who would have paid $12,655.45 in mortgage insurance premiums.

Since all of the commenters strongly opposed the Agency's proposal to collect the annual fee for the life of the loan, the Agency conducted additional analysis to determine how subsidy neutrality could be achieved if the annual fee were eliminated once 78 percent LTV is achieved. The Agency's analysis revealed that both a higher up-front fee and higher annual fee would be required. Therefore, allowing the borrowers to pay the annual fee over the life of the loan keeps both the up-front fee and annual fee percentage lower for SFHGLP customers, making the cost of homeownership more affordable. Additionally, borrowers that pay off their loans prior to maturity will pay less in annual fees. As previously indicated, the majority of the SFHGLP borrowers pay their loans off by 10 years and 3 month, and using the loan based on the example in Chart 1, the average SFHGLP borrower will pay $4,101.05 in annual fees.

The Agency acknowledges that the ''life of the loan'' provision of the annual fee is not an industry standard, and that it creates unique requirements for vendors and servicers as it relates to system enhancements. Therefore, the Agency will continue to study its subsidy model to determine if the effective period of the annual fee can be modified in the future. However, any future changes to the effective period of the annual fee will not be retroactive.

Two commenters expressed concerns that the annual fee billing process will result in higher closing costs for the borrower. The commenters explained that since RHS proposes to collect the initial annual fee 12 months from the date of closing rather than 12 months from the first payment due date as reflected on the promissory note, the lender will have to collect additional funds from the borrower at closing to ensure sufficient funds are available to pay the annual fee when it is due. Therefore, the commenters suggested the Agency reconsider the billing method.

The Agency agrees with the comment. Instead of initiating accrual of the annual fee on the date of loan closing as proposed, the accrual of the annual fee will begin on the 1st day of the month following the month in which the loan is closed. For example, if a loan closes on October 25, 2012, accrual of the annual fee will begin on November 1, 2012, and the initial annual fee payment will be due to RHS on November 1, 2013.

As previously stated, the lender may collect 1/12th of the annual fee at loan closing and 1/12th per month starting with the first payment due date. This method results in the collection of 12 annual fee payments and will ensure sufficient funds are available when the annual fee comes due. Furthermore, the Agency realizes that a 1/12th collection of the annual fee at loan closing will increase closing costs; however, based on the sample loan amount illustrated in chart 1, the closing costs will increase by a nominal amount of $34 for a borrower purchasing a $135,000 home.

One commenter expressed concerns that the Agency has not provided sufficient administrative guidance on this policy change, therefore inhibiting the industry from revising its systems and applicable disclosure documents accordingly. For example, the commenter wanted to know if the annual fee is considered mortgage insurance. The commenter was concerned that if the fee were considered mortgage insurance, escrowing of the fee would violate Real Estate Settlement Procedures Act (RESPA).

The Agency disclosed in the proposed rule that RHS will work closely with lenders and service bureaus on necessary system enhancements. Since issuance of the proposed rule, the Agency has worked with several lenders and service bureaus to ensure their systems are capable of handling the annual fee. As discussed in the background section of this rule, the Agency has made available a Guaranteed Fee Implementation Guide and a ''Guarantee and Annual Fee Calculator,'' and both can be found on the USDALinc Training and Resource Library Web site: *https://usdalinc.sc.egov.usda.gov/USDALincTrainingResourceLib.do*.

Additional guidance will also be posted to the above Web site as it becomes available.

While RHS does not regulate RESPA ''escrow account'' under RESPA is broadly defined at 24 CFR 3500.17(b) as ''any account that a servicer establishes or controls on behalf of a borrower to pay taxes, insurance premiums (including flood insurance), or other charges with respect to a federally related mortgage loan, including charges that the borrower and servicer have voluntarily agreed that the servicer should collect and pay.''

Therefore, the Agency does not believe that escrowing the annual fee is a violation of RESPA.

Two commenters wanted to know if a study has been conducted on the impact that the annual fee will have on future loan volume. The commenters believed that small lenders will drop out of the program due to the complicated nature of implementing and administering an annual fee and that only large lenders will adopt the change. The Agency realizes that any time a change is made, there is a potential for lenders both large and small to drop out of the program. Approximately 80 percent of the SFHGLP loans are serviced by larger lenders. Small community banks are actively involved with the SFHGLP, but

typically do not keep such loans on their books for 30 years. Most small community banks originate the loans and immediately sell them to larger lenders/servicers. The Agency is implementing the annual fee to eliminate the need of taxpayer funding of the SFHGLP. Without the annual fee, it is likely the availability of SFHGLP guarantees would be reduced dramatically (approximately 182,000 fewer loans would be guaranteed by SFHGLP), thereby adversely affecting potential homeowners in rural America.

Three commenters expressed concerns that the Agency was not following proper rulemaking requirements; two of the three believe the Regulatory Flexibility Act was not being met because the rule could have significant impact on small entities; and one of the three did not agree with the OMB designation of non-significant.

The OMB, not RHS, has authority for determining whether a regulation is significant. As mentioned, within that authority, OMB has found this final rule to be non-significant.

As stated in the background section of this rule, the Agency is implementing the annual fee as a result of Public Law 111–212, ''Supplemental Appropriations Act, 2010,'' enacted on July 29, 2010, which amended Section 502(h)(8) of the Housing Act of 1949 (42 U.S.C. 1472(h)(8)) to read as follows: ''(8) Fees.—Notwithstanding paragraph (14)(D), with respect to a guaranteed loan issued or modified under this subsection, the Secretary may collect from the lender—(A) at the time of guarantee or modification, a fee not to exceed 3.5 percent of the principal obligation of the loan; and (B) an annual fee not to exceed 0.5 percent of the outstanding balance of the loan for the life of the loan.'' Therefore, the authorizing statute for the SFHGLP specifically allows the Agency to implement an annual fee up to 0.5 percent of the outstanding balance of the loan for the life of the loan.

The Agency has had legal authority to implement an annual fee since the date of the statute (July 29, 2010), but chose not to implement the annual fee until October 1, 2011, to allow lenders time to make necessary technical adjustments to their internal systems. The purpose of the proposed rule was to seek comments from the public to better assist the Agency in writing the technical and administrative guidance associated with the annual fee.

The Agency is amending 7 CFR 1980.302(a) to include a definition of the annual fee. The regulations at 7 CFR 1980.310(c) also are amended to clarify that escrow funds using loan funds may be used to pay the annual fee. Lastly, the Agency will amend the eligibility regulations at 7 CFR 1980.345(c)(1) to add the annual fee amount in determinations of repayment ability.

List of Subjects in 7 CFR Part 1980

Home improvement, Loan programs—Housing and community development, Mortgage insurance, Mortgages, Rural areas.

For the reason stated in the preamble, Chapter XVIII, Title 7 of the Code of Federal Regulations is amended as follows:

PART 1980—RURAL HOUSING LOANS

■ 1. The authority citation for part 1980 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989. Subpart E also issued under 7 U.S.C. 1932(a).

Subpart D—Rural Housing Loans

■ 2. Section 1980.302(a) is amended by adding a definition of *Annual fee* in alphabetical order to read as follows:

§ 1980.302 Definitions and abbreviations.

(a) * * *

Annual fee. A periodic amount that is based on the average annual scheduled unpaid principal balance of the loan and is paid by the servicing lender to Rural Development on an annual basis for issuance of a Loan Note Guarantee. The fee may be passed on to the borrower and included in the monthly mortgage payment of a borrower and is considered when calculating applicant repayment ratios.

* * * * *

■ 3. Section 1980.310(c) is revised to read as follows:

§ 1980.310 Loan purposes.

* * * * *

(c) The cost of establishing an escrow or reserve account for payment of real estate taxes, insurance premiums and/or annual fees when they come due.

* * * * *

■ 4. Section 1980.323 is revised to read as follows:

§ 1980.323 Guarantee loan fees.

The Lender will pay an up-front guarantee fee and an annual fee. The amount of the up-front guarantee fee and annual fee will be calculated based on the appropriate figure identified in exhibit K of subpart A of part 1810 of this chapter (RD Instruction 440.1, available at *www.regulations.gov* or any Rural Development office). The nonrefundable up-front guarantee fee and annual fee may be passed on to the borrower.

(a) *Up-front guarantee fee.* The amount of the up-front guarantee fee is determined by multiplying the appropriate figure in Exhibit K of subpart A of part 1810 of this chapter, times 90 percent of the principal amount of the guaranteed loan amount. The Agency will collect the up-front guarantee fee from the lender prior to issuance of a Loan Note Guarantee.

(b) *Annual fee.* The annual fee will be based on the average annual scheduled unpaid principal balance of the loan using the actual loan amount. The fee percentage can be found in Exhibit K of subpart A of part 1810 of this chapter. The annual fee will be billed to the servicing lender of record on an annual basis for the previous 12 months. The Agency may assess a late charge to the lender if the annual fee is not paid by the due date, and the late charge may be passed on to the borrower.

■ 5. Section 1980.345(c)(1) introductory text is revised to read as follows:

§ 1980.345 Applicant eligibility requirements for a guaranteed loan.

* * * * *

(c) * * *

(1) Monthly obligations consists of the principal, interest, taxes, and insurance (PITI) plus the monthly annual fee amount for the proposed loan (less any interest assistance under this program or any other assistance from a State or County sponsored program when such payments are made directly to the Lender on the applicant's behalf), homeowner and other assessments, and the applicant's long term obligations. Long term obligations include those obligations such as alimony, child support and other obligations with a remaining repayment period of more than 6 months and other shorter term debts that are considered to have a significant impact on repayment ability.

* * * * *

Dated: June 8, 2012.

Dallas Tonsager,

Under Secretary, Rural Development.

Dated: June 1, 2012.

Michael T. Scuse,

Acting Under Secretary, Farm and Foreign Agricultural Services.

[FR Doc. 2012–16864 Filed 7–10–12; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 117

[Docket No. FAA–2009–1093; Amdt. No. 117–1A]

RIN 2120–AJ58

Flightcrew Member Duty and Rest Requirements; OMB Approval of Information Collection

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; OMB approval of information collection.

SUMMARY: This document notifies the public of the Office of Management and Budget's (OMB's) approval of the information collection requirement contained in the FAA's final rule, ''Flightcrew Member Duty and Rest Requirements,'' which was published on January 4, 2012.

DATES: The rule published January 4, 2012 (77 FR 330), including the information collection requirement in §§ 117.7, 117.9, 117.11, 117.19, and 117.29, will become effective on January 4, 2014. This document announces that OMB approval was received on May 4, 2012.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this document, contact Dale E. Roberts, Air Transportation Division (AFS–200), Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–5749; email: *dale.e.roberts@faa.gov.* For legal questions concerning this document, contact Rebecca MacPherson, Office of the Chief Counsel, Regulations Division (AGC–200), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3073; email: *rebecca.macpherson@faa.gov.*

SUPPLEMENTARY INFORMATION: On January 4, 2012, the final rule, ''Flightcrew Member Duty and Rest Requirements'' was published in the **Federal Register** (77 FR 330). In that rule, the FAA amended the FAA's existing flight, duty and rest regulations applicable to certain certificate holders and their flightcrew members operating under the domestic, flag, and supplemental operations rules.

The paperwork burden is comprised of five areas: fatigue risk management system, § 117.7; fatigue training, § 117.9; flight time limitation, § 117.11; flight duty period extension reporting, § 117.19; and emergency and government sponsored operations, § 117.29. The information collection requirements had not been approved by OMB at the time of publication.

In accordance with the Paperwork Reduction Act, the FAA submitted a copy of the new information collection requirements to OMB for its review. OMB approved the collection on May 4, 2012, and assigned the information collection OMB Control Number 2120–0751, which expires on May 31, 2015.

This document is being published to inform affected parties of the approval, and to announce that as of January 4, 2014, affected parties are required to comply with the new information collection requirements in §§ 117.7, 117.9, 117.11, 117.19, and 117.29.

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

Brenda D. Courtney,

Acting Director, Office of Rulemaking.

[FR Doc. 2012–16021 Filed 7–10–12; 8:45 am]

BILLING CODE 4910–13–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 232

Republic of Tunisia Loan Guarantees Issued Under the Department of State, Foreign Operations, and Related Programs Appropriations Act of 2012

AGENCY: Agency for International Development (USAID).

ACTION: Final rule.

SUMMARY: This regulation prescribes the procedures and standard terms and conditions applicable to loan guarantees issued for the benefit of the Republic of Tunisia pursuant to the State, Foreign Operations, and Related Programs Appropriations Act of 2012.

DATES: *Effective Date:* July 11, 2012.

FOR FURTHER INFORMATION CONTACT: Haven Cruz-Hubbard, Office of General Counsel, U.S. Agency for International Development, Washington, DC 20523–6601; tel. 202–712–4774, fax 202–216–3055.

SUPPLEMENTARY INFORMATION: Pursuant to the State, Foreign Operations, and Related Programs Appropriations Act of 2012 (Pub. L. 112–74), the United States of America, acting through the U.S. Agency for International Development, may issue certain loan guarantees applicable to sums borrowed by Banque Centrale de Tunisie, acting on behalf of the Republic of Tunisia (the ''Borrower''). The loan guarantees shall insure the Borrower's repayment of 100% of principal and interest due under such loans. The full faith and credit of the United States of America is pledged for the full payment and performance of such guarantee obligations.

This rulemaking document is not subject to rulemaking under 5 U.S.C. 553 or to regulatory review under Executive Order 12866 because it involves a foreign affairs function of the United States. The provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) do not apply.

List of Subjects in 22 CFR Part 232

Foreign relations, Foreign aid, Loan programs—foreign relations.

Authority and Issuance

■ Accordingly, a new Part 232 is added to Title 22, Chapter II, of the Code of Federal Regulations, as follows:

PART 232—REPUBLIC OF TUNISIA LOAN GUARANTEES ISSUED UNDER THE DEPARTMENT OF STATE, FOREIGN OPERATIONS, AND RELATED PROGRAMS APPROPRIATIONS ACT, 2012, DIV. I, PUB. L. 112–74—STANDARD TERMS AND CONDITIONS

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Appendix A to Part 232—Application for Compensation

Authority: Title III of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012, Division I, Pub. L. 112–74.

§ 232.01 Purpose.

The purpose of the regulations in this part is to prescribe the procedures and standard terms and conditions applicable to loan guarantees issued for the benefit of the Borrower, pursuant to Title Ill of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012, Division I, Public Law 112–74. The loan guarantees will be issued as provided herein pursuant to the Loan Guarantee Agreement, dated June 8, 2012, between

the Republic of Tunisia and the United States of America (the ''Loan Guarantee Agreement'') and will apply to sums borrowed during a period beginning on the date that the Loan Guarantee Agreement enters into force and ending one year after such date, in such amount and on such terms as may be determined by USAID, such determination to be conclusive. The loan guarantees shall insure the Borrower's repayment of 100% of principal and interest due under such loans. The full faith and credit of the United States of America is pledged for the full payment and performance of such guarantee obligations.

§ 232.02 Definitions.

Wherever used in the standard terms and conditions set out in this part:

Applicant means a Noteholder who files an Application for Compensation with USAID, either directly or through the Fiscal Agent acting on behalf of a Noteholder.

Application for Compensation means an executed application in the form of Appendix A to this part which a Noteholder, or the Fiscal Agent on behalf of a Noteholder, files with USAID pursuant to § 232.08.

Borrower means Banque Centrale de Tunisie, acting on behalf of the Republic of Tunisia.

Business Day means any day other than a day on which banks in New York, NY are closed or authorized to be closed or a day which is observed as a federal holiday in Washington, DC, by the United States Government.

Date of Application means the date on which an Application for Compensation is actually received by USAID pursuant to § 232.15.

Defaulted Payment means, as of any date and in respect of any Eligible Note, any Interest Amount and/or Principal Amount not paid when due.

Eligible Note(s) means [a] Note[s] meeting the eligibility criteria set out in § 232.04.

Fiscal Agency Agreement means the agreement among USAID, the Borrower and the Fiscal Agent pursuant to which the Fiscal Agent agrees to provide fiscal agency services in respect of the Note[s], a copy of which Fiscal Agency Agreement shall be made available to Noteholders upon request to the Fiscal Agent.

Fiscal Agent means the bank or trust company or its duly appointed successor under the Fiscal Agency Agreement which has been appointed by the Borrower with the consent of USAID to perform certain fiscal agency services for specified Eligible Note[s] pursuant to the terms of the Fiscal Agency Agreement.

Further Guaranteed Payments means the amount of any loss suffered by a Noteholder by reason of the Borrower's failure to comply on a timely basis with any obligation it may have under an Eligible Note to indemnify and hold harmless a Noteholder from taxes or governmental charges or any expense arising out of taxes or any other governmental charges relating to the Eligible Note in the country of the Borrower.

Guarantee means the guarantee of USAID pursuant to this part 232 and the State, Foreign Operations, and Related Programs Appropriations Act of 2012 (Pub. L. 112–74).

Guarantee Payment Date means a Business Day not more than three (3) Business Days after the related Date of Application.

Interest Amount means for any Eligible Note the amount of interest accrued on the Principal Amount of such Eligible Note at the applicable Interest Rate.

Interest Rate means the interest rate borne by an Eligible Note.

Loss of Investment means, in respect of any Eligible Note, an amount in Dollars equal to the total of the:

(1) Defaulted Payment unpaid as of the Date of Application,

(2) Further Guaranteed Payments unpaid as of the Date of Application, and

(3) Interest accrued and unpaid at the Interest Rate(s) specified in the Eligible Note(s) on the Defaulted Payment and Further Guaranteed Payments, in each case from the date of default with respect to such payment to and including the date on which full payment thereof is made to the Noteholder.

Notes[s] means any debt securities issued by the Borrower.

Noteholder means the owner of an Eligible Note who is registered as such on the Note Register of Eligible Notes required to be maintained by the Fiscal Agent.

Person means any legal person, including any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof.

Principal Amount means the principal amount of any Eligible Notes issued by the Borrower. For purposes of determining the principal amount of any Eligible Notes issued by the Borrower, the principal amount of each Eligible Note shall be the stated principal amount thereof.

USAID means the United States Agency for International Development or its successor.

§ 232.03 The Guarantee.

Subject to the terms and conditions set out in this part, the United States of America, acting through USAID, guarantees to Noteholders the Borrower's repayment of 100 percent of principal and interest due on Eligible Notes. Under this Guarantee, USAID agrees to pay to any Noteholder compensation in Dollars equal to such Noteholder's Loss of Investment under its Eligible Note; provided, however, that no such payment shall be made to any Noteholder for any such loss arising out of fraud or misrepresentation for which such Noteholder is responsible or of which it had knowledge at the time it became such Noteholder. This Guarantee shall apply to each Eligible Note registered on the Note Register required to be maintained by the Fiscal Agent.

§ 232.04 Guarantee eligibility.

(a) Eligible Notes only are guaranteed hereunder. Notes in order to achieve Eligible Note status:

(1) Must be signed on behalf of the Borrower, manually or in facsimile, by a duly authorized representative of the Borrower;

(2) Must contain a certificate of authentication manually executed by a Fiscal Agent whose appointment by the Borrower is consented to by USAID in the Fiscal Agency Agreement; and

(3) Shall be approved and authenticated by USAID by either:

(i) The affixing by USAID on the Notes of a guarantee legend incorporating these Standard Terms and Conditions signed on behalf of USAID by either a manual signature or a facsimile signature of an authorized representative of USAID or

(ii) The delivery by USAID to the Fiscal Agent of a guarantee certificate incorporating these Standard Terms and Conditions signed on behalf of USAID by either a manual signature or a facsimile signature of an authorized representative of USAID.

(b) The authorized USAID representatives for purposes of the regulations in this part whose signature(s) shall be binding on USAID shall include the USAID Chief and Deputy Chief Financial Officer, Assistant Administrator and Deputy, Bureau for Economic Growth, Education, and Environment, Director and Deputy Director, Office of Development Credit, and such other individual(s) designated in a certificate executed by an authorized USAID

Representative and delivered to the Fiscal Agent. The certificate of authentication of the Fiscal Agent issued pursuant to the Fiscal Agency Agreement shall, when manually executed by the Fiscal Agent, be conclusive evidence binding on USAID that an Eligible Note has been duly executed on behalf of the Borrower and delivered.

§ 232.05 Non-impairment of the Guarantee.

The full faith and credit of the United States of America is pledged to the performance of this Guarantee. The Guarantee shall be unconditional, and shall not be affected or impaired by:

(a) Any defect in the authorization, execution, delivery or enforceability of any agreement or other document executed by a Noteholder, USAID, the Fiscal Agent or the Borrower in connection with the transactions contemplated by this Guarantee or

(b) The suspension or termination of the program pursuant to which USAID is authorized to guarantee the Eligible Notes. This non-impairment of the guarantee provision shall not, however, be operative with respect to any loss arising out of fraud or misrepresentation for which the claiming Noteholder is responsible or of which it had knowledge at the time it became a Noteholder.

§ 232.06 Transferability of Guarantee; Note Register.

A Noteholder may assign, transfer or pledge an Eligible Note to any Person. Any such assignment, transfer or pledge shall be effective on the date that the name of the new Noteholder is entered on the Note Register required to be maintained by the Fiscal Agent pursuant to the Fiscal Agency Agreement. USAID shall be entitled to treat the Persons in whose names the Eligible Notes are registered as the owners thereof for all purposes of this Guarantee and USAID shall not be affected by notice to the contrary.

§ 232.07 Fiscal agent obligations.

Failure of the Fiscal Agent to perform any of its obligations pursuant to the Fiscal Agency Agreement shall not impair any Noteholder's rights under this Guarantee, but may be the subject of action for damages against the Fiscal Agent by USAID as a result of such failure or neglect. A Noteholder may appoint the Fiscal Agent to make demand for payment on its behalf under this Guarantee.

§ 232.08 Event of Default; Application for Compensation; payment.

At any time after an Event of Default, as this term is defined in an Eligible Note, any Noteholder hereunder, or the Fiscal Agent on behalf of a Noteholder hereunder, may file with USAID an Application for Compensation in the form provided in Appendix A to this part. USAID shall pay or cause to be paid to any such Applicant any compensation specified in such Application for Compensation that is due to the Applicant pursuant to the Guarantee as a Loss of Investment not later than the Guarantee Payment Date. In the event that USAID receives any other notice of an Event of Default, USAID may pay any compensation that is due to any Noteholder pursuant to a Guarantee, whether or not such Noteholder has filed with USAID an Application for Compensation in respect of such amount.

§ 232.09 No Acceleration of Eligible Notes.

Eligible Notes shall not be subject to acceleration, in whole or in part, by USAID, the Noteholder or any other party. USAID shall not have the right to pay any amounts in respect of the Eligible Notes other than in accordance with the original payment terms of such Eligible Notes.

§ 232.10 Payment to USAID of excess amounts received by a Noteholder.

If a Noteholder shall, as a result of USAID paying compensation under this Guarantee, receive an excess payment, it shall refund the excess to USAID.

§ 232.11 Subrogation of USAID.

In the event of payment by USAID to a Noteholder under this Guarantee, USAID shall be subrogated to the extent of such payment to all of the rights of such Noteholder against the Borrower under the related Note.

§ 232.12 Prosecution of claims.

After payment by USAID to an Applicant hereunder, USAID shall have exclusive power to prosecute all claims related to rights to receive payments under the Eligible Notes to which it is thereby subrogated. If a Noteholder continues to have an interest in the outstanding Eligible Notes, such a Noteholder and USAID shall consult with each other with respect to their respective interests in such Eligible Notes and the manner of and responsibility for prosecuting claims.

§ 232.13 Change in agreements.

No Noteholder will consent to any change or waiver of any provision of any document contemplated by this Guarantee without the prior written consent of USAID.

§ 232.14 Arbitration.

Any controversy or claim between USAID and any Noteholder arising out of this Guarantee shall be settled by arbitration to be held in Washington, DC in accordance with the then prevailing rules of the American Arbitration Association, and judgment on the award rendered by the arbitrators may be entered in any court of competent jurisdiction.

§ 232.15 Notice.

Any communication to USAID pursuant to this Guarantee shall be in writing in the English language, shall refer to the Republic of Tunisia Loan Guarantee Number inscribed on the Eligible Note and shall be complete on the day it shall be actually received by USAID at the Office of Development Credit, Bureau for Economic Growth, Agriculture and Trade, United States Agency for International Development, Washington, DC 20523–0030. Other addresses may be substituted for the above upon the giving of notice of such substitution to each Noteholder by first class mail at the address set forth in the Note Register.

§ 232.16 Governing law.

This Guarantee shall be governed by and construed in accordance with the laws of the United States of America governing contracts and commercial transactions of the United States Government.

Appendix A to Part 232—Application for Compensation

United States Agency for International Development Washington, DC 20523

Ref: Guarantee dated as of _____, 20____:

Gentlemen: You are hereby advised that payment of $_____ (consisting of $_____ of principal, $_____ of interest and $_____ in Further Guaranteed Payments, as defined in § 232.02(1) of the Standard Terms and Conditions of the above-mentioned Guarantee) was due on 20____, on $_____ Principal Amount of Notes issued by Banque Centrale de Tunisie, acting on behalf of the Republic of Tunisia (the ''Borrower'') held by the undersigned. Of such amount $_____ was not received on such date and has not been received by the undersigned at the date hereof. In accordance with the terms and provisions of the above-mentioned Guarantee, the undersigned hereby applies, under § 232.08 of said Guarantee, for payment of $_____, representing $_____ the Principal Amount of the presently outstanding Note(s) of the Borrower held by the undersigned that was due and payable on _____ and that remains unpaid, and $_____, the Interest Amount on such Note(s) that was due and payable by the Borrower on _____ and that remains unpaid, and $_____ in Further

Guaranteed Payments,[1] plus accrued and unpaid interest thereon from the date of default with respect to such payments to and including the date payment in full is made by you pursuant to said Guarantee, at the rate of ____% per annum, being the rate for such interest accrual specified in such Note. Such payment is to be made at [state payment instructions of Noteholder].

All capitalized terms herein that are not otherwise defined shall have the meanings assigned to such terms in the Standard Terms and Conditions of the above-mentioned Guarantee.

[Name of Applicant]

By:

Name:

Title:

Dated:

Haven Cruz-Hubbard,

Attorney Advisor, Office of the General Counsel, U.S. Agency for International Development.

[FR Doc. 2012–16638 Filed 7–10–12; 8:45 am]

BILLING CODE M

[1] In the event the Application for Compensation relates to Further Guaranteed Payments, such Application must also contain a statement of the nature and circumstances of the related loss.

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–119–FOR; OSM–2012–0013]

West Virginia Regulatory Program

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

ACTION: Interim final rule with request for comments.

SUMMARY: We are approving, on an interim basis, an amendment to the West Virginia regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). West Virginia revised its Surface Coal Mining and Reclamation Act (WVSCMRA) to effect changes concerning the special reclamation tax and apportionment of this tax. This amendment is intended to increase and extend the special reclamation tax. Moreover, a specific portion of this tax will be allocated to the Special Reclamation Water Trust Fund for the purpose of designing, constructing and maintaining water treatment systems on forfeited mine sites. We are approving the reinstatement of the special reclamation tax, its increase to twenty-seven and nine-tenths cents per ton of clean coal mined, as well fifteen cents of the amount collected allocated for deposit to the Special Reclamation Water Trust Fund.

DATES: *Effective Date:* This rule is effective July 11, 2012. *Comment Date:* We will accept written comments until 4 p.m., EST August 10, 2012. If requested, we will hold a public hearing on August 6, 2012. We will accept requests to speak until 4 p.m., EST on July 26, 2012.

ADDRESSES: You may submit comments by any of the following two methods:

- *Federal eRulemaking Portal: www.regulations.gov.* The proposed rule has been assigned Docket ID: OSM–2012–0013. If you would like to submit comments through the Federal eRulemaking Portal, go to *www.regulations.gov* and follow the instructions.
- *Mail/Hand Delivery:* Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301. Please include the rule identifier (WV–119–FOR) with your written comments.

Instructions: All submissions received must include the agency Docket ID (OSM–2012–0013) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see ''IV. Public Comment Procedures'' in the **SUPPLEMENTARY INFORMATION** section of this document. You may also request to speak at a public hearing by any of the methods listed above or by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Docket: The interim rule and any comments that are submitted may be viewed via the internet at *www.regulations.gov.* Look for Docket ID OSM–2012–0013. In addition, you may review copies of the West Virginia program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may also receive one free copy of this amendment by contacting OSM's Charleston Field Office listed below.

Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301, Telephone: (304) 347–7158. Email: *chfo@osmre.gov.*

West Virginia Department of Environmental Protection, Division of Mining and Reclamation, Mr. Thomas L. Clark, 601 57th Street SE., Charleston, WV 25304, Telephone: (304) 926–0490.

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

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 604 Cheat Road, Suite 150, Morgantown, West Virginia 26508, Telephone: (304) 291–4004. (By Appointment Only).

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 313 Harper Park Drive, Suite 3, Beckley, West Virginia 25801, Telephone: (304) 255–5265.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office, Telephone: (304) 347–7158. Email: *chfo@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program
II. Description and Submission of the Amendment
III. OSM's Findings
IV. Public Comment Procedures
V. OSM's Decision
VI. Procedural Determinations

I. Background on the West Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, **Federal Register** (46 FR 5915). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Description and Submission of the Amendment

By letter dated April 27, 2012, and received on April 27, 2012, (Administrative Record Number WV–

1577), the West Virginia Department of Environmental Protection (WVDEP) submitted an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). The amendment includes changes to the West Virginia Surface Coal Mining and Reclamation Act (WVSCMRA) as contained in Enrolled Senate Bill 579, relative to West Virginia's alternative bonding system. As detailed in WVDEP's April 27, 2012, Transmittal Letter, ''Senate Bill 579 amends § 22–3–11 of the Code of West Virginia to implement actuarial recommendations relating to the continuing fiscal viability of the Special Reclamation Fund.'' Subsection 22–3–11(h)(1) of the WVSCMRA is substantively amended by increasing the amount of the special reclamation tax to twenty-seven and nine-tenths cents per ton of clean coal mined. The former special reclamation tax, effective as of July 1, 2009, required remittance of fourteen and four-tenths cents per ton of clean coal mined; the collection of this tax is eliminated and replaced with the aforementioned amount. Additionally, the amended language requires fifteen cents per ton of the collected twenty-seven and nine-tenths cents per ton, be deposited in the Special Reclamation Water Trust Fund (the Fund). Historically, although not codified, WVDEP allocated three cents per ton of clean coal mined to finance the Fund, resulting in a severely underfunded account. It is forecasted that the imposition of the new rate enumerated in Senate Bill 579 will ease the strain placed on the Fund.

Formatting and style changes have been effectuated via Senate Bill 579. Former paragraph (h)(1) is revised to add a caption entitled: *Rate, deposits and review;* additionally, the paragraph has been segregated to add four subparts that incorporate all the former language.

III. OSM's Findings

Effective upon publication of this interim rule, we are approving, on an interim basis, the revisions to Section 22–3–11(h)(1) of the WVSCMRA, which reinstates and increases the Special Reclamation Tax and adds revenue for the Fund, provided that the special reclamation tax may not be reduced until the Special Reclamation Fund and the Fund have sufficient moneys to meet the reclamation responsibilities required in this section. Since these revisions increase revenues to the State's alternative bonding system, we find that they do not render the State's program less effective than the Federal regulations at 30 CFR 800.11(e). Because our approval of these revisions is interim in nature, and in order to satisfy the public participation requirements for approval or disapproval of State program amendments, we will accept comments on the reinstatement and increase in the Special Reclamation Tax and the additional funds allocated to the Fund in accordance with Section IV of this **Federal Register** notice. Following our review of the comments received, we will issue a final rule announcing the Director's final decision on the revisions to Section 22–3–1(h)(1) of the WVSCMRA that are the subject of this interim rule.

Pursuant to the Administrative Procedure Act at 5 U.S.C. 553(b)(3)(B), we find that good cause exists to approve the revisions to Section 22–3–11(h)(1) of the WVSCMRA on an interim basis without notice and opportunity for comment, because to require notice and opportunity for comment now would be contrary to the public interest in that it would delay the start of the collection of the increased Special Reclamation Tax. Enrolled Senate Bill 579 becomes effective under State law on July 1, 2012, and the public interest in the accomplishment of prompt and thorough reclamation of bond forfeiture sites, including water treatment of discharges from the sites, will be adversely affected if the twenty-seven and nine-tenths cents per ton special reclamation tax cannot be collected on and after that effective date. As explained above, the public will have an opportunity to comment on the reinstatement and increase in the special reclamation tax and the allocation of fifteen cents per ton of the tax allocated to the Fund, before we make a final decision.

IV. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether these amendments satisfy the applicable program approval criteria of 30 CFR 732.15. If we approve these revisions, they will become part of the West Virginia program.

Written Comments

Send your written comments to OSM at one of the addresses given above. Your comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We may not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**) or sent to an address other than those listed above (see **ADDRESSES**).

Availability of Comments

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

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. EST on July 26, 2012. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

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

Public Meeting

If there is only limited interest in participating in a public hearing, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the Docket for this rulemaking.

V. OSM's Decision

Based on the above findings, we are approving on an interim basis, the specific revisions outlined above to the West Virginia program as provided to us on April 27, 2012. To implement this decision, we are amending the Federal regulations at 30 CFR part 948, which

codify decisions concerning the West Virginia program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this interim rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on an analysis of the State submission.

Executive Order 12866—Regulatory Planning and Review

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and Section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects 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. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal regulation involving Indian lands.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State previously had a special reclamation tax of $0.144 per ton of clean coal mined. The tax is used to reclaim bond forfeiture sites in the State. On March 30, 2012, the Governor signed into law a bill that reinstated and increased the special reclamation tax to $0.279 per ton of clean coal mined and allocated $0.15 of that tax to the Fund for the purpose of designing, constructing and maintaining water treatment systems at bond forfeiture sites. Upon full implementation, the increased tax rate of $0.279 will yield approximately $ 36 million annually in additional revenue for bond forfeiture reclamation. The $0.15 per ton tax that is allocated to the Fund will provide approximately $20 million annually for water treatment at bond forfeiture sites. The tax is payable by all coal operators mining coal in West Virginia, regardless of size.

Small Business Regulatory Enforcement Fairness Act

Based upon the above analysis and discussion, we have determined that 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; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (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

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 9, 2012.

Thomas D. Shope,

Regional Director, Appalachian Region.

For the reasons set out in the preamble, 30 CFR part 948 is amended as set forth below:

PART 948—WEST VIRGINIA

■ 1. The authority citation for part 948 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 948.15 is amended by adding a new entry to the table in chronological order by ''Date of publication of final rule'' to read as follows:

§ 948.15 Approval of West Virginia regulatory program amendments.

* * * * *

Original amendment submission date	Date of publication of final rule	Citation/description of approved provisions
* *	* * *	* *
April 27, 2012	July 11, 2012	W. Va. Code 22–3–11(h)(1) (interim approval).

[FR Doc. 2012–16847 Filed 7–10–12; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

[SATS No: WY–042–FOR; Docket ID OSM–2012–0001]

Wyoming Regulatory Program

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

ACTION: Final rule.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are removing a disapproval codified in OSM regulations concerning a 1986 proposed amendment to the enforcement provisions of the Wyoming regulatory program (the Wyoming program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The disapproval is no longer necessary because Wyoming subsequently submitted and obtained approval of replacement regulations.

DATES: *Effective Date:* July 11, 2012.

FOR FURTHER INFORMATION CONTACT: Jeffrey W. Fleischman, Telephone: (307) 261–6550, Email address: *jfleischman@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Discussion of Final Rule
II. Procedural Determinations

I. Discussion of Final Rule

By letter dated March 5, 2010 (SATS number: WY–042–FOR, Administrative Record Docket ID No. OSM–2012–0001), Wyoming requested that we remove the disapproval at 30 CFR 950.12(a)(12) of the proposed 1986 revisions to Chapter XVII of the rules and regulations of the Wyoming Department of Environmental Quality (WDEQ), Land Quality Division (LQD). Wyoming requests that we remove the disapproval because the state believes that retention of the disapproval is inconsistent with our subsequent approval of replacement rules for the disapproved amendment.

On May 1, 1986, the Wyoming Department of Environmental Quality (WDEQ), Land Quality Division (LQD) submitted proposed amendments to its approved regulatory program under SMCRA. The revisions to Chapter XVII of the LQD Rules and Regulations proposed to incorporate the concept of ''minor violations'' into the rules on inspection and enforcement. The inspector could cite minor violations in inspection reports rather than through issuance of the more standard notice of violation form.

However, we found that the proposed amendment to Chapter XVII did not provide for adequate enforcement of the approved Wyoming program and therefore was less effective than the Federal regulations. Specifically, the Director found that the proposed amendment was ''not adequately limited to violations which are only minor,'' did not ''ensure that operators who repeatedly incur minor infractions or who do not abate the minor infractions in a timely manner will be formally cited,'' and did not ''ensure that minor infractions beyond some specified threshold number will be considered for purposes of determining a pattern of violations'' (51 FR 42209, 42216, November 24, 1986). We subsequently disapproved ''[a]ll revisions to Chapter XVII, which would have introduced a new enforcement scheme.'' See 30 CFR 950.12(a)(12) and 51 FR 42209, November 24, 1986.

On March 31, 1989, the WDEQ submitted additional proposed revisions to Chapter XVII to resolve the issues resulting in the disapproval of the 1986 amendment concerning that chapter. We subsequently approved the proposed revisions, finding that the ''proposed rule is consistent with and no less stringent than the requirements of SMCRA and the regulations adopted pursuant to SMCRA regarding enforcement.'' See 55 FR 30221, 30230, July 25, 1990. In our 1990 approval, we stated that ''[e]xamples of minor violations that will be identified in the inspection report, but may or may not be subject to formal notice of violation, are listed in chapter XVII, section 2(f)(i) through (f)(ix).'' We also specified that ''[o]nly those violations listed at that section may be noted in an inspection report'' and ''[a] formal notice of violation will be issued for all other violations.'' See 55 FR 30221, 30229.

Our approval in 1990 of Wyoming's 1989 proposed amendment to its enforcement rules meant that the disapproval at 30 CFR 950.12(a)(12) of the 1986 proposed amendment that the 1989 amendment replaced became moot. At Wyoming's request, we are removing 30 CFR 950.12(a)(12) in this final rule.

Removal of our disapproval of the 1986 proposed amendment does not alter the terms of our decisions on either the 1986 or the 1989 proposed amendments. Wyoming's March 5, 2010, letter confirms that the state has implemented and will continue to implement subsection 2(f) of its enforcement rules in a manner consistent with our 1990 approval of the 1989 proposed amendment. In other words, only those infractions listed in subsection 2(f) may be considered minor violations. All other violations will be cited by issuing a formal notice of violation.

II. Procedural Determinations

Administrative Procedure Act

We are publishing this final rule without prior public notice or opportunity for public comment. The Administrative Procedure Act (APA), 5 U.S.C. 553, provides an exception to notice and comment requirements when an agency finds that there is good cause for dispensing with notice and comment procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(3)(B), good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures for this rule.

Specifically, we have determined that notice and comment is unnecessary for this rule because it is nonsubstantive. As discussed above, this rule removes a now-moot provision concerning a proposed amendment to the Wyoming program that has since been replaced with a subsequent program amendment.

This rule neither imposes new regulatory requirements nor removes any existing regulatory requirements.

For the same reasons, we find that good cause exists under 5 U.S.C. 553(d)(3) to have the regulation become effective on a date that is less than 30 days after the date of publication in the **Federal Register**.

Executive Order 12866—Regulatory Planning and Review

This rule is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866. As discussed above, this rule removes a now-moot provision concerning a proposed amendment to the Wyoming program that has since been replaced with a subsequent program amendment. This rule neither imposes new regulatory requirements nor removes any existing regulatory requirements. For these reasons, we find that:

(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 for the reasons stated above.

(3) This rule does not alter the budgetary effects of 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 for the reasons stated above.

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). As discussed above, this rule removes a now-moot provision concerning a proposed amendment to the Wyoming program that has since been replaced with a subsequent program amendment. This rule neither imposes new regulatory requirements nor removes any existing regulatory requirements.

Small Business Regulatory Enforcement Fairness Act

As discussed above, this rule removes a now-moot provision concerning a proposed amendment to the Wyoming program that has since been replaced with a subsequent program amendment. This rule neither imposes new regulatory requirements nor removes any existing regulatory requirements. Therefore, this rule is not considered a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act, and it will not—

(1) Have an annual effect on the economy of $100 million.

(2) Cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions because the rule does not impose new requirements on the coal mining industry or consumers.

(3) 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 Reform Act

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. As discussed above, this rule removes a now-moot provision concerning a proposed amendment to the Wyoming program that has since been replaced with a subsequent program amendment. This rule neither imposes new regulatory requirements nor removes any existing regulatory requirements. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Federal Paperwork Reduction Act

This rule does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

This rule does not require an environmental assessment or environmental impact statement because section 702(d) of SMCRA, 30 U.S.C. 1292(d), provides that agency actions pertaining to approval of state regulatory programs do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Executive Order 12988—Civil Justice Reform

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

Executive Order 13211 requires agencies to prepare a statement of energy effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. This rule is not considered significant under Executive Order 12866, nor would it have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a statement of energy effects is not required.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on federally recognized Indian tribes and have determined that the removal of a now-moot provision concerning a 1986 proposed amendment to the Wyoming regulatory program would not have substantial direct effects 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.

Executive Order 12630—Takings

Under the criteria in Executive Order 12630, this rule does not have significant takings implications; therefore, a takings implication assessment is not required. As discussed above, this rule removes a now-moot provision concerning a proposed amendment to the Wyoming program that has since been replaced with a subsequent program amendment. This rule neither imposes new regulatory requirements nor removes any existing regulatory requirements.

Executive Order 13132—Federalism

This rule does not have federalism implications. For the reasons previously stated, 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.''

Data Quality Act

In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554).

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 27, 2012.

Allen D. Klein,

Regional Director, Western Region.

For the reasons set out in the preamble, 30 CFR part 950 is amended as set forth below:

PART 950—WYOMING

■ 1. The authority citation for part 950 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. In § 950.12:

■ a. Remove ''; and'' from paragraph (a)(11) and add a period in its place; and

■ b. Remove paragraph (a)(12).

[FR Doc. 2012–16940 Filed 7–10–12; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0389]

RIN 1625–AA00

Safety Zone; Nautical City Festival Air Show, Rogers City MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone in the Captain of the Port Sault Sainte Marie zone. This safety zone is intended to restrict vessels from certain portions of water areas within Sector Sault Sainte Marie Captain of the Port zone. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with an air show performance.

DATES: This rule is effective from 1 p.m. on August 3, 2012 until 5 p.m. on August 5, 2012.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket [USCG–2012–0389]. To view documents in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box, and click ''SEARCH.'' You may visit the Docket Management Facility, Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email MST2 Kevin Moe, U.S. Coast Guard, Sector Sault Sainte Marie, telephone 906–253–2429, email at *Kevin.D.Moe@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

On May 21, 2012, we published an NPRM entitled Safety Zone; Nautical City Festival Air Show, Rogers City MI; in the **Federal Register** (77 FR 29932). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Due to the timing of the event, waiting 30 days to make this rule effective would be impracticable.

B. Basis and Purpose

On the weekend of August 3 through 5, 2012, the Nautical City Festival will be celebrating Calcite's 100th Anniversary. As part of that celebration, an air show will be launched to the east of the Rogers City marina. The Captain of the Port Sault Sainte Marie has determined that the air show event poses various hazards to the public such as debris falling into the water and general congestion of the waterway.

C. Discussion of Rule

To safeguard against the dangers posed by the Nautical City Festival Air Show near Rogers City, MI, the Captain of the Port Sault Sainte Marie has determined that a temporary safety zone is necessary. Thus, the Captain of the Port Sault Sainte Marie is establishing a safety zone on Lake Huron to include all waters within a 5000′ by 2000′ rectangle bounded by a line drawn from 45°25′30.67″ N, 083°48′19.54″ W then southeast to 45°25′24.85″ N, 083° 47′09.68″ W then southwest to 45°25′05.41″ N, 083°47′12.84″ W then northwest to 45°25′11.30″ N 083°48′22.88″ W then back to the point of origin [DATUM: NAD 83].

This safety zone will be effective from 1:00 p.m. on August 3, 2012 until 5:00 p.m. on August 5, 2012. However, it will only be enforced from 1:00 p.m. until 5:00 p.m. each day on August 3–5, 2012. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Sector Sault Sainte Marie or his on-scene representative. All persons and vessels authorized to enter the safety zone shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene representative. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under these Orders. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone will be relatively small and will exist for only a minimal time. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by proper authority.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant

economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities; owners and operators of vessels intending to transit the waters near Rogers City, Michigan, between 1 p.m. and 5 p.m. on August 3 through 5, 2012.

This safety zone will not have a significant economic impact on a substantial number of small entities for the same reasons discussed in the Regulatory Planning and Review section.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INTFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction because it involves the establishment of a safety zone. A final environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0389 to read as follows:

§ 165.T09–0389 Safety Zone: Nautical City Festival Air Show, Rogers City MI.

(a) *Location.* The following area is a temporary safety zone: All U.S. navigable waters of Lake Huron inside a 5000′ by 2000′ rectangle bounded by a line drawn from 45°25′30.67″ N, 083°48′19.54″ W then southeast to 45°25′24.85″ N, 083°47′09.68″ W then southwest to 45°25′05.41″ N, 083°47′12.84″ W then northwest to 45°25′11.30″ N 083°48′22.88″ W then back to the point of origin [DATUM: NAD 83].

(b) *Effective and Enforcement period.* This regulation is effective from 1 p.m. on August 3, 2012 until 5 p.m. on August 5, 2012. It will only be enforced, however, from 1 p.m. until 5 p.m. each day from August 3th until August 5th.

(1) The Captain of the Port, Sector Sault Sainte Marie may suspend at any time the enforcement of the safety zone established under this section.

(2) The Captain of the Port, Sector Sault Sainte Marie, will notify the public of the enforcement and suspension of enforcement of the safety zone established by this section via any means that will provide as much notice

as possible to the public. These means might include some or all of those listed in 33 CFR 165.7(a). The primary method of notification, however, will be through Broadcast Notice to Mariners and local Notice to Mariners.

(c) *Definitions.* The following definitions apply to this section:

(1) *Designated representative* means any Coast Guard commissioned, warrant, or petty officer designated by the Captain of the Port Sault Sainte Marie to monitor these safety zones, permit entry into these safety zones, give legally enforceable orders to persons or vessels within these safety zones, or take other actions authorized by the Captain of the Port.

(2) *Public vessel* means a vessel owned, chartered, or operated by the United States or by a State or political subdivision thereof.

(d) *Regulations.* (1) The general regulations in 33 CFR 165.23 apply.

(2) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port Sault Sainte Marie or a designated representative. Upon being hailed by the U.S. Coast Guard by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(3) When the safety zone established by this section is being enforced, all vessels must obtain permission from the Captain of the Port Sault Sainte Marie or his or her designated representative to enter, move within, or exit that safety zone. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port or his or her designated representative. While within the safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

(e) *Exemption.* Public vessels, as defined in paragraph (c) of this section, are exempt from the requirements in this section.

Dated: June 21, 2012.

J.C. McGuiness,

Captain, U.S. Coast Guard, Captain of the Port Sault Sainte Marie.

[FR Doc. 2012–16897 Filed 7–10–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0376]

RIN 1625–AA00

Safety Zone: Sacramento River Closure for Aerial Cable Installation, Sacramento, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of the Sacramento River near Sherman Island, CA in support of the Sacramento River Closure for Aerial Cable Installation on July 11, 2012 through July 13, 2012. This safety zone is established to ensure the safety of workers, helicopters, mariners, and other vessels transiting the area from the dangers associated with helicopters operating under heavy loads in close proximity to power lines. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port or their designated representative.

DATES: This rule is effective from 6 a.m. through 1 p.m. on July 11, 2012 through July 13, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2012–0376 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0376 in the ''keyword'' box, and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email Ensign William Hawn, U.S. Coast Guard Sector San Francisco; telephone (415) 399–7442 or email at *D11-PF-MarineEvents@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.''

Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the event would occur before the rulemaking process would be completed. Because of the dangers posed by the helicopters operating under heavy loads in close proximity to power lines, the safety zone is necessary to provide for the safety of helicopters, mariners, and other vessels transiting the area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication because to do otherwise would be contrary to the public interest since immediate action is required to protect helicopters, mariners and vessels transiting the area.

B. Basis and Purpose

The legal basis for the proposed rule is 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1 which, collectively, authorize the Coast Guard to establish safety zones.

Pacific Gas and Electric Company will sponsor the Sacramento River Closure for Aerial Cable Installation on July 11, 2012 through July 13, 2012, in the navigable waters of the Sacramento River near Sherman Island, CA. Aerial operations to install the cable are scheduled to take place from 6 a.m. to 1 p.m. on July 11, 2012 through July 13, 2012. Upon commencement of the aerial operations, the safety zone will encompass the navigable waters around and under the Sacramento River within 200 yards of a line connecting the following points: 38°04′15″ N, 121°47′20″ W; 38°03′38″ N, 121°46′58″

W (NAD 83). The aerial cable installation is necessary to reinstall the cable that broke on October 19, 2011. The replacement cable is a non-electrical support cable that holds aircraft warning devices on a Pacific Gas and Electric high voltage electrical transmission line. The safety zone is issued to establish a temporary restricted area on the waters surrounding the installation operation. The safety zone is necessary to provide for the safety of helicopters, mariners, and other vessels transiting the area from the dangers associated with helicopters operating under heavy loads in close proximity to power lines.

C. Discussion of the Final Rule

The Coast Guard will enforce a safety zone in navigable waters around and under the Sacramento River within 200 yards of a line connecting the points 38°04′15″ N, 121°47′20″ W and 38°03′38″ N, 121°46′58″ W (NAD 83) during the aerial cable installation. Aerial operations to install the cable between the towers located adjacent the Sacramento River in positions 38°04′15″ N, 121°47′20″ W and 38°03′38″ N, 121°46′58″ W (NAD 83) are scheduled to take place from 6 a.m. to 1 p.m. on July 11, 2012 through July 13, 2012. At the conclusion of the aerial operations the safety zone shall terminate.

The effect of the temporary safety zone will be to restrict navigation in the vicinity of the aerial cable installation operation. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the restricted area. These regulations are needed to keep mariners and vessels away from the immediate vicinity of the aerial installation to ensure the safety of helicopters, mariners, and other vessels transiting the area.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

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

We expect the economic impact of this rule does not rise to the level of necessitating a full Regulatory Evaluation. The safety zone is limited in duration, and is limited to a narrowly tailored geographic area. In addition, although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the safety zone will result in minimum impact. The entities most likely to be affected are waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect owners and operators of waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities and sightseeing. This rule will not have a significant economic impact on a substantial number of small entities for several reasons: (i) This rule will encompass only a small portion of the waterway for a limited period of time, and (ii) the maritime public will be advised in advance of this safety zone via Broadcast Notice to Mariners.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health

Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone of limited size and duration. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T11–502 to read as follows:

§ 165.T11–502 Safety zone; Sacramento River Closure for Aerial Cable Installation, Sacramento, CA.

(a) *Location.* This temporary safety zone is established for the navigable waters of the Sacramento River near Sherman Island, California as depicted in National Oceanic and Atmospheric Administration (NOAA) Chart 18661. The safety zone will extend 200 yards from a line connecting the following points: 38°04′15″ N, 121°47′20″ W; 38°03′38″ N, 121°46′58″ W (NAD 83).

(b) *Enforcement Period.* The zone described in paragraph (a) of this section will be enforced from 6 a.m. through 1 p.m. on July 11, 2012 through July 13, 2012. The Captain of the Port San Francisco (COTP) will notify the maritime community of periods during which this zone will be enforced via Broadcast Notice to Mariners in accordance with 33 CFR 165.7.

(c) *Definitions.* As used in this section, ''designated representative'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer on a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the COTP in the enforcement of the safety zone.

(d) *Regulations.* (1) Under the general regulations in 33 CFR Part 165, Subpart C, entry into, transiting or anchoring within this safety zone is prohibited unless authorized by the COTP or a designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or a designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or a designated representative. Persons and vessels may request permission to enter the safety zone on VHF–23A or through the 24-hour Command Center at telephone (415) 399–3547.

Dated: June 27, 2012.

Jay W. Jewess,

Captain, U.S. Coast Guard, Captain of the Port San Francisco, Acting.

[FR Doc. 2012–16953 Filed 7–10–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Part 401

[Docket No. SLSDC–2012–0001]

RIN 2135–AA30

Seaway Regulations and Rules: Periodic Update, Various Categories

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Final rule.

SUMMARY: The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Regulations and Rules (Practices and Procedures in Canada) in their respective jurisdictions. Under agreement with the SLSMC, the SLSDC is amending the joint regulations by updating the Seaway Regulations and Rules in various categories. The changes will update the following sections of the Regulations and Rules: Condition of Vessels; Seaway Navigation; Dangerous Cargo; Information and Reports; General; and, Navigation Closing Procedures. These amendments are necessary to take account of updated procedures and will enhance the safety of transits through the Seaway. Several of the amendments are merely editorial or for clarification of existing requirements.

DATES: The final rule is effective July 11, 2012.

FOR FURTHER INFORMATION CONTACT: Carrie Mann Lavigne, Chief Counsel, Saint Lawrence Seaway Development Corporation, 180 Andrews Street, Massena, New York 13662; 315/764–3200.

SUPPLEMENTARY INFORMATION: The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Regulations and Rules (Practices and Procedures in Canada) in their respective jurisdictions.

Under agreement with the SLSMC, the SLSDC is amending the joint regulations by updating the Regulations and Rules in various categories. The changes would update the following sections of the Regulations and Rules: Condition of Vessels; Seaway Navigation; Dangerous Cargo; Information and Reports; General; and, Navigation Closing Procedures. These amendments are necessary to take account of updated procedures which will enhance the safety of transits through the Seaway. Many of these changes are to clarify existing requirements in the regulations. Where new requirements or regulations are being made, an explanation for such a change is provided below.

The joint regulations became effective in Canada on July 9, 2012. For consistency, because these are joint regulations under international agreement, and to avoid confusion among users of the Seaway, the SLSDC finds that there is good cause to make the U.S. version of the amendments effective upon the date of publication in the **Federal Register**.

Regulatory Notices

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478) or you may visit *http://www.Regulations.gov.* The Notice of Proposed Rulemaking was published in the **Federal Register** on May 31, 2012 (76 FR 13088). No comments were received.

The SLSDC is amending three sections of the Condition of Vessels portion of the joint Seaway regulations. Under section 401.11, ''Fairleads'', due to damage from fairleads on new vessels, the SLSDC is requiring that all sharp edges be rounded. In section 401.12, ''Minimum requirements—mooring lines and fairleads'', the SLSDC is addressing the use of wire lines on vessels 100 m or less. In section 401.15, ''Stern anchors'', the Seaway entities are requiring vessels of more than 125 m in overall length as well as every integrated tug and barge or articulated tug and barge unit greater than 125 m in overall length be equipped with a stern anchor.

Several changes to the Seaway Navigation section are being made. The Seaway Corporations are amending their joint rules in section 401.29, ''Maximum draft'', to permit vessels using a ''Draft Information System'' (DIS) to transit the Seaway up to 7 cm (3 inches) above the maximum permissible draft allowed at the time. The use of a DIS is an optional, not a mandatory requirement, to transit the Seaway. The DIS will allow the vessel to transit the Seaway at a draft up to 3 inches (7 cm) more than the published maximum draft with prior approval from the two Seaway entities.

Benefits of Using the DIS

The primary purpose of this amendment is safety. The use of the DIS will ensure that vessels maintain a safe under keel clearance as they make maximum use of the available water column. DIS uses water level measurements, bathymetry of the channel bottom, and squat of the vessel as it moves at different speeds and in different channel types. The squat of a vessel varies depending on the vessel type, hull shape, and the type of channel in which it is operating, and the vessel's speed. By including all the factors, the under keel clearance value is determined in real time. The information on the projected under keel clearance is integrated electronically with chart data, high-resolution bathymetry and other readings on a single bridge display.

The technology features an algorithm, which allows the Master to estimate under keel clearance ahead, offering time for a course change or other required reaction in transit. With Masters having more precise information regarding the available water column, the risk of a vessel touching bottom or grounding is reduced.

In addition to the safety benefits, increasing the maximum allowable draft will improve the Seaway's productivity and competitiveness. Depending on the commodity carried, an additional three inches of draft might account for as much as 360 additional metric tons per voyage.

Development of DIS Specification

The use of a DIS tool began in 2003 in the St. Mary's River. In 2006, the Seaway entities conducted 4 trials of the tool used in the St. Mary's River as a proof of concept. Three tests were conducted in the Montreal to Lake Ontario (MLO) section of the Seaway during 2007 under low water conditions. During 2008, tests were conducted in the MLO and Welland Canal sections of the Seaway. In 2009, eight (8) trials were conducted in the Welland Canal section and ten (10) trials were conducted in the MLO section of the Seaway. In 2010 a DIS pilot program was instituted in the MLO and Welland Canal. After successful completion of the test trials and pilot program and to ensure future consistency and reliability of the DIS, the two Seaway entities began the development of a standard DIS specification.

On January 19, 2011, the two Seaway Corporations jointly published an industrial implementation specification entitled, ''Implementation Specification—a Draft Information System for the St. Lawrence Seaway'' (Specification). Following a public comment period during which comments received were considered in the development of the Specification, a final Implementation Specification was published on the bi-national Web site at *http://www.greatlakes-seaway.com* on March 16, 2011. The Specification was developed under the guidance of the St. Lawrence Seaway Management Corporation, the SLSDC, together with representatives from system manufacturers and the shipping industry. The development of the Specification followed accelerated procedures derived from the International Organization for Standards (ISO) standardization process that endeavored to develop a broad based consensus standard. The DIS Implementation Specification describes the functionality and interfaces for a system which utilizes water levels, channel type, bathymetry, and vessel speed and characteristics to determine current and predicted under keel clearance. On March 18, 2012, the first DIS Tool was verified by a member of the International Association of Classification Societies (IACS) to be compliant with the Specification.

In addition to these changes, the two Seaway Corporations, in section 401.32, ''Cargo booms—deck cargo'' are requiring notification of the height of deck cargo in order to determine appropriate wind restrictions.

In the Information and Reports section, a change to section 401.79, ''Advance notice of arrival, vessels requiring inspection'' is being made. The amendments provide requirements for reporting notice of arrival depending on the vessel's voyage time. Further, vessels requiring inspection or re-inspection will be required to provide a 24-hour notice of inspection based on certain specified factors. The Advance Notice of Arrival procedures are currently in effect pursuant to Seaway Notices.

The other changes to the joint regulations are merely editorial or to clarify existing requirements.

Regulatory Evaluation

This regulation involves a foreign affairs function of the United States and therefore Executive Order 12866 does not apply and evaluation under the Department of Transportation's Regulatory Policies and Procedures is not required.

Regulatory Flexibility Act Determination

I certify that this regulation will not have a significant economic impact on a substantial number of small entities. The St. Lawrence Seaway Regulations and Rules primarily relate to commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne mostly by foreign vessels.

Environmental Impact

This regulation does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, *et seq.*) because it is not a major federal action significantly affecting the quality of the human environment.

Federalism

The Corporation has analyzed this rule under the principles and criteria in Executive Order 13132, dated August 4, 1999, and has determined that this proposal does not have sufficient federalism implications to warrant a Federalism Assessment.

Unfunded Mandates

The Corporation has analyzed this rule under Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48) and determined that it does not impose unfunded mandates on State, local, and tribal governments and the private sector requiring a written statement of economic and regulatory alternatives.

Paperwork Reduction Act

This regulation has been analyzed under the Paperwork Reduction Act of 1995 and does not contain new or modified information collection requirements subject to the Office of Management and Budget review.

List of Subjects in 33 CFR Part 401

Hazardous materials transportation, Navigation (water), Penalties, Radio, Reporting and recordkeeping requirements, Vessels, Waterways.

Accordingly, the Saint Lawrence Seaway Development Corporation amends 33 CFR part 401 as follows:

PART 401—SEAWAY REGULATIONS AND RULES

Subpart A—Regulations

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

Authority: 33 U.S.C. 983(a) and 984(a) (4), as amended; 49 CFR 1.52, unless otherwise noted.

■ 2. In § 401.11, add paragraph (a)(4) to read as follows:

§ 401.11 Fairleads.

(a) * * *

(4) When passing synthetic lines through a type of fairlead or closed chock acceptable to the Manager and the Corporation all sharp edges of the fairlead, closed chock and/or bulwark shall be rounded to protect the line from chafing or breakage.

* * * * *

■ 3. In § 401.12 revise paragraph (a)(1)(ii) to read as follows:

§ 401.12 Minimum requirements—mooring lines and fairleads.

(a) * * *

(1) * * *

(ii) One synthetic hawser may be hand held or if wire line is used shall be powered. The line shall lead astern from the break of the bow through a closed chock to suitable bitts on deck for synthetic line or led from a capstan, winch drum or windlass to an approved fairlead for a wire line.

* * * * *

■ 4. Revise § 401.15 to read as follows:

§ 401.15 Stern anchors.

(a) Every vessel of more than 125 m in overall length, the keel of which is laid after January 1, 1975, shall be equipped with a stern anchor.

(b) Every integrated tug and barge or articulated tug and barge unit greater than 125 m in overall length which is constructed after January 1, 2003 shall be equipped with a stern anchor.

■ 5. In § 401.28 revise paragraph (d) to read as follows:

§ 401.28 Speed limits.

* * * * *

(d) Notwithstanding the above speed limits, every vessel approaching a free standing lift bridge shall proceed at a speed that it will be able to stop prior to it reaching the Limit of Approach sign should the raising of the bridge be delayed.

* * * * *

■ 6. Revise § 401.29 to read as follows:

§ 401.29. Maximum draft.

(a) Notwithstanding any provision herein, the loading of cargo, draft and speed of a vessel in transit shall be controlled by the master, who shall take into account the vessel's individual characteristics and its tendency to list or squat, so as to avoid striking bottom.[1]

(b) The draft of a vessel shall not, in any case, exceed 79.2 dm or the maximum permissible draft designated in a Seaway Notice by the Manager and the Corporation for the part of the Seaway in which a vessel is passing.

(c) Any vessel equipped with An operational Draft Information System (DIS) Tool verified by a member of the International Association of Classification Societies (IACS) as compliant with the Implementation Specifications found at *http://www.greatlakes-seaway.com* and contained in the Seaway Handbook under ''Ship Transit and Equipment Requirements'' shall have onboard:

(1) Up-to-date electronic navigational charts; and

(2) Up-to-date charts containing high-resolution bathymetric data; and

(3) A pilot plug, if using a portable DIS Tool, will be permitted, when using the DIS Tool, subject to paragraph (a) of this section, to increase their draft by no more than 7 cm above the maximum permissible draft prescribed under paragraph (b) of this section in effect at the time.

(d) Any vessel intending to use DIS must notify the Manager or the Corporation in writing at least 24-hours prior to commencement of its initial transit in the System with the DIS Tool.

(e) Verification document of the DIS Tool must be kept on board the vessel at all times and made available for inspection.

(f) If for any reason the DIS becomes inoperable, malfunctions, or is not used, the vessel must notify the Manager or the Corporation immediately.

(68 Stat. 93–96, 33 U.S.C. 981–990, as amended and secs. 4, 5, 6, 7, 8, 12 and 13 of Sec. 2 of Pub. L. 95–474, 92 Stat. 1471)

■ 7. In § 401.32 add paragraph (c) to read as follows:

§ 401.32 Cargo booms-deck cargo.

* * * * *

(c) Seaway Traffic Control Center shall be notified of the height of deck cargo prior to transiting the Seaway or when departing from a Port or Wharf within the Seaway.

■ 8. In § 401.44, revise paragraph (b) to read as follows:

§ 401.44 Mooring in locks.

* * * * *

(b) Once the mooring lines are on the mooring posts, lines shall be kept slack

[1] The main channels between the Port of Montreal and Lake Erie have a controlling depth of 8.23m.

until the ''all clear'' signal is given by the lock personnel. When casting off signal is received, mooring lines should be kept slack until the ''all clear'' signal is given by the lock personnel.

■ 9. In § 401.59, add paragraph (e) to read as follows:

§ 401.59 Pollution.

* * * * *

(e) Except as authorized by the Manager or the Corporation, no over the side painting shall be allowed in the Seaway.

* * * * *

■ 10. In § 401.72, revise paragraph (d) to read as follows:

§ 401.72 Reporting—explosive and hazardous cargo vessels.

* * * * *

(d) Every vessel carrying radioactive substances shall, when reporting in, give the number and date of issue of any required certificate issued by the Canadian Nuclear Safety Commission (CNSC) and/or the U.S. Nuclear Regulatory Commission (USNRC) authorizing such shipment.

* * * * *

■ 11. Revise § 401.79 to read as follows:

§ 401.79 Advance notice of arrival, vessels requiring inspection.

(a) *Advance notice of arrival.* All foreign flagged vessels intending to transit the Seaway shall submit one complete electronic Notice of Arrival (NOA) prior to entering at call in point 2 (CIP 2) as follows:

(1) If your voyage time to CIP 2 is 96 hours or more, you must submit an electronic NOA 96 hours before entering the Seaway at CIP 2.

(2) If your voyage time to CIP 2 is less than 96 hours, you must submit an electronic NOA before departure, but at least 24 hours before entering the Seaway at CIP 2.

(3) If there are changes to the electronic NOA, submit them as soon as practicable but at least 12 hours before entering the Seaway at CIP 2.

(4) The NOA must be provided electronically following the USCG National Vessel Movement Center's (NVMC) procedures (*http://www.nvmc.uscg.gov*).

(5) To complete the NOA correctly for Seaway entry, select the following:

(i) ''CIP 2'' as the Arrival Port,

(ii) ''Foreign to Saint Lawrence Seaway'' as the Voyage Type, and

(iii) ''Saint Lawrence Seaway Transit'' as the Arrival State, City and Receiving Facility.

(b) *Vessels requiring inspection or reinspection.* All pre-cleared vessels must provide a 24 hour notice of inspection as follows:

(1) *Enhanced Seaway inspection.* All foreign flagged vessels and vessels of unusual design are subject to a Seaway inspection prior to initial transit of the Seaway each navigation season.

(2) *Inland self-inspection.* Inland domestic vessels which are approved by the Seaway and are ISM certified and have a company quality management system, must submit the ''Self-Inspection Report'', every 2 navigation seasons and not later than 30 days after ''fit out''.

(3) Inland domestic vessels not participating in the ''Self-Inspection Program'' are subject to Seaway inspection prior to every transit of the Seaway.

(4) Tub/barge combinations not on the ''Seaway Approved Tow'' list are subject to Seaway inspection prior to every transit of the Seaway.

■ 12. In § 401. 84, revise paragraph (c) to read as follows:

§ 401.84 Reporting of impairment or other hazard by vessels transiting within the Seaway.

* * * * *

(c) Any malfunction of equipment on the vessel

* * * * *

■ 13. In § 401.89, add paragraph (a)(4) to read as follows:

§ 401.89 Transit refused.

(a) * * *

(4) The vessel is not in compliance with flag state and/or classification society regulations.

■ 14. Revise § 401.92 to read as follows:

§ 401.92 Wintering and laying-up.

No vessel shall winter within the Seaway or lay-up within the Seaway during the navigation season except with the written permission of the Manager or the Corporation and subject to the conditions and charges that may be imposed.

■ 15. In Schedule II to Subpart A of Part 401—Table of Speeds, revise section number 2 and footnote 1 to read as follows:

* * * * *

SCHEDULE II TO SUBPART A OF PART 401—TABLE OF SPEEDS [1]

From—	To—	Maximum speed over the bottom (knots)	
		Column III	Column IV
*	*	*	*
2. Lake St. Louis Buoy A13	Lower Entrance Lower Beauharnois Lock	12 (dnb); 14 (upb)	11 (upb); 13 (dnb).
*	*	*	*

[1] Maximum speeds at which a vessel may travel in the identified area in both normal and high water conditions are set out in this schedule. The Manager and the Corporation will, from time to time, designate the set of speed limits that is in effect.

Issued at Washington, DC on July 5, 2012.

Saint Lawrence Seaway Development Corporation.

Craig H. Middlebrook,

Acting Administrator.

[FR Doc. 2012–16859 Filed 7–10–12; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF EDUCATION

34 CFR Part 690

[Docket ID ED–2012–OPE–0006]

RIN 1840–AD11

Federal Pell Grant Program; Correction

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Interim final rule; correction.

SUMMARY: The Secretary of Education is correcting the Federal Pell Grant Program interim final rule published in the **Federal Register** on May 2, 2012 (77 FR 25893). We waived rulemaking and the delayed effective date under the Administrative Procedure Act in this interim final rule, but we did not expressly waive the 60-day time period for a major rule to become effective

under the Congressional Review Act. Through this document, we correct this omission. We do not change any other aspect of the interim final rule, and its regulatory text remains unchanged.

DATES: Effective July 11, 2012.

FOR FURTHER INFORMATION CONTACT: Jacquelyn Butler, U.S. Department of Education, 1990 K Street NW., Room 8053, Washington, DC 20006–8542. Telephone: (202) 502–7890 or by email: *jacquelyn.butler@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: We make the following correction to the Federal Pell Grant Program interim final rule:

On page 25898, in the first column, replace the last paragraph under the heading *Waiver of Rulemaking and Delayed Effective Date* with the following two paragraphs:

The Administrative Procedure Act (APA) generally requires that regulations be published at least 30 days before their effective date, unless the agency has good cause to implement its regulations sooner (5 U.S.C. 553(d)(3)). In addition, this interim final rule has been determined to be a major rule for purposes of the Congressional Review Act (CRA) (5 U.S.C. 801, *et seq.*). Generally, under the CRA, a major rule takes effect 60 days after the date on which the rule is published in the **Federal Register**. Section 808(2) of the CRA, however, provides that any rule which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the Federal agency promulgating the rule determines.

As previously stated, because this interim final rule merely reflects statutory changes and removes obsolete regulatory provisions and, in the case of new § 690.64, protects students from receiving reduced amounts of Pell Grant funds, there is good cause to waive the delayed effective dates in the APA and the CRA and make this interim final rule effective on the day it is published.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: July 6, 2012.

David A. Bergeron,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 2012–16929 Filed 7–10–12; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0343; FRL–9354–1]

Methoxyfenozide; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of methoxyfenozide in or on multiple commodities which are identified and discussed later and for indirect or inadvertent combined residues of the methoxyfenozide on various other commodities. In addition, this regulation removes established tolerances for certain commodities/groups superseded by this action and revises the tolerance expression. The Interregional Research Project #4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective July 11, 2012. Objections and requests for hearings must be received on or before September 10, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2011–0343, is available at *http://www.regulations.gov* or at the OPP Docket in the Environmental Protection Agency Docket Center (EPA/DC), located in EPA West, Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. 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 OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Debra Rate, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 306–0309; email address: *rate.debra@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2011–0343 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before September 10, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2011–0343, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on line information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), Mail Code: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of July 20, 2011 (76 FR 43231) (FRL–8880–1), EPA issued a notice pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 1E7842) by IR–4, 500 College Road East, Suite 201W, Princeton, NJ 08540. The petition requested that 40 CFR 180.544 be amended by establishing tolerances for residues of the insecticide methoxyfenozide (benzoic acid, 3-methoxy-2-methyl-, 2-(3,5-dimethylbenzoyl)-2-(1,1-dimethylethyl hydrazide), in or on the raw agricultural commodities fruit, citrus, group 10–10 at 1.9 parts per million (ppm); lemon, oil at 45 ppm; citrus, oil (except lemon) at 100 ppm; vegetable, root, except sugar beet, subgroup 1B at 0.8 ppm; and beet, sugar at 0.5 ppm. In addition, the petition proposed that 40 CFR 180.544 be amended by removing the tolerance for vegetable, root, subgroup 1A from paragraph (a) and the tolerances for fruit, citrus and citrus, oil from paragraph (c). Lastly, the petition proposed to revise the tolerance expressions in 40 CFR 180.544. That notice referenced a summary of the petition prepared by Dow AgroSciences LLC, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

In the **Federal Register** of October 27, 2010 (75 FR 66092) (FRL–8848–3), EPA issued a notice pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0F7776) by Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268. The petition proposed to reestablish tolerances which were inadvertently allowed to expire in 2010. The proposed tolerances in 40 CFR 180.544 are for indirect or inadvertent combined residues of the insecticide methoxyfenozide, (benzoic acid, 3-methoxy-2-methyl-, 2-(3,5-dimethylbenzoyl)-2-(1,1-dimethylethyl) hydrazide) and its metabolites RH–117,236 free phenol of methoxyfenozide; 3,5-dimethylbenzoic acid N-tert-butyl-N′-(3-hydroxy-2-methylbenzoyl) hydrazide, RH–151,055 glucose conjugate of RH–117,236; 3,5-dimethylbenzoic acid N-tert-butyl-N-[3 (β-D-glucopyranosyloxy)-2-methylbenzoyl]-hydrazide) and RH–152,072 the malonylglycosyl conjugate of RH–117,236, in or on the raw agricultural commodities: Vegetable, root and tuber, group 1 at 0.1 ppm; vegetable, leaves of root and tuber, group 2 at 0.2 ppm; vegetable, bulb, group 3 at 0.2 ppm; vegetable, legume, group 6 at 0.1 ppm; vegetable, foliage of legume, group 7 at 10 ppm; grain, cereal, forage, fodder, and straw, group 16 at 10 ppm; grass, forage, fodder and hay, group 17 at 10 ppm; animal feed, non-grass, group 18 at 10 ppm; and herb and spice, group 19 at 10 ppm. That notice referenced a summary of the petition prepared by Dow AgroSciences LLC, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petitions, EPA has modified the levels at which tolerances are being established for some of the commodities. The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. * * *''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for methoxyfenozide including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with methoxyfenozide follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Methoxyfenozide is not acutely toxic and not a dermal sensitizer. Minimal or no toxic effects were observed in studies in which methoxyfenozide was administered by the dermal or inhalation routes of exposure.

The main target organs in the rat and dog were the liver, thyroid and red blood cells (RBC). The most consistent findings across species and studies were decreased red blood cell parameters and increased liver, thyroid, adrenal and spleen weights. In the rat metabolism study, liver contained 2–9% of the administered radioactivity at maximum concentration (C_{max}), but levels decreased and bioaccumulation was not observed. Levels in the blood were negligible. The effects of methoxyfenozide on the blood (methemoglobinemia, decreased red blood cell parameters, Heinz body formation) are consistent with those of other hydrazine compounds.

Acute and subchronic oral neurotoxicity studies in the rat did not show evidence of potential neurotoxicity. In the acute study, decreased hindlimb grip strength on Day 0 was reported in males. This finding was only observed at the limit dose in males and was not observed in the subchronic neurotoxicity study and was therefore not considered evidence of neurotoxicity. No clinical signs of toxicity or neurohistopathology were observed in other guideline studies.

No maternal or developmental effects were observed in either the rat or rabbit oral developmental toxicity studies. In the rat 2-generation reproductive toxicity study, parental effects were limited to increased liver weight and microscopic periportal hypertrophy. No offspring or reproductive toxicity was observed. In a 28-day dietary immunotoxicity study in the rat, no immunotoxicity was observed. The only observed effect was increased liver weight.

Dermal effects were not observed in the rat following a 28-day exposure period (5 exposure days per week for a total of 20 exposures). This finding is consistent with the relatively low dermal absorption of 2% of the applied dose, observed in an *in vivo* dermal absorption study in rats treated with an 80% wettable powder (WP) formulation product.

There was no evidence of carcinogenicity in the rat dietary 24-month chronic toxicity/carcinogenicity study or the mouse dietary 18-month carcinogenicity study. No mutagenic or clastogenic potential was observed in the battery of genotoxicity studies on methoxyfenozide. Based on these findings, methoxyfenozide is classified as ''not likely to be carcinogenic to humans.''

Specific information on the studies received and the nature of the adverse effects caused by methoxyfenozide as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document titled ''Methoxyfenozide Human Health Risk Assessment'' starting at page 14 in docket ID number EPA–HQ–OPP–2011–0343.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

A summary of the toxicological endpoints for methoxyfenozide used for human risk assessment is shown in the Table of this unit.

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR METHOXYFENOZIDE FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (General population including infants and children and Females 13–49 years of age).	No hazard was identified for a single oral exposure.		
Chronic dietary ..... (All populations)	NOAEL = 10.2 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.10 mg/kg/day. cPAD = 0.10 mg/kg/day	Co-critical studies: Combined oral chronic toxicity/carcinogenicity-rat LOAEL = 411/491 mg/kg/day M/F based on hematological changes (decreased RBC parameters), periportal liver hypertrophy, thyroid hypertrophy and altered colloid; possibly increased adrenal weight. Chronic oral toxicity-dog NOAEL = 9.8/12.6 mg/kg/day M/F LOAEL = 106.1/110.6 mg/kg/day based on hematological changes (decreased RBC parameters, slight methemoglobinemia) and increased serum bilirubin.
Inhalation Short-Term (1–30 days) and Intermediate-Term (1–6 months).	NOAEL = 16.8 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100 ...	Two-week oral range finding study-dog LOAEL = 90.8 mg/kg/day based on hematological changes (decreased RBC parameters, increased Heinz body count, reticulocyte counts, erythrocyte morphology and methemoglobinemia) and increased spleen weights.
Cancer (Oral, dermal, inhalation).	Classification: Not likely to be carcinogenic to humans.		

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to methoxyfenozide, EPA considered exposure under the petitioned-for tolerances as well as all existing methoxyfenozide tolerances in 40 CFR 180.544. EPA assessed dietary exposures from methoxyfenozide in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No such effects were identified in the toxicological studies for methoxyfenozide; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA used tolerance level residues, Dietary Exposure Evaluation Model (DEEM) (Ver. 7.81) default processing factors (as necessary), an empirical processing factor for orange juice, and 100 percent crop treated (PCT) for all commodities.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that methoxyfenozide does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and PCT information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for methoxyfenozide. Tolerance level residues and 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for methoxyfenozide in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of methoxyfenozide. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI–GROW) models the estimated drinking water concentrations (EDWCs) of methoxyfenozide for chronic exposures for non-cancer assessments are estimated to be 43.4 parts per billion (ppb) for surface water and 4.13 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration of value 43.4 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Methoxyfenozide is currently registered for the following uses that could result in residential exposures: Ornamentals. EPA assessed residential exposure using the following assumptions: Adults may be exposed to methoxyfenozide from its currently registered use on ornamentals. Residential pesticide handlers may be exposed for short-term durations of exposure (1–30 days) only. The inhalation (short-term) residential exposure was assessed for a ''homeowner'' mixer/loader/applicator using a manually pressurized handwand, backpack sprayer, or hose-end sprayer.

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf.*

4. *Cumulative effects from substances with a common mechanism of toxicity.*

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found methoxyfenozide to share a common mechanism of toxicity with any other substances, and methoxyfenozide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that methoxyfenozide does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act (FQPA) Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* Based on the results in the developmental toxicity studies in rats and rabbits and in the 2-generation reproduction study in rats, no increased sensitivity of fetuses or pups (as compared to adults) was demonstrated for methoxyfenozide. There are no concerns or residual uncertainties for prenatal/postnatal toxicity following exposure to methoxyfenozide.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for methoxyfenozide is complete. Although a 28-day inhalation toxicity study has not been submitted, EPA has determined that this study is not needed based on a weight of evidence approach that considered all of the available hazard and exposure information, including the use of a conservative oral POD that results in MOEs ranging from 28,000 to 4,100,000 for risk via the inhalation route due to residential and occupational exposures. Therefore, there is no need for additional UFs to account for missing studies.

ii. There is no indication that methoxyfenozide is a neurotoxic chemical and there is no need for additional UFs to account for neurotoxicity.

iii. There is no evidence that methoxyfenozide results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessment utilized 100 PCT and tolerance-level residues (established or recommended). EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to methoxyfenozide in drinking water. These assessments will not underestimate the exposure and risks posed by methoxyfenozide.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, methoxyfenozide is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to methoxyfenozide from food and water will utilize 58% of the cPAD for children 1–2 years old the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of methoxyfenozide is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Methoxyfenozide is currently registered for uses that could result in short-term residential exposure for adults, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to methoxyfenozide.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 670. Because EPA's level of concern for methoxyfenozide is a MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Because no intermediate-term adverse effect was identified, methoxyfenozide is not expected to pose an intermediate-term risk.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, methoxyfenozide is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to methoxyfenozide residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (high performance liquid chromatography (HPLC), with either tandem mass spectrometric detection (LC/MS/MS) or ultraviolet detection (HPLC/UV)) is available to enforce the tolerance expression.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has established MRLs for methoxyfenozide in or on citrus fruits at 0.7 ppm, carrots at 0.5 ppm, and radishes at 0.4 ppm. These MRLs are different than the tolerances established for methoxyfenozide in the United States. Harmonization of tolerances in the currently requested commodities is not possible, as the U.S. and Codex use patterns differ potentially resulting in residues in citrus and vegetable, root, except sugar beet, subgroup 1B, which includes carrots and radishes, under U.S. use patterns that are greater than the corresponding Codex MRLs.

C. Revisions to Petitioned-For Tolerances

EPA is establishing a slightly higher tolerance of 0.90 ppm for vegetable, root, except sugar beet, subgroup 1B, than was proposed. The 0.90 ppm tolerance was calculated using the Organization for Economic Co-operation and Development (OECD) tolerance calculation procedure. Similarly, EPA is establishing tolerances for citrus commodities that are higher than that proposed by IR–4. IR–4 proposed separate tolerances for residues in lemon oil and residues in all other citrus oils. However, because residues from the citrus field trials are similar enough to warrant a crop group tolerance, and a single processing factor was used to derive the oil tolerance, EPA is establishing a conservative tolerance in citrus oil at 100 ppm, and no separate tolerance for residues in lemon oil will be established. Tolerances proposed for inadvertent residues will not be established for vegetable, root and tuber group 1 at 1 ppm since a tolerances exist in § 180.544(a) for subgroups 1A and 1D. Therefore, only a tolerance for potato will be established at the Agency determined level of 0.02 ppm. Tolerances will not be established for vegetable, bulb, group 3 at 0.20 ppm since a tolerance exists in § 180.544(a) for subgroup 3–07B. Only a tolerance for onion, bulb, subgroup 3–07A will be established at the Agency determined level of 0.10 ppm. Tolerances also are not needed for vegetable, legume group 6, grass forage, fodder, and hay group 17, since tolerances for these groups exist under § 180.544(a). Also, since a tolerance exists in § 180.544(a) for coriander, leaves, a tolerance for Herb and spice, group 19, except coriander, leaves will be established at a lower, Agency determined level of 4.5 ppm.

V. Conclusion

Therefore, tolerances are established for residues of methoxyfenozide (benzoic acid, 3-methoxy-2-methyl-, 2-(3,5-dimehtylbenzoyl)-2-(1,1-dimethylethyl hydrazide), in or on fruit, citrus, group 10–10 at 3.0 ppm; citrus, oil at 100 ppm; vegetable, root, except sugar beet, subgroup 1B at 0.90 ppm; and beet, sugar 0.50 ppm. Also, due to the tolerances established above by this document, the following existing tolerance is removed as unnecessary; vegetable, root, subgroup 1A. All of the commodities covered by this crop subgroup are covered by the tolerances for vegetable, root, except sugar beet, subgroup 1B, and beet, sugar. In addition, concurrent with the establishment of tolerances for fruit, citrus, group 10–10 at 3.0 ppm and citrus, oil at 100 ppm in § 180.544(a), the tolerances for fruit, citrus, group 10 (10 ppm) and citrus oil (100 ppm) will be removed from § 180.544(c). Tolerances will be established under § 180.544(d)(1) for onion, bulb subgroup 3–07A at 0.10 ppm and for potato at 0.02 ppm. Tolerances will be established under § 180.544(d)(2) for grain, cereal, forage, fodder and straw, group 16 except corn at 6.0 ppm; animal feed, nongrass, group 18, straw at 8.0 ppm; and herb and spice, group 19, except coriander, leaves at 4.5 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 29, 2012.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.544:

■ i. Revise the introductory text in paragraph (a)(1);

■ ii. Remove the entry for ''Vegetable, root, subgroup 1A'' from the table in paragraph (a)(1), and add alphabetically the following commodities to the table;

■ iii. Revise introductory text in paragraph (a)(2); and

■ iv. Revise paragraphs (b), (c) and (d).

The amendments read as follows:

§ 180.544 Methoxyfenozide; tolerances for residues.

(a*) General.* (1) Tolerances are established for residues of the insecticide methoxyfenozide, including its metabolites and degradates, in or on the commodities listed in the following table. Compliance with the tolerance levels specified in the following table is to be determined by measuring only methoxyfenozide (3-methoxy-2-methylbenzoic acid 2-(3,5-dimethylbenzoyl)-2-(1,1-dimethylethyl) hydrazide) in or on the commodity.

Commodity	Parts per million
* * * * *	
Beet, sugar, roots	0.50
* * * * *	
Citrus, oil	100
* * * * *	
Fruit, citrus, group 10–10	3.0
* * * * *	
Vegetable, root, except sugar beet, Subgroup 1B	0.90
* * * * *	

(2) Tolerances are established for residues of the insecticide methoxyfenozide, including its metabolites and degradates, in or on the commodities in the following table. Compliance with the tolerance levels specified in the following table is to be determined by measuring only the sum of methoxyfenozide [3-methoxy-2-methylbenzoic acid 2-(3,5-dimethylbenzoyl)-2-(1,1-dimethylethyl) hydrazide] and its glucuronide metabolite (β-D-Glucopyranuronic acid, 3-[[2-(1,1-dimethylethyl)-2-(3,5-dimethylbenzoyl)-hydrazino]carbonyl]-2-methylphenyl-), calculated as the stoichiometric equivalent of methoxyfenozide.

* * * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances specified in the following table are established for residues of the insecticide methoxyfenozide, including its metabolites and degradates, in or on the specified agricultural commodities, resulting from use of the pesticide pursuant to FFIFRA section 18 emergency exemptions. Compliance with the tolerance levels specified in the following table is to be determined by measuring only methoxyfenozide [benzoic acid, 3-methoxy-2-methyl-, 2-(3,5-dimethylbenzoyl)-2-(1,1-dimethylethyl)hydrazide]. The expired tolerances will be revoked on the date specified in the table.

* * * * *

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent tolerances.* (1) Tolerances are established for the indirect or inadvertent residues of the insecticide methoxyfenozide, including its metabolites and degradates, in or on the raw agricultural commodities in the following table, when present therein as a result of the application of methoxyfenozide to growing crops as listed in paragraph (a) of this section. Compliance with the tolerance levels specified in the following table is to be determined by measuring only methoxyfenozide [3-methoxy-2-methylbenzoic acid 2-(3,5-dimethylbenzoyl)-2-(1,1-dimethylethyl) hydrazide].

Commodity	Parts per million
Onion, bulb, subgroup 3–07A	0.10
Potato	0.02

(2) Tolerances are established for the indirect or inadvertent residues of the insecticide methoxyfenozide, including its metabolites and degradates, in or on the raw agricultural commodities in the following table, when present therein as a result of the application of methoxyfenozide to growing crops as listed in paragraph (a) of this section. Compliance with the tolerance levels specified in the following table is to be determined by measuring only the sum of methoxyfenozide [3-methoxy-2-methylbenzoic acid, 2-(3,5-dimethylbenzoyl)-2-(1,1-dimethylethyl) hydrazide] and the following metabolites (all calculated as the stoichiometric equivalent of methoxyfenozide): free phenol of methoxyfenozide [3,5-dimethylbenzoic acid N-tert-butyl-N′-(3-hydroxy-2-methylbenzoyl) hydrazide], the glucose conjugate of the phenol [3,5-dimethyl benzoic acid N-tert-butyl-N′-[3 (β-D-glucopyranosyloxy)-2-methylbenzoyl]-hydrazide] and the malonylglycosyl conjugate of the phenol [3,5-dimethyl benzoic acid N-tert-butyl-N′-[3 (β-D-6-malonyl-glucopyranosyl-1-oxy)-2-methylbenzoyl]-hydrazide].

Commodity	Parts per million
Animal feed, nongrass, group 18, straw	8.0
Grain, cereal, forage, fodder and straw group 16, except corn	6.0
Herb and spice, group 19, except coriander, leaves	4.5

[FR Doc. 2012–16824 Filed 7–10–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0507; FRL–9353–7]

RIN 2070–ZA16

Dicloran and Formetanate; Tolerance Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revoking certain tolerances for the fungicide dicloran and the insecticide formetanate hydrochloride in follow-up to amended registrations that deleted specific uses, leaving no dicloran and formetanate hydrochloride registrations for those uses. Also, in accordance with current Agency practice, EPA is making minor revisions to the tolerance expressions for dicloran and formetanate hydrochloride and to specific tolerance nomenclatures for dicloran.

DATES: This regulation is effective July 11, 2012. Objections and requests for hearings must be received on or before September 10, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2011–0507, is available either electronically through *http://www.regulations.gov* or in hard copy at the OPP Docket in the Environmental Protection Agency Docket Center (EPA/DC), located in EPA West, Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. 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 OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Joseph Nevola, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8037; email address: *nevola.joseph@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2011- 0507 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before September 10, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2011–0507, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), Mail Code: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Background

A. What action is the Agency taking?

In the **Federal Register** of March 28, 2012 (77 FR 18748) (FRL–9340–9), EPA issued a rule that proposed to revoke certain tolerances for the fungicide dicloran and the insecticide formetanate hydrochloride in follow-up to amended registrations that deleted specific uses, leaving no dicloran and formetanate hydrochloride registrations for those uses, and make minor revisions to the tolerance expressions for dicloran and formetanate hydrochloride and to specific tolerance nomenclatures for dicloran. Also, the proposed rule of March 28, 2012 provided a 60-day comment period which invited public comment for consideration and for support of tolerance retention under FFDCA standards.

In this final rule, EPA is revoking certain tolerances because either they are no longer needed or are associated with food uses that are no longer registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) in the United States. Those instances where registrations were canceled were because the registrant failed to pay the required maintenance fee and/or the registrant voluntarily requested cancellation of one or more registered uses of the pesticide active ingredient. The tolerances revoked by this final rule are no longer necessary to cover residues of the relevant pesticides in or on domestically treated commodities or commodities treated outside but imported into the United States. It is EPA's general practice to issue a final rule revoking those tolerances and tolerance exemptions for residues of pesticide active ingredients on crop uses for which there are no active registrations under FIFRA, unless any person in comments on the proposal indicates a need for the tolerance or tolerance exemption to cover residues in or on imported commodities or legally treated domestic commodities.

EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on

legally treated foods may encourage misuse of pesticides within the United States.

Generally, EPA will proceed with the revocation of these tolerances on the grounds discussed in Unit II.A. if one of the following conditions applies:

1. Prior to EPA's issuance of a FFDCA section 408(f) order requesting additional data or issuance of a FFDCA section 408(d) or (e) order revoking the tolerances on other grounds, commenters retract the comment identifying a need for the tolerance to be retained.

2. EPA independently verifies that the tolerance is no longer needed.

3. The tolerance is not supported by data that demonstrate that the tolerance meets the requirements under the Food Quality Protection Act (FQPA).

In response to the proposed rule published in the **Federal Register** of March 28, 2012 (77 FR 18748), EPA received no comments during the 60-day public comment period. Therefore, EPA is finalizing the actions proposed concerning dicloran and formetanate hydrochloride in the **Federal Register** of March 28, 2012 (77 FR 18748) (FRL–9340–9). For a detailed discussion of the Agency's rationale for the finalized tolerance actions, refer to the proposed rule of March 28, 2012.

B. What is the Agency's authority for taking this action?

EPA's general practice is to revoke tolerances for residues of pesticide active ingredients on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore no longer be used in the United States. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as ''import tolerances,'' are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

C. When do these actions become effective?

As stated in the **DATES** section, this final rule is effective July 11, 2012. However, EPA is revoking the dicloran tolerance on potato with an expiration/revocation date of December 31, 2014 and the formetanate hydrochloride tolerances on apple; apple, wet pomace; peach; and pear with expiration/revocation dates of December 31, 2013. The Agency believes that these expiration/revocation dates allow users to exhaust stocks and allow sufficient time for passage of treated commodities through the channels of trade.

Any commodities listed in the regulatory text of this document that are treated with the pesticides subject to this final rule, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by FQPA. Under this unit, any residues of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that:

1. The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA.

2. The residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

III. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for formetanate hydrochloride or MRL for dicloran in or on potatoes.

IV. Statutory and Executive Order Reviews

In this final rule, EPA revokes specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action (i.e., a tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, entitled ''*Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*'' (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled ''*Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*'' (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled ''*Protection of Children from Environmental Health Risks and Safety Risks*'' (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–13, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020) (FRL–5753–1), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis and available information concerning the pesticides listed in this rule, the Agency hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. In a memorandum dated May 25, 2001, EPA determined that eight conditions must all be satisfied in order for an import tolerance or tolerance exemption revocation to adversely affect a significant number of small entity importers, and that there is a negligible

joint probability of all eight conditions holding simultaneously with respect to any particular revocation. (This Agency document is available in the docket of the proposed rule, as mentioned in Unit II.A.). Furthermore, for the pesticides named in this final rule, the Agency knows of no extraordinary circumstances that exist as to the present revocations that would change EPA's previous analysis. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled ''*Federalism*'' (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled ''*Consultation and Coordination with Indian Tribal Governments*'' (65 FR 67249, November 9, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

V. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 2, 2012.

Steven Bradbury,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Revise § 180.200 to read as follows:

§ 180.200 Dicloran; tolerances for residues.

(a) *General.* Tolerances are established for residues of the fungicide dicloran, including its metabolites and degradates, in or on the commodities in the table in this paragraph. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only dicloran, 2,6-dichloro-4-nitroaniline, in or on the commodity.

Commodity	Parts per million	Expiration/ revocation date
Apricot	20	None.
Bean, snap, succulent.	20	None.
Carrot, roots	10	11/2/11.
Celery	15	None.
Cherry, sweet	20	None.
Cucumber	5	None.
Endive	10	None.
Garlic	5	None.
Grape	10	None.
Lettuce	10	None.
Nectarine	20	None.
Onion	10	None.
Peach	20	None.
Plum, prune, fresh.	15	None.
Potato	0.25	12/31/14.
Rhubarb	10	None.
Sweet potato, roots.	10	None.
Tomato	5	None.

(b) *Section 18 emergency exemptions.* [Reserved].

(c) *Tolerances with regional registrations.* [Reserved].

(d) *Indirect or inadvertent residues.* [Reserved].

■ 3. Revise § 180.276 to read as follows:

§ 180.276 Formetanate hydrochloride; tolerances for residues.

(a) *General.* Tolerances are established for residues of the insecticide formetanate hydrochloride, including its metabolites and degradates, in or on the commodities in the table in this paragraph. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only formetanate hydrochloride, N,N-dimethyl-N'-[3-[(methylamino)carbonyl]oxy]phenyl]methanimidamide hydrochloride, in or on the commodity.

Commodity	Parts per million	Expiration/ revocation date
Apple	0.50	12/31/13.
Apple, wet pomace.	1.5	12/31/13.
Grapefruit	1.5	None.
Lemon	0.60	None.
Lime	0.03	None.
Nectarine	0.40	None.
Orange	1.5	None.
Peach	0.40	12/31/13.
Pear	0.50	12/31/13.
Tangelo	0.03	None.
Tangerine	0.03	None.

(b) *Section 18 emergency exemptions.* [Reserved].

(c) *Tolerances with regional registrations.* [Reserved].

(d) *Indirect or inadvertent residues.* [Reserved].

[FR Doc. 2012–16961 Filed 7–10–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 111207737–2141–02]

RIN 0648–XC094

Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish 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; closure.

SUMMARY: NMFS is prohibiting directed fishing for northern rockfish in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2012 total allowable catch (TAC) of northern rockfish in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 6, 2012, through 2400 hrs, A.l.t., December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

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

The 2012 TAC of northern rockfish in the Western Regulatory Area of the GOA is 2,156 metric tons (mt) as established by the final 2012 and 2013 harvest specifications for groundfish of the GOA (77 FR 15194, March 14, 2012).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2012 TAC of northern rockfish in the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,006 mt, and is setting aside the remaining 150 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for northern rockfish in the Western Regulatory Area of the GOA.

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

Classification

This action responds to the best available information recently obtained from the fishery. The acting Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for northern rockfish 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 July 5, 2012.

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

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

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

Dated: July 6, 2012.

Lindsay Fullenkamp,

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

[FR Doc. 2012–16915 Filed 7–6–12; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 77, No. 133
Wednesday, July 11, 2012

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 61

[NRC–2011–0012]

RIN–3150–AI92

Low-Level Radioactive Waste Regulatory Management Issues

AGENCY: Nuclear Regulatory Commission.

ACTION: Public meeting; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) plans to conduct a public meeting to discuss proposed changes to its current regulatory requirements as directed by the Commission in a January 19, 2012, Staff Requirements Memorandum. Information will be gathered from invited subject matter experts, stakeholders, and other interested members of the public regarding the changes proposed by the Commission. Specifically, the NRC staff is interested in gaining a better understanding of the issues associated with specifying a regulatory time of compliance for a low-level radioactive waste disposal facility, allowing licensees the flexibility to implement waste acceptance criteria as an alternative to the current waste classification system, and revising the NRC's licensing requirements for land disposal of radioactive waste.

DATES: The public meeting will be held on July 19, 2012, in Rockville, Maryland. Comments on the issues and questions presented in Section V of the **SUPPLEMENTARY INFORMATION** section of this document should be submitted by July 31, 2012.

ADDRESSES: The public meeting will be held on July 19, 2012, from 8 a.m. to 5 p.m. (registration begins at 7:30 a.m.) at the Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road; Salons G & H, Rockville, Maryland 20852. The NRC will accept written comments at the public meeting and welcomes active participation from those attending. You may access information and comment submissions related to this document, which the NRC possesses and are publicly available, by searching on *http://www.regulations.gov* under Docket ID NRC–2011–0012. You may submit comments by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2011–0012. Address questions about NRC dockets to Carol Gallagher; telephone: (301) 492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Donald Lowman, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5452; email: *Donald.Lowman@nrc.gov;* or Tarsha Moon, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6745; email: *Tarsha.Moon@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2011–0012 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and are publicly-available, by the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2011–0012.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–(800) 397–4209, (301) 415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2011–0012 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

The Commission's licensing requirements for the disposal of LLW in near-surface [approximately the uppermost 30 meters (100 feet)] facilities reside in 10 CFR part 61, ''Licensing Requirements for Land Disposal of Radioactive Waste.'' These regulations were published in the **Federal Register** on December 27, 1982

(47 FR 57446). The rule applies to any near-surface LLW disposal technology. The regulations emphasize an integrated systems approach to the disposal of commercial LLW, including site selection, disposal facility design and operation, minimum waste form requirements, and disposal facility closure. To reduce the burden on society over the long periods of time contemplated for the control of the radioactive material, and thus lessen reliance on institutional controls, 10 CFR part 61 emphasizes passive rather than active systems to limit and retard releases to the environment.

Development of 10 CFR part 61 was based on several assumptions as to the types of wastes likely to go into a commercial LLW disposal facility. To better understand what the likely inventory of wastes available for disposal might be, the NRC conducted a survey of existing LLW generators. The survey, documented in Chapter 3 of NUREG–0782, Draft 10 CFR part 61 Environmental Impact Statement (DEIS), ''Licensing Requirements for Land Disposal of Radioactive Waste'' (ADAMS Accession No. ML052590347)—revealed that there were about 37 distinct commercial waste streams consisting of about 25 radionuclides of potential regulatory interest. The specific waste streams in question were representative of the types of commercial LLW being generated at the time. In the Final 10 CFR part 61 Environmental Impact Statement (FEIS), ''Final Environmental Impact Statement on 10 CFR part 61 'Licensing Requirements for Land Disposal of Radioactive Waste','' (ADAMS Accession No. ML052590184) and NUREG–0945, it was reported that about half of the isotopes examined were bounding for the purposes of dose and those isotopes formed the basis for the 10 CFR part 61 LLW waste classification system, described in Tables 1 and 2 of § 61.55. (See Volume 1 of NUREG–0945, pages 5–37—5–39). Waste streams associated with the U.S. Department of Energy's (DOE's) nuclear defense complex were not considered as part of the survey, since disposal of those wastes, at that time, was to be conducted at DOE-operated sites.

Over the last several years there have been a number of developments that have called into question some of the key assumptions made in connection with the earlier 10 CFR part 61 DEIS, including:

- The emergence of potential LLW streams that were not considered in the original 10 CFR part 61 rulemaking, including large quantities of depleted uranium (DU), and possibly incidental wastes associated with the commercial reprocessing of spent nuclear fuel;
- The DOE's increasing use of commercial facilities for the disposal of defense-related LLW streams; and
- Extensive international operational experience in the management of LLW and intermediate-level radioactive wastes that did not exist at the time 10 CFR part 61 was promulgated.

These developments will need to be considered if the staff undertakes a revision of 10 CFR part 61.

III. Recent Commission Direction to the NRC Staff

In a March 18, 2009, staff requirements memorandum (SRM), SRM–SECY–08–0147,[1] the Commission directed the NRC staff to proceed with a 10 CFR part 61 rulemaking to specify a requirement for a site-specific analysis for the disposal of large quantities of DU—including the technical requirements for such an analysis—and to develop a guidance document for public comment that outlines the parameters and assumptions to be used in conducting such site-specific analyses. In a second SRM, SRM–SECY–10–0043,[2] the staff was directed to include blended LLW streams as part of this rulemaking initiative. Following the solicitation of early public input in 2009 (74 FR 30175; Docket ID NRC–2009–0257), the NRC staff subsequently developed a technical basis document for the rulemaking amendment (ADAMS Accession No. ML111040419), shared it with the NRC Agreement States, and proceeded to develop a proposed rulemaking package. In connection with the rulemaking effort, the NRC staff also proposed a two-tier approach for evaluating compliance with 10 CFR part 61's overall system performance objectives: a quantitative assessment that extends to 20,000 years as well as a qualitative analysis that extends beyond 20,000 years to the time of peak dose. In May 2011, the NRC staff sought public feedback (76 FR 24831) on the preliminary proposed rulemaking language (ADAMS Accession No. ML111150205) and the technical basis for the time of compliance recommendation (ADAMS Accession No. ML111030586). (See *http://www.nrc.gov/about-nrc/regulatory/rulemaking/potential-rulemaking/uw-streams.html.*) Later in 2011, the staff briefed the Advisory Committee on Reactor Safeguards (ACRS) on the preliminary proposed rulemaking language for which a Committee Letter Report dated September 22, 2011 (ADAMS Accession No. ML11256A191) was issued to the Commission.

More recently, in an SRM, dated January 19, 2012,[3] the Commission provided additional direction to the NRC staff concerning this rulemaking. Specifically, the NRC staff was directed to amend the existing draft rulemaking to include the following:

- Allowing licensees the flexibility to use International Commission on Radiological Protection dose methodologies in a site-specific performance assessment for the disposal of all radioactive waste.
- A two-tiered approach that establishes a compliance period that covers the reasonably foreseeable future and a longer period of performance that is not a priori and is established to evaluate the performance of the site over longer timeframes. The period of performance is developed based on the candidate site characteristics (waste package, waste form, disposal technology, cover technology and geo-hydrology) and the peak dose to a designated receptor.
- Flexibility for disposal facilities to establish site-specific waste acceptance criteria based on the results of the site's performance assessment and intruder assessment.
- A compatibility category for the elements of the revised rule that establish the requirements for site-specific performance assessments and the development of the site-specific waste acceptance criteria that ensures alignment between the States and Federal government on safety fundamentals, while providing the States with the flexibility to determine how to implement these safety requirements.

In the January 2012 SRM, the Commission also directed the NRC staff to engage stakeholders to discuss and finalize the NRC's approach to address the matters raised by the Commission. The Commission also noted that it would reserve judgment on the regulatory form these elements should take in any final rule following NRC staff evaluation of stakeholder input. Accordingly, the NRC staff planned to hold three public meetings in March, May, and July 2012 on the proposed revisions to 10 CFR part 61. The first meeting was held in Phoenix, Arizona, on March 2, 2012 (77 FR 10401) and the second meeting was held in Dallas,

[1] See *http://www.nrc.gov/reading-rm/doc-collections/commission/srm/2008/2008-0147srm.pdf.*

[2] See *http://www.nrc.gov/reading-rm/doc-collections/commission/srm/2010/2010-0043srm.pdf.*

[3] See *http://www.nrc.gov/reading-rm/doc-collections/commission/comm-secy/2011/2011-0002comgeawdm-srm.pdf.*

Texas on May 15, 2012 (77 FR 26991). After the NRC completes public outreach, the staff will prepare an amended technical basis document and start the formal rulemaking process. Changes will also need to be made to any 10 CFR part 61 performance assessment guidance document to address the recent June 2012 direction. The completion date for submittal of a revised rulemaking package is July 19, 2013.

The Commission also directed the staff to gather information on the options presented in SECY–10–0165, dated December 27, 2010,[4] concerning the staff's approach to risk-informing 10 CFR part 61. Previously, the NRC staff sponsored an earlier workshop on SECY–10–0165, on March 4, 2011 (76 FR 10810). The staff intends to seek the public's views on various proposals for a risk-informed revision of 10 CFR part 61.

IV. Emerging Issues Concerning 10 CFR Part 61

The NRC staff has also conducted other activities related to 10 CFR part 61. These include revisions to the Commission's ''Policy Statement on Volume Reduction and Low-Level Radioactive Waste Management'' (76 FR 50500; August 15, 2011); and the ''Branch Technical Position on Concentration Averaging'' (76 FR 4739; January 26, 2011). Through the course of those stakeholder interactions, the staff received comments and suggestions relevant to the more comprehensive revision of 10 CFR part 61. For example, stakeholders have recommended changes that would lengthen the period of institutional controls and allow a site-specific intruder assessment. Some stakeholders have questioned basic fundamental tenets of 10 CFR part 61 including the need to protect the inadvertent intruder. The staff intends to seek the public's views on these and other stakeholder comments.

In addition, during the March 2, 2012, public meeting in Phoenix, Arizona, several stakeholders expressed an interest in expanding the scope of the ongoing 10 CFR part 61 rulemaking beyond the Commission's current January 2012 direction. For example, the following specific suggestions were proposed in connection with any potentially expanded 10 CFR part 61 rulemaking.

- Update the § 61.55 tables to include the latest dose conversion factors and dose methodologies.
- Expand the current duration of institutional controls in 10 CFR part 61 from 100 to 300 years.
- Address the issue of the over-reporting of certain isotopes that are required to be identified by the 10 CFR part 20 LLW manifest shipping report (60 FR 15649).
- Develop specific licensing criteria for the disposal of greater-than-Class C LLW.
- Develop screening criteria pertaining to the disposal of low-activity radioactive wastes.

V. NRC Public Meeting

The purpose of this public meeting is to gather information from stakeholders and other interested members of the public concerning the rulemaking proposals identified by the Commission in its January 2012 SRM. This overall approach is consistent with the NRC's openness policy and is consistent with the type of public outreach initiative originally used by the NRC staff to develop 10 CFR part 61. The July 19, 2012, public meeting will be organized into three sessions. In the first session, the NRC staff will seek public feedback on the concerns associated with specifying a regulatory time of compliance (TOC) for a commercial LLW disposal facility. To promote stakeholder feedback, a panel of invited subject matter experts will be asked to speak to the following topics related to the specification of any TOC:

- Limits or methods to manage long term uncertainties;
- Use of tiered approaches including how to define the tiers;
- Requirements for long-term performance;
- Site-specific requirements; and
- Protection of future generations.

In the second session, the staff will seek public feedback on the issues allowing licensees the flexibility to implement waste acceptance criteria as an alternative to the current Section 61.55 waste classification system. To promote stakeholder feedback, a second panel of invited subject matter experts will be asked to speak to the following topics:

- Regulatory approaches to allow site-specific waste acceptance criteria;
- Metrics to determine site-specific waste acceptance criteria;
- Specification of specific requirements; and
- Longevity of institutional controls for site-specific waste acceptance criteria.

The third session is intended to focus generally on policy issues associated with revising 10 CFR part 61. In the third session there will be a third panel that will consist of representatives of the NRC, Agreement States, and other stakeholder organizations who have historically demonstrated an interest in the NRC's LLW programs.

Following presentations of prepared remarks by the invited panelists, stakeholders and other interested members of the public will have an opportunity to pose questions directly to panels in each of the three sessions.

The public meeting will be held on July 19, 2012, from 8 a.m. to 5 p.m. (registration begins at 7:30 a.m.) at the Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road; Salons G & H, Rockville, Maryland 20852. Pre-registration for this meeting is not necessary. Members of the public choosing to participate in this meeting remotely can do so in one of two ways—online, or via a telephone (audio) connection. Instructions for remote participation in this meeting follow.

Interested members of the public can also participate in this meeting via Webinar. The Webinar meeting registration link can be found at: *https://www1.gotomeeting.com/register/634692312.* The Webinar ID is 634–692–312. After registering, instructions for joining the Webinar (including a teleconference number and pass code) will be provided via email. All participants will be in ''listen-only'' mode during the presentation. Participants will have a chance to pose questions either orally after the presentation or in writing during the Webinar.

To receive a call back, provide your phone number when you join the meeting, or call the following number and enter the access code:

Call-in toll-free number (U.S./Canada): 1–888–469–0566. The Webinar access code is 6441887.

The agenda for the public meeting will be noticed no fewer than ten (10) days prior to the meeting on the NRC's Public Meeting Schedule Web site at *http://www.nrc.gov/public-involve/public-meetings/index.cfm.*

Questions about participation in the public meetings should be directed to the points of contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

Dated at Rockville, Maryland, this 29th day of June 2012.

[4] See *http://www.nrc.gov/reading-rm/doc-collections/commission/secys/2010/secy2010-0165/2010-0165scy.pdf.*

For the Nuclear Regulatory Commission.

Gregory Suber,

Acting Deputy Director, Environmental Protection and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2012–16657 Filed 7–10–12; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0482; Directorate Identifier 2012–NE–14–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Rolls-Royce plc (RR) RB211–524G2–19; RB211–524G2–T–19; RB211–524G3–19; RB211–524G3–T–19; RB211–524H2–19; RB211–524H2–T–19; RB211–524H–36; RB211–524H–T–36; RB211–535E4–37; RB211–535E4–B–37; RB211–535E4–B–75; and RB211–535E4–C–37 turbofan engines. This proposed AD was prompted by an investigation by RR concluding that certain intermediate-pressure (IP) turbine discs produced before 1997 by a certain supplier may contain steel inclusions. This proposed AD would require removal of the affected IP turbine discs to inspect them for steel inclusions, and removal from service if the discs fail the inspection. This proposed AD would also require removal from service of some IP turbine discs at reduced life limits. We are proposing this AD to prevent uncontained IP turbine disc failure, engine failure, and damage to the airplane.

DATES: We must receive comments on this proposed AD by September 10, 2012.

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

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

For service information identified in this proposed AD, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, England, DE248BJ; phone: 011–44–1332–242424; fax: 011–44–1332–245418 or email from *http://www.rolls-royce.com/contact/civil_team.jsp,* or download the publication from *https://www.aeromanager.com.* You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0482; Directorate Identifier 2012–NE–14–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2012–0060, dated April 18, 2012 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> The inspection of several intermediate pressure (IP) turbine discs at past engine overhauls identified the presence of steel inclusions in these parts. Further investigation concluded that all affected parts were manufactured from billets produced before 1997 at a certain supplier who also melted steel in the same furnaces. Initial engineering evaluation concluded that the lives of the parts would not be affected by the presence of the said steel inclusions. This evaluation has been recently repeated, utilising improved structural analysis, and it is now concluded that the currently published lives of the components cannot be supported for some discs with a steel inclusion.

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

Relevant Service Information

RR has issued RB211–524G, 524H, and 535E4 Propulsion Systems Alert Service Bulletin No. RB.211–72–AG493, Revision 1, dated November 11, 2011. The actions described in this service information are intended to confirm the presence or absence of steel inclusions on the affected IP turbine discs, and to require removal of certain discs at new lower life limits.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the United Kingdom and is approved for operation in the United States. Pursuant to our bilateral agreement with the European Community, EASA has notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists

and is likely to exist or develop on other products of the same type design.

This proposed AD would require removal of the affected IP turbine discs to inspect them for steel inclusions, and if found, this AD would require removal from service. This proposed AD would also impose a new lower life limit on affected IP turbine discs.

Costs of Compliance

We estimate that this proposed AD would affect about 200 engines installed on airplanes of U.S. registry. We also estimate that it would take about 12.5 work-hours per engine to inspect an IP turbine disc. The average labor rate is $85 per work-hour. In addition, 77 discs must be removed earlier than the existing Airworthiness Limitation Section requires. A prorated replacement IP turbine disc would cost about $9,925 per engine. We also estimate the cost of replacing a disc if it fails the inspection would be $225,000. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $976,725.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Rolls-Royce plc: Docket No. FAA–2012–0482; Directorate Identifier 2012–NE–14–AD.

(a) Comments Due Date

We must receive comments by September 10, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Rolls-Royce plc (RR) RB211–524G2–19; RB211–524G2–T–19; RB211–524G3–19; RB211–524G3–T–19; RB211–524H2–19; RB211–524H2–T–19; RB211–524H–36; RB211–524H–T–36; RB211–535E4–37; RB211–535E4–B–37; RB211–535E4–B–75; and RB211–535E4–C–37 turbofan engines.

(d) Reason

This AD was prompted by an investigation by RR concluding that certain intermediate-pressure (IP) turbine discs produced before 1997 by a certain supplier may contain steel inclusions. We are issuing this AD to prevent uncontained IP turbine disc failure, engine failure, and damage to the airplane.

(e) Actions and Compliance

Unless already done, do the following actions.

(f) Disc Inspection

After the effective date of this AD, use Appendix 1 and Appendix 2 of RR RB211–524G, 524H, and 535E4 Propulsion Systems Alert Service Bulletin (ASB) No. RB.211–72–AG493, Revision 1, dated November 11, 2011; to determine if the IP turbine disc is below or above the inspection threshold.

(1) If below the inspection threshold then clean, demagnetize, and perform a Superconductive Quantitative Inductive Device (SQUID) inspection of the disc at the next shop visit or before the disc reaches the inspection threshold, whichever is later. Use Appendix 4 of RR RB211–524G, 524H, and 535E4 Propulsion Systems ASB No. RB.211–72–AG493, Revision 1, dated November 11, 2011, to perform the SQUID inspection.

(2) If above the inspection threshold, clean, demagnetize and perform a SQUID inspection of the disc if in the shop or, at the next shop visit, whichever occurs first. Use Appendix 4 of RR RB211–524G, 524H, and 535E4 Propulsion Systems ASB No. RB.211–72–AG493, Revision 1, dated November 11, 2011, to perform the SQUID inspection.

(3) Do not return to service any disc that fails the inspection required by this AD.

(g) Disc Life Reduction

(1) After the effective date of this AD, use Appendix 2 of RR RB211–524G, 524H, and 535E4 Propulsion Systems ASB No. RB.211–72–AG493, Revision 1, dated November 11, 2011, to determine the new lower life of affected IP turbine disc(s).

(2) Remove from service any disc at the next shop visit or before it exceeds its new lower life limit, whichever is later, as found in Appendix 2 of RR RB211–524G, 524H, and 535E4 Propulsion Systems ASB No. RB.211–72–AG493, Revision 1, dated November 11, 2011.

(3) Do not return to service any disc that exceeds its new lower life limit, as found in Appendix 2 of RR RB211–524G, 524H, and 535E4 Propulsion Systems ASB No. RB.211–72–AG493, Revision 1, dated November 11, 2011.

(h) Definition of Shop Visit

For purposes of this AD, a shop visit is defined as induction into the shop where the IP and low pressure (LP) turbine module is removed from the engine, and any casing is removed from the IP and LP turbine module.

(i) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

(j) Related Information

(1) For more information about this AD, contact Alan Strom, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7143; fax: 781–238–7199; email: *alan.strom@faa.gov*.

(2) European Aviation Safety Agency AD 2012–0060, dated April 18, 2012, and Rolls-Royce plc RB211–524G, 524H, and 535E4 Propulsion Systems ASB No. RB.211–72–AG493, Revision 1, dated November 11, 2011, pertain to the subject of this AD.

(3) For service information identified in this AD, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby,

England, DE248BJ; phone: 011–44–1332–242424; fax: 011–44–1332–245418 or email from *http://www.rolls-royce.com/contact/civil_team.jsp,* or download the publication from *https://www.aeromanager.com.* You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on June 25, 2012.

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2012–16856 Filed 7–10–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0546; Directorate Identifier 2012–NE–15–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Division Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Pratt & Whitney PW4050, PW4052, PW4056, PW4060, PW4060A, PW4060C, PW4062, PW4062A, PW4152, PW4156, PW4156A, PW4158, PW4160, PW4460, PW4462, and PW4650 turbofan engines, including models with any dash number suffix. This proposed AD was prompted by 16 reports of damaged or failed 3rd stage low-pressure turbine (LPT) duct segments. This proposed AD would require removing from service certain part numbers (P/Ns) of 3rd stage LPT duct segments. We are proposing this AD to prevent failure of the 3rd stage LPT duct segments, which could lead to LPT rotor damage, uncontained engine failure, and damage to the airplane.

DATES: We must receive comments on this proposed AD by September 10, 2012.

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

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

For service information identified in this proposed AD, contact Pratt & Whitney, 400 Main St., East Hartford, CT 06108; phone: 860–565–8770; fax: 860–565–4503. You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: James Gray, Aerospace Engineer, Engine & Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7742; fax: 781–238–7199; email: *james.e.gray@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0546; Directorate Identifier 2012–NE–15–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We received 16 reports of damaged or failed 3rd stage LPT duct segments that resulted in 5 in-flight shutdowns, two of which were uncontained engine failures. The 3rd stage LPT duct segment assembly has seal plates that are attached with rivets. During normal engine operation, vibration may cause these seal plates to loosen or fall off, which allows hot gaspath air to enter the cavity behind the duct. This can cause the 3rd stage LPT duct segment to distort, fall into the gaspath, and damage the downstream LPT rotor blades. This condition, if not corrected, could result in failure of the 3rd stage LPT duct segments, which could lead to LPT rotor damage, uncontained engine failure, and damage to the airplane.

Relevant Service Information

We reviewed Pratt & Whitney Engine-Duct Segment, Third Stage LPT Assembly Service Bulletin (SB) No. PW4ENG 72–488, Revision 3, dated August 13, 2009. The SB lists the part numbers of parts to be removed and parts to be installed.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require removal from service of 3rd stage LPT duct segments P/Ns 50N095; 50N095–001; 50N235; 50N235–001; 50N494–01; 50N494–001; 50N495–01; and 50N495–001, at the next piece-part exposure after the effective date of the proposed AD.

Costs of Compliance

We estimate that this proposed AD would affect 151 engines installed on airplanes of U.S. registry. We estimate that no additional labor costs would be incurred to perform the required work as the work is done when the 3rd stage LPT duct segments are at piece-part exposure. The average labor rate is $85 per work-hour. Required parts would cost about $44,441 per engine. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $6,710,591.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Pratt & Whitney Division: Docket No. FAA–2012–0546; Directorate Identifier 2012–NE–15–AD.

(a) Comments Due Date

We must receive comments by September 10, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Pratt & Whitney PW4050, PW4052, PW4056, PW4060, PW4060A, PW4060C, PW4062, PW4062A, PW4152, PW4156, PW4156A, PW4158, PW4160, PW4460, PW4462, and PW4650 turbofan engines, including models with any dash number suffix, with 3rd stage LPT duct segments P/N 50N095; 50N095–001; 50N235; 50N235–001; 50N494–01; 50N494–001; 50N495–01; or 50N495–001, installed.

(d) Unsafe Condition

This AD was prompted by 16 reports of damaged or failed 3rd stage low-pressure turbine (LPT) duct segments. We are issuing this AD to prevent failure of the 3rd stage LPT duct segments, which could lead to LPT rotor damage, uncontained engine failure, and damage to the airplane.

(e) Compliance

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

(f) 3rd Stage LPT Duct Segments Removal From Service

At the next piece-part exposure after the effective date of this AD, remove from service 3rd stage LPT duct segments, P/Ns 50N095; 50N095–001; 50N235; 50N235–001; 50N494–01; 50N494–001; 50N495–01; and 50N495–001.

(g) Installation Prohibition

After the effective date of this AD, do not install into any engine any 3rd stage LPT duct segment, P/N 50N095; 50N095–001; 50N235; 50N235–001; 50N494–01; 50N494–001; 50N495–01; or 50N495–001, that is at piece-part exposure.

(h) Definition

For the purpose of this AD, piece-part exposure is when the 3rd stage LPT duct segment is removed from the engine and completely disassembled.

(i) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

(j) Related Information

(1) Pratt & Whitney Engine-Duct Segment, Third Stage LPT Assembly Service Bulletin (SB) No. PW4ENG 72–488, Revision 3, dated August 13, 2009.

(2) For more information about this AD, contact James Gray, Aerospace Engineer, Engine & Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7742; fax: 781–238–7199; email: *james.e.gray@faa.gov.*

(3) For service information identified in this AD, contact Pratt & Whitney, 400 Main St., East Hartford, CT 06108; phone: 860–565–8770; fax: 860–565–4503. You may review copies of the service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on July 2, 2012.

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2012–16857 Filed 7–10–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0150; Directorate Identifier 2011–NM–234–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier proposed airworthiness directive (AD) for all Airbus Model A318 series airplanes, Airbus Model A319 series airplanes, Airbus Model A320 series airplanes, and Airbus Model A321 series airplanes. That NPRM proposed an inspection to determine if certain angle of attack (AOA) probes are installed, and replacing the affected AOA probe if necessary. That NPRM was prompted by reports of oil residue between the stator and the rotor parts of the position resolvers of the AOA vane, which was a result of incorrect removal of the machining oil during the manufacturing process of the AOA resolvers. This action revises that NPRM by including an inspection to determine if certain other AOA probes are installed, and replacing the affected probes. We are proposing this AD to prevent erroneous AOA information and consequent delayed or non-activation of the AOA protection systems which, during flight at a high angle of attack, could result in reduced control of the airplane. Since these actions impose an additional burden over that proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on these proposed changes.

DATES: We must receive comments on this proposed AD by August 27, 2012.

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

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

For service information identified in this proposed AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* For Thales Avionics service information identified in this proposed AD, contact Thales Avionics, Retrofit Manager, 105, Avenue du Général Eisenhower, BP 63647, 31036 Toulouse Cedex 1, France; telephone +33 5 61 19 76 95; fax +33 5 61 19 68 20; email *retrofit.ata@fr.thalesgroup.com;* Internet *http://www.thalesgroup.com/aerospace.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1405; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0150; Directorate Identifier 2011–NM–234–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

We proposed to amend 14 CFR part 39 with an earlier NPRM for the specified products, which was published in the **Federal Register** on February 23, 2012 (77 FR 10693). That earlier NPRM proposed to require actions intended to address the unsafe condition for the products listed above.

Since that NPRM (77 FR 10693, February 23, 2012) was issued, we have determined that certain other AOA probes need to be inspected in order to address the identified unsafe condition.

Comments

We gave the public the opportunity to comment on the previous NPRM (77 FR 10693, February 23, 2012). The following presents the comments received on the previous NPRM and the FAA's response to each comment.

Request To Include Other AOA Probes

Airbus stated that certain Thales AOA probes, part number (P/N) C16291AB, have been modified in accordance with Thales Avionics Service Bulletin C16291A–34–007, August 27, 2009, without incorporating Thales Avionics Service Bulletin C16291A–34–007, Revision 01, dated December 3, 2009. We infer that Airbus is requesting that we change the previous NPRM (77 FR 10693, February 23, 2012) to include an inspection of those AOA probes.

We agree with Airbus' request. The AOA probes may have the same unsafe condition found in AOA probe P/N C16291AA. We have determined that those discrepant AOA probes, P/N C16291AB, must also be replaced. We have added new paragraph (g)(2) of this supplemental NPRM to address the identified unsafe condition on those AOA probes.

Request To Refer to the Latest Service Information

Airbus and United Airlines requested that the previous NPRM (77 FR 10693, February 23, 2012) reference Thales Avionics Service Bulletin C16291A–34–007, Revision 02, dated December 16, 2011, as a means of compliance.

We agree to refer to the latest revision of this service information. Thales Avionics has issued Service Bulletin C16291A–34–007, Revision 03, dated April 10, 2012. We have revised this supplemental NPRM accordingly.

FAA's Determination and Requirements of This Proposed AD

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

Certain changes described above expand the scope of the earlier NPRM (77 FR 10693, February 23, 2012). As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 755 products of U.S. registry. We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $128,350, or $170 per product.

In addition, we estimate that any necessary follow-on actions would take about 3 work-hours and require parts costing $0, for a cost of $255 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2012–0150; Directorate Identifier 2011–NM–234–AD.

(a) Comments Due Date

We must receive comments by August 27, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus Model A318–111, –112, –121, and –122 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes; certificated in any category; all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 34: Navigation.

(e) Reason

This AD was prompted by reports of oil residue between the stator and the rotor parts of the position resolvers of the angle of attack (AOA) vane, which was a result of incorrect removal of the machining oil during the manufacturing process of the AOA resolvers. We are issuing this AD to prevent erroneous AOA information and consequent delayed or non-activation of the AOA protection systems which, during flight at a high angle of attack, could result in reduced control of the airplane.

(f) Compliance

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

(g) Inspection

Within 12 months after the effective date of this AD, except as provided by paragraph (h) of this AD: Do the inspections in paragraphs (g)(1) and (g)(2) of this AD.

(1) Inspect to determine the part number (P/N) and serial number of each Thales Avionics AOA probe, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–34–1452, excluding Appendix 01, dated January 29, 2010. If any probe is found having P/N C16291AA and having a serial number listed in Thales Avionics Service Bulletin C16291A–34–007, Revision 03, dated April 10, 2012: Within 12 months after the effective date of this AD, replace the AOA probe, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–34–1452, excluding Appendix 01, dated January 29, 2010. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number and serial number of the installed AOA probes can be conclusively determined from that review.

(2) Inspect to determine the part number and serial number of each Thales Avionics AOA probe, in accordance with paragraph 3.C.1.a. of the Accomplishment Instructions of Airbus Service Bulletin A320–34–1452, excluding Appendix 01, dated January 29, 2010. If any probe is found having P/N C16291AB, on which Thales Avionics Service Bulletin C16291A–34–009, Revision 1, dated January 7, 2010, has been incorporated, and on which Thales Avionics Service Bulletin C16291A–34–007, Revision 01, dated December 3, 2009, has not been incorporated: Within 12 months after the effective date of this AD, replace the AOA probe, in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, or EASA (or its delegated agent). A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of the installed AOA probes can be conclusively determined from that review.

(h) Exception

For any airplane on which Airbus modification 150006 (installation of Thales Avionics AOA probes P/N C16291AB) or modification 26934 (installation of Goodrich AOA probes P/N 0861ED) has been embodied in production, and on which no AOA probe replacement has been made since first flight: The actions specified in paragraph (g) of this AD are not required.

(i) Parts Installation Limitations

(1) As of the effective date of this AD, no person may install a Thales Avionics AOA probe, P/N C16291AA, having a serial number listed in Thales Avionics Service Bulletin C16291A–34–007, Revision 03, dated April 10, 2012, on any airplane, unless that Thales Avionics probe has been inspected, re-identified and tested, in accordance with the Accomplishment Instructions of Thales Avionics Service Bulletin C16291A–34–007, Revision 03, dated April 10, 2012.

(2) As of the effective date of this AD, no person may install a Thales Avionics AOA probe, P/N C16291AB, on which Thales Avionics Service Bulletin C16291A–34–009, dated September 10, 2009, has been incorporated, and on which Thales Avionics Service Bulletin C16291A–34–007, Revision 01, dated December 3, 2009, has not been incorporated.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1405; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(k) Related Information

(1) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2011–0203, dated October 13, 2011, and the service information specified in paragraphs (k)(1)(i) and (k)(1)(ii) of this AD, for related information.

(i) Airbus Service Bulletin A320–34–1452, excluding Appendix 01, dated January 29, 2010.

(ii) Thales Avionics Service Bulletin C16291A–34–007, Revision 03, dated April 10, 2012.

(2) For Airbus service information identified in this AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* For Thales Avionics service information identified in this AD, contact Thales Avionics, Retrofit Manager, 105, Avenue du Général Eisenhower, BP 63647, 31036 Toulouse Cedex 1, France; telephone +33 5 61 19 76 95; fax +33 5 61 19 68 20; email *retrofit.ata@fr.thalesgroup.com;* Internet *http://www.thalesgroup.com/aerospace.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on July 5, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–16970 Filed 7–10–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0679; Directorate Identifier 2012–NM–063–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, Model CL–600–2D15 (Regional Jet Series 705) airplanes, Model CL–600–2D24 (Regional Jet Series 900) airplanes, and Model CL–600–2E25 (Regional Jet Series 1000) airplanes. This proposed AD was prompted by a report that certain wing-to-fuselage attachment nuts do not conform to the certification design requirements for dual locking features. This proposed AD would require repetitive inspections to determine that cotter pins are installed at affected wing-to-fuselage attachment joints and replacement if necessary. We are proposing this AD to prevent loss of wing-to-fuselage attachment joints, which could result in the loss of the wing.

DATES: We must receive comments on this proposed AD by August 27, 2012.

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

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

For service information identified in this proposed AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Jeffrey Zimmer, Aerospace Engineer, Airframe & Mechanical Systems Branch, ANE–171, New York Aircraft Certification Office (ACO), FAA, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7306; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0679; Directorate Identifier 2012–NM–063–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2012–10, dated March 12, 2012 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> The manufacturer has determined that wing-to-fuselage attachment nuts, part number (P/N) SH670–35635–1, SH670–35440–951, SH670–35440–3, SH670–35635–1 and 95136D–2412, installed at six attachment joint locations, do not conform to the certification design requirements for dual locking features. The nuts are not of the self-locking type as required and do not provide the frictional thread interference required to prevent the nut from backing off the bolt. As a result, only a single locking device, the cotter pin, is provided at these critical joints. In the case where a nut becomes loose, in combination with a missing or broken cotter pin, the attachment bolt at the wing-to-fuselage joint could migrate and fall out. Loss of two attachment joints could potentially result in the loss of the wing.
>
> This [TCCA] Airworthiness Directive (AD) mandates a [repetitive] detailed visual inspection (DVI) of each affected wing-to-fuselage attachment joint to ensure that a cotter pin is installed.

The required actions also include replacing any missing cotter pin. You

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

Relevant Service Information

Bombardier, Inc. has issued Service Bulletin 670BA–53–042, Revision A, dated April 27, 2012. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 366 products of U.S. registry. We also estimate that it would take about 5 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $155,550, or $425 per product.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska; and

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2012–0679; Directorate Identifier 2012–NM–063–AD.

(a) Comments Due Date

We must receive comments by August 27, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, serial numbers 10002 through 10999 inclusive; Model CL–600–2D15 (Regional Jet Series 705) and CL–600–2D24 (Regional Jet Series 900) airplanes, serial numbers 15001 through 15990 inclusive; and Model CL–600–2E25 (Regional Jet Series 1000) airplanes, serial numbers 19001 through 19990 inclusive; certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Reason

This AD was prompted by a report that certain wing-to-fuselage attachment nuts do not conform to the certification design requirements for dual locking features. We are issuing this AD to prevent loss of wing-to-fuselage attachment joints, which could result in the loss of the wing.

(f) Compliance

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

(g) Repetitive Detailed Inspection

Within 3,000 flight hours or 18 months after the effective date of this AD, whichever occurs first: Perform a detailed inspection of each affected wing-to-fuselage attachment joint, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–53–042, Revision A, dated April 27, 2012. Repeat the inspection thereafter at intervals not to exceed 6,600 flight hours.

Note 1 to paragraph (g) of this AD: The compliance time in this AD differs from the recommended compliance time specified in Bombardier Service Bulletin 670BA–53–042, Revision A, dated April 27, 2012.

(h) Corrective Action

If any cotter pin is found missing during any inspection required by paragraph (g) of this AD: Before further flight, replace any missing cotter pin using a method approved by either the Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA; or Transport Canada Civil Aviation (or its delegated agent).

(i) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 670BA–53–042, dated December 21, 2011.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO, ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York

11590; telephone: (516) 228–7300; fax: (516) 794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/ certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(k) Related Information

(1) Refer to MCAI Canadian Airworthiness Directive CF–2012–10, dated March 12, 2012; and Bombardier Service Bulletin 670BA–53–042, Revision A, dated April 27, 2012; for related information.

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on June 29, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–16960 Filed 7–10–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0680; Directorate Identifier 2011–NM–247–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model DC–10–10 and MD–10–10F airplanes. This proposed AD was prompted by a report that the safe life limit on certain main landing gear (MLG) upper torque link bolts is reduced significantly due to incorrect fabrication. This proposed AD would require replacing certain MLG upper torque link bolts with a new or serviceable part. We are proposing this AD to prevent damage to the MLG and consequent damage to airplane structure, which could adversely affect the airplane's continued safe flight and landing.

DATES: We must receive comments on this proposed AD by August 27, 2012.

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

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, CA 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Nenita Odesa, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: (562) 627–5234; fax: (562) 627–5210; email: *nenita.odesa@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0680; Directorate Identifier 2011–NM–247–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We have received a report that the safe life limit on certain MLG upper torque link bolts is reduced significantly due to incorrect fabrication. This condition, if not corrected, could result in damage to the MLG and consequent damage to airplane structure, which could adversely affect the airplane's continued safe flight and landing.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin DC10–32A260, dated September 30, 2011. The service information describes procedures for replacing certain MLG upper torque link bolts with a new or serviceable part.

Explanation of Proposed Compliance Time

Boeing Alert Service Bulletin DC10–32A260, dated September 30, 2011, specifies a compliance time of ''before further flight or before 6,590 flight cycles from installation,'' for replacing the MLG upper torque link bolt. This proposed AD would change the compliance time to ''within 6,590 flight cycles from bolt installation or within 180 days after the effective date of this AD, whichever occurs later.'' We have determined that this compliance time would provide adequate time for the actions to be done without grounding airplanes.

FAA's Determination

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

Proposed AD Requirements

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

Costs of Compliance

We estimate that this proposed AD affects 17 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Bolt Replacement	2 work-hours × $85 per hour = $170	$9,340	$9,510	$161,670

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2012–0680; Directorate Identifier 2011–NM–247–AD.

(a) Comments Due Date

We must receive comments by August 27, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model DC–10–10 and MD–10–10F airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin DC10–32A260, dated September 30, 2011.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 32, Landing Gear.

(e) Unsafe Condition

This AD was prompted a report that the safe life limit on certain main landing gear (MLG) upper torque link bolts is reduced significantly due to incorrect fabrication. We are issuing this AD to prevent damage to the MLG and consequent damage to airplane structure, which could adversely affect the airplane's continued safe flight and landing.

(f) Compliance

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

(g) Modification

For airplanes having any bolts identified in paragraph 3.B.1. of the Accomplishment Instructions of Boeing Alert Service Bulletin DC10–32A260, dated September 30, 2011: Within 6,590 flight cycles from bolt installation or within 180 days after the effective date of this AD, whichever occurs later: Replace the MLG upper torque link bolt with a new or serviceable bolt, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin DC10–32A260, dated September 30, 2011.

(h) Parts Installation

As of the effective date of this AD, no person may install a bolt identified in paragraph 3.B.1. of the Accomplishment Instructions of Boeing Alert Service Bulletin DC10–32A260, dated September 30, 2011, on any airplane.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles Airplane Certification Office (ACO), ANM–120L, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by The Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and 14 CFR 25.571, Amendment 45, and the approval must specifically refer to this AD.

(j) Related Information

(1) For more information about this AD, contact Nenita Odesa, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: (562) 627–5234; fax: (562) 627–5210; email: *nenita.odesa@faa.gov*.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, CA 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; email *dse.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on July 5, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–16963 Filed 7–10–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0719; Directorate Identifier 2011–NM–240–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Airbus Model A330–200 freighter series airplanes; Model A330–200 and –300 series airplanes; and Model A340–200 and –300 series airplanes. This proposed AD was prompted by reports of ram air turbine (RAT) pump failure. This proposed AD would require inspecting the RAT pump anti-stall valve for correct setting, re-identifying the RAT pump, performing a functional ground test of the RAT, and replacing the RAT pump or the RAT assembly with a serviceable part if necessary. We are proposing this AD to detect and correct malfunction of the RAT pump, which could lead to in-flight loss of the RAT-pump pressurization, possibly resulting in reduced control of the airplane.

DATES: We must receive comments on this proposed AD by August 27, 2012.

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

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

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

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0719; Directorate Identifier 2011–NM–240–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2011–0197, dated October 10, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> During a test flight before delivery from production, an A330 aeroplane experienced a RAT [ram air turbine] pump failure, as a result of which, the green hydraulic system could not be fully pressurized.
>
> Investigations concluded that this malfunction was due to poor installation of the anti-stall valve sleeve, causing a shift in the anti-stall speed setting and leading to an inability of the hydraulic pump Part Number (P/N) 5909522 to provide enough hydraulic pressure.
>
> This condition, if not detected and corrected, could lead to the in-flight loss of the RAT-Pump pressurization which, in case of a total engine flame out, could have consequences for the hydraulic circuits, possibly resulting in reduced control of the aeroplane. A340–500/–600 series aeroplanes are not affected by this issue because they are fitted with a different hydraulic pump P/N.
>
> For the reasons described above, this [EASA] AD requires a check to ensure correct setting of the RAT anti-stall valve in the pump housing, followed by a RAT functional ground test, and accomplishment of the applicable corrective actions, depending on findings.

Corrective actions include replacing the RAT pump or the RAT assembly with a serviceable part. Required actions include reporting the findings of the inspection. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Mandatory Service Bulletin A330–29–3117, dated July 19, 2011 (for Model A330 airplanes); and Mandatory Service Bulletin A340–29–4090, dated July 19, 2011 (for Model A340 airplanes). The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified

of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 59 products of U.S. registry. We also estimate that it would take about 4 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $20,060, or $340 per product.

In addition, we estimate that any necessary follow-on actions would take about 7 work-hours and require parts costing up to $405,143, for a cost of up to $405,738 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2012–0719; Directorate Identifier 2011–NM–240–AD.

(a) Comments Due Date

We must receive comments by August 27, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A330–201, –202, –203, –223, –243, –223F, –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes; and Airbus Model A340–211, –212, –213, –311, –312, and –313 airplanes; certificated in any category; all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 29: Hydraulic Power.

(e) Reason

This AD was prompted by reports of ram air turbine (RAT) pump failure. We are issuing this AD to detect and correct malfunction of the RAT pump, which could lead to in-flight loss of the RAT-pump pressurization, possibly resulting in reduced control of the airplane.

(f) Compliance

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

(g) Actions

(1) Within the applicable compliance time specified in table 1 of this AD, as applicable, check the RAT pump anti-stall valve for correct setting, re-identify the RAT pump, and do a functional ground test of the RAT, except as required by paragraph (g)(3) of this AD; in accordance with the Accomplishment Instructions of the applicable service bulletin specified in paragraph (g)(1)(i) or (g)(1)(ii) of this AD.

(i) Airbus Mandatory Service Bulletin A330–29–3117, dated July 19, 2011 (for Model A330 airplanes).

(ii) Airbus Mandatory Service Bulletin A340–29–4090, dated July 19, 2011 (for Model A340 airplanes).

TABLE 1—COMPLIANCE TIMES

Affected airplanes	Compliance time
For airplanes on which the A330 (certification maintenance requirements) CMR Task 292000–00001–1–C, or A340–200/–300 CMR Task 292000–A0001–1–C, or A330/A340 (maintenance review board report) MRBR Task 29.20.00/06, as applicable to the airplane type, has not been accomplished as of the effective date of this AD.	Within 3,000 flight hours or 7 months, whichever occurs first after the effective date of this AD.
For airplanes on which the A330 CMR Task 292000–00001–1–C, or A340–200/–300 CMR Task 292000–A0001–1–C, or A330/A340 MRBR Task 29.20.00/06, as applicable to the airplane type, has already been accomplished as of the effective date of this AD.	Within 24 months after the last accomplishment of A330 CMR Task 292000–00001–1–C, or A340–200/–300 CMR Task 292000–A0001–1–C, or A330/A340 MRBR Task 29.20.00/06, applicable to the airplane type, or 30 days after the effective date of this AD, whichever occurs later.

(2) If the functional ground test of the RAT, as required by paragraph (g)(1) of this AD, is not successful (as defined by the Accomplishment Instructions of the applicable service bulletin specified in paragraph (g)(1)(i) or (g)(1)(ii) of this AD): Before further flight, replace the RAT pump or the RAT assembly with a serviceable part, in accordance with the Accomplishment Instructions of the applicable service bulletin specified in paragraph (g)(1)(i) or (g)(1)(ii) of this AD.

(3) Any airplane equipped with a RAT hydraulic pump marked with an ''X'' or a date (month/year) in the amendment cell C of the identification plate, which has been successfully tested (as defined by the Accomplishment Instructions of the applicable service bulletin specified in paragraph (g)(1)(i) or (g)(1)(ii) of this AD) in accordance with the Accomplishment Instructions of the applicable service bulletin specified in paragraph (g)(1)(i) or (g)(1)(ii) of this AD prior to the effective date of this AD, is considered compliant with the requirements of paragraphs (g)(1) and (g)(2) of this AD.

(h) Parts Installation

As of the effective date of this AD, no person may install any RAT hydraulic pump or RAT assembly unless it has been inspected, corrected, and successfully tested (as defined by the Accomplishment Instructions of the applicable service bulletin specified in paragraph (g)(1)(i) or (g)(1)(ii) of this AD) in accordance with the requirements of paragraph (g) of this AD, on any airplane.

(i) Definition

A serviceable part is a RAT hydraulic pump or RAT assembly that has been inspected, corrected, and successfully tested (as defined by the Accomplishment Instructions of the applicable service bulletin specified in paragraph (g)(1)(i) or (g)(1)(ii) of this AD), in accordance with the Accomplishment Instructions of the applicable service bulletin specified in paragraph (g)(1)(i) or (g)(1)(ii) of this AD.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(k) Related Information

(1) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2011–0197, dated October 10, 2011, and the service bulletins specified in paragraphs (k)(1)(i) and (k)(1)(ii) of this AD, for related information.

(i) Airbus Mandatory Service Bulletin A330–29–3117, dated July 19, 2011.

(ii) Airbus Mandatory Service Bulletin A340–29–4090, dated July 19, 2011.

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

Issued in Renton, Washington, on July 5, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–16966 Filed 7–10–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0678; Directorate Identifier 2011–NM–285–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 747–400, and –400F series airplanes. This proposed AD was prompted by multiple reports of integrated display unit (IDU) malfunctions and mode control panel (MCP) malfunctions. This proposed AD would require installing new software, replacing the duct assembly with a new duct assembly, making wiring changes, and routing certain wire bundles. We are proposing this AD to prevent IDU malfunctions, which could affect the ability of the flight crew to read primary displays for airplane attitude, altitude, or airspeed, and consequently reduce the ability of the flight crew to maintain control of the airplane.

DATES: We must receive comments on this proposed AD by August 27, 2012.

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

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Ana Martinez Hueto, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6592; fax: 425–917–6591; email: *ana.m.hueto@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0678; Directorate Identifier 2011–NM–285–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We have received reports of IDU malfunctions and MCP malfunctions on Model 747–400, and –400F series airplanes. The reports range from a single display malfunction to all six primary IDUs going blank with an MCP malfunction, during various flight phases. Moisture in the flight deck cooling supply air could cause the IDU to blink, lose focus, or display in monochrome and the MCP to go blank. This condition, if not corrected, could affect the ability of the flight crew to read primary displays for airplane attitude, altitude, or airspeed, and consequently reduce the ability of the flight crew to maintain control of the airplane.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin 747–21A2523, Revision 1, dated October 3, 2011. This service information specifies installing new integrated display system (IDS) software, replacing the duct assembly with a new duct assembly, making wiring changes, and routing certain wire bundles.

Boeing Alert Service Bulletin 747–21A2523, Revision 1, dated October 3, 2011, refers to Boeing Service Bulletin 747–31–2426, dated July 29, 2010 (for airplanes with Rolls-Royce engines); Boeing Service Bulletin 747–31–2427, dated July 29, 2010 (for airplanes with General Electric engines); and Boeing Service Bulletin 747–31–2428, dated July 29, 2010 (for airplanes with Pratt & Whitney engines); as additional sources of guidance for installing certain IDS 508 software in each of the six IDUs and in each of the three EFIS/EICAS interface units (EIUs)

FAA's Determination

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

Proposed AD Requirements

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

Costs of Compliance

We estimate that this proposed AD affects 33 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace duct assembly and do wiring changes.	41 work-hours × $85 per hour = $3,485	$20,121	$23,606	$778,998
Software change	3 work-hours × $85 per hour = $255	0	255	8,415

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2012–0678; Directorate Identifier 2011–NM–285–AD.

(a) Comments Due Date

We must receive comments by August 27, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 747–400 and –400F series airplanes; certificated in any category; as identified in Boeing Alert Service Bulletin 747–21A2523, Revision 1, dated October 3, 2011.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 21, Air Conditioning.

(e) Unsafe Condition

This AD was prompted by multiple reports of integrated display unit (IDU) malfunctions and mode control panel (MCP) malfunctions. We are issuing this AD to prevent integrated display unit (IDU) malfunctions, which could affect the ability of the flight crew to read primary displays for airplane attitude, altitude, or airspeed, and consequently reduce the ability of the flight crew to maintain control of the airplane.

(f) Compliance

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

(g) Software Update

Within 12 months after the effective date of this AD: Install integrated display system software, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–21A2523, Revision 1, dated October 3, 2011.

Note 1 to paragraph (g) of this AD: Boeing Alert Service Bulletin 747–21A2523, Revision 1, dated October 3, 2011, refers to Boeing Service Bulletin 747–31–2426, dated July 29, 2010 (for airplanes with Rolls-Royce engines); Boeing Service Bulletin 747–31–2427, dated July 29, 2010 (for airplanes with General Electric engines); and Boeing Service Bulletin 747–31–2428, dated July 29, 2010 (for airplanes with Pratt & Whitney engines); as additional sources of guidance for the software installation specified by paragraph (g) of this AD.

(h) Replacement of Duct Assembly and Wiring Changes

Within 60 months after the effective date of this AD: Replace the duct assembly with a new duct assembly, do wiring changes, and route certain wire bundles, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–21A2523, Revision 1, dated October 3, 2011.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(j) Related Information

(1) For more information about this AD, Ana Martinez Hueto, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6592; fax: 425–917–6591; email: *ana.m.hueto@faa.gov.*

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

Issued in Renton, Washington, on June 29, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–16962 Filed 7–10–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–1213; Airspace Docket No. 11–ANM–23]

Proposed Amendment of Class E Airspace; Dillon, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: The FAA is issuing a SNPRM for the notice of proposed rulemaking (NPRM) published on March 15, 2012, in order to elicit comments addressing the proposed amendment to create Class E surface airspace and further expand the previous proposed amendment of Class E airspace extending upward from 700 feet above the surface at Dillon Airport, Dillon, MT, to accommodate aircraft using new Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures. The original NPRM only proposed an amendment of Class E airspace extending upward from 700 feet above the surface.

DATES: Comments must be received on or before August 27, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2011–1213; Airspace Docket No. 11–ANM–23, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On March 15, 2012, the FAA published a NPRM to modify Class E airspace, extending upward from 700 feet or more above the surface, at Dillon Airport, Dillon, MT (77 FR 15295). The comment period closed April 30, 2012. One comment was received.

The commenter recommended establishing Class E surface airspace, and also expand the Class E airspace extending upward from 700 feet above the surface for aircraft safety. The FAA found merit in this comment, and, therefore, proposes the additional creation of Class E surface airspace, and modification of existing Class E airspace extending upward from 700 feet above the surface. The FAA seeks comments on this SNPRM.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2011–1213 and Airspace Docket No. 11–ANM–23) and be submitted in triplicate to the Docket Management System (see

ADDRESSES section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2011–1213 and Airspace Docket No. 11–ANM–23''. The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Supplemental Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by creating Class E surface airspace and modifying existing Class E airspace extending upward from 700 feet above the surface at Dillon Airport, Dillon MT, to accommodate aircraft using new RNAV (GPS) standard instrument approach procedures at Dillon Airport. This action would enhance the safety and management of IFR operations at the airport. The geographic coordinates of the airport also would be adjusted.

Class E airspace designations are published in paragraph 6002 and 6005, respectively, of FAA Order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined 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. Therefore, this proposed regulation; (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would propose controlled airspace at Dillon Airport, Dillon, MT.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011 is amended as follows:

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

ANM MT E2 Dillon, MT [New]

Dillon Airport, MT
(Lat. 45°15′19″ N., long. 112°33′09″ W.)

Within a 6.1-mile radius of Dillon Airport. This Class E airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

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

* * * * *

ANM MT E5 Dillon, MT [Modified]

Dillon Airport, MT
(Lat. 45°15′19″ N., long. 112°33′09″ W.)

That airspace extending upward from 700 feet above the surface within a 9.2-mile radius of Dillon Airport; that airspace extending upward from 1,200 feet above the surface within a 45-mile radius of Dillon Airport.

Issued in Seattle, Washington, on July 2, 2012.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2012–16865 Filed 7–10–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–161–FOR; Docket ID: OSM–2012–0009]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (''OSM''), Interior.

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

SUMMARY: OSM announces receipt of a proposed amendment to the Pennsylvania regulatory program under the Surface Mining Control and Reclamation Act of 1977 (''SMCRA'' or the ''Act''). Pennsylvania's proposed amendment consists of additions related to beneficial use of coal ash upon active and abandoned mine sites. Pennsylvania is introducing beneficial use of coal ash into the Pennsylvania statutory scheme via Pennsylvania's Solid Waste Management Act (''SWMA''), the Clean Streams Law (''CSL''), the Surface Mining Conservation and Reclamation Act and the Administrative Code. Pennsylvania intends to revise its approved program pursuant to the additional flexibility afforded by the revised Federal regulations and SMCRA, as amended, to ensure Pennsylvania's proposed provision is consistent with and in accordance with SMCRA and the corresponding regulations. This document provides the times and locations that the Pennsylvania program and proposed amendment are available for public inspection, the comment period during which you may submit written comments and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on these amendments until 4 p.m., Eastern Standard Time (''EST'') August 10, 2012. If requested, we will hold a public hearing on the amendment on August 6, 2012. We will accept requests to speak at a hearing until 4 p.m., EST on July 26, 2012.

ADDRESSES: You may submit comments, identified by SATS No. PA–161–FOR by any of the following methods:

- *Mail/Hand Delivery:* Mr. Ben Owens, Acting Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, 3rd Floor, Pittsburgh, Pennsylvania 15220.
- *Fax:* (412) 937–2888.
- *Federal eRulemaking Portal:* The amendment has been assigned Docket ID OSM–2012–0009. If you would like to submit comments, go to *http://www.regulations.gov* and follow the instructions.

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

Docket: For access to the docket to review copies of the Pennsylvania regulations, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendments by contacting OSM's Pittsburgh Field Division Office; or you can view the full text of the program amendment available for you to read at *www.regulations.gov*.

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

Ben Owens, Acting Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, Appalachian Regional Coordinating Center, 3 Parkway Center, 3rd Floor, Pittsburgh, Pennsylvania 15220, Telephone: (412) 937–2827, Email: *bowens@osmre.gov*.

Thomas Callaghan, P. G., Director, Bureau of Mining and Reclamation, Pennsylvania Department of Environmental Protection, Rachel Carson State Office Building, P.O. Box 8461, Harrisburg, Pennsylvania 17105–8461, Telephone: (717) 787–5015, Email: *tcallaghan@state.pa.us*.

FOR FURTHER INFORMATION CONTACT: Ben Owens, Acting Chief, Pittsburgh Field Division; Telephone: (412) 937–2827. Email: *bowens@osmre.gov*.

SUPPLEMENTARY INFORMATION:

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

I. Background on the Pennsylvania Program

Section 503(a) of the SMCRA permits a state to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program effective July 30, 1982. You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Pennsylvania program in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning the Pennsylvania program and program amendments at 30 CFR 938.11, 938.12, 938.13, 938.15, and 938.16.

II. Description of the Proposed Amendment

By letter dated March 13, 2012, (Administrative Record Number PA 894.000), Pennsylvania sent OSM a request to approve regulations related to the beneficial use of coal ash on active and abandoned mine lands. Key provisions of the proposed amendment include operating requirements for beneficial use, including certification guidelines for chemical and physical properties of coal ash beneficially used and water quality monitoring requirements. Pennsylvania is requesting approval of regulations found at 25 Pa. Code Chapters 287.1 and 290, promulgated pursuant to the Pennsylvania SWMA.

287.1. Definitions

Coal ash, for the purposes of Chapters 287 and 290 includes: Fly ash, bottom ash or boiler slag that resulted from the combustion of coal and is or has been beneficially used, reused or reclaimed for a commercial, industrial or governmental purpose. This includes materials are stored, processed, transported or sold for beneficial use, reuse or reclamation.

290.1. Definitions

Temporary coal ash storage pile is stored for not more than two weeks. Water table is the toe top of the saturated zone including regional groundwater table, perched water tables, seasonal water tables and mine pools.

290.2. Scope

Coal ash that is not beneficially used in accordance with this regulation is subject to residual waste regulations. In the event of coal ash being mixed with

residual waste, a beneficial use designation must be approved. If the coal is produced by co-firing coal or waste coal with an alternative fuel the material is regulated under this chapter if the alternative fuel is less than 20% by weight of the total fuel mixture and contributes less than 10% by weight of total ash quantity, if the coal ash is mixed with construction and demolition waste, the beneficial use must be authorized under a permit for municipal waste and this chapter. Coal ash mixed with municipal waste—excluding construction and demolition waste—must not be beneficially used by direct placement into the environment.

Beneficial use activities under this chapter do not require an individual disposal permit.

290.101. General Requirements for Beneficial Use

No permit is required for beneficial use of coal ash if this chapter is complied with. To be considered a beneficial use, chemical analysis must indicate the coal ash does not exceed any of the maximum acceptable leachate levels discussed *infra.* Certain physical characteristics must be met as well.

A water quality monitoring plan is required for any structural fill, use at a mining activity site or abandoned surface coal mine site where more than 10,000 tons of coal ash per acre or more than 100,000 tons in total per site is used. Additionally, the Pennsylvania Department of Environmental Protection (''the Department''), at its discretion, may implement a water quality monitoring plan involving lesser quantities of coal ash. Coal ash may not be placed within eight feet of the water table unless used for mine subsidence control, mine fire control or mine sealing.

290.102. Use as a Structural Fill

Sixty days prior to using coal ash as a structural fill a written proposal must be submitted to the Department detailing:

- Description of the project including a topographic and soils map;
- Commencement and completion dates;
- Construction plans including a stability analysis prepared by a licensed professional engineer;
- Estimate of the volume of coal ash to be utilized;
- A chemical and leaching analysis that may not be older than one year; and
- A landowner consent.

Should the project be anticipated to exceed 10,000 tons of coal ash per acre or more than 100,000 tons in total site, the landowner consent must be recorded and public notice given in a local newspaper of general circulation at least once a week for three consecutive weeks. Information in this notice must include:

- Name and business address of person proposing to beneficially use coal ash;
- Description, location and scope of the project; and
- The location of the Department office where a copy of the written proposal may be inspected.

The Department, at its discretion, may require a public notice for smaller projects. The Department will publish a notice in the *Pennsylvania Bulletin* of each written proposal received for use of coal ash as structural fill.

The Department will respond in writing to the person proposing the use of coal ash as structural fill indicating if it is consistent with this section.

The following additional requirements for coal ash being beneficially used as structural fill must be satisfied:

- pH must be 7.0 or above, unless otherwise approved; however, it may not exceed 9.0 pH during placement and storage unless public access is restricted;
- Slope of the structural fill may not be greater than 2.5 horizontal to 1.0 vertical;
- Coal ash must be spread uniformly and compacted in layers not exceeding two feet in thickness and must be spread and compacted within 24 hours of its delivery to the site unless it is classified as a coal ash storage area;
- Surface runoff shall be minimized;
- Surface water shall be diverted;
- The coal ash shall be covered with 12 inches of soil;
- Minimum compaction of 90% of the maximum dry density as determined by the Modified Proctor Test or 95% of the maximum dry density as determined by the Standard Proctor Test must be achieved; and
- Fugitive dust shall be minimized.

Coal ash used as structural fill may not be located within:

- 100 feet of an intermittent or perennial stream;
- 300 feet of an exceptional value or high quality water;
- 300 feet of a water supply unless consented to by the owner of the water supply and submitted to the Department;
- 25 feet of a bedrock outcrop (with limited exceptions to be approved by the Department);
- 100 feet of a sinkhole or sinkhole draining area;
- A 100-year floodplain of a water of Pennsylvania unless a properly constructed structure is in place as permitted by the Department to protect the structural fill;
- 100 feet of a wetland; or
- 300 feet of an exceptional value wetland.

An annual report must be submitted for any project where more than 10,000 tons of coal ash per acre or more than 100,000 tons of coal ash in total is proposed.

Any deviation from the approved physical or chemical standards must be reported to the Department within 72 hours.

290.103. Use as a Soil Substitute

Coal ash may be used as a soil substitute if sixty days prior to such use a written proposal is submitted to the Department. The proposal must contain:

- A description of the project including a topographic and soils map of the projected area and an explanation of how the coal ash will be stored prior to use, how the soil will be prepared for application, how the coal ash will be spread and, when necessary, how the coal ash will be incorporated into the soil;
- Commencement and conclusion dates of the project;
- Proposed volume of coal ash to be used, the proposed application rate and a justification for the rate;
- A total chemical and leaching analysis and pH analysis no older than one year old;
- A chemical analysis as discussed *infra;*
- An analysis indicating the coal ash will be beneficial to use of the soil. This must be prepared and signed by an expert in soil science; and
- A landowner consent.

The Department will respond in writing to the person proposing the use of coal ash as a soil substitute or additive indicating if it is consistent with this section.

To be considered a beneficial use as a soil substitute or additive the following must be met:

- pH must range between 6.5 to 8.0 when mixed together as required by the project;
- Chemical analysis demonstrates calcium carbonate equivalency requirements;
- Surface runoff is controlled;
- Coal ash must be incorporated into the soil within 48 hours of application, unless the Department approves a deviation. The coal ash must be incorporated into the first layer of surface soil or if such is not present, the coal ash and substitute material must equal one foot. Coal ash is to enhance soil properties or plant growth;

• Coal ash shall be applied at a rate per acre that protects public health, public safety and the environment; and

• Fugitive dust must be minimized.

Coal ash may not be applied to soil being used for agriculture when the soil pH is less than 5.5 or if resultant chemical or physical soil conditions would be detrimental to biota.

Coal ash as a soil substitute or additive may not be placed within:

• 100 feet of an intermittent or perennial stream;

• 300 feet of an exceptional value wetland or exceptional value or high quality waters;

• 300 feet of a water supply unless a landowner consents to a variance;

• 100 feet of a sinkhole or area draining to a sinkhole; and

• 300 feet from an occupied dwelling unless a landowner consents to a variance.

Maximum cumulative loading rates may not be exceeded in relationship to the following constituents: arsenic, boron, cadmium, chromium, copper, lead, mercury, molybdenum, nickel, selenium and zinc.

Records of chemical and physical analyses, quantity of coal ash utilized, location of placement and sources of the coal ash must be maintained for a minimum of three years and must be made available upon request by the Department.

Any deviation from the approved physical or chemical standards must be reported to the Department within 72 hours.

290.104. Beneficial Use at Coal Mining Activity Sites

Approval for the beneficial use of coal ash at coal mining activity sites must be:

• In compliance with the Pennsylvania CSL, Surface Mining Conservation and Reclamation Act, Coal Refuse Disposal Control Act and other applicable environmental statutes and regulations promulgated thereunder;

• Certification as discussed *infra;* and

• Approval of a request by the Department. Each person wishing to use certified coal ash for a beneficial use at a coal mining activity site as part of a reclamation plan must submit a request with an appropriate filing fee and include the following:

➢ A description of the project, including an estimate in cubic yards of the amount of coal ash to be used and how it will be stored prior to placement;

➢ Documentation that the coal ash has been certified for its intended use, including the identity of the generator and the Department-assigned certification identifier;

➢ A consent from the landowner properly recorded; and

➢ An appropriate water quality monitoring plan.

When beneficial coal ash is utilized at a coal mining activity site, a nonrefundable permit filing fee is to be paid annually in the amount of $2,000 for each year it is utilized than $1,000 for each year until final bond release is achieved. This fee will be utilized to administer compliance programs. This fee will be reviewed and adjusted as necessary. Public notice shall be given if coal ash is utilized at a coal mining activity site. Overall improvement in water quality or prevention of degradation of water quality is to be the requirement for using coal ash for reclamation purposes at coal mining activity sites. Coal ash shall only be beneficially used for reclamation at the following locations: pit area, abandoned mine lands within the surface coal mining permit, coal refuse disposal and reprocessing sites and areas where other beneficial uses incorporated into the reclamation plan are being conducted.

To be placed at active coal mining sites the following additional operational requirements must be met including:

• The volume of the coal ash placed at the site may not exceed the volume of the coal, coal refuse, culm or silt removed, unless approved by the Department. The exception to this is when it is demonstrated that reclamation will be enhanced or water quality improved or certain exceptions for coal refuse reprocessing sites;

• Placement occurs by mixing with spoil or spreading it in horizontal layers no greater than 2 feet thick;

• Spreading and compaction must occur within 24 hours of delivery;

• Requirements of the Modified or Standard Proctor Test must be met when coal ash placement is not accomplished by mixing with spoil;

• Maintenance of the sources and volume of coal ash utilized;

• An approved water quality monitoring plan; and

• Minimization of fugitive dust.

Additional requirements are necessary for sites utilizing coal ash as a soil substitute, soil additive, or utilized at a coal refuse disposal site. Quarterly water monitoring must be collected and submitted to the Department for review, unless less frequent monitoring is approved by the Department. Annual reporting of coal ash placed on a coal mining activity site must be submitted to the Department. Any deviation from the approved physical or chemical standards must be reported to the Department within 72 hours.

290.105. Beneficial Use at Abandoned Mine Lands (''AML'')

Coal ash is permitted on AMLs in instances where reclamation is performed pursuant to a contract with the Department contingent upon the following:

• Compliance with all terms of this code and ancillary applicable environmental statutes and regulations;

• Appropriate Certification as detailed in this regulation; and

• An approved contract as detailed herein.

Each aforementioned contract proposal has several components, including a description of the project; proof that the coal ash has been certified for its intended use, including the identity of the generator; a reclamation plan prepared and sealed by a professional engineer; a signed statement of the land owner consenting to the placement of the coal ash which must be recorded, and a detailed water quality monitoring plan. The description of the project shall include a commencement and completion date for the project, the amount of coal ash to be utilized—in cubic yardage—and detail the coal ash placement and storage of the coal ash prior to placement and properly identify the sources of the coal ash. When coal ash is utilized as a soil substitute or an additive, the proposal must also include the justification for coal ash as beneficial use and the application rate. In the event more than 10,000 tons of coal ash per acre or more than 100,000 total tons of coal ash are utilized at one project public notice must be given for a period of three consecutive weeks. Contiguous projects will be considered a single project when determining if the above factors apply. The Department also has discretion to require other coal ash placement projects be advertised. A proof of publication of the notice is required demonstrating the notice contained:

• Name and business address of proposer;

• Description of the location and scope of the use; and

• Location where a copy of the contract proposal is available for public inspection.

Additionally, certain operating requirements for use of coal ash are required:

• Slope cannot exceed 2.5 horizontal to 1.0 vertical, unless approved by the Department after a demonstration of stability;

• Uniformity of spreading is necessary and compacting in layers shall not exceed two feet in thickness

unless approved by the Department. Spreading and compacting must occur within 24 hours of delivery unless provisions relative to coal ash storage are invoked;

• Surface runoff must be minimized and storm water managed;

• Surface water shall be diverted;

• Twelve inches of soil must cover the coal ash unless an infiltration buffer is utilized;

• Minimum compaction of 90% or 95% of the maximum dry density must be accomplished in conformity with the Modified Proctor Test or the Standard Proctor Test, respectively. Ash from each source shall be tested individually;

• Fugitive dust must be minimized;

• When used for reclamation the coal ash generally cannot be placed within:

➢ 100 feet of an existing intermittent or perennial stream or within 300 feet of an exceptional value or high quality water, unless demonstration is made to the Department that placement in this zone is necessary to achieve remediation of abandoned mine features located within this zone;

➢ 100 feet of a sinkhole or a wetland (but not an exceptional value wetland which requires a 300 foot buffer); and

➢ A 100-year floodplain of a water of the Commonwealth unless protection of this area is available consistent with the Flood Plain Management Act, the Storm Water Management Act and the Dam Safety Encroachment Act.

• When used as a soil substitute or soil additive, the coal ash shall be applied at a rate per acre that protects public health, public safety and the environment; must be part of the approved reclamation plan to increase productivity or properties of the soil; and may not be used in excess of the maximum cumulative loading rates.

An annual report must be filed with the Department detailing the company contact information, identity of the reclamation contract, including Department-assigned certification identifier, identity of each source of coal ash and the amount of coal ash placed on the site during the previous calendar year.

Should any person utilizing coal ash for beneficial use discover evidence that the coal ash does not meet certification requirements this person must notify the Department within 72 hours.

290.106. Other Beneficial Uses

The following do not require a permit as they are deemed beneficial uses. This determination is contingent upon the uses complying with the requirements of this section:

• Coal ash used in the manufacture of concrete or cement as long as it is utilized within 24 hours of delivery or stored in accordance with applicable coal ash storage criteria;

• Extraction or recovery of a component of coal ash as long as it is stored appropriately before and after extraction or recovery and disposal of the unutilized fraction of coal ash is subject to the applicable requirements for residual waste;

• Use of fly ash as a stabilized product. Moreover, when fly ash is altered prior to use or during placement it will be considered a beneficial use if:

➢ The person proposing use gives advance written notice;

➢ Fly ash is not mixed with solid waste—unless advance, written approval is given by the Department;

➢ The use results in a demonstrated reduction of the potential of the material to leach constituents into the environment;

➢ If the fly ash is used as structural fill the applicable requirements contained herein are met; and

➢ If the fly ash is used as a soil amendment the applicable requirements contained herein are met.

• Use of bottom ash or boiler slag as an antiskid material or road surface preparation material, if consistent with applicable Department of Transportation specifications. Note: the use of fly ash for the same purpose is *not* deemed a beneficial use;

• Use of coal ash as raw material for a commercially valuable product including the use of bottom ash as construction aggregate. Provisions relative to storage prior to processing are applicable;

• Use of coal ash pipe bedding contingent upon advance, written notice to the Department including an evaluation of the pH and chemical analysis of the coal ash;

• Use of coal ash for mine subsidence control, mine fire control and mine sealing, if the following are true:

➢ Advance, written notice is given to the Department;

➢ Utilization occurs within 24 hours of delivery, unless storage provisions are adhered to;

➢ If funded by the Department, all Departmental requirements and contracts must be adhered to; and

➢ The coal ash will undergo cementitious reactions.

• Use of coal ash as a fuel. To be considered a ''fuel'' the minimum heating value of 5,000 btu/lb must be exceeded. Storage of the coal ash prior to use must be consistent with this subchapter.

To fully comply with a designation of beneficial use, any person using coal ash is obligated to notify the Department of any evidence that the material does not meet appropriate chemical or physical property requirements and documentation of chemical and physical analyses of the quantity of coal ash utilized, placement and sources must be maintained for a minimum of three years following the cessation of use of the coal ash.

290.107. Requests for Information

The Department has the right to request information documenting compliance with this subchapter and failure to have documentation of compliance may result in a presumption of that person disposing of residual waste without a permit.

290.201. Coal Ash Certification

To obtain coal ash certification, the following must be met:

• Maximum acceptable leachate levels must be met. Specifically, for metals and other cations (other than selenium) the criterion is 25 times the waste classification standard for a contaminant. For selenium and sulfate, 10 times the waste classification standard and for non-metals and anions (other than sulfate and fluoride) the waste classification standard for a contaminant;

• pH must be greater than 7.0;

• When coal ash is utilized as an alkaline additive, the calcium carbonate equivalency must be a minimum of 100 parts per thousand. The Neutralization Potential Test is the standard unless another is approved by the Department; and

• When coal ash is utilized as a low permeability material the hydraulic conductivity must be 1.0 x 10 to the negative sixth power or less. This is evaluated utilizing approved Department standards. The testing must use compaction and other preparation techniques to simulate conditions at the mine site.

To reach the parameters established above, lime or cement may be added to the coal ash contingent upon request to and approval by the Department.

Requests to the Department for certification by a generator must include:

• Name and location of the generator;

• Designation of the beneficial use or uses requested;

• A specific description of the generation process. This should include details on the combustion and pollution control processes, the impact of these processes on the coal ash, fuel sources utilized and the expected percentages of coal ash that will be derived and ultimately delivered to the beneficial use site;

• Description of any material mixed with the coal ash;

• A detailed chemical analysis, from a documented environmental laboratory, on at least four samples, taken throughout a 2 to 6-month sampling period within a year that fully characterizes the composition of the coal ash. This analysis must include:

➢ Total concentrations and leachable concentrations of a full complement of heavy metals using methods and pH using soil and waste pH method found in EPA's Test Methods for Evaluating Solid Waste, Physical/Chemical Methods'' (EPA Publication No. SW–846) or comparable methods approved by the Department. Leachate concentrations must be determined using EPA Method 1312, or an approved Department alternative.

• A laboratory analysis for optimum moisture content and dry density;

• Analysis of hydraulic conductivity;

• Determination of neutralization potential;

• A detailed description of the sampling methodology utilized; and

• Other necessary testing if required for a specific beneficial use proposed.

The Department will review requests and notify the generator in writing of the assigned certification identifier or rationale as to why the source was not certified. If the coal ash is certified, the generator shall submit regular monitoring information demonstrating continued compliance. The monitoring information shall include at least one representative sample, taken quarterly. Further, a representative sample is required whenever there is a change in operation that could result in a chemical or physical component of the coal ash. Annually a report must be produced that includes the weight, in dry tons of coal ash produced for beneficial use in the previous calendar year, an estimate of the volume and the locations of where the coal ash is delivered.

A coal ash generator shall notify the Department of any changes to the information found in the application or evidence that the coal ash is not meeting certification requirements.

290.202. Revocation of Certification

Certification will be revoked if any of the following occur:

• Monitoring requirements are not met;

• Coal ash exceeds certification standards and exceedance certification requirements, as outlined *infra;* or

• Physical or chemical characteristics make the coal ash unsuitable for beneficial use.

Should certification be revoked, the coal ash cannot be used at a coal mining activity site or an AML site in the Commonwealth unless recertification is approved by the Department as outlined *infra.*

Recertification is possible if the generator can demonstrate via a detailed chemical analysis on the three recent monthly representative samples that the coal ash meets the certification requirements, and there are no physical or chemical characteristics that make the coal ash unsuitable for beneficial use.

290.203. Exceedance of Certification Requirements

Should sample results exceed any certification standard, the generator must—within 30 days of receiving the results—submit to the Department the following, as applicable:

• In the event of a laboratory error, documentation and an explanation of the error from the laboratory along with a corrected analysis demonstrating the coal ash certification standards are met; and

• Demonstration of an anomaly. This shall be documented by a comparison of the anomalous sample with prior samples; additional samples demonstrating criteria are being met; a plan for temporary increases in monitoring; and an explanation of the cause of the exceedance and how further exceedances will be avoided.

By providing this information, should the generator demonstrate to the Department's satisfaction that the exceedance is an anomaly, use of the coal ash as a beneficial use may resume. Failure to provide this information will result in a revocation of beneficial use certification for the source.

290.301. Water Quality Monitoring

Prior to placement or storage of coal ash, a water quality monitoring plan shall be submitted to the Department. At a minimum the plan must include:

• The location and design of down gradient and up-gradient monitoring points;

• A minimum of 12 background samples from each monitoring point taken at monthly intervals prior to placement of coal ash; and

• Samples are to be taken quarterly after approval.

The person taking the samples and the laboratory performing the analysis shall employ the quality assurance/quality control procedures outlined in the EPA's Handbook for Analytical Quality Control in Water and Wastewater Laboratories or Test Methods for Evaluating Solid Waste. The analytical methodologies used to meet the requirements of this section must follow established EPA protocol. The laboratory performing water quality analysis must be in conformity with Department mandated environmental laboratory accreditation.

Samples are to be analyzed for pH, temperature, specific conductance, alkalinity, acidity, sulfate, chloride, fluoride, nitrate, nitrate, ammonia, and total suspended solids without filtration.

Samples shall be analyzed for a host of heavy metal, total and dissolved concentrations. Also, static water elevation for monitoring wells and for springs, seeps and mine discharges must be measured. Additional parameters may be required at the Department's discretion.

Quarterly water quality monitoring will continue and be submitted to the Department for a minimum of five years after final placement or storage of coal ash and annually thereafter from the end of year five through 10 years after final placement or storage, unless a longer period is required by the Department.

A demonstration of attainment of applicable groundwater or surface water remediation standards must be made and must be in conformity with this subchapter relative to assessment and abatement.

290.302. Number, Location and Depth of Monitoring Points

The water quality monitoring system shall accurately characterize groundwater and surface water flow and chemistry and flow systems on the site and adjacent areas. To achieve this, the following must be met:

• At least one point that is up-gradient of the coal ash placement in order to provide representative data of groundwater not affected by the coal ash placement. The exception to this is in the event the placement is the up-gradient point; in such instances down gradient monitoring points will be utilized;

• At least three groundwater monitoring points down gradient of the coal ash placement, unless two are approved by the Department. Furthermore, at the Department's discretion, springs, seeps and mine discharges may serve as substitutes if they are down gradient and will be as effective in monitoring the coal ash placement. Down gradient wells must be hydrologically connected to the area of coal placement and constructed in a manner to detect chemical influence of the coal ash placement area throughout the longevity of the placement of coal ash. These points must be developed

and protected as approved by the Department; and

• Surface water monitoring points are necessary where such monitoring may indicate any chemical influence on the hydrologic regime from coal ash placement.

Up-gradient and down gradient points should be sufficient in number, location, and depth to be representative of water quality. These points shall not interfere with routine operations at the site and in most cases should be within 200 feet of the coal ash placement area.

Up-gradient points shall be located so as not to be affected by effects on groundwater or surface water from the coal ash placement area. Down gradient monitoring points shall be placed to provide early detection.

All wells drilled must be in compliance with the Water Well Drillers License Act and all well materials shall be decontaminated prior to installation.

290.303. Standards for Wells and Casing of Wells

Monitoring wells must be cased to maintain the integrity of the borehole and be constructed of material that will not reach groundwater that is being monitored. The minimum casing diameter must be four inches. The well must be constructed with a screen that is factory-made, will not react with the groundwater and the screen must maximize open area to minimize entrance velocities and allow rapid sample recovery.

The well must be filter-packed with chemically inert clean quartz sand, silica or glass bead. The material chosen must be well-rounded and dimensionally stable.

The casing must extend at least one foot above ground, unless the Department allows for flush mount wells.

The annular space above the sampling depth must be sealed to prevent contamination and the casing must be designed and constructed to prevent cross contamination. The Department has discretion to approve alternative casing designs for wells in stable formations.

The protective monitoring well casings must be enclosed in a protective casing that protects the well from damage, be installed for at least 10 feet above the well cap and must stick up at least three feet, and be grouted and placed with a concrete collar at least three feet deep. The casing must be numbered, protrude above the monitoring well casing, have a locked cap and must be made of steel or other material of equivalent strength.

290.304. Assessment Plan

An assessment plan must be prepared within 60 days should any of the following occur:

• Degradation is indicated from water monitoring. Federal ground water sampling and analysis requirements will be utilized to assess the data; or

• Laboratory analysis of public or private water supplies indicate contamination of ground or surface water that could reasonably be attributable to coal ash placement.

Assessment must consist of chemical data and a supporting narrative should one of the following apply:

• Ten working days following receipt of the degraded sample and the re-sampling indicates degradation has not occurred. Determination that degradation is not present must be approved by the Department; or

• Twenty working days following receipt of the degraded sample, demonstration is made that the degradation is caused by seasonal variations or activities unrelated to coal ash placement.

The assessment plan must specifically address the existence of, quality, quantity, area, extent and depth of degradation and the rate and direction of migration of contaminates. It must be prepared and sealed by a professional geologist.

For assessment plans involving wells, lysimeters, borings, pits, piezometers, springs, seeps, mine discharges and other assessment structures or devices, the number, location, size, casing type and depth must be included. If the assessment points are wells they shall be constructed in accordance with this subchapter.

All assessment plans must include:

• Sampling and analytical methods for parameters to be evaluated;

• Evaluation procedures, including the previously gathered groundwater or surface water quality and quantity information is to be included to determine the concentration, rate and extent of groundwater or surface water degradation from the facility;

• A biological assessment of surface water;

• An implementation schedule; and

• Identification of the abatement standard that will be met.

The assessment plan shall be implemented upon approval by the Department within a reasonable time not to exceed six months.

Should the Department determine the proposed plan is inadequate; it may modify the plan and approve it as modified.

If the groundwater or surface water assessment indicates that contamination is leaving the coal ash placement site, the person shall notify, in writing, each water supply owner within one-half mile down gradient of the coal ash placement area that an assessment has been initiated.

Within 45 days after the completion of the assessment plan, the person shall submit a report containing the new data collected, analysis of the data, and recommendations on the necessity for abatement.

If the Department determines after review of the assessment report that implementation of an abatement plan is not required—pursuant to this subchapter—a revised water quality monitoring plan must be submitted for approval to the Department. This revised water quality plan must outline any necessary changes and include an application for permit modification if applicable. The modifications to the plan shall be implemented within 30 days of approval.

Nothing in this section prevents prior or concurrent abatement or water supply replacement.

290.305. Abatement Plan

An abatement plan must be submitted to the Department when any of the following occur:

• The aforementioned assessment plan demonstrates the presence of groundwater or surface water degradation and analysis indicates an abatement standard will not be met at the compliance points;

• Departmental monitoring indicates the exceedance of an abatement standard even in a situation where an assessment plan has not been completed. The following are exceptions to this standard and an abatement plan will not be required to be implemented:

➢ Within ten days after receipt of the results re-sampling of the affected monitoring points indicates exceedance of an abatement standard has not occurred and the Department concurs.

• After a biological assessment of surface water indicates a detrimental effect to biota.

Abatement plans must be prepared and sealed by a professional geologist licensed to practice in this Commonwealth. The plan must include specific abatement of groundwater or surface water degradation, techniques to prevent further degradation and a schedule for implementation.

Abatement procedures must demonstrate compliance with at least one of the following standards at the identified compliance points:

• Situations where Statewide health standards are applicable, compliance

with the Statewide health standard for that constituent at and beyond 500 feet of the perimeter of or the property boundary, whichever is closer;

• The background standard for constituents at and beyond 500 feet of the perimeter of the coal ash placement area or at and beyond the property boundary, whichever is closer. Load-based standards at groundwater discharge points are acceptable under certain circumstances where approval was otherwise granted by the Department;

• Constituents for which no primary maximum contaminant levels exist the risk-based standard (addressed *supra*) at and beyond 500 feet of the perimeter of the placement area or the property boundary, whichever is closer is applied if the following conditions are met:

➢ The risk assessment used to establish the standard assumes human receptors are present at the boundary;

➢ The level is derived in a manner consistent with generally accepted and applicable health risk assessments; and

➢ The level is based on scientifically valid studies conducted in accordance with good laboratory practice standards or other scientifically valid studies approved by the Department and

➢ If the constituent is a carcinogen, the level represents a concentration associated with an excess lifetime cancer risk level of 1×10 to the negative fifth power at the property boundary.

When measuring compliance with secondary contaminants with statewide health standards or those with no primary maximum contaminant level, the Department may approve a compliance point beyond 500 feet on land owned by the owner of the coal ash placement area.

The abatement plan shall be completed and submitted to the Department for approval within 90 days, unless modified in writing.

In the event the plan is deemed inadequate it may be modified and approved or the submission of a sufficient modification may be required by the Department.

The abatement plan shall be implemented within 60 days of approval.

Should the Department determine that the plan is incapable of achieving the groundwater or surface water protection contemplated in the approval the Department may issue an order outlining one or more of the following: requiring a proposed modification to the abatement plan; requiring implementation of an abatement plan modified by the Department or another order the Department deems effective for enforcement.

290.306. Recordkeeping

Records, analyses, and evaluations of monitoring data and groundwater elevations must maintained for a minimum of three years after water quality monitoring ceases. This documentation must be made available to the Department upon request.

290.307. Interim Water Quality Monitoring Requirements

This section is applicable to sites where coal ash has been stored or placed for beneficial use prior to December 11, 2010, and will continue after that date.

Sites not previously subject to water quality monitoring requirements must submit a water quality monitoring plan whereby the location and design of down gradient and up-gradient monitoring points is identified and samples are taken quarterly. This plan shall be implemented within one year of the Department's approval of the plan.

Sites previously subject to water quality monitoring must ensure new monitoring points and replacement wells constructed after December 11, 2011, comply with the provisions of this subchapter including number, location and depth of monitoring wells and ensure the wells are properly cased as set forth in this subchapter.

All water quality monitoring after March 11, 2011, must include analysis of pH, temperature, specific conductance, alkalinity, acidity, sulfates, chlorides, fluoride, nitrate, nitrite, ammonia and total suspended solids as well as analysis of a variety of heavy metals and static water elevation for monitoring wells and the flow of springs, seeps and mine discharges must be measured.

Summary of Proposed Amendment Submitted by Pennsylvania

The key provisions of the rule address the operating requirements for beneficial use of coal ash upon active and abandoned mine land sites. The proposed amendment addition has the following components:

• Chemical and physical certification standards for coal ash to ensure compliance with beneficial use requirements;

• Coal ash monitoring to ensure coal ash meets qualification criteria;

• Water quality monitoring to create a robust dataset to facilitate the evaluation and documentation of water quality at sites where coal ash is beneficially used;

• A minimum number of monitoring points to characterize the groundwater;

• Recording of the landowner consent for placement of coal ash for beneficial use;

• Reporting of volumes and locations where coal ash is beneficially used;

• Operational and monitoring standards for all types of beneficial use;

• A centralized process to qualify coal ash for beneficial use at mine sites;

• An annual fee payable to the Department to offset some of its costs for coal ash and water quality sampling and testing at mine sites where coal ash is beneficially used; and

• Abatement plan requirements in the event that site assessments indicate groundwater or surface water degradation.

III. Public Comment Procedures

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

Electronic or Written Comments

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

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

Public Availability of Comments

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

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., EST, on July 26, 2012. If you are disabled and need reasonable

accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

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

Public Meeting

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

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

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

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSM for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 18, 2012.

Michael K. Robinson,

Acting Regional Director, Appalachian Region.

[FR Doc. 2012–16945 Filed 7–10–12; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2011–0145]

Federal Motor Vehicle Safety Standard No. 108; Lamp, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Request for comments on technical report.

SUMMARY: This notice requests comments on a technical report which evaluates new approaches for the regulation of motor vehicle lighting performance. Since 1968, the lighting standard in the United States has been updated incrementally, while lighting technologies have in some ways changed dramatically. We are requesting comments on the general approaches and specific technical merits presented in this report. These comments, in conjunction with the agency's overall priorities, will be used to shape our next steps.

DATES: Comments must be received no later than September 10, 2012.

ADDRESSES: *Report:* The technical report is available on the internet for viewing in PDF format at *http://www.regulations.gov* and search for this docket number. You may obtain a copy of the report free of charge by sending a self-addressed mailing label to Markus Price (NVS–121), National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

Comments: You may submit comments [identified by Docket Number NHTSA–2011–0145] by any of the following methods:

- *Federal eRulemaking Portal: Go to http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

You may call Docket Management at 202–366–9826.

Instructions: For detailed instructions on submitting comments, see the Procedural Matters section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mr. Markus Price, Office of Crash Avoidance Standards (Phone: 202–366–0098; Fax: 202–366–7002).

You may send mail to this official at: National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, reflective devices, and associated equipment,* is a complex motor vehicle standard that has been in effect for several decades. The agency contracted for the preparation of a technical report, ''Feasibility of New Approaches for the Regulation of Motor Vehicle Lighting Performance,'' which discusses the feasibility of new approaches to regulating motor vehicle lighting equipment. The report examines ways to effectively achieve the purposes of the performance requirements of FMVSS No. 108, which is to reduce crashes and injuries by increasing the conspicuity of motor vehicles and adequately illuminating the roadway. The report is available in the docket NHTSA–2011–0145.

The report identifies several potential opportunities for performance requirements in the following areas: headlighting photometry, headlamp test voltage, sensitivity of headlamps to vertical aim, luminance of signaling and marking lamps, masking of front turn signals, and reliability of photometric testing. The report also examines other areas, including physical lamp testing and signal lamp angular photometry.

In addition to a literature review, the authors of this report consulted experts within the lighting community through SAE International. These experts were consulted on the potential effects of requirements that are primarily vehicle-based. To increase transparency and broaden the input regarding this report, this notice requests comments from the public. We are specifically interested in

both the technical approaches taken in the report, as well as thoughts about the impact on the certification process if such an approach were taken by the agency. We request comment on any area examined in the report that could increase or decrease the protection currently provided to the traveling public.

Whole-vehicle testing (lower and upper beam headlighting)—We are seeking comment on the approach that closely aligns potential requirements with the ability of a vehicle lighting system to provide visibility for vehicle navigation while limiting the impacts of glare. Our current standard primarily treats a headlamp as a separate piece of safety equipment that is installed on a motor vehicle with various height and width restrictions. Based on various assumptions, the report translates the angular photometric requirements for each lamp in the current standard into areas in three-dimensional space around the vehicle. These areas around the vehicle are then easily correlated to various objects on the roadway, such as oncoming driver eye locations and overhead signs positions.

Headlamp test voltage—We are seeking comment on ways to closely align the test input parameters of headlamps with those experienced on vehicles in the real world. Currently, headlamps are required to meet our photometry requirements when tested at 12.8 V. Many vehicles currently operate above this voltage by design. Accordingly, the report recommends a test voltage of 13.2 V because it would closely represent the way headlamps operate on the road.

Asymmetrical headlighting—We would like comments from the public on the merits and practicality of allowing significantly different performance from different headlamps mounted on the vehicle. The report investigates the potential for such headlighting systems to provide superior glare control; however, it also notes potential issues when considering the current marking functions of headlamps as well as the current redundancy within photometry.

Adaptive forward lighting—We are seeking comment with respect to the regulation of headlamps that adapt to roadway conditions. This report does not evaluate the benefits of the various methods of adaptive forward lighting. The report notes that the whole-vehicle testing approach discussed above may provide a natural framework for which adaptive forward lighting requirements could be established in the future. The report notes that given that the current standard addresses headlamp photometry independent of the specifics of the vehicle on which it is installed, it may be difficult to evaluate the effectiveness of modifying the aim, or beam pattern of the headlighting system in a dynamic environment. We are seeking comment on how the approaches presented in the report could provide a foundation for dynamic evaluation of the headlighting system in the future.

Headlamp aim—We are seeking comment on the expected impacts of the approaches investigated in this report on headlamp aim. While it is clear that headlamp aim can be a critical factor in determining the ability of a headlighting system to adequately illuminate the roadway as well as limit glare, our current standard does not require that headlamps be aimed as installed on a new motor vehicle. The report notes that under the whole vehicle testing approach discussed above, headlamp aim would not be considered separately from headlamp photometry as the measurement of the headlighting system would take into account and measure the amount of light directed toward various regions of space surrounding the vehicle. Accordingly, headlamp aim would become an integral part of the headlighting system performance.

Signal lamp luminance—We are seeking comment on how to measure the ability to see signal lighting beyond measuring intensity and the number of lighted sections. The judgment of brightness is most similar to the measurement of luminance; that is, luminous intensity, measured in candela, divided by the area from which light is emitted, measured in cm^2. Our current standard addresses signal lamp luminance in a somewhat indirect way. While we directly measure the luminous intensity of a lamp, for the purposes of luminance, we approximate the area from which the light is emitted based on the number of lighted sections. We are seeking comment on the ability for new computer based design systems to more directly measure the area from which light is emitted and any potential benefits of directly calculating signal lamp luminous as well as any potential issues associated with the approaches presented in the report.

In addition, NHTSA also seeks comments regarding which of the above areas have the most potential for improving motor vehicle safety. We are interested in public input on which areas to prioritize based on potential safety benefits, considering the availability of limited agency resources.

Procedural Matters

How can I influence NHTSA's thinking on this subject? NHTSA welcomes public review of the technical report and will review and analyze the comments received.

How do I prepare and submit comments? Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the Docket number of this document (NHTSA–2011–0145) in your comments. Your primary comments must not be more than 15 pages long (49 CFR 553.21). However, you may attach additional documents to your primary comments. There is no limit on the length of the attachments. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://www.regulations.gov.* Please send two paper copies of your comments to Docket Management, fax them, or use the Federal eRulemaking Portal. The mailing address is U.S. Department of Transportation, Docket Management Facility, M–30, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The fax number is 1–202–493–2251. To use the Federal eRulemaking Portal, go to *http://www.regulations.gov* and follow the online instructions for submitting comments.

We also request, but do not require you to send a copy to Markus Price, Safety Standards Engineer, Visibility and Injury Prevention, NVS–121, National Highway Traffic Safety Administration, Room W53–312, 1200 New Jersey Avenue SE., Washington, DC 20590 (or email them to *markus.price@dot.gov*). He can check if your comments have been received at the Docket and he can expedite their review by NHTSA.

How can I be sure that my comments were received? If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information? If you wish to submit any information under a claim of confidentiality, send three copies of

your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Include a cover letter supplying the information specified in our confidential business information regulation (49 CFR part 512). In addition, send two copies from which you have deleted the claimed confidential business information to U.S. Department of Transportation, Docket Management Facility, M–30, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, or submit them via the Federal eRulemaking Portal.

Will the agency consider late comments? In our response, we will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, we will also consider comments that Docket Management receives after that date. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

How can I read the comments submitted by other people? You may read the materials placed in the docket for this document (*e.g.,* the comments submitted in response to this document by other interested persons) at any time by going to *http://www.regulations.gov.* Follow the online instructions for accessing the dockets. You may also read the materials at the Docket Management Facility by going to the street address given above under **ADDRESSES.** The Docket Management Facility is open between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

Issued: July 5, 2012.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2012–16893 Filed 7–10–12; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register

Vol. 77, No. 133

Wednesday, July 11, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Santa Fe National Forest; New Mexico; Southwest Jemez Mountains Landscape Restoration Project Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement

SUMMARY: The Santa Fe National Forest is proposing to conduct ecological restoration activities on up to 110,000 acres within the greater Southwest Jemez Mountains (SWJM) landscape area over 10 years. Treatment areas are located on the Jemez Ranger District and would occur in the vicinity of Jemez Springs, New Mexico. The goal is to make the landscape less susceptible to undesirable, large-scale disturbances such as high-severity wildfire, climate change, or insects. Proposed actions include improving fish and wildlife habitat, vegetative diversity, and watershed function. Implementing the treatments will provide wood products and economic opportunities.

DATES: Comments concerning the scope of the analysis must be received 30 days from date of publication of this notice in the **Federal Register**. The draft environmental impact statement is expected in April, 2013, and the final environmental impact statement is expected in August, 2013.

ADDRESSES: Send written comments to Southwest Jemez Mountains Project, Santa Fe National Forest, 11 Forest Lane, Santa Fe, NM 87508. Comments may also be sent via email to *jemezrestoration@fs.fed.us,* or via facsimile to 505–438–5390.

FOR FURTHER INFORMATION CONTACT: Julie Bain, NEPA Coordinator, via email at *jbain@fs.fed.us*.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

There is a need to restore forest and riparian ecosystems in the Southwest Jemez Mountains landscape because current ecological conditions are not meeting or moving toward the desired conditions described in the Forest Plan and the Southwest Jemez Mountains Landscape Strategy. To meet the goal of improved resilience and function, we identified four purposes. First, reduce the potential for uncharacteristically severe and intense wildfires while promoting the low-intensity, frequent surface fires that were common across this landscape. To achieve this, there is a need for: (a) Forest stands with a mosaic of grassy openings, shrubs, and groups of trees of various sizes and ages; (b) native perennial grasses, shrubs, and forbs that can carry low-severity fire across the landscape; (c) more old-growth ponderosa pine and mixed conifer stands; and (d) reduced amounts of live and dead fuels. Second, improve the function of riparian ecosystems, streams, and wildlife habitat. To achieve this, there is a need for: (a) Native riparian vegetation along streams and more pools, riffles, and large woody debris within streams; (b) fewer impacts from livestock and elk in riparian areas and along stream banks; (c) less erosion, bare soil, and unstable or raw stream banks; (d) less erosion and fewer headcuts and gullies in upland areas; (e) fewer impacts from roads; (f) fewer nonnative invasive plants; (g) springs and seeps that function at or near their potential; and (e) more structural and understory diversity in northern goshawk and Mexican spotted owl habitat. The third purposed is to offset treatment costs and provide economic opportunity. To achieve this, there is a need for: (a) A source of wood products for commercial and personal use, and (b) a transportation system to implement activities and remove wood products. Finally, the fourth purpose of this project is to provide for the sustainability of archaeological sites, traditional cultural properties, sacred sites, and forest resources and areas associated with traditional practices. To do this, there is a need for: (a) Reduced amounts of fuel on archaeological sites; (b) erosion control measures on archaeological sites; (c) forests that provide continued availability to engage in traditional practices; and (3) fewer road-related impacts on archaeological sites.

Proposed Action

In response to the purpose and need, the Santa Fe National Forest proposes to conduct forest and watershed restoration treatments on up to 110,000 acres of National Forest System lands in the Southwest Jemez Mountains for up to 10 years, or until treatments are completed. The proposed restoration activities would occur in all ecosystems in the area, including ponderosa pine, mixed conifer, piñon-juniper, riparian areas, meadows, and aspen. The forest restoration activities would focus on thinning and burning treatments that would reduce stand density, continuity, and homogeneity, and increase heterogeneity (structural diversity at the landscape scale). Stream and riparian restoration activities would occur in and along a number of the perennial streams in the area to improve water quality and habitat for fish and aquatic species. Wildlife habitat restoration activities are designed to create diverse forest and meadow habitat where wildlife can find food, water and shelter. Cultural resource sites would be protected from uncharacteristically severe fires and the flooding and erosion that follow. Streams, watersheds, and cultural resources would benefit from road treatments. The draft proposed action would:

* Cut trees individually and in groups with variable spacing and canopy opening sizes. Treatment would be accomplished by manually or mechanically cutting down (felling) trees and mechanically shredding (masticating) trees, depending on specific conditions. Thinning slash may be piled, lopped and scattered, chipped, or masticated. Merchantable wood products would be removed from sites where feasible, based on road access, slope, terrain, and economic factors.

* Conduct prescribed burns using different methods and intensities including low- to moderate-intensity, initial entry burns; low-intensity post-thinning burns to reduce slash or other surface fuels; and low-intensity maintenance burns where thinning and burning have occurred. Burning would

continue to be periodically conducted to maintain the natural 5 to 15 year fire cycle, depending on the forest type and location. Aerial and manual ignitions would be used.

* Maintain selected roads needed for access. Road maintenance includes smoothing out road surfaces, improving drainage, and stabilizing stream crossings.

*Open closed roads where needed for access and wood removal. Conduct road maintenance on these roads as needed. Roads would be closed after they are no longer needed.

*Eliminate unnecessary roads and trails (routes) through decommissioning. This can include physically closing a route to public use while maintaining that route for occasional administrative access by Forest Service personnel or specified permittees. Various methods would be used depending on site-specific conditions and land uses. Decisions about access are not included in this project.

*Constructing temporary roads where needed for access and wood product removal. After the temporary roads are no longer needed, they would be obliterated. No new permanent roads would be constructed.

*Maintain the road system by developing new and/or expanding existing gravel pits.

*Restore stream and riparian ecosystems to help improve water quality, fish habitat, riparian and meadow habitat, and watershed functions. Treatments include: Tilling and seeding denuded campsites and trails to encourage vegetation; installing structures to control erosion and stabilize stream banks and stream-road crossings; planting native riparian vegetation along stream corridors; placing logs in streams to improve pool formation and aquatic habitat conditions; protecting large meadow habitat; installing riparian exclosure fences or barriers to reduce elk and livestock use along streams; treating headcuts in arroyos in riparian meadows; thinning toe slopes and creating large woody debris; controlling invasive plants; and replacing, repairing, or installing water sources to encourage elk and cattle use in the uplands.

*Improve and enhance wildlife habitat by cutting encroaching conifers to restore upland and riparian grassy meadow habitat; regenerating aspen stands by cutting encroaching conifers and conducting prescribed burns; maintaining existing water sources and/or constructing new water sources; screening wildlife water sources; creating snags; restoring upland and floodplain meadows; removing Kentucky bluegrass and reestablishing native bunchgrasses; and maintaining the desired amount of downed logs, snags, and forest floor down woody debris.

*Protect cultural resources by reducing fuel and controlling erosion on archaeological sites and reducing fuel on traditional cultural properties and sacred sites.

All proposed thinning, mowing (of tree seedlings), and prescribed fire treatments may be used indefinitely after the initial treatments to maintain or further reduce tree densities and fuel loads.

Possible Alternatives

A full range of alternatives to the proposed action, including a no-action alternative, will be considered. The no-action alternative represents no change and serves as the baseline for the comparison among the action alternatives.

Responsible Official

The responsible official is the Forest Supervisor of the Santa Fe National Forest.

Decision To Be Made

The Forest Supervisor—the Responsible Official for this project—will decide whether or not to implement the proposed activities on all or portions of the 110,000-acre analysis area using one or more of the methods described. She will also decide which forest plan amendments to adopt.

Permits or Licenses Required

The discharge of dredged and fill material resulting from the instream habitat improvement treatments requires a Section 404 permit from the U.S. Army Corps of Engineers.

The discharge of pollutants (sediment) to waters of the U.S. requires a Clean Water Act 401 Water Quality Certification and a Clean Water Act 402 National Pollutant Discharge Elimination System (NDPES) permit from the New Mexico Environment Department.

Consult with and obtain concurrence from the U.S. Fish and Wildlife Service on the listed species to address and on the biological assessment, and continue consultation with the U.S. Fish and Wildlife Service in accordance with Section 7 of the Endangered Species Act.

Consult with the New Mexico State Historic Preservation Officer, tribes, and consulting parties regarding identification, evaluation, and determination of effects of the project on cultural resources in accordance with Section 106 of the National Historic Preservation Act.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. Ongoing collaborative efforts regarding restoration in the Southwest Jemez Mountains will continue. A variety of public involvement and collaboration activities such as open house meetings, field trips, and interagency workshops will be scheduled beginning in July 2012. Public meetings are tentatively scheduled for July 24, 26, 31 and August 2, 2012. The dates, times, and locations of the public scoping meetings will be posted on the forest's Web site at: *http://www.fs.usda.gov/detail/santafe/home/?cid=FSBDEV7_021009*.

It is important that reviewers provide their comments by the closing date and in such a manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will become part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

Dated: July 5, 2012.

Maria T. Garcia,

Forest Supervisor.

[FR Doc. 2012–16895 Filed 7–10–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service, an agency delivering the U.S. Department of Agriculture (USDA) Rural Development Utilities Programs, invites comments on this information collection for which approval from the Office of Management and Budget (OMB) will be requested.

DATES: Comments on this notice must be received by September 10, 2012.

FOR FURTHER INFORMATION CONTACT: Michele Brooks, Deputy Director, Program Development and Regulatory Analysis, USDA Rural Development, 1400 Independence Ave. SW., STOP 1522, Room 5162 South Building, Washington, DC 20250–1522. Telephone: (202) 690–1078. Fax: (202) 720–8435. Email: *michele.brooks@usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that will be submitted to OMB for approval.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Michele Brooks, Deputy Director, Program Development and Regulatory Analysis, USDA Rural Development, STOP 1522, 1400 Independence Ave. SW., Washington, DC 20250–1522. Fax: (202) 720–8435.

Title: RUS Form 675, Certification of Authority.

OMB Control Number: 0572–0074.

Type of Request: Extension of a currently approved collection.

Abstract: The Rural Utilities Service (RUS) manages loan programs in accordance with the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*) (RE Act). A major factor in managing loan programs is controlling the advance funds, including assuring that actual borrowers receive their funds. OMB Circular A–123, Management Accountability and Control, provides that information should be maintained on a current basis and that funds should be protected from unauthorized use. The use of RUS Form 675 allows effective control against unauthorized release of funds by providing a list of authorized borrower signatures against which signatures requesting funds are compared. Form 675 allows borrowers to keep RUS up-to-date of changes in signature authority and controls release of funds only to authorized borrower representatives.

Estimate of Burden: Public reporting for this collection of information is estimated to average .10 hours per response.

Respondents: Not-for-profit institutions; Business or other for-profit.

Estimated Number of Respondents: 250.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 25.0 hours.

Copies of this information collection can be obtained from Michele Brooks, Program Development and Regulatory Analysis, at (202) 690–1078. Fax: (202) 720–3485. Email: *michele.brooks@usda.gov*.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: July 2, 2012.

Jonathan Adelstein,

Administrator, Rural Utilities Service.

[FR Doc. 2012–16685 Filed 7–10–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–840]

Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination

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

SUMMARY: On March 6, 2012, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain frozen warmwater shrimp (shrimp) from India. The period of review (POR) is February 1, 2010, through January 31, 2011.

Based on our analysis of the comments received, we have made certain changes to the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled ''Final Results of Review.''

DATES: *Effective Date:* July 11, 2012.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood or Henry Almond, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC, 20230; telephone (202) 482–3874 or (202) 482–0049, respectively.

SUPPLEMENTARY INFORMATION:

Background

This review covers 184 producers/exporters. The respondents which the Department selected for individual examination are Apex Exports (Apex) and Falcon Marine Exports Limited (Falcon). The respondents which were not selected for individual examination are listed in the ''Final Results of Review'' section of this notice.

On March 6, 2012, the Department published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on shrimp from India.[1]

Also in March 2012, the Department verified the sales and cost data reported by Falcon, in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act).

In April 2012, in response to a request from the Department, Kay Kay Exports (Kay Kay), a respondent not selected for individual examination, clarified its statement of no shipments. For further discussion, see the ''Determination of No Shipments'' section of this notice.

We invited parties to comment on the *Preliminary Results* of review. In May 2012, we received case and rebuttal briefs from the Ad Hoc Shrimp Trade Action Committee (the petitioner), the American Shrimp Processors Association (the processors), and Apex, Falcon, and Kay Kay (collectively, ''the respondents'').

The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of the Order

The scope of this order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,[2]

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[1] *See Certain Frozen Warmwater Shrimp From India: Preliminary Results of Antidumping Duty Administrative Review, and Preliminary No Shipment Determination,* 77 FR 13275 (Mar. 6, 2012) (*Preliminary Results*).

[2] ''Tails'' in this context means the tail fan, which includes the telson and the uropods.

deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannemei*), banana prawn *(Penaeus merguiensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp *(Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this order. In addition, food preparations, which are not ''prepared meals,'' that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this order.

Excluded from the scope are: (1) breaded shrimp and prawns (HTSUS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTSUS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTSUS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns (HTSUS subheading 1605.20.10.40); (7) certain battered shrimp. Battered shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a ''dusting'' layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and ten percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to IQF freezing immediately after application of the dusting layer. When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this order are currently classified under the following HTSUS subheadings: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, and 1605.29.10.10. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.

Period of Review

The POR is February 1, 2010, through January 31, 2011.

Determination of No Shipments

As noted in the *Preliminary Results,* we received no-shipment claims from 13 companies. *See Certain Frozen Warmwater Shrimp From Brazil, India, and Thailand: Notice of Initiation of Antidumping Duty Administrative Reviews,* 76 FR 18157 (Apr. 1, 2011) (*Initiation Notice*). We were unable to confirm the statements from two of these companies, Veejay Impex (Veejay) and Kay Kay, with U.S. Customs and Border Protection (CBP). *See* Memorandum to the File, from Henry Almond, Analyst, Office 2, AD/CVD Operations, entitled, ''2010–2011 Administrative Review of Certain Frozen Warmwater Shrimp from India: Entry Documents from U.S. Customs and Border Protection (CBP),'' dated March 29, 2012, and Kay Kay's submission dated April 16, 2012. Thus, we have continued to assign both companies final dumping margins based on the margin calculated for Apex (because it is the only mandatory respondent for which we calculated an above *de minimis* margin). For further discussion regarding Kay Kay, see the Issues and Decision Memorandum (Decision Memo) accompanying this notice, at Comment 1. For further discussion regarding Veejay, see *Preliminary Results,* 77 FR at 13277.

Regarding the 11 remaining companies, we confirmed the claims from these companies with CBP. Therefore, because we find that the record indicates that the 11 companies listed below did not export subject merchandise to the United States during the POR, we determine that they had no reviewable transactions during the POR. These companies are:

(1) Accelerated Freeze Drying Company Ltd.[3]
(2) Amulya Sea Foods
(3) Baby Marine International
(4) Baby Marine Sarass
(5) BMR Exports
(6) Castlerock Fisheries Ltd.
(7) Esmario Export Enterprises
(8) Koluthara Exports Ltd.
(9) Penver Products (P) Ltd.
(10) Sharat Industries Ltd.
(11) Uniroyal Marine Exports Ltd.

As we stated in the *Preliminary Results,* our former practice concerning respondents submitting timely no-shipment certifications was to rescind the administrative review with respect to those companies if we were able to confirm the no-shipment certifications through a no-shipment inquiry with CBP. *See Antidumping Duties; Countervailing Duties; Final rule,* 62 FR 27296, 27393 (May 19, 1997); *see also Stainless Steel Sheet and Strip in Coils from Taiwan: Final Results of Antidumping Duty Administrative Review,* 75 FR 76700, 76701 (Dec. 9, 2010). As a result, in such circumstances, we normally instructed CBP to liquidate any entries from the no-shipment company at the deposit rate in effect on the date of entry.

In our May 6, 2003, clarification of the ''automatic assessment'' regulation, we explained that, where respondents in an administrative review demonstrate that they had no knowledge of sales through resellers to the United States, we would instruct CBP to liquidate such entries at the all-others rate applicable to the proceeding. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*).

As noted in the *Preliminary Results,* because ''as entered'' liquidation instructions do not alleviate the concerns which the May 2003 clarification was intended to address, we find it appropriate in this case to instruct CBP to liquidate any existing entries of merchandise produced by the above listed companies and exported by other parties at the all-others rate. In addition, we continue to find that it is more consistent with the May 2003 clarification not to rescind the review in part in these circumstances but, rather, to complete the review with respect to the 11 companies listed above and issue appropriate instructions to CBP based

[3] This company was listed in the *Initiation Notice* as ''Accelerated Freeze-Drying C.''

on the final results of this administrative review. *See* the ''Assessment Rates'' section of this notice below.

Cost of Production

As discussed in the *Preliminary Results,* we conducted an investigation to determine whether Apex and Falcon made third country sales of the foreign like product during the POR at prices below their costs of production (COP) within the meaning of section 773(b) of the Act. *See Preliminary Results,* 76 FR at 12029–12030. For these final results, we performed the cost test following the same methodology as in the *Preliminary Results. Id.* at 12030.

We found 20 percent or more of Apex's and Falcon's sales of a given product during the reporting period were made at prices less than the weighted-average COP for this period. Thus, we determined that these below-cost sales were made in ''substantial quantities'' within an extended period of time and at prices which did not permit the recovery of all costs within a reasonable period of time in the normal course of trade. *Id.;* and sections 773(b)(1)–(2) of the Act.

Therefore, for purposes of these final results, we continue to find that, for certain products, Apex and Falcon made below-cost sales not in the ordinary course of trade. Consequently, we disregarded these sales for each respondent and have used the remaining sales as the basis for determining normal value pursuant to section 773(b)(1) of the Act. Additionally, for those U.S. sales of subject merchandise for which there were no third country sales in the ordinary course of trade, we continued to compare export prices to constructed value in accordance with section 773(a)(4) of the Act.

Analysis of Comments Received

All issues raised in the case briefs by parties to this administrative review are listed in the Appendix to this notice and addressed in the Decision Memo, which is adopted by this notice. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file electronically via IA ACCESS in the Central Records Unit, room 7046, of the main Department of Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/* . The paper copy and electronic version of the Decision Memo are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have made certain changes in the margin calculations. These changes are discussed in the relevant sections of the Decision Memo.

Final Results of Review

We determine that the following weighted-average margin percentages exist for the period February 1, 2010, through January 31, 2011:

Manufacturer/exporter	Percent margin
Apex Exports	2.51
Falcon Marine Exports Limited	0.13*
Review-Specific Average Rate Applicable to the Following Companies: [4]	
Abad Fisheries Pvt. Ltd	2.51
Accelerated Freeze-Drying Co	**
Adilakshmi Enterprises	2.51
Allana Frozen Foods Pvt. Ltd	2.51
Allansons Ltd	2.51
AMI Enterprises	2.51
Amulya Sea Foods	**
Ananda Aqua Applications/Ananda Aqua Exports (P) Limited/Ananda Foods	2.51
Anand Aqua Exports	2.51
Andaman Seafoods Pvt. Ltd	2.51
Angelique Intl	2.51
Anjaneya Seafoods	2.51
Arvi Import & Export	2.51
Asvini Exports	2.51
Asvini Fisheries Private Limited	2.51
Avanti Feeds Limited	2.51
Ayshwarya Seafood Private Limited	2.51
Baby Marine Exports	2.51
Baby Marine International	**
Baby Marine Sarass	**
Bhatsons Aquatic Products	2.51
Bhavani Seafoods	2.51
Bijaya Marine Products	2.51
Blue Water Foods & Exports P. Ltd	2.51
Bluefin Enterprises	2.51
Bluepark Seafoods Pvt. Ltd	2.51
BMR Exports	**
Britto Exports	2.51
C P Aquaculture (India) Ltd	2.51
Calcutta Seafoods Pvt. Ltd	2.51
Capithan Exporting Co	2.51
Castlerock Fisheries Pvt. Ltd	**
Chemmeens (Regd)	2.51
Cherukattu Industries (Marine Div.)	2.51
Choice Canning Company	2.51
Choice Trading Corporation Private Limited	2.51
Coastal Corporation Ltd	2.51
Cochin Frozen Food Exports Pvt. Ltd	2.51
Coreline Exports	2.51

Manufacturer/exporter	Percent margin
Corlim Marine Exports Pvt. Ltd	2.51
Damco India Private	2.51
Devi Fisheries Limited	2.51
Devi Marine Food Exports Private Ltd/Kader Exports Private Limited/Kader Investment and Trading Company Private Limited/Liberty Frozen Foods Pvt. Ltd/Liberty Oil Mills Ltd/Premier Marine Products/Universal Cold Storage Private Limited	2.51
Diamond Seafoods Exports/Edhayam Frozen Foods Pvt. Ltd/Kadalkanny Frozen Foods/Theva & Company	2.51
Digha Seafood Exports	2.51
Esmario Export Enterprises	**
Exporter Coreline Exports	2.51
Five Star Marine Exports Private Limited	2.51
Forstar Frozen Foods Pvt. Ltd	2.51
Frontline Exports Pvt. Ltd	2.51
G A Randerian Limited	2.51
Gadre Marine Exports	2.51
Galaxy Maritech Exports P. Ltd	2.51
Gayatri Seafoods	2.51
Geo Aquatic Products (P) Ltd	2.51
Geo Seafoods	2.51
Goodwill Enterprises	2.51
Grandtrust Overseas (P) Ltd	2.51
GVR Exports Pvt. Ltd	2.51
Haripriya Marine Export Pvt. Ltd	2.51
Harmony Spices Pvt. Ltd	2.51
HIC ABF Special Foods Pvt. Ltd	2.51
Hindustan Lever, Ltd	2.51
Hiravata Ice & Cold Storage	2.51
Hiravati Exports Pvt. Ltd	2.51
Hiravati International Pvt. Ltd (located at APM—Mafco Yard, Sector—18, Vashi, Navi, Mumbai—400 705, India)	2.51
Hiravati International Pvt. Ltd (located at Jawar Naka, Porbandar, Gujarat, 360 575, India)	2.51
IFB Agro Industries Ltd	2.51
Indian Aquatic Products	2.51
Indo Aquatics	2.51
Innovative Foods Limited	2.51
International Freezefish Exports	2.51
Interseas	2.51
ITC Ltd	2.51
ITC Limited, International Business	2.51
Jagadeesh Marine Exports	2.51
Jaya Satya Marine Exports	2.51
Jaya Satya Marine Exports Pvt. Ltd	2.51
Jayalakshmi Sea Foods Private Limited	2.51
Jinny Marine Traders	2.51
Jiya Packagings	2.51
K R M Marine Exports Ltd	2.51
Kalyanee Marine	2.51
Kanch Ghar	2.51
Kay Kay Exports	2.51
Kings Marine Products	2.51
Koluthara Exports Ltd	**
Konark Aquatics & Exports Pvt. Ltd	2.51
Landauer Ltd	2.51
Libran Cold Storages (P) Ltd	2.51
Magnum Estates Limited	2.51
Magnum Export	2.51
Magnum Sea Foods Limited	2.51
Malabar Arabian Fisheries	2.51
Malnad Exports Pvt. Ltd	2.51
Mangala Marine Exim India Pvt. Ltd	2.51
Mangala Sea Products	2.51
Meenaxi Fisheries Pvt. Ltd	2.51
MSC Marine Exporters	2.51
MSRDR Exports	2.51
MTR Foods	2.51
N.C. John & Sons (P) Ltd	2.51
Naga Hanuman Fish Packers	2.51
Naik Frozen Foods	2.51
Naik Frozen Foods Pvt., Ltd	2.51
Naik Seafoods Ltd	2.51
Navayuga Exports Ltd	2.51
Nekkanti Sea Foods Limited	2.51
NGR Aqua International	2.51
Nila Sea Foods Pvt. Ltd	2.51
Nine Up Frozen Foods	2.51

Manufacturer/exporter	Percent margin
Overseas Marine Export	2.51
Paragon Sea Foods Pvt. Ltd	2.51
Penver Products (P) Ltd	**
Pijikay International Exports P Ltd	2.51
Pisces Seafood International	2.51
Premier Exports International	2.51
Premier Marine Foods	2.51
Premier Seafoods Exim (P) Ltd	2.51
R V R Marine Products Private Limited	2.51
Raa Systems Pvt. Ltd	2.51
Raju Exports	2.51
Ram's Assorted Cold Storage Ltd	2.51
Raunaq Ice & Cold Storage	2.51
Raysons Aquatics Pvt. Ltd	2.51
Razban Seafoods Ltd	2.51
RBT Exports	2.51
RDR Exports	2.51
Riviera Exports Pvt. Ltd	2.51
Rohi Marine Private Ltd	2.51
S & S Seafoods	2.51
S. A. Exports	2.51
S Chanchala Combines	2.51
Safa Enterprises	2.51
Sagar Foods	2.51
Sagar Grandhi Exports Pvt. Ltd	2.51
Sagar Samrat Seafoods	2.51
Sagarvihar Fisheries Pvt. Ltd	2.51
SAI Marine Exports Pvt. Ltd	2.51
SAI Sea Foods	2.51
Sandhya Aqua Exports	2.51
Sandhya Aqua Exports Pvt. Ltd	2.51
Sandhya Marines Limited	2.51
Santhi Fisheries & Exports Ltd	2.51
Satya Seafoods Private Limited	2.51
Sawant Food Products	2.51
Seagold Overseas Pvt. Ltd	2.51
Selvam Exports Private Limited	2.51
Sharat Industries Ltd	**
Shimpo Exports	2.51
Shippers Exports	2.51
Shroff Processed Food & Cold Storage P Ltd	2.51
Silver Seafood	2.51
Sita Marine Exports	2.51
Sowmya Agri Marine Exports	2.51
Sprint Exports Pvt. Ltd	2.51
Sri Chandrakantha Marine Exports	2.51
Sri Sakkthi Cold Storage	2.51
Sri Sakthi Marine Products P Ltd	2.51
Sri Satya Marine Exports	2.51
Sri Venkata Padmavathi Marine Foods Pvt. Ltd	2.51
Srikanth International	2.51
SSF Ltd	2.51
Star Agro Marine Exports Private Limited	2.51
Sun Bio-Technology Ltd	2.51
Suryamitra Exim (P) Ltd	2.51
Suvarna Rekha Exports Private Limited	2.51
Suvarna Rekha Marines P Ltd	2.51
TBR Exports Pvt Ltd	2.51
Teekay Marine P. Ltd	2.51
Tejaswani Enterprises	2.51
The Waterbase Ltd	2.51
Triveni Fisheries P Ltd	2.51
Uniroyal Marine Exports Ltd	**
Usha Seafoods	2.51
V.S Exim Pvt Ltd	2.51
Veejay Impex	2.51
Victoria Marine & Agro Exports Ltd	2.51
Vinner Marine	2.51
Vishal Exports	2.51
Wellcome Fisheries Limited	2.51
West Coast Frozen Foods Private Limited	2.51

* *de minimis*.
** No shipments or sales subject to this review.

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries.

Pursuant to 19 CFR 351.212(b)(1), because Apex reported the entered value for all, and Falcon for most, of their U.S. sales, we have calculated importer-specific *ad valorem* duty assessment rates for these sales based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the sales for which entered value was reported. To determine whether the duty assessment rates are *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we have calculated importer-specific *ad valorem* ratios based on the entered value. Regarding Falcon's sales to Puerto Rico, we have based the assessment rate for these sales on the cash deposit rate calculated for Falcon.

For the companies which were not selected for individual examination, we have used as the assessment rate the cash deposit assigned to these exporters, in accordance with our practice. *See, e.g., Shrimp from India,* 76 FR at 41206.

Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.,* less than 0.50 percent). The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Assessment Policy Notice*. This clarification applies to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to an intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate established in the less-than-fair-value (LTFV) investigation if there is no rate for the intermediate company(ies) involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates shown above, except if the rate is less than 0.50 percent, *de minimis* within the meaning of 19 CFR 351.106(c)(1), the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, as well as those companies listed in the ''Determination of No Shipments'' section, above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 10.17 percent, the all-others rate established in the LTFV investigation. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from India,* 70 FR 5147, 5148 (Feb. 1, 2005). These deposit requirements shall remain in effect until further notice.

Notification to Importers

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

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

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

Dated: July 3, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–16931 Filed 7–10–12; 8:45 am]

BILLING CODE 3510–DS–P

[4] This rate is based on the margin calculated for Apex because it is the only above *de minimis* margin calculated in this administrative review.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–918]

Steel Wire Garment Hangers From the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review

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

DATES: *Effective Date:* July 11, 2012

FOR FURTHER INFORMATION CONTACT: Kabir Archuletta, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington DC 20230; (202) 482–2593.

Background

On November 30, 2011, the Department of Commerce (''the Department'') published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on steel wire garment hangers from the People's Republic of China (''PRC'') covering the period October 1, 2010, through September 30, 2011.[1] On February 28, 2012, Petitioner[2] withdrew its request for an administrative review of the following companies: Ningbo Dasheng Hanger Ind. Co., Ltd., Shanghai Jianhai International Trade Co., Ltd., Shaoxing Andrew Metal Manufactured, Shaoxing Dingli Metal Clotheshorse, Shaoxing Gangyuan Metal Manufacture, and Shaoxing Tongzhou Metal Manufactured Co., Ltd.[3] Although Shaoxing Andrew Metal Manufactured, Shaoxing Gangyuan Metal Manufacture, and Shaoxing Tongzhou Metal Manufactured Co., Ltd. also requested reviews, those companies subsequently

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 76 FR 74041 (November 30, 2011) (''*Initiation Notice*'').

[2] M&B Metal Products Co., Inc. (''Petitioner'').

[3] *See* Letter from Petitioner to the Secretary of Commerce ''Third Administrative Review of Steel Wire Garment Hangers from China—Petitioner's Withdrawal of Review Requests for Specific Companies'' (February 28, 2012).

withdrew their requests on the same date.[4]

Partial Rescission

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. The withdrawal requests filed by Petitioner, Shaoxing Andrew Metal Manufactured, Shaoxing Gangyuan Metal Manufacture, and Shaoxing Tongzhou Metal Manufactured Co., Ltd. were submitted within the 90 day period and, thus, are timely. Because the withdrawal requests were timely submitted and because no other party continues to have an outstanding request for review of the aforementioned companies, in accordance with 19 CFR 351.213(d)(1), we are partially rescinding this review with respect to Ningbo Dasheng Hanger Ind. Co., Ltd., Shanghai Jianhai International Trade Co., Ltd., Shaoxing Andrew Metal Manufactured, Shaoxing Dingli Metal Clotheshorse, Shaoxing Gangyuan Metal Manufacture, and Shaoxing Tongzhou Metal Manufactured Co., Ltd.[5]

Assessment Rates

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. Ningbo Dasheng Hanger Ind. Co., Ltd., Shanghai Jianhai International Trade Co., Ltd., Shaoxing Andrew Metal Manufactured, Shaoxing Dingli Metal Clotheshorse, Shaoxing Gangyuan Metal Manufacture, and Shaoxing Tongzhou Metal Manufactured Co., Ltd., all have separate rates from a prior segment of this proceeding; therefore, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period October 1, 2010, through September 30, 2011, in accordance with 19 CFR 351.212(c)(2). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Notification to Importers

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

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

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: July 3, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–16937 Filed 7–10–12; 8:45 am]

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[4] *See* Letter from Shaoxing Andrew Metal Manufactured, Shaoxing Gangyuan Metal Manufacture, and Shaoxing Tongzhou Metal Manufactured Co., Ltd., to the Secretary of Commerce ''Steel Wire Garment Hangers from the People's Republic of China; Request for Review'' (October 31, 2011); Letter from Shaoxing Andrew Metal Manufactured, Shaoxing Gangyuan Metal Manufacture, and Shaoxing Tongzhou Metal Manufactured Co., Ltd., to the Secretary of Commerce ''Steel Wire Garment Hangers from the People's Republic of China; Withdraw from Review'' (February 28, 2012).

[5] We note that there are additional companies for which review requests were withdrawn within the 90 day period. *See* Letter from Petitioner to the Secretary of Commerce ''Third Administrative Review of Steel Wire Garment Hangers from China—Petitioner's Withdrawal of Review Requests for Specific Companies'' (February 28, 2012). However, because these companies do not have a separate rate from a prior segment of this proceeding, we intend to address the disposition of these withdrawal requests in the preliminary results of this review. *See, e.g., Honey From the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review,* 77 FR 25682, 25683 n.1 (May 1, 2012); *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review,* 77 FR 12811, 12811 n.1 (March 2, 2012).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–929]

Small Diameter Graphite Electrodes From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review

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

SUMMARY: On March 6, 2012, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on small diameter graphite electrodes (SDGEs) from the People's Republic of China (PRC). The review covers 25 companies for the period February 1, 2010, through January 31, 2011.

The final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled ''Final Results of Review.''

DATES: *Effective Date:* July 11, 2012.

FOR FURTHER INFORMATION CONTACT: Dmitry Vladimirov or Minoo Hatten, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington DC 20230; telephone: (202) 482–0665 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 6, 2012, the Department published *Small Diameter Graphite Electrodes from the People's Republic of China: Preliminary Results and Partial Rescission of Administrative Review,* 77 FR 13284 (March 6, 2012) (*Preliminary Results*). The administrative review covers Fushun Jinly Petrochemical Carbon Co., Ltd. (Fushun Jinly), Xinghe County Muzi Carbon Co., Ltd. (Muzi Carbon), Sichuan Guanghan Shida Carbon Co., Ltd. (Shida Carbon), Jilin Carbon Import and Export Company (Jilin Carbon), the Fangda Group (comprised of five collapsed companies, Beijing Fangda Carbon Tech Co., Ltd., Chengdu Rongguang Carbon Co., Ltd., Fangda Carbon New Material Co., Ltd., Fushun Carbon Co., Ltd., and Hefei Carbon Co., Ltd.), Dechang Shida Carbon Co., Ltd., Fushun Carbon Plant, Fushun Jinli Petrochemical Carbon Co., Ltd., Guanghan Shida Carbon Co., Ltd., Jilin Carbon Graphite Material Co., Ltd., Lanzhou Hailong New Material Co., Liaoning Fangda Group Industrial Co.,

Ltd., Shida Carbon Group, Sichuan Dechang Shida Co., Ltd., Sichuan Shida Trading Co., Ltd., Sinosteel Anhui Co., Ltd., Sinosteel Corp., Sinosteel Jilin Carbon Co., Ltd., Sinosteel Jilin Carbon Imp. & Exp. Co., Ltd., Sinosteel Sichuan Co., Ltd., and Xinghe County Muzi Carbon Plant. The period of review (POR) is February 1, 2010, through January 31, 2011.

On April 5, 2012, and April 13, 2012, we received case and rebuttal briefs, respectively, from Fushun Jinly, the remaining participating respondent company selected for individual examination, and the petitioners, SGL Carbon LLC and Superior Graphite Co. No interested party requested a hearing.

The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise covered by the order includes all small diameter graphite electrodes of any length, whether or not finished, of a kind used in furnaces, with a nominal or actual diameter of 400 millimeters (16 inches) or less, and whether or not attached to a graphite pin joining system or any other type of joining system or hardware. The merchandise covered by the order also includes graphite pin joining systems for small diameter graphite electrodes, of any length, whether or not finished, of a kind used in furnaces, and whether or not the graphite pin joining system is attached to, sold with, or sold separately from, the small diameter graphite electrode. Small diameter graphite electrodes and graphite pin joining systems for small diameter graphite electrodes are most commonly used in primary melting, ladle metallurgy, and specialty furnace applications in industries including foundries, smelters, and steel refining operations. Small diameter graphite electrodes and graphite pin joining systems for small diameter graphite electrodes that are subject to the order are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheading 8545.11.0000. The HTSUS number is provided for convenience and customs purposes, but the written description of the scope is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the Issues and Decision (I&D) Memorandum which is hereby adopted by this notice. A list of the issues raised is attached to this notice as an appendix. The I&D Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). Access to IA ACCESS is available in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the I&D Memorandum can be accessed directly on the internet at *http://www.trade.gov/ia/.* The signed I&D Memorandum and the electronic versions of the I&D Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received from interested parties, we made a change to the margin calculations for Fushun Jinly. Specifically, for the final results, we have revised the calculation of the surrogate value for steel strip packing material.[1]

Non-Market-Economy Country Status

In the *Preliminary Results,* we treated the PRC as a non-market economy (NME) country. *See Preliminary Results,* 77 FR at 13286. No interested party commented on our designation of the PRC as an NME country. Therefore, for the final results of review, we have continued to treat the PRC as an NME country for purposes of determining normal value in accordance with section 773(c) of the Act.

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

In the *Preliminary Results,* we found that the Fangda Group, Fushun Jinly, Muzi Carbon, and Shida Carbon demonstrated their eligibility for separaterates. *See Preliminary Results,* 77 FR at 13286–88. We received no comments from interested parties on this finding. Therefore, in these final results, we continue to find that the evidence placed on the record of this review by the Fangda Group, Fushun Jinly, Muzi Carbon, and Shida Carbon demonstrates an absence of government control, both in law and in fact, with respect to these companies' exports of the subject merchandise. Thus, we have determined that the Fangda Group, Fushun Jinly, Muzi Carbon, and Shida Carbon are eligible to receive a separate rate.

Rate for Non-Selected Companies

We selected Fushun Jinly and Jilin Carbon as mandatory respondents in this review. *See Preliminary Results,* 77 FR at 13285. The Fangda Group, Muzi Carbon, and Shida Carbon are exporters of SDGEs from the PRC that demonstrated their eligibility for a separate rate, as discussed above, but were not selected for individual examination in this review. The statute and the Department's regulations do not directly address the establishment of a rate to be applied to companies not selected for individual examination where the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. The Department's practice in cases involving limited selection based on exporters accounting for the largest volumes of trade has been to look to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others rate in an investigation. Section 735(c)(5)(A) of the Act instructs that we are not to calculate an all-others rate using any zero or *de minimis* margins or any margins based entirely on facts available. Section 735(c)(5)(B) of the Act also provides that, where all margins are zero rates, *de minimis* rates, or rates based entirely on facts available, we may use ''any reasonable method'' for assigning the rate to non-selected respondents. In this instance, we have calculated a rate above *de minimis* for Fushun Jinly.

Consistent with the Department's practice, we have assigned the rate calculated for Fushun Jinly to the Fangda Group, Muzi Carbon, and Shida Carbon. Because the rate calculated for Fushun Jinly has changed since the *Preliminary Results,* the margin assigned to the Fangda Group, Muzi Carbon, and Shida Carbon has also changed accordingly. As explained in the section below entitled ''The PRC–Wide Entity,'' because Jilin Carbon did not participate in this administrative review, we did not grant it a separate rate and considered it part of the PRC-wide entity.

[1] *See* I&D Memorandum at Comment 5. *See also* Memorandum to the File, entitled ''Administrative Review of the Antidumping Duty Order on Small Diameter Graphite Electrodes from the People's Republic of China: Final Results Analysis Memorandum for Fushun Jinly Petrochemical Carbon Co., Ltd.,'' dated concurrently with this notice.

The PRC-Wide Entity

As explained in the *Preliminary Results,* 16 companies under review did not apply for a separate rate. *See Preliminary Results,* 77 FR at 13288. As such, they have not demonstrated their eligibility for separate rates in this administrative review. *Id.* Additionally, none of these companies notified the Department that they had no shipments of subject merchandise during the POR. In the *Preliminary Results* we determined that, because there were exports of merchandise under review from PRC exporters that did not demonstrate their eligibility for separate rates, they should be treated as part of the PRC-wide entity. Additionally, as stated in the *Preliminary Results,* because Jilin Carbon did not participate in this administrative review, we preliminarily did not grant it a separate rate and also considered it part of the PRC-wide entity. *See Preliminary Results,* 77 FR at 13288–89. We have not received any information since the *Preliminary Results* that provides a basis for reconsidering our preliminary determination with respect to these 17 companies. Therefore, the Department continues to find that these 17 companies should be treated as part of the PRC-wide entity and subject to the PRC-wide entity rate.

In accordance with section 776(a) and (b) of the Act and as explained in more detail in the *Preliminary Results,* we determined that the PRC-wide entity's rate should be based on total adverse facts available (AFA). *See Preliminary Results,* 77 FR at 13289. No party has commented on the use of a total AFA rate for the PRC-wide entity. Accordingly, the Department continues to assign an AFA rate to the PRC-wide entity of 159.64 percent. This is the highest percent margin alleged in the petition, the PRC-wide rate determined in the investigation, and the rate currently applicable to the PRC-wide entity.[2]

As explained further in the *Preliminary Results,* the Department considers that rate corroborated pursuant to section 776(c) of the Act based upon our pre-initiation analysis of the adequacy and accuracy of the information in the Petition. *See Preliminary Results,* 77 FR at 13289–90. No party commented on this.

[2] *See Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People's Republic of China,* 74 FR 2049, 2054–55 (January 14, 2009).

Final Results of Review

The Department has determined that the following final dumping margins exist for the period February 1, 2010, through January 31, 2011:

Company	Margin (percent)
Fushun Jinly Petrochemical Carbon Co., Ltd	36.79
Xinghe County Muzi Carbon Co., Ltd	36.79
Sichuan Guanghan Shida Carbon Co., Ltd	36.79
Beijing Fangda Carbon Tech Co., Ltd	36.79
Chengdu Rongguang Carbon Co., Ltd	36.79
Fangda Carbon New Material Co., Ltd	36.79
Fushun Carbon Co., Ltd	36.79
Hefei Carbon Co., Ltd	36.79
PRC-wide entity†	159.64

† The PRC-wide entity includes the following companies: Dechang Shida Carbon Co., Ltd., Fushun Carbon Plant, Jilin Carbon Graphite Material Co., Ltd., Jilin Carbon Import and Export Company, Lanzhou Hailong New Material Co., Liaoning Fangda Group Industrial Co., Ltd., Shida Carbon Group, Sichuan Dechang Shida Co., Ltd., Sichuan Shida Trading Co., Ltd., Sinosteel Anhui Co., Ltd., Sinosteel Corp., Sinosteel Jilin Carbon Co., Ltd., Sinosteel Jilin Carbon Imp. & Exp. Co., Ltd., and Sinosteel Sichuan Co., Ltd.[3]

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b), the Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. For assessment purposes, we calculated exporter/importer- (or customer-) specific assessment rates for merchandise subject to this review consistent with 19 CFR 351.212(b)(1). We calculated an *ad valorem* rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total entered values associated with those transactions. None of these rates was *de minimis* (*see* 19 CFR 351.106(c)(2)). Thus, we will direct CBP to assess the resulting *ad valorem* rates against the entered customs values for the subject merchandise. We intend to instruct CBP to liquidate entries containing subject merchandise exported by the PRC-wide entity at the PRC-wide entity rate shown above.

[3] In the *Preliminary Results* we stated that Fushun Jinli Petrochemical Carbon Co., Ltd. (Fushun Jinli), Guanghan Shida Carbon Co., Ltd. (Guanghan Shida Carbon), and Xinghe County Muzi Carbon Plant (Muzi Carbon Plant) are part of the PRC–Wide entity and are not entitled to a separate rate. *See Preliminary Results,* 77 FR at 13287, FN 17. Upon further examination of record evidence we find that each of the following sets of companies are the same entity, respectively: Fushun Jinli and Fushun Jinly; Guanghan Shida Carbon and Shida Carbon; Muzi Carbon Plant and Muzi Carbon. Accordingly, Fushun Jinli, Guanghan Shida Carbon, and Muzi Carbon Plant are not part of the PRC-wide entity and the cash deposit and assessment rates that we establish for Fushun Jinly, Shida Carbon, and Muzi Carbon apply to any entries made by Fushun Jinli, Guanghan Shida Carbon, and Muzi Carbon Plant.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For the Fangda Group, Fushun Jinly, Muzi Carbon, and Shida Carbon the cash deposit rates will be the margins listed above; (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 159.64 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

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

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under the APO in accordance with 19 CFR 351.305(a)(3), which

continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Disclosure

We intend to disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

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

Dated: July 3, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–16932 Filed 7–10–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–867]

Large Power Transformers From the Republic of Korea: Final Determination of Sales at Less Than Fair Value

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

SUMMARY: The Department of Commerce (the Department) has determined that imports of large power transformers from the Republic of Korea (Korea) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are listed in the ''Continuation of Suspension of Liquidation'' section of this notice.

DATES: *Effective Date:* July 11, 2012.

FOR FURTHER INFORMATION CONTACT: David Cordell and Brian Davis, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0408 or (202) 482–7924, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 16, 2012, the Department published in the **Federal Register** its preliminary determination in the antidumping duty investigation of large power transformers from Korea. *See Large Power Transformers From the Republic of Korea: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 77 FR 9204 (February 16, 2012) (*Preliminary Determination*).

As provided in section 782(i) of the Act, we conducted sales and cost verifications of the questionnaire responses submitted by the mandatory respondents, Hyundai Heavy Industries Co., Ltd. (Hyundai) and Hyosung Corporation (Hyosung). We used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by both companies.[1]

We received case briefs from ABB Inc., Delta Star, Inc., and Pennsylvania Transformer Technology Inc. (collectively, Petitioners), Hyundai, and Hyosung on May 25, 2012. These parties submitted rebuttal comments on June 1, 2012. No hearing was requested.

On June 4, 2012 and June 6, 2012, the Department solicited revised sales and cost databases from Hyosung and Hyundai, respectively, to address minor corrections and findings from verification. Accordingly, Hyundai and Hyosung submitted revised sales and cost databases on June 12, 2012. We met with counsel for Petitioners, Hyundai, and Hyosung on June 13, June 18, and June 19, 2012, respectively.[2]

Period of Investigation

The period of investigation is July 1, 2010, through June 30, 2011.

Scope of Investigation

The scope of this investigation covers large liquid dielectric power transformers (LPTs) having a top power handling capacity greater than or equal to 60,000 kilovolt amperes (60 megavolt amperes), whether assembled or unassembled, complete or incomplete.

Incomplete LPTs are subassemblies consisting of the active part and any other parts attached to, imported with or invoiced with the active parts of LPTs. The ''active part'' of the transformer consists of one or more of the following when attached to or otherwise assembled with one another: The steel core or shell, the windings, electrical insulation between the windings, the mechanical frame for an LPT.

The product definition encompasses all such LPTs regardless of name designation, including but not limited to step-up transformers, step-down transformers, autotransformers, interconnection transformers, voltage regulator transformers, rectifier transformers, and power rectifier transformers.

The LPTs subject to this investigation are currently classifiable under subheadings 8504.23.0040, 8504.23.0080 and 8504.90.9540 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this antidumping investigation are addressed in the Issues and Decision Memorandum from Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration (Issues and Decision Memorandum), which is dated concurrently with and hereby adopted by this notice. A list of the issues raised is attached to this notice as Appendix I. The Issues and Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS).

[1] *See* Memoranda to the File entitled ''Home Market Verification of the Sales Response of Hyosung Corporation in the Antidumping Duty Investigation of Large Power Transformers from the Republic of Korea,'' dated May 4, 2012; ''Home Market Verification of the Sales Response of Hyundai Heavy Industries Co., Ltd. (''HHI'') and Hyundai Corporation, U.S.A. (collectively Hyundai) in the Antidumping Duty Investigation of Large Power Transformers from the Republic of Korea,'' dated May 10, 2012; ''Constructed Export Price Verification of the Sales Response of Hyosung Corporation in the Antidumping Duty Investigation of Large Power Transformers from the Republic of Korea,'' dated May 15, 2012; ''Constructed Export Price Verification of the Sales Response of Hyundai Heavy Industries (HHI) and Hyundai Corporation, U.S.A. (collectively Hyundai) in the Antidumping Duty Investigation of Large Power Transformers from the Republic of Korea,'' dated May 16, 2012; ''Verification of the Cost Response of Hyosung Corporation in the Antidumping Investigation of Large Power Transformers from South Korea,'' dated May 4, 2012; and ''Verification of the Cost of Production and Constructed Value Data Submitted by Hyundai Heavy Industries Co., Ltd. in the Antidumping Duty Investigation of Large Power Transformers from the Republic of Korea,'' dated May 2, 2012.

[2] *See* Memoranda to the File entitled, ''Antidumping Duty Investigation concerning Large Power Transformers from the Republic of Korea: Department Meeting with Petitioners' Counsel,'' dated June 15, 2012, ''Antidumping Duty Investigation concerning Large Power Transformers from the Republic of Korea: Department Meeting with Respondent's Counsel (Hyundai),'' dated June 20, 2012, and ''Antidumping Duty Investigation concerning Large Power Transformers from the Republic of Korea: Department Meeting with Respondent's Counsel (Hyosung Corporation),'' dated June 19, 2012.

Access to IA ACCESS is available in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/ia/*. The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of the comments received and our findings at verifications, we have made certain changes to the margin calculations for Hyundai and Hyosung. For a discussion of these changes, *see* Memoranda to the file, through Angelica Mendoza, Program Manager, from David Cordell and Brian Davis, International Trade Analysts, entitled ''Analysis of Data Submitted by Hyundai Heavy Industries (HHI) and Hyundai Corporation, U.S.A. (collectively Hyundai) in the Final Determination of the Antidumping Duty Investigation of Large Power Transformers from the Republic of Korea'' and, ''Analysis of Data Submitted by Hyosung Corporation in the Final Determination of the Antidumping Duty Investigation of Large Power Transformers from the Republic of Korea,'' dated July 2, 2012; *see also* Memoranda to Neal M. Halper, Director, Office of Accounting, through Michael P. Martin, Lead Accountant, entitled, ''Cost of Production and Constructed Value Calculation Adjustments for the Final Determination—Hyundai Heavy Industries Co., Ltd. and Hyundai Corporation, USA'' and ''Cost of Production and Constructed Value Calculation Adjustments for the Final Determination—Hyosung Corporation,'' both dated July 2, 2012.

Continuation of Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of large power transformers from Korea which were entered, or withdrawn from warehouse, for consumption on or after February 16, 2012, the date of publication of the *Preliminary Determination.* We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average margins, as indicated below, as follows: (1) The rates for Hyundai and Hyosung will be the rates we have determined in this final determination; (2) if the exporter is not a firm identified in this investigation but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 22.00 percent, as discussed in the ''All Others Rate'' section, below. These suspension-of-liquidation instructions will remain in effect until further notice.

Manufacturer/exporter	Weighted-average margin (percent)
Hyundai Heavy Industries Co., Ltd	14.95
Hyosung Corporation	29.04
All Others	22.00

All Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated all others rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated excluding any zero or *de minimis* margins and any margins determined entirely under section 776 of the Act. Hyundai and Hyosung are the only respondents in this investigation for which we calculated company-specific rates that are not zero or *de minimis* or determined entirely under section 776 of the Act. Therefore, because there are only two relevant weighted-average dumping margins for this final determination and because using a weighted-average calculation risks disclosure of business proprietary information of Hyundai and Hyosung, the ''all others'' rate is a simple-average of these two values, which is 22.00 percent. *See Seamless Refined Copper Pipe and Tube From Mexico: Final Determination of Sales at Less Than Fair Value,* 75 FR 60723, 60724 (October 1, 2010) (using a simple average to determine the ''All Others'' rate when there are only two relevant weighted-average dumping margins because use of a weighted average risks disclosure of business proprietary information).[3]

[3] In the public version of its December 13, 2011, supplemental questionnaire responses at page SA–1, Hyosung provided ranged quantity and value of U.S. sales data, whereas in its January 13, 2012, supplemental questionnaire response at page SBC1, Hyundai provided indexed quantity and value U.S. sales data. Therefore, we were unable to perform the analysis articulated in *Ball Bearings and Parts Thereof From France, et al.: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53662–3 (September 1, 2010) in this investigation in determining the ''all others rate.''

Disclosure

We intend to disclose to parties in this proceeding the calculations performed within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our final determination. As our final determination is affirmative and in accordance with section 735(b)(2) of the Act, the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Order

This notice also serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CPR 351.305. Timely notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published pursuant to sections 735(d) and 777(i)(l) of the Act.

Dated: July 2, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix I

Issues and Decision Memorandum

General

Comment 1: Date of Sale
Comment 2: Facts Available

Hyundai Heavy Industries Co., Ltd.—Specific Comments

Comment 3: Home Market Gross Unit Price
Comment 4: U.S. Gross Unit Price
Comment 5: U.S. Selling Expenses: Commissions and U.S. Duty
Comment 6: CEP Offset
Comment 7: Inconsistent Allocation of Certain Selling Expenses

Comment 8: General and Administrative and Financial Expenses
Comment 9: Unshipped Sales
Comment 10: Normal Value Versus Constructed Value

Hyosung Corporation—Specific Comments

Comment 11: Selling Expense Classifications
Comment 12: Gross Unit Price
Comment 13: The Understatement of U.S. Selling Expenses
Comment 14: The Use of Actual Data in Margin Calculation
Comment 15: General and Administrative and Indirect Selling Expense Ratios
Comment 16: Clerical Error

[FR Doc. 2012–16935 Filed 7–10–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meetings; Correction

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

ACTION: Notice of a revision to a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene its Law Enforcement Advisory Panel in conjunction with the Gulf States Marine Fisheries Commission's Law Enforcement Committee.

DATES: The meeting will convene at 8:30 a.m. on Wednesday, July 25, 2012 and conclude no later than 5 p.m. on July 26, 2012.

ADDRESSES: The meeting will be held at the Louisiana Wildlife & Fisheries Lab, 195 Ludwig Lane, Grand Isle, LA 70358; telephone: (985) 787–2163

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Deputy Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The original notice published in the **Federal Register** on July 6, 2012 (77 FR 39998). This notice is being republished in its entirety due to some agenda changes.

The Gulf of Mexico Fishery Management Council (Council) will convene the Law Enforcement Advisory Panel (LEAP) along with the Gulf States Marine Fisheries Commission's Law Enforcement Committee (LEC) in a workshop environment to revise the Two-Year Operations Plan and the Five-Year Strategic Plan that expire in 2013. The LEAP/LEC will also discuss Joint Enforcement Agreements and funding, as well as upcoming topics for their October 2012 meeting. Immediately following the workshop session, the LEAP/LEC will discuss recent individual fishing quota (IFQ) enforcement actions and possible changes being considered by NMFS to the IFQ program protocols including: Landing notification process, landing transaction procedures, process for approving or removing landing locations, and offloading requirements. Finally, the LEAP/LEC will discuss implications to enforcement of the recent decision by Louisiana to extend its seaward boundary from three miles to three marine leagues.

The Law Enforcement Advisory Panel consists of principal law enforcement officers in each of the Gulf States, as well as the National Oceanic and Atmospheric Administration (NOAA) Law Enforcement, U.S. Fish and Wildlife Service (FWS), the U.S. Coast Guard, and the NOAA General Counsel for Law Enforcement. A copy of the agenda and related materials can be obtained by calling the Council office at (813) 348–1630.

Although other non-emergency issues not on the agendas may come before the Law Enforcement Advisory Panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions of the Law Enforcement Advisory Panel will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Council (see **ADDRESSES**) 5 working days prior to the meeting.

Dated: July 6, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–16934 Filed 7–10–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XX47

Marine Mammals; File No. 14097

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

ACTION: Notice; receipt of application for permit amendment.

SUMMARY: Notice is hereby given that National Marine Fisheries Service, Southwest Fisheries Science Center (SWFSC) (Responsible Party: Lisa Ballance, Ph.D.), Protected Resources Division, 3333 N. Torrey Pines Ct., La Jolla, CA 92037, has applied for an amendment to Scientific Research Permit No. 14097–01.

DATES: Written, telefaxed, or email comments must be received on or before August 10, 2012.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 14097 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices: See **SUPPLEMENTARY INFORMATION**.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed below. Comments may also be submitted by facsimile to (301)713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Kristy Beard or Amy Hapeman, (301)427–8401.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 14097–01 is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as

amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 14097, issued on July 7, 2010, (75 FR 40776), authorizes the permit holder to conduct scientific research on 5 pinniped species, 57 cetacean species, and 5 sea turtle species in U.S. territorial and international waters of the Pacific, Southern, Indian, and Arctic Oceans as part of three projects. Under Project I (Pinnipeds) population assessments are conducted of northern elephant seals (*Mirounga angustirostris*), California sea lions (*Zalophus californianus*), Steller sea lions (*Eumetopias jubatus*), and harbor seals (*Phoca vitulina*) via aerial photography, ground or vessel surveys, and photogrammetry to determine abundance, distribution patterns, length frequencies, and breeding densities. Scats and spewings are collected from California sea lions to determine their diet. Under Project II (Cetaceans) surveys are conducted to determine the abundance, distribution, movement patterns, and stock structure of cetaceans. These studies are conducted through vessel surveys, aerial surveys, small plane photogrammetry, photo-identification (from vessels and small boats), biological sampling, radio tagging, and satellite tagging. Under Project III (Sea Turtles) surveys are conducted to determine the abundance, distribution, movement patterns, stock structure, and diet of sea turtles. Sea turtles may be opportunistically captured during Project II surveys for biological sampling and to attach satellite tags. Cetacean, pinniped, and sea turtle biological samples may be imported/exported. The permit was amended (to version no. 14097–01) on July 7, 2011, to authorize use of less invasive suction cup tags instead of a portion of the authorized dart/barb tag takes.

The permit holder is requesting the permit be amended to (1) include authorization for the attachment of dart/barb tags or implantable tags on Arnoux's beaked whales (*Berardius arnuxii*) in the Southern Ocean, using the methods authorized for other species; and (2) increase the takes of pinniped species encountered during aerial, ground, and vessel surveys in the Pacific Ocean, to account for ten additional surveys per year. The expiration date of the permit would not change: June 30, 2015.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activities proposed are consistent with the Proposed Action Alternative in the Environmental Assessment (EA) for Issuance of a Scientific Research Permit [File No. 14097] for Pinniped, Cetacean, and Sea Turtle Studies (NMFS 2010). Based on that analysis, NMFS determined that issuance of the permit would not significantly impact the quality of the human environment and that preparation of an environmental impact statement was not required. That determination is documented in a Finding of No Significant Impact (FONSI), signed on July 1, 2010. The EA and FONSI are available upon request.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Documents may be reviewed in the following locations:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)427–8401; fax (301)713–0376;

Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018; and

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808)944–2200; fax (808)973–2941.

Dated: July 5, 2012.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–16916 Filed 7–10–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC071

Strategic Plan for Federal Research and Monitoring of Ocean Acidification

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

ACTION: Notice of availability; request for public comments.

SUMMARY: We are advising the public that a Draft Strategic Plan for Federal Research and Monitoring of Ocean Acidification is being made available for public review and comment. The Draft Research Plan presents a vision for how to move Federal agencies toward a better understanding of the process of ocean acidification, its effects on marine ecosystems, and the steps that could be taken to adapt marine resource management to account for it.

DATES: Comments must be received on or before September 10, 2012.

ADDRESSES: Please visit *http://www.st.nmfs.noaa.gov/iwgoa/pages/research_strategy.html* to view and provide comments on the draft Strategy. Comments can be submitted via an online form or by submitting revised version of the strategy, with changes tracked, to *NMFS.ST.OAStrategy@noaa.gov.* Alternatively, you may send comments by U.S. mail to National Oceanic and Atmospheric Administration National Marine Fisheries Service, ATTN: OA Strategy Coordinator, 1315 East-West Highway, F/ST7, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Jennifer Howard, 301–713–8173, *NMFS.ST.OAStrategy@noaa.gov*

SUPPLEMENTARY INFORMATION:

Background

The development of this Strategic Plan (Plan) was directed by section 12404(c) and guided by section 12405 of the Federal Ocean Acidification Research And Monitoring Act of 2009, 33 U.S.C. 3701–3708, (FOARAM Act). The Plan is intended to guide ''Federal research and monitoring on ocean acidification that will provide for an assessment of the impacts of ocean acidification on marine organisms and marine ecosystems and the development of adaption and mitigation strategies to conserve marine organisms and marine ecosystems.''

This Plan presents a vision on how to move Federal agencies toward a better understanding of the process of ocean acidification, its effects on marine ecosystems, and the steps that could be taken to adapt marine resource management to account for it. The Plan calls for the implementation of a comprehensive global and regional ocean acidification observing system that includes the monitoring of biological effects on marine organisms and ecosystems. Researchers will quantify the physiological effects of ocean acidification, under a range of scenarios, on a wide variety of marine organisms. Enhanced modeling efforts

will lead to improved understanding of the global biogeochemical processes of ocean acidification and its impact on marine ecosystems. Pursuant to section 12404 of the FOARAM Act, 33 U.S.C. 3703, a National Ocean Acidification Program will be established to lead U.S. coordination of ocean acidification activities between the Federal agencies, and with academic institutions, industry, and other private sector and international partners. A national ocean acidification data management and information exchange program will ensure that ocean acidification information reaches scientists, decision makers, and the public in a timely manner. Finally, the U.S. will join other countries in establishing a robust international research program to address this global challenge.

Overview

The Plan is organized into seven priority themes:

Theme 1—''Monitoring of Ocean Chemistry and Biological Impacts,'' identifies sampling programs that collect ocean acidification data, and it prioritizes additional monitoring systems necessary for adequate data collection and monitoring.

Theme 2—''Research to Understand Responses to Ocean Acidification,'' describes the goals and priorities to understand the physiological responses of marine organisms to ocean acidification and its interactions with other stressors, the impacts to marine food webs, and possible approaches to track ecosystem responses.

Theme 3—''Modeling to Predict Changes in the Ocean Carbon Cycle and Impacts on Marine Ecosystems and Organisms,'' summarizes requirements and recommendations for modeling ocean acidification, and its impacts on marine organisms and ecosystems, including codifying our research understanding and studying the interplay of factors affecting marine ecosystems, thus permitting analysis of the efficacy of adaptation and mitigation strategies.

Theme 4—''Technology Development and Standardization of Measurements,'' describes goals that ensure the ability to measure all required parameters through technology development and adequate data quality via measurement standardization.

Theme 5—''Assessment of Socioeconomic Impacts and Development of Strategies to Conserve Marine Organisms and Ecosystems,'' focuses on assessing the socioeconomic impacts of ocean acidification and developing adaptation and mitigation strategies.

Theme 6—''Education, Outreach, and Engagement Strategy on Ocean Acidification,'' describes goals for designing and coordinating educational, public outreach, and domestic and international engagement activities, as well as ensuring results and assessments of monitoring and research efforts are accessible to and understandable by all stakeholders.

Theme 7—''Data Management and Integration,'' discusses the need for effective data management and integration within the context of other international, Federal, State, local and private activities.

Description of Desired Comments

General comments are welcome and specific comments are invited on: (1) Whether the proposed strategy meets the requirements of the FOARAM Act, (2) whether the proposed strategy meets the ocean acidification research needs of the United States; (3) ways to enhance the quality, utility, and clarity of the strategy; and (4) any additional information that is currently absent that should be included. Comments submitted in response to this notice will become a matter of public record and will be posted online together with responses from the Interagency Working Group on Ocean Acidification established under section 12404 of the FOARAM Act. *Id.* All comments will be carefully considered and addressed in the Strategic Research Plan to the extent possible.

Public Availability of Comments

All comments received are a part of the public record and may be posted for public viewing at *http://www.st.nmfs.noaa.gov/iwgoa/pages/research_strategy.html* without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted via email to *NMFS.ST.OAStrategy@noaa.gov* in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Dated: July 5, 2012.

David Detlor,

Acting Director, Office of Science and Technology, National Marine Fisheries Service.

[FR Doc. 2012–16919 Filed 7–10–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2012–OS–0084]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to add a new system of records.

SUMMARY: The Office of the Secretary of Defense proposes to add a new system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on August 10, 2012 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number 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, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number 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: Cindy Allard, Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0461.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT.** The proposed system report, as required by 5 U.S.C. 552a(r) of the

Privacy Act of 1974, as amended, was submitted on June 27, 2012, 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: July 5, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DHRA 10 DoD

SYSTEM NAME:

Defense Sexual Assault Advocate Certification Program.

SYSTEM LOCATION:

National Organization for Victim Assistance, 510 King Street, Suite 424, Alexandria, VA 22314–3132.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DoD civilian employees and military personnel requesting national certification as a victim advocate through the National Advocate Credentialing Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applicant's first name, middle initial, and last name; position (Sexual Assault Response Coordinator (SARC) or Sexual Assault Prevention Representative Victim Advocate (SAPR VA)); Service affiliation; Grade/Rank; Installation/Command; Installation/Command/Agency address (street, city, state, ZIP code, country); work email address; work telephone number; level to which applicant is applying (Level I, II, III, or IV); certificates of training; Memoranda of Recommendation from the first person in the chain of command or SARC, and the Senior Commander or Commander; date of application; dates the Applicant provided service as SARC or SAPR VA (or as a victim advocate); and the opinions and evaluation of a 12-question performance questionnaire, represented by ''yes'' or ''no'' answers and short comments and certification number issued.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 1561 note, Sexual Assault Response Coordinators and Sexual Assault Victim Advocates; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; DoD Directive 6495.01, Sexual Assault Prevention and Response (SAPR) Program; DoD Instruction 6495.02, Sexual Assault Prevention and Response (SAPR) Program Procedures.

PURPOSE(S):

To track the certification of SARC and SAPR VAs. Information will be used to review, process, and report on the status of SARC and SAPR VA certification to Congress.

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 may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Any release of information contained in this system of records outside the DoD under a routine use will be compatible with the purpose(s) for which the information is collected and maintained. The DoD ''Blanket Routine Uses'' set forth at the beginning of Office of the Secretary of Defense (OSD) systems of records notices may apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files and electronic media.

RETRIEVABILITY:

Applicant records are retrieved by first name, middle initial, last name, installation/command, Military Service affiliation, rank/grade, position, certification level, and/or certification number.

SAFEGUARDS:

Records are maintained in a controlled facility that employs physical restrictions such as double locks and is accessible only to authorized persons who hold key fobs. Access to electronic data files in the system is role-based, restricted to essential personnel only, and requires the use of a password. The data server is locked in a windowless room with restricted access. Data is encrypted at rest, and backup data is encrypted and removed to a different secure location for storage. Paper files are stored in a locked filing cabinet in a locked room in the controlled facility. Access to paper files is restricted to those with authorized access. All records are accessible only to authorized persons with a need-to-know basis who are properly screened, cleared and trained.

RETENTION AND DISPOSAL:

Disposition pending (until the National Archives and Records Administration approves a retention and disposal schedule, records will be treated as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

Sexual Assault Prevention and Response Office, ATTN: Defense Sexual Assault Incident Database Program Manager, 4800 Mark Center Drive, Room 07G21, Alexandria, VA 22350–1500.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Sexual Assault Prevention and Response Office, ATTN: D–SAACP Manager, 4800 Mark Center Drive, Room 07G21, Alexandria, VA 22350–1500.

Requests must be signed and should contain first name, middle initial, last name, rank/grade, Service affiliation, installation/command, certification level, and certification number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Office of the Secretary of Defense/Joint Staff Freedom of Information Act Requester Service Center, 1155 Defense Pentagon, Washington, DC 20301–1155.

Requests must be signed and should contain first name, middle initial, last name, rank/grade, Service affiliation, installation/command, certification level, and certification number.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records for contesting contents and appealing initial agency determinations are contained in OSD Administrative Instruction 81; 32 Code of Federal Regulations part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The individual, first person in chain of command or SARC and the Senior Commander or Commander, and the National Advocate Credentialing Program.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2012–16871 Filed 7–10–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2012–OS–0085]

Privacy Act of 1974; System of Records

AGENCY: National Reconnaissance Office, DoD.

ACTION: Notice to Add a New System of Records.

SUMMARY: The National Reconnaissance Office proposes to add a new system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The blanket (k)(1) exemption applies to this systems of records to accurately describe the basis for exempting disclosure of classified information that is or may be contained in the records.

DATES: This proposed action will be effective on August 10, 2012 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number 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, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number 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: Chief, Privacy and Information Sharing, National Reconnaissance Office (NRO), 14675 Lee Road, Chantilly, VA 20151–1715 or (703) 808–0414.

SUPPLEMENTARY INFORMATION: The National Reconnaissance Office 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 address in **FOR FURTHER INFORMATION CONTACT**. The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on June 27, 2012, 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: July 5, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

QNRO–31

SYSTEM NAME:

Software Security Risk Evaluations.

SYSTEM LOCATION:

National Reconnaissance Office (NRO), 14675 Lee Road, Chantilly, VA 20151–1715.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Software developers that support products that NRO is considering purchasing or leasing.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name; company name; registered business telephone number and address (which for small businesses may also be an individual's residential telephone number and address); additional information relevant to conducting a software risk evaluation, such as the company an individual works for or other software products the individual has developed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Security Act of 1947, as amended; 5 U.S.C. 301, Departmental Regulations; E.O. 12333, as amended; DoD 5200.1–M, Acquisition Systems Protection Program; DoD 5240.1–R, Procedures Governing the Activities of DoD Intelligence Components That Affect United States Persons; DoDD 5200.27, Acquisition of Information Concerning Persons and Organizations not Affiliated with the Department of Defense; DoDD 5240.2, DoD Counterintelligence (CI); DoDI 5240.8, Security Classification Guide for Information Concerning the DoD Counterintelligence Program.

PURPOSE(S):

The Software Security Risk Evaluations (SSRE) system is used to evaluate potential security risks or counterintelligence threats associated with purchasing or using software products.

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 NRO as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD Blanket Routines Uses published at the beginning of the NRO 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:

Records are maintained in paper files and on electronic storage media.

RETRIEVABILITY:

Records are retrieved by the individual's name.

SAFEGUARDS:

Records are maintained in a controlled facility. Physical entry is restricted by use of locks, guards, badges, and is accessible only to authorized personnel. Access to records is limited to persons responsible for servicing the record in performance of official duties and who are properly screened and cleared for need-to-know. Access to computerized data is restricted by passwords, which are changed periodically.

RETENTION AND DISPOSAL:

Records are destroyed when superseded, obsolete, or no longer needed. Records are destroyed by erasing or shredding.

SYSTEM MANAGER(S) AND ADDRESS:

National Reconnaissance Office, ATTN: Chief, Counter Intelligence Operations, Office of Security and Counter Intelligence, 14675 Lee Road, Chantilly, VA 20151–1715.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Request should contain full name, current address, telephone number, date and place of birth, and other such personal information necessary to locate the record sought. While the Social Security Number (SSN) is not required, providing it will expedite the authentication of the requestor's identity and clearance level.

In addition, the requester must provide a notarized statement or an unsworn declaration in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).

If executed within the United States, its territories, possessions, or commonwealths: I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Request should include full name, current address, telephone number, date place of birth, and other such personal information necessary to locate the record sought. While the Social Security Number (SSN) is not required, providing it will expedite the authentication of the requestor's identity and clearance level.

In addition, the requester must provide a notarized statement or an unsworn declaration 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 NRO rules for accessing records, for contesting contents and appealing initial agency determinations are published in 32 CFR part 326 or may be obtained from the Privacy Act Coordinator, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

RECORD SOURCE CATEGORIES:

From available research tools.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), and published in 32 CFR part 326. For additional information contact the system manager.

[FR Doc. 2012–16872 Filed 7–10–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2012–OS–0086]

Privacy Act of 1974; System of Records

AGENCY: Defense Information Systems Agency, DoD.

ACTION: Notice to Add a New System of Records.

SUMMARY: The Defense Information Systems Agency proposes to add a new system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The blanket (k)(1) exemption applies to this system of records to accurately describe the basis for exempting disclosure of classified information that is or may be contained in the records.

DATES: This proposed action will be effective on August 10, 2012 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number 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, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanette Weathers-Jenkins, DISA Privacy Officer, Chief Information Office, 6916 Cooper Avenue, Fort Meade, MD 20755–7901, or by phone at (301) 225–8158.

SUPPLEMENTARY INFORMATION: The Defense Information Systems Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a(r)), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**. The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on June 27, 2012, 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: July 5, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

K890.18

SYSTEM NAME:

Contract Support System (CSS).

SYSTEM LOCATION:

DISA Defense Enterprise Computer Center (DECC–OKC), 8705 Industrial Boulevard, Building 3900, Tinker AFB, OK 73145–2713.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Customer and Vendor Point of Contact (POC) is accessed only by the Federal/DoD Government contracting officials for contracting purposes.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information collected and nature are defined in the following two categories:

(1) Vendor Data: Vendor POC name, vendor company name, company business size, company Dun & Bradstreet Number, company Tax Identification Number, company set aside type, company HUBZone preference, company ethnic group and company U.S. Business and Women-Owned Business Identifier, vendor work address, vendor POC work phone, and vendor POC work email. Information is used to track the POC at the vendor's organization pertaining to specific contracts awarded by Procurement and Logistics Directorate/Defense Information Technology Contracting Organization (PLD/DITCO).

(2) Customer Data: Customer name, agency/organization, street address, office code, phone number and email address is stored in relation to contracts that have been awarded for them by PLD/DITCO. The system also collects the training dates for those customers that have been designated Contracting Officer Representatives (COR) or Task Monitors (TM).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; Public Law 106–229, Electronic Signatures in Global and National Commerce Act; Presidential Directive on Electronic Commerce, July 1, 1997; OASD(C3I) Policy

Memorandum dated August 12, 2000, subject: Department of Defense (DoD) Public Key Infrastructure (PKI) and, OASD(C3I) Memorandum dated Jan 2001, subject: Common Access Card (CAC), and Government Paperwork Elimination Act.

PURPOSE(S):

CSS is a client-server application used by PLD/DITCO contracting specialists, contracting officers, budget analysts and managers to enter procurement, funding, contractor and user information. CSS provides standard reporting, ad-hoc reporting and tracking capability of procurement, funding, contractor and user information via central Oracle database storage & retrieval of said information.

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 may be specifically disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of NGA's compilation of systems of records notices may also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, guards, and is accessible only to authorized personnel. Access to records is limited to person(s) responsible for servicing the record in performance of their official duties and who are properly screened and cleared for need-to-know. Access to computerized data is restricted by Common Access Card (CAC) and/or passwords which are changed periodically. Additionally, users receive training and awareness notices on the proper marking of sensitive information. Host Based Security System (HBSS) is operational and provides mechanisms to protect, detect, track, and report malicious computer-related activities in near real-time.

RETENTION AND DISPOSAL:

Disposition pending (until the National Archives and Records Administration approves retention and disposal schedule, records will be treated as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

CSS Program Manager/Technical Manager: 2300 East Drive, Scott Air Force Base, IL 62225–5406.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the DITCO FOIA Officer, 2300 East Drive, Scott Air Force Base, IL 62225–5406.

Requests must include the individual's full name, rank, grade or title, component affiliation, work email address, telephone number, assigned office or unit, complete mailing address, and specific contract number and name of Vendor awarded the contract.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the DITCO FOIA Officer, located at 2300 East Drive, Scott Air Force Base, IL 62225–5406.

Requests must include the individual's full name, rank, grade or title, component affiliation, work email address, telephone number, assigned office or unit, complete mailing address, and specific contract number and name of Vendor awarded the contract.

CONTESTING RECORD PROCEDURES:

DISA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DISA Instruction 210–225–2; 32 CFR part 316; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Vendor POC data obtained and manually entered by contracting officials and system administrators. The source of verification of the data is the Central Contractor Registration (CCR). The information source for the federal customer information comes directly from the customer and is entered by contracting officers/specialists and system administrators.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), and published in 32 CFR part 316. For additional information contact the system manager.

[FR Doc. 2012–16873 Filed 7–10–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2012–0011]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to Add a New System of Records.

SUMMARY: The Department of the Navy proposes to add a new system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The blanket (k)(1) exemption applies to this systems of records to accurately describe the basis for exempting disclosure of classified information that is or may be contained in the records.

DATES: This proposed action will be effective on August 10, 2012 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number 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, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Patterson, Department of the Navy, DNS–36, 2000 Navy Pentagon, Washington, DC 20350–2000 or call at (202) 685–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy 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 address in **FOR FURTHER INFORMATION CONTACT**. The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on June 27, 2012, 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: July 5, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

NM01500–13

SYSTEM NAME:

Naval Postgraduate School Education Management System (PYTHON)

SYSTEM LOCATION:

U.S. Naval Postgraduate School (NPS), 1 University Circle, Monterey, CA 93943–5100.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. and International Military from all service branches, civilian, and contractor personnel attached to the U.S. Naval Postgraduate School.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number (SSN), civilian grade, military rank, and address; other names used, other ID number, citizenship, gender, race/ethnicity, birth date, personal cell telephone number, home telephone number, personal email address, mailing/home address, mother's middle name, family member information including name, relationship to sponsor, gender, and email address, marital status, military records, emergency contact, and education information including current grades, curriculum, and prior education.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 605, United States Naval Postgraduate School; Sections: 7041, Function; 7044, Civilian teachers: number; compensation; 7045, Officers of the other armed forces; enlisted members: admission; 7046, Officers of foreign countries: admission; 7047, Students at institutions of higher education: admission; 7049, Defense industry civilians: admission to defense product development program; and E.O. 9397 (SSN), as amended.

PURPOSE:

To manage the Navy Postgraduate School Information Technology (NPS IT) user and student information for enrolling students, scheduling classes, disseminating grades, distributing grades, producing and maintaining transcripts, dropping/adding classes, administering student opinion forms, and managing IT accounts.

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 DoD Blanket Routine Uses that appear at the beginning of the Navy's compilation of system of records notices may apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in paper files and on electronic storage media.

RETRIEVABILITY:

By name and Social Security Number (SSN).

SAFEGUARDS:

Access to the Python web interface occurs over encrypted channels. Periodic security audits, regular monitoring of users' security practices and additional security methods enforce access controls to ensure only authorized personnel have access to the data. Paper copies are stored in safes and locked in fire proof file cabinets. These protection mechanisms are emphasized during training, periodic user awareness training, and spot checks. Additional controls are in place such as periodic security audits, regular monitoring of users' security practices, and methods to ensure only authorized personnel have access to personally identifiable information.

RETENTION AND DISPOSAL:

Student's transcripts are permanent. User data is deleted upon departure of the user. System data is destroyed when no longer needed or after two years, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Enterprise Information Systems, Information Technology and Communication Services, 555 Dyer Road, Monterey, CA 93943–5100.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List.

The request should include full name, Social Security Number (SSN), proof of identity, and mailing address of the individual concerned and should be signed by the requestor. The system manager will require an original signature or a notarized signature as a means of proving the identity of the individual requesting access to the records.

RECORDS ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List.

The request should include full name, Social Security Number (SSN), proof of identity, and mailing address of the individual concerned and should be signed by the requestor. The system manager will require an original signature or a notarized signature as a means of proving the identity of the individual requesting access to the records.

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:

Individual and NPS faculty.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), and published in 32 CFR part 320. For additional information contact the system manager.

[FR Doc. 2012–16870 Filed 7–10–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Innovative Approaches to Literacy Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

Overview Information:

Innovative Approaches to Literacy (IAL) Program; Notice inviting applications for new awards for fiscal year (FY) 2012.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.215G

Dates:

Applications Available: July 11, 2012.

Deadline for Transmittal of Applications: August 10, 2012.

Deadline for Intergovernmental Review: October 9, 2012.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Innovative Approaches to Literacy (IAL) program supports high-quality programs designed to develop and improve literacy skills for children and students from birth through 12th grade within the attendance boundaries of high-need local educational agencies (LEAs) and schools. The U.S. Department of Education (Department) intends to support innovative programs that promote early literacy for young children, motivate older children to read, and increase student achievement by using school libraries, distributing free books to children and their families, and offering high-quality literacy activities.

Many schools and districts across the Nation do not have school libraries that deliver high-quality literacy programming to children and their families. Additionally, many schools do not have qualified library media specialists and library facilities. Where facilities do exist, they are often under-resourced and lack adequate books and other materials. In many communities, high-need children and students have limited access to appropriate age- and grade-level reading material in their homes.

The IAL program supports the implementation of high-quality plans for childhood literacy activities and book distribution efforts that are supported by at least one study that meets the definition of scientifically valid research (as defined in this notice).

Proposed projects under the IAL program, based on those plans, may include, among other things, activities that—

(a) Increase access to a wide range of literacy resources (either print or electronic) that prepare young children to read, and provide learning opportunities to all participating students;

(b) Provide high-quality childhood literacy activities with meaningful opportunities for parental engagement, including encouraging parents to read books often with their children in their early years of school and of life, and teaching parents how to use literacy resources effectively;

(c) Strengthen literacy development across academic content areas by providing a wide range of literacy resources spanning a range of both complexity and content (including both literature and informational text) to effectively support reading and writing;

(d) Offer appropriate educational interventions for all readers with support from school libraries or not-for-profit organizations;

(e) Foster collaboration and joint professional development opportunities for teachers, school leaders, and school library personnel with a focus on using literacy resources effectively to support reading and writing and academic achievement. For example, an approach to professional development within the IAL program might be collaboration between library and school personnel to plan subject-specific pedagogy that is differentiated based on each student's developmental level and is supported by universal design for learning (as defined in this notice), technology, and other educational strategies; and

(f) Provide resources to support literacy-rich academic and enrichment activities and services aligned with State college- and career-ready academic content standards and the comprehensive statewide literacy plan (SLP) (as defined in this notice).

The IAL program is carried out under the legislative authority of the Fund for Improvement of Education (FIE), Title V, Part D, Subpart 1, Sections 5411 through 5413 of the Elementary and Secondary Education Act of 1965, as amended (ESEA) (20 U.S.C. 7243–7243b). FIE supports nationally significant programs to improve the quality of elementary and secondary education at the State and local levels and to help all children meet challenging State college- and career-ready academic content standards.

In accordance with the Conference and Senate Reports [1] accompanying the Consolidated Appropriations Act, 2012, and subject to the submission of sufficient applications that meet the requirements of this notice, the Department will award no less than 50 percent of FY 2012 funds to applications from LEAs (on behalf of school libraries) for high-quality school library projects that increase access to a wide range of literacy resources (either print or electronic) and provide learning opportunities to all students.

Priorities: This competition includes one absolute priority and four competitive preference priorities. Competitive preference priority 1 is from the notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637). We establish the absolute priority and competitive preference priorities 2, 3, and 4 in this notice.

Absolute Priority: For FY 2012 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Absolute Priority—High-quality plan for innovative approaches to literacy that include book distribution, childhood literacy activities, or both, and that is supported by at least one study that meets the definition of scientifically valid research (as defined in this notice).

To meet this priority an applicant must submit a plan that includes the information listed below, and the Department's reviewers must be able to determine from that information that the plan is supported by at least one study that meets the definition of scientifically valid research (as defined in this notice). The required applicant information is as follows:

(a) A description of the proposed book distribution, childhood literacy activities, or both, that are designed to improve the literacy skills of children and students by one or more of the following—

(i) promoting early literacy and preparing young children to read;

(ii) developing and improving students' reading ability; and

(iii) motivating older children to read.

(b) The age or grade spans from birth through 12th grade of children and students to be served within the attendance boundaries of high-need LEAs (as defined in this notice);

(c) A detailed description of the key goals, the activities to be undertaken and rationale for those activities, the timeline, the parties responsible for implementing the activities, and the credibility of the plan (as judged, in part, by the information submitted as supporting evidence); and

(d)(i) A description of how the proposed project is supported by the cited study; and (ii) the name of and citation for the supporting study that is relevant to the applicant's proposed project. Applications will be reviewed and scored on the selection criteria, and then will be reviewed to determine eligibility under the absolute priority in this notice.

Competitive Preference Priorities: For FY 2012 and any subsequent year in

[1] H.R. Conf. Rep. No. 112–331, at 1150 (2011); S. Rep. No. 112–84, at 182 (2011).

which we make awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award an additional 5 points to an application that meets either Priority 1 or 4. We award up to an additional 5 points to an applicant that meets Priority 2 and up to an additional 5 points to an applicant that meets Priority 3. A total of up to 15 additional points may be awarded.

These priorities are:

Competitive Preference Priority 1—Turning Around Persistently Lowest-Achieving Schools (5 points).

Under this priority, we give competitive preference to projects that are designed to address one or more of the following priority areas:

(a) Improving student achievement (as defined in this notice) in persistently lowest-achieving schools (as defined in this notice).

(b) Increasing graduation rates (as defined in this notice) and college enrollment rates for students in persistently lowest-achieving schools (as defined in this notice).

(c) Providing services to students enrolled in persistently lowest-achieving schools (as defined in this notice).

Note: For the purposes of this priority, the Department considers schools that are identified as Tier I or Tier II schools under the School Improvement Grants program (see 75 FR 66363) as part of a State's approved FY 2009 or FY 2010 applications to be persistently lowest-achieving schools. A list of these Tier I and Tier II schools can be found on the Department's Web site at *http://www2.ed.gov/programs/sif/index.html.*

Competitive Preference Priority 2—Technology (5 Points)

Under this priority, we give competitive preference to projects that are designed to improve reading readiness in children or student achievement (as defined in this notice) through the use of high-quality digital tools or materials, which may include preparing teachers or school library personnel to use the technology to improve instruction, as well as developing, implementing, or evaluating digital tools or materials.

Competitive Preference Priority 3—Improving Early Learning Outcomes (5 Points)

Under this priority, we give competitive preference to projects that are designed to improve school readiness and success for high-need children (as defined in this notice) from birth through 3rd grade (or for any age group of high-need children within this range) through a focus on language and literacy development, including encouraging parents to read books often with their children in their early years of school and of life.

Competitive Preference Priority 4—Serving Rural LEAs (5 Points)

Under this priority, we give competitive preference to projects that are designed to provide high-quality literacy programming, or distribute books, or both, to students served by a rural local educational agency (as defined in this notice).

Definitions: Some of the definitions in this notice are from the notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486) and corrected on May 12, 2011 (76 FR 27637); those are identified at the end of the definition. The definition of ''preschool'' is from 34 CFR 77.1. Definitions without a citation we establish in this notice.

Comprehensive statewide literacy plan means a plan (which may be a component or modification of the plan submitted under the Striving Readers Comprehensive Literacy formula grant program, CFDA 84.371B) that addresses the literacy and language needs of children from birth through 12th grade, including English learners and students with disabilities; aligns literacy policies, resources, and practices; contains clear instructional goals; and sets high expectations for all students and student subgroups.

Graduation rate means a four-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1) and may also include an extended-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1)(v) if the State in which the proposed project is implemented has been approved by the Secretary to use such a rate under Title I of the ESEA. (76 FR 27640).

High-need children and high-need students means children and students at risk of educational failure, such as children and students who are living in poverty, who are English learners, who are far below grade level or who are not on track to becoming college- or career-ready by graduation, who have left school or college before receiving, respectively, a regular high school diploma or a college degree or certificate, who are at risk of not graduating with a diploma on time, who are homeless, who are in foster care, who are pregnant or parenting teenagers, who have been incarcerated, who are new immigrants, who are migrant, or who have disabilities. (76 FR 27640).

High-need local educational agency (LEA) means an LEA, including a charter school or State-administered school that is considered an LEA under State law, in which at least 25 percent of the students aged 0–17 in the geographic area served by the LEA (or, in the case of a charter school that is an LEA, at least 25 percent of the students enrolled in the school) are from families with incomes below the poverty line based on the most recent satisfactory data available from the U.S. Census Bureau at the time this notice is published. These data are Small Area Income and Poverty Estimates for school districts for the most recent income year. A list of LEAs with their family poverty rates (based on these Census Bureau data) is posted on our Web site at *www.ed.gov/programs/ial/eligibility.html.*

National not-for-profit organization means an agency, organization, or institution owned and operated by one or more corporations or associations whose net earnings do not benefit, and cannot lawfully benefit, any private shareholder or entity. In addition, it means, for the purposes of this program, an organization of national scope that is supported by staff or affiliates at the State and local levels, who may include volunteers, and that has a demonstrated history of effectively developing and implementing literacy activities.

Persistently lowest-achieving schools means, as determined by the State: (i) Any Title I school in improvement, corrective action, or restructuring that (a) is among the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring or the lowest-achieving five Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater; or (b) is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years; and (ii) any secondary school that is eligible for, but does not receive, Title I funds that: (a) Is among the lowest-achieving five percent of secondary schools or the lowest-achieving five secondary schools in the State that are eligible for, but do not receive, Title I funds, whichever number of schools is greater; or (b) is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years.

To identify the persistently lowest-achieving schools, a State must take into account both: (i) The academic achievement of the ''all students'' group

in a school in terms of proficiency on the State's assessments under section 1111(b)(3) of the ESEA in reading/language arts and mathematics combined; and (ii) the school's lack of progress on those assessments over a number of years in the ''all students'' group. (76 FR 27640).

Preschool means the educational level from a child's birth to the time at which the State provides elementary education. (34 CFR 77.1)

Rural local educational agency means a local educational agency (LEA) that is eligible under the Small Rural School Achievement program (SRSA) or the Rural and Low-Income School (RLIS) program authorized under Title VI, Part B of the ESEA at the time of application. Eligible applicants may determine whether a particular LEA is eligible for these programs by referring to information on the Department's Web site at *http://www2.ed.gov/nclb/freedom/local/reap.html.*

Scientifically based research standards means research standards that (i) apply rigorous, systematic, and objective methodology to obtain reliable and valid knowledge relevant to education activities and programs; and (ii) present findings and make claims that are appropriate to and supported by the methods that have been employed. The term includes, appropriate to the research being conducted: (i) Employing systematic, empirical methods that draw on observation or experiment; (ii) involving data analyses that are adequate to support the general findings; (iii) relying on measurements or observational methods that provide reliable data; (iv) making claims of causal relationships only in random assignment experiments or other designs (to the extent such designs substantially eliminate plausible competing explanations for the obtained results); (v) ensuring that studies and methods are presented in sufficient detail and clarity to allow for replication or, at a minimum, to offer the opportunity to build systematically on the findings of the research; (vi) obtaining acceptance by a peer-reviewed journal or approval by a panel of independent experts through a comparably rigorous, objective, and scientific review; and (vii) using research designs and methods appropriate to the research question posed.

Scientifically valid research includes applied research, basic research, and field-initiated research in which the rationale, design, and interpretation are soundly developed in accordance with scientifically based research standards (as defined in this notice).

Student achievement means (a) For tested grades and subjects: (1) A student's score on the State's assessments under the ESEA; and, as appropriate, (2) other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across schools.

(b) For non-tested grades and subjects: Alternative measures of student learning and performance, such as student scores on pre-tests and end-of-course tests, and objective performance-based assessments; student learning objectives; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across schools.

Universal design for learning (UDL) means a scientifically valid framework for guiding educational practice that (i) Provides flexibility in the ways information is presented, in the ways students respond or demonstrate knowledge and skills, and in the ways students are engaged; and (ii) Reduces barriers in instruction, provides appropriate accommodations, supports, and challenges, and maintains high achievement expectations for all students, including students with disabilities and students who are English learners.

Waiver of Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities, requirements, and definitions. Section 437(d)(1) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(d)(1), however, allows the Secretary to exempt from rulemaking requirements, regulations governing the first grant competition under a new or substantially revised program authority. This is the first grant competition for this program under the authority in sections 5411 through 5413 of the ESEA (20 U.S.C. 7243–7243b) and therefore qualifies for this exemption. In order to ensure timely grant awards, the Secretary has decided to forgo public comment under section 437(d)(1) of GEPA.

These priorities, requirements, and definitions will apply to the FY 2012 grant competition and any subsequent year in which we make awards from the list of unfunded applicants from this competition.

Program Authority: 20 U.S.C. 7243–7243b.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 97, 98, and 99. (b) The Education Department debarment and suspension regulations in 2 CFR part 3485. (c) The notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637).

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $28,599,844.

Estimated Range of Awards to LEAs: $150,000 to $750,000.

Estimated Average Size of Awards: $500,000.

Estimated Number of Awards: 30.

Estimated Range of Awards to national not-for-profit organizations: $3,000,000 to $14,000,000.

Estimated Average Size of Awards: $4,500,000.

Estimated Number of Awards: 1–4.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months.

III. Eligibility Information

1. *Eligible Applicants:* Eligible applicants for IAL grants are (1) A high-need LEA (as defined in this notice); (2) a national not-for-profit organization (as defined in this notice) that serves children and students within the attendance boundaries of a high-need LEA; (3) a consortium of one or more national not-for-profit organizations that serve children and students within the attendance boundaries of one or more high-need LEAs; or (4) a consortium of high-need LEAs.

Note: In order to demonstrate that charter schools or State-administered schools are LEAs, applicants must include documentation from their State educational agency confirming LEA status. Subject to the submission of sufficient applications that meet the requirements of this notice, the Department will award no less than 50 percent of the funds to LEAs (on behalf of school libraries) for high-quality school library projects that increase access to a wide range of print and electronic resources and provide learning opportunities to all students. The Secretary reserves the right to fund a sufficient number of high-quality literacy and book distribution projects from LEAs and national not-for-profit organizations.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application

package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/index.html.* To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.215G.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the person or team listed under *For Further Information Contact* in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to no more than 25 pages, using the following standards:

- A ''page'' is 8.5'' x 11'', on one side only, with 1'' margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will be not accepted.

The page limit does not apply to the cover sheet; eligibility information; the budget section, including the narrative budget justification; the assurances and certifications; the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section.

Our reviewers will not read any pages of your application that exceed the page limit.

Note: The applicant must include in the abstract section of the application package the citation of at least one study used to address paragraph (d)(ii) of the absolute priority.

3. *Submission Dates and Times:*

Applications Available: July 11, 2012.

Deadline for Transmittal of Applications: August 10, 2012.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under *For Further Information Contact* in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: October 9, 2012.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR Part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR)—and, after May 23, 2012, with the System for Award Management (SAM), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR or SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR or SAM registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete. Information about SAM is available at SAM.gov.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/applicants/get_registered.jsp.*

7. *Other Submission Requirements:*

Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Innovative Approaches to Literacy Program, CFDA number 84.215G, must be submitted electronically using the Government-wide Grants.gov Apply site at www.Grants.gov. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written

statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the IAL program at *www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.215, not 84.215G).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material. Additional, detailed information on how to attach files is in the application instructions.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; and
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Peter Eldridge, U.S. Department of Education, 400 Maryland Avenue SW., room 3E246, Washington, DC 20202–6200. FAX: (202) 260–8969.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.215G) LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.215G) 550 12th Street SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 and are listed in the following paragraphs. The maximum score for all criteria is 100 points. The maximum possible score for each criterion is indicated in parentheses.

(a) *Significance* (10 points). The Secretary considers the significance of the proposed project. In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The extent to which the proposed project is likely to build local capacity to provide, improve, or expand services that address the needs of the target population. (5 points)

(ii) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies. (5 points)

(b) *Quality of the project design* (20 points). The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (5 points)

(ii) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources.
(5 points)

(iii) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students. (5 points)

(iv) The extent to which performance feedback and continuous improvement are integral to the design of the proposed project. (5 points)

(c) *Quality of the project services* (25 points). The Secretary considers the quality of the services to be provided by the proposed project. In determining the quality of the services to be provided by the proposed project, the Secretary considers the following factors:

(i) The quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (10 points)

(ii) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services. (10 points)

(iii) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services. (5 points)

(d) *Adequacy of resources* (10 points). The Secretary considers the adequacy of the resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project. (5 points)

(ii) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits.
(5 points)

(e) *Quality of the management plan* (20 points). The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks. (10 points)

(ii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project. (5 points)

(iii) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project.
(5 points)

(f) *Quality of the project evaluation* (15 points). The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation include the use of

objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible. (10 points)

(ii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes. (5 points)

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

Subject to the submission of sufficient applications that meet the requirements of this notice, the Department will award no less than 50 percent of these funds to applications from LEAs (on behalf of school libraries) for high-quality school library projects that increase access to a wide range of print and electronic resources and provide learning opportunities to all students.

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for the grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR Part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has developed the following performance measures for measuring the overall effectiveness of the IAL program. (1) The percentage of 4-year-old children participating in the project who achieve significant gains in oral language skills. (2) The percentage of participating 3rd-grade students who meet or exceed proficiency on State reading or language arts assessments under section 1111(b)(3) of the ESEA. (3) The percentage of participating 8th-grade students who meet or exceed proficiency on State reading or language arts assessments under section 1111(b)(3) of the ESEA. (4) The percentage of participating high school students who meet or exceed proficiency on State reading or language arts assessments under section 1111(b)(3) of the ESEA.

All grantees will be expected to submit an annual performance report that includes data addressing these performance measures, to the extent that they apply to the grantee's project. For example, a grantee that proposes to improve the quality of school library services for high school students would only be required to report data for measure 4.

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

For Further Information Contact: Peter Eldridge, U.S. Department of Education, 400 Maryland Avenue SW., Room 3E246, Washington, DC 20202–6200. Telephone: (202) 260–2514 or by email: *Peter.Eldridge@ed.gov*.

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under *For Further Information Contact* in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in the text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: July 6, 2012.

Deborah S. Delisle,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2012–16930 Filed 7–10–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12–848–000.
Applicants: CenterPoint Energy Gas Transmission Comp.
Description: CenterPoint Energy Gas Transmission Company, LLC submits tariff filing per 154.204: CEGT LLC—Connect Assignment to PVR to be effective 7/1/2012.
Filed Date: 7/2/12.
Accession Number: 20120702–5154.
Comments Due: 5 p.m. ET 7/16/12.

Docket Numbers: RP12–849–000.
Applicants: National Fuel Gas Supply Corporation.
Description: National Fuel Gas Supply Corporation submits tariff filing per 154.204: New Section 35(c) to be effective 8/1/2012.
Filed Date: 7/2/12.
Accession Number: 20120702–5172.
Comments Due: 5 p.m. ET 7/16/12.

Docket Numbers: RP12–850–000.
Applicants: WTG Hugoton, LP.
Description: WTG Hugoton, LP submits tariff filing per 154.203: Annual Fuel Retention Percentage Filing 2012–2013 to be effective 8/1/2012.
Filed Date: 7/2/12.
Accession Number: 20120702–5179.
Comments Due: 5 p.m. ET 7/16/12.

Docket Numbers: RP12–851–000.
Applicants: Cheyenne Plains Gas Pipeline Company, L.
Description: Cheyenne Plains Gas Pipeline Company, L.L.C. submits tariff filing per 154.403(d)(2): CPG Fuel and L&U Filing to be effective 8/1/2012.
Filed Date: 7/2/12.
Accession Number: 20120702–5272.
Comments Due: 5 p.m. ET 7/16/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP12–832–001.
Applicants: ANR Storage Company.
Description: ANR Storage Company submits tariff filing per 154.205(b): Twin Eagle Amendment to be effective 7/1/2012.
Filed Date: 7/2/12.
Accession Number: 20120702–5147.
Comments Due: 5 p.m. ET 7/16/12.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR § 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 03, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–16866 Filed 7–10–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1276–003; ER10–1292–002; ER10–1287–002; ER10–1303–002; ER10–1319–004; ER10–1353–004.
Applicants: Consumers Energy Company, CMS Energy Resource Management Company, Grayling Generation Station Limited Partnership, Genesee Power Station Limited Partnership, CMS Generation Michigan Power, LLC, Dearborn Industrial Generation, LLC.
Description: Updated Market Power Analysis of Consumer Energy Company, *et. al.*
Filed Date: 6/28/12.
Accession Number: 20120628–5178.
Comments Due: 5 p.m. ET 8/27/12.

Docket Numbers: ER10–1483–001.
Applicants: Dominion Energy Kewaunee, Inc.
Description: Market Power Analyses Report of Dominion Energy Kewaunee, Inc.
Filed Date: 6/29/12.
Accession Number: 20120629–5042.
Comments Due: 5 p.m. ET 8/27/12.

Docket Numbers: ER10–2739–004; ER10–2751–002; ER10–2742–002.
Applicants: Renaissance Power, LLC, Tilton Energy LLC, LS Power Marketing, LLC.
Description: Updated Market Power Analysis of LS Power Marketing, LLC, *et. al.*
Filed Date: 6/28/12.
Accession Number: 20120628–5179.
Comments Due: 5 p.m. ET 8/27/12.

Docket Numbers: ER12–60–003; ER10–1632–003; ER10–1616–001.
Applicants: New Covert Generating Company, LLC, Tenaska Power Services Co., Tenaska Power Management, LLC.
Description: Updated Market Power Analysis of Tenaska Power Management, LLC, *et. al.* under ER12–60, *et. al.*
Filed Date: 6/28/12.
Accession Number: 20120628–5177.
Comments Due: 5 p.m. ET 8/27/12.

Docket Numbers: ER12–1722–001.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: SIPC-Prairie State FCA Amendment (2) to be effective 5/8/2012.
Filed Date: 6/28/12.
Accession Number: 20120628–5152.
Comments Due: 5 p.m. ET 7/19/12.

Docket Numbers: ER12–1735–001.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.17(b): GRE-City of Worthington Amendment to be effective 5/9/2012.
Filed Date: 6/29/12.
Accession Number: 20120629–5058.
Comments Due: 5 p.m. ET 7/20/12.

Docket Numbers: ER12–1762–001.
Applicants: Consolidated Edison Company of New York, Inc.
Description: Amendment to RDM target filing to be effective 5/11/2012.
Filed Date: 6/28/12.
Accession Number: 20120628–5159.
Comments Due: 5 p.m. ET 7/19/12.

Docket Numbers: ER12–2132–000.
Applicants: ITC Midwest LLC.
Description: Filing of Duane Arnold Energy Center Agreement to be effective 8/28/2012.
Filed Date: 6/28/12.
Accession Number: 20120628–5122.
Comments Due: 5 p.m. ET 7/19/12.

Docket Numbers: ER12–2133–000.
Applicants: New York Independent System Operator, Inc.

Description: Request for Limited Tariff Waivers of the New York Independent System Operator, Inc. for the Procurement of Black Start Service from TC Ravenswood, LLC on an interim basis; and Request for Shortened Comment Period and Expedited Action.
Filed Date: 6/28/12.
Accession Number: 20120628–5124.
Comments Due: 5 p.m. ET 7/6/12.

Docket Numbers: ER12–2134–000.
Applicants: PJM Interconnection, L.L.C.
Description: Original Service Agreement No. 3342; Queue No. W1–122 to be effective 6/18/2012.
Filed Date: 6/28/12.
Accession Number: 20120628–5128.
Comments Due: 5 p.m. ET 7/19/12.

Docket Numbers: ER12–2135–000.
Applicants: Orange and Rockland Utilities, Inc.
Description: Attachment K—Recharge NY Operating Agreement and Retail Transmission to be effective 7/1/2012.
Filed Date: 6/28/12.
Accession Number: 20120628–5136.
Comments Due: 5 p.m. ET 7/19/12.

Docket Numbers: ER12–2136–000.
Applicants: Pacific Gas and Electric Company.
Description: E&P Agreement for PG&E's Schindler 4 Project to be effective 6/29/2012.
Filed Date: 6/28/12.
Accession Number: 20120628–5143.
Comments Due: 5 p.m. ET 7/19/12.

Docket Numbers: ER12–2137–000.
Applicants: GenOn Florida, LP.
Description: Revised Market-Based Rate Tariff to be effective 7/1/2012.
Filed Date: 6/28/12.
Accession Number: 20120628–5155.
Comments Due: 5 p.m. ET 7/19/12.

Docket Numbers: ER12–2138–000.
Applicants: GenOn Power Midwest, LP.
Description: Revised Market-Based Rate Tariff to be effective 7/1/2012.
Filed Date: 6/28/12.
Accession Number: 20120628–5156.
Comments Due: 5 p.m. ET 7/19/12.

Docket Numbers: ER12–2139–000.
Applicants: GenOn Wholesale Generation, LP.
Description: Revised Market-Based Rate Tariff to be effective 7/1/2012.
Filed Date: 6/28/12.
Accession Number: 20120628–5157.
Comments Due: 5 p.m. ET 7/19/12.

Docket Numbers: ER12–2140–000.
Applicants: RRI Energy Services, LLC.
Description: Revised Market-Based Rate Tariff to be effective 7/1/2012.
Filed Date: 6/28/12.
Accession Number: 20120628–5158.
Comments Due: 5 p.m. ET 7/19/12.

Docket Numbers: ER12–2141–000.
Applicants: NorthWestern Corporation.
Description: Revised Rate Schedule 188—Colstrip 1 & 2 Transmission Agreement to be effective 9/1/2012.
Filed Date: 6/29/12.
Accession Number: 20120629–5004.
Comments Due: 5 p.m. ET 7/20/12.

Docket Numbers: ER12–2142–000.
Applicants: NorthWestern Corporation.
Description: Service Agreement No. 641—United Grain Corporation to be effective 6/29/2012.
Filed Date: 6/29/12.
Accession Number: 20120629–5005.
Comments Due: 5 p.m. ET 7/20/12.

Docket Numbers: ER12–2143–000.
Applicants: PJM Interconnection, LLC.
Description: PJM Interconnection, LLC submits tariff filing per 35.13(a)(2)(iii): Filing of First Revised Service Agreement No. 3262; Queue No. W4–068 to be effective 6/7/2012.
Filed Date: 6/29/12.
Accession Number: 20120629–5055.
Comments Due: 5 p.m. ET 7/20/12.

Docket Numbers: ER12–2144–000.
Applicants: ITC Midwest LLC.
Description: ITC Midwest LLC submits tariff filing per 35.13(a)(2)(iii): Filing of Notice of Succession to be effective 8/29/2012.
Filed Date: 6/29/12.
Accession Number: 20120629–5061.
Comments Due: 5 p.m. ET 7/20/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 29, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–16867 Filed 7–10–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC12–114–000.
Applicants: Dominion Energy Salem Harbor, LLC, Footprint Power Acquisitions LLC, Footprint Power Real Estate LP, Footprint Salem Harbor Operations LLC.
Description: FPA Section 203 Application of Footprint Power Acquisitions LLC, et al. and Request for Expedited Consideration.
Filed Date: 6/29/12.
Accession Number: 20120629–5232.
Comments Due: 5 p.m. ET 7/20/12.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG12–81–000.
Applicants: Blue Sky East, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Blue Sky East, LLC.
Filed Date: 6/29/12.
Accession Number: 20120629–5152.
Comments Due: 5 p.m. ET 7/20/12.

Docket Numbers: EG12–82–000.
Applicants: Meadow Creek Project Company LLC.
Description: Self-Certification of EWG Status of Meadow Creek Project Company LLC.
Filed Date: 6/29/12.
Accession Number: 20120629–5217.
Comments Due: 5 p.m. ET 7/20/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2130–004.
Applicants: Forward Energy LLC.
Description: Triennial Report of Forward Energy LLC.
Filed Date: 6/29/12.
Accession Number: 20120629–5105.
Comments Due: 5 p.m. ET 8/28/12.

Docket Numbers: ER10–2136–004.
Applicants: Invenergy Cannon Falls LLC.
Description: Triennial Report Invenergy Cannon Falls LLC.
Filed Date: 6/29/12.
Accession Number: 20120629–5113.
Comments Due: 5 p.m. ET 8/28/12.

Docket Numbers: ER10–2405–002; ER10–2407–002; ER10–2425–002; ER10–2424–002.
Applicants: High Prairie Wind Farm II, LLC, Pioneer Prairie Wind Farm I, LLC, Rail Splitter Wind Farm, LLC, Lost Lakes Wind Farm LLC.

Description: Updated market power analysis of High Prairie Wind Farm II, LLC, Lost Lakes Wind Farm LLC, Pioneer Prairie Wind Farm I, LLC, and Rail Splitter Wind Farm, LLC.
Filed Date: 6/29/12.
Accession Number: 20120629–5101.
Comments Due: 5 p.m. ET 8/28/12.

Docket Numbers: ER10–2431–002; ER10–2434–002; ER10–2467–002; ER11–3731–002; ER10–2436–002 .
Applicants: Wapsipinicon Wind Project, LLC, Hoosier Wind Project, LLC, Chanarambie Power Partners, LLC, Fenton Power Partners I, LLC, LWP Lessee, LLC.
Description: Triennial Market Power Analysis Update of enXco Central Region Companies.
Filed Date: 6/29/12.
Accession Number: 20120629–5119.
Comments Due: 5 p.m. ET 8/28/12.

Docket Numbers: ER10–2563–001.
Applicants: Wisconsin Electric Power Company.
Description: Wisconsin Electric Power Company's Triennial Market Power Analysis Report for 2012.
Filed Date: 6/29/12.
Accession Number: 20120629–5211.
Comments Due: 5 p.m. ET 8/28/12.

Docket Numbers: ER10–2616–002; ER10–2586–001; ER10–2647–002.
Applicants: Dynegy Marketing and Trade, LLC, Dynegy Midwest Generation, LLC, Dynegy Power Marketing, LLC.
Description: Market Power Analysis of Dynegy Marketing and Trade, LLC, et al.
Filed Date: 6/29/12.
Accession Number: 20120629–5139.
Comments Due: 5 p.m. ET 8/28/12.

Docket Numbers: ER10–2738–002.
Applicants: The Empire District Electric Company.
Description: Updated Market Power Analysis of The Empire District Electric Company.
Filed Date: 6/29/12.
Accession Number: 20120629–5138.
Comments Due: 5 p.m. ET 8/28/12.

Docket Numbers: ER10–2985–003; ER10–3049–004; ER10–3051–004.
Applicants: Champion Energy Marketing LLC, Champion Energy Services, LLC, Champion Energy, LLC.
Description: Updated Market Power Analysis for the Central Region of Champion Energy Marketing LLC, et al.
Filed Date: 6/29/12.
Accession Number: 20120629–5216.
Comments Due: 5 p.m. ET 8/28/12.

Docket Numbers: ER10–2994–006; ER12–2075–001; ER12–2076–001; ER12–2077–001; ER12–2078–001; ER12–2081–001; ER12–2083–001; ER12–2084–001; ER12–2086–001; ER12–2108–001; *ER12–2097–001; ER12–2101–001; ER12–2102–001; ER12–2109–001; ER12–2106–001; ER12–2107–001.*
Applicants: MinnDakota Wind LLC, Northern Iowa Windpower II LLC, Flying Cloud Power Partners, LLC, Moraine Wind LLC, Trimont Wind I LLC, Barton Windpower LLC, Elm Creek Wind, LLC, Farmers City Wind, LLC, Buffalo Ridge I LLC, Moraine Wind II LLC, Buffalo Ridge II LLC, Elm Creek Wind II LLC, Atlantic Renewable Projects II LLC, New Harvest Wind Project LLC, Rugby Wind LLC, Iberdrola Renewables, LLC.
Description: Updated Market Power Analysis of Iberdrola Renewables, LLC, et al. for the Central Region.
Filed Date: 6/29/12.
Accession Number: 20120629–5135.
Comments Due: 5 p.m. ET 8/28/12.

Docket Numbers: ER10–3079–003; ER12–126–005.
Applicants: Tyr Energy, LLC, Trademark Merchant Energy, LLC.
Description: Updated market power analysis for Tyr Energy, LLC, et al.
Filed Date: 6/29/12.
Accession Number: 20120629–5086.
Comments Due: 5 p.m. ET 8/28/12.

Docket Numbers: ER11–3084–003; ER11–3097–003; ER12–1010–001; ER10–1186–002; ER10–1277–002; ER10–1211–002; ER10–1188–002.
Applicants: The Detroit Edison Company, DTE Energy Trading, Inc., DTE River Rouge No. 1, LLC, DTE Energy Supply, Inc., DTE East China, LLC, DTE Pontiac North, LLC, DTE Stoneman, LLC.
Description: Updated Market Power Analysis of The Detroit Edison Company, et al.
Filed Date: 6/29/12.
Accession Number: 20120629–5074.
Comments Due: 5 p.m. ET 8/28/12.

Docket Numbers: ER11–4044–005.
Applicants: Gratiot County Wind LLC.
Description: Triennial Report of Gratiot County Wind LLC.
Filed Date: 6/29/12.
Accession Number: 20120629–5108.
Comments Due: 5 p.m. ET 8/28/12.

Docket Numbers: ER11–4046–004
Applicants: Gratiot County Wind II LLC.
Description: Triennial Report of Gratiot County Wind II LLC.
Filed Date: 6/29/12.
Accession Number: 20120629–5106.
Comments Due: 5 p.m. ET 8/28/12.

Docket Numbers: ER12–164–003.
Applicants: Bishop Hill Energy III LLC.
Description: Triennial Report of Bishop Hill Energy III LLC.
Filed Date: 6/29/12.
Accession Number: 20120629–5111.
Comments Due: 5 p.m. ET 8/28/12.

Docket Numbers: ER12–645–004.
Applicants: California Ridge Wind Energy LLC.
Description: Triennial Report of California Ridge Wind Energy LLC.
Filed Date: 6/29/12.
Accession Number: 20120629–5112.
Comments Due: 5 p.m. ET 8/28/12.

Docket Numbers: ER12–1403–002.
Applicants: Consolidated Edison Company of New York, Inc.
Description: Amendment of RY3 filing to be effective 4/1/2012.
Filed Date: 6/29/12.
Accession Number: 20120629–5096.
Comments Due: 5 p.m. ET 7/20/12.

Docket Numbers: ER12–2145–000.
Applicants: EC&R O&M LLC.
Description: Application for Market-Based Rate Authority to be effective 6/29/2012.
Filed Date: 6/29/12.
Accession Number: 20120629–5069.
Comments Due: 5 p.m. ET 7/20/12.
Docket Numbers: ER12–2146–000
Applicants: Interstate Power and Light Company
Description: Cancellation of IPL and Vienna Wind LBA Agreement to be effective 9/1/2012.
Filed Date: 6/29/12
Accession Number: 20120629–5090
Comments Due: 5 p.m. ET 7/20/12

Docket Numbers: ER12–2147–000
Applicants: Pacific Gas and Electric Company
Description: Amendment to Extend the PG&E–NCPA Interconnection Agreement to be effective 8/31/2012.
Filed Date: 6/29/12
Accession Number: 20120629–5107
Comments Due: 5 p.m. ET 7/20/12

Docket Numbers: ER12–2148–000
Applicants: ITC Midwest LLC
Description: Filing of an Interconnection Agreement with Archer-Daniels-Midland Co. to be effective 8/29/2012.
Filed Date: 6/29/12
Accession Number: 20120629–5122
Comments Due: 5 p.m. ET 7/20/12

Docket Numbers: ER12–2149–000
Applicants: Pacific Gas and Electric Company
Description: Amendment to Extend the PG&E—SVP Interconnection Agreement to be effective 8/31/2012.
Filed Date: 6/29/12
Accession Number: 20120629–5127
Comments Due: 5 p.m. ET 7/20/12

Docket Numbers: ER12–2150–000
Applicants: Plains and Eastern Clean Line LLC, Plains and Eastern Clean Line Oklahoma LLC
Description: Application of Plains and Eastern Clean Line LLC and Plains and

Eastern Clean Line Oklahoma LLC for Authorization to Sell Transmission Services at Negotiated Rates and for Related Relief.

Filed Date: 6/29/12
Accession Number: 20120629–5129
Comments Due: 5 p.m. ET 7/20/12

Docket Numbers: ER12–2151–000
Applicants: Northern States Power Company, a Minnesota Corporation
Description: 2012–6–29—SS Const Agrmt-283–NSP to be effective 6/5/2012.
Filed Date: 6/29/12
Accession Number: 20120629–5131
Comments Due: 5 p.m. ET 7/20/12

Docket Numbers: ER12–2152–000
Applicants: PJM Interconnection, L.L.C.
Description: Original Service Agreement No. 3335; Queue No. X1–034 to be effective 6/7/2012.
Filed Date: 6/29/12
Accession Number: 20120629–5134
Comments Due: 5 p.m. ET 7/20/12

Docket Numbers: ER12–2153–000
Applicants: Golden Spread Electric Cooperative, Inc.
Description: 2012 Annual Update and Amendment to be effective 6/30/2012.
Filed Date: 6/29/12
Accession Number: 20120629–5147
Comments Due: 5 p.m. ET 7/20/12

Docket Numbers: ER12–2154–000
Applicants: PacifiCorp
Description: OATT Attachment N to be effective 8/29/2012.
Filed Date: 6/29/12
Accession Number: 20120629–5158
Comments Due: 5 p.m. ET 7/20/12

Docket Numbers: ER12–2155–000
Applicants: PJM Interconnection, L.L.C.
Description: Filing of First Revised Service Agreement No. 3144; Queue No. W2–056 to be effective 6/12/2012.
Filed Date: 6/29/12
Accession Number: 20120629–5169
Comments Due: 5 p.m. ET 7/20/12

Docket Numbers: ER12–2156–000
Applicants: Midwest Independent Transmission System, ITC Midwest LLC
Description: SA 2453 ITC Midwest—Northern States to be effective 8/29/2012.
Filed Date: 6/29/12
Accession Number: 20120629–5171
Comments Due: 5 p.m. ET 7/20/12

Docket Numbers: ER12–2157–000
Applicants: Southwest Power Pool, Inc.
Description: 2198R2 Kansas Power Pool NITSA NOA to be effective 6/1/2012.
Filed Date: 6/29/12
Accession Number: 20120629–5175
Comments Due: 5 p.m. ET 7/20/12

Docket Numbers: ER12–2158–000
Applicants: Interstate Power and Light Company
Description: IPL Changes in Depreciation Rates for Wholesale Production Service to be effective 7/1/2012.
Filed Date: 6/29/12
Accession Number: 20120629–5176
Comments Due: 5 p.m. ET 7/20/12

Docket Numbers: ER12–2159–000
Applicants: Canadian Hills Wind, LLC
Description: Application for Market-Based Rate Authority and baseline tariff to be effective 8/28/2012.
Filed Date: 6/29/12
Accession Number: 20120629–5179
Comments Due: 5 p.m. ET 7/20/12

Docket Numbers: ER12–2160–000
Applicants: Southwest Power Pool, Inc.
Description: 1166R16 Oklahoma Municipal Power Authority NITSA NOA to be effective 6/1/2012.
Filed Date: 6/29/12
Accession Number: 20120629–5182
Comments Due: 5 p.m. ET 7/20/12

Docket Numbers: ER12–2161–000
Applicants: Duke Energy Carolinas, LLC
Description: Amendment to Formula Rate (June 2012) to be effective 6/1/2011.
Filed Date: 6/29/12
Accession Number: 20120629–5186
Comments Due: 5 p.m. ET 7/20/12

Docket Numbers: ER12–2162–000
Applicants: Southwest Power Pool, Inc.
Description: 2379 Flat Ridge 2 Wind Energy, LLC Meter Agent Agreement to be effective 6/1/2012.
Filed Date: 6/29/12
Accession Number: 20120629–5190
Comments Due: 5 p.m. ET 7/20/12

Docket Numbers: ER12–2163–000
Applicants: Southwest Power Pool, Inc.
Description: 1636R8 Kansas Electric Power Cooperative, Inc. to be effective 6/1/2012.
Filed Date: 6/29/12
Accession Number: 20120629–5192
Comments Due: 5 p.m. ET 7/20/12

Docket Numbers: ER12–2164–000
Applicants: Florida Power & Light Company
Description: FPL Revisions to LCEC Rate Schedule FERC No. 312 to be effective 1/1/2011.
Filed Date: 6/29/12
Accession Number: 20120629–5197
Comments Due: 5 p.m. ET 7/20/12

Docket Numbers: ER12–2165–000
Applicants: Florida Power & Light Company
Description: FPL Revisions to LCEC Rate Schedule FERC No. 317 to be effective 1/1/2014.
Filed Date: 6/29/12
Accession Number: 20120629–5199
Comments Due: 5 p.m. ET 7/20/12

Docket Numbers: ER12–2166–000
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc.'s Notice of Cancellation.
Filed Date: 6/29/12
Accession Number: 20120629–5209
Comments Due: 5 p.m. ET 7/20/12

Docket Numbers: ER12–2167–000
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc.'s Notice of Cancellation.
Filed Date: 6/29/12
Accession Number: 20120629–5212
Comments Due: 5 p.m. ET 7/20/12

Docket Numbers: ER12–2168–000
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc.'s Notice of Cancellation of Large Generator Interconnection Agreement.
Filed Date: 6/29/12
Accession Number: 20120629–5214
Comments Due: 5 p.m. ET 7/20/12

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH12–18–000
Applicants: Citizens Energy Corporation
Description: Waiver Notification of Status as Single-State Holding Company System of Citizens Energy Corporation (FERC65–B).
Filed Date: 6/29/12
Accession Number: 20120629–5118
Comments Due: 5 p.m. ET 7/20/12

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 29, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–16868 Filed 7–10–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL12–82–000]

Californians for Renewable Energy, Inc., Michael E. Boyd, Robert M. Sarvey, v. California Public Utilities Commission, California Department of Water Resources, Pacific Gas and Electric Company, Southern California Edison Company, Mountain View Power Partners; Notice of Petition For Enforcement and Complaint

Take notice that on July 2, 2012, pursuant to section 210(h)(2) of the Public Utility Regulatory Policies Act of 1978 (PURPA), Californians for Renewable Energy, Inc., Michael E. Boyd, and Robert M. Sarvey (collectively Petitioner) filed a Petition for Enforcement requesting the Federal Energy Regulatory Commission (Commission) exercise its authority and initiate enforcement action against the California Public Utilities Commission, California Department of Water Resources, Pacific Gas and Electric Company, Southern California Edison Company, and Mountain View Power Partners (collectively Respondent) to ensure that PURPA regulations are properly and lawfully implemented by Respondent.

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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on July 23, 2012.

Dated: July 3, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–16884 Filed 7–10–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9698–9]

Notice of Administrative Settlement Agreement for Recovery of Past Response Costs Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, As Amended

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: Notice is hereby given that a proposed administrative settlement agreement for recovery of past response costs (''Proposed Agreement'') associated with the Browning Lumber Company Superfund Site, Boone County, West Virginia was executed by the Environmental Protection Agency (''EPA'') and is now subject to public comment. The Proposed Agreement would require Settling Party to reimburse EPA $1,280,000.00 for past response costs incurred by EPA for the Site.

DATES: Comments must be submitted on or before August 10, 2012.

ADDRESSES: The Proposed Agreement and additional background information relating to the Proposed Agreement are available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. A copy of the Proposed Agreement may be obtained from Robert S. Hasson (3RC41), Senior Assistant Regional Counsel, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103.

Comments should reference the ''Browning Lumber Company Superfund Site, Proposed Administrative Settlement Agreement for Recovery of Past Response Costs'' and ''EPA Docket No. CERCLA–03–2012–0062DC,'' and should be forwarded to Robert S. Hasson at the above address.

FOR FURTHER INFORMATION CONTACT: Robert S. Hasson (3RC41), U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103, Phone: (215) 814–2672; *hasson.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), notice is hereby given that a proposed administrative settlement agreement for recovery of past response costs (''Proposed Agreement'') associated with the Browning Lumber Company Superfund Site, Boone County, West Virginia was executed by the Environmental Protection Agency (''EPA'') and is now subject to public comment, after which EPA may modify or withdraw its consent if comments received disclose facts or considerations that indicate that the Proposed Agreement is inappropriate, improper, or inadequate. The Proposed Agreement would resolve potential EPA claims under Section 107(a) of CERCLA, against JPMorgan Chase Bank, N.A. (''Settling Party''). The Proposed Agreement would require Settling Party to reimburse EPA $1,280,000.00 for past response costs incurred by EPA for the Site.

For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the Proposed Agreement. EPA's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

Dated: June 29, 2012.

Ronald Borsellino,

Director, Hazardous Site Cleanup Division, Region III.

[FR Doc. 2012–16942 Filed 7–10–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 9520–1]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget (OMB) responses to Agency Clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Rick Westlund (202) 566–1682, or email at *westlund.rick@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR Number 1688.07; RCRA Expanded Public Participation (Renewal); 40 CFR 124.31–124.33; and 40 CFR 270.62–270.66; was approved on 06/13/2012; OMB Number 2050–0149; expires on 06/30/2015; Approved without change.

EPA ICR Number 1713.10; Federal Operating Permit Regulations; 40 CFR part 71; was approved on 06/13/2012; OMB Number 2060–0336; expires on 06/30/2015; Approved without change.

EPA ICR Number 2163.04; NSPS for Other Solid Waste Incineration (OSWI) Units; 40 CFR part 60 subparts A and EEEE; was approved on 06/25/2012; OMB Number 2060–0563; expires on 06/30/2015; Approved without change.

EPA ICR Number 1362.09; NESHAP for Coke Oven Batteries; 40 CFR part 63 subparts A and L; was approved on 06/25/2012; OMB Number 2060–0253; expires on 06/30/2015; Approved without change.

EPA ICR Number 2170.04; Air Emissions Reporting Requirements (AERR) (Renewal); 40 CFR part 51; was approved on 06/25/2012; OMB Number 2060–0580; expires on 06/30/2015; Approved without change.

EPA ICR Number 2100.05; Federal Supplier (Small Business) Greenhouse Gas Inventory Pilot (Renewal); was approved on 06/26/2012; OMB Number 2060–0532; expires on 06/30/2015; Approved without change.

EPA ICR Number 1821.07; NESHAP for Steel Pickling, HCl Process Facilities and Hydrochloric Acid Regeneration Plants; 40 CFR part 63 subparts A and CCC; was approved on 06/26/2012; OMB Number 2060–0419; expires on 06/30/2015; Approved without change.

EPA ICR Number 2031.06; Protection of Stratospheric Ozone: Request for Applications from Critical Use Exemption for the Phaseout of Methyl Bromide (Renewal); 40 CFR part 82; was approved on 06/27/2012; OMB Number 2060–0482; expires on 06/30/2015; Approved without change.

EPA ICR Number 1432.30; Recordkeeping and Periodic Reporting of the Production, Import, Export, Recycling, Destruction, Transhipment, and Feedstock Use of Ozone-Depleting Substances (Renewal); 40 CFR 82.13; was approved on 06/27/2012; OMB Number 2060–0170; expires on 06/30/2015; Approved without change.

EPA ICR Number 2298.03; NESHAP for Nine Metal Fabrication and Finishing Source Categories; 40 CFR part 63 subparts A and XXXXXX; was approved on 06/28/2012; OMB Number 2060–0622; expires on 06/30/2015; Approved without change.

EPA ICR Number 1867.05; Voluntary Aluminum Industrial Partnership (VAIP)(Renewal); was approved on 06/28/2012; OMB Number 2060–0411; expires on 06/30/2015; Approved without change.

EPA ICR Number 1189.24; Identification, Listing and Rulemaking Petitions; 40 CFR parts 260 and 261; 40 CFR 261.2(a)(2)ii, 261.4(a)23–25 and 261.31; was approved on 06/28/2012; OMB Number 2050–0053; expires on 06/30/2015; Approved without change.

EPA ICR Number 1445.11; Continuous Release Reporting Regulations (CRRR) under CERCLA 1980 (Renewal); 40 CFR 302.8; was approved on 06/28/2012; OMB Number 2050–0086; expires on 06/30/2015; Approved without change.

EPA ICR Number 2454.01; NESHAP for Polyvinyl Chloride and Copolymers Production Area Sources (Final Rule); 40 CFR part 63, subparts A and DDDDDD; was approved on 06/29/2012; OMB Number 2060–0684; expires on 06/30/2015; Approved without change.

EPA ICR Number 2205.07; Focus Groups as Used by EPA for Economics Projects (Renewal); was approved on 06/29/2012; OMB Number 2090–0028; expires on 06/30/2015; Approved with change.

John Moses,

Director, Collections Strategies Division.

[FR Doc. 2012–16858 Filed 7–10–12; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2011–0264; FRL–9519–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Stationary Source Compression Ignition Internal Combustion Engines (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before August 10, 2012.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2011–0264, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to: *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460; and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the

procedures prescribed in 5 CFR 1320.12. On May 9, 2011 (76 *FR* 26900), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to both EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2011–0264, which is available for public viewing online at *http://www.regulations.gov,* or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to either submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov*.

Title: NSPS for Stationary Source Compression Ignition Internal Combustion Engines (Renewal).

ICR Numbers: EPA ICR Number 2196.04, OMB Control Number 2060–0590.

ICR Status: This ICR is scheduled to expire on August 31, 2012. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The New Source Performance Standards (NSPS) for Stationary Source Compression Ignition Internal Combustion Engines (40 CFR part 60, Subpart IIII) were proposed on July 11, 2005, promulgated on July 11, 2006, and amended on June, 8, 2011. The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A, and any changes, or additions to the Provisions specified at 40 CFR part 60, subpart IIII.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average one hour per response. ''Burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of stationary source compression ignition internal combustion engines.

Estimated Number of Respondents: 206,410.

Frequency of Response: Initially and annually.

Estimated Total Annual Hour Burden: 193,707.

Estimated Total Annual Cost: $18,803,009, which includes $18,560,917 in labor costs, no capital/startup costs, and $242,092 in operation and maintenance (O&M) costs.

Changes in the Estimates: There is an adjustment increase in the total estimated burden hours and a decrease in the total estimated cost for the respondents as currently identified in the OMB Inventory of Approved Burdens. This is not due to any program changes. The increase in burden hours reflects a growth in the respondent universe since the last ICR renewal. The decrease in costs is due to a mathematical error that has been corrected since the last ICR.

There is an adjustment increase in the total estimated burden hours and costs for the Agency as currently identified in the OMB Inventory of Approved Burdens. The increase reflects a mathematical correction in the burden hour calculation and an adjustment in labor rates. This ICR uses updated labor rates in estimating the burden costs for all labor categories.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–16860 Filed 7–10–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0878; FRL–9354–5]

Agrobacterium radiobacter; Registration Review Proposed Decision; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's proposed registration review decision for the pesticide *Agrobacterium radiobacter* and opens a public comment period on the proposed decision. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, that the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

DATES: Comments must be received on or before September 10, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0878, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), Mail Code: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please

follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For pesticide specific information, contact: Ann Sibold, Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–6502; fax number: (703) 308–7026; email address: *sibold.ann@epa.gov.*

For general information on the registration review program, contact: Kevin Costello, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–5026; fax number: (703) 308–8090; email address: *costello.kevin@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the regulatory action leader listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What action is the Agency taking?

Pursuant to 40 CFR 155.58, this notice announces the availability of EPA's proposed registration review decision for the pesticide *Agrobacterium radiobacter* strains K84/Kerr-84 and K1026, Case 4101, and opens a 60-day public comment period on the proposed decision.

Agrobacterium radiobacter is a naturally occurring soil bacterium present in many soil types. Two strains of *Agrobacterium radiobacter,* K84/Kerr-84 and K1026, are registered as microbial pesticides for control of Crown Gall (caused by the plant pathogen *Agrobacterium tumefaciens*) when applied to seeds, roots and/or stems of nonbearing fruit, nut and ornamental plants.

The registration review docket for a pesticide includes earlier documents related to the registration review of the case. For example, the review opened with the posting of a Summary Document, containing a Preliminary Work Plan, for public comment. A Final Work Plan was posted to the docket following public comment on the initial docket.

The documents in the docket describe EPA's rationales for conducting additional risk assessments for the registration review of *Agrobacterium radiobacter,* as well as the Agency's subsequent risk findings. This proposed registration review decision is supported by the rationales included in those documents. Following public comment, the Agency will issue a final registration review decision for products containing *Agrobacterium radiobacter.*

The Agency will carefully consider all comments received by the closing date and will provide a ''Response to Comments Memorandum'' in the docket. The final registration review decision will explain the effect that any comments had on the decision and provide the Agency's response to significant comments.

Background on the registration review program is provided at: *http://www.epa.gov/oppsrrd1/registration_review.* Links to earlier documents related to the registration review of this pesticide are provided at: *http://www.epa.gov/oppsrrd1/registration_review/agrobacterium_radiobacter/index.htm.*

B. What is the Agency's authority for taking this action?

Section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) provides authority for this registration review action.

List of Subjects

Environmental protection, Administrative practice and procedure, *Agrobacterium radiobacter,* Pesticides and pests.

Dated: June 22, 2012.

Keith A. Matthews,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 2012–16195 Filed 7–10–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012178.

Title: GWF/Crowley Space Charter Agreement.

Parties: Great White Fleet Liner Services Ltd. (GWF) and Crowley Latin American Services, LLC (''Crowley'').

Filing Party: Wade S. Hooker, Esquire, 211 Central Park W. New York, NY 10024.

Synopsis: The agreement authorizes Great Fleet Liner Services Ltd. to charter space from Crowley Latin America Services LLC in the trade from ports in Costa Rica and inland and coastal points via such ports and ports in Florida and U.S. inland and coastal points served via such ports.

Agreement No.: 012179.

Title: Hoegh/Farrell Space Charter and Cooperative Working Agreement.

Parties: Hoegh Autoliners AS and Farrell Lines Incorporated.

Filing Party: Wayne R. Rohde, Esquire; Cozen O'Connor; 1627 I Street NW., Suite 1100, Washington, DC 20006–4007.

Synopsis: The agreement authorizes Hoegh to charter space to Farrell for U.S. government-impelled cargo on an ''as needed, as available'' basis between worldwide ports including ports in the United States. It also authorizes the parties to engage in a limited range of cooperative working arrangements with respect to the movement of such cargo.

By Order of the Federal Maritime Commission.

Dated: July 6, 2012.

Karen V. Gregory,

Secretary.

[FR Doc. 2012–16924 Filed 7–10–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for a license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF)—Ocean Transportation Intermediary (OTI) pursuant to section 40901 of the Shipping Act of 1984 (46 U.S.C. 40101). Notice is also hereby given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a licensee.

Interested persons may contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by email at *OTI@fmc.gov.*

American Red Ball International, Inc. (NVO & OFF), 9750 3rd Avenue NE., #200, Seattle, WA 98115, Officers: Beverly Franklin, CFO/Secretary, (Qualifying Individual), John Griffin, President, Application Type: QI Change.

American Vanpac Carriers, Inc. (NVO & OFF), 9750 3rd Avenue NE., #200, Seattle, WA 98115, Officers: Beverly Franklin, CFO/Secretary, (Qualifying Individual), John Griffin, President, Application Type: QI Change.

Atlas Van Lines International Corp. (NVO & OFF), 9750 3rd Avenue NE., #200, Seattle, WA 98115, Officers: Beverly Franklin, Assistant Secretary, (Qualifying Individual), John Griffin, President, Application Type: QI Change.

Dynasty CHB, Inc. (NVO & OFF), 365 Chelsea Street, East Boston, MA 02128, Officers: Dawn Lowry, President/Secretary/Treasurer/Clerk, (Qualifying Individual), Patrick Lee, Director, Application Type: License Transfer & QI Change.

Gulf Premier Logistics LLC (NVO & OFF), 340 N. Sam Houston Parkway East, #217, Houston, TX 77060, Officers: Dee Chase-Unno, Vice President (Operations), (Qualifying Individual), Jason Lancaster, CEO, Application Type: Add NVO Service.

J.B.R. Marine Inc. (NVO & OFF), 1163 Fairway Drive, #106, City of Industry, CA 91789, Officer: XiuJi Zhang, President, (Qualifying Individual), Application Type: Add NVO Service.

Simple Logistics Inc. (NVO), 147–35 Farmers Boulevard, #201, Jamaica, NY 11434, Officers: Hea Seong Jeong, President/Treasurer, (Qualifying Individual), Hong Sik Um, Vice President/Secretary, Application Type: New NVO License.

Victory Van Corporation dba Victory Van International (NVO), 950 S. Pickett Street, Alexandria, VA 22304, Officers: Stephen L. Henegar, Vice President, (Qualifying Individual), Chris Patton, President/CEO, Application Type: QI Change & Business Structure Change.

Worldwide Cargo Services, Inc. (NVO), 2 Johnson Road, Lawrence, NY 11559, Officers: Scott Halfon, Treasurer, (Qualifying Individual), Mark A. Parrotto, President/Secretary, Application Type: New NVO License.

Dated: July 6, 2012.

Karen V. Gregory,

Secretary.

[FR Doc. 2012–16914 Filed 7–10–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Rescission of Order of Revocation

Notice is hereby given that the Order revoking the following license has been rescinded by the Federal Maritime Commission pursuant to section 40901 of the Shipping Act of 1984 (46 U.S.C. 40101).

License Number: 022797N

Name: Lupprian's Cargo Express, Inc.

Address: 700 Nicholas Blvd., Suite 401, Elk Grove Village, IL 60007

Order Published: June 27, 2012 (77 FR 38289 DOC No. 2012–15700)

Vern W. Hill,

Director, Bureau of Certification and Licensing.

[FR Doc. 2012–16926 Filed 7–10–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 40901 of the Shipping Act of 1984 (46 U.S.C. 40101) effective on the corresponding date shown below:

License Number: 1688F.

Name: Central Freight Forwarding, Inc.

Address: 9900 NW 25th Street, Miami, FL 33172.

Date Revoked: May 24, 2012.

Reason: Failed to maintain a valid bond.

License Number: 3767F.

Name: Advante Customs Broker and Freight Forwarders Inc.

Address: 3100 Kerner Blvd., Suite C–2, San Rafael, CA 94901.

Date Revoked: June 14, 2012.

Reason: Failed to maintain a valid bond.

License Number: 3918N.

Name: Benison International Transportation, Inc.

Address: 9740 Jordan Circle, Suite #A, Santa Fe Springs, CA 90670.

Date Revoked: June 5, 2012.

Reason: Failed to maintain a valid bond.

License Number: 10952N.

Name: Central Cargo Corporation.

Address: 9900 NW 25th Street, Miami, FL 33172.

Date Revoked: May 24, 2012.

Reason: Failed to maintain a valid bond.

License Number: 12903N.
Name: Kesco Container Line, Inc.
Address: 154–09 146th Avenue, 2nd Floor, Jamaica, NY 11434.
Date Revoked: May 23, 2012.
Reason: Failed to maintain a valid bond.

License Number: 15101F.
Name: Northstar Shipping & Trading, Inc.
Address: 2855 Mangum Road, Suite 535, Houston, TX 77092.
Date Revoked: May 23, 2012.
Reason: Failed to maintain a valid bond.

License Number: 016201N.
Name: Delta Line International, Inc.
Address: 7970 NW 56th Street, Miami, FL 33166.
Date Revoked: June 14, 2012.
Reason: Failed to maintain a valid bond.

License Number: 18359N.
Name: Topwinner Transportation (USA) Inc.
Address: 1641 West Main Street, Suite 308, Alhambra, CA 91801.
Date Revoked: May 31, 2012.
Reason: Failed to maintain a valid bond.

License Number: 019456N.
Name: Global Galan Logistics Inc.
Address: 3132 SW 173rd Terrace, Miramar, FL 33029.
Date Revoked: June 13, 2012.
Reason: Failed to maintain a valid bond.

License Number: 020029N.
Name: CJ Services International Corp.
Address: 10164 NW 41st Street, Doral, FL 33178.
Date Revoked: May 30, 2012.
Reason: Failed to maintain a valid bond.

License Number: 020185NF.
Name: Cruise Logistics LLC dba Freightco Logistics.
Address: 835 S 192nd Street, Suite 100, Sea Tac, WA 98148.
Date Revoked: June 8, 2012.
Reason: Failed to maintain valid bonds.

License Number: 020929F.
Name: S & E Transportation LLC.
Address: 26224 Enterprise Court, Lake Forest, CA 92630.
Date Revoked: June 3, 2012.
Reason: Failed to maintain a valid bond.

License Number: 021186NF.
Name: U.S. Xpress, Inc. dba Xpress Network Solutions.
Address: 4080 Jenkins Road, Chattanooga, TN 37421.
Date Revoked: June 13, 2012.
Reason: Voluntarily surrendered license.

License Number: 021243NF.
Name: Cargo Logistics & Trade Solutions, Limited Liability Company.
Address: 13367 NW 47th Avenue, Opa Locka, FL 33054.
Date Revoked: May 26, 2012.
Reason: Failed to maintain valid bonds.

License Number: 021277N.
Name: Topstar International Logistics, Inc.
Address: 2063 South Atlantic Blvd., Suite 2–M, Monterey Park, CA 91754.
Date Revoked: June 8, 2012.
Reason: Failed to maintain a valid bond.

Vern W. Hill,
Director, Bureau of Certification and Licensing.

[FR Doc. 2012–16921 Filed 7–10–12; 8:45 am]
BILLING CODE 6730–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0262; Docket 2012–0001; Sequence 3]

General Services Administration Acquisition Regulation; Submission for OMB Review; Identification of Products With Environmental Attributes

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of request for comments regarding an extension of a previously existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding identification of products with environmental attributes. A notice was published in the **Federal Register** at 77 FR 17481, on March 26, 2012. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology; and ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: August 10, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Dana Munson, Procurement Analyst, General Services Acquisition Policy Division, GSA, at telephone (202) 357–9652 or via email to *dana.munson@gsa.gov*.

ADDRESSES: Submit comments identified by Information Collection 3090–0262, Identification of Products with Environmental Attributes, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''Information Collection 3090–0262, Identification of Products with Environmental Attributes'', under the heading ''Enter Keyword or ID'' and selecting ''Search''. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–0262, Identification of Products with Environmental Attributes''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0262, Identification of Products with Environmental Attributes'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 3090–0262, Identification of Products with Environmental Attributes.

Instructions: Please submit comments only and cite Information Collection 3090–0262, Identification of Products with Environmental Attributes, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

SUPPLEMENTARY INFORMATION:

A. Purpose

General Services Administration (GSA) requires contractors submitting Multiple Award Schedule Contracts to identify in their GSA price lists those products that they market commercially that have environmental attributes. The identification of these products will enable Federal agencies to maximize the use of these products to meet the responsibilities expressed in statutes and executive orders.

B. Annual Reporting Burden

Respondents: 9,000.
Responses Per Respondent: 1.
Annual Responses: 9,000.
Hours Per Response: 3.
Total Burden Hours: 27,000.
Obtaining Copies of Proposals: Requesters may obtain a copy of the

information collection documents from the Regulatory Secretariat Division (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 3090–0262, Identification of Products with Environmental Attributes, in all correspondence.

Dated: July 3, 2012.

Joseph A. Neurauter,

Director, Office of Acquisition Policy, Senior Procurement Executive.

[FR Doc. 2012–16898 Filed 7–10–12; 8:45 am]

BILLING CODE 6820–61–P

GENERAL SERVICES ADMINISTRATION

[Docket 2012–0001; Sequence 13; OMB Control NO. 3090–0283]

Office of the Chief Information Officer; Information Collection; Temporary Contractor Information Worksheet

AGENCY: Identity, Credential, and Access Management (ICAM) Division, Office of Enterprise Solutions (IA), Office of the Chief Information Officer (OCIO), General Services Administration (GSA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a previously approved information collection requirement regarding temporary contractor information worksheet.

GSA requires OMB approval for this collection to make determinations on granting unescorted physical access to GSA-controlled facilities. The approval is critical for GSA to continue to make physical access determinations for temporary contractors as a result of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5).

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: September 10, 2012.

ADDRESSES: Submit comments identified by Information Collection 3090–0283, Temporary Contractor Information Sheet, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–0283, Temporary Contractor Information Sheet''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0283, Temporary Contractor Information Sheet'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street, NE., Washington, DC 20417. Attn: Hada Flowers/IC 3090–0283, Temporary Contractor Information Sheet.

Instructions: Please submit comments only and cite Information Collection 3090–0283, Temporary Contractor Information Sheet, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Phil Ahn, Director, OCIO Identity Credential and Access Management Division, GSA, telephone (202) 501–2447 or via email at *phil.ahn@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The U.S. Government conducts criminal checks to establish that applicants or incumbents working for the Government under contract may have unescorted access to GSA-controlled facilities. GSA uses the Temporary Contractor Information Worksheet and the FBI Form FD–258 Fingerprint Card to conduct a FBI National Criminal Information Check (NCIC) for each temporary contractor (working on contract for six months or less and require physical access only) on GSA contracts for American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) efforts to determine whether to grant unescorted access to GSA-controlled facilities. GSA will continue to make physical access determinations for temporary contractors due to the American Recovery and Reinvestment Act of 2009.

The Office of Management and Budget (OMB) Guidance M–05–24 for Homeland Security Presidential Directive (HSPD) 12 authorizes Federal departments and agencies to ensure that temporary contractors have limited/controlled access to facilities and information systems. GSA Directive CIO P 2181.1 Homeland Security Presidential Directive-12 Personal Identity Verification and Credentialing (available at *http://www.gsa.gov/hspd12*) states that GSA temporary contractors must undergo a minimum of a FBI National Criminal Information Check (NCIC) to receive unescorted physical access. Temporary contractors' Social Security Number is needed to keep records accurate, because other people may have the same name and birth date. Executive Order 9397 Numbering System for Federal Accounts Relating to Individual Persons also allows Federal agencies to use this number to help identify individuals in agency records. GSA describes how information will be maintained in the Privacy Act system of record notice published in the **Federal Register** at 73 FR 35690 on June 24, 2008.

B. Annual Reporting Burden

Respondents: 1,250.
Responses per Respondent: 1.
Hours per Response: .25.
Total Burden Hours: 313.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1275 First Street, NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 3090–0283, Temporary Contractor Information Worksheet in all correspondence. The form can be downloaded from the GSA Forms Library at *http://www.gsa.gov/forms.* Type GSA 850 in the form search field.

Dated: June 28, 2012.

Casey Coleman,

Chief Information Officer.

[FR Doc. 2012–16899 Filed 7–10–12; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Presidential Advisory Council on HIV/AIDS

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of the Assistant Secretary for Health.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Service (DHHS) is hereby giving notice that the Presidential Advisory Council

on HIV/AIDS (PACHA) will hold a meeting. The meeting will be open to the public.

DATES: The meeting will be held July 25, 2012 from 3:00 p.m. to approximately 5:00 p.m. (EDT).

ADDRESSES: 801 K Street NW., Washington, DC, 20001.

FOR FURTHER INFORMATION CONTACT: Mr. Melvin Joppy, Committee Manager, Presidential Advisory Council on HIV/AIDS, Department of Health and Human Services, 200 Independence Avenue SW., Room 443H, Hubert H. Humphrey Building, Washington, DC 20201; (202) 690–5560. More detailed information about PACHA can be obtained by accessing the Council's Web site *www.aids.gov/pacha.*

SUPPLEMENTARY INFORMATION: PACHA was established by Executive Order 12963, dated June 14, 1995 as amended by Executive Order 13009, dated June 14, 1996. The Council was established to provide advice, information, and recommendations to the Secretary regarding programs and policies intended to promote effective prevention of HIV disease and AIDS. The functions of the Council are solely advisory in nature.

The Council consists of not more than 25 members. Council members are selected from prominent community leaders with particular expertise in, or knowledge of, matters concerning HIV and AIDS, public health, global health, philanthropy, marketing or business, as well as other national leaders held in high esteem from other sectors of society. Council members are appointed by the Secretary or designee, in consultation with the White House Office on National AIDS Policy. The agenda for the upcoming meeting will be posted on the Council's Web site at *www.aids.gov/pacha.*

Public attendance at the meeting is limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact person. Pre-registration for public attendance is advisable and can be accomplished by contacting the PACHA Committee Manager at *melvin.joppy@hhs.gov.* Members of the public will have the opportunity to provide comments at the meeting. Any individual who wishes to participate in the public comment session must register with Melvin Joppy at *melvin.joppy@hhs.gov;* registration for public comment will not be accepted by telephone. Public comment will be limited to two minutes per speaker. Any members of the public who wish to have printed material distributed to PACHA members at the meeting should submit, at a minimum, 1 copy of the materials to the Committee Manager, PACHA, no later than close of business Wednesday, July 18, 2012. Contact information for the PACHA Committee Manager is listed above.

Dated: July 5, 2012.

B. Kaye Hayes,

Executive Director, Presidential Advisory Council on HIV/AIDS.

[FR Doc. 2012–16907 Filed 7–10–12; 8:45 am]

BILLING CODE 4150–43–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''American Recovery and Reinvestment Act ''Developing a Registry of Registries''.'' In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on February 23rd, 2012 and allowed 60 days for public comment. Several comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by August 10, 2012.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by email at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

American Recovery and Reinvestment Act ''Developing a Registry of Registries''

The Food and Drug Administration Modernization Act of 1997, Public Law 105–115, provided for the creation of a Clinical Trials Data Bank, known as *ClinicalTrials.gov.* Since its launch in 2000, the ClinicalTrials.gov system has registered over 90,500 trials. The large volume of studies currently listed in ClinicalTrials.gov and the high usage numbers suggest that the system has been successful at improving access to information about clinical studies. However, while ClinicalTrials.gov supports the listing of observational studies, such listing is not required.

Patient registries are a distinct type of observational study. Patient registries may be designed for many purposes, such as to observe the natural history of disease, examine comparative effectiveness, or fulfill post-approval commitments. Patient registries have specific characteristics that are not currently captured on ClinicalTrials.gov. To date, some registry sponsors have attempted to leverage the observational study model to post patient registry-type records on ClinicalTrials.gov. However, stakeholders have noted that the system does not fully meet their needs.

Patient registries have received significant attention and funding in recent years. Similar to controlled interventional studies, patient registries represent some burden to patients (e.g., time to complete patient reported outcome measures, risk of loss of privacy), who often participate voluntarily in hopes of improving knowledge about a disease or condition. Patient registries also represent a substantial investment of health research resources. Despite these factors, registration of patient registries in ClinicalTrials.gov is not currently required, presenting the potential for duplication of efforts and insufficient dissemination of findings that are not published in the peer-reviewed literature. To ensure that resources are used in the most efficient manner, registries need to be listed in a manner similar to that of trials in ClinicalTrials.gov.

By creating a central point of collection for information about all patient registries in the United States, the Registry of Patient Registries (RoPR) helps to further AHRQ's goals by making information regarding quality, appropriateness, and effectiveness of health services (and patient registries in

particular) more readily available and centralized.

The primary goal of this project is to engage stakeholders in the design and development of a RoPR database system that is compatible with ClinicalTrials.gov and meets the following objectives:

(1) Provides a searchable database of patient registries in the United States (to promote collaboration, reduce redundancy, and improve transparency);

(2) facilitates the use of common data fields and definitions in similar health conditions (to improve opportunities for sharing, comparing, and linkage);

(3) provides a public repository of searchable summary results (including results from registries that have not yet been published in the peer-reviewed literature);

(4) offers a search tool to locate existing data that researchers can request for use in new studies; and serves as a recruitment tool for researchers and patients interested in participating in patient registries.

This study is being conducted by AHRQ through its contractor, the Outcome DEcIDE Center, pursuant to the American Recovery and Reinvestment Act, Pub. L. 111–5, and pursuant to AHRQ's statutory authority to conduct and support research and disseminate information on health care and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of health care services and with respect to database development. 42 U.S.C. 299a(a)(1) and (8).

Method of Collection

To achieve the goals of this project the following data collections will be implemented:

(1) Collect information from registry holders, defining a patient registry profile via a Web-based interface, to populate the RoPR database system.

The purpose of the RoPR is to create a readily available public resource in the model of ClinicalTrials.gov to share information on existing patient registries to promote collaboration, reduce redundancy, and improve transparency in registry research. Patient registry research has become more prevalent and, based on stakeholder feedback, is not adequately served by ClinicalTrials.gov at present. The information being collected in the RoPR record will be visible to the public visiting the RoPR Web site and will be available for public use in this capacity.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden for the respondents' time to participate in the RoPR. Because the RoPR is a voluntary system available to any entity conducting a patient registry, it is not possible to determine the number of potential respondents. We do know that over 3,800 newly registered records designated as ''observational studies'' were entered into ClinicalTrials.gov in 2010. Only a subset of this number (which we will estimate at a maximum of 40%) would qualify as patient registries and would likely be registered in the RoPR. Therefore, we use 1,520 (3,800* 0.40) in Exhibits 1 and 2 below as a very rough, but high, estimation of the potential number of respondents who will enter registries into the RoPR annually. The actual number of respondents will depend on a variety of factors and could vary widely. It should be remembered that mandates could evolve making registration in the RoPR mandatory. Our estimates therefore attempt to factor an upper threshold for volume.

Each respondent will enter a new RoPR record only once and is estimated to take 45 minutes. An estimated 50% (760 records) of RoPR records will be updated once a year and will take about 15 minutes. This estimate is based on a query of ClinicalTrials.gov which showed that about 50% of observational studies registered in ClinicalTrials.gov had been updated in the past year. The total respondent burden is estimated to be 1,330 hours annually.

Exhibit 2 shows the estimated cost burden associated with the respondent's time to participate in the RoPR. The total cost burden is estimated to be $45,579 annually.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
New RoPR Record	1,520	1	45/60	1,140
Review/update RoPR Record	760	1	15/60	190
Total	2,280	na	na	1,330

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
New RoPR Record	1,520	1,140	$34.27	$39,068
Review/update RoPR Record	760	190	34.27	6,511
Total	2,280	1,330	na	45,579

*Based upon the mean average wage for Healthcare Practitioners and Technical Occupations, May 2010 National Occupational Employment and Wage Estimates, U.S. Department of Labor, Bureau of Labor Statistics. Available at: *http://www.bls.gov/oes/current/oes_nat.htm#29-0000*.

Estimated Annual Costs to the Federal Government

Exhibit 3 shows the estimated total and annualized cost to the government to create and maintain the RoPR for 3 years. The total cost is estimated to be $3,184,333.

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST

Cost component	Total cost	Annualized cost
Project Development	$2,318,509	$772,836
Project Management	409,149	136,383
Overhead	456,675	152,225
Total	3,184,333	1,061,444

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: July 5, 2012.

Carolyn M. Clancy,

Director.

[FR Doc. 2012–16849 Filed 7–10–12; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–12–0842]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy, call the CDC Reports Clearance Officer at (404) 639–7570 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

STD Surveillance Network (SSuN)-(OMB 0920–0842 Exp: 1/31/2013)—Revision—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The purpose of the STD Surveillance Network (SSuN) project is to improve the capacity of national, state, and local STD programs to detect, monitor, and respond rapidly to trends in STDs through enhanced collection, reporting, analysis, visualization and interpretation of disease information. The objectives of the SSuN Project are (1) To establish an integrated network of sentinel STD clinics and health departments to inform and guide national programs and policies for STD control in the U.S.; (2) to improve the capacity of national, state and local STD programs to detect, monitor and respond to established and emerging trends in STDs, HIV, and viral hepatitis; and (3) to identify and evaluate the effectiveness of public health interventions to reduce STD morbidity.

The SSuN Project is an active STD sentinel surveillance network comprised of 12 surveillance sites around the United States. SSuN uses two surveillance strategies to collect information. The first is a STD clinic-based surveillance which extracts data from existing electronic medical records for all patient visits at participating STD clinics. The second is a population-based surveillance in which a sample of individuals reported with gonorrhea to the 12 SSuN state or city health departments are interviewed using locally-designed interview templates.

For the clinic-based surveillance, the specified data elements are abstracted on a quarterly basis from existing electronic medical records for all patient visits to participating clinics. Data in the electronic medical record may be collected at time of registration, during the clinic encounter, or through laboratory testing. For the population-based STD surveillance, the results of interviews will be entered into a developed Microsoft Access database that will be adapted locally for each clinic. High quality, informative, and timely surveillance data are necessary to guide STD programs so interventions are designed and implemented appropriately. Furthermore, surveillance data are necessary for understanding the impact of STD interventions based on the epidemiology of each STD.

This information is collected to establish an integrated network of sentinel STD clinics and health departments to inform and guide national programs and policies for STD control in the U.S. It will improve the capacity of national, state, and local STD programs to detect, monitor, and respond to established and emerging trends in STDs, HIV, and viral hepatitis. SSuN will help identify and evaluate the effectiveness of public health interventions to reduce STD morbidity.

The SSuN surveillance platform allows CDC to establish and maintain common standards for data collection, transmission, and analysis, and to build and maintain STD surveillance expertise in 12 surveillance areas. Such common systems, established mechanisms of communication, and in-place expertise are all critical components for timely, flexible, and high quality surveillance.

There is no cost to respondents other than their time. The total estimated annual burden hours are 480.

ESTIMATED ANNUALIZED BURDEN HOURS

Types of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
SSuN site	12	4	2

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Types of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Gonorrhea Case	2,880	1	8/60

Kimberly S. Lane,

Deputy Director, Office of Science Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2012–16913 Filed 7–10–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–12–0493]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 and send comments to Kimberly Lane, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

2013 and 2015 National Youth Risk Behavior Surveys (YRBS)(OMB No. 0920–0493)—Reinstatement with change—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The purpose of this request is to obtain OMB approval to reinstate with change, the data collection for the National Youth Risk Behavior Survey (YRBS), a school-based survey that has been conducted biennially since 1991. OMB approval for the 2009 YRBS and 2011 YRBS expired November 30, 2011 (OMB no. 0920–0493). CDC seeks a three-year approval to conduct the YRBS in Spring 2013 and Spring 2015. Minor changes incorporated into this reinstatement request include: an updated title for the information collection to accurately reflect the years in which the survey will be conducted, minor changes to the data collection instrument, and a minor increase in the burden estimate.

The YRBS assesses priority health risk behaviors related to the major preventable causes of mortality, morbidity, and social problems among both youth and young adults in the United States. Data on health risk behaviors of adolescents are the focus of approximately 65 national health objectives in Healthy People 2020, an initiative of the U.S. Department of Health and Human Services (HHS). The YRBS provides data to measure 20 of the health objectives and 1 of the Leading Health Indicators established by Healthy People 2020. In addition, the YRBS can identify racial and ethnic disparities in health risk behaviors. No other national source of data measures as many of the Healthy People 2020 objectives addressing adolescent health risk behaviors as the YRBS. The data also will have significant implications for policy and program development for school health programs nationwide.

In Spring 2013 and Spring 2015, the YRBS will be conducted among nationally representative samples of students attending public and private schools in grades 9–12. Information supporting the YRBS also will be collected from state, district, and school-level administrators and teachers. The table below reports the number of respondents annualized over the 3-year project period.

There are no costs to respondents except their time. The total estimated annualized burden hours are 7,822.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
State Administrators	State-level Recruitment Script for the Youth Risk Behavior Survey.	17	1	30/60
District Administrators	District-level Recruitment Script for the Youth Risk Behavior Survey.	80	1	30/60
School Administrators	School-level Recruitment Script for the Youth Risk Behavior Survey.	133	1	30/60
Teachers	Data Collection Checklist for the Youth Risk Behavior Survey.	435	1	15/60
Students	Youth Risk Behavior Survey	10,129	1	45/60

Kimberly S. Lane,

Deputy Director, Office of Science Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2012–16912 Filed 7–10–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–12–12PE]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 and send comments to Kimberly S. Lane, at CDC 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Interventions to Reduce Shoulder MSDs in Overhead Assembly—New -National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The mission of the National Institute for Occupational Safety and Health (NIOSH) is to promote safety and health at work for all people through research and prevention. Under Public Law 91–596, sections 20 and 22 (Section 20–22, Occupational Safety and Health Act of 1970), NIOSH has the responsibility to conduct research to advance the health and safety of workers. In this capacity, NIOSH proposes to conduct a study to assess the effectiveness and cost-benefit of occupational safety and health (OSH) interventions to prevent musculoskeletal disorders (MSDs) among workers in the Manufacturing (MNF) sector.

Musculoskeletal disorders (MSDs) represent a major proportion of injury/illness incidence and cost in the U.S. Manufacturing (MNF) sector. In 2008, 29% of non-fatal injuries and illnesses involving days away from work (DAW) in the MNF sector involved MSDs and the MNF sector had some of the highest rates of MSD DAW cases. The rate for the motor vehicle manufacturing sub-sector (NAICS 3361) was among the highest of MNF sub sectors, with MSD DAW rates that were higher than the general manufacturing MSD DAW rates from 2003–2007. In automotive manufacturing, overhead conveyance of the vehicle chassis requires assembly line employees to use tools in working postures with the arms elevated. These postures are believed to be associated with symptoms of upper limb discomfort, fatigue, and impingement syndromes (Fischer *et al.,* 2007). Overhead working posture, independent of the force or load exerted with the hands, may play a role in the development in these conditions. However, recent studies suggest a more significant role of localized shoulder muscle fatigue in contributing to these disorders. Fatigue of the shoulder muscles may result in changes in normal shoulder kinematics (motion) that affect risk for shoulder impingement disorders (Ebaugh et. al., 2006; Chopp et al., 2010).

The U.S. Manufacturing sector has faced a number of challenges including an overall decline in jobs, an aging workforce, and changes in organizational management systems. Studies have indicated that the average age of industrial workers is increasing and that older workers may differ from younger workers in work capacity, injury risk, severity of injuries, and speed of recovery (Kenny et al., 2008; Gall et al., 2004; Restrepo et al., 2006). As the average age of the industrial population increases and newer systems of work organization (such as lean manufacturing) are changing the nature of labor-intensive work, prevention of MSDs will be more critical to protecting older workers and maintaining productivity.

This study will evaluate the efficacy of two intervention strategies for reducing musculoskeletal symptoms and pain in the shoulder attributable to overhead assembly work in automotive manufacturing. These interventions are, (1) an articulating spring-tensioned tool support device that unloads from the worker the weight of the tool that would otherwise be manually supported, and, (2) a targeted exercise program intended to increase individual employees' strength and endurance in the shoulder and upper arm stabilizing muscle group. As a primary prevention strategy, the tool support engineering control approach is preferred; however, a cost-efficient opportunity exists to concurrently evaluate the efficacy of a preventive exercise program intervention. Both of these intervention approaches have been used in the Manufacturing sector, and preliminary evidence suggests that both approaches may have merit. However, high quality evidence demonstrating their effectiveness, by way of controlled trials, is lacking.

This project will be conducted as a partnership between NIOSH and Toyota Motors Engineering & Manufacturing North America, Inc. (TEMA), with the intervention evaluation study taking place at the Toyota Motor Manufacturing Kentucky, Inc. (TMMK) manufacturing facility in Georgetown, Kentucky. The prospective intervention evaluation study will be conducted using a group-randomized controlled trial multi-time series design. Four groups of 25–30 employees will be established to test the two intervention treatment conditions (tool support, exercise program), a combined intervention treatment condition, and a control condition. The four groups will be comprised of employees working on two vehicle assembly lines in different parts of the facility, on two work shifts (first and second shift). Individual randomization to treatment condition is not feasible, so a group-randomization (by work unit) will be used to assign the four groups to treatment and control conditions. Observations will be made over the 10-month study period and questionnaires will include the Shoulder Rating Questionnaire (SRQ), Disabilities of the Arm, Shoulder and Hand (DASH) questionnaire, a Standardized Nordic Questionnaire for body part discomfort, and a Work Organization Questionnaire. In addition to the questionnaires a shoulder-specific functional capacity evaluation test battery will be administered at 90 and 210 days, immediately pre- and post-intervention, to confirm the efficacy of the targeted exercise program in improving shoulder capacity.

In summary, this study will evaluate the effectiveness of two interventions to reduce musculoskeletal symptoms and pain in the shoulder associated with repetitive overhead work in the manufacturing industry and will disseminate the results of evidence-based prevention practices to the greatest audience possible. NIOSH expects to complete data collection in 2014.

There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
PAR–Q (Physical Activity Readiness)	125	1	2/60	4
Shoulder Rating Questionnaire (SRQ)	125	10	4/60	83
Disabilities of the Arm Shoulder and Hand (DASH)	125	10	6/60	125
Standardized Nordic Questionnaire for Musculoskeletal Symptoms Instrument	125	10	4/60	83
Work Org Questionnaire	125	3	26/60	163
Total				458

Kimberly S. Lane,

Deputy Director, Office of Science Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2012–16911 Filed 7–10–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Subcommittee on Procedures Review, Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned subcommittee:

Time and Date:
9 a.m.–5 p.m., Eastern Time, July 31, 2012

Place: Cincinnati Airport Marriott, 2395 Progress Drive, Hebron, Kentucky 41018, Telephone: (859) 334–4611, Fax: (859) 334–4619.

Status: Open to the public, but without an oral public comment period. To access by conference call dial the following information: 1 (866) 659–0537, Participant Pass Code 9933701.

Background: The ABRWH was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the compensation program. Key functions of the ABRWH include providing advice on the development of probability of causation guidelines that have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the ABRWH to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2013.

Purpose: The ABRWH is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advising the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is a reasonable likelihood that such radiation doses may have endangered the health of members of this class. The Subcommittee on Procedures Review was established to aid the ABRWH in carrying out its duty to advise the Secretary, HHS, on dose reconstructions. The Subcommittee on Procedures Review is responsible for overseeing, tracking, and participating in the reviews of all procedures used in the dose reconstruction process by the NIOSH Division of Compensation Analysis and Support (DCAS) and its dose reconstruction contractor.

Matters To Be Discussed: The agenda for the Subcommittee meeting includes discussion of the following Oak Ridge Associated Universities and DCAS procedures: DCAS TIB–0013 (''Selected Geometric Exposure Scenario Considerations for External Dose Reconstruction at Uranium Facilities''), OTIB–0052 (''Parameters to Consider When Processing Claims for Construction Trade Workers''), OTIB–0054 (''Fission and Activation Product Assignment for Internal Dose-Related Gross Beta and Gross Gamma Analyses''), PER 14 (''Construction Trades Workers''), PER 17 (Evaluation of Incomplete internal Dosimetry records from Idaho, Argonne-East and Argonne-West National Laboratories''), and PER 20 (''Blockson TBD Revision''); Identification of Overarching Dose Reconstruction Issues; Discussion of New Summaries of Completed Procedure Reviews; and a continuation of the comment-resolution process for other dose reconstruction procedures under review by the Subcommittee.

The agenda is subject to change as priorities dictate.

This meeting is open to the public, but without an oral public comment period. In the event an individual wishes to provide comments, written comments may be submitted. Any written comments received will be provided at the meeting and should be submitted to the contact person below in advance of the meeting.

Contact Person for More Information: Theodore Katz, Designated Federal Officer, NIOSH, CDC, 1600 Clifton Road, Mailstop E–20, Atlanta, Georgia

30333, Telephone: (513) 533–6800, Toll Free 1 (800) CDC–INFO, Email: *dcas@cdc.gov*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 3, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–16892 Filed 7–10–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2012–0645]

Towing Safety Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Committee Management; Notice of Open Teleconference Federal Advisory Committee Meeting.

SUMMARY: The Towing Safety Advisory Committee (TSAC) will meet via teleconference to review and discuss a new Task Statement titled ''Recommendations for Safety Standards of Portable Facility Vapor Control Systems'' and to discuss the progress of open Task Statements. This meeting will be open to the public.

DATES: The teleconference meeting will take place on Thursday, July 26, 2012, from 11 a.m. to 12:30 p.m. EST. This meeting may close early if all business is finished. Oral comments may be made at the July 26 meeting, but requests to make oral presentations and the submission of written comments are due by July 16, 2012.

ADDRESSES: The Committee will meet via telephone conference, on July 26, 2012. The Public may participate by contacting the DFO and obtaining the telephone number to call in. Please contact the DFO as listed below in the **FOR FURTHER INFORMATION CONTACT** section to obtain teleconference information; however, the number of teleconference lines is limited and available on a first come first served basis. Members of the public may also participate by coming to Room 5–1224, U.S. Coast Guard Headquarters Building, 2100 Second Street SW., Washington, DC 20593. You must present a valid, government-issued photo identification to gain entrance to the Coast Guard Headquarters building. Requests to make oral presentations should be sent to Commander Rob Smith, Designated Federal Officer (DFO) of TSAC, Commandant (CG–OES–2), 2100 Second Street SW., Stop 7126, Washington, DC 20593–7126 or by fax to 202–372–1926 on or before July 16, 2012.

For information on facilities or services for individuals with disabilities or to request special assistance at the teleconference, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section, as soon as possible.

To facilitate public participation we are inviting public comment on the issues to be considered by the committee as listed in the ''Agenda'' section below. You may submit a written comment on or before July 16, 2012 or an oral comment during the public comment portion of the meeting.

Comments in writing must be submitted no later than July 16, 2012, and must be identified by USCG–2012–0645 and may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: Patrick.J.Mannion@uscg.mil.* Include the docket number (USCG–2012–0645) in the subject line of the message.
- *Fax:* (202) 372–1926
- *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 202–366–9239.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number of this action. All comments submitted will be posted on *www.regulations.gov* without alteration and will contain any personal information you provided. You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Docket: For access to the docket to read documents or comments related to this notice, go to *www.regulations.gov.* During the July 26th meeting, we will have a public comment period from 12:00 to 12:30 p.m. Speakers are requested to limit their comments to 3 minutes. Please note that the public comment period may end before the time indicated, if everyone present who wishes to has spoken. Please contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section to register as a speaker.

FOR FURTHER INFORMATION CONTACT: Commander Rob Smith, Designated Federal Officer (DFO) of TSAC, or Mr. Patrick Mannion, Alternate Designated Federal Officer (ADFO), telephone 202–372–1439, fax 202–372–1926. If you have any questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act* (FACA), 5 U.S.C. App. (Pub. L. 92–463). The Towing Safety Advisory Committee provides advice and recommendations to the Department of Homeland Security on matters relating to shallow-draft inland and coastal waterway navigation and towing safety. See 33 U.S.C. 1231a.

Agenda of Meeting

The agenda for the Thursday, July 26, 2012 Committee meeting is as follows:

(1) Administrative functions.

(2) Presentation and discussion of interim reports and recommendations on:

(a) TASK 01–12, ''Recommendations for the Prevention of Towing Vessel Crewmember Falls Overboard.''

(b) TASK 02–12, ''Review and Recommendations for the Revision of NVIC 1–95, Voluntary Training Standards for Entry-Level Personnel on Towing Industry Vessels.''

(c) TASK 03–12, ''Recommendations for the Enhancement of Towing Vessel Stability.''

(3) Issuance of new Task Statement ''Recommendations for Safety Standards of Portable Facility Vapor Control Systems.''

(4) Period for public comment.

Minutes

Minutes from the meeting will be available for public review and copying within 30 days following the meeting at the *http://fido.gov/facadatabase/* Web site. The meeting minutes may be accessed via this Web site by clicking ''Public Access'', then ''Explore Data'' and typing ''704'' in the ''Committee Quick Find'' box. Once you have accessed the Committee page, click on the meetings tab and then the ''View'' button for the meeting dated July 26, 2012, to access the information for this meeting. Minutes and documents applicable for this meeting can also be

found at an alternative site using the following web address: *https://homeport.uscg.mil;* select these options: Missions>Port and Waterways>Safety Advisory Committee>TSAC>Meetings/Minutes or>Task Statements.

Dated: July 5, 2012.

J.G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2012–16896 Filed 7–10–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Crew Member's Declaration

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Crew Member's Declaration (Form 5129). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Written comments should be received on or before September 10, 2012, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Crew Member's Declaration

OMB Number: 1651–0021

Form Number: Form 5129

Abstract: CBP Form 5129, *Crew Member's Declaration,* is a declaration made by crew members listing all goods acquired abroad which are in his/her possession at the time of arrival in the United States. The data collected on CBP Form 5129 are used for compliance with currency reporting requirements, supplemental immigration documentation, agricultural quarantine matters, and the importation of merchandise by crew members who complete the individual declaration. This form is authorized by 19 USC 1431 and provided for by 19 CFR 4.7, 4.81, 122.44, 122.46, 122.83, 122.84 and 148.61–148.67. CBP Form 5129 is accessible at *http://forms.cbp.gov/pdf/CBP_Form_5129.pdf*

Current Actions: This submission is being made to extend the expiration date with no changes to the burden hours to allow or to the information being collected.

Type of Review: Extension (without change)

Affected Public: Businesses and Individuals

Estimated Number of Respondents: 6,000,000

Estimated Number of Annual Responses: 6,000,000

Estimated Time per Response: 10 minutes

Estimated Total Annual Burden Hours: 996,000

Dated: July 5, 2012.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2012–16887 Filed 7–10–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5600–FA–05]

Announcement of Funding Awards for the Self-Help Homeownership Opportunity Program (SHOP) for Fiscal Year 2012

AGENCY: Office of Community Planning and Development, 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 2012 (FY 2012) Notice of Funding Availability (NOFA) for the Self-Help Homeownership Opportunity Program (SHOP). This announcement contains the consolidated names and addresses of this year's award recipients under SHOP.

FOR FURTHER INFORMATION CONTACT: For questions concerning SHOP Program awards, contact Ginger Macomber, SHOP Program Manager, Office of Affordable Housing Programs, U.S. Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–4500, telephone (202) 402–4605. Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The SHOP program provides federal grants on a competitive basis to national and regional nonprofit organizations and consortia to undertake self-help homeownership housing programs. Grantees may carry out SHOP activities directly and/or distribute SHOP funds to local nonprofit affiliates. The SHOP grants must be used to purchase land and make necessary infrastructure improvements, which may not exceed $15,000 per unit. Leveraged funds must be used for the construction or rehabilitation of the SHOP units.

Low-income homebuyers must contribute their sweat equity to the construction of their homes and/or the homes of other homebuyers. Reasonable accommodations are made for homebuyers with disabilities. Sweat equity involves participation in the construction of the housing, which can include, but is not limited to, assisting in the painting, carpentry, trim work, drywall, roofing, and siding for the housing. Labor is also contributed by

community volunteers. The SHOP funds together with the homebuyer's sweat equity and volunteer labor contributions significantly reduce the cost of the housing for the low-income homebuyers.

The FY 2012 awards announced in this Notice were selected for funding in the FY 2012 SHOP competition posted on the grants.gov Web site. Applications were scored and selected for funding based on the selection criteria in the General Section and the SHOP program section. The amount appropriated in FY 2012 to fund the SHOP grants was $13,500,000. The allocations for SHOP grantees are as follows:

Community Frameworks, 409 Pacific Avenue Suite 105, Bremerton, WA 98337	$1,905,750
Habitat for Humanity International, 121 Habitat Street, Americus, GA 31709	6,693,040
Housing Assistance Council, 1025 Vermont Avenue Suite 606, Washington, DC 20005	4,247,550
Tierra del Sol Housing Corporation, Western States Housing Consortium, P.O. Box 2626, 880 Anthony Drive, Anthony, NM 88021	653,660
Total	13,500,000

These non-profit organizations propose to distribute SHOP funds to several hundred local affiliates and consortium members that will acquire and prepare the land for construction, provide homebuyer counseling, select homebuyers, coordinate the homebuyer sweat equity and volunteer labor efforts, and assist in the arrangement of interim and permanent financing.

Dated: June 19, 2012.

Mark Johnston,

Assistant Secretary for Community Planning and Development (Acting).

[FR Doc. 2012–16902 Filed 7–10–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

[Docket No. ONRR–2012–0003]

U.S. Extractive Industries Transparency Initiative Final Stakeholder Assessment and Multi-Stakeholder Group Findings

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior (Interior) has retained an independent facilitator, the Consensus Building Institute (CBI), to conduct a stakeholder assessment as part of the U.S. Extractive Industries Transparency Initiative (USEITI) implementation process. On July 11, 2012, Interior received CBI's final assessment regarding options for forming a U.S. multi-stakeholder group that will be responsible for determining the implementation of USEITI. By this notice, Interior is notifying the public of the availability on our Web site of CBI's final stakeholder assessment and findings regarding establishment of the U.S. multi-stakeholder group.

FOR FURTHER INFORMATION CONTACT: Matthew Williams, telephone (202) 254–5573, fax number (202) 254–5589, email *matt.williams@onrr.gov.*

SUPPLEMENTARY INFORMATION: On February 24, 2012 (74 FR 11151), Interior published a notice in the **Federal Register** seeking public comment on the formation of a multi-stakeholder group to implement USEITI. In that notice, Interior stated that it would hold a series of public listening sessions to provide additional opportunities for public comment. In March, Interior held those listening sessions in St. Louis, Missouri; Denver, Colorado; Houston, Texas; and Washington, DC. CBI analyzed the input from these four public listening sessions, interviews with potential stakeholders, and written comments submitted to Interior. The input formed the basis of CBI's draft independent stakeholder assessment and finding regarding options for establishing the U.S. multi-stakeholder group. On May 3, 2012 (77 FR 26315), Interior published a notice in the **Federal Register** announcing a public comment period, from May 18–June 29, 2012, seeking feedback on CBI's draft stakeholder assessment and the recommended options for establishing the U.S. multi-stakeholder group, which was published on May 18, 2012. As part of the comment period, Interior held three public listening sessions in Anchorage, Alaska; Pittsburg, Pennsylvania; and New Orleans, Louisiana; a public webinar; and a public workshop on June 22, 2012, in Washington, DC. CBI analyzed the input from these public listening sessions, written comments submitted to Interior, and the input provided and issues raised by stakeholders at the June 22, 2012, USEITI public workshop. This input formed the basis of CBI's final stakeholder assessment and findings regarding establishment of the U.S. multi-stakeholder group.

Interior published and made available all comments received during the public comment periods, online at *http://www.doi.gov/EITI.* Starting on July 10, 2012, CBI's final assessment will be available online at *http://www.doi.gov/EITI.* You may request a copy of the assessment from Matthew Williams through the contact information above.

Background: In September 2011, President Barack Obama announced the United States' commitment to participate in the Extractive Industries Transparency Initiative. EITI is a signature initiative of the U.S. National Action Plan for the international Open Government Partnership and offers a voluntary framework for governments and companies to publicly disclose in parallel the revenues paid and received for extraction of oil, gas, and minerals that belong to the State. The design of each framework is country-specific, and is the result of a multi-year, consensus-based process by a multi-stakeholder group comprised of government, industry, and civil society representatives. On October 25, President Obama named Secretary of the Interior Ken Salazar as the U.S. Senior Official responsible for implementing USEITI. In response, Secretary Salazar posted a White House blog the same day, committing to work with industry and civil society to implement USEITI.

For further information on EITI, please visit the USEITI Web page at *http://www.doi.gov/EITI.*

Dated: July 2, 2012.

Amy Holley,

Acting Assistant Secretary for Policy, Management and Budget.

[FR Doc. 2012–16923 Filed 7–10–12; 8:45 am]

BILLING CODE 4310–T2–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2012–N108: FXRS12650400000S3–123–FF04R02000]

Desecheo National Wildlife Refuge, PR; Draft Comprehensive Conservation Plan and Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability, request for comments.

SUMMARY: We, the Fish and Wildlife Service (Service) announce the availability of a draft comprehensive conservation plan and environmental assessment (Draft CCP/EA) for the Desecheo National Wildlife Refuge (NWR) in the municipality of Mayagüez, Puerto Rico, for public review and comment. In this Draft CCP/EA, we describe the alternative we propose to

use to manage this refuge for the 15 years following approval of the final CCP.

DATES: To ensure consideration, we must receive your written comments by August 10, 2012.

ADDRESSES: You may obtain a copy of the Draft CCP/EA by contacting Ms. Susan Silander, via U.S. mail at P.O. Box 510, Boquerón, PR 00622. Alternatively, you may download the document from our Internet Site at *http://southeast.fws.gov/planning* under ''Draft Documents.'' Comments on the Draft CCP/EA may be submitted to the above postal address or by email to *susan_silander@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Susan Silander at 787/851–7258 (telephone).

SUPPLEMENTARY INFORMATION:

Introduction

Desecheo NWR is a 360-acre island located in the Mona Passage, approximately 12 miles west of Rincón, Puerto Rico. With this notice, we continue the CCP process for Desecheo NWR. We started the process through a notice in the **Federal Register** on December 19, 2008 (73 FR 77828). For more about the refuge and our CCP process, please see that notice.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Issues

During the development of the Draft CCP/EA, we identified issues that we felt were most significant to the refuge and the public. These issues included: (1) Control of introduced species (*e.g.,* monkeys, goats, rats, and plants); (2) illegal activities (e.g., smuggling of aliens and drugs and poaching); (3) cleanup of military ordnance; (4) restoration of habitat; (5) potential for opening the refuge to limited public uses and development of ecotourism projects; (6) providing boat access; (7) coordinating activities with Marine Reserve planning efforts; (8) permitting periodic access for ham radio operators; and (9) camping.

CCP Alternatives, Including Our Proposed Alternative

We developed three alternatives for managing the refuge (Alternatives A, B, and C), with Alternative C as our proposed alternative. A full description of each alternative is in the Draft CCP/EA. We summarize each alternative below.

Alternative A: Current Management (No Action)

We would continue with periodic surveys and management of seabirds and endemic reptiles, sea turtles, migratory landbirds, and the federally threatened Higo Chumbo cactus.

Removal of invasive animal species would also continue, and we would begin the monitoring of 10 established vegetation plots to evaluate success of forest restoration. There would be no active monitoring of climate change.

We would continue cooperation with partnering agencies to provide surveillance and enforcement that protects refuge resources from illegal activities, such as poaching and drug trafficking.

Environmental education and interpretation would continue through the refuge Web site and factsheets, and staff would continue to give presentations to mainland communities and local schools.

We would continue to work with cooperating agencies and partners to clean up unexploded ordnance to increase safety on the refuge. For the foreseeable future, the refuge would continue to be closed to protect the public from this hazard. No staff would be specifically assigned to the refuge, and it would continue to be managed from Complex headquarters in Boquerón, Puerto Rico.

Alternative B: Public Use Emphasis

We would continue periodic efforts to survey and manage seabirds and endemic reptiles. We would also continue opportunistic surveys for hawksbill turtles, migratory landbirds, and the federally threatened Higo Chumbo cactus.

We would continue our efforts to remove invasive animal species and would implement efforts to avoid introduction of new invasive species from increased public visitation. We would begin to monitor 10 established vegetation plots across the island to determine the success of restoration efforts. As with Alternative A, there would be no active monitoring of climate change.

We would continue cooperating with partnering agencies to provide surveillance and enforcement to protect refuge resources from illegal activities, such as poaching and drug trafficking.

Under this alternative, we would increase the level of off-site environmental education and outreach opportunities to mainland communities and schools. We would provide additional interpretive materials, such as brochures and fact sheets. Subject to safety concerns, we would provide on-site interpretive materials and opportunities for wildlife observation and photography. We would also allow for appropriate and compatible non-wildlife-dependent uses on the refuge by means of special use permits.

As portions of the refuge are cleared of unexploded ordnance and as other safety issues are addressed, appropriate sites might be opened to the public. We would acquire an open-water boat capable of reaching the island to provide for extended visits. This alternative would add a half-time public use or park ranger position to the refuge.

Alternative C: Habitat and Wildlife Restoration and Limited Public Use (Proposed Alternative)

Over the 15-year life of the CCP, we would provide the conditions for reestablishment of nesting seabird colonies. Routine monitoring and life-history studies of terrestrial reptiles would be conducted and habitat improvements would be made. We would continue periodic surveys of turtles and implement seasonal surveys of migratory landbirds. We would pursue opportunities for propagation, reintroduction, and removal of threats to the Higo Chumbo cactus.

We would increase monitoring and, if necessary, efforts to remove invasive species. The number of vegetation plots and frequency of monitoring would be increased to improve restoration efforts. Over the 15-year life of the CCP, we would complete the removal of all invasive animal species. We would also develop and implement a plan for monitoring and mitigating the effects of climate change on the refuge.

Under this alternative, the levels of surveillance and enforcement with partners would be increased, and we would also provide additional equipment to improve enforcement capabilities on the refuge.

We would increase off-site environmental education and outreach to mainland communities and schools, and we would increase the availability of interpretive materials, such as brochures and fact sheets. Subject to safety concerns being met, we would increase on-site interpretation through signage and brochures and provide limited opportunities for refuge-guided wildlife observation and photography. We would continue to respond to special requests for non-wildlife-dependent uses that are appropriate and compatible.

We would continue to work with cooperating agencies and partners to increase safety on the refuge through the removal of unexploded ordnance. Safety would be ensured by only permitting controlled, refuge-guided activities in cleared areas. We would acquire an open-water boat capable of reaching the island to provide for extended visits.

This alternative would add a half-time public use or park ranger position and a half-time manager position to be shared with the Complex headquarters.

Next Step

After the comment period ends, we will analyze the comments and address them.

Public Availability of Comments

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

Authority

This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd *et seq.*).

Dated: May 16, 2012.

Mark J. Musaus,

Acting Regional Director.

[FR Doc. 2012–16891 Filed 7–10–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2012–N107; FXRS12650400000S3–123–FF04R02000]

Culebra National Wildlife Refuge, PR; Draft Comprehensive Conservation Plan and Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of a draft comprehensive conservation plan and environmental assessment (Draft CCP/EA) for Culebra National Wildlife Refuge (NWR) in the municipality of Culebra, Puerto Rico, for public review and comment. In this Draft CCP/EA, we describe the alternative we propose to use to manage this refuge for the 15 years following approval of the final CCP.

DATES: To ensure consideration, we must receive your written comments by August 10, 2012.

ADDRESSES: You may obtain a copy of the Draft CCP/EA by contacting Ms. Ana Román, via U.S. mail at P.O. Box 510, Boquerón, PR 00622. Alternatively, you may download the document from our Internet Site at *http://southeast.fws.gov/planning* under ''Draft Documents.'' Comments on the Draft CCP/EA may be submitted to the above postal address or by email to *ana_roman@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Ana Román at 787/851–7258 (telephone).

SUPPLEMENTARY INFORMATION:

Introduction

Culebra NWR is located within the municipality of Culebra, Puerto Rico, and consists of several units on the main island of Culebra and numerous small islands surrounding Culebra. With this notice, we continue the CCP process for Culebra NWR. We started the process through a notice in the **Federal Register** on December 19, 2008 (73 FR 77827). For more about the refuge, please see that notice.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Issues

During the development of the Draft CCP/EA, we identified issues that we felt were most significant to the refuge and the public. These issues included: (1) Managing invasive species; (2) protecting and managing sea turtle nesting beaches; (3) monitoring and managing seabird colonies; (4) cleaning of contamination and unexploded ordnance from prior military activities; (5) accessing and utilizing beaches; (6) developing plans for repair and re-utilization of the old Observation Post at Punta Flamenco; (7) developing hiking trails; (8) completing boundary verification; and (9) developing renewable energy projects.

CCP Alternatives, Including Our Proposed Alternative

We developed three alternatives for managing the refuge (Alternatives A, B, and C), with Alternative C as our proposed alternative. A full description of each alternative is in the Draft CCP/EA. We summarize each alternative below.

Alternative A: Current Management (No Action)

Under this alternative, we would continue with periodic efforts to survey and manage for seabird populations. In cooperation with partners, we would also continue surveys and protection of nesting hawksbill, green, and leatherback sea turtles and their nests/eggs. There would, however, be no active program for resident and migratory birds.

We would continue to protect habitat and conduct periodic surveys for the Virgin Islands and Puerto Rican boas and giant anoles. For listed plants, we would continue to protect and monitor existing populations of *Pepperomia wheelerii* and *Leptocereus grantianus.* We would also protect land and

resources on offshore cays and conduct limited invasive species removal.

Culebra NWR would maintain its existing boundaries with no further acquisition. We would continue to work informally with the Puerto Rico Department of Natural and Environmental Resources (DNER) and other partners, and restore the law enforcement officer position to protect refuge resources.

The refuge would maintain its current schedule, under which it is open to the public during daylight hours only. Currently closed areas, such as the Observation Post, would remain closed to the public. Access to open areas by water taxis under special use permits would continue. We would continue to provide for opportunistic wildlife observation and photography. Existing signage and interpretive materials would be maintained. We would continue to operate the refuge without a visitor center or friends group. Cooperation with agencies, the municipality, education institutions, non-governmental organizations, and volunteers assisting with refuge management would continue.

Alternative B: Wildlife Management Emphasis

Under this alternative, we would conduct expanded seasonal surveys to determine seabird abundance, and provide for research on nesting success and nesting habitat quality. We would also manipulate vegetation to improve seabird nesting habitat, and implement control of invasive predators that prey on seabirds.

In cooperation with partners, we would also continue surveys and protection of sea turtles and their nests/eggs. To benefit resident and migratory birds, annual surveys would be developed and implemented at selected locations throughout the refuge. We would also implement habitat management strategies to benefit target species of birds and cooperate with Puerto Rico DNER to conduct regular surveys and manage habitat for listed animal species. This alternative provides for the establishment of additional populations of two species of listed plants—*Pepperomia wheelerii* and *Leptocereus grantianus.*

Alternative B would provide for the restoration of hydrology to specified areas of degraded mangrove habitat, as well as restoration of dry forest through selective invasive species removal and planting of propagated trees. This alternative would intensify efforts at invasive species control and eradication, and pursue opportunities for habitat restoration on offshore cays.

Under this alternative, we would clearly delineate all refuge boundaries and pursue opportunities for boundary expansion with acquisitions from willing sellers. Partnerships with Puerto Rico DNER and others would be strengthened and formalized, and we would restore the law enforcement officer position to protect refuge resources.

The refuge would maintain its current schedule, under which it is open to the public during daylight hours only. The Observation Post and other currently closed areas would remain closed. Access to offshore cays would continue by water taxis under special use permits. Opportunistic wildlife observation and photography on open areas would continue. We would continue to operate the refuge without a visitor center.

In addition to the staff provided under Alternative A, we would add a full-time biologist position and one full-time and one half-time biological technician position. Under Alternative B, we would continue coordination with the Army Corps of Engineers to remove hazardous materials and unexploded ordnance from the refuge.

We would also facilitate the formation of a friends group with 5 years of approval of the comprehensive conservation plan, and increase cooperation with partners focused on wildlife management by establishing formal agreements where appropriate.

Alternative C: Expansion of Wildlife and Habitat Management, With Increased Public Use Opportunities (Proposed Alternative)

This alternative expands both wildlife and habitat management and public use activities.

To recover special status plants and animal species, Alternative C is virtually identical to Alternative B. It provides for expanded seasonal surveys to determine seabird abundance, research on nesting success, nesting habitat quality, manipulation of vegetation to improve nesting habitat, and control of invasive predators.

We would also continue surveys and protection of sea turtles and develop and implement annual surveys for resident and migratory birds, and establish additional populations of two species of listed plants—*Pepperomia wheelerii* and *Leptocereus grantianus.*

This alternative also calls for restoring hydrology to areas of degraded mangrove habitat, and restoring dry forest through selective invasive species removal and planting of propagated trees. We would also intensify efforts at invasive species control and eradication and pursue habitat restoration on offshore cays.

Within 5 years of approval of the comprehensive conservation plan, we would clearly delineate all refuge boundaries, pursue opportunities for boundary expansion with acquisitions from willing sellers, and work to resolve boundary issues. We would also complete and begin to implement a cultural resources management plan for the refuge.

The refuge would maintain its current schedule, under which it is open to the public during daylight hours only. Working with the Army Corps of Engineers to determine safety of areas cleared of unexploded ordnance, we would evaluate the potential for opening additional areas to the public, considering both safety and biological factors. We would continue to permit water taxis under special use permit for access to cays. We would also develop partnerships to restore and reopen the Observation Post for environmental research and/or education purposes.

We would continue to provide for opportunistic wildlife observation and photography opportunities. We would develop additional public use facilities, such as trails, towers, boardwalks, and blind, to increase opportunities for wildlife observation and photography. We would also develop environmental education and interpretation programs and materials (e.g., curriculum, teacher training) to be used both on and off the refuge.

In addition to current staff, we would add one public use specialist position, one biologist position, one and one-half biological technician positions, and one maintenance worker position.

This alternative provides for the maintenance of all current equipment and facilities, including two boats and the office and residence buildings. It also provides for the development and maintenance of additional trails, towers, boardwalks, blinds, and the construction of a new headquarters/visitor contact station.

We would also facilitate the formation of a friends group, increase cooperation with partners in habitat and wildlife management and public use, and establish formal agreements.

Contingent upon adding a public use specialist, within 5 years of CCP approval, we would develop and begin to implement a communications plan.

Next Step

After the comment period ends, we will analyze the comments and address them.

Public Availability of Comments

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

Authority

This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd *et seq.*).

Dated: June 11, 2012.

Mark J. Musaus,

Acting Regional Director.

[FR Doc. 2012–16901 Filed 7–10–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORB050; L17220000.LV0000.HX091520; OR–66276; HAG12–0004]

Notice of Realty Action: Proposed Direct Sale of Public Land in Harney County, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) proposes to sell a 5-acre parcel of public land in Harney County, Oregon, by direct sale procedures to Allan and Ethel Bossuot for the approved appraised fair market value of $13,200.

DATES: The BLM must receive comments regarding the proposed sale on or before August 27, 2012.

ADDRESSES: Written comments concerning this proposed sale may be submitted to Three Rivers Resource Area Field Manager, BLM Burns District Office, 28910 Hwy 20 West, Hines, Oregon 97738.

FOR FURTHER INFORMATION CONTACT: Tara McLain, Realty Specialist, at 28910 Hwy 20 West, Hines, Oregon 97738 or phone 541–573–4462. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Pursuant to Section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA), as amended (43 U.S.C. 1713), and regulations at 43 CFR subpart 2710 (43 CFR 2710), this conveyance would be made by direct sale procedures to Allan and Ethel Bossuot to resolve an inadvertent occupancy trespass that has been in existence since 1902 for the land described as follows:

Willamette Meridian

T. 20 S., R. 29 E.,
Sec. 34, E½SE¼SE¼SW¼.

Containing 5 acres, more or less, in Harney County.

A Notice of Intent was published July 21, 2011, to amend the BLM Three Rivers Resource Management Plan (RMP) for Land Tenure. The 1992 BLM Three Rivers RMP did not identify this parcel of public land as suitable for disposal. However, due to the topography and land ownership patterns surrounding the parcel, it is difficult and uneconomic to manage as public land. The rim rock that exists above the parcel essentially cuts it off from access for management by the BLM. The Decision Record amending the BLM Three Rivers RMP for Land Tenure was signed by the State Director on November 28, 2011. There were no protests filed to the Decision Record; therefore, the Decision became final on December 28, 2011.

The BLM is proposing a direct sale of the 5-acre parcel which is the smallest legal subdivision that would wholly encompass the improvements that have been in existence on the parcel since 1902. A direct sale is appropriate because the current lessees have used/occupied buildings located on this parcel. The public interest would be best served by disposing of this parcel to the user/occupant by direct sale. The Federal government would retain the rights to the minerals. Any patent issued would be subject to all valid existing rights of record and contain the following terms, conditions, and reservations:

a. A reservation of a right-of-way 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);

b. The sale would be subject to the requirements of Section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9620(h); and,

c. A reservation to the United States for all minerals including, oil and gas and geothermal minerals.

Detailed information concerning the proposed land sale including the appraisal, planning and environmental documents, and mineral report are available for review at the BLM Burns District 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 Federal holidays.

Public comments regarding the proposed sale may be submitted in writing to the BLM Three Rivers Resource Area Field Manager (see **ADDRESSES** section) on or before August 27, 2012. Comments received by telephone or in electronic form, such as email or facsimile, will not be considered. Any adverse comments regarding the proposed sale will be reviewed by the BLM Oregon/Washington 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 not less than 60 days from July 11, 2012.

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

Authorities: 43 CFR 2710.3–1, 2711.1–2.

Fred O'Ferrall,

Chief, Branch of Land, Mineral and Energy Resources.

[FR Doc. 2012–16910 Filed 7–10–12; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–10537: 2200–1100–665]

Notice of Intent to Repatriate Cultural Items: Gregg County Historical Museum, Longview, TX

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Gregg County Historical Museum, in consultation with the

appropriate Indian tribe, has determined that the cultural items meet the definition of unassociated funerary objects and repatriation to the Indian tribe stated below may occur if no additional claimants come forward. Representatives of any Indian tribe that believes itself to be culturally affiliated with the cultural items may contact the Gregg County Historical Museum.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the cultural items should contact the Gregg County Historical Museum at the address below by August 10, 2012.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Gregg County Historical Museum that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

In 2002, the Buddy Calvin Jones collection, a privately held collection of Native American human remains and artifacts, was donated to the Gregg County Historical Museum, Longview, TX. Buddy Calvin Jones was an avocational archeologist who later became a professional archeologist, and excavated numerous sites in eastern Texas. The unassociated funerary objects enumerated below were removed by Mr. Jones or his associates from a site in southwest Arkansas and numerous sites in eastern Texas. The unassociated objects listed below were removed from burial sites, but are not known to relate to specific human remains in the collection. Dates for the sites were determined through an analysis of the objects' decorative styles, characteristic forms, and methods of manufacture.

In 1965, four unassociated funerary objects were removed from burials at the Booker site in southwest Arkansas. The exact location of the site is not specified in notes or records of the collection. The unassociated funerary objects are two ceramic bowls and two ceramic jars. The Booker site dates to A.D. 1400–1680, the Late Caddo period.

In 1968, 106 unassociated funerary objects were removed from burials at the Pipe or Ferguson site (41AN67). The unassociated funerary objects are 1 marine shell gorget and 105 ceramic elbow pipe sherds that had been placed on the chest of the individual in the burial. The Pipe site dates to A.D. 1480–1650, the Late Caddo period.

In 1964, 18 unassociated funerary objects were removed from burials at site GC S–20 (41GG5). The unassociated funerary objects are ceramic vessels. The site GC S–20 dates to A.D. 1200–1450, the Middle Caddo period.

In 1960, two unassociated funerary objects were removed from a burial at the Ware Acres site (41GG31). The unassociated funerary objects are ceramic pipes. The Ware Acres site dates to A.D. 1650–1800, the Historic Caddo period.

In 1963, 18 unassociated funerary objects were removed from burials at the site GC 130 (41GG50). The unassociated funerary objects are 17 ceramic vessels and 1 elbow pipe. The site GC 130 dates to A.D. 1200–1450, the Middle Caddo period.

In 1962, 44 unassociated funerary objects were removed from burials at the Susie Slade site (41HS13). The unassociated funerary objects are ceramic vessels. The Susie Slade site dates to A.D. 1650–1800, the Historic Caddo period.

In 1963 and 1965, 26 unassociated funerary objects were removed from burials at the Brown site (41HS261). The unassociated funerary objects are ceramic vessels. The Brown site dates to A.D. 1650–1790, the Historic Caddo.

Sometime in 1959 and thereafter, six unassociated funerary objects were removed from burials at the C.D. Marsh site (41HS269). The unassociated funerary objects are ceramic vessels. The C.D. Marsh site dates to A.D. 1200–1450, the Middle Caddo period.

In 1961, 42 unassociated funerary objects were removed from burials at the Patton or Peanut Patch site (41HS825). The unassociated funerary objects are 38 ceramic vessels, 3 ceramic pipes, and 1 hematite pigment stone. The Patton site dates to A.D. 1450–1680, the Late Caddo period.

In 1964, 10 unassociated funerary objects were removed from burials at the Younger site (41MR6). The unassociated funerary objects are ceramic vessels. The Younger site dates to A.D. 1200–1450, the Middle Caddo period.

In 1955, 18 unassociated funerary objects were removed from a burial at the Millsey Williamson site (41RK3). The unassociated funerary objects are 15 ceramic vessels, 1 French-made gun flint, 1 piece of sheet brass, and 1 brass musket butt plate. The Millsey Williamson site dates to A.D. 1650–1800, the Historic Caddo period.

In 1956, five unassociated funerary objects were removed from a burial at the Cherokee Lake site (41RK132). The unassociated funerary objects are 4 ceramic vessels and 1 ceramic pipe. The Cherokee Lake site dates to A.D. 1650–1800, the Historic Caddo period.

Sometime between the late 1950s and the mid-1960s, nine unassociated funerary objects were removed from the Sipes site (41RK602). The unassociated funerary objects are ceramic vessels. The Sipes site dates to A.D. 1200–1450, the Middle Caddo period.

In 1962, 14 unassociated funerary objects were removed from burials at the Sam Kaufman site (41RR16). The unassociated funerary objects are ceramic vessels. The Sam Kaufman site dates to A.D. 1450–1680, the Late Caddo period.

In 1960, 34 unassociated funerary objects were removed from burials at the Garvin Final site (41SM77), also known as the Vanderpool site. The unassociated funerary objects are 33 ceramic vessels and 1 ceramic pipe. The Garvin Final site dates to A.D. 1450–1680, the Late Caddo period.

In 1957, 134 unassociated funerary objects were removed from burials at the Henry Spencer site (41UR315). The unassociated funerary objects are 122 ceramic vessels, 8 arrow points (of the Perdiz style), 3 ceramic pipe sherds, and 1 glass bead. The Henry Spencer site dates to A.D. 1450–1680, the Late Caddo period.

In 1958, 110 unassociated funerary objects were removed from burials at the Enis Smith site (41UR317). The unassociated funerary objects are 95 ceramic vessels, 14 arrow points (of the Maud and Talco style), and 1 mass of gray clay pigment. The Enis Smith site dates to A.D. 1450–1680, the Late Caddo period.

In 1954–1955, 57 unassociated funerary objects were removed from burials at the Henry Williams site (41UR318). The unassociated funerary objects are 48 ceramic vessels, 6 arrow points (Talco type), 1 stone bead, and 2 ceramic pipe sherds. The Henry Williams site dates to A.D. 1450–1680, the Late Caddo period.

Sometime between the mid-1950s and the mid-1960s, 20 unassociated funerary objects were removed from burials at the I. P. Starr site (41UR319). The unassociated funerary objects are 11 ceramic vessels and 9 arrow points (Talco, Washita, and Perdiz types). The

I. P. Starr site dates to A.D. 1450–1680, the Late Caddo period.

In 1958, 27 unassociated funerary objects were removed from burials at the Taft site (41UR320). The unassociated funerary objects are 26 ceramic vessels and 1 ceramic pipe. The Taft site dates to A.D. 1450–1680, the Late Caddo period.

In 1955–1956 and 1959, 69 unassociated funerary objects were removed from burials at the Frank Smith site (41UR326). The unassociated funerary objects are 68 ceramic vessels and 1 ceramic tubular pipe. The Frank Smith site dates to A.D. 1450–1680, the Late Caddo period.

Sometime between the mid-1950s and the mid-1960s, one unassociated funerary object was removed from a burial at the Frank Smith Refinery site (41UR327). The unassociated funerary object is a single ceramic vessel. The Frank Smith Refinery site dates to A.D. 1450–1680, the Late Caddo period.

Sometime prior to 1954, one unassociated funerary object was removed from burials at the Glade Creek at Oil Lease site GC 23 (no site trinomial has been assigned), in Gregg County, TX. The exact location of this site is not specified in notes or records of the collection. The unassociated funerary object is a ceramic vessel. The Glade Creek at Oil Lease site dates to A.D. 1450–1680, the Late Caddo period.

Sometime between the mid-1950s and the mid-1960s, eight unassociated funerary objects were removed from site GC BCJ (no site trinomial has been assigned), in Gregg County, TX. The exact location of this site is not specified in notes or records of the collection. The unassociated funerary objects are 7 ceramic vessels and 1 mussel shell hoe. The site GC BCJ dates to A.D. 1200–1680, the Middle or Late Caddo periods.

In 1965, 25 unassociated funerary objects were removed from the Hyte or Hiett site (no site trinomial has been assigned), in Gregg County, TX. The exact location of the site is not specified in notes or records of the collection, except that it is on Panther Creek. The unassociated funerary objects are ceramic vessels. The Hyte site dates to A.D. 1450–1680, the Late Caddo period.

In 1963, 20 unassociated funerary objects were removed from burials at the E. Fields site (no site trinomial has been assigned), in Harrison County, TX. The exact location of this site is not specified in notes or records of the collection, except that it is on Hatley Creek. The unassociated funerary objects are ceramic vessels. The E. Fields site dates to A.D. 1200–1680, the Middle and Late Caddo periods.

Sometime between the mid-1950s and the mid-1960s, five unassociated funerary objects were removed from the HC site (no site trinomial has been assigned), in Harrison County, TX. The exact location of this site is not specified in notes or records of the collection. The unassociated funerary objects are 4 ceramic vessels and 1 engraved elbow pipe. The HC site dates to A.D. 1450–1680, the Late Caddo period.

Sometime between the mid-1950s and the mid-1960s, two unassociated funerary objects were removed from burials at the Pearl Smith site, HC 53/60 (no site trinomial has been assigned), in Harrison County, TX. The exact location of this site is not specified in notes or records of the collection. The unassociated funerary objects are ceramic vessels. The Pearl Smith site dates to A.D. 1200–1680, the Middle and Late Caddo periods.

Sometime between the mid-1950s and the mid-1960s, three unassociated funerary objects were removed from burials at the Loftis site (no site trinomial has been assigned), in Harrison County, TX. The exact location of this site is not specified in notes or records of the collection. The unassociated funerary objects are ceramic vessels. The Loftis site dates to A.D. 1450–1680, the Late Caddo period.

Sometime between the mid-1950s and the mid-1960s, three unassociated funerary objects were removed from burials at the Marshall Red Gully site (no site trinomial has been assigned), in Harrison County, TX. The exact location of this site is not specified in notes or records of the collection. The unassociated funerary objects are ceramic vessels. The Marshall Red Gully site dates to A.D. 1200–1450, the Middle Caddo period.

In 1941, two unassociated funerary objects were removed from burials at the Mrs. Martin Farm site (no site trinomial has been assigned), in Harrison County, TX. The exact location of this site is not specified; however, notes and records of the collection indicate that it is near Darco, TX, on the Sabine River. The unassociated funerary objects are ceramic vessels. The Mrs. Martin Farm site dates to A.D. 1200–1680, the Middle and Late Caddo periods.

In 1955, one unassociated funerary object was removed from a burial exposed in a road at the Beckville site (no site trinomial has been assigned) in Panola County, TX. The exact location of this site is not specified; however, notes and records of the collection indicate that it is two miles north of the town of Beckville, TX. The unassociated funerary object is a ceramic vessel. The Beckville site dates to A.D. 1200–1680, the Middle and Late Caddo periods.

In 1940, two unassociated funerary objects were removed from burials at the L. N. Morwell Farm site (no site trinomial has been assigned), in Rusk County, TX. The exact location of this site is not specified; however, notes and records of the collection indicate on Martin Creek and Trammels Trace, an historic road that ran parallel to Martin Creek before crossing the Sabine River. The unassociated funerary objects are ceramic vessels. The L. N. Morwell Farm site dates to A.D. 1200–1450, the Middle Caddo period.

Sometime between the mid-1950s and the mid-1960s, 19 unassociated funerary objects were removed from burials at the FIN site (no site trinomial has been assigned) in Smith County, TX. The exact location of this site is not specified in notes or records of the collection. The unassociated funerary objects are ceramic vessels. The FIN site dates to A.D. 1450–1680, the Late Caddo period.

Sometime between the mid-1950s and the mid-1960s, 20 unassociated funerary objects were removed from burials at the SC site (no site trinomial has been assigned) in Smith County, TX. The unassociated funerary objects are 17 ceramic vessels, 2 ceramic elbow pipes, and 1 ceramic platform pipe. The SC site dates to A.D. 1450–1680, the Late Caddo period.

In 1961, eight unassociated funerary objects were removed from burials at the A. Davis site (no site trinomial has been assigned) in Upshur County, TX. The exact location of this site is not specified in notes or records of the collection, except that it is on property that adjoins the Frank Smith site (41UR326). The unassociated funerary objects are ceramic vessels. The A. Davis site dates to A.D. 1450–1680, the Late Caddo period.

In 1955, 32 unassociated funerary objects were removed from burials at the A SS site (no site trinomial has been assigned) in Upshur County, TX. The exact location of this site is not specified in notes or records of the collection, except that it is believed to be a second cemetery on the same property where the Henry Spencer site (41UR315) is located. The unassociated funerary objects are ceramic vessels. The A SS site dates to A.D. 1450–1680, the Late Caddo period.

Sometime between the mid-1950s and the mid-1960s, one unassociated funerary object was removed from burials at the Byars site (no site trinomial has been assigned) in Smith County, TX. The exact location of this site is not specified in notes or records

of the collection, except it is believed to be in the Lake Palestine area and may be the same site as the Byers site. The unassociated funerary object is a ceramic vessel. The Byars site dates to A.D. 1450–1680, the Late Caddo period.

Sometime between the mid-1950s and the mid-1960s, 11 unassociated funerary objects were removed from burials at the BCJ site (no site trinomial has been assigned), possibly in Smith County, TX. The exact location of this site is not specified in notes or records of the collection, except it is believed to be in Smith County based on ''SC'' markings on several of the vessels. The unassociated funerary objects are ceramic vessels. The BCJ site dates to A.D. 1450–1680, the Late Caddo period.

Sometime between the mid-1950s and the mid-1960s, two unassociated funerary objects were removed from a burial identified as Burial 6 at an unknown site in eastern Texas. The exact location of this site is not specified in notes or records of the collection, although it is likely to be from an Upshur County Caddo cemetery. The unassociated funerary objects are ceramic vessels. The burial dates to A.D. 1450–1680, the Late Caddo period.

Sometime between the mid-1950s and the mid-1960s, two unassociated funerary objects were removed from a burial at the D T Loyd site (41UR8/208), in eastern Texas. The exact location of this site is not specified in notes or records of the collection, although it is likely to be from an Upshur County Caddo cemetery. The unassociated funerary objects are ceramic vessels. The D T Loyd site dates to A.D. 1450–1680, the Late Caddo.

Sometime between the mid-1950s and the mid-1960s, two unassociated funerary objects were removed from burials at the UC site (no trinomial has been assigned) in eastern Texas. The exact location of this site is not specified in notes or records of the collection, although it is likely located in Upshur County, TX. The unassociated funerary objects are ceramic pipes. The UC site dates to A.D. 1450–1680, the Late Caddo period.

Sometime between the mid-1950s and the mid-1960s, 13 unassociated funerary objects were removed from burials identified as Lot 2 in eastern Texas. The exact location of this site is not specified in notes or records of the collection. The unassociated funerary objects are ceramic vessels. The Lot 2 collection dates to A.D. 1450–1680, the Late Caddo period.

Sometime between the mid-1950s and the mid-1960s, 13 unassociated funerary objects were removed from burials identified as Lot 3 in eastern Texas. The exact location of this site is not specified in notes or records of the collection. The unassociated funerary objects are ceramic vessels. The Lot 3 collection dates to A.D. 1450–1680, the Late Caddo period.

Sometime between the mid-1950s and the mid-1960s, 20 unassociated funerary objects were removed from burials identified as Lot 5 in eastern Texas. The exact location of this site is not specified in notes or records of the collection. The unassociated funerary objects are 19 ceramic vessels and 1 blue glass bead. The Lot 5 collection dates to A.D. 1450–1680, the Late-Historic Caddo period.

Sometime between the mid-1950s and the mid-1960s, six unassociated funerary objects were removed from burials at site 170 PS in eastern Texas. The exact location of this site is not specified in notes or records of the collection. The unassociated funerary objects are ceramic vessels. The 170 PS site dates to A.D. 1450–1680, the Late Caddo period.

Sometime between the mid-1950s and the mid-1960s, two unassociated funerary objects were removed from burials at site 170 SS in eastern Texas. The exact location of this site is not specified in notes or records of the collection. The unassociated funerary objects are ceramic vessels. The 170 SS site dates to A.D. 1450–1680, the Late Caddo period.

Sometime between the mid-1950s and the mid-1960s, 18 unassociated funerary objects were removed from burials at site 500 PS BC in eastern Texas. The exact location of this site is not specified in notes or records of the collection. The unassociated funerary objects are ceramic vessels. The 500 PS BC site dates to A.D. 1450–1680, the Late Caddo period.

Sometime between the mid-1950s and the mid-1960s, seven unassociated funerary objects were removed from burials at site 600 P BCJ in eastern Texas. The exact location of this site is not specified in notes or records of the collection. The unassociated funerary objects are ceramic vessels. The 600 P BCJ site dates to A.D. 1450–1680, the Late Caddo period.

Sometime between the mid-1950s and the mid-1960s, five unassociated funerary objects were removed from burials at site 600 S BCJ site in eastern Texas. The exact location of this site is not specified in notes or records of the collection. The unassociated funerary objects are ceramic vessels. The 600 S BCJ site dates to A.D. 1450–1680, the Late Caddo period.

Sometime between the mid-1950s and the mid-1960s, three unassociated funerary objects were removed from burials at site 600 SS in eastern Texas. The exact location of this site is not specified in notes or records of the collection, although it is possible it may be the Brown site (41HS261). The unassociated funerary objects are ceramic vessels. The 600 SS site dates to A.D. 1450–1680, the Late Caddo period.

Sometime between the mid-1950s and the mid-1960s, 25 unassociated funerary objects were removed from burials at site SS in eastern Texas. The exact location of this site is not specified in notes or records of the collection. The unassociated funerary objects are ceramic vessels. The SS site dates to A.D. 1450–1680, the Late Caddo period.

Sometime between the mid-1950s and the mid-1960s, 24 unassociated funerary objects were removed from burials at site TAS–B in eastern Texas. The exact location of this site is not specified in notes or records of the collection, although it may be the Millsey Williamson site (41RK3). The unassociated funerary objects are ceramic vessels. The TAS–B site dates to A.D. 1200–1680, the Middle-Late Caddo period.

Sometime between the mid-1950s and the mid-1960s, 44 unassociated funerary objects were removed from burials at site TAS–C in eastern Texas. The exact location of this site is not specified in notes or records of the collection, although it may be the Millsey Williamson site (41RK3), the Brown site (41HS261), or the Susie Slade site (41HS13). The unassociated funerary objects are ceramic vessels. The TAS–C site dates to A.D. 1450–1680, the Late Caddo period.

Sometime between the mid-1950s and the mid-1960s, 10 unassociated funerary objects were removed from burials at site TAS–S in eastern Texas. The exact location of this site is not specified in notes or records of the collection, although it may be the Brown site (41HS261). The unassociated funerary objects are 8 ceramic vessels, 1 arrow point, and 1 deer antler tool. The TAS–S site dates to A.D. 1450–1680, the Late-Historic Caddo period.

Sometime between the mid-1950s and the mid-1960s, 11 unassociated funerary objects were removed from burials at site TS in eastern Texas. The exact location of this site is not specified in notes or records of the collection. The unassociated funerary objects are 9 ceramic vessels and 2 ceramic pipes. The TS site dates to A.D. 1450–1680, the Late Caddo period.

Sometime between the mid-1950s and the mid-1960s, two unassociated funerary objects were removed from a burial at site MA (no trinomial has been assigned) in eastern Texas. The exact location of this site is not specified in notes or records of the collection, although it is believed to be located in Marion County. The unassociated funerary objects are ceramic vessels. The MA site dates to A.D. 1450–1680, the Late Caddo period.

Sometime between the mid-1950s and the mid-1960s, two unassociated funerary objects were removed from burials at site DAR C (no trinomial has been assigned) in eastern Texas. The exact location of this site is not specified in notes or records of the collection, except it is believed to be located in Harrison County. The unassociated funerary objects are ceramic pipes. The DAR C site dates to A.D. 1450–1680, the Late Caddo period.

Sometime between the mid-1950s and the mid-1960s, one unassociated funerary object was removed from burials at site GC (no trinomial has been assigned) in eastern Texas. The exact location of this site is not specified in notes or records of the collection, except it is believed to be located in Gregg County. The unassociated funerary object is a ceramic pipe. The GC site dates to A.D. 1450–1680, the Late Caddo period.

Sometime between the mid-1950s and the mid-1960s, five unassociated funerary objects were removed from burials at site or sites labeled 1100 AD (no trinomial(s) have been assigned) in eastern Texas. The exact location of this site is not specified in notes or records of the collection. The unassociated funerary objects are ceramic pipes. The 1100 AD site(s) date to A.D. 1450–1680, the Late Caddo period.

Sometime between the mid-1950s and the mid-1960s, two unassociated funerary objects were removed from burials at site or sites labeled 1500 AD (no trinomial(s) have been assigned) in eastern Texas. The exact location of this site is not specified in notes or records of the collection. The unassociated funerary objects are ceramic pipes. The 1500 AD site(s) date to A.D. 1450–1680, the Late Caddo period.

Sometime between the mid-1950s and the mid-1960s, 275 unassociated funerary objects were removed from burials at unknown and unrecorded sites in eastern Texas. These unassociated funerary objects have no available provenience. The unassociated funerary objects are 1 lot of approximately 8,267 glass beads, 250 ceramic vessels, and 24 ceramic pipes. The lot of glass beads are believed to have come from burials at seven Historic Caddo sites, including Ware Acres (41GG31), Kinsloe (41GG3), Cherokee Lake (41RK132), Millsey Williamson (41RK3), C. D. Marsh (41HS269), Susie Slade (41HS13), and Brown (41HS261) which were excavated by Jones for his 1968 Master of Arts thesis (Buddy Calvin Jones, ''The Kinsloe Focus: A Study of Seven Historic Caddoan Sites in Northeast Texas,'' Master of Arts thesis, Department of Anthropology, University of Oklahoma, Norman, OK, 1968). The ceramic vessels and the ceramic pipes have no available provenience information, but are believed to date to A.D. 1450–1680, the Late Caddo period. The glass beads date from the late 17th century to the early 19th century, the Historic Caddo period.

Determinations made by the Gregg County Historical Museum

Officials of the Gregg County Historical Museum have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the 1,431 cultural items described above as unassociated funerary objects are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from specific burial sites of Native American individuals.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between cultural items and the Caddo Nation of Oklahoma.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with these categories of funerary objects should contact Neina Kennedy, Executive Director, Gregg County Historical Museum, 214 N. Fredonia Street, Longview, TX 75601, telephone (903) 753–5840, before August 10, 2012. Repatriation of these unassociated funerary objects to the Caddo Nation of Oklahoma may proceed after that date if no additional claimants come forward.

The Gregg County Historical Museum is responsible for notifying the Caddo Nation of Oklahoma that this notice has been published.

Dated: June 7, 2012.

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2012–16928 Filed 7–10–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–10538: 2200–1100–665]

Notice of Inventory Completion: Gregg County Historical Museum, Longview, TX

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Gregg County Historical Museum has completed an inventory of human remains and associated funerary objects in consultation with the appropriate Indian tribe and has determined that there is a cultural affiliation between the human remains and associated funerary objects and a present-day Indian tribe. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects may contact the Gregg County Historical Museum. Repatriation of the human remains and associated funerary objects to the Indian tribe stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains and associated funerary objects should contact the Gregg County Historical Museum at the address below by August 10, 2012.

ADDRESSES: Neina Kennedy, Executive Director, Gregg County Historical Museum, 214 N. Fredonia Street, Longview, TX 75601, telephone (903) 753–5840.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Gregg County Historical Museum in Longview, TX. The human remains and associated funerary objects were removed from a total of 16 archeological sites, including 13 sites located in Gregg, Harrison, Red River, Rusk and Upshur counties in Texas and three sites of unknown county location within eastern Texas.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects.

The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by physical anthropology consultants (Angela Tine, Geo-Marine, Inc., and Nikki Dixon, The University of Texas at Arlington) in 2010 and 2011, working with the curator of the Buddy Jones collection at the Gregg County Historical Museum. A detailed assessment of the associated funerary objects was made by the professional staff of Archeological & Environmental Consultants, LLC, in conjunction with the curator of the Buddy Jones collection at the Gregg County Historical Museum. Both assessments were made in consultation with representatives of the Caddo Nation of Oklahoma.

History and Description of the Remains

In 2002, the Buddy Calvin Jones collection, a privately-held collection of Native American human remains and artifacts, was donated to the Gregg County Historical Museum, Longview, TX. Buddy Calvin Jones was an avocational archeologist who later became a professional archeologist, and excavated numerous sites in eastern Texas. The collection contains human remains and associated funerary objects removed from a total of 16 archeological sites, including 13 sites located in Gregg, Harrison, Red River, Rusk and Upshur counties in Texas and three sites of unknown location within eastern Texas.

In 1963, human remains representing, at minimum, five individuals were removed from three burials at site 41GG50, in Gregg County, TX. The human remains from Burial 1 include one possibly male adult, one adult of unknown sex, and one juvenile of unknown sex. The human remains from Burial 6 include an occipital cranial bone fragment of one adult of unknown sex. The human remains from Burial 7 include one adult of unknown sex. No known individuals were identified. The 11 associated funerary objects are 5 ceramic vessels from Burial 1; 4 ceramic vessels form Burial 6; and 2 ceramic vessels form Burial 7. The burials date to A.D. 1200–1400, the Middle Caddo period.

In the late 1950s, human remains representing, at minimum, six individuals were removed from five burials at site 41HS269 (C.D. Marsh), in Harrison County, TX. The human remains from Burial 1 include two human molars of one individual of unknown age and sex. The human remains from Burial 2 include one adult of unknown sex, and a human medial cuneiform and other bone fragments of one individual of unknown age and sex. The human remains from Burial 4 include a postcranial human bone from one adult of unknown sex. The human remains from Burial 6 include one child of unknown sex. The human remains from Burial 7 include one individual of unknown age and sex. No known individuals were identified. The eight associated funerary objects are four ceramic vessels from Burial 1; 1 lot of miscellaneous sherds from Burial 2; 1 lot of miscellaneous sherds from Burial 4; 1 lot of miscellaneous sherds and lithic debris from Burial 6; and 1 ceramic vessel form Burial 7. The burials rang in date from A.D. 1200–1400, the Middle Caddo period, through the middle-to-late 18th century.

Between December 1961 and January 1962, human remains representing, at minimum, two individuals were removed from one burial at site 41RR16 (Sam Kaufman), in Red River County, TX. The human remains from Burial 2 include one child of unknown sex and fragments of one adult, possibly middle aged and female. No known individuals were identified. The three associated funerary objects are ceramic vessels from Burial 2. The burial dates to A.D. 1500–1600, the Late Caddo period.

In 1957, human remains representing, at minimum, 19 individuals were removed from 16 burials at site 41UR315 (Henry Spencer), in Upshur County, TX. The site was a large cemetery known to have more than 40 burials. The human remains from Burial 1 include one adult of unknown sex. The human remains from Burial 5 include 16 long bone fragments of one individual of unknown age and sex. The human remains from Burial 8 include bone and dental fragments of one adult of unknown age and sex. The human remains from Burial 9 (or 11) include teeth and cranial fragments of one individual. The human remains from Burial 10 include teeth and skull fragments of one adult of unknown sex. The human remains from Burial 13 include teeth and bone fragments of two children of unknown sex. The human remains from Burial 18 (or 28) were comingled and include bone fragments and teeth of one child. The human remains from Burial 21 include bone fragments of one child of unknown sex. The human remains from Burial 22 include teeth and bone fragments of one child of unknown sex and two adults of unknown sex. The human remains from Burial 27 include teeth and bone fragments of one adult of unknown sex. The human remains from Burial 31 include bone fragments of one adult of unknown age and sex. The human remains from Burial 36 include a long bone of one adult of unknown sex. The human remains from an unnumbered burial (Lot 102) include one tooth, miscellaneous cranial fragments and miscellaneous postcranial fragments from one adult of unknown sex. The human remains from an unnumbered burial (Lot 145) include teeth and seven bone fragments of one individual of unknown age and sex. The human remains from an unnumbered burial (UC 31/Lot 151) include two teeth of one individual of unknown age and sex. The human remains from an unnumbered burial (Lot 129) include one adult of unknown sex. No known individuals were identified. The 62 associated funerary objects are 5 ceramic vessels from Burial 1; 6 ceramic vessels from Burial 5; 6 ceramic vessels from Burial 8; 2 ceramic vessels from Burial 9; 3 ceramic vessels from Burial 10; 3 ceramic vessels from Burial 13; 9 ceramic vessels from Burial 18; 1 ceramic vessel from Burial 21; 6 ceramic vessels and 2 ceramic elbow pipes from Burial 22; 6 ceramic vessels from Burial 27; 3 ceramic vessels from Burial 28; 2 ceramic vessels from Burial 31; 5 ceramic vessels from Burial 36; 1 ceramic vessel from an unnumbered burial (Lot 102); 1 lot of miscellaneous sherds from an unnumbered burial (UC 31/Lot 151); and 1 ceramic vessel from an unnumbered burial (Lot 129). The burials likely date to A.D. 1450–1650, the Late Caddo period.

In 1954–1955, human remains representing, at minimum, three individuals were removed from three burials at site 41UR318 (Henry Williams), in Upshur County, TX. The site was a large cemetery known to have more than 36 burials. The human remains from Burial 17 include cranial bone fragments, a temporal bone, long bone fragments, burned bone fragments and a femur diaphysis of one individual of unknown age and sex. The human remains from an unnumbered burial (Lot 130) include bone and teeth of one adult of unknown sex. The human remains from an unnumbered burial (Lot 121) include bone fragments of one juvenile or adult of unknown sex. No known individuals were identified. The two associated funerary objects are a ceramic vessel from Burial 17 and 1 lot of miscellaneous sherds from an unnumbered burial (Lot 121). The burials date to A.D. 1500–1600, the Late Caddo period.

In 1958, human remains representing, at minimum, three individuals were removed from three burials at site 41UR320 (Taft), in Upshur County, TX.

The site was a cemetery known to have six burials. The human remains from Burial 3 include molar crowns, incisor crowns and small bone fragments of one individual of unknown age and sex. The human remains from Burial 4 include bone and teeth fragments of one individual of unknown age and sex. The human remains from an unnumbered burial (Lot 150) include teeth and bone fragments of one individual of unknown age and sex. No known individuals were identified. The 15 associated funerary objects are 11 ceramic vessels from Burial 3, 3 ceramic vessels from Burial 4, and 1 plain vessel from the unnumbered burial (Lot 150). The burials date from the period A.D. 1500–1600, the Late Caddo period.

Sometime between the late 1950s and the mid-1960s, human remains representing, at minimum, one individual were removed from one burial at site GC 82 (on Hawkins Creek), in Gregg County, TX. The exact location of the burial is not specified in notes or records of the collection. The site was a cemetery known to have five burials. The human remains from Burial 5 include teeth, phalanges and bone fragments of one individual of unknown age and sex. No known individuals were identified. The one associated funerary object is a spool-necked bottle from Burial 5. The burial dates to A.D. 1500–1600, the Late Caddo period.

In June 1955, human remains representing, at minimum, one individual were removed from one burial at site 41GG51 (Hawkins Creek), in Gregg County, TX. The human remains from an unnumbered burial include mandible fragment and teeth of one juvenile of unknown sex. No known individuals were identified. The one associated funerary object is one lot of miscellaneous sherds. The burial dates to A.D. 1200–1400, the Middle Caddo period.

Sometime between the mid-1950s and mid-1960s, human remains representing at minimum, one individual were removed from one burial at site GC 10 (near Grace Creek), in Gregg County, TX. The exact location of the burial is not specified in notes or records of the collection. The human remains from the unnumbered burial include a human molar of one individual of unknown age and sex. No known individual was identified. No associated funerary objects are present. The burial dates to A.D. 1500–1600, the Late Caddo period.

In 1956, human remains representing at minimum, one individual were removed from one burial at an unknown site (Lot 169), in Rusk County, TX. The exact location of the burial is not specified in notes or records of the collection. The human remains from the unnumbered burial include a human tooth of one individual of unknown age and sex. No known individual was identified. The one associated funerary object is one lot of miscellaneous sherds. The burial dates to A.D. 1200–1400, the Middle Caddo period.

In 1956, human remains representing at minimum, one individual were removed from one burial (Lot 170), in Rusk County, TX. The exact location of the burial is not specified in notes or records of the collection. The human remains from the unnumbered burial include 5 molars, other tooth fragments, and 15 unspecified bone fragments of one individual of unknown age and sex. No known individual was identified. The one associated funerary object is one lot of miscellaneous sherds. The burial dates to A.D. 1200–1400, the Middle Caddo period.

In 1959, human remains representing, at minimum, one individual were removed from one burial at site M–6 Plummer (in Little Cypress Creek basin), in Upshur County, TX. The exact location of the burial is not specified in notes or records of the collection. The human remains from the unnumbered burial include cranium fragments and teeth of one individual of unknown age and sex. No known individuals were identified. The six associated funerary objects are five ceramic bowls and one ceramic bottle. The burial dates to A.D. 1500–1600, the Late Caddo period.

In 1954, human remains representing, at minimum, one individual were removed from one burial at site 41UR319 (Starr Mound), in Upshur County, TX. The human remains from an unnumbered burial include rib fragments, teeth, and unknown bone fragments of one individual of unknown age and sex. No known individuals were identified. No associated funerary objects are present. The burial dates to A.D. 1500–1600, the Late Caddo period.

Sometime between the mid-1950s and mid-1960s, human remains representing, at minimum, one individual were removed from one burial at site TAS–C (in the Sabine River basin), in eastern Texas. The exact location of the burial is not specified in notes or records of the collection. The human remains from the unnumbered burial include a tooth of one adult of unknown sex. No known individuals were identified. The one associated funerary object is a ceramic vessel. The burial dates to A.D. 1500–1600, the Late Caddo period.

At an unknown date between the mid-1950s and mid-1960s, human remains representing, at minimum, one individual were removed from one burial (Burial 36, Lot 134), in eastern Texas. The exact location of the burial is not specified in notes or records of the collection. The human remains from Burial 36, Lot 134 include teeth from one adolescent of unknown sex. No known individuals were identified. The three associated funerary objects are ceramic bowls. The burial dates to A.D. 1430–1680, the Late Caddo period.

Sometime between the mid-1950s and mid-1960s, human remains representing, at minimum, four individuals were removed from four unnumbered burials in eastern Texas. The exact location of the burials is not specified in notes or records of the collection. The human remains from an unnumbered burial (Lot 133) include bone of one subadult of unknown age and sex. No known individuals were identified. The one associated funerary object is an engraved bowl. The burial dates to A.D. 1430–1680, the Late Caddo period. The human remains from an unnumbered burial (Lot 116) include mandibular and molar fragments of one individual of unknown age and sex. No known individual was identified. The one associated funerary object is a brushed punctuated jar. The burial dates to A.D. 1430–1680, the Late Caddo period. The human remains from an unnumbered burial (Lot 160) include teeth and cranial fragments of one individual of unknown age and sex. No known individual was identified. The one associated funerary object is a brushed punctuated jar. The burial dates to A.D. 1500–1600, the Late Caddo period. The human remains from an unnumbered burial (Lot 167) include a human premolar, an unspecified rib fragment, and other unspecified bone fragments of one individual of unknown age and sex. No known individual was identified. The one associated funerary object is 1 lot of miscellaneous sherds. The burial dates to A.D. 1200–1400, the Middle Caddo period.

The human remains and associated funerary objects described above are affiliated with the Caddo Nation of Oklahoma based on geographical and archeological evidence. Eastern Texas is part of the traditional homelands of the Caddo Nation of Oklahoma, based on over 100 years of archeological findings, historical and ethnographic records and documents that date as early as 1540, and the cultural traditions of the Caddo peoples themselves. Many of the burial positions-in rows with the body of the individual laid on an east-west axis and the head facing west-are consistent with Caddo burials in this part of eastern Texas. The associated funerary objects also suggest Caddo origins, based on the characteristic forms, methods of

manufacture and decoration styles that are distinctly Eastern Texas Caddo.

Determinations Made by the Gregg County Historical Museum

Officials of the Gregg County Historical Museum have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of 51 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 119 funerary objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Caddo Nation of Oklahoma.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Neina Kennedy, Executive Director, Gregg County Historical Museum, 214 N. Fredonia Street, Longview, TX 75601, telephone (903) 753–5840, before August 10, 2012. Repatriation of the human remains and associated funerary objects to the Caddo Nation of Oklahoma may proceed after that date if no additional claimants come forward.

The Gregg County Historical Museum is responsible for notifying the Caddo Nation of Oklahoma that this notice has been published.

Dated: June 7, 2012.

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2012–16927 Filed 7–10–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

[Docket No. ONRR–2011–0025]

Agency Information Collection Activities: Submitted for Office of Management and Budget Review; Comment Request

AGENCY: Office of Natural Resources Revenue, Interior.

ACTION: Notice of an extension of a currently approved information collection.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), the Office of Natural Resources Revenue (ONRR) is notifying the public that we have submitted to the Office of Management and Budget (OMB) an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR parts 1227, 1228, and 1229. This notice also provides the public with a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATES: Submit written comments on or before August 10, 2012.

ADDRESSES: Submit written comments by either FAX (202) 395–5806 or email (*OIRA_Docket@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1012–0003).

Please also submit a copy of your comments to ONRR by one of the following methods:

- Electronically go to *http://www.regulations.gov*. In the entry titled ''Enter Keyword or ID,'' enter ONRR–2011–0025, and then click search. Follow the instructions to submit public comments. We will post all comments.
- Mail comments to Stephen Chubb, Regulatory Specialist, Office of Natural Resources Revenue, P.O. Box 25165, MS 64000A, Denver, Colorado 80225. Please reference ICR 1012–0003 in your comments.
- Hand-carry comments or use an overnight courier service. Our courier address is Building 85, Room A–614, Denver Federal Center, West 6th Ave. and Kipling St., Denver, Colorado 80225. Please reference ICR 1012–0003 in your comments.

FOR FURTHER INFORMATION CONTACT: Stephen Chubb, email *stephen.chubb@onrr.gov*. You may also contact Stephen Chubb to obtain copies, at no cost, of (1) the ICR, (2) any associated forms, and (3) the regulations that require the subject collection of information. You may also review the ICR online at *http://www.reginfo.gov/public/do/PRAMain*.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Parts 1227, 1228, and 1229, Delegated and Cooperative Activities with States and Indian Tribes.

OMB Control Number: 1012–0003.

Bureau Form Numbers: None.

Abstract: The Secretary of the U.S. Department of the Interior is responsible for mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary's responsibility, according to various laws, is to manage mineral resource production from Federal and Indian lands and the OCS, collect the royalties and other mineral revenues due, and distribute the funds collected in accordance with applicable laws. The Secretary also has a trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. ONRR performs the minerals revenue management functions for the Secretary and assists the Secretary in carrying out the Department's trust responsibility for Indian lands. Public laws pertaining to mineral leases on Federal and Indian lands are available at *http://www.onrr.gov/Laws_R_D/PublicLawsAMR.htm*.

When a company or an individual enters into a lease to explore, develop, produce, and dispose of minerals from Federal or Indian lands, that company or individual agrees to pay the lessor a share in an amount or value of production from the leased lands. The lessee, or the designee, must report various kinds of information to the lessor relative to the disposition of the leased minerals. Such information is generally available within the records of the lessee or others involved in developing, transporting, processing, purchasing, or selling of such minerals. The information that ONRR collects includes data necessary to ensure that the lessee accurately values and appropriately pays all royalties and other mineral revenues due.

The Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), which the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 amended, authorizes the Secretary to develop delegated and cooperative agreements with States (30 U.S.C 1735, sect. 205) and Indian Tribes (30 U.S.C. 1732, sect. 202) to carry out certain inspection, auditing, investigation, or limited enforcement activities for oil and gas leases in their jurisdiction. The States and Indian Tribes are working partners and are an integral part of the overall onshore and offshore compliance effort. The Appropriations Act of 1992 also authorizes the States and Tribes to perform the same functions for coal and other solid mineral leases.

This collection of information is necessary in order for States and Tribes to conduct audits and related investigations of Federal and Indian oil, gas, coal, any other solid minerals, and geothermal royalty revenues from Federal and tribal leased lands. Relevant parts of the regulations include 30 CFR parts 1227, 1228, and 1229, as described below:

Title 30 CFR part 1227—Delegation to States, provides procedures to delegate certain Federal minerals revenue management functions to States for Federal oil and gas leases. The regulations provide only audit and investigation functions to States for Federal geothermal and solid mineral leases, and leases subject to section 8(g) of the OCS Lands Act, within their State boundaries. In order for ONRR to consider a State for such delegation, the State must submit a written proposal to, and receive approval from, the ONRR Director. States also must provide periodic accounting documentation to ONRR, including an annual work plan and quarterly reimbursement vouchers.

Title 30 CFR part 1228—Cooperative Activities with States and Indian Tribes, provides procedures for Indian Tribes to carry out audits and related investigations of their respective leased lands. The Tribe must submit a written proposal to ONRR in order to enter into a cooperative agreement. The proposal must outline the activities that the Tribe will undertake and must present evidence that the Tribe can meet the Secretary's standards in order for the Tribe to conduct the activities. The Tribe also must submit an annual work plan and budget, as well as quarterly reimbursement vouchers.

Title 30 CFR part 1229—Delegation to States provides procedures for States to carry out audits and related investigations of leased Indian lands within their respective State boundaries by permission of the respective Indian tribal councils or individual Indian mineral owners. The State must receive the Secretary's delegation of authority and submit annual audit work plans detailing its audits and related investigations, annual budgets, and quarterly reimbursement vouchers. States also must maintain records according to section 1227.200(d).

ONRR protects proprietary information that the States and Tribes submit under this collection. We do not collect items of a sensitive nature. States and Tribes must respond in order to obtain the benefit of entering into a cooperative agreement with the Secretary.

Frequency: Varies based on the function performed.

Estimated Number and Description of Respondents: 10 States and 6 Indian Tribes.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 5,519 hours.

We have not included in our estimates certain usual and customary requirements that States and Tribes perform in the normal course of business. This 30-day **Federal Register** notice burden chart shows a 12-hour reduction in annual burden hours from the previous 60-day notice. This adjustment is for section 1227.200(e). The following table shows the estimated burden hours by CFR section and paragraph:

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS

30 CFR Section	Reporting and recordkeeping requirements	Hour burden per response	Number of annual responses	Annual burden hours
	Part 1227—Delegation to States **Delegation Proposals**			
1227.103; 107; 109; 110(a–b(1)); 110(c–e); 111(a–b); 805.	What must a State's delegation proposal contain? If you want ONRR to delegate royalty management functions to you, then you must submit a delegation proposal to the ONRR Deputy Director. The ONRR will provide you with technical assistance and information to help you prepare your delegation proposal.	200	1	200
	Delegation Process			
1227.110(b)(2)	(b)(2) If you want to change the terms of your delegation agreement for the renewal period, you must submit a new delegation proposal under this part.	16	11	176
	Existing Delegations **Compensation**			
1227.112(d) and (e)	What compensation will a State receive to perform delegated functions? You will receive compensation for your costs to perform each delegated function subject to the following conditions * * * (d) At a minimum, you must provide vouchers detailing your expenditures quarterly during the fiscal year. However, you may agree to provide vouchers on a monthly basis in your delegation agreement * * * (e) You must maintain adequate books and records to support your vouchers * * *	4	64	256
	States' Responsibilities To Perform Delegated Functions			
1227.200(a), (b), (c) and (d)	What are a State's general responsibilities if it accepts a delegation? For each delegated function you perform, you must: (a) * * * seek information or guidance from ONRR regarding new, complex, or unique issues. * * * (b)(1) * * * Provide complete disclosure of financial results of activities;	200	10	2,000

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR Section	Reporting and recordkeeping requirements	Hour burden per response	Number of annual responses	Annual burden hours
	(2) Maintain correct and accurate records of all mineral-related transactions and accounts; (3) Maintain effective controls and accountability; (4) Maintain a system of accounts * * * (5) Maintain adequate royalty and production information * * * (c) Assist ONRR in meeting the requirements of the Government Performance and Results Act (GPRA) * * * (d) Maintain all records you obtain or create under your delegated function, such as royalty reports, production reports, and other related information. * * * You must maintain such records for at least 7 years. * * *			
1227.200(e); 801(a); 804	(e) Provide reports to ONRR about your activities under your delegated functions * * * At a minimum, you must provide periodic statistical reports to ONRR summarizing the activities you carried out * * *	3	40	120
1227.200(f); 401(e); 601(d)	(f) Assist ONRR in maintaining adequate reference, royalty, and production databases. * * *	1	250	250
1227.200(g); 301(e)	(g) Develop annual work plans * * *	60	10	600
1227.200(h)	(h) Help ONRR respond to requests for information from other Federal agencies, Congress, and the public * * *	8	10	80
1227.400(a)(4) and (a)(6); 401(d); 501(c).	What functions may a State perform in processing production reports or royalty reports? Production reporters or royalty reporters provide production, sales, and royalty information on mineral production from leases that must be collected, analyzed, and corrected. (a) If you request delegation of either production report or royalty report processing functions, you must perform * * * (4) Timely transmitting production report or royalty report data to ONRR and other affected Federal agencies * * * (6) Providing production data or royalty data to ONRR and other affected Federal agencies. * * *	250	1	250
1227.400(c)	(c) You must provide ONRR with a copy of any exceptions from reporting and payment requirements for marginal properties and any alternative royalty and payment requirements for unit agreements and communitization agreements you approve.	12	1	12
1227.601(c)	What are a State's responsibilities if it performs automated verification? To perform automated verification of production reports or royalty reports, you must * * * (c) Maintain all documentation and logging procedures * * *	10	1	10
Performance Review				
Subtotal Burden for 30 CFR Part 1227			399	3,954
Part 1228—Cooperative Activities With States and Indian Tribes Subpart C—Oil and Gas, Onshore				
1228.100(a) and (b); 101(c); 107(b).	Entering into an agreement	200	1	200
	(a) * * * Indian Tribe may request the Department to enter into a cooperative agreement by sending a letter from * * * tribal chairman * * * to the Director of ONRR. (b) The request for an agreement shall be in a format prescribed by ONRR and should include at a minimum the following information: (1) Type of eligible activities to be undertaken. (2) Proposed term of the agreement. (3) Evidence that * * * Indian Tribe meets, or can meet by the time the agreement is in effect * * *			

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR Section	Reporting and recordkeeping requirements	Hour burden per response	Number of annual responses	Annual burden hours
	(4) If the State is proposing to undertake activities on Indian lands located within the State, a resolution from the appropriate tribal council indicating their agreement to delegate to the State responsibilities under the terms of the cooperative agreement for activities to be conducted on tribal or allotted land.			
1228.101(a)	Terms of agreement	15	6	90
	(a) Agreements entered into under this part shall be valid for a period of 3 years and shall be renewable * * * upon request of * * * Indian Tribe. * * *			
1228.101(d)	(d) * * * Indian Tribe will be given 60 days to respond to the notice of deficiencies and to provide a plan for correction of those deficiencies. * * *	80	1	80
1228.103(a) and (b)	Maintenance of records	120	6	720
	(a) * * * Indian Tribe entering into a cooperative agreement under this part must retain all records, reports, working papers, and any backup materials * * *			
	(b) * * * Indian Tribe shall maintain all books and records * * *			
1228.105(a)(1) and (a)(2)	Funding of cooperative agreements	60	6	360
	(a)(1) The Department may, under the terms of the cooperative agreement, reimburse * * * Indian Tribe up to 100 percent of the costs of eligible activities. Eligible activities will be agreed upon annually upon the submission and approval of a work plan and funding requirement.			
	(2) A cooperative agreement may be entered into with * * * Indian Tribe, upon request, without a requirement for reimbursement of costs by the Department.			
1228.105(c)	(c) . . . Indian Tribe shall submit a voucher for reimbursement of eligible costs incurred within 30 days of the end of each calendar quarter. * * * Indian Tribe must provide the Department a summary of costs incurred, for which * * * Indian Tribe is seeking reimbursement, with the voucher.	4	24	96
Subtotal Burden for 30 CFR Part 1228			44	1,546
Part 1229—Delegation to States Subpart C—Oil and Gas, Onshore Administration of Delegations				
1229.100(a)(1) and (a)(2)	Authorities and responsibilities subject to delegation	1	1	1
	(a) All or part of the following authorities and responsibilities of the Secretary under the Act may be delegated to a State authority:			
	(1) Conduct of audits related to oil and gas royalty payments made to the ONRR which are attributable to leased * * * Indian lands within the State. Delegations with respect to any Indian lands require the written permission, subject to the review of the ONRR, of the affected Indian Tribe or allottee.			
	(2) Conduct of investigation related to oil and gas royalty payments made to the ONRR which are attributable to * * * Indian lands within the State. Delegation with respect to any Indian lands require the written permission, subject to the review of the ONRR, of the affected Indian Tribe or allottee. No investigation will be initiated without the specific approval of the ONRR. * * *			
1229.101(a) and (d)	Petition for delegation	1	1	1
	(a) The governor or other authorized official of any State which contains * * * Indian oil and gas leases where the Indian Tribe and allottees have given the State an affirmative indication of their desire for the State to undertake certain royalty management-related activities on their lands, may petition the Secretary to assume responsibilities to conduct audits and related investigations of royalty related matters affecting * * * Indian oil and gas leases within the State * * *	1	1	1

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR Section	Reporting and recordkeeping requirements	Hour burden per response	Number of annual responses	Annual burden hours
	(d) In the event that the Secretary denies the petition, the Secretary must provide the State with the specific reasons for denial of the petition. The State will then have 60 days to either contest or correct specific deficiencies and to reapply for a delegation of authority.			
1229.102(c)	Fact-finding and hearings	1	1	1
	(c) A State petitioning for a delegation of authority shall be given the opportunity to present testimony at a public hearing.			
1229.103(c)	Duration of delegations; termination of delegations	1	1	1
	(c) A State may terminate a delegation of authority by giving a 120-day written notice of intent to terminate.			
1229.105	Evidence of Indian agreement to delegation	1	1	1
	In the case of a State seeking a delegation of authority for Indian lands * * * the State petition to the Secretary must be supported by an appropriate resolution or resolutions of tribal councils joining the State in petitioning for delegation and evidence of the agreement of individual Indian allottees whose lands would be involved in a delegation. Such evidence shall specifically speak to having the State assume delegated responsibility for specific functions related to royalty management activities.			
1229.106	Withdrawal of Indian lands from delegated authority. If at any time an Indian Tribe or an individual Indian allottee determines that it wishes to withdraw from the State delegation of authority in relation to its lands, it may do so by sending a petition of withdrawal to the State. * * *	1	1	1
1229.109(a)	Reimbursement for costs incurred by a State under the delegation of authority.	1	1	1
	(a) The Department of the Interior (DOI) shall reimburse the State for 100 percent of the direct cost associated with the activities undertaken under the delegation of authority. The State shall maintain books and records in accordance with the standards established by the DOI and will provide the DOI, on a quarterly basis, a summary of costs incurred * * *			
1229.109(b)	(b) The State shall submit a voucher for reimbursement of costs incurred within 30 days of the end of each calendar quarter.	1	4	4
	Delegation Requirements			
1229.120	Obtaining regulatory and policy guidance. All activities performed by a State under a delegation must be in full accord with all Federal laws, rules and regulations, and Secretarial and agency determinations and orders relating to the calculation, reporting, and payment of oil and gas royalties. In those cases when guidance or interpretations are necessary, the State will direct written requests for such guidance or interpretation to the appropriate ONRR officials. * * *	1	1	1
1229.121	Recordkeeping requirements	1	1	1
	(a) The State shall maintain in a safe and secure manner all records, workpapers, reports, and correspondence gained or developed as a consequence of audit or investigative activities conducted under the delegation * * *			
	(b) The State must maintain in a confidential manner all data obtained from DOI sources or from payor or company sources under the delegation * * *			

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR Section	Reporting and recordkeeping requirements	Hour burden per response	Number of annual responses	Annual burden hours
	(c) All records subject to the requirements of paragraph (a) must be maintained for a 6-year period measured from the end of the calendar year in which the records were created * * * Upon termination of a delegation, the State shall, within 90 days from the date of termination, assemble all records specified in subsection (a), complete all working paper files in accordance with § 229.124, and transfer such records to the ONRR. (d) The State shall maintain complete cost records for the delegation in accordance with generally accepted accounting principles. * * *			
1229.122	Coordination of audit activities (a) Each State with a delegation of authority shall submit annually to the ONRR an audit workplan specifically identifying leases, resources, companies, and payors scheduled for audit * * * A State may request changes to its workplan * * * at the end of each quarter of each fiscal year. All requested changes are subject to approval by the ONRR and must be submitted in writing. (b) When a State plans to audit leases of a lessee or royalty payor for which there is an ONRR or OIG resident audit team, all audit activities must be coordinated through the ONRR or OIG resident supervisor. * * * (c) The State shall consult with the ONRR and/or OIG regarding resolution of any coordination problems encountered during the conduct of delegation activities.	1	1	1
1229.123(b)(3)(i)	Standards for audit activities. (b)(3) Standards of reporting. (i) Written audit reports are to be submitted to the appropriate ONRR officials at the end of each field examination.	1	1	1
1229.124	Documentation standards. Every audit performed by a State under a delegation of authority must meet certain documentation standards. In particular, detailed workpapers must be developed and maintained.	1	1	1
1229.125(a) and (b)	Preparation and issuance of enforcement documents (a) Determinations of additional royalties due resulting from audit activities conducted under a delegation of authority must be formally communicated by the State, to the companies or other payors by an issue letter prior to any enforcement action. * * * (b) After evaluating the company or payor's response to the issue letter, the State shall draft a demand letter which will be submitted with supporting workpaper files to the ONRR for appropriate enforcement action. Any substantive revisions to the demand letter will be discussed with the State prior to issuance of the letter. * * *	1	1	1
1229.126(a) and (b)	Appeals (a) . . . The State regulatory authority shall, upon the request of the ONRR, provide competent and knowledgeable staff for testimony, as well as any required documentation and analyses, in support of the lessor's position during the appeal process. (b) An affected State, upon the request of the ONRR, shall provide expert witnesses from their audit staff for testimony as well as required documentation and analyses to support the Department's position during the litigation of court cases arising from denied appeals. * * *	1	1	1
1229.127	Reports from States. The State, acting under the authority of the Secretarial delegation, shall submit quarterly reports which will summarize activities carried out by the State during the preceding quarter of the year under the provisions of the delegation. * * *	1	1	1
Subtotal Burden for 30 CFR Part 229			19	19

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR Section	Reporting and recordkeeping requirements	Hour burden per response	Number of annual responses	Annual burden hours
TOTAL BURDEN			462	5,519

Estimated Annual Reporting and Recordkeeping ''Non-hour'' Cost Burden: We have identified no ''non-hour cost'' burden associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501 *et seq.*) provides that 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.

Comments: Section 3506(c)(2)(A) of the PRA requires each agency to ''* * * provide 60-day notice in the **Federal Register** * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to (a) evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information that ONRR collects; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, we published a notice in the **Federal Register** on February 2, 2012 (77 FR 5268), announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. We received no unsolicited comments in response to the notice.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection, but they may respond after 30 days. Therefore, in order to ensure maximum consideration, OMB should receive public comments by August 10, 2012.

Public Comment Policy: We post all comments, including names and addresses of respondents, at *http://www.regulations.gov*. Before including your address, phone number, email address, or other personal identifying information in your comment, be advised that we may make publicly available at any time your entire comment—including your personal identifying information. While you can ask us in your comment to withhold from public view your personal identifying information, we cannot guarantee that we will be able to do so.

Information Collection Clearance Officer: Laura Dorey (202) 208–2654.

Dated: June 21, 2012.

Gregory J. Gould,

Director, Office of Natural Resources Revenue.

[FR Doc. 2012–16922 Filed 7–10–12; 8:45 am]

BILLING CODE 4310–T2–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–12–017]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: July 17, 2012 at 11:00 a.m.

PLACE: Room 100, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Vote in Inv. Nos. 731–TA–678–679 and 681–682 (Third Review) (Stainless Steel Bar from Brazil, India, Japan, and Spain). The Commission is currently scheduled to transmit its determinations and Commissioners' opinions to the Secretary of Commerce on or before July 26, 2012.
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: July 9, 2012.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–17056 Filed 7–9–12; 4:15 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–363]

Controlled Substances: Proposed Adjustment to the Aggregate Production Quotas for 2012

In notice document 2012–16396 appearing on pages 39737–38741 in the issue of Thursday, July 5, 2012, make the following correction:

On page 39739, in the table, in the second line from the bottom of the page, the third column should read ''No Change.''

[FR Doc. C1–2012–16396 Filed 7–10–12; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances Notice of Application; ISP Freetown Fine Chemicals

Pursuant to Title 21 Code of Federal Regulations 1301.34(a), this is notice that on April 30, 2012, ISP Freetown Fine Chemicals, 238 South Main Street, Assonet, Massachusetts 02702, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of Phenylacetone (8501), a basic class of controlled substance listed in schedule II.

The company plans to import the controlled substance to manufacture amphetamine.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances listed in schedule I or II, which fall under the authority of section 1002(a)(2)(B) of the Act 21 U.S.C. 952 (a)(2)(B) may, in the circumstances set forth in 21 U.S.C. 958(i), file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43, and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement

Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than August 10, 2012.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, 40 FR 43745–46, all applicants for registration to import a basic class of any controlled substance in schedules I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: July 2, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–16920 Filed 7–10–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application; United States Pharmacopeial Convention

Pursuant to Title 21 Code of Federal Regulations 1301.34 (a), this is notice that on February 17, 2012, United States Pharmacopeial Convention, 12601 Twinbrook Parkway, Rockville, Maryland 20852, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of the following basic classes of controlled substances:

Drug	Schedule
Cathinone (1235)	I
Methaqualone (2565)	I
Lysergic acid diethylamide (7315)	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
3,4-Methylenedioxyamphetamine (7400).	I
Codeine-N-oxide (9053)	I
Heroin (9200)	I
Morphine-N-oxide (9307)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phenmetrazine (1631)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Phencyclidine (7471)	II
4-Anilino-N-phenethyl-4-piperidine (8333).	II
Phenylacetone (8501)	II
Alphaprodine (9010)	II
Anileridine (9020)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Sufentanil (9740)	II

The company plans to import reference standards for sale to researchers and analytical labs.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances listed in schedule I or II, which fall under the authority of section 1002(a)(2)(B) of the Act 21 U.S.C. 952 (a)(2)(B) may, in the circumstances set forth in 21 U.S.C. 958(i), file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43, and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than August 10, 2012.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, 40 FR 43745–46, all applicants for registration to import a basic class of any controlled substance in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: July 2, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–16918 Filed 7–10–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement—Technical Assistance Site Management in NIC's Evidence-Based Decision Making in Local Criminal Justice Systems Initiative

AGENCY: National Institute of Corrections, U.S. Department of Justice.

ACTION: Solicitation for a Cooperative Agreement.

SUMMARY: The National Institute of Corrections (NIC) Community Services Division is soliciting proposals from organizations, groups, or individuals to enter into a cooperative agreement with NIC for up to 16 months beginning in August 2012. Work under this cooperative agreement is part of a larger NIC initiative, Evidence-Based Decision Making (EBDM) in Local Criminal Justice Systems. Work under this cooperative agreement will be coordinated with awardees of other cooperative agreements who will be providing services under Phase III of this initiative.

Specifically, under this cooperative agreement, the awardee will provide technical assistance to seven Phase III sites that have already been identified. During Phase II of the EBDM initiative, the seven sites identified change strategies based on their individual system planning activities. These change strategies are critical to meeting their system's harm reduction goals. The technical assistance from this award will be targeted to the identified change strategies.

DATES: Applications must be received by 4 p.m. (EDT) on Friday, July 30, 2012.

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. Electronic applications can be submitted via *http://www.grants.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this announcement can be downloaded from the NIC Web site at *www.nicic.gov/cooperativeagreements*.

All technical or programmatic questions concerning this announcement should be directed to Lori Eville, Correctional Program Specialist, National Institute of Corrections, at *leville@bop.gov*. In addition to direct reply, all questions and answers will be posted on the NIC Web site at *www.nicic.gov* for public review (the names of those submitting questions will not be posted). The Web site will be updated regularly and postings will remain on the Web site until the closing date of this cooperative agreement solicitation. Only questions received by 12:00 p.m. (EDT) on July 20, 2012 will be posted on the NIC Web site.

SUPPLEMENTARY INFORMATION:

Overview: The overall goal of the EBDM Initiative is to establish and test articulated linkages (information tools and protocols) between the decisions of local criminal justice stakeholders and the application of human and organizational change principles (evidence-based practices) in achieving measurable reductions in pretrial misconduct and post-conviction risk of reoffending. The unique focus of the initiative is the review of locally developed criminal justice strategies that guide practice within existing sentencing statutes and rules.

The initiative intends to (1) improve the quality of information that jurisdictions use to make individual case decisions in local systems and (2) engage these systems as policymaking bodies to collectively improve the effectiveness and capacity of their decision making related to pretrial release/sentencing options. Local officials involved in the initiative include: Judges, prosecutors, public defenders, police, human service providers, county executives, and administrators of jail, probation, and pretrial services agencies.

Local criminal justice decisions are defined broadly to include dispositions regarding arrest, cite and release or to custody, pretrial release or detention and setting of bail and pretrial release conditions, pretrial diversion, charging and plea bargaining, sentencing of adjudicated offenders regarding use of community and custody options, and responses to violations of conditions of pretrial release and community sentences.

Background: In June 2008, the National Institute of Corrections (NIC) launched a multi-phased initiative and awarded a cooperative agreement to address evidence-based decision making in local criminal justice systems. The goal of Phase I of the initiative was to build a systemwide framework (from arrest through final disposition and discharge) that would result in more collaborative evidence-based decision making and practices in local criminal justice systems. This effort was grounded in two decades of research on the factors that contribute to criminal reoffending and the methods a justice system can employ to interrupt the cycle of reoffense. Today, the initiative seeks to equip criminal justice policymakers in local communities with information, processes, and tools that will result in measurable reductions of pretrial misconduct and post-conviction reoffending.

The principle product of Phase I of this initiative was the Evidence-Based Decision Making Framework in Local Criminal Justice Systems. The Framework identifies the key structural elements of a system informed by evidence-based practice. It defines a vision of safer communities. It puts forward the belief that risk and harm reduction are fundamental goals of the justice system and that these can be achieved without sacrificing offender accountability or other important justice system outcomes.

The Framework both acknowledges the importance of the key premises and values underlying our criminal justice system and provides a set of principles to guide evidence-based decision making within that context. The principles themselves are evidence-based. The Framework also highlights groundbreaking research that demonstrates that pretrial misconduct and offender recidivism can be reduced. It identifies the key stakeholders who must be actively engaged in a collaborative partnership if an evidence-based system of justice is to be achieved. It outlines the difficult challenges agencies face as they seek to deliberately and systematically implement such an approach in their local communities. A copy of the Evidence-Based Decision Making Framework document can be downloaded online at *http://nicic.gov/Library/024372*.

In August 2010, NIC launched Phase II (Planning and Engagement) of the Evidence-Based Decision Making in Local Criminal Justice Systems Initiative by selecting seven jurisdictions to serve as EBDM ''seed sites.'' Those sites are Mesa County, Colorado; Grant County, Indiana; Ramsey County, Minnesota; Yamhill County, Oregon; City of Charlottesville/County of Albemarle, Virginia; Eau Claire County, Wisconsin; Milwaukee County, Wisconsin.

The cooperative agreement awardees of Phase II provided extensive technical assistance to each of the seven seed sites for a period of 10 months. The overarching purpose of the technical assistance was to (1) Develop a shared philosophy and vision for the local criminal justice system; (2) Determine the capacity to collect and analyze data, including the quality of the data, to support ongoing analysis of the effectiveness of current and future policies, practices, and services designed to achieve specific risk and harm reduction outcomes; and (3) Change knowledge, skills, and abilities regarding research-based risk reduction strategies.

Each site received technical assistance that was specific to the initiative and individualized to its system's needs. Monthly site visits from an assigned technical assistance site coordinator led the jurisdictions through the attainment of specific activities and goals. The Roadmap to Phase II outlines the major objectives that the technical assistance providers guided the seeds sites through. A copy of the roadmap is available online at *http://static.nicic.gov/Public/roadmap_phase_ii_final_2.docx.*

The technical assistance was intended to lead to the following outcomes: Build a genuine, collaborative policy team; Build individual agencies that are collaborative and in a state of readiness for change; Understand current practice within each agency/across the system; Understand and have the capacity to implement evidence-based practices; Establish performance measurements/outcomes/system scorecard; Develop a system logic model; Engage/gain support of the community; and Develop a strategic action plan.

All seven sites completed Phase II in October 2011. Each jurisdiction submitted an application for acceptance into Phase III of the initiative. Within their applications are a detailed strategic action plan and their system's logic model. The action plan and logic model are the foundation of implementation activities of the Phase III technical assistance.

Scope of Work: The intent of this request for proposal is to expand the availability of technical assistance to the jurisdictions involved in NIC's Evidence-Based Decision Making in Local Criminal Justice Systems

Initiative. Technical assistance will be coordinated and/or provided to seven EBDM sites: Grant County, IN; Yamhill County, OR; Charlottesville, VA; and Ramsey County, MN; Mesa County, CO; Milwaukee County, WI; Eau Claire County, WI. The technical assistance will be guided by each site's established strategic action plan, logic model, and other agreed upon specialized assistance required to reach the jurisdiction's identified outcomes.

In addition, targeted technical assistance will be provided to each of the seven sites to develop a site-specific communication strategy. The communication strategy will guide elected and non-elected officials in effectively communicating the set of core principles upon which their criminal justice system will base its decisions. The communication strategy will be targeted to both criminal justice staff and the general public.

Project Deliverables: (1) The awardee will work with the site coordinator from each of the seven sites to develop a report that prioritizes current unfunded, targeted activities that require technical assistance. These activities include technical assistance events across the criminal justice system in areas such as data collection, risk assessment, application of evidence-based practices, logic model development, guarding against implementation failure, and sustaining change. The report will include how the technical assistance will be provided, the recommended technical assistance provider, the estimated cost of delivering the technical assistance, and the anticipated effect that delivering the technical assistance will have on the sites' performance measures. This report will be due within 60 days of the award. (2) The awardee will develop a report from each technical assistance event completed by the technical assistance provider and submitted to the site and NIC. At minimum, the report will include the activities that the technical assistance is addressing, who attended the technical assistance event, the outcome of the technical assistance, and other findings and/or recommendations. (3) The awardee will work with each of the seven jurisdictions to develop a strategic communications plan that outlines their criminal justice systems' mission, vision, and risk and harm reduction measures and strategies. This will include a written communications plan that will identify key audiences of both internal and external stakeholders to which the message shall be communicated.

Meetings: The cooperative agreement awardee will participate in an initial meeting with the NIC staff for a project overview and preliminary planning meeting within 2 weeks of the award. The awardee will meet with NIC staff routinely to discuss the activities noted in the timeline during the course of the cooperative agreement. Meetings will be held no less than quarterly and may be conducted via webinar or in person as agreed upon by NIC and the awardee.

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, and a budget narrative explaining projected costs. The following forms must also be included: OMB Standard Form 424, Application for Federal Assistance; OMB Standard Form 424A, Budget information—Non-Construction Programs; OMB Standard Form 424B, 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 the Drug-Free Workplace Requirements (available at *http://www.nicic.gov/downloads/general/certif-frm.pdf.*

Applications may be submitted in hard copy, or electronically via *http://www.grants.gov.* If submitted in hard copy, there needs to 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: Pub. L. 93–415.

Funds Available: Up to $300,000 is available for this project, subject to available funding, but preference will be given to applicants who provide the most cost efficient solutions in accomplishing the scope of work. Determination will be made based on best value to the government, not necessarily the lowest bid. Funds may be used only for the activities that are directly related to the project.

This project will be a collaborative venture with the NIC Community Services 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.

Required Expertise: Successful applicants must be able to demonstrate that they have the organizational capacity to carry out the deliverables of this project. Appropriate expertise may include extensive experience in correctional and criminal justice policy and practice and a strong background in criminal justice systemwide change with experience in the implementation of evidence-based practices in the criminal justice system to reduce pretrial misconduct and offender risk of reoffending. Applicants should also have demonstrated the ability to package a criminal justice strategy and advance it to a national audience.

Review Considerations: Applications received under this announcement will be subject to the NIC review process. The criteria for the evaluation of each application will be as follows:

Program Narrative: (50%)

Are all of the project tasks adequately discussed, and is there a clear statement of how each will be accomplished, including the staffing, resources, and strategies to be employed? Are there any innovative approaches, techniques, or design aspects proposed that will enhance the project?

Organizational Capabilities: (25%)

Do the skills, knowledge, and expertise of the applicant(s) and the proposed project staff demonstrate a high level of competency to complete the tasks? Does the applicant have the necessary experience and organizational capacity to complete the goals of the project?

Program Management/Administration (25%)

Does the applicant identify reasonable objectives, milestones, and measures to track progress? If there are consultants and/or partnerships proposed, is there a clear structure to ensure effective utilization and coordination? Is the proposed budget realistic, does it provide sufficient cost detail/narrative, and does it represent good value relative to the anticipated results?

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, dial 1–866–705–5711 and select option 1).

Registration in the CCR can be done online at the CCR Web site *http://www.ccr.gov.* A CCR Handbook and

worksheet can also be reviewed at the Web site.

Number of Awards: One.

NIC Opportunity Number: 12CS04. This number should appear as a reference line in the cover letter, where indicated on Standard Form 424, and outside of the envelope in which the application is sent.

Catalog of Federal Domestic Assistance Number: 16.603.

Executive Order 12372: This program is subject to the provisions of Executive Order 12372.

E.O. 12372 allows states the option of setting up a system for reviewing applications from within their states for assistance under certain federal programs. Applicants (other than federally recognized Indian tribal governments) should contact their state Single Point of Contact (SPOC), a list of which is available at *http://www.whitehouse.gov/omb/grants_spoc.*

Christopher Innes,

Acting Director, National Institute of Corrections.

[FR Doc. 2012–16925 Filed 7–10–12; 8:45 am]

BILLING CODE 4410–36–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Arts and Artifacts Indemnity Panel Advisory Committee

AGENCY: Federal Council on the Arts and the Humanities, National Endowment for the Humanities, National Foundation on the Arts and the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Federal Council on the Arts and the Humanities will hold a meeting of the Arts and Artifacts Domestic Indemnity Panel. The purpose of the meeting is for panel review, discussion, evaluation, and recommendation of applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities for exhibitions beginning after October 1, 2012.

DATES: The meeting will be held on Monday, August 6, 2012, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Old Post Office Building, 1100 Pennsylvania Ave. NW., Washington, DC 20506, in Room 730.

FOR FURTHER INFORMATION CONTACT: Lisette Voyatzis, Committee Management Officer, 1100 Pennsylvania Avenue NW., Room 529, Washington, DC 20506, or call (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the National Endowment for the Humanities' TDD terminal at (202) 606–8282.

SUPPLEMENTARY INFORMATION: Because the meeting will consider proprietary financial and commercial data provided in confidence by indemnity applicants, and material that is likely to disclose trade secrets or other privileged or confidential information, and because it is important to keep the values of objects to be indemnified, and the methods of transportation and security measures confidential, the meetings will be closed to the public pursuant to section 552b(c)(4) of Title 5 U.S.C., as amended. I have made this determination under the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings dated July 19, 1993.

Dated: July 6, 2012.

Lisette Voyatzis,

Committee Management Officer.

[FR Doc. 2012–16903 Filed 7–10–12; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0164; Docket Nos. 50–315; 50–316; License Nos. DPR–58; DPR–74 EA–12–005]

In the Matter of Indiana Michigan Power Company, D. C. Cook Nuclear Power Plant; Confirmatory Order Modifying License (Effective Immediately)

I

Indiana Michigan Power Company (Licensee) is the holder of Reactor Operating License Nos. DPR–58 and DPR–74 issued by the U.S. Nuclear Regulatory Commission (NRC or the Commission) pursuant to Title 10 of the Code of Federal Regulations (10 CFR) part 50, on October 25, 1974, for Unit 1 and on December 23, 1977, for Unit 2. Both licenses were renewed on August 30, 2005. The licenses authorize the operation of the D. C. Cook Nuclear Power Plant in accordance with conditions specified therein.

This Confirmatory Order is the result of an agreement reached during an alternative dispute resolution (ADR) mediation session conducted on May 23, 2012.

II

On June 1, 2011, the NRC Office of Investigations (OI) began an investigation (OI Report No. 3–2011–011) at the D. C. Cook Nuclear Power Plant. Based on the evidence developed during its investigation, the NRC identified one apparent violation of NRC requirements in 10 CFR Part 26, Sections 4(b) and 31(d)(2)(v) by failing to ensure that an individual, who was offsite when selected for Fitness-for-Duty (FFD) testing, was tested at the earliest reasonable and practical opportunity when both the donor and collectors were available. The results of the investigation, completed on December 28, 2011, were sent to Indiana Michigan Power Company in a letter dated March 6, 2012.

On May 23, 2012, the NRC and Indiana Michigan Power Company met in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. ADR is a process in which a neutral mediator with no decision-making authority assists the parties in reaching an agreement on resolving any differences regarding the dispute. This confirmatory order is issued pursuant to the agreement reached during the ADR process.

III

In response to the NRC's offer, Indiana Michigan Power Company requested use of the NRC ADR process to resolve differences it had with the NRC. During that ADR session, a preliminary settlement agreement was reached. The elements of the agreement consisted of the following:

1. The licensee has stated that it has completed the following actions, which will be acknowledged in the Confirmatory Order (CO):

a. Benchmarked nine different nuclear utilities for firm definition of ''available'' in regard to random drug testing;

b. Conducted unannounced FFD testing of the high level individual, who was not tested on May 3, 2011;

c. Revised site procedure SPP–2060–SFI–411, ''Fitness-for-Duty (FFD) Random Selection and Notification Process,'' to include a definition of ''available'' for testing as it relates to the FFD random testing process based on the benchmarking results;

d. Performed a gap analysis and revised the FFD collector training material;

e. Briefed the FFD collectors on the changes to the training material; and

f. Reviewed and revised all FFD program implementing procedures to

ensure they contain the level of detail necessary for the least-experienced FFD staff member to successfully complete their tasks.

2. Within 90 days of the effective date of the CO, Indiana Michigan Power Company will develop a lessons-learned presentation of the events that gave rise to the CO, which highlights not only the particular events but also the broader case of ensuring that procedural and regulatory requirements are met in the face of challenges to expedite plant processes arising from pressures due to organizational structure and time constraints. Indiana Michigan Power Company will make the presentation materials available to the onsite NRC resident inspectors. Indiana Michigan Power Company will present these lessons learned within 180 days to all available first-line supervisors and above at the D. C. Cook Nuclear Power Plant. Plant supervisors who may not be available at the time of the presentation(s) will review the presentation materials and acknowledge (e.g., by signature) the review of the materials.

3. Within 365 days of the effective date of the CO, Indiana Michigan Power Company will develop and make a presentation based on the facts and lessons learned from the events that gave rise to the CO. The presentation will highlight not only the particular events but also the broader case of ensuring that procedural and regulatory requirements are met in the face of challenges to expedite plant processes arising from pressures due to organizational structure and time constraints. Indiana Michigan Power Company will make this presentation at an industry FFD forum and a broader industry forum, such that industry personnel in all four NRC regions would have the opportunity to receive the material. Indiana Michigan Power Company will make the presentation materials available to the onsite NRC resident inspectors.

4. Indiana Michigan Power Company will inform the NRC Regional Administrator, Region III, in writing within 30 days of the completion of all of the actions described in the CO.

5. The NRC will describe the violation in the CO without a severity level. The NRC will not issue a separate Notice of Violation or a civil penalty. The NRC will close the currently open unresolved item (URI 05000315/2011404–01; URI 05000316/2011404–01) with a green finding without any further enforcement.

6. The NRC agrees not to pursue any further enforcement action in connection with the NRC's March 6, 2012, letter to Indiana Michigan Power Company. This does not prohibit NRC from taking enforcement action in accordance with the NRC Enforcement Policy if Indiana Michigan Power Company commits a similar violation in the future or fails to meet the terms of the CO.

On June 18, 2012, the Licensee consented to issuing this Order with the commitments, as described in Section V below. Indiana Michigan Power Company further agreed that this Order is to be effective upon issuance and that it has waived its right to a hearing.

IV

Since the licensee has agreed to take additional actions to address NRC concerns, as set forth in Item III above, the NRC has concluded that its concerns can be resolved through issuance of this CO.

I find that the Indiana Michigan Power Company's commitments as set forth in Section V are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that Indiana Michigan Power Company commitments be confirmed by this Order. Based on the above and Indiana Michigan Power Company's consent, this CO is immediately effective upon issuance.

V

Accordingly, pursuant to Sections 104b, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 50, *it is hereby ordered,* effective immediately, that License Nos. DPR–58 and DPR–74 are modified as follows:

1. Within 90 days of the effective date of the CO, Indiana Michigan Power Company will develop a lessons-learned presentation of the events that gave rise to the CO, which highlights not only the particular events but also the broader case of ensuring that procedural and regulatory requirements are met in the face of challenges to expedite plant processes arising from pressures due to organizational structure and time constraints. Indiana Michigan Power Company will make the presentation materials available to the onsite NRC resident inspectors. Indiana Michigan Power Company will present these lessons learned within 180 days of the effective date of the CO to all available first-line supervisors and above at the D. C. Cook Nuclear Power Plant. Plant supervisors who may not be available at the time of the presentation(s) will review the presentation materials and acknowledge (e.g., by signature) the review of the materials.

2. Within 365 days of the effective date of the CO, Indiana Michigan Power Company will develop and make a presentation based on the facts and lessons learned from the events that gave rise to the CO. The presentation will highlight not only the particular events but also the broader case of ensuring that procedural and regulatory requirements are met in the face of challenges to expedite plant processes arising from pressures due to organizational structure and time constraints. Indiana Michigan Power Company will make this presentation at an industry FFD forum and a broader industry forum, such that industry personnel in all four NRC regions would have the opportunity to receive the material. Indiana Michigan Power Company will make the presentation materials available to the onsite NRC resident inspectors.

3. Indiana Michigan Power Company will inform the NRC Regional Administrator, Region III, in writing within 30 days of the completion of all of the actions described in the CO.

The Regional Administrator, Region III, may, in writing, relax or rescind any of the above conditions upon demonstration by the Indiana Michigan Power Company of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than Indiana Michigan Power Company, may request a hearing within 20 days of its publication in the **Federal Register**. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension.

All documents filed in the NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not

submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://adams.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a person (other than Indiana Michigan Power Company) requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this CO and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this CO should be sustained. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date this Confirmatory Order is published in the **Federal Register** without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received.

A request for hearing shall not stay the immediate effectiveness of this order.

Dated this 28th day of June 2012.

For the Nuclear Regulatory Commission.

Cynthia D. Pederson,

Deputy Regional Administrator, Region III.

[FR Doc. 2012–16908 Filed 7–10–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–04530; NRC–2012–0157]

Application and Amendment to Facility Operating Licenses Involving Proposed No Significant Hazards Considerations Containing Sensitive Unclassified Non-Safeguard Information

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request; opportunity to provide comments, request a hearing and petition for leave to intervene, and order.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) has received, by letter dated August 20, 2009, a license amendment application from the United States Department of Agriculture (USDA or the licensee), requesting approval of a Decommissioning Plan for its Low-Level Radioactive Burial Site located in Beltsville, Maryland. License No. 19–00915–03 authorizes the licensee to use radioactive byproduct material for research and development activities and for use in gauging and measurement devices. The licensee revised the original plan and re-submitted the amendment request. Specifically, the amendment provides a Decommissioning Plan for the excavation and disposal of low-level radioactive waste from its research and development activities that had been disposed in a previously permitted low-level waste burial area at the Beltsville site.

DATES: Comments must be filed by August 10, 2012. Requests for a hearing or leave to intervene must be filed by September 10, 2012. Any potential party as defined in Title 10 of the Code of Federal Regulations (10 CFR) 2.4, who believes access to Sensitive Unclassified Non-Safeguards Information (SUNSI) is necessary to respond to this notice must request document access by July 23, 2012.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and are publicly available, by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0157. You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0157. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov*.
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Mark C. Roberts, Senior Health Physicist, Decommissioning Branch, Division of Nuclear Materials Safety, Region I, U.S. Nuclear Regulatory Commission, King of Prussia, PA 19406; telephone: 1–610–337–5094; email: *Mark.Roberts@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0157 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and are publicly available, by any of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0157.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. The amendment request for the U.S. Department of Agriculture Revised Final Decommissioning Plan, Low-Level Radioactive Burial Site, Beltsville Area Research Center is available in ADAMS under Accession No. ML120600551. Supporting documents for this license amendment can be found in ADAMS under Accession Nos. ML120600526 and ML120600543. Additional documents related to the application can also be found in ADAMS under Docket No. 03004530.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2012–0157 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Introduction

The NRC has received, by letter dated August 20, 2009, a license amendment application from the USDA, requesting approval of a Decommissioning Plan for its Low-Level Radioactive Burial Site located in Beltsville, Maryland. License No. 19–00915–03 authorizes the licensee to use radioactive byproduct material for research and development activities and for use in gauging and measurement devices. The licensee revised the original plan and re-submitted the amendment request. Specifically, the amendment (ADAMS Accession No. ML120600551) provides a Decommissioning Plan for the excavation and disposal of low level radioactive waste from its research and development activities that had been disposed in a previously permitted low level waste burial area at the Beltsville site.

An NRC administrative review, documented in a letter to the USDA

dated November 18, 2009, found the application acceptable to begin a technical review. If the NRC approves the amendment, the approval will be documented in an amendment to NRC License No. 19–00915–03. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment.

III. Opportunity To Request a Hearing and Petitions for Leave To Intervene

Requirements for hearing requests and petitions for leave to intervene are found in 10 CFR 2.309, ''Hearing Requests, Petitions to Intervene, Requirements for Standing, and Contentions.'' Interested persons should consult 10 CFR 2.309, which is available at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852 (or call the PDR at 1–800–397–4209 or 301–415–4737). The NRC's regulations are available online in the NRC Library at *http://www.nrc.gov/reading-rm/doc-collections/#cfr*.

Any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene in accordance with the filing instructions in Section IV of this document. As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition must provide the name, address, and telephone number of the petitioner and specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies, and procedures. The Atomic Safety and Licensing Board (the Licensing Board) will set the time and place for any prehearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Non-timely petitions for leave to intervene and contentions, amended petitions, and supplemental petitions will not be entertained absent a determination by the Commission, the Licensing Board or a Presiding Officer that the petition should be granted and/or the contentions should be admitted based upon a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

A petition for leave to intervene must also include a specification of the contentions that the petitioner seeks to have litigated in the hearing. For each contention, the petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. Additionally, the petitioner must demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the findings the NRC must make to support the granting of a license amendment in response to the application. The petition must also include a concise statement of the alleged facts or expert opinions which support the position of the petitioner and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely. Finally, the petition must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the application for amendment that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application for amendment fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. Each contention must be one that, if proven, would entitle the petitioner to relief.

A State, county, municipality, Federally recognized Indian tribe, or designated representative thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(d)(2). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by September 10, 2012. The petition must be filed in accordance with the filing instructions in Section IV of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except State and Federally recognized Indian tribes do not need to address the standing requirements in 10 CFR 2.309(d)(1) if the facility is located within its boundaries. The entities listed above could also seek to participate in the proceeding as a nonparty pursuant to 10 CFR 2.315(c).

Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the discretion of the Licensing Board, including such limits and conditions as may be imposed in exercise of that discretion upon the making of limited appearance statements. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by September 10, 2012.

IV. Electronic Submissions (E-Filing)

All documents filed in the NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for

hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as Social Security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from July 11, 2012. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and

OGCmailcenter@nrc.gov, respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requester's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requester has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requester satisfies both D.(1) and D.(2) above, the NRC staff will notify the requester in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requester may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requester no later than 25 days after the requester is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and need for access, the NRC staff shall immediately notify the requester in writing, briefly stating the reason or reasons for the denial.

(2) The requester may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

H. Review of Grants of Access. A party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 5th day of July 2012.

For the Nuclear Regulatory Commission.

Kenneth R. Hart,

Acting Secretary of the Commission.

Attachment 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information in This Proceeding

Day	Event/activity
0	Publication of Federal Register notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requester reply).
20	Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[3] Requesters should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING—Continued

Day	Event/activity
25	If NRC staff finds no ''need'' or no likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2012–16904 Filed 7–10–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0163]

Communication With Transport Vehicles

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; withdrawal.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission), is withdrawing Regulatory Guide 5.32, Revision 1, ''Communication with Transport Vehicles,'' published in May 1975. The guide is being withdrawn because it is outdated due to advances in technology.

ADDRESSES: Please refer to Docket ID NRC–2012–0163 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and are publicly-available, using any the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0163. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Marshall Kohen, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–5436, email: *Marshall.Kohen@nrc.gov* or Rick Jervey, telephone: 301–251–7404, email: *Richard.Jervey@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is withdrawing Regulatory Guide 5.32, revision 1, ''Communication with Transport Vehicles,'' published in May 1975. This RG describes radiotelephone equipment, systems, and procedures that were in use in 1975 which were found acceptable to the NRC staff for complying with the Commission's regulations within 10 Code of Federal Regulations (CFR) Part 73, (10 CFR part 73) ''Physical Protection of Plants and Materials.'' Other more advanced communication systems have replaced the systems described in the RG. The regulations discussing communication are established and measured by performance standards to meet communication objectives. The NRC's regulations do not specify radio communication systems described in this RG, and they are not used.

The discussion of radiotelephone communication requirements in RG 5.32 is no longer useful for current communication needs for protection of transport vehicles or shipments of radioactive materials. Other means of communication are available which provide sufficient flexibility to meet performance objectives required by 10 CFR part 73.

II. Further Information

The withdrawal of Regulatory Guide 5.32 does not alter any prior or existing licensing commitments or conditions based on its use. The guidance provided in this regulatory guide is neither necessary nor current. Regulatory guides may be withdrawn when their guidance is superseded by congressional action or no longer provides useful information, or due to changes in technology or methodology.

Dated at Rockville, Maryland, this 6th day of July 2012.

For the Nuclear Regulatory Commission.

Harriet Karagiannis,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2012–16906 Filed 7–10–12; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Privacy Act of 1974; System of Records

AGENCY: Postal Service™.

ACTION: Notice of modification to existing system of records.

SUMMARY: The United States Postal Service® is proposing to modify a Customer Privacy Act System of Records. These modifications reflect the addition of language preferences selected by the customer and an update to the system manager's title.

DATES: The revision will become effective without further notice on August 10, 2012 unless comments received on or before that date result in a contrary determination.

ADDRESSES: Comments may be mailed or delivered to the Records Office, United States Postal Service, 475 L'Enfant Plaza SW., Room 9431, Washington, DC 20260–2201. Copies of all written comments will be available at this address for public inspection and photocopying between 8 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jane Eyre, Manager, Records Office, 202–268–2608.

SUPPLEMENTARY INFORMATION: This notice is in accordance with the Privacy Act requirement that agencies publish their amended systems of records in the **Federal Register** when there is a revision, change, or addition. The Postal Service™ has reviewed this system of records and has determined that this Customer Privacy Act System of Records should be revised to modify Categories of Records in the System and the System Manager(s) and Address.

I. Background

In July 2011, the Postal Service introduced a re-designed usps.com Web site with the first launch of multilingual functionality in October 2011 and added translated content in January 2012.

Additionally, in June 2012 the Postal Service made additional management and organizational changes.

II. Rationale for Changes to USPS Privacy Act Systems of Records

The Customer Experience Improvement Project enables a broader audience to successfully interact with the Postal Service in the customer's preferred language. As a result, these updates will allow customers to permanently select which language they want to use when receiving emails from the Postal Service and when visiting usps.com.

Also, in regards to the system manager title update, there is a continuing need to reflect changes in the identity or title of responsible officials.

III. Description of Changes to Systems of Records

The Postal Service is modifying one system of records listed below. Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views, or arguments on this proposal. A report of the proposed modifications has been sent to Congress and to the Office of Management and Budget for their evaluation. The Postal Service does not expect this amended notice to have any adverse effect on individual privacy rights. The affected system is as follows:

USPS 810.100.

System Name: www.usps.com Registration.

Accordingly, for the reasons stated, the Postal Service proposes changes in the existing system of records as follows:

USPS 810.100

SYSTEM NAME:

www.usps.com Registration

CATEGORIES OF RECORDS IN THE SYSTEM

* * * * *

[*CHANGE TO READ*]

4. *Customer preferences:* Preferences to receive USPS marketing information, preferences to receive marketing information from USPS partners, preferred means of contact, preferred email language and format, preferred on-screen viewing language, product and/or service marketing preference.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

* * * * *

[*CHANGE TO READ*]

Chief Marketing/Sales Officer and Executive Vice President, United States Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260.

* * * * *

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2012–16869 Filed 7–10–12; 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 an Open Meeting on July 11, 2012 at 10 a.m., in the Auditorium, Room L–002.

The subject matter of the Open Meeting will be:

The Commission will consider whether to adopt Rule 613 under Section 11A of the Securities Exchange Act, to require national securities exchanges and national securities associations to submit a national market system (''NMS'') plan to develop, implement, and maintain a consolidated order tracking system, or consolidated audit trail, with respect to the trading of NMS securities, that would capture customer and order event information for orders in NMS securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

Commissioner Gallagher, as duty officer, determined that no earlier notice thereof was possible.

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: July 6, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–16991 Filed 7–9–12; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67351; File No. SR–Phlx–2012–84]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Clarify the Functioning of the Post-Only Order in NASDAQ OMX PSX

July 5, 2012.

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 June 22, 2012, 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 proposes to clarify the functioning of the Post-Only Order in NASDAQ OMX PSX (''PSX''). If the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Commission waives the pre-operative delay provided for in Rule 19b–4(f)(6),[3] Phlx proposes to implement the proposed rule change immediately. The text of the proposed rule change is available at *http://nasdaqomxphlx.cchwallstreet.com/nasdaqomxphlx/phlx/,* at Phlx's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Phlx proposes to clarify the functionality associated with its existing Post-Only Order on PSX. Last year, Phlx submitted a proposed rule change that changed the functionality of this order type.[4] In the course of describing and clarifying the order's then-existing functionality, however, SR–Phlx–2011–70 erroneously characterized one aspect of the functioning of the order and, as a result, introduced erroneous language into the rule text describing the rule.

If a Post-Only Order would lock an order on PSX at the time of entry, the order is re-priced and displayed by the System to one minimum price increment (i.e., $0.01 or $0.0001) below the current low offer (for bids) or above the current best bid (for offers). Thus, if the best bid and best offer on the PSX book were $10.00 x $10.05, and a market participant entered a Post-Only Order to buy at $10.05, the order would be re-priced and displayed at $10.04. However, SR–Phlx–2011–70 erroneously stated that if a Post-Only Order would cross an order on the System, the order would be repriced as described above unless the value of price improvement associated with executing against a resting order equals or exceeds the sum of fees charged for such execution and the value of any rebate that would be provided if the order posted to the book and subsequently provided liquidity, in which case the order will execute. In fact, in a case where the order crosses an order on the System, the order will be repriced, and will not execute. Accordingly, Phlx is deleting language from the rule that states otherwise.[5]

The error occurred because the functionality to consider pricing was described in the original filing to establish a Post-Only Order on The NASDAQ Stock Market LLC (''NASDAQ'') and was implemented on that market, but was not fully reflected in the text of NASDAQ Rule 4751.[6] Subsequently, Phlx adopted identical rule text when it established PSX as its new facility for trading cash equity securities, but did not implement the price consideration functionality due to its inconsistency with model of allocating executions of incoming orders among posted orders pro rata based on their size.[7] In May 2011, NASDAQ filed a proposed rule change to modify the repricing behavior of its Post-Only Order, and added rule language to clarify the existing price-consideration functionality of its order.[8] When Phlx opted to make a corresponding change to the repricing behavior of its Post-Only Order, it was assumed that a corresponding change to describe price consideration behavior was also required. In fact, no such change was needed since the behavior of the PSX order is not identical to that of the NASDAQ order.

2. Statutory Basis

Phlx believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[9] in general, and with Section 6(b)(5) of the Act,[10] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Phlx believes that the change is necessary to reflect accurately the functioning of PSX's Post-Only Order.

B. Self-Regulatory Organization's Statement on Burden on Competition

Phlx does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6)(iii) thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing.[15] However, pursuant to Rule 19b–4(f)(6)(iii),[16] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon

[3] 17 CFR 240.19b–4(f)(6).

[4] Securities Exchange Act Release No. 64563 (May 27, 2011), 76 FR 32255 (June 3, 2011) (SR–Phlx–2011–70).

[5] Phlx is also correcting a typographical error in the rule text.

[6] *See* Securities Exchange Act Release No. 59392 (February 11, 2009), 74 FR 7943 (February 20, 2009) (SR–NASDAQ–2009–006).

[7] Securities Exchange Act Release No. 62877 (September 9, 2010), 75 FR 56633 (September 16, 2010) (SR–Phlx–2010–79).

[8] Securities Exchange Act Release No. 64552 (May 26, 2011), 76 FR 31998 (June 2, 2011) (SR–NASDAQ–2011–070).

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] 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 the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this pre-filing requirement.

[16] 17 CFR 240.19b–4(f)(6)(iii).

filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the rule text describing the Post-Only Order to describe its functionality accurately without delay. Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2012–84 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2012–84. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of 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–Phlx–2012–84 and should be submitted on or before August 1, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–16875 Filed 7–10–12; 8:45 am]

BILLING CODE 8011–01–P

[17] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67354; File No. SR–BX–2012–049]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish TradeInfo BX and BX Options Maintenance Tool and Related Fees

July 5, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 29, 2012, NASDAQ OMX BX, Inc. (''BX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a 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

BX proposes to establish two services, TradeInfo BX for Options and BX Options Maintenance Tool, and related fees for BX Options Participants.

The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.com/*, at BX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange filed and received approval to operate a new options market.[3] The new market, called NASDAQ OMX BX Options, or BX Options, is an all-electronic trading platform with no physical trading floor. At this time BX proposes to adopt fees associated with two services, TradeInfo BX for Options and BX Options Maintenance Tool.

TradeInfo BX will allow a BX Options Participant to scan for all orders it submitted to BX Options in a particular security or all orders of a particular type, regardless of their status (open, canceled, executed, etc.) Also, a BX Options Participant will be able to cancel open orders at the port or firm mnemonic level. For example, after scanning for open orders, a subscribing member is able to select an open order and cancel the order. TradeInfo also permits users to scan other order statuses, such as executed, cancelled, broken, rejected and suspended orders and generate reports of execution, order or cancel information, which can be exported into a spreadsheet for review. TradeInfo allows a BX Options Participant to manage its order flow and mitigate risk by giving users the ability to view its orders and executions, as well as the ability to perform cancels at the port or firm mnemonic level. Finally, TradeInfo BX has the ability to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012) (Order Granting Approval of a Proposed Rule Change Relating to the Establishment of a New Options Market, NASDAQ OMX BX Options).

download records of orders and executions for recordkeeping purposes. TradeInfo BX is similar to comparable products offered by The NASDAQ Options Market (''NOM'') and NASDAQ OMX PHLX, LLC (''PHLX'').[4]

The Exchange proposes to offer TradeInfo BX to BX Options Participants for a fee of $95 per user, per month for member's trading activity on the market. This is the same fee assessed to NOM Participants and PHLX members for this service. Use of TradeInfo by BX Options Participants is voluntary. The proposed fee would cover the costs associated with establishing the service, responding to customer requests, configuring BX's systems, programming to user specifications, and administering the service, among other things.

The BX Options Maintenance Tool (''OMT'') is a web-based options back-office tool that gives users the ability to query trades, correct trades and/or allocate trades to the appropriate accounts and sub-accounts for clearing. The Options Clearing Corporation (''OCC'') requires firms to provide certain information when submitting a trade for clearing. Specifically, the OMT will allow a firm to correct a trade's account number or designate a sub-account number, correct a trade's designation as opening or closing, and change the Clearing Member Trade Assignment clearing firm. The OMT will also allow firms to correct a trade's OCC designation as Customer, Firm, or Market Maker. Today, NOM makes similar a tool available to firms to correct trade clearing information that is submitted to OCC.[5]

BX proposes to offer OMT to BX Options Participants for a subscription fee of $200 per month, per user. This is the same fee for the same service offered to NOM Participants. Use of OMT by BX Options Participants is voluntary. The proposed fee will cover the costs associated with establishing the service, responding to customer requests, configuring BX's systems, programming to user specifications, and administering the service, among other things.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] 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 offering these products to BX Options Participants. The Exchange believes the proposed rule change is consistent with these requirements because the Trade Info offers a useful analytical tool with which members may access information concerning their order and trade activity, thus allowing such participants to make informed decisions concerning such activity. OMT offers the ability to correct a trade's account number along with other features. The Exchange notes that both NOM and PHLX offer Trade Info and NOM offers OMT to their options participants. Affording Exchange participants access to the same functionality promotes the goal of perfecting the mechanism of a free and open market by providing a subscriber clearer picture of its market activity and providing it the ability to quickly cancel orders should the participant determine it necessary to do so. Use of the products is voluntary and the subscription fees will be imposed on all purchasers equally based on the number of users. The proposed fees will cover the costs associated with establishing the services, responding to customer requests, configuring the Exchange's systems, programming to user specifications, and administering the service, among other things.

The Exchange believes that the proposed fees are consistent with the provisions of Section 6 of the Act,[8] in general, and with Section 6(b)(4) of the Act,[9] in particular, in that they provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls.

The Exchange believes that the TradeInfo BX fee is reasonable because the service is voluntary and would provide BX Options Participants the ability to cancel orders and receive reports, among other things. This service is currently offered to NOM Participants and PHLX options members at the same price. The proposed fee would cover the costs associated with establishing the service, responding to customer requests, configuring BX's systems, programming to user specifications, and administering the service, among other things.

The Exchange believes the TradeInfo BX fee is equitable and not unfairly discriminatory because the fee would be uniformly assessed to all BX Options Participants that elect to subscribe to the product. The fees are based on the number of users subscribed per month, so all similarly-situated member firms would be assessed the same amount. It is also important to note that BX Options Participants would only be able to access their own trade and order information.

The Exchange believes that the OMT fee is reasonable because the service is voluntary and would provide BX Options Participants the ability to query trades and correct trade information for clearing purposes, among other things. This service is currently offered to NOM Participants at the same price. The proposed fee will cover the costs associated with establishing the service, responding to customer requests, configuring BX's systems, programming to user specifications, and administering the service, among other things.

The Exchange believes the OMT fee is equitable and not unfairly discriminatory because the fee would be uniformly assessed to all BX Options Participants that elect to subscribe to the product. The fees are based on the number of subscriptions subscribed, so all similarly-situated member firms would be assessed the same amount. It is also important to note that BX Options Participants would only be able to access their own trade and order information.

B. Self-Regulatory Organization's Statement on Burden on Competition

BX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, BX believes that the fee will constrain market participants from pursuing certain inefficient and potentially abusive trading strategies. To the extent that this change may be construed as a burden on competition, BX believes that it is appropriate in order to further the purposes of Section 6(b)(5) of the Act.[10]

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

[4] *See* NOM Rules at Chapter XV at Sections 3 and PHLX's Pricing Schedule at Section XII.

[5] *See* NOM Rules at Chapter XV at Section 6.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78f(b)(5).

the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) [12] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[13] However, Rule 19b–4(f)(6)(iii) [14] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay and designate the proposed rule change operative on July 2, 2012. The Commission notes that other exchanges provide similar services with similar fees as proposed instantly by BX.[15] Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and hereby designates the proposal operative on July 2, 2012.[16]

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.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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 Exchange has satisfied this requirement.

[13] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[14] *Id.*

[15] *See supra* notes 4 and 5 and accompanying text.

[16] For the 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).

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BX–2012–049 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2012–049. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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–2012–049, and should be submitted on or before August 1, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–16878 Filed 7–10–12; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67355; File No. SR–NASDAQ–2012–079]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify NASDAQ's Fee Schedule Governing Order Routing

July 5, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 28, 2012, The NASDAQ Stock Market LLC (''NASDAQ'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ proposes to modify NASDAQ's fee schedule governing order routing. NASDAQ will implement the proposed change on July 2, 2012. The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com,* at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 III [sic] below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is making a minor modification to the schedule governing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

fees for use of its routing services. Effective July 2, 2012, the NASDAQ OMX PSX (''PSX'') facility of NASDAQ OMX PHLX LLC (''Phlx'') has reduced the fees that it charges for accessing liquidity.[3] Accordingly, NASDAQ is making a conforming change to the fee that it charges for routing directed orders to PSX, reducing the charge from $0.0029 per share executed to $0.0005 per share executed.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Sections 6(b)(4) and (5) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. All similarly situated members are subject to the same fee structure, and access to NASDAQ is offered on fair and non-discriminatory terms. The change is reasonable because the proposed fee for routing directed orders to PSX reflects the reduction in the fee that will be charged by PSX to NASDAQ with respect to such orders.[6] The change is consistent with an equitable allocation of fees because it will bring the economic attributes of routing directed orders to PSX more in line with the cost of executing orders there. Finally, the change is not unfairly discriminatory because it solely applies to members that opt to route directed orders to PSX.

Finally, NASDAQ notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, NASDAQ must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. NASDAQ believes that the proposed rule change reflects this competitive environment because it is designed to ensure that the charges for use of the NASDAQ routing facility to route to PSX reflect a reduction in the cost of such routing.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Because the market for order execution is extremely competitive, members may readily opt to disfavor NASDAQ's routing services if they believe that alternatives offer them better value. The proposed change is designed to ensure that the charges for use of the NASDAQ routing facility to route to PSX reflect a reduction in the cost of such routing, thereby allowing it to remain competitive.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[7] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2012–079 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2012–079. This file number should be included on the subject line if email is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NASDAQ–2012–079, and should be submitted on or before August 1, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–16879 Filed 7–10–12; 8:45 am]

BILLING CODE 8011–01–P

[3] *See* SR–Phlx–2012–87 (June 27, 2012).

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4) and (5).

[6] Depending on volume of routed orders in a month, NASDAQ will be charged either $0.0005 or $0 per share executed. In a circumstance where the charge was $0, NASDAQ believes that it is nevertheless appropriate to charge a markup above this cost to reflect the additional costs of offering routing services and the value of such services.

[7] 15 U.S.C. 78s(b)(3)(a)(ii) [sic].

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67357; File No. SR–C2–2012–011]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Order Granting Approval of Proposed Rule Change To Implement a Disaster Recovery Facility

July 5, 2012.

I. Introduction

On May 14, 2012, C2 Options Exchange, Incorporated (''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to implement a disaster recovery facility (''DRF''). The proposed rule change was published for comment in the **Federal Register** on May 23, 2012.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

As set forth in proposed Exchange Rule 6.45 and the Notice, C2 has proposed to operate a DRF and adopt a rule governing its use.[4] The DRF is designed to allow the Exchange to continue to operate a marketplace for trading its exclusively-listed options (''ELOs'') [5] in the event that its main trading system becomes inoperable or otherwise unavailable due to a disaster or other unusual circumstance.[6] The DRF would provide a venue for investors to open and close positions in ELOs traded on C2 (*e.g.,* SPXPM) in the event that the main C2 system became inoperable.[7] To operate the DRF, the Exchange would use hardware located in the Chicago Board Options Exchange, Incorporated (''CBOE'') building in Chicago, Illinois.[8] C2's main trading engine is located on the East Coast, thus there would be geographic diversity between the DRF and the main C2 trading system.[9] The Exchange has represented that the DRF would have the necessary systems capacity to handle trading in the event that use of the DRF becomes necessary.[10]

All C2 Trading Permit Holders (''TPH''),[11] including those that may not also be a CBOE TPH, would have access to the DRF.[12] Each TPH would be required, as instructed by the Exchange, to take appropriate actions in order to be able to trade options through the DRF, which actions would include completion of an Exchange certification process to ensure that TPHs are prepared to migrate to the DRF if and when necessary.[13] The Exchange has represented that it would continuously maintain the DRF so that it would always be available for use if needed.[14] The Exchange has represented further it has written supervisory procedures in place that would cover activation and use of the DRF, which would help ensure an efficient transition to the DRF.[15]

As soon as practicable after an event that rendered the main C2 system inoperable or otherwise unavailable, but prior to commencing trading on the DRF, the Exchange would announce publicly the option classes that would be available for trading on the DRF.[16] C2 has represented that trading on the DRF would be identical to trading on the Exchange.[17] For example, all trading and non-trading rules of the Exchange, including its fee schedule, would continue to apply to option classes traded on the DRF.[18] Quote and trade information also would continue to be reported to the Options Price Reporting Authority (''OPRA'') in the same manner as for regular trading on C2.[19] Trading would transition back to the main C2 system as soon as it becomes operational.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[20] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(1) of the Act,[21] which requires that an exchange be organized and have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Commission believes that proposed Exchange Rule 6.45 provides a business continuity plan that is reasonably designed to allow the Exchange to continue trading its ELOs in the event that a disaster or other unusual circumstance renders the main C2 systems inoperable for continued trading. Specifically with respect to ELOs, continued trading on the DRF following a disruption that affects C2's main trading systems will provide market participants and investors with continued access to a marketplace to open, close, and trade positions in C2's ELOs. In the absence of adequate DRF facilities and procedures, market participants could be adversely affected by an inability to transact in such ELOs.

The Commission notes that the details of the Exchange's proposal are consistent with the key elements set forth in the 2003 Policy Statement on Business Continuity Planning for Trading Markets, which directed SRO trading markets and electronic communication networks to take steps to develop procedures to minimize the potential disruption and market impact that could result from an event that interrupts the ability of market participants to utilize their trading systems.[22] Among other things, C2's proposal provides for geographic diversity between the DRF and C2's main trading system; references the written supervisory procedures to govern the operation of the DRF;

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 67008 (May 17, 2012), 77 FR 30571 (May 23, 2012) (''Notice'').

[4] *See* C2 Rule 6.45.

[5] An ELO is an option that trades exclusively on C2 because C2 has an exclusive license to list and trade such option, or has proprietary rights in the interest underlying the option. When C2 filed this proposed rule change, it only listed and traded one ELO: SPXPM, which are Standard & Poor's 500 Index options with third-Friday-of-the-month expiration dates for which the exercise settlement value is based on the index value derived from the closing prices of component securities. *See* Notice, *supra* note 3, 77 FR at 30571.

[6] *See* Notice, *supra* note 3, 77 FR at 30571; proposed C2 Rule 6.45(a).

[7] *See* Notice, *supra* note 3, 77 FR at 30571.

[8] *See id.*

[9] *See id.*

[10] *See id.*

[11] *See* C2 Rule 1.1 (defining ''Trading Permit Holder'').

[12] *See* Notice, *supra* note 3, 77 FR at 30571.

[13] *See* C2 Rule 6.45(d).

[14] *See* Notice, *supra* note 3, 77 FR at 30571.

[15] *See id.*

[16] *See* C2 Rule 6.45(b).

[17] *See* Notice, *supra* note 3, 77 FR at 30571.

[18] *See* C2 Rule 6.45(c).

[19] The Exchange represented that any ELO traded on the DRF would continue to reflect C2 as the exchange venue on the public tape. *See* Email from Angelo Evangelou, CBOE, to Commission staff dated February 7, 2012. In addition, the Exchange has represented that if C2 shuts down its main trading system during trading hours and subsequently migrates to the DRF, the regulatory data for the portion of the day that the main trading system was operating would be backed-up and available remotely. *See* Email from Angelo Evangelou, CBOE, to Commission staff dated July 3, 2012.

[20] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 15 U.S.C. 78f(b)(1).

[22] *See* Securities Exchange Act Release No. 48545 (September 25, 2003), 68 FR 56656 (October 1, 2003) (File No. S7–17–03) (Business Continuity Planning for Trading Markets) (''Policy Statement'').

establishes a process to ensure that TPHs will be ready to trade on the DRF if and when necessary; and contemplates public notice when a transition to trading on the DRF becomes necessary.[23] Accordingly, the Commission believes that C2's DRF should enable C2 to continue to offer a marketplace for trading its ELOs promptly after an event that disables C2's main trading system in a manner that is designed to minimize potential disruption and market impact.

In addition, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[24] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the Commission finds the proposed rule change is reasonably designed to facilitate transactions by providing market participants with the necessary disclosure to understand the Exchange's operational capabilities and plans with respect to its ELOs in the event of a disruption to C2's main trading systems.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[25] that the proposed rule change (SR–C2–2012–011) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–16881 Filed 7–10–12; 8:45 am]

BILLING CODE 8011–01–P

[23] *See* Policy Statement, *supra* note 22, 68 FR at 56658.

[24] 15 U.S.C. 78f(b)(5).

[25] 15 U.S.C. 78s(b)(2).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67356; File No. SR–ICC–2012–10]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Schedule 502 of the ICC Rules for the June 20, 2012 Index Maturity

July 5, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 22, 2012, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II and III below, which Items have been prepared primarily by ICC. ICC filed the proposed rule change pursuant to Section 19(b)(3)(A)[3] of the Act and Rule 19b–4(f)(i)[4] thereunder, so the proposed rule change was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to update Schedule 502 of the ICC Rules in order to be consistent with the index maturity, which occurred on June 20, 2012.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC 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. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[5]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to update Schedule 502 of the ICC Rules in order to be consistent with the index maturity, which occurred on June 20, 2012. The North American credit default swap indices that matured (''Maturing Indices'') are: Investment Grade, Series 8, 5-year; Investment Grade High Volatility, Series 8, 5-year; and High Yield, Series 8, 5-year. The Maturing Indices update does not require any changes to the body of the ICC Rules. Also, the Maturing Indices update does not require any changes to the ICC risk management framework. The only change being submitted is the updates to the Maturing Indices in Schedule 502 of the ICC Rules. ICC believes that the update to the three Maturing Indices is consistent with the purposes and requirements of Section 17A of the Act[6] and the rules and regulations thereunder applicable to ICC because it will facilitate the prompt and accurate settlement of derivative agreements.

(B) Self-Regulatory Organization's Statement on Burden on Competition

ICC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)[7] of the Act and Rule 19b–4(f)(4)(i)[8] thereunder because by updating the three Maturing Indices, it effects a change in an existing service of ICC that either does not adversely affect the safeguarding of securities or funds in the custody or control of ICC or for which it is responsible, and does not significantly affect the respective rights or obligations of ICC or the persons using it. 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,

[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)(i).

[5] The Commission has modified the text of the summaries prepared by ICC.

[6] 15 U.S.C. 78q–1.

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(4)(i).

or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICC–2012–10 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–ICC–2012–10. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal office of ICC and on ICC's Web site at *https://www.theice.com/publicdocs/regulatory_filings/ICEClearCredit_061812.pdf.* 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–ICC–2012–10 and should be submitted on or before August 1, 2012.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[9]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–16880 Filed 7–10–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67352; File No. SR–Phlx–2012–83]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Distributor Fees for Two Related Options Market Data Products

July 5, 2012.

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 June 22, 2012, 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, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Phlx proposes to establish distributor fees for two related options market data products, PHLX Depth of Market and PHLX Orders. PHLX Depth of Market includes full depth of quotes and orders, imbalance information and last sale data for options listed on PHLX, and PHLX Orders provides pricing information for options orders on the PHLX limit order book.

The text of the proposed rule change is available at *http://nasdaqomxphlx.cchwallstreet.com/nasdaqomxphlx/phlx/,* at Phlx's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to establish distributor fees for the PHLX Depth of Market (''PHLX Depth'') and PHLX Orders options data products. PHLX Depth is a data product that provides: (i) Order and quotation information for individual quotes and orders on the PHLX book; (ii) last sale information for trades executed on PHLX; and (iii) an Imbalance Message as described in prior rule filings.[3] PHLX Depth provides data that enhances the ability to analyze market conditions, and to create and test trading models and analytical strategies. PHLX Depth of Market is useful for gaining comprehensive insight into the trading activity in a particular option series on the PHLX market.

PHLX Orders is a real-time full limit order book data feed that provides pricing information for orders on the PHLX limit order book. PHLX Orders is currently provided as part of the Top of PHLX Options Plus Orders (''TOPO Plus Orders'') data product; PHLX Orders data is identical to the ''Orders'' portion of the TOPO Plus Orders product. PHLX Orders provides real-time information to enable users to keep track of the single order book(s), single and complex orders,[4] imbalance information, and Complex Order Live Auction (''COLA'')[5] for all symbols listed on PHLX. It is a compilation of data for limit orders residing on the Exchange's limit order book for options traded on the Exchange that the Exchange provides through a real-time data feed. The Exchange updates the information upon receipt of each displayed limit

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 66967 (May 11, 2012); 77 FR 29440 (May 17, 2012).

[4] A Complex Order is an order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced as a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. *See* Exchange Rule 1080 08(a)(i).

[5] *See* Exchange Rule 1080 08(e).

order or change to any order resting on the book.

Market data users should be free to choose the data elements they use and purchase. Some users seek to view the full depth of market, others the orders on the limit book, and still others just the top of the market. The market functions most effectively when it includes numerous participants employing varied trading strategies requiring different use of market data products. Thus, the PHLX Orders product is designed for users that want the order book information provided in TOPO Plus Orders but don't need the entire TOPO Plus Orders data set. PHLX Orders complements the Top of PHLX Options or ''TOPO'' product that contains the best priced quotes and orders in the PHLX market. The Depth Data product is designed for users that want a full range of data available from the PHLX options market, and that are willing to pay for the extra technology, telecommunications bandwidth, and other requirements of processing such data. The Exchange makes all data products equally available to all market participants.

PHLX is proposing to establish distributor fees for the Depth Data and Orders Data products. PHLX classifies distributors as either ''internal'' or ''external,'' depending upon whether the receiving entity transmits the data only to Subscribers within its own corporate organization or those outside that organization.[6] Currently, PHLX assesses distributor fees for TOPO of $2,000 per month for internal distribution and $2,500 per month for external distribution. PHLX assesses distributor fees for TOPO Plus Orders of $4,000 per month for internal distribution and $5,000 per month for external distribution. PHLX is hereby proposing to assess fees for Depth Data of $4,000 per month for internal distribution and $4,500 per month for external distribution. Additionally, PHLX is proposing to assess fees for PHLX Orders of $3,000 per month for internal distribution and $3,500 per month for external distribution. Offering the PHLX Orders feed separately from the TOPO feed allows customers to access the specific data they need and at a lower price. PHLX Orders distributors will pay $1000 or $1500 per month less than TOPO Plus Orders distributors currently pay.

In addition, PHLX fees compare favorably with fees assessed by other exchanges for similar products:

DEPTH FEEDS

Exchange:	PHLX	NOM	ISE	CBOE
	PHLX depth	ITTO	Depth of market	BBO data feed
Top of market	No	No	Yes	Yes.
Depth of market	Full depth	Full depth	Top 5 levels	No.
Depth of orders only	No	No	No	No.
Trades	Yes	Yes	No	Yes.
Imbalance	Yes	Yes	No	No.
Complex orders	No	No	No	Yes.
Internal	$4,000	$1,500	$5,000	$3,500.
External	$4,500	$2,000	$5,000	$3,500.

ORDERS FEEDS

Exchange:	PHLX	PHLX	ISE	BATS	CBOE
	TOPO plus orders	PHLX orders	Spread book feed	Multicast PITCH	BBO data feed
Top of market	Yes	No	No	No	Yes.
Depth of market	No	No	No	No	No.
Depth of orders only	Yes	Yes	No	Yes	No.
Trades	Yes	Yes	No	Yes	Yes.
Imbalance	Yes	Yes	No	No	No.
Complex orders	Yes	Yes	Yes	No	Yes.
Internal Distributor Fee	$4,000	$3,000	$3,000	0	$3,500.
External Distributor Fee	$5,000	$3,500	$3,000	0	$3,500.

As set forth in more detail below, PHLX believes that the proposed fees are consistent with the Act in that they are fair and reasonable and provide for an equitable allocation of fees among PHLX members and other users of PHLX products.

2. Statutory Basis

PHLX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general, and with Section 6(b)(4) of the Act,[8] in particular, in that it provides an equitable allocation of reasonable fees among Subscribers and recipients of PHLX data. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

The Commission concluded that Regulation NMS—by deregulating the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also

[6] *See* PHLX Fee Schedule, Section IX. Multiple exchanges use similar internal external classifications, including the NASDAQ Options Market, the Chicago Board Options Exchange (''CBOE''), and the International Securities Exchange (''ISE'').

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[9]

By removing ''unnecessary regulatory restrictions'' on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well. PHLX Depth Data and PHLX Orders are precisely the sort of market data products that the Commission envisioned when it adopted Regulation NMS.

On July 21, 2010, President Barack Obama signed into law H.R. 4173, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act''), which amended Section 19 of the Act. Among other things, Section 916 of the Dodd-Frank Act amended paragraph (A) of Section 19(b)(3) of the Act by inserting the phrase ''on any person, whether or not the person is a member of the self-regulatory organization'' after ''due, fee or other charge imposed by the self-regulatory organization.'' As a result, all SRO rule proposals establishing or changing dues, fees, or other charges are immediately effective upon filing regardless of whether such dues, fees, or other charges are imposed on members of the SRO, non-members, or both. Section 916 further amended paragraph (C) of Section 19(b)(3) of the Act to read, in pertinent part, ''At any time within the 60-day period beginning on the date of filing of such a proposed rule change in accordance with the provisions of paragraph (1) [of Section 19(b)], the Commission summarily may temporarily suspend the change in the rules of the self-regulatory organization made thereby, 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 this title. If the Commission takes such action, the Commission shall institute proceedings under paragraph (2)(B) [of Section 19(b)] to determine whether the proposed rule should be approved or disapproved.''

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* No. 09–1042 (D.C. Cir. 2010), although reviewing a Commission decision made prior to the effective date of the Dodd-Frank Act, upheld the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data. ''In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.' '' *NetCoalition,* at 15 (quoting H.R. Rep. No. 94–229, at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 321, 323). The court's conclusions about Congressional intent are therefore reinforced by the Dodd-Frank Act amendments, which create a presumption that exchange fees, including market data fees, may take effect immediately, without prior Commission approval, and that the Commission should take action to suspend a fee change and institute a proceeding to determine whether the fee change should be approved or disapproved only where the Commission has concerns that the change may not be consistent with the Act.

For the reasons stated above, PHLX believes that the proposed fees are fair and equitable, and not unreasonably discriminatory. As described above, the proposed fees are based on pricing conventions and distinctions that exist in PHLX's current fee schedule, and the fee schedules of other exchanges. These distinctions are each based on principles of fairness and equity that have helped for many years to maintain fair, equitable, and not unreasonably discriminatory fees, and that apply with equal or greater force to the current proposal.

As described in greater detail below, if PHLX has calculated improperly and the market deems the proposed fees to be unfair, inequitable, or unreasonably discriminatory, firms can diminish or discontinue the use of their data because the proposed fee is entirely optional to all parties. Firms are not required to purchase proprietary data or to utilize any specific pricing alternative if they do choose to purchase proprietary data. PHLX is not required to make Depth-of-Book or Orders data available or to offer specific pricing alternatives for potential purchases. PHLX can discontinue offering a pricing alternative (as it has in the past) and firms can discontinue their use at any time and for any reason (as they often do), including due to their assessment of the reasonableness of fees charged. PHLX continues to establish and revise pricing policies aimed at increasing fairness and equitable allocation of fees among Distributors and users.

PHLX believes that the Depth Data and Orders Data product pricing promotes increased transparency by offering a pricing options resulting in fees based upon distributors' and users' different levels of usage of data elements. While PHLX may need to periodically adjust the distributor fees to reflect market forces, it continues to view the fee cap as a way for firms to make additional information available to the firms' clients, thereby increasing transparency in the market.

B. Self-Regulatory Organization's Statement on Burden on Competition

PHLX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Notwithstanding its determination that the Commission may rely upon competition to establish fair and equitably allocated fees for market data, the *NetCoalition* court found that the Commission had not, in that case, compiled a record that adequately supported its conclusion that the market for the data at issue in the case was competitive. PHLX believes that a record may readily be established to demonstrate the competitive nature of the market in question.

There is intense competition between trading platforms that provide transaction execution and routing services and proprietary data products. Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platform where the order can be posted, including the execution fees, data quality and price and distribution of it's data products. Without the prospect of a taking order seeing and reacting to a posted order on a particular platform, the posting of the order would accomplish little. Without trade executions, exchange data products cannot exist. Data products are valuable to many end Subscribers only insofar as they provide information that end Subscribers expect will assist them or their customers in making trading decisions.

The costs of producing market data include not only the costs of the data

[9] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, an exchange's customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A broker-dealer will direct orders to a particular exchange only if the expected revenues from executing trades on the exchange exceed net transaction execution costs and the cost of data that the broker-dealer chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the broker-dealer will choose not to buy it. Moreover, as a broker-dealer chooses to direct fewer orders to a particular exchange, the value of the product to that broker-dealer decrease, for two reasons. First, the product will contain less information, because executions of the broker-dealer's orders will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that broker-dealer because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the broker-dealer is directing orders will become correspondingly more valuable.

Thus, a super-competitive increase in the fees charged for either transactions or data has the potential to impair revenues from both products. ''No one disputes that competition for order flow is 'fierce'.'' *NetCoalition* at 24. However, the existence of fierce competition for order flow implies a high degree of price sensitivity on the part of broker-dealers with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A broker-dealer that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. Similarly, if a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected broker-dealers will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data.

Analyzing the cost of market data distribution in isolation from the cost of all of the inputs supporting the creation of market data will inevitably underestimate the cost of the data. Thus, because it is impossible to create data without a fast, technologically robust and well-regulated execution system, system costs and regulatory costs affect the price of market data. It would be equally misleading, however, to attribute all of the exchange's costs to the market data portion of an exchange's joint product. Rather, all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platforms may choose to pay rebates to attract orders, charge relatively low prices for market information (or provide information free of charge) and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market information, and setting relatively low prices for accessing posted liquidity. In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering. This would be akin to strictly regulating the price that an automobile manufacturer can charge for car sound systems despite the existence of a highly competitive market for cars and the availability of after-market alternatives to the manufacturer-supplied system.

The market for market data products is competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

Broker-dealers currently have numerous alternative venues for their order flow, including nine existing SRO markets (plus two more expected this year), as well as various forms of alternative trading systems (''ATSs''). Each SRO market competes to produce transaction reports via trade executions. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including NASDAQ, CBOE, ISE, NYSE Amex, and NYSEArca.

Any ATS or BD can combine with any other ATS, BD, or multiple ATSs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple broker-dealers' production of proprietary data products. The potential sources of proprietary products are virtually limitless.

Market data vendors provide another form of price discipline for proprietary data products because they control the primary means of access to end Subscribers. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Thomson Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end Subscribers will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only data that will enable them to attract ''eyeballs'' that contribute to their advertising revenue. Retail broker-dealers, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: they can simply refuse to purchase any proprietary data product that fails to provide sufficient value. PHLX and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully.

In addition to the competition and price discipline described above, the market for proprietary data products is

also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, BATS Trading and Direct Edge.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While broker-dealers have previously published their proprietary data individually, Regulation NMS encourages market data vendors and broker-dealers to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg and Thomson Reuters.

The court in *NetCoalition* concluded that the Commission had failed to demonstrate that the market for market data was competitive based on the reasoning of the Commission's *NetCoalition* order because, in the court's view, the Commission had not adequately demonstrated that the proprietary data at issue in the case is used to attract order flow. PHLX believes, however, that evidence not before the court clearly demonstrated that availability of data attracts order flow.

Competition among platforms has driven PHLX continually to improve its platform data offerings and to cater to customers' data needs. For example, PHLX has developed and maintained multiple delivery mechanisms (IP, multi-cast, and compression) that enable customers to receive data in the form and manner they prefer and at the lowest cost to them. PHLX has created new products like Depth Data, TOPO and TOPO Plus Orders, because offering data in multiple formatting allows PHLX to better fit customer needs. PHLX offers data via multiple extranet providers, thereby helping to reduce network and total cost for its data products. PHLX has developed an online administrative system to provide customers transparency into their data feed requests and streamline data usage reporting.

Despite these enhancements and a dramatic increase in message traffic, PHLX's fees for market data have remained flat. In fact, as a percent of total Subscriber costs, PHLX data fees have fallen relative to other data usage costs—including bandwidth, programming, and infrastructure—that have risen. The same holds true for execution services; despite numerous enhancements to PHLX's trading platform, absolute and relative trading costs have declined. Platform competition has intensified as new entrants have emerged, constraining prices for both executions and for data.

The vigor of competition for proprietary information is significant and the Exchange believes that this proposal itself clearly evidences such competition. PHLX is offering a new pricing model in order to keep pace with changes in the industry and evolving customer needs. It is entirely optional and is geared towards attracting new customers, as well as retaining existing customers.

The Exchange has witnessed competitors creating new products and innovative pricing in this space over the course of the past year. PHLX continues to see firms challenge its pricing on the basis of the Exchange's explicit fees being higher than the zero-priced fees from other competitors such as BATS. In all cases, firms make decisions on how much and what types of data to consume on the basis of the total cost of interacting with PHLX or other exchanges. Of course, the explicit data fees are but one factor in a total platform analysis. Some competitors have lower transactions fees and higher data fees, and others are vice versa. The market for this Depth-of-Book information is highly competitive and continually evolves as products develop and change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[10] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx-2012–83 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx-2012–83. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of 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–Phlx-2012–83 and should be submitted on or before August 1, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–16876 Filed 7–10–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67353; File No. SR–ISE–2012–61]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by International Securities Exchange To Amend ISE Rule 715 To Reflect a Modification in the Functionality of the Add Liquidity Order

July 5, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on June 27, 2012, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 715 (Types of Orders) to reflect a modification in the functionality of the Add Liquidity Order and to rename the order type.

The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The 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 purpose of this proposed rule change is [sic] amend ISE Rule 715(n), Add Liquidity Order (''ALO''), to add a sentence describing a change to the functionality.[3]

The ALO was adopted to accommodate investors and market participants who wish only to provide liquidity in certain circumstances, such as to receive a maker fee (rebate) upon execution of an order. ALOs are limit orders that will only be executed as a ''maker'' on the ISE. Members can choose whether an ALO that is executable on the ISE upon entry (or that locks or crosses an away market upon entry) will be cancelled or re-priced to one minimum price variation above the national best bid or below the national best offer. For an ALO to be accepted by the system the Member must designate whether the order shall be re-priced or cancelled; there is no default option. An Add Liquidity Order will only be re-priced once and will be executed at the re-priced price.

The Exchange is now proposing additional functionality, such that, if at the time of entry, an ALO would lock or cross one or more non-displayed orders on the Exchange, the ALO will be cancelled or re-priced to the minimum price variation above the best non-displayed bid price (for sell orders) or below the best non-displayed offer price (for buy orders).[4] Currently, the only type of non-displayed order available on the Exchange is the all-or-none order (''AON''). AONs are contingency orders that have no priority on the book,[5] are not included in the ISE best bid or offer and, as such, are not included in the national best bid or offer (''NBBO''). AONs are considered to be ''non-displayed'' because they are not disseminated to OPRA to be included in the NBBO. However, they are not truly a ''non-displayed'' order as AONs are disseminated via the ISE Order Feed which Members can subscribe to for a fee.[6] Accordingly, Members entering AONs do not have an expectation that their order is ''non-displayed'' and would not have concerns that the ALO could disclose the existence of the AON by re-pricing to one minimum price variation above the AON bid price or below the AON offer price as Members have access to the existence of AONs via the ISE Order Feed.

The Exchange believes that adding this functionality is imperative to ensure that ALOs are only executed when providing liquidity. Without the ability to re-price an ALO that locks or crosses a non-displayed order, under certain circumstances, an incoming ALO could execute against a non-displayed order resting on the ISE limit order book, which would be in direct contravention with the purpose of an ALO—to provide liquidity, not take liquidity.

Additionally, for branding and marketing purposes, the Exchange proposes to rename the ''Add Liquidity Order'' to the ''Add Liquidity Only'' order.

As the implementation date for this order is not certain, the Exchange will announce the specific operative date via an Information Circular.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general, and with Section 6(b)(5) of the Act,[8] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the ALO order is designed to provide market participants with the ability to provide liquidity and have more control over their execution costs. When an ALO would lock or cross a non-displayed order on the ISE limit

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ALOs have not yet been implemented on the Exchange. While the rule change adopting the ALO became operative on April 6, 2012, the implementation date for the order type was delayed until such time as the technology incorporating this functionality was released. *See* Securities Exchange Act Release No. 66617 (March 19, 2012), 77 FR 17102 (March 23, 2012) (Notice of Filing and Immediate Effectiveness of SR–ISE–2012–20).

[4] For example, if the NBBO is 2.00 x 2.06 and there is a non-displayed all-or-none (''AON'') order (due to the size contingency, AON orders are not displayed) on the book to sell 10 contracts at 2.05, an incoming ALO to buy 10 contracts at 2.06 will be re-priced to 2.04.

[5] *See* Supplemental Material .02 to ISE Rule 713.

[6] *See* ISE Schedule of Fees.

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

order book or be executed upon entry, it will either be cancelled or re-priced as designated. The only non-displayed order type that the Exchange offers is the all-or-none order, which is non-displayed in the sense that it is not included in the ISE best bid and offer, and therefore, is not included in the NBBO. However, AONs are disseminated via the ISE Order Feed, allowing market participants to know of the existence of the AONs and thereby removing any expectation that AONs are truly non-displayed. Accordingly, Members entering AONs do not have an expectation that their AON is non-displayed and would not have concerns that this modification of the ALO's functionality could provide market participants with the ability to ferret out AONs on the ISE limit order book which would otherwise be hidden.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not 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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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) [9] of the Act and Rule 19b–4(f)(6) [10] thereunder. The Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing the proposed rule change.

At any time within 60 days of the filing of the proposed rule change, the Commission may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml);* or
- Send an Email to *rule-comments@sec.gov.* Please include File No. SR–ISE–2012–61 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–ISE–2012–61. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commissions 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. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. 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–ISE–2012–61 and should be submitted by August 1, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–16877 Filed 7–10–12; 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).

[11] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 7952]

60-Day Notice of Proposed Information Collection: Passport Demand Forecasting Study Phase III

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Passport Demand Forecasting Study Phase III.
- *OMB Control Number:* None.
- *Type of Request:* Reinstatement of a previous collection.
- *Originating Office:* Bureau of Consular Affairs/Passport Services (CA/PPT)
- *Form Number:* SV–2012–0006.
- *Respondents:* A national representative sample of U.S. Citizens, Nationals, and any other categories of individuals that are entitled to a U.S. Passport product.
- *Estimated Number of Respondents:* 4,000 survey respondents per month.
- *Estimated Number of Responses:* 48,000 survey respondents per annually.
- *Average Hours Per Response:* 10 minutes per survey.
- *Total Estimated Burden:* 8,000 hours annually.
- *Frequency:* Monthly.
- *Obligation to Respond:* Voluntary.

DATES: The Department will accept comments from the public up to 60 days from July 11, 2012.

ADDRESSES: You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Send direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information

collection and supporting documents to *PassportSurvey@state.gov*.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: The Intelligence Reform and Terrorism Prevention Act calls for the Secretary of Homeland Security, along with the Secretary of State, to develop and implement a plan that requires sufficient documentation of citizenship and identity to be shown when entering the United States. The requirement above, along with other socio-demographic variables has left the future demand for U.S. Passport products as undefined. The ambiguity of passport demand has resulted in Passport Services having an urgent need to obtain regular statistical data on issues that focus on and are related to passport applications and travel. In support of these efforts, Passport Services will conduct monthly forecasts of passport demand. The data gathered from the Passport Demand Forecasting Study Phase III will be used to monitor, assess, and forecast passport demand on a continuous basis.

Methodology: Passport Services is conducting a Passport Demand Forecast Study that will include monthly survey to collect data from a national representative sample of U.S. Citizens, Nationals and any other categories of individuals that are entitled to a U.S. Passport product using multiple methodologies. Methodologies can include mail, web/internet, telephone, and mixed-mode surveys to ensure that Passport Services reaches the appropriate audience and leverages the best research method to obtain valid responses. The survey data will cover an estimated 48,000 respondents annually and will include topics covering passport demand, travel, and socio-demographic variables of interest to the United States Department of State.

Dated: July 3, 2012.

Barry J. Conway,

Managing Director, Passport Support Operations, Bureau of Consular Affairs, Department of State.

[FR Doc. 2012–16974 Filed 7–10–12; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 7951]

Notice of Receipt of Application for Presidential Permit for the Construction of a New International Trade Crossing (NITC)

The Department of State hereby gives notice that on June 21, 2012, it received an application from the State of Michigan for a permit authorizing the construction, operation and maintenance of a new international road bridge that would connect Detroit, Wayne County, Michigan, and Windsor, Essex County, Ontario, Canada. The proposed bridge crossing would span approximately 2,800 feet or 0.53 miles. Landing in the Delray area of Detroit, it would include a plaza for inspection facilities, and a new interchange with Interstate 75. The application was filed by the State of Michigan, which would own the U.S. portion of the bridge. The bridge would be constructed, operated, and maintained by a new Crossing Authority, a Canadian corporation, acting through a concessionaire under a Public Private Partnership agreement. Michigan would grant a lease or another property interest to the Crossing Authority for these purposes.

The Department's jurisdiction with respect to this application is based upon Executive Order 11423, dated August 16, 1968, as amended, and the International Bridge Act of 1972 (Pub. L. 92–343, 86 Stat. 731, approved September 26, 1972). As required by E.O. 11423, the Department will circulate this application to concerned agencies for comment. Under E.O. 11423, the Department has the responsibility to determine, taking into account input from these agencies and other stakeholders, whether issuance of a Presidential permit for this proposed bridge would be in the U.S. national interest.

Interested members of the public are invited to submit written comments regarding this application on or before August 9, 2012 via email at *NITCComments@state.gov*. The Presidential permit application can be viewed online at *http://www.state.gov/p/wha/rt/permit/*.

Dated: July 5, 2012.

Elizabeth L. Martinez,

Director, Office of Canadian Affairs, Bureau of Western Hemisphere Affairs, Department of State.

[FR Doc. 2012–16938 Filed 7–10–12; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF STATE

[Public Notice 7950]

Defense Trade Advisory Group; Notice of Open Meeting

Summary: The Defense Trade Advisory Group (DTAG) will meet in open session from 1:30 p.m. until 5 p.m. on Thursday, July 26, 2012, at 1777 F Street NW., Washington, DC. Entry and registration will begin at 1 p.m. The membership of this advisory committee consists of private sector defense trade representatives, appointed by the Assistant Secretary of State for Political-Military Affairs, who advise the Department on policies, regulations, and technical issues affecting defense trade. The purpose of the meeting will be to discuss current defense trade issues and topics for further study. Agenda topics will be posted on the Directorate of Defense Trade Controls' Web site, at *www.pmddtc.state.gov* approximately 10 days prior to the meeting.

Members of the public may attend this open session and will be permitted to participate in the discussion in accordance with the Chair's instructions. Members of the public may, if they wish, submit a brief statement to the committee in writing.

As seating is limited to 125 persons, those wishing to attend the meeting must notify the DTAG Alternate Designated Federal Officer (DFO) by COB Friday, July 20, 2012. Members of the public requesting reasonable accommodation must also notify the DTAG Executive Secretariat by that date. If notified after this date, the DTAG Secretariat will be unable to accommodate requests due to security requirements at the meeting location. A person requesting reasonable accommodation should notify the Alternate DFO by the same date.

Each non-member observer or DTAG member that wishes to attend this plenary session should provide: His/her name; company or organizational affiliation; phone number; date of birth; and identifying data such as driver's license number, U.S. Government ID, or U.S. Military ID, to the DTAG Alternate DFO, Patricia Slygh, via email at *SlyghPC@state.gov*. One of the following forms of valid photo identification will be required for admission to the

meeting: U.S. driver's license, passport, U.S. Government ID or other valid photo ID. Personal data is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who attend Department functions.

For additional information, contact Patricia Slygh, PM/DDTC, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, Washington, DC 20522–0112; telephone (202) 663–2830; FAX (202) 261–8199; or email *SlyghPC@state.gov*.

Dated: July 3, 2012.

Robert S. Kovac,

Designated Federal Officer, Defense Trade Advisory Group, Department of State.

[FR Doc. 2012–16976 Filed 7–10–12; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No FMCSA–2011–0097]

Pilot Program on NAFTA Trucking Provisions

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; request for public comment.

SUMMARY: FMCSA announces and requests public comment on data and information concerning the Pre-Authorization Safety Audit (PASA) for Jose Guadalupe Morales Guevara (DBA Fletes Morales) which applied to participate in the Agency's long-haul pilot program to test and demonstrate the ability of Mexico-domiciled motor carriers to operate safely in the United States beyond the municipalities in the United States on the United States-Mexico international border or the commercial zones of such municipalities. This action is required by the ''U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007'' and all subsequent appropriations.

DATES: Comments must be received on or before July 23, 2012.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2011–0097 by any one of the following methods: *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, (M–30), U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., West Building, Ground Floor, Room 12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. All submissions must include the Agency name and docket number for this notice. See the ''Public Participation'' heading below for instructions on submitting comments and additional information.

Note that all comments received, including any personal information provided, will be posted without change to *http://www.regulations.gov.* Please see the ''Privacy Act'' heading below.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to Room W12–140 on the ground floor of the DOT Headquarters Building at 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act System of Records Notice for the DOT Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

Public Participation: The *http://www.regulations.gov* Web site is generally available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the ''help'' section of the *http://www.regulations.gov* Web site. Comments received after the comment closing date will be included in the docket, and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Marcelo Perez, FMCSA, North American Borders Division, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Telephone (512) 916–5440 Ext. 228; email *marcelo.perez@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

On May 25, 2007, the President signed into law the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (the Act), (Pub. L. 110–28, 121 Stat. 112, 183, May 25, 2007). Section 6901 of the Act requires that certain actions be taken by the Department of Transportation (the Department) as a condition of obligating or expending appropriated funds to grant authority to Mexico-domiciled motor carriers to operate beyond the municipalities in the United States on the United States-Mexico international border or the commercial zones of such municipalities (border commercial zones).

On July 8, 2011, FMCSA announced in the **Federal Register** [76 FR 40420] its intent to proceed with the initiation of a U.S.-Mexico cross-border long-haul trucking pilot program to test and demonstrate the ability of Mexico-domiciled motor carriers to operate safely in the United States beyond the border commercial zones as detailed in the Agency's April 13, 2011, **Federal Register** notice [76 FR 20807]. The pilot program is a part of FMCSA's implementation of the North American Free Trade Agreement (NAFTA) cross-border long-haul trucking provisions in compliance with section 6901(b)(2)(B) of the Act. FMCSA reviewed, assessed, and evaluated the required safety measures as noted in the July 8, 2011, notice and considered all comments received on or before May 13, 2011, in response to the April 13, 2011, notice. Additionally, to the extent practicable, FMCSA considered comments received after May 13, 2011.

In accordance with section 6901(b)(2)(B)(i) of the Act, FMCSA is required to publish in the **Federal Register**, and provide sufficient opportunity for public notice and comment comprehensive data and information on the PASAs conducted of motor carriers domiciled in Mexico that are granted authority to operate beyond the border commercial zones. This notice serves to fulfill this requirement.

FMCSA is publishing for public comment the data and information relating to one PASA that was completed on February 10, 2012. FMCSA announces that the Mexico-domiciled motor carrier in Table 1 successfully completed the PASA. Notice of this completion was also published in the FMCSA Register.

Tables 2, 3 and 4 all titled (''Successful Pre-Authorization Safety Audit (PASA) Information'') set out

additional information on the carrier(s) noted in Table 1. A narrative description of each column in the tables is provided as follows:

A. *Row Number in the Appendix for the Specific Carrier:* The row number for each line in the tables.

B. *Name of Carrier:* The legal name of the Mexico-domiciled motor carrier that applied for authority to operate in the United States (U.S.) beyond the border commercial zones and was considered for participation in the long-haul pilot program.

C. *U.S. DOT Number:* The identification number assigned to the Mexico-domiciled motor carrier and required to be displayed on each side of the motor carrier's power units. If granted provisional operating authority, the Mexico-domiciled motor carrier will be required to add the suffix ''X'' to the ending of its assigned U.S. DOT Number for those vehicles approved to participate in the pilot program.

D. *FMCSA Register Number:* The number assigned to the Mexico-domiciled motor carrier's operating authority as found in the FMCSA Register.

E. *PASA Initiated:* The date the PASA was initiated.

F. *PASA Completed:* The date the PASA was completed.

G. *PASA Results:* The results upon completion of the PASA. The PASA receives a quality assurance review before approval. The quality assurance process involves a dual review by the FMCSA Division Office supervisor of the auditor assigned to conduct the PASA and by the FMCSA Service Center New Entrant Specialist designated for the specific FMCSA Division Office. This dual review ensures the successfully completed PASA was conducted in accordance with FMCSA policy, procedures and guidance. Upon approval, the PASA results are uploaded into the FMCSA's Motor Carrier Management Information System (MCMIS). The PASA information and results are then recorded in the Mexico-domiciled motor carrier's safety performance record in MCMIS.

H. *FMCSA Register:* The date FMCSA published notice of a successfully completed PASA in the FMCSA Register. The FMCSA Register notice advises interested parties that the application has been preliminarily granted and that protests to the application must be filed within 10 days of the publication date. Protests are filed with FMCSA Headquarters in Washington, DC. The notice in the FMCSA Register lists the following information:

a. Current registration number (e.g., MX–123456);

b. Date the notice was published in the FMCSA Register;

c. The applicant's name and address; and

d. Representative or contact information for the applicant.

The FMCSA Register may be accessed through FMCSA's Licensing and Insurance public Web site at *http://li-public.fmcsa.dot.gov/,* and selecting FMCSA Register in the drop down menu.

I. *U.S. Drivers:* The total number of the motor carrier's drivers approved for long-haul transportation in the United States beyond the border commercial zones.

J. *U.S. Vehicles:* The total number of the motor carrier's power units approved for long-haul transportation in the United States beyond the border commercial zones.

K. *Passed Verification of 5 Elements (Yes/No):* A Mexico-domiciled motor carrier will not be granted provisional operating authority if FMCSA cannot verify all of the following five mandatory elements. FMCSA must:

a. Verify a controlled substances and alcohol testing program consistent with 49 CFR part 40.

b. Verify a system of compliance with hours-of-service rules of 49 CFR part 395, including recordkeeping and retention;

c. Verify the ability to obtain financial responsibility as required by 49 CFR 387, including the ability to obtain insurance in the United States;

d. Verify records of periodic vehicle inspections; and

e. Verify the qualifications of each driver the carrier intends to use under such authority, as required by 49 CFR parts 383 and 391, including confirming the validity of each driver's Licencia Federal de Conductor and English language proficiency.

L. *If No, Which Element Failed:* If FMCSA cannot verify one or more of the five mandatory elements outlined in 49 CFR part 365, Appendix A, Section III, this column will specify which mandatory element(s) cannot be verified.

Please note that for items L through P below, during the PASA, after verifying the five mandatory elements discussed in item K above, FMCSA will gather information by reviewing a motor carrier's compliance with ''acute and critical'' regulations of the Federal Motor Carrier Safety Regulations (FMCSRs) and Hazardous Materials Regulations (HMRs). Acute regulations are those where noncompliance is so severe as to require immediate corrective actions by a motor carrier regardless of the overall basic safety management controls of the motor carrier. Critical regulations are those where noncompliance relates to management and/or operational controls. These regulations are indicative of breakdowns in a carrier's management controls. A list of acute and critical regulations is included in 49 CFR part 385, Appendix B, Section VII.

Parts of the FMCSRs and HMRs having similar characteristics are combined together into six regulatory areas called ''factors.'' The regulatory factors are intended to evaluate the adequacy of a carrier's management controls.

M. *Passed Phase 1, Factor 1:* A ''yes'' in this column indicates the carrier has successfully met Factor 1 (listed in part 365, Subpart E, Appendix A, Section IV(f)). Factor 1 includes the General Requirements outlined in parts 387 (Minimum Levels of Financial Responsibility for Motor Carriers) and 390 (Federal Motor Carrier Safety Regulations—General).

N. *Passed Phase 1, Factor 2:* A ''yes'' in this column indicates the carrier has successfully met Factor 2, which includes the Driver Requirements outlined in parts 382 (Controlled Substances and Alcohol Use and Testing), 383 (Commercial Driver's License Standards; Requirements and Penalties) and 391 (Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors).

O. *Passed Phase 1, Factor 3:* A ''yes'' in this column indicates the carrier has successfully met Factor 3, which includes the Operational Requirements outlined in parts 392 (Driving of Commercial Motor Vehicles) and 395 (Hours of Service of Drivers).

P. *Passed Phase 1, Factor 4:* A ''yes'' in this column indicates the carrier has successfully met Factor 4, which includes the Vehicle Requirements outlined in parts 393 (Parts and Accessories Necessary for Safe Operation) and 396 (Inspection, Repair and Maintenance) and vehicle inspection and out-of-service data for the last 12 months.

Q. *Passed Phase 1, Factor 5:* A ''yes'' in this column indicates the carrier has successfully met Factor 5, which includes the hazardous material requirements outlined in parts 171 (General Information, Regulations, and Definitions), 177 (Carriage by Public Highway), 180 (Continuing Qualification and Maintenance of Packagings) and 397 (Transportation of Hazardous Materials; Driving and Parking Rules).

R. *Passed Phase 1, Factor 6:* A ''yes'' in this column indicates the carrier has successfully met Factor 6, which includes Accident History. This factor is the recordable accident rate during the past 12 months. A recordable ''accident'' is defined in 49 CFR 390.5, and means an accident involving a commercial motor vehicle operating on a public road in interstate or intrastate commerce which results in a fatality; a bodily injury to a person who, as a result of the injury, immediately received medical treatment away from the scene of the accident; or one or more motor vehicles incurring disabling damage as a result of the accident requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

S. *Number U.S. Vehicles Inspected:* The total number of vehicles (power units) the motor carrier is approved to operate in the United States beyond the border commercial zones that received a vehicle inspection during the PASA. During a PASA, FMCSA inspected all power units to be used by the motor carrier in the pilot program and applied a current Commercial Vehicle Safety Alliance (CVSA) inspection decal, if the inspection is passed successfully. This number reflects the vehicles that were inspected, irrespective of whether the vehicle received a CVSA inspection at the time of the PASA decal as a result of a passed inspection.

T. *Number U.S. Vehicles Issued CVSA Decal:* The total number of inspected vehicles (power units) the motor carrier is approved to operate in the United States beyond the border commercial zones that received a CVSA inspection decal as a result of an inspection during the PASA.

U. *Controlled Substances Collection:* Refers to the applicability and/or country of origin of the controlled substance and alcohol collection facility that will be used by a motor carrier that has successfully completed the PASA.

a. ''US'' means the controlled substance and alcohol collection facility is based in the United States.

b. ''MX'' means the controlled substance and alcohol collection facility is based in Mexico.

c. ''Non-CDL'' means that during the PASA, FMCSA verified that the motor carrier is not utilizing commercial motor vehicles subject to the commercial driver's license requirements as defined in 49 CFR 383.5 (Definition of Commercial Motor Vehicle). Any motor carrier that does not operate commercial motor vehicles as defined in § 383.5 is not subject to DOT controlled substance and alcohol testing requirements.

V. *Name of Controlled Substances and Alcohol Collection Facility:* Shows the name and location of the controlled substances and alcohol collection facility that will be used by a Mexico-domiciled motor carrier who has successfully completed the PASA.

TABLE 1

Row number in tables 2, 3 and 4 of the Appendix to today's notice	Name of carrier	USDOT No.
1	Jose Guadalupe Morales Guevara DBA Fletes Morales	683409

TABLE 2—SUCCESSFUL PRE-AUTHORIZATION SAFETY AUDIT (PASA) INFORMATION (SEE ALSO TABLES 3 AND 4)

Column A—Row No.	Column B—Name of carrier	Column C—US DOT No.	Column D—FMCSA register No.	Column E—PASA iInitiated	Column F—PASA completed	Column G—PASA results	Column H—FMCSA register	Column I—US drivers	Column J—US vehicles
1	Jose Guadalupe Morales Guevara	683409	MX–316863	1/10/12	1/20/12	Pass	6/25/12	1	1

TABLE 3—SUCCESSFUL PRE-AUTHORIZATION SAFETY AUDIT (PASA) INFORMATION (SEE ALSO TABLES 2 AND 4)

Column A—Row No.	Column B—Name of carrier	Column C—US DOT No.	Column D—FMCSA register No.	Column K—Passed verification of 5 elements (yes/no)	Column L—If no, which element failed	Column M—Passed phase 1 factor 1	Column N—Passed phase 1 factor 2	Column O—Passed phase 1 factor 3	Column P—Passed phase 1 factor 4
1	Jose Guadalupe Morales Guevara.	683409	MX–316863	Yes	None	Pass	Pass	Pass	Pass.

TABLE 4—SUCCESSFUL PRE-AUTHORIZATION SAFETY AUDIT (PASA) INFORMATION (SEE ALSO TABLES 2 AND 3)

Column A—Row No.	Column B—Name of carrier	Column C—US DOT No.	Column D—FMCSA register No.	Column Q—Passed phase I factor 5	Column R—Passed phase I factor 6	Column S—No. U.S. vehicles inspected	Column T No. U.S. vehicles issued CVSA decal	Column U—Controlled substance collection	Column V—Name of controlled substances and alcohol collection facility
1	Jose Guadalupe Morales Guevara	683409	MX–316863	N/A	Pass	1	1	US	Fernando Ruiz, Inc.

In an effort to provide as much information as possible for review, the application and PASA results for this carrier are posted at the Agency's Web site for the pilot program at *http://www.fmcsa.dot.gov/intl-programs/trucking/Trucking-Program.aspx.* For carriers that participated in the Agency's demonstration project that ended in 2009, copies of the previous PASA and compliance review, if conducted, are also posted. All documents were redacted so that personal information regarding the drivers is not released. Sensitive business information, such as the carrier's tax identification number, is also redacted. In response to previous comments received regarding the PASA notice process, FMCSA also posted copies of the vehicle inspections conducted during the PASA in the PASA document.

In addition to information collected during the PASA, FMCSA reviewed available information regarding the carrier's safety performance. FMCSA's Safety Measurement System (SMS) for Jose Guadalupe Morales Guevara DBA Fletes Morales does not show safety performance issues; all BASICS for the carrier indicate that there is either insufficient data (insufficient inspections) or no violations. The SMS data reflect that this carrier was not regularly traveling into the U.S. for the past 24 months and accrued only 2 driver inspections and one vehicle inspection with no violations noted.

A list of the carrier's vehicles approved by FMCSA for use in the pilot program is also available at the above referenced Web site.

The applicant carrier noted one affiliated company, Jose Guadalupe Morales Guevara DBA Morales Trucking (U.S. DOT number 1217935). FMCSA notes that the SMS scores for Morales Trucking also do not exceed the alert thresholds. FMCSA has also confirmed that Jose Guadalupe Morales Guevara DBA Fletes Morales was created to fulfill a separate business need, and is not an attempt to evade or conceal a negative safety performance history by Morales Trucking.

To date, no carriers have failed the PASA. The Act only requires publication of data for carriers receiving operating authority, as failure to successfully complete the PASA precludes the carrier from being granted authority to participate in the long-haul pilot program. FMCSA will publish this information to show motor carriers that failed to meet U.S. safety standards.

Request for Comments

In accordance with the Act, FMCSA requests public comment from all interested persons on the PASA information presented in this notice. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, the FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

FMCSA notes that under its regulations, preliminary grants of authority, pending the carrier's showing of compliance with insurance and process agent requirements and the resolution of any protests, are publically noticed through publication in the FMCSA Register. Any protests of such grants must be filed within 10 days of publication of notice in the FMCSA Register.

Issued on: July 2, 2012.

Anne S. Ferro,

Administrator.

[FR Doc. 2012–16890 Filed 7–10–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0163]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice of applications for exemption from the diabetes mellitus requirement; request for comments.

SUMMARY: FMCSA announces receipt of applications from 23 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before August 10, 2012.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2012–0163 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001.

Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 23 individuals listed in this notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b) (3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statutes.

Qualifications of Applicants

Randall W. Amtower

Mr. Amtower, 51, has had ITDM since 2011. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Amtower understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Amtower meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class E operator's license from West Virginia.

Steven G. Brickey

Mr. Brickey, 43, has had ITDM since 2002. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Brickey understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Brickey meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class R operator's license from Colorado.

Ronald K. Coleman

Mr. Coleman, 70, has had ITDM since 1992. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Coleman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Coleman meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class D CDL from Kentucky.

Randall L. Corrick

Mr. Corrick, 27, has had ITDM since 2000. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Corrick understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Corrick meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from North Dakota.

Raymond G. Gravesandy

Mr. Gravesandy, 51, has had ITDM since 2009. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Gravesandy understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gravesandy meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New York.

John T. Green

Mr. Green, 40, has had ITDM since 2005. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Green understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Green meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Texas.

Gregory M. Harris

Mr. Harris, 53, has had ITDM since 2005. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Harris understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Harris meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Texas.

Bryan R. Hopkins

Mr. Hopkins, 51, has had ITDM since 2007. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hopkins understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV

safely. Mr. Hopkins meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

Kelly M. Keller

Mr. Keller, 56, has had ITDM since 2008. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Keller understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Keller meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from North Dakota.

Roger S. Kumbalek

Mr. Kumbalek, 59, has had ITDM since 2011. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Kumbalek understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kumbalek meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wisconsin.

Timothy J. Loeschen

Mr. Loeschen, 27, has had ITDM since 1999. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Loeschen understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Loeschen meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Texas.

Gary K. McCord

Mr. McCord, 57, has had ITDM since 1977. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. McCord understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. McCord meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he has stable proliferative diabetic retinopathy. He holds a Class B operator's license from Indiana.

Joseph L. Miska

Mr. Miska, 51, has had ITDM since 2012. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Miska understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Miska meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

Susan L. Mosel

Ms. Mosel, 58, has had ITDM since 2012. Her endocrinologist examined her in 2012 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Mosel that she understands diabetes management and monitoring, has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Mosel meets the vision requirements of 49 CFR 391.41(b)(10). Her optometrist examined her in 2012 and certified that she does not have diabetic retinopathy. She holds a Class D operator's license from Wisconsin.

Mark T. L. Owings

Mr. Owings, 25, has had ITDM since 1994. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Owings understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Owings meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Kansas.

Jacob D. Oxford

Mr. Oxford, 21, has had ITDM since 1998. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Oxford understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Oxford meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Idaho.

Derek W. Palmer

Mr. Palmer, 24, has had ITDM since 2000. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Palmer understands

diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Palmer meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Massachusetts.

Robert D. Regavich

Mr. Regavich, 48, has had ITDM since 1992. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Regavich understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Regavich meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from New Jersey.

Jack W. Schlichting

Mr. Schlichting, 50, has had ITDM since 1990. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Schlichting understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Schlichting meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Minnesota.

Lonnie H. Shere

Mr. Shere, 56, has had ITDM since 2009. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Shere understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Shere meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Washington.

Craig A. Trimmer

Mr. Trimmer, 29, has had ITDM since 2010. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Trimmer understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Trimmer meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Ohio.

Lisa E. Williams

Ms. Williams, 51, has had ITDM since 2010. Her endocrinologist examined her in 2012 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Williams understands diabetes management and monitoring, has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Williams meets the vision requirements of 49 CFR 391.41(b)(10). Her optometrist examined her in 2012 and certified that she does not have diabetic retinopathy. She holds an operator's license from Indiana.

Ramon I. Zamora-Ortiz

Mr. Zamora-Ortiz, 54, has had ITDM since 2008. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Zamora-Ortiz understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Zamora-Ortiz meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Washington.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136(e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

[1] Section 4129(a) refers to the 2003 notice as a ''final rule.'' However, the 2003 notice did not issue a ''final rule'' but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Issued on: July 3, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–16888 Filed 7–10–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2002–11714; FMCSA–2005–23099; FMCSA–2006–24783; FMCSA–2008–0021; FMCSA–2010–0050; FMCSA–2010–0114]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 22 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective August 9, 2012. Comments must be received on or before August 10, 2012.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. FMCSA–2002–11714; FMCSA–2005–23099; FMCSA–2006–24783; FMCSA–2008–0021; FMCSA–2010–0050; FMCSA–2010–0114, using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 22 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 22 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

David E. Balboni (MA)
Mark S. Berkheimer (PA)
Michael D. DeBerry (WV)
Tony K. Ellis (IN)
Jerry L. Gibson (FL)
Rici W. Giesseman (OH)
George R. House (MO)
Michael A. Jabro (MI)
Michael G. Martin (CT)
Michael M. Martinez (NM)
Robert L. McClain (MI)
Daniel E. Miller (VA)
Buddy W. Myrick (TX)
James L. Okonek (WI)
Aaron L. Paustian (IA)
John J. Pribanic (TX)
Alan J. Reynaldos (NJ)
Charles L. Rill, Sr. (MD)
John P. Rodrigues (TX)
Robert Smiley (NM)
Robert L. Sulfridge (KY)
Scott E. Tussey (KY)

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level

of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 22 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (67 FR 15662; 67 FR 37907; 69 FR 26206; 71 FR 4194; 71 FR 13450; 71 FR 26601; 71 FR 32183; 71 FR 41310; 73 FR 9159; 73 FR 15568; 73 FR 27017; 73 FR 36955; 75 FR 14658; 75 FR 20882; 75 FR 28684; 75 FR 34210; 75 FR 34211; 75 FR 34212; 75 FR 36778; 75 FR 36779; 75 FR 38602; 75 FR 47888). Each of these 22 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by August 10, 2012.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 22 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: July 3, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–16886 Filed 7–10–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1999–5578; FMCSA–1999–6480; FMCSA–2002–11714; FMCSA–2003–14223; FMCSA–2004–17195; FMCSA–2006–24015; FMCSA–2006–24783; FMCSA–2009–0154; FMCSA–2010–0082]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 12 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective August 1, 2012. Comments must be received on or before August 10, 2012.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. FMCSA–1999–5578; FMCSA–1999–6480; FMCSA–2002–11714; FMCSA–2003–14223; FMCSA–2004–17195; FMCSA–2006–24015; FMCSA–2006–24783; FMCSA–2009–0154; FMCSA–2010–0082, using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17,

2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 12 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 12 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Manuel A. Almeida (MA)
Ronald B. Brown (ME)
Trixie L. Brown (IN)
Thomas L. Corey (IN)
Brian G. Hagen (IL)
Azizi A. Jamal (NJ)
Willard L. Riggle (IN)
Jose M. Suarez (TX)
Lee F. Taylor (NJ)
Barney J. Wade (MS)
Richard G. Wendt (MS)
Charles A. Winchell (OK)

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 12 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (64 FR 27027; 64 FR 51568; 64 FR 68195; 65 FR 20251; 67 FR 15662; 67 FR 37907; 67 FR 38311; 68 FR 10302; 68 FR 19596; 69 FR 17263; 69 FR 26921; 69 FR 31447; 70 FR 74103; 71 FR 14566; 71 FR 14568; 71 FR 27033; 71 FR 27034; 71 FR 30227; 71 FR 30228; 71 FR 32184; 71 FR 41311; 71 FR 43557; 73 FR 27014; 73 FR 28187; 73 FR 36955; 73 FR 42403; 74 FR 37299; 74 FR 48344; 75 FR 25918; 75 FR 25919; 75 FR 36778; 75 FR 36779; 75 FR 39729; 75 FR 38602). Each of these 12 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by August 10, 2012.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 12 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: July 3, 2012.

Larry W. Minor,

Associate Administrator for Policy .

[FR Doc. 2012–16889 Filed 7–10–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–26367]

Motor Carrier Safety Advisory Committee (MCSAC): Membership Solicitation

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Request for Applications and Nominations to the Motor Carrier Safety Advisory Committee (MCSAC).

SUMMARY: FMCSA solicits applications and nominations for interested persons to serve on the MCSAC. The MCSAC is composed of FMCSA stakeholders from the safety enforcement, industry, labor, and safety sectors and is charged with providing advice and recommendations to the FMCSA Administrator on Federal motor carrier safety programs. As part of this solicitation, current members with terms expiring in 2012 will be able to indicate their interest in being reappointed for another term.

DATES: Applications/nominations for the MCSAC and letters of interest in reappointment must be received electronically on or before August 10, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Shannon L. Watson, Senior Advisor to the Associate Administrator for Policy, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 385–2395, *mcsac@dot.gov.* Additionally, should you wish to review tasks that the MCSAC has considered and learn more about the committee and its membership, please go to *http://mcsac.fmcsa.dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

MCSAC

Section 4144 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU, Pub. L. 109–59, 119 Stat. 1144, August 10, 2005) required the Secretary of Transportation to establish the MCSAC. The MCSAC provides advice and recommendations to the FMCSA Administrator on motor carrier safety programs and regulations, and operates in accordance with the Federal Advisory Committee Act (FACA, 5 U.S.C. App 2).

The committee may be comprised of not more than 20 members appointed by the Administrator for up to 2-year terms. Members are selected from among individuals who are not employees of FMCSA and who are specially qualified to serve on the Committee based on their education, training, or experience. Currently, the members include representatives of the motor carrier industry, safety advocates, labor, and safety enforcement communities. Representatives of a single enumerated interest group may not constitute a majority of the committee members. Committee members must not be officers or employees of the Federal Government and serve without pay. The Administrator may allow a member, when attending meetings of the committee or a subcommittee, reimbursement of expenses authorized under Section 5703 of Title 5, United States Code and the Federal Travel Regulation System (41 CFR Subtitle F), relating to per diem, travel, and transportation.

The President's Memorandum of June 18, 2010, concerning lobbyists on Agency boards and commissions (75 FR 35995, June 23, 2010) directed the heads of Executive departments and agencies ''not to make any new appointments or reappointments of federally registered lobbyists to advisory committees and other boards and commissions.'' Pursuant to the President's directive, FMCSA will not consider for appointment to the MCSAC any individual who is subject to the registration and reporting requirements of the Lobbying Disclosure Act (2 U.S.C. 1605).

The Designated Federal Official anticipates calling MCSAC meetings approximately three times each year. Meetings are open to the general public, except as provided under the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2). Notice of each meeting is published in the **Federal Register** at least 15 calendar days prior to the date of the meeting.

II. Request for Nominations

The FMCSA seeks applications and nominations for membership to the MCSAC from among its stakeholder groups for representatives with specialized experience, education, or training in commercial motor vehicle safety issues. The Agency is required under FACA to appoint members of diverse views and interests to ensure the committee is balanced with appropriate consideration of background. All Committee members must be able to attend at least three meetings each year in person or by teleconference. Interested persons should have a commitment to transportation safety, and a record of collaboration and professional experience in commercial motor vehicle safety issues. As part of this solicitation, current members with expiring terms will be able to indicate their interest in being reappointed for another term.

On-line applications will be accepted for positions on the MCSAC. Applications may be obtained from the MCSAC Web site at *http://mcsac.fmcsa.dot.gov/,* completed on-line and emailed to Shannon L. Watson, Senior Advisor to the Associate Administrator for Policy, FMCSA, at *mcsac@dot.gov.* The Web site contains additional information on the MCSAC, including reports, meeting minutes, and membership information.

Applications/nominations and letters of interest in reappointment must be received on or before August 10, 2012.

Issued on: June 29, 2012.

Anne S. Ferro,

Administrator.

[FR Doc. 2012–16894 Filed 7–10–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

[Case ID: SOM–1066]

Additional Designation of Persons Whose Property and Interests in Property Are Blocked Pursuant to Executive Order 13536 of April 12, 2010, ''Blocking Property of Certain Persons Contributing to the Conflict in Somalia''

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of 6 individuals whose property and interests in property are blocked pursuant to Executive Order 13536 of April 12, 2010, ''Blocking Property of Certain Persons Contributing to the Conflict in Somalia.''

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue NW. (Treasury Annex), Washington, DC 20220, Tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

The List of Specially Designated Nationals and Blocked Persons (''SDN List'') and additional information concerning OFAC are available from OFAC's Web site (*www.treas.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs also is available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

On April 12, 2010, the President issued the Executive Order ''Blocking Property of Certain Persons Contributing to the Conflict in Somalia'' (the ''Order'') pursuant to, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–06). In the

Order, the President declared a national emergency to address the deterioration of the security situation and the persistence of violence in Somalia and acts of piracy and armed robbery at sea off the coast of Somalia.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person, of persons listed in the Annex to the Order and of persons determined by the Secretary of the Treasury, in consultation with the Secretary of State, to satisfy certain criteria set forth in the Order.

The Annex to the Order lists eleven individuals and one entity whose property and interests in property are blocked pursuant to the Order. Today, OFAC is publishing additional identifying information of persons contributing to the conflict in Somalia. The listing of the blocked 6 individuals is as follows:

1. ABD EL-RAHMAN, Suhayl Salim (a.k.a. ABDURAHAMAN, Suhayl; a.k.a. AL-SUDANI, Abu Faris; a.k.a. FARIS, Abu; a.k.a. MUHAMMAD, Sahib; a.k.a. MUHAMMAD, Suhayl Salim; a.k.a. SALIM, Suhayl; a.k.a. UL-ABIDEEN, Zain; a.k.a. ZAYN, Haytham; a.k.a. ''SABA''; a.k.a. ''SANA''; a.k.a. ''SUNDUS''); DOB 17 Jun 1984; alt. DOB 1990; POB Rabak, Sudan; Passport C0004350; Personal ID Card A00710804 (individual) [SOMALIA].

2. AHMED, Abubaker Shariff (a.k.a. AHMED, Abubakar; a.k.a. AHMED, Abubaker Shariff; a.k.a. AHMED, Sheikh Abubakar; a.k.a. MAKABURI; a.k.a. SHARIFF, Abu Makaburi; a.k.a. SHARIFF, Abubaker), Majengo Area, Mombasa, Kenya; DOB 1962; alt. DOB 1967; POB Kenya; citizen Kenya (individual) [SOMALIA].

3. GOITOM, Taeme Abraham (a.k.a. GEBREDENGEL, Simon; a.k.a. GOITOM, Te'ame; a.k.a. SELASSIE, Ta'ame Abraham; a.k.a. SELASSIE, Te'ame Abraha; a.k.a. SELASSIE, Te'ame Abraham; a.k.a. TA'AME, Abraham Selassie; a.k.a. ''DA'AME''; a.k.a. ''DHA'AME''; a.k.a. ''GAAMEI''; a.k.a. ''MEKELE''; a.k.a. ''MEKELLE''; a.k.a. ''MEQELE''; a.k.a. ''TESFALEN''; a.k.a. ''TSEGAI''); DOB 1957; alt. DOB 1956; POB Akale Guzay (Shemejena); Diplomatic Passport Laissez-Passer 02154; Colonel; Head of Eritrean External Intelligence Operation; Brigadier General (individual) [SOMALIA].

4. MOHAMMED, Aboud Rogo (a.k.a. MOHAMED, Aboud Rogo; a.k.a. MUHAMMAD, Aboud Rogo; a.k.a. ROGO, Aboud Mohammad; a.k.a. ROGO, Aboud Mohammed; a.k.a. ROGO, Aboud Seif; a.k.a. ROGO, Sheikh Aboud); DOB 11 Nov 1960; alt. DOB 11 Nov 1967; alt. DOB 11 Nov 1969; alt. DOB 01 Jan 1969; POB Kenya; alt. POB Lamu Island, Kenya; citizen Kenya (individual) [SOMALIA].

5. NEGASH, Tewolde Habte (a.k.a. KIDANE, Amanuel; a.k.a. MEHAREN, Senay Beraki; a.k.a. MUSA, Abdirahim; a.k.a. MUSA, Abdirahman; a.k.a. MUSE, Abdirahim; a.k.a. MUSE, Abdirahman; a.k.a. NAGASH, Tewaled Holde; a.k.a. NAGESH, Tewaled Holde; a.k.a. NEGASH, Bitewelde Habte; a.k.a. NEGASH, Emanuel; a.k.a. NEGASH, Ole; a.k.a. NEGASH, Tewelde Habte; a.k.a. NEGASH, Tewold Habte; a.k.a. ''DESTA''; a.k.a. ''WEDI''); DOB 05 Sep 1960; POB Asmara, Eritrea; Diplomatic Passport D0001060; alt. Diplomatic Passport D000080; Colonel (individual) [SOMALIA].

6. OMAR, Omar Awadh (a.k.a. AWADH, Omar; a.k.a. SAHAL, Omar); DOB 20 Sep 1973; POB Mombasa, Kenya; Passport A764712 (Kenya) expires 27 Mar 2013; alt. Passport B002271 (Kenya); alt. Passport KE007776 expires Aug 2009; Possibly Located in Kenya (individual) [SOMALIA].

Dated: July 5, 2012.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2012–16854 Filed 7–10–12; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 77 Wednesday,

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Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 413 and 417

Medicare Program; End-Stage Renal Disease Prospective Payment System, Quality Incentive Program, and Bad Debt Reductions for All Medicare Providers; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 413 and 417

[CMS–1352–P]

RIN 0938–AR13

Medicare Program; End-Stage Renal Disease Prospective Payment System, Quality Incentive Program, and Bad Debt Reductions for All Medicare Providers

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This rule proposes to update and make revisions to the End-Stage Renal Disease (ESRD) prospective payment system (PPS) for calendar year (CY) 2013. This rule also proposes to set forth requirements for the ESRD quality incentive program (QIP), including for payment year (PY) 2015 and beyond. This proposed rule will implement changes to bad debt reimbursement for all Medicare providers, suppliers, and other entities eligible to receive bad debt. (See the Table of Contents for a listing of the specific issues addressed in this proposed rule.)

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. E.S.T. on August 31, 2012.

ADDRESSES: In commenting, please refer to file code CMS 1352 P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1352–P, P.O. Box 8010, Baltimore, MD 21244–8010.

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 to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1352–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following addresses prior to the close of the comment period:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey 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.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786 9994 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

Michelle Cruse or Terri Deutsch, (410) 786–4533, for issues related to ESRD.

Heidi Oumarou, (410) 786–7942, for issues related to the ESRD market basket.

Teresa Casey, (410) 786–7215, for issues related to the QIP.

Kellie Shannon, (410) 786–0416 for information regarding Medicare bad debt.

SUPPLEMENTARY INFORMATION:

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: *http://www.regulations.gov.* Follow the search instructions 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.

Electronic Access

This **Federal Register** document is also available from the **Federal Register** online database through *Federal Digital System (FDsys),* a service of the U.S. Government Printing Office. This database can be accessed via the internet at *http://www.gpo.gov/fdsys/.*

Addenda Are Only Available Through the Internet on the CMS Web Site

In the past, a majority of the Addenda referred to throughout the preamble of our proposed and final rules were available in the **Federal Register**. However, the Addenda of the annual proposed and final rules will no longer be available in the **Federal Register**. Instead, these Addenda to the annual proposed and final rules will be available only through the Internet on the CMS Web site. The Addenda to the End-Stage Renal Disease (ESRD) Prospective Payment System (PPS) rules are available at: *http://www.cms.gov/ESRDPayment/PAY/list.asp.* Readers who experience any problems accessing any of the Addenda to the proposed and final rules of the ESRD PPS that are posted on the CMS Web site identified above should contact Michelle Cruse at 410–786–7540.

Table of Contents

To assist readers in referencing sections contained in this preamble, we are providing a Table of Contents. Some of the issues discussed in this preamble affect the payment policies, but do not require changes to the regulations in the Code of Federal Regulations (CFR).

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Acronyms

Because of the many terms to which we refer by acronym in this proposed rule, we are listing the acronyms used and their corresponding meanings in alphabetical order below:

AMCC Automated Multi-Channel Chemistry
ASP Average Sales Price
AV Arteriovenous
BLS Bureau of Labor Statistics
BMI Body Mass Index
BSA Body Surface Area
CBSA Core-Based Statistical Area
CCN CMS Certification Number
CDC Centers for Disease Control and Prevention
CLABSI Central Line Access Bloodstream Infections
CFR Code of Federal Regulations
CIP Core Indicators Project
CMS Centers for Medicare & Medicaid Services
CPM Clinical Performance Measure

CPT Current Procedural Terminology
CROWNWeb Consolidated Renal Operations in a Web-Enabled Network
CY Calendar Year
DFC Dialysis Facility Compare
DFR Dialysis Facility Report
DME Durable Medical Equipment
ESA Erythropoiesis Stimulating Agent
ESRD End-Stage Renal Disease
ESRDB End-Stage Renal Disease Bundled
FDA Food and Drug Administration
FI/MAC Fiscal Intermediary/Medicare Administrative Contractor
FY Fiscal Year
GDP Gross Domestic Product
HAI Healthcare-Associated Infections
HCPCS Healthcare Common Procedure Coding System
HD Hemodialysis
HHD Home Hemodialysis
ICD–9–CM International Classification of Diseases, 9th Edition, Clinical Modifications
ICH CAHPS In-Center Hemodialysis Consumer Assessment of Healthcare Providers and Systems
IGI IHS Global Insight
IPPS Inpatient Prospective Payment System
KDIGO Kidney Disease: Improving Global Outcomes
KDOQI Kidney Disease Outcome Quality Initiative
Kt/V A measure of dialysis adequacy where K is dialyzer clearance, t is dialysis time, and V is total body water volume
LDO Large Dialysis Organization
MAP Medicare Allowable Payment
MCP Monthly Capitation Payment
MIPPA Medicare Improvements for Patients and Providers Act of 2008 (Pub. L. 110–275)
MMA Medicare Prescription Drug, Improvement and Modernization Act of 2003
MMEA Medicare and Medicaid Extenders Act of 2010 Pub. L. 111–309
MFP Multifactor Productivity
NHSN National Healthcare Safety Network
NQF National Quality Forum
PD Peritoneal Dialysis
PFS Physician Fee Schedule
PPS Prospective Payment System
PSR Performance Score Report
PY Payment Year
QIP Quality Incentive Program
REMIS Renal Management Information System
RFA Regulatory Flexibility Act
RUL Reasonable Useful Lifetime
SBA Small Business Administration
SIMS Standard Information Management System
SHR Standardized Hospitalization Ratio
SSA Social Security Administration
The Act Social Security Act
The Affordable Care Act The Patient Protection and Affordable Care Act
URR Urea Reduction Ratio
VBP Value Based Purchasing

I. Executive Summary

A. Purpose

1. End-Stage Renal Disease (ESRD) Prospective Payment System (PPS)

This rule proposes to update and make revisions to the End-Stage Renal Disease (ESRD) prospective payment system (PPS) for calendar year (CY) 2013. In accordance with section 1881(b)(14) of the Social Security Act (the Act), as added by section 153(b) of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) (Pub. L. 110–275), Centers for Medicare & Medicaid Services (CMS) implemented a case-mix adjusted bundled PPS for Medicare outpatient ESRD dialysis services beginning January 1, 2011. The ESRD PPS replaced the basic case-mix adjusted composite payment system and the methodologies for the reimbursement of separately billable outpatient ESRD services.

Also, section 1881(b)(14)(F) of the Act, as added by section 153(b) of MIPPA and amended by section 3401(h) of the Affordable Care Act (Pub. L. 111–148), established that beginning CY 2012, and each subsequent year, the Secretary shall reduce the market basket increase factor by a productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act. In addition, the application of the productivity adjustment may result in the increase factor being less than 0.0 percent for a year.

2. End-Stage Renal Disease (ESRD) Quality Incentive Program (QIP)

This rule also proposes to set forth requirements for the ESRD Quality Incentive Program (QIP), including payment year (PY) 2015. The program is authorized under section 153(c) of MIPPA, which added section 1881(h) to the Social Security Act (the Act). The ESRD QIP is the most recent step in fostering improved patient outcomes by establishing incentives for dialysis facilities to meet performance standards established by CMS.

3. Reductions to Bad Debt Payments for All Medicare Providers

This proposed rule would also implement the changes to the limitations on payments for bad debt reimbursement set forth in section 3201 of The Middle Class Tax Extension and Job Creation Act of 2012 (Pub. L. 112–96) by revising 42 CFR 413.89, Bad debts, charity, and courtesy allowances.

B. Summary of the Major Provisions

1. ESRD PPS

- *Update to the composite and ESRD PPS base rate for CY 2013:* For CY 2013, we propose an ESRD PPS base rate of $240.88. This amount reflects the application of the ESRD bundled (ESRDB) market basket reduced by the productivity adjustment, or 2.5 percent, and the wage index budget-neutrality adjustment factor of 1.000826 to the CY 2012 ESRD PPS base rate of $234.81. The proposed base rate is applicable to both the ESRD PPS portion of the blended payment under the transition and payments under the full PPS. For CY 2013, we propose a composite rate portion of the ESRD PPS blended payment of $145.49. This amount reflects the CY 2012 composite rate of $141.94, increased by the ESRDB market basket reduced by the productivity adjustment.
- *Update to the composite rate drug add-on for CY 2013:* We are not proposing any changes to the methodology used to compute the drug add-on for CY 2013; we are only updating the data used to calculate the drug add-on for CY 2013. Using 6 years of ASP drug expenditure data, and other data, we estimate a 3.0 percent decrease in aggregate drug expenditures and a 4.6 percent increase in enrollment. Using these estimates, we project a 7.3 percent decrease in per patient growth of drug expenditures for CY 2013. Thus, we are projecting that the combined growth in per patient utilization and pricing for CY 2013 would result in a decrease to the drug add-on equal to 1.0 percentage points. We are, however, proposing to apply a zero update to the drug add-on adjustment and maintain the $20.33 per treatment drug add-on amount for CY 2013. Because the market basket minus productivity that is applied to the composite rate increases the composite rate, the add-on adjustment of 14.3 percent is reduced to 14.0 percent to maintain the drug add-on at $20.33.
- *Market basket and productivity adjustment:* Under section 1881(b)(14)(F) of the Act, beginning in CY 2012, ESRD PPS payment amounts and the composite rate portion of the transition blended payment amounts shall be annually increased by an ESRD market basket percentage increase factor reduced by a multi-factor productivity (MFP) adjustment. The proposed CY 2013 ESRDB market basket increase factor is 3.2 percent. The current forecast of the proposed CY 2013 MFP adjustment is 0.7 percent. The resulting proposed CY 2013 MFP-adjusted ESRDB market basket update is equal to 2.5 percent.

• *The transition budget-neutrality adjustment factor:* For CY 2013, we are proposing to apply the transition budget neutrality adjustment methodology established in CY 2011. This results in a 0 percent adjustment. Therefore, for CY 2013 we propose a 0 percent reduction to be applied to both the blended payments made under the transition and payments made under the 100 percent ESRD PPS for renal dialysis services furnished January 1, 2013 through December 31, 2013.

• *Updates to the wage index and wage index floor:* We adjust wage indices on an annual basis using the most current hospital wage data to account for differing wage levels in areas in which ESRD facilities are located. In CY 2013, we are not proposing any changes to the application of the wage index budget-neutrality adjustment factor and will continue to apply the budget-neutrality adjustment to the pre-floor, pre-reclassified wage index values for the composite rate portion of the blended payment and to the base rate for the ESRD PPS. Over the past several years, we have been gradually decreasing the wage index floor by 0.05 in an effort to gradually phase out the floor and in CY 2013 will continue to do so. Therefore, in CY 2013, we are reducing the wage index floor from 0.55 to 0.50. We also applied the wage index budget-neutrality adjustment factor to the wage index floor of 0.500 which results in an adjusted wage index floor of 0.501 (0.500×1.001538) for CY 2013.

• *Update to the outlier policy:* We are updating the outlier services fixed dollar loss amounts and Medicare Allowable Payments (MAPs) for CY 2013 using 2011 data. Based on the use of more current data, the fixed-dollar loss amount for pediatric patients would decrease from $71.64 to $50.15 and the MAP amount would decrease from $45.44 to $43.63 as compared to CY 2012 values. For adult patients, the fixed-dollar loss amount drops from $141.21 to $113.35 and the MAP amount drops from $78.00 to $61.06. Because of the decline in utilization associated with the implementation of the expanded bundle, the 1 percent target for outlier payments was not achieved in CY 2011. Use of 2011 data to recalibrate the thresholds, reflecting lower utilization of EPO and other outlier services, is expected to result in aggregate outlier payments close to the 1 percent target in CY 2013. We believe this update to the outlier MAP and fixed dollar loss amounts for CY 2013 will increase payments for ESRD beneficiaries requiring higher resource utilization in accordance with a 1 percent outlier policy.

• *Policy reiteration (composite rate drugs and AY modifier):* Under the composite and basic case-mix adjusted composite rate payment systems, certain drugs were included in the composite rate and were not eligible for separate payment. Our analyses of claims show that ESRD facilities are continuing to report composite rate drugs. In this proposed rule, we are reiterating that any item or service included in the composite rate should not be identified on ESRD claims.

• An AY modifier can be appended to claims for drugs and laboratory tests that are not ESRD-related to allow for separate payment. Our analyses of claims show that there are ESRD facilities and laboratories that are appending the AY modifier to drugs and laboratory tests that we believe are ESRD-related, resulting in separate payment. In this proposed rule, we are reiterating the purpose of the AY modifier and emphasizing that we are continuing our monitoring efforts. We are also indicating that we may consider eliminating the AY modifier in future rulemaking.

2. ESRD QIP

This proposed rule proposes to implement new requirements for the ESRD QIP. It proposes to continue some of the previous ESRD QIP measures, add new measures, and expand the scope of some of the existing measures to cover the measure topics as follows:

- To evaluate anemia management:
  - Hemoglobin Greater Than 12 g/dL, a clinical measure.
  - Anemia Management, a reporting measure.*
- To evaluate dialysis adequacy:
  - A clinical Kt/V measure for adult hemodialysis patients.*
  - A clinical Kt/V measure for adult peritoneal dialysis patients.*
  - A clinical Kt/V measure for pediatric hemodialysis patients.*
- To determine whether patients are treated using the most beneficial type of vascular access:
  - Vascular Access Type, a clinical measure topic comprised of an arteriovenous fistula and catheter measure.
- To address effective bone mineral metabolism management:
  - Hypercalcemia, a clinical measure.*
  - Mineral Metabolism, a reporting measure.
- To address safety:
  - NHSN Dialysis Event reporting measure.
- To assess patient and caregiver experience:
  - ICH CAHPS survey reporting measure.

* Denotes that this measure is new to the ESRD QIP.

It also proposes to establish CY 2013 as the performance period for the PY 2015 ESRD QIP, establish performance standards for each measure, and adopt scoring and payment reduction methodologies that are similar to those finalized for the PY 2014 ESRD QIP.

3. Reductions to Bad Debt Payments for all Medicare Providers

This rule would also implement the statutory changes to the limitations on payments for bad debt reimbursement by revising 42 CFR 413.89, Bad debts, charity, and courtesy allowances. We are also proposing to move 42 CFR 413.178(a) to 42 CFR 413.89(h)(3), and to move 42 CFR 413.178(d)(2) to 42 CFR 413.89(i)(2) and to remove 42 CFR 413.178(b), (c) and (d)(1), as they are duplicated and discussed at 42 CFR 413.89. Additionally, we are making a technical correction to the cross reference in 42 CFR 417.536(f)(1) to Medicare bad debt reimbursement policy.

C. Summary of Costs and Benefits

In section VII of this proposed rule, we set forth a detailed analysis of the impacts that the proposed changes would have on affected entities and beneficiaries. The impacts include the following:

1. Impacts of the Proposed ESRD PPS

The impact chart in section VII.B.1.a of this proposed rule displays the estimated change in payments to ESRD facilities in CY 2013 as compared to estimated payments in CY 2012. The overall impact of the CY 2013 changes is projected to be a 3.1 percent increase in payments. Hospital-based ESRD facilities have an estimated 3.7 percent increase in payments compared with freestanding facilities with an estimated 3.0 percent increase. Urban facilities are expected to receive an estimated payment increase of 3.1 percent compared to an estimated 3.0 percent increase for rural facilities. We expect a 2.4 percent decrease in estimated payments as a result of wage index adjustments for Puerto Rico and the Virgin Islands. However, this is offset by the impact of the outlier policy, resulting in an estimated 0.4 percent increase in payment. The estimated 3.1 percent overall payment increase would result in a $250 million cost to Medicare and a $70 million cost to beneficiaries. In 2013, a 2.5 percent market basket increase would result in a $200 million

cost to Medicare and a $50 million cost to beneficiaries. The outlier fixed dollar loss and MAP adjustments in CY 2013 would result in a $30 million cost to Medicare and a $10 million cost to beneficiaries.

2. Impacts for ESRD QIP

The overall economic impact of the proposed ESRD QIP is an estimated $20.9 million for PY 2015. We expect the total payment reductions to be approximately $8.5 million, and the costs associated with the collection of information requirements for certain measures to be approximately $12.4 million.

The estimated payment reduction will continue to incentivize facilities to provide higher quality care to beneficiaries. The reporting measures that result in costs associated with the collection of information are critical to better understanding the quality of care beneficiaries receive, particularly a patient's experience of care, and will be used to incentivize improvements in the quality of care provided.

3. Impacts of Bad Debt Provisions

We are codifying the provisions of section 3201 of The Middle Class Tax Extension and Job Creation Act of 2012 that requires reductions in bad debt reimbursement to all providers eligible to receive bad debt reimbursement; these provisions are specifically prescribed by statute and thus, are self-implementing. There will be a $10.9 billion savings to the program over 10 years resulting from these self-implementing reductions in bad debt reimbursement.

II. Calendar Year (CY) 2013 End-Stage Renal Disease (ESRD) Prospective Payment System (PPS)

A. Background on the End-Stage Renal Disease (ESRD) Prospective Payment System (PPS)

On August 12, 2010, we published in the **Federal Register** a final rule (75 FR 49030 through 49214) titled, ''End-Stage Renal Disease Prospective Payment System'', hereinafter referred to as the CY 2011 ESRD PPS final rule. In the CY 2011 ESRD PPS final rule, we implemented a case-mix adjusted bundled PPS for Medicare outpatient ESRD dialysis services beginning January 1, 2011, in accordance with section 1881(b)(14) of the Act, as added by section 153(b) of MIPPA.

On November 10, 2011, we published in the **Federal Register**, a final rule (76 FR 70228 through 70316) titled, ''Medicare Program; End-Stage Renal Disease Prospective Payment System and Quality Incentive Program; Ambulance Fee Schedule; Durable Medical Equipment; and Competitive Acquisition of Certain Durable Medical Equipment, Prosthetics, Orthotics and Supplies (hereinafter referred to as the CY 2012 ESRD PPS final rule). In that final rule, for the ESRD PPS, we made a number of routine updates for CY 2012, implemented the second year of the transition to the ESRD PPS, made several policy changes and clarifications, and made technical changes with regard to the CY 2011 ESRD PPS final rule. In that rule, we finalized the following:

- A composite rate of $141.94 per treatment for renal dialysis services that is used in the composite rate portion of the ESRD PPS payment for ESRD facilities receiving blended payments during the transition. The $141.94 reflected the addition of the CY 2011 Part D per treatment amount ($.49) for oral ESRD drugs with an injectable equivalent to the CY 2011 composite rate of $138.53, and the application of the ESRD Bundled (ESRDB) market basket update of 3.0 percent minus a multifactor productivity adjustment of 0.9 percent, that is, a 2.1 percent increase.
- A zero update to the drug add-on adjustment and maintaining the $20.33 per treatment drug add-on amount for the composite rate portion of the ESRD PPS blended payment. This results in a 14.3 percent drug add-on adjustment to the composite rate portion of the ESRD PPS blended payment.
- An ESRD PPS base rate of $234.81 per treatment for renal dialysis services. The ESRD PPS base rate applies to the ESRD PPS portion of the blended payments during the transition and to the ESRD PPS payments. This amount reflected the CY 2012 ESRDB market basket update of 3.0 percent minus a multifactor productivity adjustment of 0.9 percent, that is, a 2.1 percent increase. This amount also reflected the application of the wage index budget-neutrality adjustment of 1.001520.
- A zero percent transition budget-neutrality adjustment factor for claims for renal dialysis services furnished from April 1, 2011 through December 31, 2011 and for CY 2012.
- The labor-related share of 41.737 percent for the CY 2012 ESRD PPS payment and the labor-related share of 53.711 percent for the CYs 2012 and 2013 ESRD composite rate portion of the blended payment for those ESRD facilities receiving a blended payment during the transition.
- The methodology for CY 2012 and subsequent years for computing the wage index budget-neutrality adjustment factors. For CY 2012, the wage index budget-neutrality adjustment factor for the composite portion of the ESRD PPS blended payment is 1.002830, and is applied to the wage index values. The wage index budget-neutrality adjustment factor for the ESRD PPS portion of the blended payment and for the ESRD PPS is 1.001520, and is applied to the ESRD PPS base rate.
- A 0.05 reduction to the wage index floor for CYs 2012 and 2013 which resulted in a wage index floor of 0.550 and 0.500, respectively. For CY 2012, the wage index floor under the composite rate portion of the blended payment is 0.552 after the wage index budget-neutrality adjustment factor is applied to 0.550. The wage index floor under the ESRD PPS is 0.550.
- The methodologies used for CY 2012 and subsequent years of computing a wage index value for areas without hospital data for urban and rural geographic areas and for Puerto Rico.
- Using the ESRDB market basket forecasts for the ESRD PPS transition payment updates.
- The methodology for calculating and applying the multifactor productivity adjustment to the ESRDB market basket.
- An annual deadline of November 1st for ESRD facilities to submit an attestation if they believe that they are eligible for the low-volume payment adjustment.
- Changes to 42 CFR 413.232(b)(1) and (b)(2) to indicate that in the absence of an ESRD facility's final settled 12-consecutive month cost report, a fiscal intermediary (FI) or A/B Medicare Administrative Contractor (MAC) can review the ESRD facility's as-filed 12-consecutive month cost report when determining if an ESRD facility meets the low-volume criteria.
- Eliminating the restriction on vancomycin to allow ESRD facilities to receive separate payment by appending the AY modifier on the claim for vancomycin when the diagnosis reported on the claim indicates the drug was used to treat a non-ESRD related condition.
- Incorporating the Part B drug overfill policy into our outlier policy and for purposes of the composite rate portion of the blended payment during the transition, that is, ESRD facilities may only report units and charges for drugs and biologicals actually purchased.
- Using a body surface area (BSA) national average of 1.87, which is the latest national average as the reference point for the computation of the BSA

adjustment for both the composite rate portion of the ESRD PPS blended payment and for the ESRD PPS. We will also review the BSA national average on the CY 2012 claims and every 5 years thereafter.

• Changes to the outlier provision which included: (1) Eliminating the issuance of a specific list of eligible outlier service drugs, (2) including antibiotics furnished in the home to treat catheter site infections or peritonitis associated with peritoneal dialysis as an eligible outlier service, (3) excluding thrombolytic drugs and biologicals from the outlier policy, (4) including testosterone and anabolic steroids that are used for anemia management as an eligible outlier service, and (5) excluding the laboratory tests that comprise the Automated Multi-Channel Chemistry panel from the definition of outlier services and revising § 413.237 to indicate this change. Finally, in the CY 2012 ESRD PPS final rule (76 FR 70228), we clarified the following:

• For the low-volume payment adjustment, (1) ''payment year'' was defined as the period of time that we use for determining payment to ESRD facilities, which is a calendar year; (2) ''eligibility'' years was defined as the 3 years preceding the payment year and are based on cost reporting years; (3) for the cost reporting years, ESRD facilities must report costs for 12-consectutive months; (4) in the absence of a final-settled cost report, an FI or A/B MAC can review the ESRD facility's as-filed cost report when verifying eligibility; and (5) if the FI or A/B MAC finds that the ESRD facility did not meet low-volume eligibility based on the final settled cost report, they should discontinue application of the low-volume adjustment and recoup the inappropriate payments.

• The ICD–9–CM diagnosis codes that are eligible for the co-morbidity payment adjustments are subject to the annual ICD–9–CM coding changes that occur in the hospital inpatient PPS final rule and effective October 1st of every year.

• Laboratory tests that are performed for Medicare ESRD beneficiaries in an emergency room or emergency department as part of the general work-up of the patient necessary for diagnosis are not considered to be renal dialysis services.

B. Routine Updates and Proposed Policy Changes to the CY 2013 ESRD PPS

1. Composite Rate Portion of the ESRD PPS Blended Payment

Section 1881(b)(14)(E)(i) of the Act requires a 4-year transition under the ESRD PPS. This proposed rule would implement the third year of the transition period for those ESRD facilities going through the transition rather than electing to receive payment based on 100 percent of the payment amount under the ESRD PPS. For CY 2013, under 42 CFR § 413.239(a)(3), facilities that go through the transition will receive a blended rate equal to the sum of 75 percent of the full ESRD PPS amount and 25 percent of the basic case-mix adjusted composite payment amount. Accordingly, as a result of the transition period under the ESRD PPS, we continue to update the composite rate portion of the blended payment during the 4-year transition, (that is, CY 2011 through 2013), which would include updates to the drug add-on adjustment required by section 1881(b)(12)(F) of the Act, as well as the wage index values (which includes a budget-neutrality factor) used to adjust the labor component of the composite rate. The proposed updates to the drug add-on adjustment under the composite rate portion of the blended rate can be found in section II.B.1.a of this proposed rule and the wage index is discussed in section II.B.5 of this proposed rule. For CY 2013, we are also proposing to update the second part of the transition budget-neutrality adjustment to reflect updated data. The transition budget-neutrality adjustment is applied to both the blended payments under the transition and payments under the ESRD PPS. The discussion regarding the proposed transition budget-neutrality adjustment can be found in section II.B.4 of this proposed rule.

As discussed in section II.B.3 of this proposed rule, section 1881(b)(14)(F)(ii) of the Act, as added by section 153(b) of MIPPA and amended by section 3401(h) of the Affordable Care Act, provides that, for years during which the transition applies, the composite rate portion of the blend shall be annually increased by the ESRDB market basket and, for CY 2012 and each subsequent year, the ESRDB market basket shall be reduced by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act. In sections II.B.3.b and II.B.3.c of this proposed rule, we describe the basis for the proposed CY 2013 ESRDB market basket increase of 3.2 percent, and the productivity offset of 0.7 percent, yielding a proposed forecasted rate of increase in the base rate of 2.5 percent.

For CY 2013, the composite rate portion of the ESRD PPS blended payment would be $145.49. The $145.49 reflects the CY 2012 composite rate of $141.94 increased by the ESRDB market basket reduced by the productivity adjustment (3.2 percent minus 0.7 percent) of 2.5 percent.

a. Proposed Update to the Drug Add-on to the Composite Rate Portion of the ESRD Blended Payment Rate

Section 1881(b)(14)(E)(i) of the Act requires a 4-year transition under the ESRD PPS. Under § 413.239, ESRD facilities were permitted to make a one-time election by November 1, 2010, to be excluded from the transition and receive full payment under the ESRD PPS. Section 413.239(a)(3) provides for ESRD facilities that elected to receive payment under the transition to be paid a blended amount that will consist of 25 percent of the basic case-mix adjusted composite payment system and 75 percent of the ESRD PPS payment in CY 2013. Thus, during the ESRD PPS transition, we must continue to update the composite rate portion of the blended payment amount which includes an update to the drug add-on.

As required under section 1881(b)(12) of the Act, the basic case-mix adjusted composite payment system includes services in the composite rate and an add-on to the composite rate to account for the difference between pre-MMA payments for separately billed drugs and the revised drug pricing specified in the statute. In this proposed rule, we are not proposing any changes to the drug add-on methodology in CY 2013, but are merely updating the data used in computing the drug add-on as described below.

i. Estimating Growth in Expenditures for Drugs and Biologicals in CY 2013

Section 1881(b)(12)(F) of the Act specifies that the drug add-on increase must reflect ''the estimated growth in expenditures for drugs and biologicals (including erythropoietin) that are separately billable * * *''. By referring to ''expenditures'', we believe the statute contemplates that the update would account for both increases in drug prices, as well as increases in utilization of those drugs.

In order to account for increases in drug prices and utilization, since we now have 6 years of drug expenditure data based on ASP pricing, for CY 2013, we continue estimating growth in drug expenditures based on the trends in available data. We then removed growth in enrollment for the same time period

from the expenditure growth so that the residual reflects the per patient expenditure growth (which includes price and utilization combined).

To estimate drug expenditure growth using trend analysis, for CY 2013, we looked at the average annual growth in total drug expenditures between 2006 and 2011. First, we estimated the total drug expenditures for all ESRD facilities in CY 2011. We used the final CY 2006 through CY 2010 ESRD claims data and the latest available CY 2011 ESRD facility claims, updated through December 31, 2011 (that is, claims with dates of service from January 1 through December 31, 2011, that were received, processed, paid, and passed to the National Claims History File as of December 31, 2011). For the CY 2013 PPS final rule, we intend to use additional updated CY 2011 claims with dates of service for the same timeframe. This updated CY 2011 data file will include claims received, processed, paid, and passed to the National Claims History File as of June 30, 2012. While the CY 2011 claims file used in this proposed rule is the most current available, we recognize that it does not reflect a complete year, as claims with dates of service towards the end of the year have not all been processed. To more accurately estimate the update to the drug add-on, completed aggregate drug expenditures are required.

Next, for CY 2013, based on analysis of the 2010 claims, we inflated the CY 2011 drug expenditures to estimate the June 30, 2012 update of the 2011 claims file. We used the relationship between the December 2010 and the June 2011 versions of 2010 claims to estimate the more complete 2011 claims that will be available in June 2012 and applied that ratio to the 2011 claims data from the December 2011 claims file. The net adjustment to the CY 2011 claims data is an increase of 9.7 percent to the 2011 expenditure data. This adjustment allows us to more accurately compare the 2010 and 2011 drug expenditure data to estimate per patient growth.

Using the completed full-year 2011 drug expenditure figure, we calculated the average annual change in drug expenditures from 2006 through 2011. This average annual change showed a decrease of 3.0 percent in drug expenditures from 2006 through 2011. We used this 3.0 percent decrease to project drug expenditures for both 2012 and 2013.

ii. Estimating per Patient Growth

Once we had the projected growth in drug expenditures from 2012 to 2013, we calculated per patient growth between CYs 2012 and 2013 by removing the estimated growth in enrollment data between CYs 2012 and 2013. We estimate a 4.6 percent growth in fee for service Medicare dialysis beneficiary enrollment between CYs 2012 and 2013. To obtain the per-patient estimated growth in expenditures, we divided the total drug expenditure change of a 3 percent decrease between 2012 and 2013 (0.97) by enrollment growth of 4.6 percent (1.046) for the same timeframe. The result is a per-patient growth factor equal to 0.927 (0.97/1.046 = 0.927). Thus, we are projecting a 7.3 percent decrease ($-7.3\% = -.073 = 0.927 - 1$) in per patient growth in drug expenditures between 2012 and 2013.

iii. Applying the Proposed Growth Update to the Drug Add-On Adjustment

In the CY 2012 ESRD PPS proposed and final rules, we provided an incorrect citation to the CY 2006 PFS final rule with comment in the discussion of the application of the projected growth update percentages. The correct citationto this discussion in the CY 2006 PFS final rule with comment is 70 FR 70166 and 70167. In that rule, we applied the projected growth percentage to the total amount of drug add-on dollars established for CY 2005 to establish a dollar amount for the CY 2006 growth. In addition, we projected the growth in dialysis treatments for CY 2006 based on the projected growth in ESRD enrollment. We divided the projected total dollar amount of the CY 2006 growth by the projected total dialysis treatments to develop the per treatment growth update amount. This growth update amount, combined with the CY 2005 per treatment drug add-on amount, resulted in a 14.7 percent adjustment to the composite rate for CY 2006.

Subsequent to the publication of the CY 2006 PFS final rule with comment, the Deficit Reduction Act (DRA) of 2005 (Pub. L. 109–171) was enacted on February 8, 2006. Section 5106 of the DRA amended section 1881(b)(12) of the Act to require the Secretary to increase the amount of the composite rate component of the basic case-mix adjusted system for dialysis services furnished on or after January 1, 2006 by 1.6 percent above the amount of the composite rate for such services furnished on December 31, 2005. We issued Change Request (CR) 4291, Transmittal 849, entitled, ''Update to the ESRD Composite Payment Rates'' on February 10, 2006 to instruct contractors to implement this change. We stated in CR 4291 that because the drug add-on adjustment is determined as a percentage of the composite rate, it was necessary to adjust the drug add-on percentage to account for the 1.6 percent increase in the composite payment rate. Therefore, the total drug add-on adjustment to the composite payment rate for 2006 was 14.5 percent instead of 14.7 percent.

In the CY 2007 PFS final rule with comment period (71 FR 69683 and 69684), we revised our update methodology by applying the growth update to the per treatment drug add-on amount. That is, for CY 2007, we applied the growth update factor of 4.03 percent to the $18.88 per treatment drug add-on amount resulting in an updated per treatment drug add-on amount of $19.64 per treatment (71 FR 69684). For CY 2008, the per treatment drug add-on amount was updated to $20.33. In the CYs 2009, 2010, and 2011 PFS final rule with comment period (73 FR 69755 through 69757, 74 FR 61923, 75 FR 73485, respectively) and the CY 2012 ESRD PPS final rule (76 FR 70239), we applied a zero update to the per treatment drug add-on amount resulting in a per treatment drug add-on amount of $20.33. As discussed in detail below, for CY 2013, we are again proposing no update to the per treatment drug add-on amount of $20.33 established in CY 2008.

iv. Proposed Update to the Drug Add-On Adjustment for CY 2013

As discussed above, we estimate a 3.0 percent decrease in drug expenditures between CYs 2012 and CY 2013. Combining this decrease with a 4.6 percent increase in enrollment, as described above, we are projecting a 7.3 percent decrease in per patient growth of drug expenditures between CYs 2012 and CY 2013. Therefore, we are projecting that the combined growth in per patient utilization and pricing for CY 2013 would result in a decrease to the drug add-on equal to 1.0 percentage points (out of the 14.3 percent add-on for 2012). This figure is derived by applying the 7.3 percent decrease to the CY 2012 drug add-on of $20.33. This would result in a revised drug add-on of $18.85, which is 13.0 percent of the proposed CY 2013 base composite rate of $145.49. If we were to apply no decrease to the drug add-on of $20.33, this would result in a 14.0 percent drug add-on. However, similar to last year and as indicated above, we are proposing a zero update to the drug add-on adjustment. We believe this approach is consistent with the language under section 1881(b)(12)(F) of the Act which states in part that ''the Secretary shall annually increase'' the drug add-on amount based on the growth in expenditures for separately

billed ESRD drugs. Therefore, we propose to apply a zero update and maintain the $20.33 per treatment drug add-on amount for CY 2013. We are seeking comment on our proposed zero update to the drug add-on.

The current $20.33 per treatment drug add-on reflected a 14.3 percent drug add-on adjustment to the composite rate in effect for CY 2012. As discussed in section II.B.3.a. of this proposed rule, section 1881(b)(14)(F) of the Act requires that an ESRDB market basket minus productivity adjustment be used to update the composite rate portion of the ESRD PPS payment (proposed forecast of 2.5 percent in 2013 effective January 1, 2013), resulting in a proposed decrease to the CY 2013 drug add-on adjustment from 14.3 to 14.0 percent, to maintain the drug add-on at $20.33. This decrease occurs because the drug add-on adjustment is a percentage of the composite rate. Since the proposed CY 2013 composite rate is higher than the CY 2012 composite rate, and since the drug add-on remains at $20.33, the percentage decreases. Therefore, we are proposing a drug add-on adjustment to the composite rate for CY 2013 of 14.0 percent.

2. ESRD PPS Base Rate

In the CY 2012 ESRD PPS final rule (76 FR 70231), we discussed the development of the ESRD PPS per treatment base rate that is codified in the Medicare regulations at § 413.220 and § 413.230. We explained that the CY 2011 ESRD PPS final rule (75 FR 49071 through 49082) provides a detailed discussion of the methodology used to calculate the ESRD PPS base rate and the computation of factors used to adjust the ESRD PPS base rate for projected outlier payments and budget-neutrality in accordance with sections 1881(b)(14)(D)(ii) and 1881(b)(14)(A)(ii) of the Act, respectively. Specifically, the ESRD PPS base rate was developed from CY 2007 claims (that is, the lowest per patient utilization year), updated to CY 2011, and represented the average per treatment Medicare Allowable Payment (MAP) for composite rate and separately billable services. We further explained that in accordance with § 413.230, the ESRD PPS base rate is adjusted for the patient-specific case-mix adjustments, applicable facility adjustments, geographic differences in area wage levels using an area wage index, as well as any outlier payment or training payments (if applicable). For CY 2012, the ESRD PPS base rate was $234.81 (76 FR 70231).

As discussed previously, section 1881(b)(14)(F)(i) of the Act, as added by section 153(b) of MIPPA and amended by section 3401(h) of the Affordable Care Act, provides that, beginning in 2012, the ESRD PPS payment amounts are required to be annually increased by the rate of increase in the ESRD market basket, reduced by the productivity adjustment. Accordingly, for this proposed rule, we applied the 2.5 percent increase to the CY 2012 ESRD PPS base rate of $234.81, which results in a CY 2013 ESRD PPS base rate of $240.68 ($234.81 × 1.025 = $240.68). The proposed CY 2013 ESRD PPS base rate is applicable to both the ESRD PPS portion of the blended payment under the transition and payments under the full ESRD PPS.

In addition, as discussed in section II.B.5.c. of this proposed rule, for CY 2013 we are applying the wage index budget-neutrality adjustment factor of 1.000826 to the CY 2013 ESRD PPS base rate (that is, $240.68), yielding a proposed CY 2013 ESRD PPS wage-index budget-neutrality adjusted base rate of $240.88 ($240.68 × 1.000826 = $240.88).

3. ESRD Bundled Market Basket

a. Overview and Background

In accordance with section 1881(b)(14)(F)(i) of the Act, as added by section 153(b) of MIPPA and amended by section 3401(h) of the Affordable Care Act, beginning in 2012, the ESRD bundled payment amounts are required to be annually increased by an ESRD market basket increase factor that is reduced by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act. The application of the productivity adjustment described may result in the increase factor being less than 0.0 for a year and may result in payment rates for a year being less than the payment rates for the preceding year. The statute further provides that the market basket increase factor should reflect the changes over time in the prices of an appropriate mix of goods and services used to furnish renal dialysis services. Under section 1881(b)(14)(F)(ii) of the Act, as added by section 153(b) of MIPPA and amended by section 3401(h) of the Affordable Care Act, the ESRDB rate market basket increase factor will also be used to update the composite rate portion of ESRD payments during the ESRD PPS transition period from CYs 2011 through 2013; though beginning in CY 2012, such market basket increase factor will be reduced by the productivity adjustment. Therefore, a full market basket was applied to the composite rate portion of the blended payment in CY 2011 during the first year of the transition.

b. Proposed Market Basket Update Increase Factor and Labor-Related Share for ESRD Facilities for CY 2013

As required under section 1881(b)(14)(F) of the Act, CMS developed an all-inclusive ESRDB input price index (75 FR 49151 through 49162). Although ''market basket'' technically describes the mix of goods and services used to produce ESRD care, this term is also commonly used to denote the input price index (that is, cost categories, their respective weights, and price proxies combined) derived from that market basket. Accordingly, the term ''ESRDB market basket,'' as used in this document, refers to the ESRDB input price index.

For this proposed rule, we are proposing to use the same methodology described in the CY 2011 ESRD PPS final rule (75 FR 49151 through 49162) to compute the CY 2013 ESRDB market basket increase factor and labor-related share based on the best available data (76 FR 40503). Consistent with historical practice, we estimate the ESRDB market basket update based on IHS Global Insight (IGI), Inc.'s forecast using the most recently available data. IGI is a nationally recognized economic and financial forecasting firm that contracts with CMS to forecast the components of the market baskets.

Using this methodology and the IGI forecast for the first quarter of 2012 of the CY 2008-based ESRDB market basket (with historical data through the fourth quarter of 2011), and consistent with our historical practice of estimating market basket increases based on the best available data, the proposed CY 2013 ESRDB market basket increase factor is 3.2 percent. For the CY 2013 ESRD payment update, we will continue to use a labor-related share of 41.737 percent for the ESRD PPS payment and the ESRD PPS portion of the blended payment, which was finalized in the CY 2011 ESRD final rule (75 FR 49161). We will also continue to use a labor-related share of 53.711 percent for the ESRD composite rate portion of the blended payment for all years of the transition. This labor-related share was developed from the labor-related components of the 1997 ESRD composite rate market basket that was finalized in the CY 2006 Physician Fee Schedule (PFS) final rule (70 FR 70168), and is consistent with the mix of labor-related services paid under the composite rate, as well as the method finalized in the CY 2011 ESRD PPS final rule (75 FR 49116).

c. Proposed Productivity Adjustment

The ESRDB market basket must be annually adjusted by changes in economy-wide productivity. Specifically, under section 1881(b)(14)(F)(i) of the Act, as amended by section 3401(h) of the Affordable Care Act, for CY 2012 and each subsequent year, the ESRD market basket percentage increase factor shall be reduced by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act. The statute defines the productivity adjustment to be equal to the 10-year moving average of changes in annual economy-wide private nonfarm business multifactor productivity (MFP) (as projected by the Secretary for the 10-year period ending with the applicable fiscal year, year, cost reporting period, or other annual period) (the ''MFP adjustment''). The Bureau of Labor Statistics (BLS) is the agency that publishes the official measure of private nonfarm business MFP. Please see *http://www.bls.gov/mfp* to obtain the BLS historical published MFP data.

CMS notes that the proposed and final methodology for calculating and applying the MFP adjustment to the ESRD payment update is similar to the methodology used in other payment systems, as required by section 3401 of the Affordable Care Act.

The projection of MFP is currently produced by IGI. The details regarding the methodology for forecasting MFP and how it is applied to the market basket was finalized in the CY 2012 ESRD PPS final rule (76 FR 70232 through 70234). Using this method and the IGI forecast for the first quarter of 2012 of the 10-year moving average of MFP, the proposed CY 2013 MFP factor is 0.7 percent.

d. Calculation of the ESRDB Market Basket Update, Adjusted for Multifactor Productivity for CY 2013

Under section 1881(b)(14)(F) of the Act, beginning in CY 2012, ESRD PPS payment amounts and the composite rate portion of the transition blended payment amounts shall be annually increased by an ESRD market basket percentage increase factor reduced by a productivity adjustment. We are proposing to follow the same methodology for calculating the ESRDB market basket updates adjusted for MFP that was finalized in the CY 2012 ESRD PPS final rule (76 FR 70234).

Thus, in accordance with section 1881(b)(14)(F)(i) of the Act, the proposed market basket increase factor for CY 2013 for the ESRDB market basket is based on the 1st quarter 2012 forecast of the CY 2008-based ESRDB market basket update, which is estimated to be 3.2 percent. This market basket percentage is then reduced by the MFP adjustment (the 10-year moving average of MFP for the period ending CY 2013) of 0.7 percent, which is based on IGI's 1st quarter 2012 forecast. The resulting proposed MFP-adjusted ESRDB market basket update for CY 2013 is equal to 2.5 percent, or 3.2 percent less 0.7 percentage point. If more recent data is subsequently available (for example, a more recent estimate of the market basket and MFP adjustment), we will use such data, if appropriate, to determine the CY 2013 market basket update and MFP adjustment in the CY 2013 ESRD PPS final rule.

4. Transition Budget-Neutrality Adjustment for CY 2013

Section 1881(b)(14)(E)(i) of the Act requires the Secretary to provide a 4-year phase-in of the payments under the ESRD PPS for renal dialysis services furnished on or after January 1, 2011, with payments under the ESRD PPS fully implemented for renal dialysis services furnished on or after January 1, 2014. We use the term ''transition'' rather than ''phase-in'' to be consistent with other Medicare payment systems.

Section 1881(b)(14)(E)(ii) of the Act permitted ESRD facilities to make a one-time election to be excluded from the transition. An ESRD facility that elected to be excluded from the transition receives payment for renal dialysis services furnished on or after January 1, 2011, based on 100 percent of the payment rate under the ESRD PPS rather than a blended payment based in part on the payment under the basic case-mix adjusted composite payment system and in part on the payment under the ESRD PPS. Section 1881(b)(14)(E)(iii) of the Act also requires that we make an adjustment to payments during the transition so that the estimated total amount of payments under the ESRD PPS, including payments under the transition, equals the estimated total amount of payments that would otherwise occur under the ESRD PPS without such a transition. We refer to this provision as the transition budget-neutrality adjustment.

In the CY 2012 ESRD PPS final rule (76 FR 70235), we discussed the methodology used to develop the transition budget-neutrality adjustment factor. We explained that there were two parts that comprised the adjustment. For the first part, we created a one-time payment adjustment to the composite rate portion of the blended payment during the transition to account for the per treatment costs of ESRD drugs with an injectable equivalent that were paid under Part D. We finalized the one-time addition of the CY 2011 Part D per treatment amount of $0.49 to the composite rate (76 FR 70231). For the second part, we computed a factor that would make the estimated total amount of payments under the ESRD PPS, including payments under the transition, equal to the estimated total amount of payments that would otherwise occur without such a transition. We finalized in the CY 2011 ESRD PPS final rule a transition budget-neutrality adjustment of 3.1 percent based on estimates of ESRD facilities that would elect to be excluded from the transition. On April 6, 2011, we published an interim final rule (76 FR 18930) in which we revised the transition budget-neutrality adjustment from 3.1 to 0.0 percent for treatments furnished from April 1, 2011 through December 31, 2011. For CY 2012, we did not make any changes to our methodology for computing the second part of the transition budget-neutrality adjustment. In the CY 2012 ESRD PPS final rule (76 FR 70236), we finalized a zero percent reduction to all payments made to ESRD facilities for CY 2012 (that is, the zero percent adjustment was applied to both the blended payments under the transition and payments made under the 100 percent ESRD PPS).

Given that the transition budget-neutrality adjustment required under section 1881(b)(14)(E)(iii) of the Act applies in each year of the transition, we must update the transition budget-neutrality adjustment for CY 2013, the third year of the transition. As discussed in detail below, and in accordance with section 1881(b)(14)(E)(iii) of the Act, an adjustment is made to payments so that estimated total payments under the transition equal estimated total payment amounts without such a transition. In this proposed rule, we are not proposing for CY 2013 to change the methodology used to calculate either part of the transition budget-neutrality adjustment factor. We are, however, proposing to use updated data. The first part, which was addressed and finalized in the CY 2012 ESRD PPS final rule, is the Part D payment amount added to the composite rate. Therefore, this amount is updated annually by the ESRDB market basket reduced by the productivity adjustment. The second part is updated as described below.

For CY 2013, we started with 2011 utilization data from claims, as 2011 is the latest complete year of claims data available. For this proposed rule, we used the December claims file. We updated the CY 2011 utilization data to

CYs 2012 and 2013 payments by using the price growth factors for CYs 2012 and 2013, as discussed in the impact analysis in section VII.B.1.a. of this proposed rule. We then took the estimated payments under the full CY 2013 ESRD PPS and the blended payments under the transition based on actual facility election data and compared these estimated payments to the total estimated payments in CY 2013 as if all facilities had elected to receive payment under the ESRD PPS. We then calculated the transition budget-neutrality factor to be 1 minus the ratio of estimated payments under the ESRD PPS if there were no transition to the total estimated payments under the transition, which results in 0 percent reduction factor for CY 2013. Therefore, for CY 2013, we are proposing a 0 percent reduction to all payments made to ESRD facilities (that is, the 0 percent adjustment would be applied to both the blended payments made under the transition and payments made under the 100 percent ESRD PPS) for renal dialysis items and services furnished January 1, 2013 through December 31, 2013. We solicit comments on the proposed second part of CY 2013 transition budget-neutrality adjustment.

5. Proposed Updates to the Wage Index Values and Wage Index Floor for the Composite Rate Portion of the Blended Payment and the ESRD PPS Payment

Section 1881(b)(14)(D)(iv)(II) of the Act provides that the ESRD PPS may include such other payment adjustments as the Secretary determines appropriate, such as a payment adjustment by a geographic wage index, such as the index referred to in section 1881(b)(12)(D) of the Act. In the CY 2011 ESRD PPS final rule (75 FR 49117), we finalized the use of the OMB's CBSA-based geographic area designations to define urban/rural areas and corresponding wage index values. In the CY 2012 ESRD PPS final rule (76 FR 70241), we finalized the wage index policy that is used under the ESRD PPS. Under the ESRD PPS, we have adopted the same method and source of wage index values used previously to compute the wage index values for the basic case-mix adjusted composite payment system. Specifically, we finalized our policies to continue to utilize the methodology established under the composite payment system for updating the wage index values using the OMB's CBSA-based geographic area designations to define urban and rural areas and corresponding wage index value values; the gradual reduction of the wage index floor during the transition; and the policies for areas with no hospital data. For CY 2013, we are not proposing any changes to the methodology finalized in the CY 2012 final rule and will update the wage index values using the FY 2013 IPPS pre-floor, pre-reclassified hospital wage data.

In the CY 2012 ESRD PPS final rule (76 FR 70242), we explained that we would continue to use the labor-related share of 53.711 finalized in the 2005 PFS final rule (70 FR 70168) for the composite rate portion of the blended payment during the transition and continue to use a labor-related share of 41.737 for the ESRD PPS payment for CY 2012. We also discussed that the wage data used to construct the wage index under the ESRD PPS is updated annually, based on the most current data available and based on OMB's urban and rural definitions and corresponding wage index values. Additional discussion on the labor-share can be found in section II.B.3.b. of this proposed rule. For CY 2013, we are not proposing to change the labor-related shares as finalized in the CY 2012 rule and as discussed in section II.B.3.b of this proposed rule.

In the CY 2012 ESRD PPS final rule (76 FR 70240), we discussed that during the transition we would continue to update the composite rate portion of the ESRD PPS blended payment, including adjusting payments for geographic differences in area wage levels, as noted above. We also discussed the application of the wage index budget-neutrality adjustment factor to the area wage index values for the composite rate portion of the ESRD PPS blended payment. In this proposed rule, for CY 2013 we are not proposing any changes to the methodology for the wage index used to adjust the composite rate portion of the ESRD PPS blended payment.

a. Reduction to the ESRD Wage Index Floor

In the CY 2012 ESRD PPS final rule (76 FR 70239 through 70241), we finalized that we will continue to reduce the wage index floor by 0.05 for each of the remaining years of the transition. That is, we finalized the 0.05 reduction to the wage index floor for CYs 2012 and 2013, resulting in a wage index floor of 0.550 and 0.500, respectively. The wage index floor value is used in lieu of wage index values below the floor. In CY 2013, the wage index floor only applies to areas located in Puerto Rico because those are the only areas that have wage index values below the wage index floor value of 0.500 in CY 2013. The wage index floor is applied to both the composite rate portion of the blend and to the ESRD PPS. In this proposed rule, we are not proposing any changes to the wage index floor methodology or reduction.

Consequently for CY 2013, we will continue to reduce the wage index floor by 0.05 which will reduce the wage index value from 0.550 to 0.500. The ESRD wage index floor value of 0.500 would be applied to areas that are below the wage index floor.

In the CY 2012 ESRD PPS final rule (76 FR 70241), we explained that continuing to artificially adjust the wage index values after the transition by substituting a wage index floor is not an appropriate method to address low wages in certain geographic locations. Therefore, we would no longer apply a wage index floor beginning January 1, 2014 because the wage index floor would be lower than areas with low wage index values.

b. Policies for Areas With No Wage Data

In the CY 2012 ESRD PPS final rule (76 FR 70241), we explained that we adopted the CBSA designations for the basic case-mix adjusted composite rate payment system and for the ESRD PPS. We also discussed and finalized the methodologies we use to calculate wage index values for ESRD facilities that are located in urban and rural areas where there are no hospital data. That is, for urban areas with no hospital data we compute the average wage index value of all urban areas within the State and use that value as the wage index. For rural areas with no hospital data, we compute the wage index using the average wage index values from all contiguous CBSAs to represent a reasonable proxy for that rural area. For rural Puerto Rico, we use the wage index floor as the wage index value, since all rural Puerto Rico areas are subject to the floor.

We further explained that for rural Massachusetts, we determined that the borders of Dukes and Nantucket Counties are contiguous with Barnstable and Bristol counties. Under the methodology, the values for these counties are averaged to establish the wage index value for rural Massachusetts. In the CY 2012 ESRD PPS final rule (76 FR 70241), we finalized that for CY 2012 and subsequent years, we will continue to follow these methodologies for computing a wage index value for areas without hospital data for urban and rural geographic areas and for Puerto Rico.

Subsequent to the issuance of the CY 2012 ESRD PPS final rule, we determined that for CY 2012 there was a rural hospital with wage data to base

an area wage index on for rural Massachusetts. We note that the wage index value for rural Massachusetts was correctly identified on the wage index table for CY 2012 based on the wage data for that rural hospital. Consequently, in this proposed rule we are correcting the statement in the CY 2012 final rule that ''For rural Massachusetts, we determined that the borders of Dukes and Nantucket Counties are contiguous with Barnstable and Bristol counties. Under the methodology, the values for these counties are averaged to establish the wage index value for rural Massachusetts'' (76 FR 70241). Therefore, for CY 2012 and subsequent years, the area wage index value for rural Massachusetts is based on wage index data of the rural hospital.

For CY 2013, we will continue to use the statewide urban average based on the average of all urban areas within the state for urban areas without hospital data. We note that Yuba City, California now has hospital data to calculate a wage index. Therefore, the methodology for computing a wage index for urban areas without hospital data no longer applies to that area. The only urban area without wage index data is Hineville-Fort Stewart, GA.

c. Proposed Wage Index Budget-Neutrality Adjustment

In the CY 2012 ESRD PPS final rule (76 FR 70241 and 70242), we explained that we have broad discretion under section 1881(b)(14)(D)(iv)(II) of the Act to develop a geographic wage index. We explained that in addition to being given broad discretion, the section cites the wage index under the basic case-mix adjusted composite payment system as an example. We have previously interpreted the statutory requirement in section 1881(b)(12)(D) of the Act for the geographic adjustment for the basic case-mix adjusted composite payment system as requiring that the geographic adjustment be made in a budget-neutral manner.

In the CY 2012 ESRD PPS final rule (76 FR 70241 and 70242), we finalized the policy to apply the wage index in a budget-neutral manner under the ESRD PPS using a wage index budget-neutrality adjustment factor. We further explained that in the first year of the ESRD PPS, CY 2011, we did not apply a wage index budget-neutrality adjustment factor under the ESRD PPS because budget-neutrality was achieved through the overall 98 percent budget-neutrality requirement in section 1881(b)(14)(A)(ii) of the Act. In the CY 2012 ESRD PPS final rule (76 FR 70242), we finalized that for CY 2012 and CY 2013 we will apply the wage index budget-neutrality adjustment to the wage index values for the composite rate portion of the blended payment and that for CY 2012 and subsequent years we will apply the wage index budget-neutrality adjustment to the ESRD PPS base rate for purposes of the ESRD PPS portion of the blended payment during the transition and the ESRD PPS payment. We are not proposing any changes to the wage index budget-neutrality adjustment methodology for CY 2013.

In the CY 2012 ESRD PPS final rule (76 FR 70242), we also finalized the methodology for computing the wage index budget-neutrality adjustment factor for CY 2012 and subsequent years. For CY 2013, we are not proposing any changes to the methodology. Consequently, for CY 2013 wage index budget-neutrality adjustment factors, we use the fiscal year (FY) 2013 pre-floor, pre-reclassified, non-occupational mix-adjusted hospital data to compute the wage index values, 2011 outpatient claims (paid and processed as of December 31, 2011), and geographic location information for each facility which may be found through Dialysis Facility Compare. Dialysis Facility Compare can be found at the Dialysis Facility Compare Web page on the CMS Web site at *http://www.cms.hhs.gov/DialysisFacilityCompare/*. The FY 2013 hospital wage index data for each urban and rural locale by CBSA may also be accessed on the CMS Web site at *http://www.cms.hhs.gov/AcuteInpatientPPS/WIFN/list.asp*. The wage index data are located in the section entitled, ''FY 2013 Proposed Rule Occupational Mix Adjusted and Unadjusted Average Hourly Wage and Pre-Reclassified Wage Index by CBSA''.

To compute the CY 2013 wage index budget-neutrality adjustment factor for this proposed rule, using treatment counts from the 2011 claims and facility-specific CY 2012 payment rates, we computed the estimated total dollar amount that each ESRD facility would have received in CY 2012. The total of these payments became the target amount of expenditures for all ESRD facilities for CY 2013. Next, we computed the estimated dollar amount that would have been paid for the same ESRD facilities using the final ESRD wage index for CY 2013. The total of these payments becomes the new CY 2013 amount of wage-adjusted expenditures for all ESRD facilities.

After comparing these two dollar amounts (target amount divided by the new CY 2013 amount), we calculated two wage index budget-neutrality adjustment factors that, when multiplied by the applicable CY 2013 estimated payments, would result in aggregate payments to ESRD facilities that would remain budget-neutral when compared to the target amount of expenditures. The first factor was applied to the ESRD PPS base rate. The second factor would be applied to the wage index values for the composite rate portion of the blended payment. Therefore, we are proposing for CY 2013, a wage index budget-neutrality adjustment factor for the composite portion of the ESRD PPS blended payment of 1.001538, which would be applied directly to the ESRD wage index values. For the ESRD PPS (that is, for the full ESRD PPS payments and the ESRD PPS portion of the blended payments during the transition), we are proposing a wage index budget-neutrality adjustment factor of 1.000826 would be applied to the ESRD PPS base rate.

Because we apply the wage index budget-neutrality adjustment factor to the wage index values to ensure budget-neutrality under the composite rate portion of the blended payment, we also apply the wage index budget-neutrality adjustment factor to the wage index floor. Therefore, for the composite rate portion of the blended payment, for CY 2013, we would apply the wage index budget-neutrality adjustment factor to the wage index floor of 0.500 which results in an adjusted wage index floor of 0.501 (1.001538×0.500). Under the ESRD PPS, the wage index floor for CY 2013 is 0.500 because the wage index budget-neutrality adjustment factor is applied to the base rate.

d. ESRD PPS Wage Index Tables

The CY 2013 ESRD proposed wage index tables, referred to as Addendum A (ESRD facilities located in urban areas), and Addendum B (ESRD facilities located in rural areas) are posted on the CMS Web site at *http://www.cms.gov/ESRDPayment/PAY/list.asp*. The wage index tables list two separate columns of wage index values. One column represents the wage index values for the composite rate portion of the blended payment to which the wage index budget-neutrality adjustment factor has been applied. Another column lists the wage index values for the ESRD PPS, which does not reflect the application of the wage index budget-neutrality adjustment factor, because we have finalized for CY 2012 and subsequent years, that we will apply the wage index budget-neutrality adjustment factor to the ESRD PPS base rate.

6. Proposed Drug Policy Changes

a. Daptomycin

In the CY 2011 ESRD PPS final rule (75 FR 49050 through 49052), we stated that antibiotics used for the treatment of venous access infections and peritonitis are renal dialysis services under the ESRD PPS. Payments for anti-infective drugs in injectable forms (covered under Part B) and oral or other forms of administration (formerly covered under Part D) used in the treatment of ESRD, were included in computing the final ESRD PPS base rate and, therefore, would not be separately paid under the ESRD PPS. This policy also applies to any drug or biological that may be developed in the future.

Subsequent to the publication of the CY 2011 ESRD PPS final rule, we received numerous comments indicating that vancomycin is indicated in the treatment of both ESRD and non-ESRD conditions, such as skin infections. In the CY 2012 ESRD PPS final rule (75 FR 70243), we eliminated the restriction on vancomycin to allow ESRD facilities to receive separate payment by placing the AY modifier on the claim for vancomycin when furnished to treat non-ESRD related conditions. We also stipulated that in accordance with ICD–9 guidelines as described in the CY 2011 ESRD PPS final rule (75 FR 49107), an ESRD facility must report the diagnosis code for which vancomycin is indicated. We also reiterated that treatment of any skin infection that is related to renal dialysis access management would be considered a renal dialysis service paid under the ESRD PPS, and that no separate payment would be made. Finally, in response to comments, we stated that we would consider removing the system edit for daptomycin in future rulemaking.

After consultation with our medical experts, we are proposing to eliminate the restriction on daptomycin to allow ESRD facilities to receive separate payment by placing the AY modifier on the claim for daptomycin when furnished to treat non-ESRD related conditions for CY 2013 and subsequent years. In accordance with ICD–9–CM coding guidelines, the ESRD facility would also be required to report the diagnosis code for which the daptomycin is indicated. We solicit public comments on our proposal to eliminate the restriction on daptomycin to allow ESRD facilities to receive separate payment for these drugs when furnished to treat non-ESRD related conditions. We will continue to monitor the use of anti-infectives furnished by ESRD facilities including those that are identified as non-ESRD related.

b. Alteplase and Other Thrombolytics

Medicare regulations at § 413.237(a)(2) through (a)(6), and (b) specify the methodology used to calculate outlier payments. An ESRD facility is eligible for an outlier payment if its actual or imputed Medicare Allowable Payment (MAP) amount per treatment for ESRD outlier services exceeds a threshold. The MAP amount represents the average incurred amount per treatment for services that were or would have been considered separately billable services prior to January 1, 2011. The discussion on the outlier policy is in section II.B.7. of this proposed rule.

In the CY 2012 ESRD PPS final rule (76 FR 70246), we explained that subsequent to the publication of the CY 2011 ESRD PPS final rule, our clinical review of the 2007 ESRD claims used to develop the ESRD PPS revealed that dialysis facilities routinely used alteplase and other thrombolytic drugs for access management purposes. We explained that under the Medicare Benefit Policy Manual, Pub. 100–02, chapter 11, section 30.4.1, drugs used as a substitute for any of the listed items, or used to accomplish the same effect were covered under the composite rate. We further explained that because heparin is a composite rate drug and could be used for access management, any drug or biological used for the same purpose may not be separately paid. Section 413.237(a)(1) provides the definition of ESRD outlier services. Specifically, § 413.237(a)(1)(i) includes ''ESRD related drugs and biologicals that were or would have been, prior to January 1, 2011, separately billable under Medicare Part B.''

Because outlier payments are restricted under § 413.237(a) to those items or services that were or would have been considered separately billable prior to January 1, 2011, in the CY 2012 ESRD PPS final rule (76 FR 70249), we excluded thrombolytic drugs from the outlier policy and we recomputed the outlier MAP amounts to reflect this change. However, for CY 2012 we did not propose to exclude separate payment of thrombolytic drugs under the composite rate portion of the blended payment.

For CY 2013, we are proposing that thrombolytic drugs would not be considered eligible for separate payment under the composite rate portion of the blended payment for those ESRD facilities that are receiving a blended payment under the transition. We believe that this proposal is consistent with the changes we made to our outlier policy regarding excluding thrombolytic drugs from outlier eligibility as discussed above. We solicit comment on our proposal to exclude thrombolytic drugs from separate payment under the composite rate portion of the blended payment during the transition.

c. Part B Drug Pricing

In the CY 2011 ESRD PPS proposed rule (74 FR 49991), with respect to estimating the imputed MAP amounts of ESRD outlier services that are separately billable under Part B, we proposed to use Average Sales Price (ASP) data for Part B ESRD-related drugs (which is updated quarterly). We did not make any changes to this proposed methodology in the CY 2011 final rule. In the CY 2012 ESRD PPS final rule (76 FR 70243), we explained that ESRD facilities receiving blended payments under the transition would receive payments based on ASP for separately billable ESRD drugs and biologicals for the composite rate portion of the blend. In the CY 2012 ESRD PPS final rule (76 FR 70244), we stated that under the outlier policy, we use the ASP methodology.

We are proposing for CY 2013 and subsequent years to continue to use the ASP methodology, including any modifications finalized in the Physician Fee Schedule (PFS) final rules, to compute our outlier MAP amounts, the drug add-on, and any other policy that requires the use of payment amounts for drugs and biologicals that would be separately paid absent the ESRD PPS and for the composite rate portion of the blended payment during the transition. We also would use this methodology for payment analyses that CMS may perform. We are seeking comment on our proposal to apply the ASP methodology or any modifications to the ASP for these purposes, as updated from time to time in the PFS rule or in updating the ASP pricing.

7. Proposed Revisions to the Outlier Policy

Section 1881(b)(14)(D)(ii) of the Act requires that the ESRD PPS include a payment adjustment for high cost outliers due to unusual variations in the type or amount of medically necessary care, including variability in the amount of erythropoiesis stimulating agents (ESAs) necessary for anemia management. Our regulations at 42 CFR 413.237(a)(1) provides that ESRD outlier services include: (i) ESRD-related drugs and biologicals that were or would have been, prior to January 1, 2011, separately billable under Medicare Part B; (ii) ESRD-related laboratory tests that

were or would have been, prior to January 1, 2011, separately billable under Medicare Part B; (iii) medical/surgical supplies, including syringes used to administer ESRD-related drugs, that were or would have been, prior to January 1, 2011, separately billable under Medicare Part B; and (iv) renal dialysis service drugs that were or would have been, prior to January 1, 2011, covered under Medicare Part D, excluding ESRD-related oral-only drugs.

In the CY 2011 ESRD PPS final rule, we stated that for purposes of determining whether an ESRD facility would be eligible for an outlier payment, it would be necessary for the facility to identify the actual ESRD outlier services furnished to the patient by line item on the monthly claim (75 FR 49142).

Drugs, laboratory tests, and medical/surgical supplies that we would recognize as outlier services were specified in Attachment 3 of Change Request 7064, Transmittal 2033 issued August 20, 2010 rescinded and replaced by Transmittal 2094, dated November 17, 2010. With respect to the outlier policy, Transmittal 2094 identified additional drugs and laboratory tests that may be eligible for ESRD outlier payment. Transmittal 2094 was rescinded and replaced by Transmittal 2134, dated January 14, 2011 which was issued to correct the subject on the Transmittal page and made no other changes.

In the CY 2012 ESRD PPS final rule (76 FR 70246), we finalized our proposal to eliminate the issuance of a specific list of eligible outlier service drugs which were or would have been separately billable under Medicare Part B prior to January 1, 2011. We stated in that rule, however, that we planned to use separate guidance to continue to identify renal dialysis service drugs which were or would have been covered under Part D for outlier eligibility purposes in order to provide unit prices for calculating imputed outlier services. We also plan to identify, through our monitoring efforts, items and services that are incorrectly being identified as eligible outlier services. Any updates to the list of renal dialysis items and services that qualify as outlier services will be made through administrative issuances, if necessary.

Our regulations at 42 CFR 413.237(a)(2) through (a)(6), and (b) specify the methodology used to calculate outlier payments. An ESRD facility is eligible for an outlier payment if its actual or imputed Medicare Allowable Payment (MAP) amount per treatment for ESRD outlier services exceeds a threshold. The MAP amount represents the average incurred amount per treatment for services that were or would have been considered separately billable services prior to January 1, 2011. The threshold is equal to the ESRD facility's predicted ESRD outlier services MAP amount per treatment (which is case-mix adjusted) plus the fixed dollar loss amount. In accordance with § 413.237(c) of the regulations, facilities are paid 80 percent of the per treatment amount by which the imputed MAP amount for outlier services (that is, the actual incurred amount) exceeds this threshold. ESRD facilities are eligible to receive outlier payments for treating both adult and pediatric dialysis patients.

In the CY 2011 ESRD PPS final rule, using 2007 data, we established the outlier percentage at 1.0 percent of total payments (75 FR 49142 through 49143). We also established the fixed dollar loss amounts that are added to the predicted outlier services MAP amounts. The outlier services MAP amounts and fixed dollar loss amounts are different for adult and pediatric patients due to differences in the utilization of separately billable services among adult and pediatric patients (75 FR 49140).

As we explained in the CY 2011 ESRD PPS final rule (75 FR 49138 and 49139), the predicted outlier services MAP amounts for a patient would be determined by multiplying the adjusted average outlier services MAP amount by the product of the patient-specific case-mix adjusters applicable using the outlier services payment multipliers developed from the regression analysis to compute the payment adjustments. The average outlier services MAP amount per treatment for CY 2011 was based on payment amounts reported on 2007 claims and adjusted to reflect projected prices for 2011. For CY 2012, the outlier services MAP amounts and fixed dollar loss amounts were based on 2010 data (76 FR 70250). That is, for CYs 2011 and 2012, the MAP and fixed dollar loss amounts were computed based on pre-ESRD PPS claims data and utilization.

a. Impact of Proposed Changes to the Outlier Policy

For CY 2013, we are not proposing any changes to the methodology used to compute the MAP or fixed dollar loss amounts. Rather, in this proposed rule, we are updating the outlier services MAP amounts and fixed dollar loss amounts to reflect the utilization of outlier services reported on the 2011 claims using the December 2011 claims file. That is, for CY 2013, the MAP and fixed dollar loss amounts are based on ESRD PPS claims and utilization. The impact of this update is shown in Table 1 which compares the outlier services MAP amounts and fixed dollar loss amounts used for the outlier policy in CY 2012 with the updated estimates for this proposed rule. The estimates for the proposed outlier CY 2013 outlier policy, which are included in Column III of Table 1, were inflation adjusted to reflect projected 2013 prices for outlier services.

TABLE 1—OUTLIER POLICY: IMPACT OF USING UPDATED DATA TO DEFINE THE OUTLIER POLICY

	Column I Outlier policy for CY 2012 (based on 2010 data price inflated to 2012) *		Column II Updated outlier estimates based on 2011 data price inflated to 2012 *		Column III Proposed outlier policy for CY 2013 (based on 2011 data price inflated to 2013) *	
	Age <18	Age >=18	Age <18	Age >=18	Age <18	Age >=18
Average outlier services MAP amount per treatment [1]	$46.26	$81.73	$40.20	$60.58	$41.49	$62.95
Adjustments:						
Standardization for outlier services [2]	1.0024	0.9738	1.0731	0.9898	1.0731	0.9898
MIPPA reduction	0.98	0.98	0.98	0.98	0.98	0.98
Adjusted average outlier services MAP amount [3]	$45.44	$78.00	$42.27	$58.76	$43.63	$61.06
Fixed dollar loss amount that is added to the predicted MAP to determine the outlier threshold [4]	$71.64	$141.21	$46.70	$105.96	$50.15	$113.35

TABLE 1—OUTLIER POLICY: IMPACT OF USING UPDATED DATA TO DEFINE THE OUTLIER POLICY—Continued

	Column I Outlier policy for CY 2012 (based on 2010 data price inflated to 2012) *		Column II Updated outlier estimates based on 2011 data price inflated to 2012 *		Column III Proposed outlier policy for CY 2013 (based on 2011 data price inflated to 2013) *	
	Age <18	Age >=18	Age <18	Age >=18	Age <18	Age >=18
Patient months qualifying for outlier payment	5.7%	5.4%	7.6%	5.2%	7.4%	5.1%

* The outlier services MAP amounts and fixed dollar loss amounts were inflation adjusted to reflect updated prices for outlier services (that is, 2012 prices in Columns I and II and projected 2013 prices in Column III).

[1] Excludes patients for whom not all data were available to calculate projected payments under an expanded bundle. The outlier services MAP amounts are based on 2011 data. The medically unbelievable edits of 400,000 units for EPO and 1,200 mcg for Aranesp that are in place under the ESA claims monitoring policy were applied.

[2] Applied to the average outlier MAP per treatment. Standardization for outlier services is based on existing Case Mix Adjusters for adult and pediatric patient groups.

[3] This is the amount to which the separately billable (SB) payment multipliers are applied to calculate the predicted outlier services MAP for each patient.

[4] The fixed dollar loss amounts were calculated using 2011 data to yield total outlier payments that represent 1% of total projected payments for the ESRD PPS.

As seen in Table 1, the estimated fixed dollar loss amounts that determine the 2013 outlier threshold amounts (Column III) are lower than those used for the 2012 outlier policy (Column I). The main reason for these reductions is the lower utilization of epoetin and other outlier services in the first year of the PPS. This can be seen by comparing the outlier service MAP amounts in Column I (which are based on 2010 data) vs. Column II (which is based on 2011 data).

The fixed dollar loss amounts which are added to the predicted MAP amounts per treatment to determine the outlier thresholds are being updated from $141.21 to $113.35 for adult patients and from $71.64 to $50.15 for pediatric patients compared with CY 2012 values. We estimate that the percentage of patient months qualifying for outlier payments under the current policy will be 5.1 percent and 7.4 percent for adult and pediatric patients, respectively, based on our use of 2011 data. The pediatric outlier MAP and fixed dollar loss amounts continue to be lower for pediatric patients than adults due to the continued lower use of outlier services (primarily reflecting lower use of epoetin and other injectable drugs).

b. Outlier Policy Percentage

Section 413.220(b)(4) stipulates that the per treatment base rate is reduced by 1 percent to account for the proportion of the estimated total payments under the ESRD PPS that are outlier payments. Because of the decline in utilization associated with the implementation of the expanded bundle, the 1 percent target for outlier payments was not achieved in CY 2011. Based on the 2011 claims, outlier payments represented approximately 0.52 percent of total payments. That is, the historical data previously used to set the outlier thresholds for CY 2011 overestimated the use of outlier services under the expanded ESRD PPS, leading to lower outlier payments than expected. Use of 2011 data to recalibrate the thresholds, reflecting lower utilization of EPO and other outlier services, is expected to result in aggregate outlier payments close to the 1 percent target in CY 2013. We believe this update to the outlier MAP and fixed dollar loss amounts for CY 2013 will increase payments for ESRD beneficiaries requiring higher resource utilization in accordance with a 1 percent outlier policy.

We note that recalibration of the fixed dollar loss amounts in this proposed rule for CY 2013 outlier payments results in no change in payments to ESRD facilities for beneficiaries with renal dialysis items and services that are not eligible for outlier payments, but raises payments to providers for beneficiaries with renal dialysis items and services that are eligible for outlier payments. Therefore, beneficiary co-insurance obligations would increase for renal dialysis services eligible for outlier services and would remain unchanged for those not eligible.

C. Clarifications Regarding the ESRD PPS

1. Reporting Composite Rate Items and Services

In the CY 2011 ESRD PPS final rule (75 FR 49036), we explained that section 1881(b)(14)(B)(i) of the Act requires that the ESRD PPS payment bundle include composite rate services. The basic case-mix adjusted composite payment system represented a limited PPS for a bundle of routine outpatient maintenance renal dialysis services. We defined composite rate services at § 413.171 as ''items and services used in the provision of outpatient maintenance dialysis for the treatment of ESRD and included in the composite payment system established under section 1881(b)(7) [of the Act] and the basic case-mix adjusted composite payment system established under section 1881(b)(12) of the Act.'' In § 413.171 we also defined renal dialysis services as including, ''items and services included in the composite rate for renal dialysis services as of December 31, 2010.''

The composite rate included a number of items and services beyond the dialysis treatment itself. In the CY 2011 ESRD PPS final rule (75 FR 49173), we explained that currently services that are billed on the ESRD claim do not provide any detail of the composite rate items and services that are furnished to the patient. As we discussed in the Medicare Claims Processing Manual, Pub. 100–04, chapter 8, sections 50.1 and 50.2., laboratory tests and drugs covered under the facility's composite rate may not be billed separately. As mentioned above, the composite rate represented the routine items and services provided to Medicare beneficiaries for outpatient maintenance dialysis, therefore was full payment for those items and services. It would not have been appropriate for ESRD facilities to bill for items and services in the composite rate because this would result in duplicate payments made by Medicare.

In the CY 2011 ESRD PPS final rule (75 FR 49048), we also explained that in our analysis of the ESRD claims we identified drugs and biologicals that were included in the composite payment rate but for which ESRD facilities received separate payment in addition to the composite rate payment. Because these composite rate drugs and biologicals were listed separately on the ESRD claims, separate payment was

inadvertently made. We further explained that we excluded those payments from the final ESRD PPS base rate calculation. We also noted that the Medicare Benefit Policy Manual, Pub. 100–02, chapter 11, section 30.4.1 lists the drugs and fluids that were included under the composite payment system as heparin, antiarrythmics, protamine, local anesthetics, apresoline, dopamine, insulin, lidocaine, mannitol, saline, pressors, heparin antidotes, benadryl, hydralazine, lanoxin, solu-cortef, glucose, antihypertensives, antihistamines, dextrose, inderal, levophed, and verapamil. The Medicare Benefit Policy Manual, Pub. 100–02, chapter 11, section 30.4.1 also explicitly states, ''* * * drugs used in the dialysis procedure are covered under the facility's composite rate and may not be billed separately. Drugs that are used as a substitute for any of these items, or are used to accomplish the same effect, are also covered under the composite rate.'' The manual further provides that ''administration of these items (both the staff time and supplies) is covered under the composite rate and may not be billed separately'' (75 FR 49048). In the CY 2012 final rule (76 FR 70243), with regards to antibiotics, we provided for separate payment for vancomycin when furnished to treat non-ESRD related conditions. Also, in section II.B.6.a of this proposed rule, we proposed to provide for separate payment for daptomycin if furnished for non-ESRD-related conditions. We also eliminated the payment distinction for antibiotics furnished in an ESRD facility or in the home used to treat access infections or peritonitis. We finalized that antibiotics furnished in the home to treat access site infections and peritonitis would be eligible for outlier payment (76 FR 70246).

As described at § 413.239, there are ESRD facilities receiving reimbursement under the transition, that is, receiving a blended payment of the basic case-mix adjusted composite rate payment system and the ESRD PPS. If an ESRD facility receives payment under the transition and reports a drug, biological, or laboratory test that was included in the composite rate on the ESRD claim, it could receive separate payment for that item or service within the portion of the blended payment that is based on the basic case-mix adjusted composite payment system.

As mentioned above and defined at § 413.237, ESRD-related drugs, biologicals, and laboratory tests that were or would have been separately payable under the basic case-mix adjusted composite payment system qualify as eligible outlier services. In the CY 2012 ESRD PPS final rule (76 FR 70246), we finalized the elimination of the issuance of a specific list of eligible outlier service drugs which were or would have been separately billable under Medicare Part B prior to January 1, 2011. Therefore, if an ESRD facility reports a drug or biological that was included in the basic case-mix adjusted composite payment system on the ESRD claim, it would inappropriately be applied toward an outlier calculation. This is because all drugs and biologicals with a rate available on the ASP pricing file when the modifier AY is not present are eligible for outlier consideration.

As a result of our monitoring efforts, we continue to see composite rate drugs reported on ESRD claims. Therefore, in this proposed rule we are reiterating that composite rate items and services are not to be reported on the ESRD facility claim. We are instituting measures to ensure that composite rate drugs will be prevented from being applied to the outlier payment. These measures will be discussed through administrative issuances. We are continuing to monitor the reporting of composite rate items and services on ESRD claims and plan to take actions to recoup inappropriate and duplicative payments. If the inclusion of composite rate items and services such as laboratory tests, drugs and supplies on claims will be required, we will discuss this requirement in future rulemaking.

2. ESRD Facility Responsibilities for ESRD-Related Drugs and Biologicals

It has come to our attention that some ESRD facilities are requiring ESRD beneficiaries to purchase renal dialysis drugs and are informing beneficiaries not to use their Part D plan for their purchases.

Section 1866(a)(1)(A) of the Act as codified in regulations at 42 CFR 489.21 prohibits providers from billing beneficiaries for services for which the beneficiary would have been entitled to have payment made under Medicare if the provider appropriately filed claims. Furthermore, section 1881(b)(2)(A) of the Act states that payments shall be made to a renal dialysis facility only if it agrees to accept such payments as payment in full for covered services except for the beneficiary co-insurance and deductible amounts.

In the CY 2011 ESRD PPS final rule (75 FR 49045), we explained that the ESRD PPS bundled base rate reflects Medicare payment for the average ESRD patient. We stated that we had incorporated payments under the basic case-mix adjusted composite rate payment system as well as payments for separately billable items and services into the ESRD PPS base rate. As a result, we believe the ESRD PPS payments are sufficient and reflect the average cost of providing care to the average patient with ESRD and therefore, we expect that, on average, high cost patients would be offset by low cost patients. In the CY 2011 ESRD PPS final rule (75 FR 49045), we also explained that we had provided for higher acuity patients with patient case-mix adjusters and outlier payments for high-cost patients. We further cited 42 CFR § 494.90 of the ESRD Conditions for Coverage which requires the development of an individualized patient plan of care to address patient needs and concluded that we believe ESRD facilities should make medical decisions based on patient needs and not solely on a financial basis.

In the CY 2011 ESRD PPS final rule (75 FR 49050), we stipulated that any drug or biological (that is injectable, oral or other forms of administration) furnished for the purpose of access management, anemia management, vascular access or peritonitis, cellular management and bone and mineral metabolism would be considered renal dialysis services under the ESRD PPS. Any drug or biological used as a substitute for a drug or biological that was included in the ESRD PPS bundled base rate would also be a renal dialysis service and would not be eligible for separate payment. Antiemetics, anti-infectives, antipruritics, anxiolytic, excess fluid management, fluid and electrolyte management and pain management could be used for dialysis purposes and therefore, considered ESRD related. We indicated that we presumed these drugs and biologicals in whatever form they are furnished to be renal dialysis services unless indicated that they are used for non-ESRD related conditions. Drugs and biologicals paid under Part D that are furnished by an ESRD facility for ESRD-related purposes, would be considered renal dialysis services (75 FR 49050 and 49051).

We are reiterating in this proposed rule that ESRD facilities are responsible for furnishing renal dialysis items and services that are required to meet patient needs. This would include oral or other forms of administration of injectable drugs and biologicals that are furnished for ESRD-related conditions. We would also expect that ESRD facilities would not restrict access to necessary drugs for financial purposes, requiring patients to purchase medically necessary drugs and biologicals. We expect that ESRD facilities would furnish drugs and biologicals that had been considered medically necessary

prior to the implementation of the ESRD PPS and not exclude them because the ESRD facility is now financially responsible for these drugs and biologicals. Because of the reasons cited above, ESRD facilities may not require, induce or coerce beneficiaries to purchase any renal dialysis item or service.

3. Use of AY Modifiers

In response to comments received, in the CY 2011 ESRD PPS final rule, we stated that we had developed a mechanism to be used by ESRD facilities to identify and be paid separately for non-ESRD-related drugs and biologicals (75 FR 49052 and 75 FR 49168). We provided this mechanism in order to support a Medicare beneficiary's need for the furnishing of non-ESRD-related items and services (that is, predominantly drugs and laboratory tests) during a dialysis treatment to mitigate the need for the beneficiary to receive additional injections or health care visits. We further stated that in the event that supplies or equipment are not ESRD-related, ESRD facilities would be required to place a modifier for those supplies and equipment signifying that they were used for services that are not ESRD-related and eligible for separate payment (75 FR 49168). Change Request 7064, Transmittal 2033, entitled ''End Stage Renal Disease (ESRD) Prospective Payment System (PPS) and Consolidated Billing for Limited Part B Services, issued on August 20, 2010, re-issued November 17, 2010 under Transmittal 2094, and re-issued January 14, 2011 under Transmittal 2134, provided instructions in the use of the modifier. In that Change Request, we indicated that the claim lines for laboratory tests and drugs provided to a beneficiary for reasons other than the treatment of ESRD, must be submitted with the AY modifier to allow for separate payment outside of the ESRD PPS. In the CY 2012 final rule, we provided for the use of the AY modifier with vancomycin, if used for non-ESRD-related conditions with the requirement that the ESRD facilities include the diagnosis code of the condition (76 FR 70243). In this proposed rule, in section II.B.6.a, we are also proposing the use of the AY modifier with daptomycin for non-ESRD related conditions. ESRD facilities will also be required to indicate the ICD–9–CM code on the claim that reflects the condition requiring the use of daptomycin.

Our monitoring activities have identified that there are ESRD facilities and clinical laboratories that are appending the AY modifier for items that we believe are ESRD-related. Additionally, some ESRD facilities and clinical laboratories appear to be appending the AY modifier on many items and services reported on the claims. We are reiterating in this proposed rule that the purpose of the AY modifier is to allow beneficiaries the convenience to receive non-ESRD-related items (that is, drugs and laboratory tests) during their dialysis treatment and to allow the ESRD facility to receive payment for furnishing those items. The AY modifier is also intended to allow separate payment to laboratories in the event an ESRD-related laboratory test was required for non-ESRD conditions. The AY modifier is not intended to be used to receive separate payment for items that are ESRD-related and therefore are included in the ESRD PPS base rate. We are continuing to monitor the use of the AY modifier and intend to take steps to recoup inappropriate payments. In the event that we believe that the AY modifier is not being used for the purpose intended, we may be forced to discontinue the AY modifier and cease to provide separate payment for any non-ESRD-related drug or laboratory test furnished.

III. End-Stage Renal Disease (ESRD) Quality Incentive Program (QIP) for Payment Year (PY) 2015

A. Background

For over 30 years, monitoring the quality of care provided to end-stage renal disease (ESRD) patients by dialysis providers or facilities (hereinafter referred to collectively as ''facility'' or ''facilities'') has been an important component of the Medicare ESRD payment system. The ESRD quality incentive program (QIP) is the most recent step in fostering improved patient outcomes by establishing incentives for dialysis facilities to meet or exceed performance standards established by CMS. The ESRD QIP is authorized by section 153(c) of MIPPA, which added section 1881(h) to the Act. CMS established the ESRD QIP for PY 2012, the initial year of the program in which payment reductions are being made, in two rules published in the **Federal Register** on August 12, 2010 and January 5, 2011 (75 FR 49030 and 76 FR 628, respectively). On November 10, 2011, CMS published a rule in the **Federal Register** outlining the PY 2013 and PY 2014 ESRD QIP (76 FR 70228).

Section 1881(h) of the Act requires the Secretary to establish an ESRD QIP by (i) selecting measures; (ii) establishing the performance standards that apply to the individual measures; (iii) specifying a performance period with respect to a year; (iv) developing a methodology for assessing the total performance of each facility based on the performance standards with respect to the measures for a performance period; and (v) applying an appropriate payment reduction to facilities that do not meet or exceed the established Total Performance Score. This proposed rule discusses each of these elements and our proposals for their application to PY 2015 and future years of the ESRD QIP.

B. Considerations in Updating and Expanding Quality Measures Under the ESRD QIP for PY 2015 and Subsequent PYs

1. Value-Based Purchasing (VBP) Overview

Throughout the past decade, Medicare has been transitioning from a program that pays for healthcare based solely on the number of services furnished to a beneficiary to a program that ties portions of payments to providers and suppliers to the quality of services they deliver. By paying for the quality of care, rather than merely the quantity of care, we believe we are strengthening the healthcare system while also advancing the National Quality Strategy and the three part aim which promote (i) better care for the individual thereby (ii) advancing the health of the entire population while also (iii) reducing costs. CMS specifies the domains and specific measures of quality for our value-based purchasing (VBP) programs and we are working to link the aims of the National Quality Strategy with our payment policies on a national scale.

There are currently six domains of measurement for our VBP programs, based on the six priorities of the National Quality Strategy: (i) Care coordination; (ii) population/community health; (iii) efficiency and cost reduction; (iv) safety; (v) patient- and caregiver-centered experience and outcomes; and (vi) clinical care. Together these domains not only encourage better care at the facility level, but also encourage different care settings to interface to comprehensively improve healthcare. Although currently none of the VBP programs measure quality across all of the six domains, we are working to ensure that each program considers measures supporting the six national priorities where feasible. Furthermore, we are working in partnership with facilities, beneficiaries, the National Quality Forum (NQF), the Measures Application Partnership, sister agencies in the Department of Health and Human Services (HHS), and other stakeholders to develop new

measures where gaps exist, refine measures requiring adjustment, and remove measures when appropriate. We are also working with stakeholders to ensure that the ESRD QIP serves the needs of our beneficiaries and also advances the goals of the National Quality Strategy.

We believe that the development of an ESRD QIP that is successful in promoting the delivery of high quality healthcare services in dialysis facilities is paramount. We seek to adopt measures for the ESRD QIP that promote better, safer, and more efficient care. Our measure development and selection activities for the ESRD QIP take into account national priorities, such as those established by the National Priorities Partnership (*http://www.nationalprioritiespartnership.org/*), HHS Strategic Plan (*http://www.hhs.gov/secretary/about/priorities/priorities.html*), the National Strategy for Quality Improvement in Healthcare (*http://www.healthcare.gov/center/reports/quality03212011a.html*), and the HHS National Action Plan to Prevent Healthcare Associated Infections (HAIs) (*http://www.hhs.gov/ash/initiatives/hai/esrd.html*). To the extent practicable, we have sought to adopt measures that have been endorsed by a national consensus organization, recommended by multi-stakeholder organizations, and developed with the input of facilities, purchasers/payers, beneficiaries, and other stakeholders.

2. Brief Overview of Proposed PY 2015 Measures

Thus far, we have adopted measures for the ESRD QIP that fall under three of the six National Quality Strategy measure priority domains:

- *Safety:* National Healthcare Safety Network (NHSN) Dialysis Event reporting;
- *Patient- and Caregiver-Centered Experience:* In-Center Hemodialysis Consumer Assessment of Healthcare Providers and Systems (ICH CAHPS) survey reporting; and
- *Clinical Quality of Care:* (i) Hemoglobin Greater Than 12 g/dL; (ii) Hemodialysis Adequacy (Urea Reduction Ratio (URR)); (iii) Vascular Access Type; (iv) and Mineral Metabolism reporting (76 FR 70228).

For PY 2015, we are proposing to add new measures in the clinical quality of care domain and to expand the scope of the NHSN Dialysis Event reporting measure (safety domain) and the Mineral Metabolism reporting measure (clinical quality of care domain). We believe that the PY 2015 ESRD QIP not only further promotes the health of ESRD patients, but also strengthens the goals of the National Quality Strategy. To that end, and as proposed and further discussed below, we are proposing to include 11 measures in the PY 2015 ESRD QIP. We also propose to include these measures and measure topics in subsequent payment years. The following measures seek to evaluate facilities on the clinical quality of care which they deliver.

- For purposes of evaluating anemia management:
  - Hemoglobin Greater Than 12 g/dL, a clinical measure.
  - Anemia Management, a reporting measure.*
- To evaluate dialysis adequacy:
  - A clinical Kt/V measure for adult hemodialysis patients.*
  - A clinical Kt/V measure for adult peritoneal dialysis patients.*
  - A clinical Kt/V measure for pediatric hemodialysis patients.*
- To determine whether patients are treated using the most beneficial type of vascular access:
  - An arteriovenous fistula measure.
  - A catheter measure.
- To address effective bone mineral metabolism management:
  - Hypercalcemia, a clinical measure.*
  - Mineral Metabolism, a reporting measure (expansion proposed).

Additionally, we are proposing to expand a previously adopted reporting measure addressing safety:

- NHSN Dialysis Event reporting measure.

We are also proposing to continue using a previously adopted reporting measure assessing patient- and caregiver-centered experience:

- ICH CAHPS survey reporting measure.

* Indicates that the measure is new to the ESRD QIP.

Although, at this time, we are not proposing to adopt measures that address care coordination, population/community health, or efficiency and cost of care, we are soliciting comments in this proposed rule on potential measures that would fall into each of these areas. We also discuss below the following measures that are under consideration for future adoption: a 30-Day Hospital Readmission measure to address care coordination; an access to care measure to address population/community health; and an efficiency measure. We also discuss below the Standardized Hospitalization Ratio Admissions (SHR) measure and the Standardized Mortality Ratio (SMR) measure that we are considering for program adoption in future years. We welcome further comments on these and the other potential measures for future program years.

3. PY 2014 Mineral Metabolism Measure

As noted above, in the CY 2012 ESRD PPS final rule, we adopted the Mineral Metabolism reporting measure which requires each facility to attest that it monitored serum calcium and serum phosphorus at least once a month for each Medicare ESRD patient (76 FR 70271). We have since realized, however, that it may be difficult for some facilities to make this attestation if, for example, a patient is seen at the beginning of the month, his or her blood is not drawn, and then he or she is hospitalized or transient for the remainder of the month. While it is our intention to encourage facilities to put systems and processes into place to ensure at least monthly serum calcium and phosphorus monitoring, we believe it is reasonable to give consideration to situations where the monthly blood draw does not happen within the dialysis facility given these scenarios. Therefore, for PY 2014, we propose to change the Mineral Metabolism reporting requirement.

We considered proposing to require facilities to report the required information for less than 100 percent of their patients. Specifically, we considered lowering the threshold to require that a facility attest that it monitored on a monthly basis the serum calcium and serum phosphorus levels for 98 percent of its patients. We ultimately decided that a facility should be required to take and report these values for every patient at least once per month so that each beneficiary receives the highest standard of care. We realize, however, that there are circumstances beyond a facility's control wherein it may not be able to draw a sample for this patient. Therefore, for purposes of scoring the measure, we propose to now require that, in order for a facility to receive 10 points on the PY 2014 Mineral Metabolism measure, it must attest that it monitored on a monthly basis the serum calcium and serum phosphorus levels for every Medicare ESRD patient provided that: (i) The patient is alive for the entirety of the applicable month; (ii) if the patient is treated in-center, that patient was treated at that facility at least twice during the claim month; and (iii) if the patient receives dialysis at home, a facility must report this information regardless of the number of treatments, provided that a claim is submitted for that patient. Additionally, we propose that if a patient is hospitalized or transient during a claim month, the facility may monitor the serum calcium

and serum phosphorus readings for that patient for the month if a patient has labs drawn by another provider/facility, those labs are evaluated by an accredited laboratory (a laboratory that is accredited by, for example, Joint Commission, College of American Pathologists, AAB (American Association of Bioanalysts), or State or Federal agency), and the dialysis facility reviews the serum calcium and serum phosphorus readings. We believe that these proposals will provide more flexibility for facilities and will also prevent facilities from drawing blood, even when not necessary, each time a patient visits for fear that he or she will fail to come to the facility again during that month. We request comment on this proposal. We also request comment on our consideration to lower the attestation to monthly monitoring of 98 percent of Medicare ESRD patients. We chose 98 percent in order to encourage improvement, and to ensure that we do not undermine the current level of high-reporting (based on the CrownWeb pilot data). We recognize that 100 percent might not be appropriate due to some individual cases that may not fit specified criteria.

Additionally, for purposes of clarification, we note that the PY 2014 attestations for both the Mineral Metabolism and ICH CAHPS measures will become available in CROWNWeb in December. As noted in the CY 2011 ESRD PPS final rule, these attestations must be made before January 31, 2013 (76 FR 70269, 70271).

4. Measures Application Partnership Review

In addition to the considerations discussed above, in selecting measures for the PY 2015 ESRD QIP, we considered input from the multi-stakeholder group, the Measures Application Partnership (*http://www.qualityforum.org.map/*). Section 1890A(a)(1) of the Act, as added by section 3014(b) of the Affordable Care Act, requires the entity with a contract under section 1890(a) of the Act, currently NQF, to convene multi-stakeholder groups to provide input to the Secretary on the selection of quality and efficiency measures for use in certain programs. Section 1890A(a)(2) of the Act requires the Secretary, not later than December 1 of each year, to make available to the public a list of quality and efficiency measures that are under consideration for use in certain programs. Section 1890A(a)(3) of the Act requires the entity with a contract under section 1890(a) of the Act to transmit the input of the multi-stakeholder groups to the Secretary not later than February 1 of each year, beginning in 2012. Section 1890A(a)(4) of the Act requires the Secretary to take into consideration the input of the multi-stakeholder groups in selecting quality and efficiency measures. The Measures Application Partnership is the public-private partnership comprised of multi-stakeholder groups convened by NQF for the primary purpose of providing input on measures as required by sections 1890A(a)(1) and (3) of the Act. The Measures Application Partnership's input on the quality and efficiency measures under consideration for adoption in CY 2012 was transmitted to the Secretary on February 1, 2012 and is available at (*http://www.qualityforum.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=69885*). As required by section 1890A(a)(4) of the Act, we considered these recommendations in selecting quality and efficiency measures for the ESRD QIP.

Four proposed measures for the PY 2015 ESRD QIP (that is, three for dialysis adequacy and one for hypercalcemia) were made publicly available in accordance with section 1890A(a)(2) of the Act and were reviewed by the Measures Application Partnership. The Measures Application Partnership gave support to two of the proposed measures, NQF #1454: Proportion of patients with hypercalcemia and NQF #1423: Minimum spKt/V for Pediatric Hemodialysis Patients. The Measures Application Partnership supported the direction of a proposed composite measure comprised of two NQF-endorsed measures, NQF #0249: Hemodialysis Adequacy Clinical Performance Measure III: Hemodialysis Adequacy—HD Adequacy—Minimum Delivered Hemodialysis Dose and NQF #0318: Peritoneal Dialysis Adequacy Clinical Performance Measure III—Delivered Dose of Peritoneal Dialysis Above Minimum. The Measures Application Partnership recommended that the composite measure comprised of the two NQF dialysis adequacy measures be tested to ensure feasibility. We have taken these comments into consideration for the PY 2015 ESRD QIP. We will further discuss these considerations and our proposals for the PY 2015 ESRD QIP measures in the section below.

C. Proposed Measures for the PY 2015 ESRD QIP and Subsequent PYs of the ESRD QIP

Similar to our other quality reporting and pay for performance programs, we are proposing that once a quality measure is selected and finalized for the ESRD QIP through rulemaking, the measure would continue to remain part of the program for all future years, unless we remove or replace it through rulemaking or notification. We believe that this will streamline the rulemaking process, provide continuity of quality measurement, and allow ESRD facilities to plan both quality reporting and quality improvement activities. In general, we anticipate considering quality measures for removal or replacement if: (1) Measure performance among the majority of ESRD facilities is so high and unvarying that meaningful distinctions in improvements or performance can no longer be made; (2) performance or improvement on a measure does not result in better or the intended patient outcomes; (3) a measure no longer aligns with current clinical guidelines or practice; (4) a more broadly applicable (across settings, populations, or conditions) measure for the topic becomes available; (5) a measure that is more proximal in time to desired patient outcomes for the particular topic becomes available; (6) a measure that is more strongly associated with desired patient outcomes for the particular topic becomes available; or (7) collection or public reporting of a measure leads to negative unintended consequences. If there is reason to believe that a measure raises potential safety concerns, we are proposing that we would take immediate action to remove the measure from the ESRD QIP and not wait for the annual rulemaking cycle. Such measures would be promptly removed from the measure set, and we would confirm the removal in the next ESRD QIP rulemaking cycle. ESRD facilities and the public would be immediately notified of our decision to remove a measure that raises potential safety concerns through the usual ESRD program communication channels, including memos, email notification, and web postings.

Many of the quality measures used in different Medicare and Medicaid reporting programs are endorsed by NQF. As part of its regular maintenance process for endorsed performance measures, the NQF requires measure stewards to submit annual measure maintenance updates and undergo maintenance of endorsement review every 3 years. Under the measure maintenance process, the measure steward (owner/developer) is responsible for updating and maintaining the currency and relevance of the measure and confirming specification changes to NQF on an annual basis. NQF solicits information from measure stewards for annual reviews in order to review measures for

continued endorsement in a specific 3-year cycle. Non-NQF-endorsed measures may also go through similar maintenance by their measure stewards; such maintenance includes reviewing and updating measures.

Through the measure maintenance process, measures are sometimes updated to incorporate changes that we believe do not substantially change the nature of the measures. Examples could be changes to exclusions to the patient population, changes to definitions, or extension of the measure endorsement to apply to other settings. We believe these types of maintenance changes are distinct from more substantive changes to measures that result in what are considered new or different measures, and that they do not trigger the same agency obligations under the Administrative Procedure Act.

In this proposed rule, we are proposing that if a measure that we have adopted for the ESRD QIP is updated in a manner that we consider to not substantially change the nature of the measure, we would use a subregulatory process to incorporate those updates to the measure specifications that apply to the program. Specifically, we would revise our previously adopted measure specifications to clearly identify the updates made by the NQF or other measure steward and either post the updates directly on the CMS Web site or provide links to where the updates can be found. We would also provide sufficient lead time for facilities to implement the changes where changes to the data collection systems would be necessary.

We would continue to use the rulemaking process to adopt changes to a measure that we consider to substantially change the nature of the measure. We believe that this proposal adequately balances our need to incorporate updates to ESRD QIP measures in the most expeditious manner possible, while preserving the public's ability to comment on updates that so fundamentally change an endorsed measure that it is no longer the same measure that we originally adopted. We invite public comment on this proposal and on our proposal that once a quality measure is adopted, it is retained for use in the subsequent ESRD QIP payment years unless we remove or replace it as discussed above.

Consistent with these goals and policies, we previously finalized six measures (including one measure with two measure sub-components) (Table 2) for the PY 2014 ESRD QIP (76 FR 70228). We propose to continue to use five of these measures for the PY 2015 ESRD QIP; however, we propose to augment two (NHSN Dialysis Event reporting and Mineral Metabolism reporting) of these five measures used in PY 2014 to continue to promote improvement in the PY 2015 ESRD QIP. We are proposing to remove the PY 2014 URR Dialysis Adequacy measure. In addition, we are proposing to add three new measures of dialysis adequacy, an anemia management reporting measure, and a hypercalcemia clinical measure.

TABLE 2—MEASURES ADOPTED FOR THE PY 2014 ESRD QIP

NQF No.	Measure title	
N/A	Percent of Patients with Hemoglobin Greater Than 12 g/dL*	
N/A	URR Hemodialysis Adequacy	
N/A for composite measure.	Vascular Access Type	Hemodialysis Vascular Access- Maximizing Placement of Arterial Venous Fistula (AVF)* (NQF#0257). Hemodialysis Vascular Access- Minimizing use of Catheters as Chronic Dialysis Access* (NQF#0256).
N/A[1]	NHSN Dialysis Event Reporting*+ Enroll and report 3 months of dialysis event data.	
N/A[2]		In-Center Hemodialysis Consumer Assessment of Healthcare Providers and Systems (ICH CAHPS) Survey Reporting* Facilities are required to attest that they administered the ICH CAHPS survey via a third party during the performance period.
N/A[3]		Mineral Metabolism Reporting. Facilities are required to attest that they have monitored each of their Medicare patient's phosphorus and calcium levels monthly throughout the performance period.*+

[1] We note that an NQF-endorsed bloodstream infection measure (NQF#1460) exists, and data for this measure is collected as part of dialysis event reporting in NHSN. It is our intention to use this measure in future years of the ESRD QIP. We believe that a reporting measure is a necessary step in reaching our goal to use NQF#1460.

[2] We note that a related measure utilizing the results of this survey has been NQF-endorsed (#0258), and it is our intention to use this measure in future years of the ESRD QIP. We believe that a reporting measure is a necessary step in reaching our goal to use NQF#0258.

[3] We note that the NQF has previously endorsed phosphorus and calcium monitoring measures (#0261 and #0255) upon which this measure is based.

* Indicates a measure we are proposing for PY 2015 and future years of the ESRD QIP.

+ Indicates a measure we are proposing to augment for PY 2015 and future years of the ESRD QIP.

Along with the measures that have been previously adopted and which we propose to continue for use in the PY 2015 ESRD QIP as well as subsequent years of the program, Table 3, below, lists the new measures that are being proposed for the PY 2015 ESRD QIP and subsequent years of the program. Table 4 lists the measures we are considering for future years of the ESRD QIP.

TABLE 3—NEW MEASURES PROPOSED FOR THE ESRD QIP PY 2015 AND FUTURE YEARS OF THE PROGRAM

NQF No.	Measure title
N/A	Anemia Management Reporting.
0249	Hemodialysis Adequacy Clinical Performance Measure III: Hemodialysis Adequacy—HD Adequacy—Minimum Delivered Hemodialysis Dose.
0318	Peritoneal Dialysis Adequacy Clinical Performance Measure III—Delivered Dose of Peritoneal Dialysis Above Minimum.
1423	Minimum spKt/V for Pediatric Hemodialysis Patients.
1454	Proportion of Patients with Hypercalcemia.

TABLE 4—MEASURES UNDER CONSIDERATION FOR FUTURE YEARS OF THE ESRD QIP

NQF No.	Measure title
1463	Standardized Hospitalization Ratio for Admissions (SHR).
0369	Dialysis Facility Risk-Adjusted Standardized Mortality Ratio (SMR).

1. PY 2014 Measures Continuing for PY 2015 and Subsequent Payment Years

We are proposing to continue using two measures and one measure topic adopted in PY 2014 for the PY 2015 ESRD QIP and future years of the program. Proposals for scoring these measures are discussed below. For the reasons stated in the CY 2012 ESRD PPS final rule (76 FR 70262, 70264 through 65, 70269), we propose to continue using: (i) The Hemoglobin Greater than 12 g/dL measure; (ii) the Vascular Access Type measure topic comprised of two measures, (a) the Hemodialysis Vascular Access-Maximizing Placement of AVF (NQF #0257) measure, and (b) the Hemodialysis Vascular Access-Minimizing use of Catheters as Chronic Dialysis Access (NQF #0256) measure; and (iii) the ICH CAHPS survey reporting measure. The technical specifications for these measures can be found at *http://www.dialysisreports.org/pdf/esrd/public-measures/Anemia Management-HGB-2015-NPRM.pdf*; *http://www.dialysisreports.org/pdf/esrd/public-measures/VascularAccess-Catheter-2015-NPRM.pdf*; *http://www.dialysisreports.org/pdf/esrd/public-measures/VascularAccess-Fistula-2015-NPRM.pdf*; and *http://www.dialysis reports.org/pdf/esrd/public-measures/ICHCAHPS-2015-NPRM.pdf*. We request comment on the proposed continuation of these measures.

2. Expansion of Two PY 2014 Measures for PY 2015 and Subsequent Payment Years

As stated earlier, we believe it is important to continue using measures from one payment year to the next payment year of the program to encourage continued improvements in patient care. Since we believe that continued improvement in patient care is important, we are proposing to expand the requirements under two reporting measures that we adopted for the PY 2014 ESRD QIP. These proposed expanded requirements would apply to the measures for PY 2015 and future payment years of the ESRD QIP.

a. Proposed Expanded NHSN Dialysis Event Reporting Measure

HAIs are a leading cause of preventable mortality and morbidity across different settings in the healthcare sector, including dialysis facilities. In a national effort to reduce this outcome, HHS agencies, including CMS, are partnering with the Centers for Disease Control and Prevention (CDC) to encourage facilities to report to the NHSN as a way to track and facilitate action intended to reduce HAIs. The NHSN is currently a secure, internet-based surveillance system that integrates patient and healthcare personnel safety surveillance systems managed by the Division of Healthcare Quality Promotion at the CDC. NHSN has been operational since 2006 and tracks data from acute care hospitals, long-term care hospitals, psychiatric hospitals, rehabilitation hospitals, outpatient dialysis centers, ambulatory surgery centers, and long term care facilities. We believe that reporting dialysis events to the NHSN by all facilities supports national goals for patient safety, particularly goals for the reduction of HAIs.

For the reasons stated above, we are proposing to retain the NHSN Dialysis Event reporting measure that we adopted for the PY 2014 ESRD QIP (76 FR 70268 through 70269), but with an expanded reporting period. For PY 2014, ESRD QIP facilities were required to: (i) Enroll in the NHSN and complete any training required by the CDC related to reporting dialysis events via the NHSN system; and (ii) submit three or more consecutive months of dialysis event data to the NHSN. For the PY 2015 ESRD QIP and future payment years, we propose to retain the NHSN measure and expand the reporting period to a full 12 months of dialysis event data. Although we expect most facilities to have enrolled and trained in the NHSN dialysis event system by the end of CY 2012, we note that facilities that have not done so by January 1, 2013 or facilities that receive a CMS certification number (CCN) during 2013 must enroll and complete this training before reporting the data in order to fulfill the requirements of this reporting measure. The information reported to NHSN would be provided by the CDC to CMS for use in the ESRD QIP.

As discussed in more detail below, we are proposing that the performance period for the PY 2015 ESRD QIP would be CY 2013. We propose that facilities must report dialysis event data monthly to the NHSN. We also propose that facilities be granted a ''grace period'' of one month to report this data. For example, a facility's dialysis event data for January 2013 must be reported on or before February 28, 2013. The final month of data from the performance period would be reported on or before January 31, 2014. For further information regarding the NHSN's dialysis event reporting protocols, please see *http://www.cdc.gov/nhsn/psc_da_de.html*. This link provides general information and links to more detailed, specialized information.

We note that this proposed measure only applies to facilities treating in-center patients. For purposes of the NHSN Dialysis Event reporting measure, we determine whether a facility treats in-center patients by referencing the facility's information in CMS data sources (that is, SIMS and CROWNWeb). Facilities report the types of patients that they serve in these data sources. If a facility lists in-center

services, we are proposing that the facility would be required to comply with the NHSN dialysis event reporting measure.

Section 1881(h)(2)(B)(i) of the Act requires that, unless the exception set forth in section 1881(h)(2)(B)(ii) of the Act applies, the measures specified for the ESRD QIP under section 1881(h)(2)(A)(iii) of the Act must have been endorsed by the entity with a contract under section 1890(a) of the Act (which is currently NQF). Under the exception set forth in 1881(h)(2)(B)(ii) of the Act, in the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed by the entity with a contract under section 1890(a) of the Act, the Secretary may specify a measure that is not so endorsed so long as due consideration is given to measures that have been endorsed or adopted by a consensus organization identified by the Secretary.

An NQF-endorsed bloodstream infection measure (NQF#1460) exists and is collected by the CDC as part of dialysis event reporting in NHSN. This measure assesses the number of hemodialysis patients with positive blood cultures. This measure differs from the dialysis event reporting measure that we adopted for the PY 2014 ESRD QIP and are proposing to expand beginning with the PY 2015 program because it evaluates the number of hemodialysis outpatients with positive blood cultures over a specified time period. By contrast, the proposed NHSN Dialysis Event reporting measure assesses facilities based on whether they enroll and report dialysis event data to the NHSN, not based on what the data reported are. We intend to propose to adopt NQF #1460 once facilities have reported enough data to enable us to compute performance standards, achievement thresholds, improvement thresholds, and benchmarks for the measure.

For the reasons stated in the CY 2012 ESRD PPS final rule (76 FR 70268 through 69), we propose to retain the measure and expand the reporting period for PY 2015 and future years of the program. We request comment on this proposal. The technical specifications for this measure are located at *http://www.dialysisreports.org/pdf/esrd/public-measures/NHSNDialysisReporting-2015-NPRM.pdf*.

b. Proposed Expanded Mineral Metabolism Reporting Measure

Undertreatment of bone mineral metabolism disease can cause severe consequences for ESRD patients. For PY 2014, it was not yet feasible to adopt a clinical measure evaluating facilities based on their patients' bone mineral metabolism rates because facilities did not report serum phosphorus and serum calcium values during the baseline and performance periods that we finalized with respect to that year. Instead, for PY 2014, we finalized a measure assessing whether facilities routinely monitored the serum calcium and serum phosphorus levels in their patients. For PY 2015, we propose to expand this measure by requiring facilities to report a serum calcium and serum phosphorus level for each qualifying patient each month according to the requirements in CROWNWeb. Facilities would be required to enter these values into CROWNWeb on a monthly basis. Facilities would be granted a ''grace period'' of one month to enter the data. For example, we would require a facility to report serum calcium and serum phosphorus data for January 2013 on or before February 28, 2013. The final month of data from the performance period would be reported on or before January 31, 2014.

We do not intend for this proposed measure to encourage unnecessary testing or unduly burden a facility. Consequently, for purposes of scoring the measure, we considered proposing to require facilities to report the required information for less than 100 percent of their patients. Specifically, we considered lowering the threshold to reporting 98 percent of patients for a month in order to receive credit for that month. We chose 98 percent in order to encourage improvement, and to ensure that we do not undermine the current level of high-reporting (based on the CrownWeb pilot data). We recognize that 100 percent might not be appropriate due to some individual cases that may not fit specified criteria. We ultimately decided that a facility should be required to take and report these values for every patient at least once per month so that each beneficiary receives the highest standard of care. We realize, however, that there are circumstances beyond a facility's control wherein it may not be able to draw a sample for this patient. Therefore, we are not proposing that the facility itself must draw the serum phosphorus and serum calcium levels. If, for example, a patient is hospitalized or transient during a claim month, the facility may report the serum calcium and serum phosphorus readings for the patient for a month if a patient has labs drawn by another provider/facility and those labs are evaluated by an accredited laboratory (a laboratories that is accredited by, for example, the Joint Commission, the College of American Pathologists, the AAB (American Association of Bioanalysts), or State or Federal agency), and the dialysis facility obtains the serum calcium and serum phosphorus readings. Additionally, we propose to only consider a patient qualified for this measure (i) if the patient is alive at the end of the month; (ii) if the patient is treated in-center, that patient was treated at that facility at least twice during the claim month; and (iii) if the patient receives dialysis at home, a claim is submitted for that patient. We believe that these proposals will provide more flexibility for facilities and will also discourage facilities from drawing blood, even when not necessary, for fear that the patient will fail to come to the facility again during that month. We request comment on this proposal. We also request comment on whether facilities should only have to report data for 98 percent of their patients.

Section 1881(h)(2)(B)(i) of the Act requires that, unless the exception set forth in section 1881(h)(2)(B)(ii) applies, the measures specified for the ESRD QIP under section 1881(h)(2)(A)(iii) of the Act must have been endorsed by the entity with a contract under section 1890(a) of the Act (which is currently NQF). Under the exception set forth in 1881(h)(2)(B)(ii) of the Act, in the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed by the entity with a contract under section 1890(a) of the Act, the Secretary may specify a measure that is not so endorsed so long as due consideration is given to measures that have been endorsed or adopted by a consensus organization identified by the Secretary.

An NQF-endorsed measure assessing hypercalcemia exists (NQF #1454) and we are proposing to adopt this measure for the PY 2015 ESRD QIP and subsequent payment years, as further discussed below. The NQF-endorsed hypercalcemia measure, however, does not score facilities based only on whether or not that facility reported serum calcium values. The Mineral Metabolism reporting measure, unlike the Hypercalcemia measure, would assess only whether facilities report serum calcium and serum phosphorus values. It would not score facilities based on the actual values that they report. We believe it is important to continue to encourage reporting independent of a measure that scores based on the actual values reported because we need such values to monitor

aspects of bone mineral metabolism, for example phosphorus management, independent of hypercalcemia; this information will allow us to develop comprehensive bone mineral metabolism measures for use in future years of the ESRD QIP.

In the CY 2012 ESRD PPS final rule, we discussed the basis for the Mineral Metabolism reporting measure (76 FR 70270 through 71). We stated that ''the NQF has previously endorsed phosphorus and calcium monitoring measures (NQF #0261 and NQF #0255) and, in 2008, we adopted serum calcium and serum phosphorus monitoring as Clinical Performance Measures (*http://www.dialysisreports.org/ESRDMeasures.aspx*).'' The NQF measures referenced above call for monitoring these serum calcium and serum phosphorus values, but they do not require actual reporting of these values, as is the intent of the Mineral Metabolism reporting measure.

For these reasons, we propose to expand the Mineral Metabolism reporting measure for PY 2015 and subsequent payment years under 1881(h)(2)(B)(ii) of the Act. The technical specifications for this measure can be found at *http://www.dialysisreports.org/pdf/esrd/public-measures/MineralMetabolism-Reporting-2015-NPRM.pdf*. We further note that requiring the reporting of serum calcium and serum phosphorus levels for the PY 2015 ESRD QIP will allow us to develop mineral metabolism measures based on clinical data in the future. We request comment on this proposal to expand the Mineral Metabolism reporting measure.

3. New Measures Proposed for PY 2015 and Subsequent Payment Years of the ESRD QIP

As the program evolves, we believe it is important to continue to evaluate and expand the measures selected for the ESRD QIP. Therefore, for the PY 2015 ESRD QIP and subsequent payment years, we are proposing to adopt five new measures. The proposed new measures include: three measures of dialysis adequacy (together comprising one dialysis adequacy measure topic); one measure of hypercalcemia, and one reporting measure involving hemoglobin and ESA dosages for all patients.

a. Proposed Kt/V Dialysis Adequacy Measure Topic

Section 1881(h)(2)(A)(i) states that the ESRD QIP must evaluate facilities based on measures of ''dialysis adequacy''. For PYs 2012–2014, the ESRD QIP included a hemodialysis adequacy measure evaluating the number of patients with a URR of at least 65 percent. For the PY 2015 ESRD QIP, and future payment years, we are proposing to remove the URR Hemodialysis Adequacy measure. In its place, we are proposing to adopt three measures of dialysis adequacy (together comprising one dialysis adequacy measure topic) based on Kt/V (K = clearance, t = dialysis time, and V = volume of distribution) for the PY 2015 ESRD QIP and future payment years of the program. Kt/V is a widely accepted measure of dialysis adequacy in the ESRD community because it takes into account the amount of urea removed with excess fluid. Further, while the URR Hemodialysis Adequacy measure only applies to in-center hemodialysis patients, the proposed Kt/V measures will allow us to evaluate dialysis adequacy in adult hemodialysis (HD) patients (in-center and home hemodialysis (HHD)) receiving three treatments weekly, adult peritoneal dialysis (PD) patients, and pediatric HD patients receiving three to four treatments weekly. We are proposing to adopt the following NQF-endorsed Kt/V measures of dialysis adequacy, each one applicable to a different patient population:

(i) NQF #0249: Hemodialysis Adequacy Clinical Performance Measure III: Hemodialysis Adequacy—HD Adequacy—Minimum Delivered Hemodialysis Dose;

(ii) NQF #0318: Peritoneal Dialysis Adequacy Clinical Performance Measure III—Delivered Dose of Peritoneal Dialysis Above Minimum; and

(iii) NQF #1423: Minimum spKt/V for Pediatric Hemodialysis Patients.

The proposed measures assess whether Medicare dialysis patients (PD, HD, and pediatric hemodialysis) meeting the modality specific Kt/V threshold. Performance on the measures are expressed as a proportion of patient-months meeting the measure threshold.

For the reasons stated above, we are proposing to use Kt/V as the measure of dialysis adequacy for the PY 2015 ESRD QIP and future payment years of the program. Kt/V would be measured for adult HD patients using NQF #0249, adult PD patients using NQF #0318, and pediatric hemodialysis patients using NQF #1423. Additionally, we are proposing to remove the URR Hemodialysis Adequacy measure; we request comments on these proposals. The technical specifications for this measure can be found at *http://www.dialysisreports.org/pdf/esrd/public-measures/PediatricHemodialysisAdequacy-ktv-2015-NPRM.pdf*; *http://www.dialysisreports.org/pdf/esrd/public-measures/PeritonealDialysisAdequacy-ktv-2015-NPRM.pdf*; and *http://www.dialysisreports.org/pdf/esrd/public-measures/HemodialysisAdequacy-ktv-2015-NPRM.pdf*. We request comment on these proposals. The proposed scoring and weighting of the Kt/V Dialysis Adequacy measure topic is discussed below.

b. Hypercalcemia

Section 1881(h)(2)(A)(iii) of the Act states that the measures specified for the ESRD QIP shall include other measures as the Secretary specifies, including, to the extent feasible, measures of bone mineral metabolism. Abnormalities of bone mineral metabolism are exceedingly common and contribute significantly to morbidity and mortality in patients with advanced Chronic Kidney Disease (CKD). Numerous studies have associated disorders of mineral metabolism with morbidity, including fractures, cardiovascular disease, and mortality. Therefore, we believe it is necessary to adopt a clinical measure that encourages proper bone mineral metabolism management.

One indicator of bone mineral metabolism management is hypercalcemia. We are, therefore, proposing to use the NQF-endorsed measure, NQF #1454: Proportion of patients with hypercalcemia, to evaluate ESRD facilities for the PY 2015 and future payment years of the ESRD QIP. This measure assesses the number of patients with uncorrected serum calcium greater than 10.2 mg/dL for a 3-month rolling average. ''Uncorrected'' means not corrected for serum albumin concentration. Performance on this measure is expressed as a proportion of patient-months for which the 3-month rolling average exceeds the measure threshold. Because the NQF-endorsed measure calls for a 3-month rolling average, we are proposing that the first measure rate for this measure would be calculated using the first 3 months of data collected during the proposed performance period (that is, there would be no measure rate for the first 2 months of the performance period; we would calculate the first measure rate for the performance period using the first 3 months of data and would then calculate a rate each successive month, dropping the oldest month and adding the newest month). Because we are proposing to adopt this measure not only for PY 2015, but also subsequent payment years, we also propose that, beginning with the PY 2016 program, we would measure hypercalcemia beginning in January of the applicable

performance period. This will allow us to have a 3-month rolling average for all months in the performance period. We propose that the 3-month rolling average rate for January would be calculated using the rates from November and December of the previous year as well as January of that year. Likewise, we propose that the rate for February would be calculated using the rates from December, January and February to calculate the 3-month rolling average, and so on. Technical specifications for this measure can be found at *http://www.dialysisreports.org/pdf/esrd/public-measures/MineralMetabolism-Hypercalcemia-2015-NPRM.pdf*. We welcome comments on these proposals.

c. Proposed Anemia Management Reporting Measure

Section 1881(h)(2)(A)(i) requires ''measures on anemia management that reflect the labeling approved by the Food and Drug Administration (FDA) for such management.'' Although the current FDA-approved label for Erythropoiesis-Stimulating Agents (ESAs) only specifically addresses hemoglobin levels greater than 11 g/dL, previous FDA-approved labels suggested patients on ESAs maintain a hemoglobin level of 10–12 g/dL. As we noted in the CY 2012 ESRD PPS final rule, upon further research, the FDA determined that there is no evidence suggesting a lower target level at which hemoglobin does not cause increased risks of death, serious adverse cardiovascular reactions, and stroke and, therefore, changed its approved label on June 24, 2011 (76 FR 70257).

As a result of the changes in the FDA approved-label and the implementation of the ESRD QIP, we are monitoring trends and indicators of anemia management for the Medicare ESRD population. We have found that the average monthly blood transfusion rate increased from 2.7 percent in 2010 to 3.2 percent in 2011. We are working through our ESRD QIP monitoring and evaluation program to further assess this issue. We believe that it is important that we continue monitoring hemoglobin levels in patients to ensure that anemia is properly treated, and we are proposing to adopt a measure for PY 2015, and future payment years, which requires facilities to report ESA dosage (if applicable) and hemoglobin and/or hematocrit levels for patients on at least one monthly claim. In addition to this measure, proposed below, we plan to continue to monitor the rate of transfusions and may consider the adoption of relevant quality measures through future rulemaking if necessary.

Since January 1, 2012, facilities have been required to report hemoglobin or hematocrit[1] levels for each patient on every claim (CR 7640). Beginning April 1, 2012, if a hemoglobin or hematocrit value is not included in the claim, the claim is returned to the facility (CR 7593). If a hemoglobin or hematocrit value is not available for a patient, a facility can enter a default value of 99.99 on the claim and the claim will not be returned, provided the facility is not billing for an ESA. The default value is not acceptable when the claim includes an ESA, in such a case, the claim will be returned to the provider.

We are concerned that our current policy of paying claims that include a default hemoglobin or hematocrit value of 99.99 could lead to the under-reporting of patients' hemoglobin or hematocrit levels and ESA dosage by facilities; we are specifically concerned that we will not receive complete and accurate hemoglobin/hematocrit readings for those patients not receiving ESAs because a default value of 99.99 can be reported on claims, and these claims will be paid, if no ESA is administered to the patient. Additionally, we believe that facilities might choose to strategically not report certain patients' hemoglobin or hematocrit levels on certain claims—those where the patient's hemoglobin levels are greater than 12 g/dL—in order to make the performance rate of their Hemoglobin Greater Than 12 g/dL measure seem better and reduce the likelihood of a payment reduction under the ESRD QIP.

Because it is possible that facilities could under-report hemoglobin or hematocrit levels, we are proposing to adopt an Anemia Management reporting measure for the PY 2015 ESRD QIP, and future payment years of the program. For this measure, we propose to require facilities to report a hemoglobin or hematocrit value and, as applicable, an ESA dosage for all Medicare patients at least once per month via claims. We propose to consider claims with 99.99 values as not meeting the requirements of this measure (that is, claims reporting 99.99 will be counted as if the hemoglobin or hematocrit value were left blank).

We do not intend for this proposed measure to encourage unnecessary testing or unduly burden a facility. Consequently, for purposes of scoring the measure, we considered proposing to require facilities to report the required information for less than 100 percent of their patients. Specifically, we considered lowering the threshold to reporting 98 percent of patients for a month in order to receive credit for that month. We ultimately decided that a facility should be required to take and report these values for every patient at least once per month so that each beneficiary receives the highest standard of care. We realize, however, that there are circumstances beyond a facility's control wherein it may not be able to draw a sample for this patient. Therefore, we are not proposing that the facility itself must draw blood for each patient. If, for example, a patient is hospitalized or transient during a claim month, the facility may report the hemoglobin/hematocrit readings and ESA dosage (if applicable) for the patient for a month if a patient has labs drawn by another provider/facility and those labs are evaluated by an accredited laboratory (a laboratories that is accredited by, for example, the Joint Commission, the College of American Pathologists, the AAB (American Association of Bioanalysts), or State or Federal agency), and the dialysis facility obtains the hemoglobin/hematocrit readings and ESA dosage. Additionally, we propose to only consider a patient qualified for this measure (i) if the patient is alive at the end of the month; (ii) if the patient is treated in-center, that patient was treated at that facility at least twice during the claim month; and (iii) if the patient receives dialysis at home, a claim is submitted for that patient. We believe that these proposals will provide more flexibility for facilities and will also discourage facilities from drawing blood, even when not necessary, for fear that the patient will fail to come to the facility again during that month. We request comment on this proposal. We also request comment on whether facilities should only have to report data for 98 percent of their patients.

The proposed Anemia Management reporting measure was not included in the list of measures under consideration in accordance with section 1890A(a)(2) of the Act because we had not yet fully assessed the impact of the new FDA-endorsed ESA label on the ESRD population. We have since received and analyzed more, but still incomplete, anemia management data; we believe it is necessary to require facilities to provide complete data so that we may fully understand the effect of the FDA guidance and other factors. The proposed Anemia Management reporting measure will play a critical role in patient safety. As noted above, our monitoring activities indicate that

[1] Hematocrit values are used to calculate hemoglobin levels by taking the hematocrit value and dividing by three.

there has been a slight but noticeable increase in transfusions since the adoption of the ESRD PPS. Additionally, a United States Renal Data System analysis presented in May 2012 found an increase in blood transfusion rates among ESRD patients concurrent with the implementation of the ESRD PPS. Although the association of changes in transfusion rates with the ESRD PPS, FDA label changes, and other factors are not yet known, we believe proactive facility engagement in regular monitoring of patient hemoglobin or hematocrit levels regardless of ESA use is critical to maintaining safe care, protecting the safety of beneficiaries, and monitoring the program effectively. We further believe that the data collected from the proposed measure are necessary for measure development in a clinical area of critical significance to patient safety—anemia and transfusion. Delay in proposing to adopt this reporting measure may prevent us from creating clinical measures for use in future years of the program and pose a risk to patients. Finally, we note that section 1881(h) of the Act specifically highlights the importance of anemia management measures, and we do not believe it would be in the best interest of the program to wait an additional year to propose this measure.

For the reasons stated above, we propose to adopt an Anemia Management reporting measure for the PY 2015 ESRD QIP and subsequent payment years. For the technical specifications for this measure, see *http://www.dialysisreports.org/pdf/esrd/public-measures/AnemiaManagement-Reporting-2015-NPRM.pdf*. We request public comment on this proposal.

4. Measures Under Consideration for Future Payment Years of the ESRD QIP

In addition to the PY 2015 ESRD QIP, we are also considering measures for future payment years of the program. We are specifically considering whether we should propose in future rulemaking to adopt the following two measures,

- NQF #1463: Standardized Hospitalization Ratio for Admissions (SHR) and
- NQF #0369: Dialysis Facility Risk-adjusted Standardized Mortality Ratio (SMR).

We intend to adopt these measures for future payment years of the ESRD QIP, possibly beginning with the PY 2018 program. We are notifying facilities of our intent and soliciting comments on incorporating these measures into future payment years of the ESRD QIP.

a. Standardized Hospitalization Ratio (SHR)

Hospitalizations are an important indicator of patient quality of life and morbidity. The SHR is an NQF-endorsed (#1463), risk-adjusted measure of hospitalization for dialysis patients. The measure is claims-based and describes, as a ratio, the number of ESRD Medicare patient actual admissions versus expected hospitalizations adjusted for the facility's Medicare patient case mix. Please refer to the NQF Measures Web site (*www.qualityforum.org*) to obtain more detail about this measure.

b. Standardized Mortality Ratio (SMR)

The SMR measure is an NQF-endorsed (#0396) critical patient-centered, outcome measure of overall patient care furnished by facilities. We believe that the SMR measure would encourage appropriate overall patient care by facilities and incentivize facilities to examine the holistic health of the patient rather than treating the patient based on an individual measure-by-measure basis. The SMR measure describes, as a ratio, the number of ESRD Medicare patient actual deaths versus expected deaths adjusted for the facility's Medicare patient case mix. Please refer to the NQF Measures Web site (*www.qualityforum.org*) to obtain more detail about this measure.

c. Public Reporting of SHR and SMR Measures

Although the SHR and SMR measures may not be adopted for the ESRD QIP until a future payment year, we intend to publicly report these measure rates/ratios to the public via Dialysis Facility Compare (DFC) to encourage facilities to improve their care. Section 4558(b) of the Balanced Budget Act of 1997 (Pub. L. 105–33) (BBA) directs the Secretary to develop, not later than January 1, 1999, and implement, not later than January 1, 2000, a method to measure data reflective of the quality of renal dialysis services provided under the Medicare program. Under this authority, we began reporting the SMR measure on DFC in January, 2001 as a survival measure and used three categories to rate facility performance: ''as expected,'' ''worse than expected,'' and ''better than expected.'' The SMR measure that we are considering adopting for the ESRD QIP was developed in 1999 and facilities are required to submit this data via form 2746. The SHR measure that we are considering adopting for the ESRD QIP was developed in 1995, presented to a Technical Expert Panel after modifications to risk adjustment and statistical modeling in 2007, and received NQF-endorsement in 2011. The data needed to calculate the SHR measure have been regularly reported to DFR since 1995 and have been used by facilities for quality improvement activities. We plan to add the SHR data to the DFC effective January 2013; additionally we will report the actual SMR rates/ratio on the DFC beginning January 2013.

We originally proposed to adopt the SHR measure for the PY 2014 program, but did not finalize the proposal, in part, because commenters voiced concerns regarding accuracy of the co-morbidity data used in the calculation of the measures. Details on public comments and why we did not adopt the SHR measure are articulated in the CY 2012 ESRD PPS final rule (76 FR 70267). Since that time, we have identified that the claim form UB 92 with the type of bill (TOB) field 72X allows a facility to input up to 17 co-morbid conditions per claim submission. We acknowledge that patient co-morbidities can change with time and since the capability already exists on the UB 92 TOB, we believe the best means for facilities to update patient co-morbidities is through the ESRD 72x claims form. Details on this form can be found in the Medicare Claims Processing Manual, Chapter 8—Outpatient ESRD Hospital, Independent Facility, and Physician/Supplier Claims (*https://www.cms.gov/manuals/downloads/clm104c08.pdf*).

In addition, because the NQF-endorsed SHR and SMR measures are risk-adjusted for ESRD patients that reside in nursing homes, in order to calculate the measure rates on DFC, we will utilize data from the Minimum Data Set (MDS) to identify those individuals in nursing homes. We would use this data not only for reporting the measure rates on DFC at present, but also for calculating the measures if we adopted them for us in future years of the ESRD QIP. The Omnibus Budget Reconciliation Act (OBRA) of 1987 requires that all Medicare and Medicaid certified nursing homes complete MDS assessments on all of their patients.

We request comment regarding the feasibility of adopting these measures for future payment years of the ESRD QIP.

5. Other Potential Future Measures Under Development

As part of our effort to continuously improve the ESRD QIP, we are working on developing additional, robust measures that provide valid assessments of the quality of care furnished to ESRD beneficiaries by facilities. Some areas of measure development are discussed

below. In addition, we are considering the feasibility of developing quality measures in other areas such as kidney transplantation, quality of life, health information technology for quality improvement at the point of care and the electronic exchange of information for care coordination, and transfusions. We request comment on these potential areas of future measurement and welcome suggestions on other topics for measure development.

a. Thirty-Day Hospital Readmissions

One of the major areas our VBP programs seek to promote is care coordination. Care coordination measures assess caregivers not only on the care directly under their control, but also on their success in coordinating care with other providers and suppliers. Hospital readmission is often the outcome of uncoordinated care. Care coordination measures encourage primary caregivers, ESRD facilities, physicians, and hospitals to work together to improve the quality of care. A 30-day hospital readmissions measure is a primary example of care coordination. This measure is currently under development for ESRD, and we request comment regarding our use of such a measure in future payment years.

b. Efficiency

One of the main goals of our VBP programs is not only to enhance quality of care but also efficiency in providing that care. At present, we are not aware of an efficiency measure that is appropriate for the ESRD population. We are, however, interested in receiving comments regarding this concept.

c. Population/Community Health

We are aware that unintended consequences, specifically those involving access to care, may result from the ESRD QIP. To address these concerns, we are currently monitoring access to care and exploring the development of new measures or adjustments to existing measures that would mitigate the unintended consequences and/or incentivize facilities caring for patients who may, generally, contribute to lower facility measure rates. We request comment on developing such a measure or adjustments to measures, specifically with regard to access to care issues.

6. Proposed Scoring for the PY 2015 ESRD QIP

Section 1881(h)(3)(A)(i) of the Act requires the Secretary to develop a methodology for assessing the total performance of each facility based on the performance standards established with respect to the measures selected for the performance period. For the PY 2014 ESRD QIP, we adopted a performance scoring methodology that assessed facilities on both their achievement and improvement on clinical measures. We stated that we believe that this scoring methodology will more accurately reflect a facility's performance on the measures because it will enable us to differentiate between facilities that simply meet the performance standards, those that exceed the performance standards by varying amounts, and those that fall short of the performance standards. We also stated that we believe that the PY 2014 methodology appropriately incentivizes facilities to both achieve high Total Performance Scores and improve the quality of care they provide (76 FR 70272). We believe that the methodology set forth for PY 2014 continues to incentivize facilities to meet the goals of the ESRD QIP; therefore, with the exception of the proposed changes further discussed in the applicable section below, we propose to adopt a scoring methodology for the PY 2015 ESRD QIP that is nearly identical to the PY 2014 ESRD QIP.

7. Proposed Performance Period for the PY 2015 ESRD QIP

Section 1881(h)(4)(D) of the Act requires the Secretary to establish the performance period with respect to a year. For the PY 2014 ESRD QIP, we finalized a performance period of CY 2012. We stated that we believe that, at this point, a 12-month performance period is the most appropriate for the program because this period accounts for any potential seasonal variations that might affect a facility's score on some of the measures, and also provides adequate incentive and feedback for facilities and Medicare beneficiaries (76 FR 70271). We continue to believe that a 12-month performance period will best meet these policy objectives, and we considered what 12-month period would be closest in time to the payment year but would still allow us to time to operationalize the program, calculate scores, and grant facilities a period of time to preview and ask questions regarding these scores before they are published and impact payment. We have determined that CY 2013 is the latest period of time during which we can collect a full 12 months of data and still implement the payment reductions beginning with January 1, 2015 services. Therefore, for the PY 2015 ESRD QIP, we propose to establish CY 2013 as the performance period for all of the measures. We request comments on this proposal.

8. Proposed Performance Standards for the PY 2015 ESRD QIP

Similar to the PY 2014 ESRD QIP, we propose to adopt performance standards for the PY 2015 ESRD QIP measures under section 1881(h)(4)(A) of the Act. This section provides that ''the Secretary shall establish performance standards with respect to measures selected * * * for a performance period with respect to a year.'' Section 1881(h)(4)(B) of the Act further provides that the ''performance standards * * * shall include levels of achievement and improvement, as determined appropriate by the Secretary.'' We use the performance standards to establish the minimum score a facility must achieve to avoid a payment reduction.

a. Proposed Clinical Measure Performance Standards

With respect to the seven proposed clinical measures, we propose to set the PY 2015 improvement performance standard and achievement performance standard (collectively, the ''performance standard'') for each measure at the national performance rate (which we would define as the 50th percentile) of all facilities' performance on the measure during CY 2011 (the proposed comparison period—discussed in more detail below).

For the PY 2014 ESRD QIP, we set the performance standards at the national performance rate during a baseline period of July 1, 2010–June 30, 2011. This period of time, however, did not allow us to publish the numerical values for the performance standards concurrently with the final rule because of the length of time needed for us to compile claims-based measure data at the individual facility level and calculate the measure rates. Instead, we included an estimate of the numerical values for the performance standards in the final rule, using nine months of data, and posted the numerical values of the performance standards based on the full 12 months of data on *http://www.dialysisreports.org/pdf/esrd/public-measures/UpdatedBaseline-2014-FR.pdf* by the end of December 2011. In order to ensure that we have enough time to calculate and assign numerical values to the proposed performance standards for the PY 2015 program, we are proposing to set the performance standards based on the national performance rate (that is, the 50th percentile) of facility performance in CY 2011. By choosing this time period for PY 2015, however, the data on which we base the performance standards would only capture 6 months of more recent data when compared to

PY 2014 and would also overlap with 6 months of the data used to calculate the PY 2014 performance standards. We are also concerned that if we finalize this period of time, we would not be adequately addressing stakeholder requests that we take steps to minimize the length of ''data lag'' between the dates used to calculate the performance standards and the payment year. We recognize that stakeholders might prefer that we base performance standards on data as close in time to PY 2015 as possible.

The period of time closest to the payment year that would allow us to post the numerical values for the performance standards before the end of the first month of the performance period is parallel to that of PY 2014, from July 1, 2011 through June 30, 2012. As with PY 2014, selecting this time period for purposes of calculating numerical values for the performance standards would not allow us to publish these numerical values until late 2012 or early 2013, which is closer in time and may possibly be during the performance period. However, as in PY 2014, we would still be able to provide estimates for the numerical values of the performance standards at the time of final rule publication and post the actual numbers as soon as they are available in December 2012 or January 2013.

Based on these considerations, we are proposing CY 2011 as the basis for the performance standards (that is, the national performance rates). We do, however, request comment concerning whether we should instead use data closer in time to the payment year and set the performance standards using July 1, 2011 through June 30, 2012 data.

For two of the PY 2015 measure topics, Kt/V Dialysis Adequacy and Hypercalcemia, we do not possess data for the entirety of CY 2011, the year on which we propose to base the performance standards. We did not begin collecting uniform data on the Kt/V hemodialysis adequacy measure until January 1, 2012 (see Change Request 7460), and, under the conditions for coverage, facilities were not required to report serum calcium values that will be used to calculate the Hypercalcemia clinical measure until their submission of May 2012 data with the June 2012 national implementation of CROWNWeb. Despite these issues, we do have data on which we can base performance standards. Although facilities are not yet required to report serum calcium levels, approximately 63 percent of facilities, which treat approximately 80 percent of the Medicare ESRD patient population, have been voluntarily reporting this data via CROWNWeb piloting since July 2008. Additionally, we have compared the serum calcium values reported by facilities in 2010 as part of a clinical data reporting program called ELab,[2] to values that have been voluntarily reported by facilities in 2010 through CROWNWeb, and the values are significantly similar. We believe that these similarities will also extend to data reported in 2011. Therefore, we propose to calculate performance standards for the Hypercalcemia measure using the data that we collected via CROWNWeb Pilots collected during CY 2011.

Uniform Kt/V reporting for hemodialysis patients did not begin until January 1, 2012 (CR 7640). Before this time, facilities could use a number of different methodologies to calculate Kt/V values, with the result that the values could be different depending on which methodology was used. We have analyzed the data collected during the CROWNWeb pilot and found that 88 percent of facilities that reported to CROWNWeb had reported Kt/V values using a NQF specified calculation method (this method is also specified in Change Request 7640) that yields consistent results and that is part of the specifications for each of the hemodialysis Kt/V measures that we are proposing to adopt for the PY 2015 program. Though we are not able to tell what calculation method a facility used by reviewing a claim, we believe it is reasonable to assume that roughly the same percentage of facilities reported Kt/V on their claims prior to 2012 using the same formula that they used to report it under the CROWNWeb pilot. For this reason, we propose to calculate the performance standards for the three proposed Kt/V measures using CY 2011 claims data. This is the best data we have available at this time to set reliable performance standards for Kt/V. We understand, however, that stakeholders may be concerned about the nuances of the data and we invite public comment on this proposal.

If, after consideration of the comments, we decide to not adopt the adult, hemodialysis Kt/V measure for PY 2015, we propose to continue to use URR as a measure of hemodialysis adequacy for this population. As we have noted, Kt/V is preferred over URR. Because the pediatric hemodialysis measure faces the same methodological issues as the adult hemodialysis measure, we propose that if we do not adopt the Kt/V measure for adult hemodialysis patients, we would also not adopt the Kt/V measure for pediatric hemodialysis patients. We note that the NQF endorsed measure for Kt/V measure for peritoneal dialysis adequacy does not specify the body surface area formulas or the total body water formulas to utilize; and we would accept the submission of peritoneal adequacy Kt/V values that utilize the methods currently in use as industry standards. We believe it is important to include peritoneal dialysis patients in the ESRD QIP and are soliciting comments on the inclusion of the peritoneal dialysis Kt/V adequacy measure. We propose that, were we to retain the URR measure for adult hemodialysis, we would still adopt the Kt/V peritoneal dialysis measure. We propose that these measures would still comprise a Dialysis Adequacy measure topic and would be scored in the same manner as we propose for the Kt/V measures, below.

Even with the challenges outlined above, we believe that the advantages of adopting the Kt/V hemodialysis measure for PY 2015 outweigh the disadvantages. Therefore, we propose Kt/V as the measure for hemodialysis adequacy for PY 2015, but we specifically solicit comments regarding whether we should continue to use URR for adult hemodialysis patients for PY 2015.[3]

We also considered calculating performance standards for the Kt/V Dialysis Adequacy measure topic based on data from January 1, 2012–June 30, 2012, to ensure that the data was calculated consistently. We are, however, aware that a shortened data period may affect the measure rates' reliability. Therefore, we are proposing to calculate performance standards based on the data from CY 2011 discussed above, but we invite comment on an alternative 6 month period beginning on or after the date on which uniform reporting began, January 1, 2012.

b. Estimated Performance Standards

At this time, we do not have the necessary data to assign numerical values to the proposed performance standards for the clinical measures because we do not yet have all of the data from CY 2011. However, we are able to estimate these numerical values based on the latest full year of data

[2] *http://www.esrdnet11.org.*

[3] Note that, as further explained below, the issue we have discussed with respect to the reporting of Kt/V values prior to CY 2012 would not be an issue for the calculation of improvement scores because we are proposing CY 2012 as the period used to calculate the improvement threshold; beginning January 1, 2012, all facilities are required to report Kt/V uniformly on their claims.

available. In Table 5, we have provided the estimated performance standards for all of the measures, except for the Hypercalcemia measure, based on data from October 1, 2010–September 30, 2011. For the Hypercalcemia measure, we currently have only 6 months of data based on approximately 63 percent of facilities reporting; the estimate, therefore, is based on data from April 2011–October 2011.

TABLE 5—ESTIMATED NUMERICAL VALUES FOR THE PERFORMANCE STANDARDS FOR THE PY 2015 ESRD QIP CLINICAL MEASURES USING THE MOST RECENTLY AVAILABLE DATA

Measure	Performance standard (%)
Hemoglobin >12 g/dL	2
Vascular Access Type:	
%Fistula	59
%Catheter	13
Kt/V:	
Adult Hemodialysis	93
Adult, Peritoneal Dialysis	83
Pediatric Hemodialysis	90
Hypercalcemia	[1] 3

[1] As noted above, the performance standard for the Hypercalcemia measure is based on approximately 63 percent of facilities (accounting for approximately 80 percent of the Medicare ESRD population) reporting serum calcium values in CROWNWeb.

In accordance with our statements in the CY 2012 ESRD PPS final rule (76 FR 70273), if the final numerical values for the PY 2015 performance standards are worse than PY 2014 for a measure, we propose to substitute the PY 2014 performance standard for that measure. We believe that the ESRD QIP should not have lower standards than previous years. We request comments on this proposal.

c. Proposed Performance Standards for PY 2015 Reporting Measures

We established the performance standards for the reporting measures for PY 2014 based upon whether facilities met certain reporting requirements rather than achieved or improved on specific clinical values. We propose to establish the same performance standard for the ICH CAHPS reporting measure for PY 2015 that we established for PY 2014. Under this proposed performance standard, facilities would be required to provide an attestation that they successfully administered the ICH CAHPS survey via a third party in accordance with the measure specifications. We propose that this attestation must be completed in CROWNWeb by January 31, 2014.

For the NHSN Dialysis Event reporting measure we propose to set the performance standard as successfully reporting 12 months of data from CY 2013. If a facility has not yet enrolled and trained in the NHSN dialysis event system, we are proposing that the performance standard for that facility would also include completion of these requirements.

For the Mineral Metabolism reporting measure we propose to set the performance standard as successfully reporting serum phosphorus and calcium values for all 12 months of the performance period for (i) in-center hemodialysis patients the facility treats at least twice during the applicable month and (ii) all peritoneal and home hemodialysis patients that the facility treats.

For the Anemia Management reporting measure we propose to set the performance standard as successfully reporting hemoglobin or hematocrit and ESA dosage (if applicable) for all 12 months of the performance period for (i) in-center hemodialysis patients the facility treats at least twice during the applicable month and (ii) all peritoneal and home hemodialysis patients that the facility treats.

Further information regarding the reporting requirements is found in sections III.C.2.a, III.C.2.b, III.C.3.c, and III.C.9.c of this proposed rule. We request comment on these proposals.

9. Proposed Scoring for the PY 2015 ESRD QIP Proposed Measures

In order to assess whether a facility has met the performance standards, we finalized a methodology for the PY 2014 program under which we separately score each clinical and reporting measure. We score facilities based on an achievement and improvement scoring methodology for purposes of assessing their performance on the clinical measures. Under the PY 2014 ESRD QIP scoring methodology, a facility's performance on each of the clinical measures is determined based on the higher of (i) an achievement score or (ii) an improvement score (76 FR 70273). We propose to use a similar methodology for purposes of scoring facilities performance on each of the clinical measures for the PY 2015 ESRD QIP.

As in PY 2014, in determining a facility's achievement score for the PY 2015 program, we propose that facilities would, based on their performance in CY 2013 (the proposed performance period), receive points along an achievement range, which we would define as a scale that runs from the achievement threshold to the benchmark. We propose to define the achievement threshold for each of the proposed clinical measures as the 15th percentile of national facility performance during CY 2011. We believe that this achievement threshold will provide an incentive for facilities to continuously improve their performance while not reducing the incentives to facilities that score at or above the national performance rate for the clinical measures (76 FR 70276). We propose to define the benchmark as the 90th percentile of the national facility performance during CY 2011 because it represents a demonstrably high but achievable standard of excellence that the best performing facilities reached. We further propose that, for the proposed Kt/V Dialysis Adequacy measures and the proposed Hypercalcemia measure, we would use the same data we proposed above to use to calculate the performance standards for purposes of calculating the achievement thresholds and the benchmarks for these measures. We request comment on these proposals.

In determining an improvement score for the clinical measures, we propose that facilities receive points along an improvement range, defined as a scale running between the improvement threshold and the benchmark. We propose to define the improvement threshold as the facility's rate on the measure during CY 2012. The facility's improvement score would be calculated by comparing its performance on the measure during CY 2013 (the proposed performance period) to its performance on the measure during CY 2012. We are proposing to base the improvement threshold on data from CY 2012 rather than CY 2011 (the period of time we have proposed to use to calculate the performance standards, achievement thresholds, and benchmarks) because, as we explain above, we do not have complete facility level CY 2011 data that we can use to calculate an improvement threshold for every facility on the Kt/V Dialysis Adequacy measures and the Hypercalcemia measure. Rather than proposing to adopt a policy under which no facility could receive an improvement score on these measures, we are proposing to use data from CY 2012 to calculate the improvement thresholds. Additionally, we believe by using CY 2012 to calculate the improvement thresholds, we will more closely align timing of the payment reduction with the period of time we use to calculate improvement thresholds. Note that, for the proposed Hypercalcemia measure, we did not require data collection via CROWNWeb until June 2012, and, therefore, the data we are proposing to use to set the

improvement threshold for each facility would only include May 2012–December 2012 data.

Our proposals for the time periods used for the various calculations for clinical measures are depicted below in Table 6. We request comments on our proposal to use data from CY 2012 to calculate improvement thresholds.

When considering the time period we would use to calculate improvement thresholds, we sought to mitigate data lag issues as much as possible by selecting a period in time as close as possible to the performance period. However, to entirely mitigate this data lag, we also considered a period that would take place during the performance period. Using this approach, to calculate an improvement score, we would derive an improvement threshold from either the first quarter of CY 2013 or the first 6 months of CY 2013 and compare it to the facility's measure rate in the last quarter of CY 2013 or the last 6 months of CY 2013, respectively. We ultimately decided not to propose this approach because, when possible, we prefer to use 12 months of data to calculate measure rates to ensure more reliable rates, particularly for low-volume facilities. Additionally, using this approach, part of the performance period for purposes of calculating the facility's performance rate and achievement score (all of CY 2013) could overlap with the data we use to calculate the improvement threshold (first quarter or 6 months of CY 2013). Although we are proposing to calculate improvement thresholds based on data from CY 2012, we also request comment regarding use of these alternative periods for purposes of calculating the improvement threshold.

TABLE 6—PROPOSED PERIODS USED FOR PY 2015 CALCULATIONS

Measure	Proposed period of time used in calculating achievement thresholds, benchmarks, and performance standards	Proposed period of time used in calculating improvement thresholds
Hemoglobin >12 g/dL	CY 2011	CY 2012.
Vascular Access Type:		
%Fistula	CY 2011	CY 2012.
%Catheter	CY 2011	CY 2012.
Kt/V:		
Adult Hemodialysis	CY 2011 (data from facilities using all methods to calculate Kt/V).	CY 2012.
Adult, Peritoneal Dialysis	CY 2011 (data from facilities using all methods to calculate Kt/V).	CY 2012.
Pediatric Hemodialysis	CY 2011 (data from facilities using all methods to calculate Kt/V).	CY 2012.
Hypercalcemia	CY 2011 (data from CROWNWeb Pilot reporting).	CROWNWeb—May 1, 2012 to December 31, 2012.

Like the performance standards, at this time, we do not have the necessary data to assign numerical values to the proposed achievement thresholds and benchmarks for the clinical measures. However, we are able to estimate them based on the latest full year of data available. In Table 7, we have provided the estimated achievement thresholds and benchmarks for all of the measures, except for Hypercalcemia, based on data from October 1, 2010–September 30, 2011. For the Hypercalcemia measure, we currently have only 7 months of data; the estimate, therefore, is based on data from April 2011–October 2011.

TABLE 7—ESTIMATED PROPOSED ACHIEVEMENT THRESHOLDS AND BENCHMARKS FOR THE PROPOSED PY 2015 ESRD QIP CLINICAL MEASURES USING THE MOST RECENTLY AVAILABLE DATA

Measure	Achievement threshold (%)	Benchmark (%)
Hemoglobin >12 g/dL	7	0
Vascular Access Type:		
%Fistula	46	74
%Catheter	23	5
Kt/V:		
Adult Hemodialysis	86	97
Adult, Peritoneal Dialysis	58	94
Pediatric Hemodialysis	78	96
Hypercalcemia	[1] 6	[1] 0

[1] As noted above, the performance standard for the Hypercalcemia measure is based on approximately 63 percent of facilities (accounting for approximately 80 percent of the Medicare ESRD population) reporting serum calcium values in CROWNWeb.

In accordance with our statements in the CY 2012 ESRD PPS final rule (76 FR 70273), if the final PY 2015 numerical values for the achievement thresholds and benchmarks are worse than PY 2014 for a measure, we propose to substitute the PY 2014 achievement thresholds and benchmarks for that measure. We believe that the ESRD QIP should not have lower standards than previous years. We request comments on this proposal.

a. Proposals for Scoring Facility Performance on Clinical Measures Based on Achievement

We propose to award between 0 and 10 points for each of the clinical measures. As noted, we propose that this score be based upon the higher of

an achievement or improvement score on the measure. For purposes of scoring achievement for the measures, we propose to base the score on where a facility's performance falls relative to the achievement threshold and the benchmark for that measure. We propose that, identical to PY 2014, if a facility's measure rate during the performance period is:

- Equal to or greater than the benchmark, the facility would receive 10 points for achievement;
- Less than the achievement threshold, the facility would receive 0 points for achievement; or
- Equal to or greater than the achievement threshold, but below the benchmark, the following formula would be used to derive the achievement score: [9 * ((Facility's performance period rate − achievement threshold)/(benchmark − achievement threshold))] + .5, with all scores rounded to the nearest integer, with half rounded up.

Using this formula, a facility would receive a score of 1 to 9 points based on a linear scale disturbing all points proportionately between the achievement threshold and the benchmark so that the interval in performance between the score needed to receive a given number of achievement points and one additional achievement point is the same throughout the range of performance from the achievement threshold to the benchmark.

b. Proposals for Scoring Facility Performance on Clinical Measures Based on Improvement

We propose that facilities would earn between 0 and 9 points for each of the clinical measures based on how much their performance on the measure during CY 2013 improved from their performance on the measure during CY 2012. A unique improvement range for each measure would be established for each facility. We propose that if a facility's measure rate during the performance period is:

- Less than the improvement threshold, the facility would receive 0 points for improvement; or
- Equal to or greater than the improvement threshold, but below the benchmark, the following formula would be used to derive the improvement score: [10 * ((Facility performance period rate − Improvement threshold)/(Benchmark − Improvement threshold))] − .5, with all scores rounded to the nearest integer, with half rounded up.

Note that if the facility score is equal to or greater than the benchmark, it would receive 10 points on the measure per the achievement score methodology discussed above.

c. Proposals for Calculating the Reporting Measure Scores

As noted, reporting measures differ from clinical measures in that they are not scored based on clinical values, but rather, are scored based on whether facilities are successful in achieving the reporting requirements associated with each of these proposed measures. The proposed criteria that would apply to each reporting measure is discussed below.

With respect to the proposed Anemia Management, Mineral Metabolism, and NHSN Dialysis Event reporting measures, we propose, for each measure, to award facilities:

(i) 5 points for meeting the reporting requirements for at least 6-consecutive months during the performance period;

(ii) 10 points for meeting the reporting requirements for all 12 months of the performance period; and

(iii) 0 points for meeting the reporting requirements for less than 6-consecutive months during the performance period.

We believe that requiring 6-consecutive months of data rather than 6 non-consecutive months of data for a facility to receive points on these measures will hold facilities to the highest level of quality; facilities will be encouraged to continue to improve their reporting mechanisms throughout the performance period. We are concerned that awarding points for 6 non-consecutive months of reporting may cause facilities to be less diligent in their reporting efforts overall. We specifically request comment regarding whether the proposed 6-consecutive month reporting requirement will improve quality more than a non-consecutive month reporting requirement. We also propose, as discussed in more detail below, that facilities would need to receive a CCN prior to July 1, 2013 in order to receive a score on a reporting measure. Finally, for purposes of the NHSN Dialysis Event reporting measure, we propose that to be awarded 5 or 10 points, any facility that has not yet enrolled and trained in the NHSN dialysis event system must do so and must agree to the required consent (*http://www.cdc.gov/nhsn/PDFs/PurposesEligibilityRequirementsConfidentiality.pdf*).

With respect to the proposed ICH CAHPS reporting measure, we propose to retain the PY 2014 scoring methodology for the PY 2015 ESRD QIP. An in-center hemodialysis facility will receive a score of 10 points if it attests that it successfully administered the ICH CAHPS survey via a third party during the performance period according to the specification found at *https://www.cahps.ahrq.gov/Surveys-Guidance/ICH.aspx*. Eligible facilities (facilities providing adult, in-center hemodialysis) that do not provide such an attestation would receive 0 points on the measure. We propose that this attestation must be entered via CROWNWeb by January 31, 2014. We note that the ICH CAHPS survey is only available to adult patients who are treated in-center. For purposes of the ICH CAHPS reporting measure, we determine whether a facility treats adult, in-center patients by referencing the facility's information in CMS data sources (that is, SIMS and CROWNWeb). Facilities report the types of patients that they serve in these data sources. If a facility lists adult in-center services, we are proposing that the facility would be required to comply with the ICH CAHPS reporting measure.

We request comment on the proposed methodology for scoring the PY 2015 ESRD QIP reporting measures. We also request comment regarding whether facilities should receive points for partially reporting data and whether such reporting need be for consecutive months.

10. Proposals for Weighting the PY 2015 ESRD QIP Measures and Calculation of the PY 2015 ESRD QIP Total Performance Score

Section 1881(h)(3)(A)(iii) of the Act provides that the methodology for assessing facility total performance shall include a process to weight the performance scores with respect to individual measures to reflect priorities for quality improvement such as weighting the scores to ensure that facilities have strong incentives to meet or exceed anemia management and dialysis adequacy performance standards, as determined appropriate by the Secretary. In determining how to appropriately weight the PY 2015 ESRD QIP measures for purposes of calculating Total Performance Scores, we considered two criteria. Specifically, we considered the number of measures we have proposed to include in the PY 2015 ESRD QIP as well as the National Quality Strategy priorities.

a. Proposals for Weighting Individual Measures To Compute Measure Topic Scores for the Kt/V Dialysis Adequacy Measure Topic and the Vascular Access Type Measure Topic

Because the Kt/V Dialysis Adequacy measure topic and the Vascular Access Type measure topic are comprised of multiple measures, it is necessary for us

to discuss how we will derive an overall score for each measure topic. For these measure topics, we propose that each measure be scored separately for each facility using the achievement and improvement methodology discussed above. After calculating the individual measure scores within a measure topic, we propose to calculate a measure topic score using the following steps: (1) Dividing the number of patients in the denominator of each measure by the sum of the denominators for all of the applicable measures in the measure topic; (2) multiplying that figure by the facility's score on the measure; (3) summing the results achieved for each measure; and (4) rounding this sum (with half rounded up). We are proposing that, if a facility does not have enough patients to receive a score on one of the measures in the measure topic (this proposal is discussed below), that measure would not be included in the measure topic score for that facility. Only one measure within the measure topic need have enough cases to be scored in order for the measure topic to be scored and included in the calculation of the Total Performance Score. We believe it is important to proportionately weight the measures within a measure topic because we seek to give equal importance to each patient. Finally, we are proposing that the measure topic score would be equal to one clinical measure in the calculation of the Total Performance Score.

For additional explanation of our proposal to calculate measure topic scores, please see the following examples:

Example 1: Facility X serves hemodialysis (HD), peritoneal dialysis (PD), and pediatric patients. For HD patients, Facility X's Kt/V measure rate is 50/60. For PD patients, Facility's X's Kt/V measure rate is 15/20. For pediatric patients, Facility X's Kt/V measure rate is 10/20. There are 100 patients included in the measure topic (60 + 20 + 20). Assume that the facility's measure rates lead to the following measure scores: HD—7; PD—8; pediatric—5. To compute the Kt/V Dialysis Adequacy measure topic score for Facility X, we would calculate the following: (7 * 60/100) + (8 * 20/100) + (5 * 20/100) = 6.8, which we would round to 7. The Kt/V Dialysis Adequacy measure topic score would then be treated as one clinical measure when calculating the Total Performance Score.

Example 2: Facility Y serves HD patients and PD patients. For HD patients, Facility Y's Kt/V measure rate is 5⁰⁄₆₀; assume that this rate leads to a score of 6. For PD patients, Facility Y's Kt/V measure rate is 4⁄7. Facility Y has no Kt/V measure rate for pediatric patients because it does not serve this population. Assume that the minimum case number for scoring a measure is 11. Because there are only seven cases in Facility Y's denominator, Facility Y would not receive a PD Kt/V measure score. Furthermore, Facility Y did not treat any pediatric patients, so it would not receive a pediatric Kt/V measure score. Therefore, the Kt/V Dialysis Adequacy measure topic score for Facility Y would be 6. The Kt/V Dialysis Adequacy would then be treated as one clinical measure when calculating the Total Performance Score.

We request comment on the proposed method of weighting individual measure scores to derive a measure topic score.

b. Proposals for Weighting the Total Performance Score

We believe that weighting the finalized clinical measures/measure topics equally will incentivize facilities to improve and achieve high levels of performance across all of the measures, resulting in overall improvement in the quality of care provided to ESRD patients. We also believe that, while the reporting measures are valuable, the clinical measures value actual patient outcomes and therefore justify a higher combined weight. We do, however, propose to weight the clinical measures slightly less for the PY 2015 ESRD QIP than we did for the PY 2014 ESRD QIP. For the PY 2015 ESRD QIP, we believe it is important to begin to more rigorously incentivize reporting, specifically since for three of the four reporting measures, we now require actual data submission. We intend to use these data for purposes of developing and creating clinical measures in the future; thus, complete and correct data submission in these areas is essential to the program's overall goal of continued and improved ESRD quality care. For these reasons, we propose to equally weight the clinical measures/measure topics for which a facility receives a score equal to 80 percent of the Total Performance Score; we also propose to equally weight the reporting measures for which a facility receives a score as 20 percent of the Total Performance Score. We request comment on this proposed methodology for weighting the clinical and reporting measures.

We have also considered the issue with awarding a Total Performance Score to facilities that do not report data on the proposed minimum number of cases with respect to one or more of the finalized measures/measure topics. As we stated in the CY 2012 ESRD PPS final rule, we believe it is important to include as many facilities as possible in the ESRD QIP. We have, however, revisited our policy of including any facility that receives a score on one measure, whether that measure is a clinical or reporting measure, and we have decided to propose a different approach for PY 2015. We believe it is preferable to require a facility to have at least one clinical and one reporting measure to receive a Total Performance Score. By requiring this minimum, we ensure that a facility is not included in the program unless it meets the minimum case requirement for at least one clinical measure/measure topic. In the case of a facility that has sufficient data (11 cases, as proposed below) from the performance period, but lacks sufficient data (11 cases, as proposed below) to calculate the improvement threshold, we propose to only calculate its achievement score, because it would not be possible to calculate its improvement score. We request comment on our proposals to require a facility to qualify for a score on at least one reporting and one clinical measure in order to receive a Total Performance Score.

Finally, we propose that all Total Performance Scores be rounded to the nearest integer, with half being rounded up, and we request comment on this proposal. For further examples regarding measure and Total Performance Score calculations, we refer readers to the figures below.

c. Examples of the Proposed PY 2015 ESRD QIP Scoring Methodology

Below, we provide examples to illustrate the proposed scoring methodology for PY 2015. Figures 1–3 illustrate the scoring for a clinical measure. Figure 1 shows Facility A's performance on an example clinical measure. Note that for this example clinical measure, the facility is attempting to achieve a high rate (that is, the higher the measure rate, the higher the measure score). The example benchmark (which is the 90th percentile of performance nationally in CY 2011) calculated for this measure is 74 percent, and the example achievement threshold (which is the 15th percentile of performance nationally in CY 2011) is 46 percent. Facility A's performance rate of 86 percent during the performance period meets or exceeds the benchmark of 76 percent, so Facility A would earn 10 points (the maximum) for achievement for this measure. (Because, in this example, Facility A has earned the maximum number of points possible for this measure, its improvement score is irrelevant.)

Figure 1. Measure Rate at or above the Benchmark.

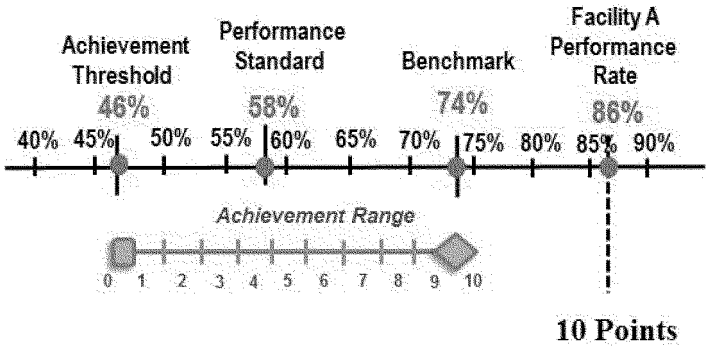
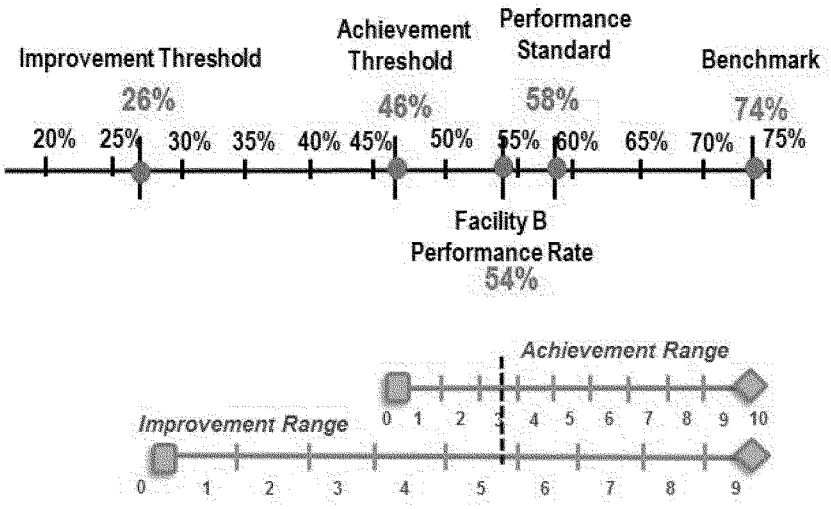


Figure 2 shows the scoring for another facility, Facility B. As illustrated below, the facility's performance on the example clinical measure improved from 26 percent in CY 2012 to 54 percent during the performance period. The achievement threshold is 46 percent, the performance standard is 58 percent, and the benchmark is 74 percent.

Figure 2. Measure Rate within the Achievement Range and within the Improvement Range.



Because the facility's performance during the performance period is within both the achievement range and the improvement range, we must calculate both the improvement and achievement score to find the example clinical measure score. To calculate the achievement score, we would employ the formula discussed above.

$$9 \times \frac{\text{Facility Performance Rate} - \text{Achievement Threshold}}{\text{Benchmark} - \text{Achievement Threshold}} + 0.5$$

The result of this formula for this example is [9 * ((54 − 46)/(74 − 46))] + .5, which equals 3.07 and we round to 3.

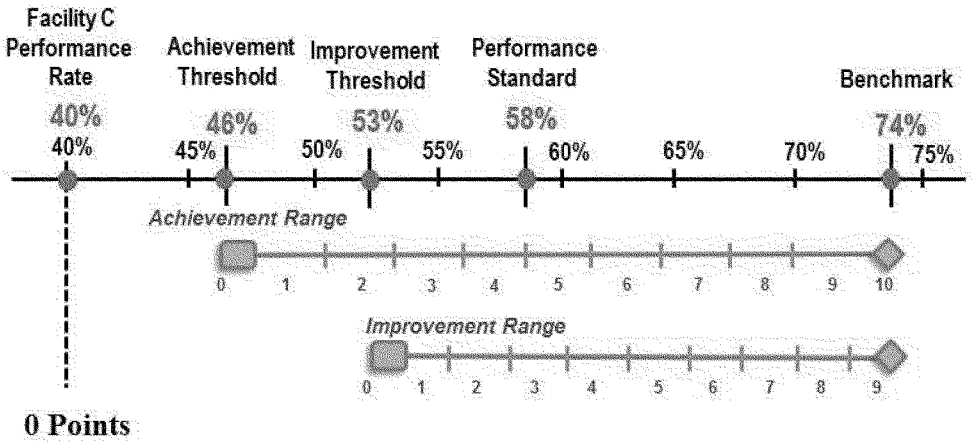
Likewise, to calculate the improvement score, we employ the improvement formula discussed above.

$$10 \times \frac{\text{Facility Performance Rate} - \text{Improvement Threshold}}{\text{Benchmark} - \text{Improvement Threshold}} - 0.5$$

The result of this formula for this example is [10 * ((54 − 26)/(74 − 26))] − .5, which equals 5.33 and we round to 5. Therefore, for this example clinical measure, Facility B's achievement score is 3, and its improvement score is 5. We award Facility B the higher of the two scores. Thus, Facility B's score on this example measure is 5.

In Figure 3 below, Facility C's performance on the example clinical measure drops from 53 percent in CY 2012 to 40 percent in CY 2013, a decline of 13 percent.

Figure 3. Measure Rate below the Achievement Range and the Improvement Range



Because Facility C's performance during the performance period falls below the achievement threshold of 46 percent, it receives 0 points for achievement. Facility C also receives 0 points for improvement because its performance during the performance period was lower than its performance during CY 2012. Therefore, in this example, Facility C would receive 0 points for the example clinical measure.

The method illustrated above would be applied to each clinical measure in order to obtain a score for each measure. Scores for reporting measures are calculated based upon their individual criteria, as proposed.

After calculating the scores for each measure, we would calculate the Total Performance Score. As an example, applying the weighting criteria to a facility that receives a score on all finalized measures, we would calculate the facility's Total Performance Score using the following formula:

Total Performance Score = [(.200 * Hemoglobin Greater Than 12g/dL Measure) + (.200 * Kt/V Dialysis Adequacy Measure Topic) + (.200 * Vascular Access Type Measure Topic) + (.200 * Hypercalcemia Measure) + (.05 * NHSN Dialysis Event Reporting Measure) + (.05 * ICH CAHPS Survey Reporting Measure) + (.05 * Mineral Metabolism Reporting Measure) + (.05 * Anemia Management Reporting Measure)] * 10.

The Total Performance Score would be rounded to the nearest integer (and any individual measure values ending in .5 would be rounded to the next higher integer).

However, if, for example, a facility did not receive a score on the proposed Hypercalcemia measure, the facility's Total Performance Score would be calculated as follows:

Total Performance Score = [(.267 * Hemoglobin Greater Than 12g/dL Measure) + (.267 * Kt/V Dialysis Adequacy Measure Topic) + (.267 * Vascular Access Type Measure Topic) + (.05 * NHSN Dialysis Event Reporting Measure) + (.05 * ICH CAHPS Survey Reporting Measure) + (.05 * Mineral Metabolism Reporting Measure) + (.05 * Anemia Management Reporting Measure)] * 10.

Again, the Total Performance Score would be rounded to the nearest integer (and any individual measure values ending in .5 would be rounded to the next higher integer).

Finally, if, for example, a facility qualified for only two of the reporting measures, the facility's Total Performance Score would be calculated as follows:

Total Performance Score = [(.200 * Hemoglobin Greater Than 12g/dL Measure) + (.200 * Kt/V Dialysis Adequacy Measure Topic) + (.200 * Vascular Access Type Measure Topic) + (.200 * Hypercalcemia Measure) + (.100 * Mineral Metabolism Reporting Measure) + (.100 * Anemia Management Reporting Measure)] * 10.

Again, the Total Performance Score would be rounded to the nearest integer (and any individual measure values ending in .5 would be rounded to the next higher integer).

11. Proposed Minimum Data for Scoring Measures for the PY 2015 ESRD QIP

We are proposing to only score facilities on clinical measures for which they have a minimum number of cases during the performance period. We have assessed how reliable each proposed clinical measure is using the currently available data. Specifically, we studied the degree the measures assess the actual differences in performance

among facilities as opposed to the variation within a facility. Thus, in order for a facility to be scored on any clinical measure, we are proposing that the facility must report a minimum number of cases qualifying for that measure over the course of the 12-month performance period. This proposed minimum seeks to ensure that facilities are being evaluated based on the care they provide.

a. Proposed Minimum Data for Scoring Measures for the PY 2015 ESRD QIP

Dialysis facilities tend to have a small, relatively stable patient census, with each facility reporting on an average of 50–60 cases per measure. In previous rules, commenters have asked that we consider the effect of case size on measure reliability in the context of the ESRD QIP. We recognize that as a general principle, reliability improves with increasing case size; that is, the reliability of a measure or score describes numerically to what extent that measure or score assesses the actual differences in performance among facilities as opposed to the random variation within facilities. Furthermore, we wish to be responsive to public comment and to ensure that dialysis facilities with extremely small numbers of patients are not penalized by the ESRD QIP due to random variation in their patient samples. Thus, we have developed and propose here a new methodology to make favorable adjustments to the clinical measure rates of facilities with very small numbers of patients. We also propose a case minimum for clinical measures to protect patient privacy, which we believe could be compromised if the publicly reported data for a facility is based on a small patient population.

i. Proposed Case Minimum for Clinical Measures

Given the ESRD QIP's potential to encourage quality improvement, our goal is to ensure the full participation of as many facilities as possible in the program. However, we must ensure that all measure rates capture a large enough number of patients so that the privacy of each patient is protected. A case minimum allows us to achieve these policy objectives of measurement reliability and patient privacy.

For the first 3 payment years of the ESRD QIP, we set the minimum number of cases to be scored on a clinical measure at 11. Eleven cases has historically been the case minimum for displaying measures on DFC. We have determined that in the context of DFC, 11 cases will meet the requirement that individual patients are not identifiable in the aggregate measure rate. Given that we believe that 11 cases is sufficient to address privacy concerns and that our policy objective is to maximize the number of facilities that participate in the ESRD QIP, we propose to set a proposed case minimum threshold of 11 cases. Under this proposal, facilities must report at least 11 qualifying cases over the course of the 12-month performance period to be scored on a given clinical measure. We seek public comment on this proposal.

ii. Proposed Adjustment Methodology for Clinical Measures

We indicated in the CY 2012 ESRD PPS final rule that we would continue to assess the reliability of our measures in future payment years of the program (76 FR 70259). To further explore this issue in response to comments, we evaluated the reliability of measure rates and the Total Performance Score for facilities of various sizes using the PY 2014 program clinical measures. Specifically, we performed a simulation of the PY 2014 QIP to calculate the Inter-Unit Reliability (IUR) stratified by facility size. The IUR is a statistic commonly adopted for assessing the reliability of measures or scores, and is the ratio of the between-facility variance to the sum of the between-facility variance and the within-facility variance.

We found the reliability of the Total Performance Score to be acceptable for all strata (IUR>0.6). However, we recognize that facilities with very small numbers of patients are more likely to have a lower IUR. In a facility with a low IUR, the case mix might potentially shift its measure rate higher or lower than the rate the same facility would report if it were treating an ''average'' ESRD population. In the context of the ESRD QIP, a favorable skew would not have a negative effect on facility payment, but an unfavorable skew potentially could result in the facility receiving a payment reduction. We cannot identify which specific facilities will have a low IUR until after the performance period has concluded. However, in performing the stratification analysis, we found that a favorable adjustment to the two strata with the lowest number of cases would reduce the risk of penalizing facilities in those strata for random within-facility variation. The average number of cases contributing to the Total Performance Score in the second stratum is 25. Accordingly, we have developed and propose below a favorable adjustment to the measure rates for facilities with at least the minimum case threshold of 11 and fewer than the adjustment threshold of 26 cases. This methodology would give facilities ''the benefit of the doubt'' and ensure that any error in measure rates due to a small number of cases will not adversely affect payment. Specifically, if a facility reports at least a proposed adjustment threshold of 26 cases during the 12-month performance period on a measure, it would be scored based on its raw performance rate on the measure. If the facility reports between 11 and 25 cases during the 12-month performance period, it would be scored based on its raw performance rate plus a favorable reliability adjustment to account for a possible unfavorable skew in the measure rate due to small sample size.

We propose the following methodology to adjust the measure rate used to score facilities with 11–25 cases for a given measure. The adjustment factors in facility size and the standard error of the measure, which can be estimated using an analysis of variance (ANOVA). This analysis allows us to estimate how much better the measure rate could have been if that facility were treating an ''average'' population of patients and make a favorable adjustment to the facility's score in that amount. For example, as a facility treats more patients, the reliability of the measure rate improves, and the difference between the facility's measure rate and the measure rate we statistically would expect to see if the facility were treating an ''average'' panel of patients decreases. Thus, the magnitude of the adjustment factor increases as the number of cases decreases from 25 to 11.

Because the adjustment factor takes into account a facility's performance (standard error of the measure) and the number of cases for the measure, it is computed separately for each measure. The specific methodology we propose follows:

- ANOVA provides an estimate *sw* of the square root of within facility variance, given by the within subject mean square.
- Then for the *ith* facility, the standard error of the average measure (denoted by x_i) is given by

$$SE(x_i)=sw/\sqrt{n_i},$$

where n_i is the number of patients in the *ith* facility. Now denote C as the minimum case number. We propose the following adjustment for the original score by introducing a weight depending on facility size.

- Let

$$w_i = 1 - \frac{n_i}{c} \text{ if } n_i < C,$$

and $w_i = 0$ if $n_i \geq C$, where C is the lower bound of cases for facilities that will not receive any adjustment.

- For measures where large values of x_i are good (i.e., for the PY 2015 ESRD QIP, the fistula measure and the Kt/V Dialysis Adequacy measure topic):
  - The new score is: $t_i = x_i + w_i * SE(x_i)$. (If $t_i > 100\%$, we set $t_i = 100\%$).
- In cases where lower values of x_i are better (i.e., for the PY 2015 ESRD QIP, the Hemoglobin Greater Than 12g/dL, catheter, and Hypercalcemia measures):
  - The new score is: $t_i = x_i - w_i * SE(x_i)$. (If $t_i < 0\%$, we set $t_i = 0\%$).

This approach gives facilities an allowance to account for the uncertainty in the estimatex_i by accounting for the size of the patient population in both weights and standard errors. As explained above, this allowance decreases when the case size increases (from 11 to 26 or more)—the larger the case size, the smaller the allowance. For example, when C=26, this implies that for measures with 26 cases and above, no allowance is made. We seek public comment on this methodology and the proposed adjustment threshold.

In summary, based on these analyses, we propose for PY 2015 a new approach to account for facilities with low case numbers. A facility would fall into one of three categories with respect to each clinical measure.

- If the facility reported at least the adjustment threshold for a clinical measure (that is, at least 26 cases meeting the measure specifications), we would calculate the measure score with no adjustment.
- If the facility reported fewer cases than the case minimum for a clinical measure (that is, fewer than 11 cases meeting the measure specifications), we would not calculate a score for the measure.
- If the facility reported at least the case minimum, but fewer than the adjustment threshold for a measure (that is, at least 11 but fewer than 26 cases meeting the measure specifications), we would use an adjustment to calculate a score for the measure.

We believe that this proposal balances the competing interests of privacy, measure and Total Performance Score reliability, and allows for the inclusion of as many facilities in the ESRD QIP as possible. We request public comment on the case minimum proposals.

While one model is presented above, we invite comment on alternative approaches that are consistent with our intent to include as many facilities as possible in the ESRD QIP and at the same time address concerns from stakeholders regarding the reliability of measures where there are small numbers of cases. We believe that this adjustment is appropriate for the ESRD QIP considering the particular measure set and scoring methodology for PY 2015. As the program grows and evolves, we will continue to assess reliability based on the measures and scoring methodology for that payment year.

b. Proposed Minimum Data Requirements for Reporting Measures by New Facilities

For purposes of the PY 2014 ESRD QIP, we stated that a facility that receives a CCN on or after July 1, 2012 has the option to choose whether or not it is scored on each reporting measure (76 FR 70275). We considered using the same approach for PY 2015 as we did in PY 2014 (that is, allowing new facilities to choose whether or not they will be scored on each reporting measure). Under that approach, if a new facility reports enough information to receive 10 points on a reporting measure, the facility is scored on that measure. If a new facility scores zero or 5 points on a reporting measure, it is not scored on that measure. As the program evolves, we believe it is important to continuously push improvement in all facilities—both old and new. Additionally, we wish to incentivize new facilities to put reporting mechanisms in place as soon as possible. For these reasons, we propose to modify the reporting measure minimum data requirement from that of PY 2014.

For PY 2015, we propose that any facility receiving a CCN before July 1, 2013 be scored on the reporting measures. However, since a facility receiving a CCN after January 1, 2013 would not be able to report a full 12 months of data, we do not believe it is appropriate to require it to do so in order to receive a full 10 points on the reporting measures. Instead, we propose to score these facilities proportionately for the time for which they have a CCN during the performance period. To earn 10 points on the ICH CAHPS reporting measure, we propose to require that a facility receiving a CCN between January 1, 2013 and June 30, 2013 attest that it successfully administered the survey during the time for which it had a CCN during the performance period. For purposes of the Anemia Management, NHSN Dialysis Event, and Mineral Metabolism reporting measures, we propose that if a facility receives a CCN on or after January 1, 2013, but before July 1, 2013, it would receive 10 points for reporting for all months for which it has a CCN and 5 points for consecutively reporting half of the months for which it has a CCN during the performance period. If a facility has a CCN for an odd number of months, we would round down to calculate the number of months for which it must report to receive 5 points. Finally, we propose to begin counting the number of months for which a facility is open on the first day of the month after the facility receives a CCN. For example, assume a facility receives a CCN on March 15, 2013. In order for this facility to receive 10 points on the applicable reporting measure, it must report data from April 1, 2013—December 31, 2013 (or 9 months of data). In order for it to receive 5 points, it must report half of the months for which it is open, consecutively. For this facility to receive 5 points, it would need to report 4.5 months of data. Since we have proposed to round down, this facility would be required to report 4 months of data to receive 5 points.

We realize that facilities receiving a CCN on or after July 1, 2013, may have difficulty meeting the requirements of the reporting measures, such as enrolling and training for the NHSN Dialysis Event reporting measure or hiring a third-party to administer the ICH CAHPS survey, because of the short period of time left in the performance period. We also do not believe it is appropriate to reduce payment for a one year period based on less than 6 months of performance. Therefore, we propose to exclude facilities receiving a CCN on or after July 1, 2013 from the requirements of the reporting measures. Because we have proposed, as discussed above, that a facility will not receive a Total Performance Score unless it receives a score on at least one clinical and one reporting measure, finalizing this proposal would result in facilities not being eligible for a payment reduction if they receive a CCN on or after July 1, 2013. We request comment regarding these proposals. We also elicit comments regarding whether there would be a more appropriate way to score these new facilities on reporting measures so that they may be eligible for inclusion in the ESRD QIP.

12. Proposed Payment Reductions for the PY 2015 ESRD QIP

Section 1881(h)(3)(A)(ii) of the Act requires the Secretary to ensure that the application of the scoring methodology results in an appropriate distribution of payment reductions across facilities such that facilities achieving the lowest Total Performance Scores receive the

largest payment reductions. For PY 2014, we adopted an approach under which a facility did not have to meet or exceed the performance standards with respect to each of the finalized clinical measures to avoid receiving a payment reduction under the ESRD QIP. Rather, even if a facility failed to meet or exceed the performance standards with respect to one or more of these measures, the facility could avoid a payment reduction if it achieved a minimum Total Performance Score that is equal to or greater than the minimum Total Performance Score it would receive if it had met the performance standards for each of the clinical measures or, in the case of the Vascular Access Type Measure, for the two subcomponent measures.

For PY 2014, in calculating this minimum Total Performance Score, we excluded the reporting measures because we believed this approach best underscored the importance of the clinical measures. For PY 2015, we propose to retain the same approach as in PY 2014. We discuss the methodology for deriving the performance standards for the measure topics, above. We request comments on these proposals.

Alternately, in order to better incentivize compliance with reporting measures, we also considered raising the minimum Total Performance Score to include 50 percent of the total points a facility could have received had it met all of the reporting requirements for each measure. In other words, because a facility could receive up to 40 points in PY 2015 for meeting all of the reporting measure requirements, we considered raising the minimum Total Performance Score by 20 points (one-half of 40). This approach would ensure that facilities receiving a CCN before August 1, 2013 could still achieve the minimum Total Performance Score by meeting, on average, the performance standards for the clinical measures and achieving as many points on the reporting measures as is possible. We request comment regarding whether the reporting measures should be scored at greater than 0 when calculating the minimum Total Performance Score.

Section 1881(h)(3)(A)(ii) of the Act requires that facilities achieving the lowest Total Performance Scores receive the largest payment reductions. For PY 2014, we adopted an approach we intend to continue for PY 2015. We believe that this consistency will allow the program to be more understandable to both facilities and the general public. Therefore, we propose that the payment reduction scale be the same as the PY 2014 program. Therefore, for each 10 points a facility falls below the minimum Total Performance Score, it would receive an additional 0.5 percent payment reduction on its ESRD payments for PY 2015, with a maximum reduction of 2.0 percent. As we stated in the CY 2012 ESRD PPS final rule, we believe that such a sliding scale will incentivizes facilities to meet the performance standards and continue to improve their performance because even if a facility fails to achieve the minimum Total Performance Score, such facility will still be incentivized to strive for, and attain, better performance rates in order to reduce the amount of its payment reduction (76 FR 70281). We request comments on the proposed payment reduction scale.

Because we are not yet able to calculate the performance standards for each of the clinical measures, we are also not able to calculate the minimum Total Performance Score. Based on the estimated performance standards listed above, we estimate that a facility must meet or exceed a minimum Total Performance Score of 52 to avoid a payment reduction. Facilities failing to meet this minimum will receive payment reductions in the estimated amounts indicated in the Table 8 below.

TABLE 8—ESTIMATED PAYMENT REDUCTION SCALE FOR PY 2015 BASED ON THE MOST RECENTLY AVAILABLE DATA

Total performance score	Reduction %
100–52 *	0
51–42	0.5
41–32	1.0
31–22	1.5
21–0	2.0

13. Proposed Data Validation

One of the critical elements of the ESRD QIP's success is ensuring that the data submitted to calculate measure scores and Total Performance Scores is accurate. To that end, we have procured the services of a data validation contractor who will be tasked with validating a national sample of facilities' records as they report data under the ESRD QIP. Beginning in CY 2013, we propose to begin a pilot data validation program for the ESRD QIP. Because data validation for the ESRD QIP is new to both facilities as well as CMS, we believe that the first year of validation should result in no payment reductions to facilities. Accordingly, we propose that, beginning in CY 2013, we would randomly sample the records of approximately 750 facilities. We anticipate that a CMS-designated contractor would request approximately 10 records from each of these facilities. We propose that the facility must comply with this request for records within 60-days of receiving notice. The contractor would review these records to ensure accuracy and reliability of the data reported by the facility for purposes of the ESRD QIP.

As noted above, we propose that, in the first year of this program, no facility will receive a payment reduction resulting from the data validation process. In future years of the program, we intend to evolve our pilot program into a full, data validation effort. We are also discussing a data validation measure whereby facilities would be scored based on the accuracy of their records. Finally, we are contemplating increasing a facility's payment reduction by one tier (for example, from 0.5 percent to 1.0 percent) if its data is incorrect beyond a certain threshold. In future years, we intend to propose more detailed procedures regarding data validation process that may result in penalties. We request comment on our data validation proposals for PY 2015 and the methods we are considering for PY 2016.

14. Proposals for Scoring Facilities Whose Ownership Has Changed

During our first year of implementation of the ESRD QIP, PY 2012, facilities requested guidance regarding how a change in ownership affects any applicable ESRD QIP payment reduction. We propose that, for all future years of the ESRD QIP, the application of an ESRD QIP payment reduction would depend on whether the facility retains its CCN after the ownership transfer. If the facility's CCN remains the same after the facility is transferred, for purposes of the ESRD QIP, we would consider the facility to be the same facility (despite the change in ownership) and we would apply any ESRD QIP payment reduction for the transferor to the transferee. Likewise, as long as the facility retains the same CCN, we would calculate the measure scores using the data submitted during the applicable period regardless of whether the ownership changed during one of these periods. If, however, a facility receives a new CCN as a result of a change in ownership, we would treat the facility as a new facility for purposes of the ESRD QIP as of the date it received the new CCN. We believe that these proposals are the most operationally efficient and will allow facilities the most certainty when they change ownership. We propose to apply these rules beginning with the PY 2014

ESRD QIP, and we request public comment on these proposals.

15. Proposals for Public Reporting Requirements

Section 1881(h)(6)(A) of the Act requires the Secretary to establish procedures for making information regarding facilities' performance under the ESRD QIP available to the public, including information on the Total Performance Score (as well as appropriate comparisons of facilities to the national average with respect to such scores) and performance scores for individual measures achieved by each facility. Section 1881(h)(6)(B) of the Act further requires that a facility have an opportunity to review the information to be made public with respect to that facility prior to such information's publication. In addition, section 1881(h)(6)(C) of the Act requires the Secretary to provide each facility with a certificate containing its Total Performance Score to post in patient areas within the facility. Finally, section 1881(h)(6)(D) of the Act requires the Secretary to post a list of facilities and performance-score data on the CMS Web site.

In the PY 2012 ESRD QIP final rule, we adopted uniform requirements based on sections 1881(h)(6)(A) through 1881(h)(6)(D) of the Act, establishing procedures for facilities to review the information to be made public and the procedures for informing the public through facility-posted certificates for the first 3 payment years of the ESRD QIP (76 FR 636 through 639). We propose that these requirements generally apply to PY 2015 and subsequent payment years. However, we are proposing to make some modifications, as outlined below, to these requirements and that these modifications, if finalized, become effective upon the effective date of this final rule; thus, these requirements, if finalized, would apply in PY 2014 and for subsequent payment years. All other previously finalized requirements would remain the same. First, for the first year of the program, PY 2012, we did not explicitly state that we would be publishing a list of facility performance on or after December 1 of the year before the payment consequence year. We did, however, make this list available for the pubic via the CMS Web site. For the PY 2013 ESRD QIP and subsequent payment years, and in accordance with section 1881(h)(6)(D) of the Act, we propose to publish such aggregate list on the CMS Web site at *www.cms.gov* and any other Web site controlled by CMS. This list will include information on the facility, specifically:

(i) Name and address;

(ii) Measure rates (which may include numerators and denominators) and scores;

(iii) And Total Performance Scores.

This list will also indicate those facilities which do not have enough data to calculate one or more measure rates and/or a Total Performance Score. We believe it is important to publish such a list because it allows beneficiaries, the public, and facilities access to this information without having to individually download a certificate for each facility, and, because of such access, we believe it will ultimately improve quality. The data will be more accessible, Medicare beneficiaries and their families will have the information more easily to make choices about their care, and facilities can more readily compare their performance to other facilities or across facilities. Therefore, beginning in January 2013, we propose to publish a list of facility information described above for each payment year after facilities have the ability to review their scores.

Second, for PY 2012, we required facilities to prominently post certificates within five days of us making these certificates available for download from Dialysis Facility Reports (DFR) in accordance with section 1881(h)(6)(C) of the Act (76 FR 637). We are proposing to modify the previously finalized requirements for posting certificates in two ways. We no longer believe it is necessary for facilities to post these certificates within five days of their availability. The certificates are provided in late December, and it was our experience in the PY 2012 program that many individuals responsible for the certificates were away on holiday during this period of time. Therefore, we are proposing to change this requirement so that, beginning with the PY 2014 program, facilities will be required to post their certificates on or before the first business day after January 1 of each payment year. Certificates are typically available for download on or around December 15, and we believe that this two week amount of time is long enough to allow facilities to post them. Therefore, beginning PY 2014, we propose that facilities be required to post their Performance Score Certificates on or before the first business day after January 1 of each payment year in a prominent place for the duration of that payment year and otherwise comply with the requirements listed in the PY 2012 final rule (76 FR 637).

Third, for the PY 2012 ESRD QIP, we required facilities to post one copy of the certificate in their facility (76 FR 637). Beginning PY 2014, we propose to require facilities to post two copies of this certificate, one copy in English and one copy in Spanish. Both of these certificates (which are posted as a single file) will be provided by CMS, both must be posted by the first business day after January 1 of the payment year, and both must be posted for the entirety of such year in a prominent location. We are proposing to require the certificate to be posted in both English and Spanish to make the certificate more understandable to native Spanish speakers. Thus, to best serve a greater number of ESRD patients, we propose to finalize the requirement that facilities must post both an English and a Spanish certificate prominently in their facility. The only additional burden for facilities in adding this Spanish certificate is its printing and posting.

IV. Limitation on Payments to All Providers, Suppliers and Other Entities Entitled to Bad Debt

A. Background

Under section 1861(v)(1) of the Act and current regulations at 42 CFR 413.89 and 413.178, Medicare pays some or all of the uncollectible deductible and coinsurance amounts to those entities eligible to receive reimbursement for bad debt. To determine if bad debt amounts are allowable, the requirements at § 413.89 must be met. Chapter 3 of the Provider Reimbursement Manual (PRM) (CMS Pub. 15, Part I) provides guidance on the standards governing bad debt reimbursement.

Under section 1861(v)(1)(T) of the Act and § 413.89(h)(1) of the regulations, Medicare payments for allowable bad debt amounts for hospitals are reduced by 30 percent for cost reporting periods beginning on or after October 1, 2001. Also, under section 1861(v)(1)(V) of the Act and § 413.89(h)(2) of the regulations, Medicare payments for allowable bad debt amounts for patients that are not dual eligible individuals in skilled nursing facilities (SNFs) with cost reporting periods beginning on or after October 1, 2005, are currently reduced by 30 percent. Section 413.89(h)(2) also defines a dual eligible individual for bad debt purposes as an individual that is entitled to benefits under Part A of Medicare and is determined eligible by the State for Medical Assistance under Title XIX of the Act as described in 42 CFR 423.772 paragraph (2) under the definition of a ''full-benefit dual eligible individual.''

For all other providers, suppliers, and entities eligible to receive bad debt payment, including critical access

hospitals (CAHs), rural health clinics (RHCs), Federally qualified health centers (FQHCs), community mental health centers (CMHCs), swing bed hospitals, as defined at 42 CFR 413.114(b), and patients that are dual eligible individuals in SNFs, Medicare pays 100 percent of allowable bad debt amounts. Although Medicare pays end-stage renal disease (ESRD) facilities 100 percent of allowable bad debt amounts, these payments are currently capped at the facility's reasonable cost in accordance with § 413.178(a). In addition, for health maintenance organizations (HMOs) reimbursed on a cost basis and competitive medical plans (CMPs) defined under section 1876 of the Act, and for health care prepayment plans (HCPPs) defined under section 1833(a)(1)(A) of the Act, Medicare pays a portion of bad debt amounts under 42 CFR 417.536(f) of our regulations.

B. Section 3201 of The Middle Class Tax Extension and Job Creation Act of 2012 Public Law 112–96

Sections 3201(a) and (b) of the Middle Class Tax Extension and Job Creation Act of 2012 (Pub. L. 112–96) amended section 1861(v)(1)(T) and section 1861 (v)(1)(V) of the Act, respectively, by further reducing the percentage of allowable bad debt attributable to the deductibles and coinsurance amounts payable to hospitals and SNFs. Section 3201(b) of The Middle Class Tax Extension and Job Creation Act of 2012 revised the SNF bad debt reductions to include both dual eligible beneficiaries and non-dual eligible beneficiaries under section 1861(v)(1)(V) of the Act and to apply such reductions to swing bed hospitals for cost reporting periods beginning during fiscal year 2013 and subsequent fiscal years.

Finally, section 3201(c) of The Middle Class Tax Extension and Job Creation Act of 2012 added a new subparagraph 1861(v)(1)(W) to the Act, which applied a reduction in bad debt payments to ''providers'' not addressed under subparagraphs 1861(v)(1)(T) or 1861 (v)(1)(V) of the Act. For the purpose of subparagraph 1861(v)(1)(W) of the Act, section 3201(c) of The Middle Class Tax Extension and Job Creation Act of 2012 defined ''providers'' as a supplier or any other type of entity that receives payment for bad debts under the authority of section 1861(v)(1)(A) of the Act. These providers include, but are not limited to, CAHs, RHCs, FQHCs, CMHCs, HMOs reimbursed on a cost basis, CMPs, HCPPs and ESRD facilities.

C. Summary of Provisions of This Proposed Rule

1. Self-Implementing Provisions of Section 3201 of The Middle Class Tax Extension and Job Creation Act of 2012 (Pub. L. 112–96)

The provisions of subsections 3201(a), (b), and (c) of The Middle Class Tax Extension and Job Creation Act of 2012 permit no discretion on the part of the Secretary and thus, are self implementing, with the exception of ESRD facilities as discussed below. We are proposing to codify these provisions, as summarized below, in our regulations.

- Payment of allowable bad debt to hospitals for cost reporting periods beginning during fiscal year 2013 and subsequent fiscal years would be reduced by 35 percent.
- Payment of allowable bad debt to SNFs and swing bed hospitals for cost reporting periods beginning during fiscal year 2013 or a subsequent fiscal year would be reduced by 35 percent for coinsurance amounts for services furnished to a beneficiary who is not a dual eligible individual.
- Payment of allowable bad debt to SNFs and swing bed hospitals for coinsurance for services furnished to a beneficiary who is a dual eligible individual would be:
  - For cost reporting periods beginning during fiscal year 2013, reduced by 12 percent;
  - For cost reporting periods beginning during fiscal year 2014, reduced by 24 percent and;
  - For cost reporting periods beginning during fiscal year 2015, reduced by 35 percent.
- Payment of allowable bad debt to all other providers, suppliers and any other entity that receives payment for bad debts under the authority of section 1861(v)(1)(A) of the Act would be:
  - For cost reporting periods beginning during fiscal year 2013, reduced by 12 percent;
  - For cost reporting periods beginning during fiscal year 2014, reduced by 24 percent;
  - And for cost reporting periods beginning during fiscal year 2015 and subsequent fiscal years, by 35 percent.

A summary of the changes in Medicare bad debt payment percentages required by section 3201 of The Middle Class Tax Extension and Job Creation Act of 2012 is reflected in Table 9 below:

TABLE 9—SUMMARY OF MEDICARE BAD DEBT REIMBURSEMENT BY PROVIDER TYPES FOR COST REPORTING PERIODS THAT BEGIN DURING FY 2013, 2014, 2015 AND SUBSEQUENT YEARS [4]

Provider type	*Allowable bad debt amount during FY 2012* (percent)	*Allowable bad debt amount during FY 2013* (percent)	*Allowable bad debt amount during FY 2014* (percent)	*Allowable bad debt amount during FY 2015 & subsequent FYs* (percent)
Hospitals	70	65	65	65
SNFs: Non-Full Dual Eligibles	70	65	65	65
Swing Bed Hospitals: Non-Full Dual Eligibles	100	65	65	65
SNFs: Full Dual Eligibles	100	88	76	65
Hospital Swing Beds: Full Dual Eligibles	100	88	76	65
CAHs	100	88	76	65
ESRD Facilities	100	88	76	65
CMHCs	100	88	76	65
FQHCs	100	88	76	65
RHCs	100	88	76	65
Cost Based HMOs	100	88	76	65
Health Care Pre-Payment Plans	100	88	76	65
Competitive Medical Health Plans	100	88	76	65

ESRD facility bad debt payments will continue to be subject to the cap up to the facility's reasonable costs.

2. Remove and Reserve § 413.178

We are proposing to move specific requirements to reimburse ESRD bad debt amounts from § 413.178 to § 413.89 and remove and reserve § 413.178.

3. Technical Corrections

We are also proposing a technical correction to 42 CFR 417.536(f)(1) to refer to 42 CFR 413.89 as the appropriate cross reference to Medicare bad debt reimbursement policy, to revise the existing language describing bad debt to conform to § 413.89(a), and to remove requirements that already are set out at § 413.89.

D. Proposed Changes to Medicare Bad Debt Policy

In this rule, we are proposing to conform existing regulations text found at § 413.89(h) to the self-implementing provisions of section 3201 of The Middle Class Tax Extension and Job Creation Act of 2012. We currently cap bad debt reimbursement to an ESRD facility's reasonable costs under § 413.178(a). In this rule, we are proposing to move the current provision at § 413.178(a) to proposed § 413.89(h)(3), and to add ESRD facilities to the list of facilities to which § 413.89 ''Bad debts, charity, and courtesy allowances,'' applies. We also propose to remove duplicate provisions and reserve § 413.178 for further use. In addition, we are making a technical correction to § 417.536(f)(1) to clarify Medicare bad debt reimbursement policy.

1. Proposed Changes to 42 CFR 413.89(h)

Under each paragraph of our existing regulations at § 413.89(h), we describe the limits on bad debt payment to be reductions to the amount of bad debt otherwise treated as allowable costs. Under § 413.89(a), bad debts are deductions from revenue and are not to be included in allowable cost. Therefore, we are proposing to clarify that the limits on bad debt payments are reductions to amount of allowable bad debt.

We propose to revise § 413.89(h)(1)(iv) to set forth the percentage reduction in reimbursable bad debt payments to hospitals for cost reporting periods beginning during fiscal years 2001 through 2012.

We propose to add a new § 413.89(h)(1)(v), which would set forth the percentage reduction in reimbursable bad debt payments required by section 1861(v)(1)(T)(v) of the Act to hospitals for cost reporting periods beginning during fiscal year 2013 and subsequent fiscal years.

We propose to revise § 413.89(h)(2) to add paragraphs (h)(2)(i) and (h)(2)(ii). Paragraph (h)(2)(i) would set forth the percentage reduction in reimbursable bad debt payments required by section 1861(v)(1)(V)(ii) of the Act for SNFs and swing bed hospitals for cost reporting periods beginning during fiscal year 2006 and subsequent fiscal years for a patient that was not a dual eligible individual. Paragraph (h)(2)(ii) would set forth the reduction in reimbursable bad debt payments for SNFs and swing bed hospitals, for cost reporting periods beginning during fiscal year 2013, fiscal year 2014, fiscal year 2015, and subsequent fiscal years, for a patient that was a dual eligible individual.

We propose to revise § 413.89(h)(3) to set forth the percentage reduction in allowable bad debt payments required by section 1861(v)(1)(W) of the Act for ESRD facilities for cost reporting periods beginning during fiscal year 2013, fiscal year 2014, fiscal year 2015 and subsequent fiscal years and to reimburse the reduced amount of bad debt up to the facility's costs as discussed below.

We propose to add a new § 413.89(h)(4) to set forth the percentage reduction in reimbursable bad debt payments for all other entities required by section 1861(v)(1)(W) of the Act not described in § 413.89(h)(1), (h)(2), or (h)(3) that would be eligible to receive reimbursement of bad debt for cost reporting periods beginning during fiscal year 2013, fiscal year 2014, fiscal year 2015 and subsequent fiscal years.

2. Rationale for Removing 42 CFR 413.178

For ESRD facilities, § 413.178(a) states that CMS will reimburse each facility its allowable Medicare bad debts, as defined in § 413.89(b), up to the facility's costs, as determined under Medicare principles, in a single lump sum payment at the end of the facility's cost reporting period. This cap on bad debt payments will remain in place along with applying the reductions in bad debt payments discussed above.

Currently, we reimburse an ESRD facility 100 percent of its allowable bad debt up to the facility's reasonable cost. We considered applying the FY reduction percentage after the cap is applied, however, we are proposing to apply the FY reduction percentage to allowable bad debt prior to applying the cap. We believe that our proposed application of the reduction percentage is more appropriate and consistent with how we currently determine the amount of allowable bad debt that is capped at the facility's cost.

We are proposing to make the following revisions to § 413.89(h)(3) to implement the ESRD facilities' bad debt reduction effective October 1, 2012 in accordance with section 1861(v)(1)(W) of the Act and to apply the cap on ESRD facilities' bad debt payments as required under § 413.178(a). For illustrative purposes only, we have included examples of the computation of bad debt payments for each proposed revision to § 413.89(h)(3).

We are proposing to add § 413.89(h)(3)(i) for cost reporting periods that begin before October 1, 2012, where the cap on bad debt payments would be applied as follows:

1. Unrecovered costs = $90.00
2. Allowable bad debt = $110.00
3. Allowable bad debt of $110.00 is capped at the unrecovered costs of $90.00, therefore, the facility would receive $90.00.

We are proposing to add § 413.89(h)(3)(ii) for cost reporting periods that begin during FY 2013, where the amount of allowable bad debt is reduced by 12 percent and the cap would be applied as follows:

1. Unrecovered costs = $90.00
2. Allowable bad debt = $110.00
3. Allowable bad debt of $110.00 would be reduced by 12 percent to $96.80 which is capped at the unrecovered costs, therefore, the facility would receive $90.00.

We are proposing to add § 413.89(h)(3)(iii) for cost reporting periods that begin during FY 2014, where the amount of allowable bad debt is reduced by 24 percent and the cap would be applied as follows:

1. Unrecovered costs = $90.00
2. Allowable bad debt = $110.00
3. Allowable bad debt of $110.00 would be reduced by 24 percent to $83.60 which does not exceed the unrecovered costs, therefore, the facility would receive $83.60.

We are proposing to add § 413.89(h)(3)(iv) for cost reporting periods that begin during a subsequent FY, where the amount of allowable bad debt is reduced by 35 percent and the cap would be applied as follows:

1. Unrecovered costs = $50.00
2. Allowable bad debt = $110.00
3. In this example, allowable bad debt of $110.00 would be reduced by 35 percent to $71.50 which is capped at the unrecovered costs. Because, under this example, unrecovered costs are set at $50.00, the facility would receive $50.00.

We propose to remove current regulations text at § 413.178(a) since the requirement to apply the cap on bad debt payments will be at proposed § 413.89(h)(3). We also propose to remove current regulations text at § 413.178(b), (c), and (d)(1) since these provisions already exist in the discussions of our bad debt requirements § 413.89, Chapter 3 of the PRM Part I, and in the Medicare cost report instructions in the PRM Part II. In addition, we are proposing to move the current general bad debt exception at § 413.89(i) to new paragraph

§ 413.89(i)(1) in order to propose moving the ESRD facilities' bad debt exception provision currently discussed at § 413.178(d)(2) to proposed new paragraph § 413.89(i)(2). Since we are proposing to remove all existing regulations under § 413.178 we are proposing to reserve this section for future use.

3. Technical Corrections to 42 CFR 417.536(f)(1)

In this rule, we are proposing to revise the regulations text at 417.536(f)(1) to correct the cross-reference to the Medicare bad debt reimbursement regulation, so that § 417.536(f)(1) would reference 42 CFR 413.89 instead of the current outdated reference to § 413.80. In addition, we are revising the existing language at 42 CFR 417.536(f)(1) to conform to the description of bad debt in § 413.89(a) and we are removing §§ 417.536(f)(1)(i) and (ii) since these provisions already exist in the discussions of our bad debt requirements § 413.89, Chapter 3 of the PRM Part I, and in the Medicare cost report instructions in the PRM Part II.

V. Collection of Information Requirements

A. Legislative Requirement for Solicitation of Comments

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.

B. Requirements in Regulation Text

In this proposed rule, we are not proposing any changes to regulatory text for the ESRD PPS in CY 2013.

C. Additional Information Collection Requirements

This proposed rule does not impose any new information collection requirements in the regulation text, as specified above. However, this proposed rule does make reference to several associated information collections that are not discussed in the regulation text contained in this document. The following is a discussion of these information collections.

1. ESRD QIP

a. Display of Certificates for the PY 2015 ESRD QIP

Section III.C.15 of this proposed rule discusses a disclosure requirement for the PY 2014 and PY 2015 ESRD QIP. As stated earlier in this proposed rule, section 1881(h)(6)(C) of the Act requires the Secretary to provide certificates to dialysis care providers and facilities with their Total Performance Scores under the ESRD QIP. This section also requires each facility that receives an ESRD QIP certificate to display it prominently at the facility.

To comply with this requirement, we proposed to issue one English and one Spanish ESRD QIP certificate beginning in PY 2014 to facilities via a generally accessible electronic file format. We have previously finalized other display requirements for the program, including that each facility prominently display the applicable ESRD QIP certificate in the patient area, take the necessary measures to ensure the security of the certificate in the patient areas, and have staff available to answer questions about the certificate in an understandable manner, taking into account that some patients might have limited English proficiency.

The burden associated with the aforementioned requirements is the time and effort necessary for facilities to print the applicable ESRD QIP certificates, display the certificates prominently in patient areas, ensure the safety of the certificates, and respond to patient inquiries in reference to the certificates. We do not anticipate that posting the Spanish certificate will add more time or burden to the Collection of Information requirements outlined in the CY 2011 ESRD PPS final rule (76 FR 70298 through 70299) for the PY 2014 ESRD QIP. Therefore, this analysis only applies to the burden associated with the PY 2015 and beyond requirements.

We estimate that approximately 5,633 facilities will receive ESRD QIP certificates in PY 2015 and will be required to display them. We also estimate that it will take each facility 10 minutes per year to print, prominently display, and secure the ESRD QIP certificates, for a total estimated annual burden of 939 hours (10/60 hours * 5,633 facilities). According to the Bureau of Labor Statistics, the mean hourly wage of a registered nurse is $33.23. Since we anticipate nurses (or administrative staff) will post these certificates, we estimate that the aggregate cost of this requirement will be $31,203 ($33.23/hour × 939 hours). We estimate that approximately one-third of ESRD patients, or 100,000 patients, will ask a question about the ESRD QIP certificate. We further estimate that it will take each facility approximately five minutes to answer each patient question about the applicable ESRD QIP certificate, or 1.52 hours per facility each year. The total estimated annual burden associated with this requirement is 8,563 hours (1.52 hours/facility × 5,633 facilities). The total estimated annual burden for both displaying the ESRD QIP certificates and answering patient questions about the certificates is 9,502 hours (8,563 hours + 939 hours). While the total estimated annual burden associated with both of these requirements as discussed is 9,502 hours, we do not believe that there will be a significant cost associated with these requirements because we are not proposing to require facilities to complete new forms. We estimate that the total cost for all ESRD facilities to comply with the collection of information requirements associated with the certificates each year would be less than $315,752 ($33.23/hour × 9,502 hours).

b. Proposed NHSN Dialysis Event Reporting Requirement for the PY 2015 ESRD QIP

As stated above in section III.C.2 of this proposed rule, we propose to include reporting dialysis events to the NHSN as a reporting measure for the PY 2015 ESRD QIP. Specifically, we would require facilities to submit 12 months of dialysis event data to the NHSN. The burden associated with this requirement for existing facilities is the time and effort necessary for facilities to submit 12 months of data. According to our most recent data, 5,490 facilities treat in-center hemodialysis and/or pediatric hemodialysis patients and are, then, eligible to receive a score on this measure; therefore, we estimate that approximately 5,490 facilities will submit the required data. Based on data previously collected, we further estimate that the average number of dialysis events is 0.08 per patient per month and that each facility has approximately 75 patients. Accordingly, we estimate the number of dialysis events in a 12-month period for all facilities to be 395,230 (0.08 events/patient/month × 75 patients/facility × 5,490 facilities × 12 months) for the PY

2015 ESRD performance period. We estimate it will require 10 minutes to collect and submit data on these events and the estimated burden for submitting 12 months of data will be 65,880 hours (395,230 dialysis events × 10/60 minutes). If the dialysis events were distributed evenly across all 5,490 facilities that would result in an additional 12 hour (67,596 hours/5,490 facilities) burden for each facility at a cost of $399 ($33.23/hour × 12 hours) per facility. In total, we believe that the cost for all ESRD facilities to comply with the reporting requirements associated with NHSN Dialysis Event measure would be approximately $2.2 million ($399 × 5,490 facilities = $2,190,510) per year.

In addition, we recognize that some facilities are new and would not have completed the required training and enrollment required by the NHSN. We estimate that the number of ESRD facilities increases by 3 percent per year. Accordingly, we believe that 169 facilities (.03 × 5,633 facilities) will be new in PY 2015. As noted in the CY 2011 ESRD QIP final rule (76 FR 70299), we estimate that it will take each new provider 8 hours to enroll and complete the required training. The total estimated burden for these facilities to enroll and train is 1,352 hours (169 × 8 hours) or $44,927 ($33.23/hour × 1,352 hours). In sum, we estimate the total cost for all facilities to comply with the NHSN Dialysis Events reporting requirement to be less than $2.2 million ($2,190,510 + $44,927).

c. ICH CAHPS Survey Attestation Requirement for the PY 2015 ESRD QIP

As stated above in section III.C.1 of this proposed rule, we proposed to include a measure that assesses facility usage of the ICH CAHPS survey as a reporting measure for the PY 2015 ESRD QIP. The burden associated with this requirement is the time and effort necessary for facilities to administer the ICH CAHPS survey through a third party and submit an attestation to CMS that they successfully administered the survey.

We estimate that approximately 5,489 facilities treat adult, in-center hemodialysis patients and are, therefore, eligible to receive a score on this measure. We estimate that all 5,489 facilities will administer the ICH CAHPS survey through a third-party and submit an attestation to that effect. We estimate that it will take each facility's third-party administrator 16 hours per year to be trained on the survey features. We further estimate that it will take each facility approximately five minutes to submit the attestation each year. The estimated total annual burden on facilities is 88,281 hours ((16 hours × 5,489 facilities) + ((5/60 minutes) × 5,489 facilities) which is valued at approximately $3 million (88,281 hours × $33.23), or $547 per facility ($3,000,000/5,489). We estimate that it would take each patient 30 minutes to complete the survey (to account for variability in education levels) and that approximately 75 surveys per year would be taken per facility.[5] Interviewers from each facility would spend a total of approximately 37.5 hours per year with patients completing these surveys (30/60 minutes * 75 minutes) or $1,247 (37.5 hours × $33.23) for an estimated annual burden of 205,838 hours (37.5 hours * 5,489 facilities) which is valued at approximately $6.9 million (205,838 hours × 33.23/hour). We estimate that time burden for ESRD facilities to comply with the collection of information requirements associated with administering the ICH CAHPS survey each year would be approximately $1,794 ($547 + $1,247) or $9.9 million ($1,794 × 5,489 facilities = $9,847,266) across all ESRD facilities.

d. Data Validation Requirements

Section III.C.13 of the proposed rule outlines our data validation proposals. We proposed to randomly sample records from 750 facilities; each sampled facility would be required to produce approximately 10 records. The burden associated with this validation requirement is the time and effort necessary to submit validation data to a CMS contractor. We estimate that it will take each facility approximately 2.5 hours to comply with these requirements. If 750 facilities are tasked with providing the required documentation, the estimated annual burden across all facilities would be 1,875 hours (750 facilities × 2.5 hours) at a total of $62, 307 (1,875 hours × $33.23/hour) or $83.08 ($62,307/750) per facility in the sample. We also anticipate that the sampled facilities will be reimbursed by our validation contractor for the costs associated with copying and mailing the requested records.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site at *http://www.cms.gov/PaperworkReductionActof1995/PRAL/list.asp#TopOfPage.*

If you comment on these information collection and recordkeeping requirements, please do either of the following:

1. Submit your comments electronically as specified in the **ADDRESSES** section of this proposed rule; or

2. Submit your comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: CMS Desk Officer, [CMS–1352–P], Fax: (202) 395–6974; or Email: *OIRA_submission@omb.eop.gov*.

2. Reductions to Bad Debt Payments for All Medicare Providers

The statutorily mandated reductions of bad debt payments to providers, suppliers, and other entities that are currently receiving bad debt payments will not result in any changes to or any additional collection of information requirements.

VI. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VII. Economic Analyses

A. Regulatory Impact Analysis

1. Introduction

We examined the impacts of this proposed rule as required by Executive Order 12866 (September 30, 1993, Regulatory Planning and Review) and Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011). Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of

[5] Last year, we stated that we believed that 200 surveys would be administered per facility per year (76 FR 70299). Upon further review, however, we note that the ICH CAHPS specifications require a sample of 200 surveys only for those facilties with a large patient population. Facilties with fewer than 200 patients are required to survey a sample of patients, aiming for a 40 percent response rate. (*http://www.cahps.ahrq.gov/~/media/Files/SurveyDocuments/ICH/Admin_Survey/53_fielding_the_ich_survey.pdf*). Since we estimate that each facility serves approximately 75 patients, we believe that the average facility, at most, would survey 75 patients per year.

reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated economically significant under section 3(f)(1) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget. We have prepared a Regulatory Impact Analysis that to the best of our ability presents the costs and benefits of the proposed rule. We solicit comments on the regulatory impact analysis provided.

2. Statement of Need

This rule proposes a number of routine updates for renal dialysis services in CY 2013, proposes to implement the third year of the ESRD PPS transition, and proposes to make several policy changes and clarifications to the ESRD PPS. These include proposed updates and changes to the ESRD PPS and composite rate base rates, wage index values, wage index budget-neutrality adjustment factors, outlier payment policy, and transition budget-neutrality adjustment. Failure to publish this proposed rule would result in ESRD facilities not receiving appropriate payments in CY 2013.

This rule proposes to implement the QIP for PY 2015 and beyond by establishing measures, scoring, and payment reductions to incentivize improvements in dialysis care as directed by section 1881(h) of the Act. Failure to establish QIP program parameters in this rule would prevent continuation of the QIP beyond PY 2014.

This proposed rule implements the reduction percentages of bad debt reimbursement required by section 3201 of The Middle Class Tax Extension and Job Creation Act of 2012. Section 3201(c) of The Middle Class Tax Extension and Job Creation Act of 2012 added a new subparagraph-1861(v)(1)(W) to the Act, which applied a reduction in bad debt payments to ''providers'' not addressed under subparagraphs 1861(v)(1)(T) or 1861 (v)(1)(V) of the Act. For the purpose of subparagraph 1861(v)(1)(W) of the Act, section 3201(c) of The Middle Class Tax Extension and Job Creation Act of 2012 defined ''providers'' as a supplier or any other type of entity that receives payment for bad debts under the authority of section 1861(v)(1)(A) of the Act. These providers include, but are not limited to, CAHs, RHCs, FQHCs, CMHCs, HMOs reimbursed on a cost basis, CMPs, HCPPs and ESRD facilities.

3. Overall Impact

We estimate that the proposed revisions to the ESRD PPS will result in an increase of approximately $320 million in payments to ESRD facilities in CY 2013, which includes the amount associated with the increase in the ESRDB market basket reduced by the productivity adjustment, updates to outlier amounts, and the effect of changing the blended payments from 50 percent under the composite rate payment and 50 percent under the ESRD PPS to 25 percent under the composite rate payment and 75 percent under the ESRD PPS.

We estimate that the proposed requirements related to the ESRD QIP for PY 2015 will cost approximately $12.4 million and the predicted payment reductions will equal about $8.5 million to result in a total impact from the proposed ESRD QIP requirements of $20.9 million.

In section IV of this proposed rule, we discuss the provisions required by section 3201 of The Middle Class Tax Extension and Job Creation Act of 2012, which apply percentage reductions in bad debt reimbursement to all providers eligible to receive bad debt reimbursement; these provisions are specifically prescribed by statute and thus, are self-implementing. Table 9 in section IV.C.1 of this proposed rule depicts a comparison of the bad debt payment percentages prior to and after FY 2013. We estimate these self implementing provisions of section 3201 of The Middle Class Tax Extension and Job Creation Act of 2012 will result in savings to the Medicare program of $10.92 billion over the period from 2012 through 2022.

B. Detailed Economic Analysis

1. CY 2013 End-Stage Renal Disease Prospective Payment System

a. Effects on ESRD Facilities

To understand the impact of the changes affecting payments to different categories of ESRD facilities, it is necessary to compare estimated payments (that is, payments made under the 100 percent ESRD PPS and those under the ESRD PPS blended payment during the transition) in CY 2012 to estimated payments in CY 2013. To estimate the impact among various classes of ESRD facilities, it is imperative that the estimates of payments in CY 2012 and CY 2013 contain similar inputs. Therefore, we simulated payments only for those ESRD facilities for which we are able to calculate both current payments and new payments.

For this proposed rule, we used the December 2011 update of CY 2011 National Claims History file as a basis for Medicare dialysis treatments and payments under the ESRD PPS. We updated the 2011 claims to 2012 and 2013 using various updates. The updates to the ESRD PPS base rate and the base composite rate portion of the blended rate during the transition are described in section II.B. of this proposed rule. In addition, in order to prepare an impact analysis, since some ESRD facilities opted to be paid the blended payment amount during the transition, we made various assumptions about price growth for the formerly separately billable drugs and laboratory tests with regard to the composite portion of the ESRD PPS blended payment during the transition. These rates of price growth are briefly outlined below, and are described in more detail in the CY 2011 ESRD PPS final rule (75 FR 49078 through 49080).

We used the CY 2011 amounts for the CYs 2012 and 2013 amounts for Supplies and Other Services, since this category primarily includes the $0.50 administration fee for separately billable Part B drugs and this fee continues to be an appropriate amount. Because some ESRD facilities will receive blended payments during the transition and receive payment for ESRD drugs and biologicals based on their average sales price plus 6 percent (ASP+6), we estimated price growth for these drugs and biologicals based on ASP+6 percent. We updated the last available quarter of actual ASP data for the top twelve drugs (the second quarter of 2012) thru 2013 by using the quarterly growth in the Producer Price Index (PPI) for Drugs, consistent with the method for addressing price growth in the ESRDB market basket. This resulted in increases of 1.5 percent, 0.6 percent, 2.8 percent, 0.3 percent, 0.9 percent and 1.4 percent, respectively, for the third quarter of 2012 thru the fourth quarter of 2013. Since the top twelve drugs account for over 99 percent of total former separately billable Part B drug payments, we used a weighted average growth of the top twelve drugs for the remainder. Table 10 below shows the updates used for the drugs.

We updated payments for laboratory tests paid under the laboratory fee schedule to 2012 and 2013 using the statutorily required update of the CPI–U increase with any legislative adjustments. For this proposed rule, the growth from 2011 to 2012 is 0.7 percent and the growth from 2011 to 2013 is 0.3 percent.

TABLE 10—PRICE INCREASES FROM 2011 TO 2012 AND 2011 TO 2013 OF FORMER SEPARATELY BILLABLE PART B DRUGS

	Price update 2011 to 2012 (%)	Price update 2011 to 2013 (%)
EPO	0.3	5.8
Paricalcitol	−27.4	−25.5
Sodium_ferric_glut	−20.3	−20.7
Iron_sucrose	−13.1	−11.0
Levocarnitine	22.7	29.3
Doxercalciferol	−72.2	−77.1
Calcitriol	90.7	65.7
Vancomycin	−8.2	−1.9
Alteplase	13.2	19.4
Aranesp	6.4	12.3
Daptomycin	9.5	15.0
Ferumoxytol	−7.0	−2.9
Other Injectibles	−7.4	−3.1

Table 11 shows the impact of the estimated CY 2013 ESRD payments compared to estimated payments to ESRD facilities in CY 2012.

TABLE 11—IMPACT OF PROPOSED CHANGES IN PAYMENTS TO ESRD FACILITIES FOR CY 2013 ESRD PROPOSED RULE

[Percent change in total payments to ESRD facilities (both program and beneficiaries)]

Facility type	Number of facilities	Number of treatments (in millions)	Effect of 2013 changes in outlier policy (%)	Effect of 2013 changes in wage indexes (%)	Effect of total 2013 changes [3] (%)
	A	B	C	D	E
All Facilities	5,633	37.0	0.4	0.0	3.1
Type:					
Freestanding	5,089	34.0	0.4	0.0	3.0
Hospital based	544	2.9	0.2	0.2	3.7
Ownership Type:					
Large dialysis organization	3,663	24.5	0.5	0.0	3.0
Regional chain	915	6.3	0.3	0.1	3.1
Independent	617	3.9	0.2	0.0	3.2
Hospital based [1]	429	2.2	0.2	0.3	3.7
Unknown	9	0.0	0.3	1.3	4.2
Geographic Location:					
Rural	1,249	6.1	0.5	−0.2	3.0
Urban	4,384	30.9	0.4	0.0	3.1
Census Region:					
East North Central	916	5.5	0.5	0.1	3.2
East South Central	464	2.8	0.6	−0.4	2.7
Middle Atlantic	623	4.5	0.4	0.1	3.2
Mountain	332	1.7	0.3	−0.2	2.8
New England	167	1.2	0.5	0.6	3.6
Pacific	662	5.0	0.2	0.5	3.3
Puerto Rico and Virgin Islands	41	0.3	−0.2	−2.4	0.4
South Atlantic	1,244	8.5	0.5	−0.3	2.9
West North Central	411	2.0	0.3	0.2	3.4
West South Central	773	5.4	0.4	−0.1	3.0
Facility Size:					
Less than 4,000 treatments [2]	1,043	2.8	0.3	0.2	3.4
4,000 to 9,999 treatments	2,163	10.4	0.5	0.0	3.1
10,000 or more treatments	2,270	23.4	0.4	0.0	3.1
Unknown	157	0.3	0.3	0.0	2.9
Percentage of Pediatric Patients:					
Less than 2%	5,524	36.6	0.4	0.0	3.1
Between 2% and 19%	45	0.3	0.3	0.0	3.1
Between 20% and 49%	9	0.0	−1.9	−0.1	2.0
More than 50%	55	0.0	−0.3	0.1	2.2

[1] Includes hospital based facilities not reported to have large dialysis organization or regional chain ownership.

[2] Of the 1,043 Facilities with less than 4,000 treatments, only 322 qualify for the low-volume adjustment. The low-volume adjustment is mandated by Congress, and is not applied to pediatric patients. The impact to these Low volume Facilities is a 3.5% increase in payments.

[3] Includes the effect of ESRDB Market Basket minus productivity increase of 2.5% to the ESRD PPS base and the Composite Rate. Includes the effect of the change in the drug add-on percentage from 14.3% to 14.0% for those facilities that opted to be paid under the transition. Includes the effect of the blend changing from 50/50 to 25/75 for CY 2012 to CY 2013 for those facilities that choose to be paid under the transition.

Note: Totals do not necessarily equal the sum of rounded parts.

Column A of the impact table indicates the number of ESRD facilities for each impact category and column B indicates the number of dialysis treatments (in millions). The overall effect of the proposed changes to the outlier payment policy described in section II.B.7 of this proposed rule, is shown in column C. For CY 2013, the impact on all facilities as a result of the changes to the outlier payment policy would be a 0.4 percent increase in estimated payments. The estimated impact of the changes to outlier payment policy ranges from a 1.9 percent decrease to a 0.6 percent increase. Most ESRD facilities are anticipated to experience a positive effect in their estimated CY 2013 payments as a result of the proposed outlier policy changes.

Column D shows the effect of the wage index on ESRD facilities and reflects the CY 2013 wage index values for the composite rate portion of the blended payment during the transition and the ESRD PPS payments. Facilities located in the census region of Puerto Rico and the Virgin Islands would receive a 2.4 percent decrease in estimated payments in CY 2013. Since most of the facilities in this category are located in Puerto Rico, the decrease is primarily due to the reduction in the wage index floor, (which only affects facilities in Puerto Rico in CY 2013). The other categories of types of facilities in the impact table show changes in estimated payments ranging from a 0.4 percent decrease to a 1.3 percent increase due to the update of the wage index.

Column E reflects the overall impact (that is, the effects of the proposed outlier policy changes, the proposed wage index, the effect of the ESRDB market basket increase minus productivity adjustment, and the effect of the change in the blended payment percentage from 50 percent of payments based on the composite rate system and 50 percent based on the ESRD PPS in 2012, to 25/75, respectively, for 2013, for those facilities that opted to be paid under the transition). We expect that overall, ESRD facilities will experience a 3.1 percent increase in estimated payments in 2013. ESRD facilities in Puerto Rico and the Virgin Islands are expected to receive a 0.4 percent increase in their estimated payments in CY 2013. This small increase is primarily due to the negative impact of the wage index. The other categories of types of facilities in the impact table show positive impacts ranging from an increase of 2.0 percent to 4.2 percent in their 2013 estimated payments.

b. Effects on Other Providers

Under the ESRD PPS, ESRD facilities are paid directly for the renal dialysis bundle and other provider types such as laboratories, DME suppliers, and pharmacies, may no longer bill Medicare directly for renal dialysis services. Rather, effective January 1, 2011, such other providers can only furnish renal dialysis services under arrangements with ESRD facilities and must seek payment from ESRD facilities rather than Medicare. Under the ESRD PPS, Medicare pays ESRD facilities one payment for renal dialysis services, which may have been separately paid to suppliers by Medicare prior to the implementation of the ESRD PPS. Therefore, in CY 2013, the third year of the ESRD PPS, we estimate that the proposed ESRD PPS will have zero impact on these other providers.

c. Effects on the Medicare Program

We estimate that Medicare spending (total Medicare program payments) for ESRD facilities in 2013 will be approximately $8.7 billion. This estimate is based on various price update factors discussed in section VII.B.1.a in this proposed rule and takes into account a projected increase in fee-for-service Medicare dialysis beneficiary enrollment of 4.6 percent in CY 2013.

d. Effects on Medicare Beneficiaries

Under the ESRD PPS, beneficiaries are responsible for paying 20 percent of the ESRD PPS payment amount or blended payment amount for patients treated in facilities going through the ESRD PPS transition. As a result of the projected 3.1 percent overall increase in the proposed ESRD PPS payment amounts in CY 2013, we estimate that there will be an increase in beneficiary co-insurance payments of 3.1 percent in CY 2013, which translates to approximately $70 million.

e. Alternatives Considered

We considered eliminating the AY modifier use by ESRD facilities in CY 2013, which could address program integrity concerns but could also require Medicare beneficiaries to incur additional injections, medical visits and co-insurance liabilities and accordingly, we did not pursue this alternative. Rather, we decided to monitor the use of the AY modifier and consider the elimination of the AY modifier in future rulemaking if we determine that it is being used inappropriately.

2. End-Stage Renal Disease Quality Incentive Program

a. Effects of the PY 2015 ESRD QIP

The ESRD QIP provisions are intended to prevent possible reductions in the quality of ESRD dialysis facility services provided to beneficiaries as a result of payment changes under the ESRD PPS by implementing a ESRD QIP that reduces ESRD payments by up to 2 percent for dialysis facilities that fail to meet or exceed a Total Performance Score with respect to performance standards established by the Secretary with respect to certain specified measures. The methodology that we are proposing to determine a facility's Total Performance Score is described in section III.C.10 of this proposed rule. Any reductions in ESRD payments would begin on January 1, 2015 for services furnished on or after January 1, 2015.

As a result, based on the ESRD QIP outlined in this proposed rule, we estimate that, of the total amount of dialysis facilities (including those not receiving an ESRD QIP Total Performance Score), approximately 14 percent or 801 of the facilities would likely receive a payment reduction for PY 2015. Facilites that do not receive a TPS are not eligible for a payment reduction.

The ESRD QIP impact assessment assumes an initial count of 5,633 dialysis facilities paid through the PPS. Table 12 shows the overall estimated distribution of payment reductions resulting from the PY 2015 ESRD QIP.

TABLE 12—ESTIMATED DISTRIBUTION OF PY 2015 ESRD QIP PAYMENT REDUCTIONS

Payment reduction (%)	Number of facilities	Percent of facilities
0.0	4563	85.1
0.5	470	8.8
1.0	190	3.5
1.5	77	1.4
2.0	64	1.2

* **Note:** This table excludes 268 facilities that did not receive a score because they did not have enough data to receive a Total Performance Score.

To estimate whether or not a facility would receive a payment reduction under the proposed approach, we scored each facility on achievement and improvement for each of the proposed clinical measures using the most recent data available for each measure shown in Table 13.

TABLE 13—DATA USED TO ESTIMATE PY 2015 ESRD QIP PAYMENT REDUCTIONS

Measure	Period of time used to calculate achievement thresholds, performance standards, benchmarks, and improvement thresholds	Performance period
Hemoglobin Greater Than 12 g/dL	Jan 2010–Dec 2010	Jan 2011–Sep 2011
Vascular Access Type:		
% Fistula	Oct 2010–Mar 2011	Apr 2011–Sep 2011.
% Catheter	Oct 2010–Mar 2011	Apr 2011–Sep 2011.
Kt/V:		
Adult HD	Jul 2010–Dec 2010	Jan 2011–Sep 2011.
Adult PD	Jul 2010–Dec 2010	Jan 2011–Sep 2011.
Pediatric HD	Jul 2010–Dec 2010	Jan 2011–Sep 2011.
Hypercalcemia	Mar 2010–Dec 2010	Apr 2011–Oct 2011.

For the all of the measures except Hypercalcemia, we used claims data for these calculations. For the Hypercalcemia measure, we used CROWNWeb data. Clinical measures with less than 11 cases for a facility were not included in that facility's Total Performance Score. Clinical measures with 11–25 cases for a facility received an adjustment as outlined in section III.C.1 of this proposed rule. Each facility's Total Performance Score was compared to the estimated minimum Total Performance Score and the payment reduction table found in section III.C.12 of this proposed rule. Facilities were required to have a score on at least one clinical measure to receive a Total Performance Score. For these simulations, reporting measures were not included due to lack of data availability. Therefore, the simulated facility Total Performance Scores were calculated using only the clinical measure scores.

To estimate the total payment reductions in PY 2015 for each facility resulting from this proposed rule, we multiplied the total Medicare payments to the facility during the one year period between October 2010 and September 2011 by the facility's estimated payment reduction percentage expected under the ESRD QIP, yielding a total payment reduction amount for each facility: (Total ESRD payment in October 2010 through September 2011 times the estimated payment reduction percentage). For PY 2015 the total payment reduction for all of the 801 facilities expected to receive a reduction is approximately $8.5 million ($8,523,594). Further, we estimate that the total costs associated with the collection of information requirements for PY 2015 described in section V.C.2 of this proposed rule would be approximately $12.4 million for all ESRD facilities. As a result, we estimate that ESRD facilities will experience an aggregate impact of $20.9 million ($12,398,455 + 8,523,594 = $20,922,049) as a result of the PY 2015 ESRD QIP.

Table 14 below shows the estimated impact of the finalized ESRD QIP payment reductions to all ESRD facilities for PY 2015. The table details the distribution of ESRD facilities by facility size (both among facilities considered to be small entities and by number of treatments per facility), geography (both urban/rural and by region), and by facility type (hospital based/freestanding facilities). Given that the time periods used for these calculations will differ from those we propose to use for the PY 2015 ESRD QIP, the actual impact of the PY 2015 ESRD QIP may vary significantly from the values provided here.

TABLE 14—IMPACT OF PROPOSED QIP PAYMENT REDUCTIONS TO ESRD FACILITIES FOR PY 2015

	Number of facilities	*Number of Medicare treatments 2011 (in millions)* [3]	*Number of facilities with QIP score*	*Number of facilities expected to receive a payment reduction*	*Payment reduction (percent change in total ESRD payments)*
All Facilities	5,633	37.0	5,364	801	−0.12
Facility Type:					
Freestanding	5,089	34.0	4,956	679	−0.10

TABLE 14—IMPACT OF PROPOSED QIP PAYMENT REDUCTIONS TO ESRD FACILITIES FOR PY 2015—Continued

	Number of facilities	Number of Medicare treatments 2011 (in millions) [3]	Number of facilities with QIP score	Number of facilities expected to receive a payment reduction	Payment reduction (percent change in total ESRD payments)
Hospital-based	544	2.9	408	122	−0.31
Ownership Type:					
Large Dialysis	3,663	24.5	3, 586	459	−0.09
Regional Chain	915	6.3	876	119	−0.12
Independent	617	3.9	583	125	−0.20
Hospital-based (non-chain)	429	2.2	314	96	−0.33
Unknown	9	0.0	5	2	−0.20
Facility Size:					
Large Entities	4,578	30.8	4,462	578	−0.09
Small Entities [1]	1,046	6.1	897	221	−0.24
Unknown	9	0.0	5	2	−0.20
Urban/Rural Status:					
Rural	1,249	6.1	1,186	173	−0.11
Urban	4,384	30.9	4,178	628	−0.12
Census Region:					
Northeast	784	5.7	741	117	−0.13
Midwest	1,320	7.5	1,223	229	−0.16
South	2,476	16.7	2,407	346	−0.11
West	991	6.7	954	96	−0.08
US Territories [2]	62	0.3	39	13	−0.24
Census Division:					
East North Central	916	5.5	847	175	−0.18
East South Central	464	2.8	451	65	−0.12
Middle Atlantic	623	4.5	582	100	−0.14
Mountain	332	1.7	318	37	−0.08
New England	167	1.2	159	17	−0.10
Pacific	662	5.0	636	59	−0.08
South Atlantic	1,244	8.5	1,209	188	−0.12
West North Central	411	2.0	376	54	−0.11
West South Central	773	5.4	747	93	−0.10
US Territories [2]	41	0.3	39	13	−0.24
Facility Size (# of total treatments):					
Less than 4,000 treatments	1,043	2.8	899	143	−0.17
4,000–9,999 treatments	2,163	10.4	2,121	299	−0.10
Over 10,000 treatments	2,270	23.4	2,249	324	−0.10
Unknown	157	0.3	95	35	−0.47

[1] Small Entities include hospital-based and satellite facilities and non-chain facilities based on DFC self-reported status.
[2] Includes Puerto Rico and Virgin Islands.
[3] Based on claims data through September 2011.

b. Alternatives Considered for the PY 2015 ESRD QIP

In developing the proposed PY 2015 ESRD QIP, we selected measures that we believe are important indicators of patient outcomes and quality of care as discussed in sections III.C.1, III.C.2, and III.C.3 of this proposed rule. Poor management of anemia and inadequate dialysis, for example, can lead to avoidable hospitalizations, decreased quality of life, and death. Infections are also a leading cause of death and hospitalization among hemodialysis patients, but there are proven infection control methods that have been shown effective in reducing morbidity and mortality. We also considered proposing to adopt the Standardized Hospitalization Ratio Admissions (SHR) measure and the Standardized Mortality Ratio (SMR) measures as part of the PY 2015 ESRD QIP. While we decided not to propose to adopt the SHR and SMR measures for the PY 2015 ESRD QIP, we will publicly report these measure rates/ratios to the public via DFC to encourage facilities to improve their care. We believe the measures selected will allow us to continue focusing on improving the quality of care that Medicare beneficiaries receive from ESRD dialysis facilities.

In developing the proposed scoring methodology for the PY 2015 ESRD QIP, we considered a number of alternatives including various improvement ranges, achievement thresholds, and benchmarks. We also considered whether some of the new measures should be scored based on only achievement. We also discussed scoring some of the clinical measures using a binary methodology (that is, facilities receive either zero or 10 points for missing or achieving a standard, respectively). We ultimately decided to propose to mirror the PY 2014 ESRD QIP scoring methodology as closely as possible. We aim to design a scoring methodology that is straightforward and transparent to facilities, patients, and other stakeholders, and we believe one of the ways to obtain this transparency is to be as consistent as possible from year-to-year of the program. We believe that this consistency will allow us to better assess the impacts of the ESRD QIP upon facilities and beneficiaries. Finally, we believe that all scoring methodologies for Medicare VBP programs should be aligned as appropriate given their specific statutory requirements, and the scoring methodology proposed for the ESRD QIP is similar to the Hospital Inpatient VBP Program.

When deciding upon how to best score the Vascular Access Type and Kt/V Dialysis Adequacy measure topics, we considered combining all of the

measures within the measure topic into one composite measure (that is, having one, combined numerator and one, combined denominator for all of the measures within the topic) rather than individually scoring each measure and weighting it appropriately in the measure topic. We believe that it is important to mirror the NQF specifications for each measure as much as possible; we also heeded the suggestion of the Measures Application Partnership to further test composite measures before implementing them. Therefore, we decided to propose measure topics where each measure within the measure topic is scored individually and then weighted appropriately.

In order to receive credit for a month of reporting, we considered proposing to require facilities to report the required information for less than 100 percent of their patients for the Mineral Metabolism and Anemia Management reporting measures. Specifically, we considered lowering the threshold to reporting 98 percent of patients for a month in order to receive credit for that month. We ultimately decided that, in order to encourage the best care for patients, it is appropriate to hold facilities to the higher standard. Because the measures allow facilities to report values taken by other providers/facilities and because we require reporting only for those hemodialysis patients that a facility sees at least twice in a claim month or for those peritoneal dialysis patients for which a facility submits a claim, we believe that the measures afford facilities enough flexibility while also requiring the best quality care.

We also considered multiple baseline periods for purposes of scoring facilities on achievement and improvement. We considered periods of the same time and duration, periods occurring at different times, and periods with various durations. We ultimately decided that a baseline period of 12 months for both the achievement and improvement scores is best because it is consistent with the PY 2014 program. Additionally, a 12-month baseline period prevents issues related to seasonality. We decided to propose achievement and improvement baseline periods occurring over different periods of time because we believe that this approach mitigates data lag as much as possible and also allows us to score all of the measures on both achievement and improvement. Finally, we decided to propose an achievement baseline period spanning a calendar year (CY 2011) because this approach allows us to publish the numerical values for the performance standards before the beginning of the performance period.

In deciding upon the minimum number of cases required for a facility to be scored on a measure, we reviewed and discussed many options. We considered keeping the program the same as PY 2014 by excluding measures with less than 11 cases and applying no adjustment. We also discussed excluding measures with less than 26 and less than 51 cases. Finally, we discussed an adjustment applicable to measures with 26–50 cases. We believe that, given the alternatives, the proposed methodology strikes an appropriate balance between maximizing facility inclusion in the program and preventing results for very small facilities from limiting the reliability of total performance scores.

Finally, in deciding upon the calculation of the minimum Total Performance Score, we considered a score that includes a value for each of the reporting measures. We decided, however, to propose to adhere to the PY 2014 methodology—calculating the minimum Total Performance Score as if the reporting measures were excluded from the calculation. Again, we believe that consistently scoring the ESRD QIP will allow us to better assess its impacts and allow facilities to plan for future years of the program.

3. Reductions to Bad Debt Payments for All Medicare Providers

Section 3201 of The Middle Class Tax Extension and Job Creation Act of 2012 that requires reductions in bad debt reimbursement to all providers, supplies and other entities eligible to receive bad debt reimbursement will have a significant impact on the operations of all affected entities. However, these provisions are specifically prescribed by statute and thus, are self-implementing. It is estimated that the savings in the CY 2013 would be $330 million.

C. Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars_a004_a-4*), in Table 15 below, we have prepared an accounting statement showing the classification of the transfers and costs associated with the various provisions of this proposed rule.

TABLE 15—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED TRANSFERS AND COSTS/SAVINGS ESRD PPS FOR CY 2013

Category	Transfers
Annualized Monetized Transfers	$250 million.
From Whom to Whom	Federal government to ESRD providers.
Category	**Transfers**
Increased Beneficiary Co-insurance Payments	$70 million.
From Whom to Whom	Beneficiaries to ESRD providers.
ESRD QIP for PY 2015	
Category	**Transfers**
Annualized Monetized Transfers	−$8.5 million.*
From Whom to Whom	Federal government to ESRD providers.
Category	**Costs**
Annualized Monetized ESRD Provider Costs	12.4 million.**

TABLE 15—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED TRANSFERS AND COSTS/SAVINGS ESRD PPS FOR CY 2013—Continued

Category	Transfers
Savings from Congressionally Mandated Reductions of Bad Debt Payments in CY 2013	
Category	Transfers
Annualized Monetized Bad Debt Payments	$ − 330 million.
From Whom to Whom	Federal government to Medicare providers.

* It is the reduced payment to the ESRD facilities, which fall below the quality standards as stated in section III.C.12 of this proposed rule.
** It is the cost associated with the collection of information requirements for all ESRD facilities.

VIII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (September 19, 1980, Pub. L. 96–354) (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. Approximately 19 percent of ESRD dialysis facilities are considered small entities according to the Small Business Administration's (SBA) size standards, which classifies small businesses as those dialysis facilities having total revenues of less than $34.5 million in any 1 year. Individuals and States are not included in the definitions of a small entity. For more information on SBA's size standards, see the Small Business Administration's Web site at *http://sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf* (Kidney Dialysis Centers are listed as 621492 with a size standard of $34.5 million).

The claims data used to estimate payments to ESRD facilities in this RFA analysis and RIA do not identify which dialysis facilities are part of a large dialysis organization (LDO), regional chain, or other type of ownership because each individual dialysis facility has its own provider number and bills Medicare using this number. Therefore, in previous RFA analyses and RIAs presented in proposed and final rules that updated the basic case-mix adjusted composite payment system, we considered each ESRD facility to be a small entity for purposes of the RFA analysis. However, we conducted a special analysis for this proposed rule that enabled us to identify the ESRD facilities that are part of an LDO or regional chain and therefore, were able to identify individual ESRD facilities that would be considered small entities.

We do not believe ESRD facilities are operated by small government entities such as counties or towns with populations of 50,000 or less, and therefore, they are not enumerated or included in this estimated RFA analysis. Individuals and States are not included in the definition of a small entity.

For purposes of the RFA, we estimate that approximately 19 percent of ESRD facilities are small entities as that term is used in the RFA (which includes small businesses, nonprofit organizations, and small governmental jurisdictions). This amount is based on the number of ESRD facilities shown in the ownership category in Table 11. Using the definitions in this ownership category, we consider the 617 facilities that are independent and the 429 facilities that are shown as hospital-based to be small entities. The ESRD facilities that are owned and operated by LDOs and regional chains would have total revenues of more than $34.5 million in any year when the total revenues for all locations are combined for each business (individual LDO or regional chain), and are not, therefore, included as small entities.

For the ESRD PPS updates proposed in this rule, a hospital-based ESRD facility (as defined by ownership type) is estimated to receive a 3.7 percent increase in payments for CY 2013. An independent facility (as defined by ownership type) is estimated to receive a 3.2 percent increase in payments for 2013.

Based on the proposed QIP payment reduction impacts to ESRD facilities for PY 2015, we estimate that of the 801 ESRD facilities expected to receive a payment reduction, 221 ESRD small entity facilities would experience a payment reduction (ranging from 0.5 percent up to 2.0 of total payments), as presented in Table 14 above. We anticipate the payment reductions to average approximately $10,462 per facility among the 801 facilities receiving a payment reduction, with an average of $12,509 per small entity facilities receiving a payment reduction. Using our projections of facility performance, we then estimated the impact of anticipated payment reductions on ESRD small entities, by comparing the total payment reductions for the 221 small entities expected to receive a payment reduction, with the aggregate ESRD payments to all small entities. We estimate that there are a total of 897 small entity facilities. For this entire group of 897 ESRD small entity facilities, a decrease of 0.24 percent in aggregate ESRD payments is observed.

Therefore, the Secretary has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities. We solicit comment on the RFA analysis provided.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. Any such regulatory impact 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 do not believe this proposed rule will have a significant impact on operations of a substantial number of small rural hospitals because most dialysis facilities are freestanding. While there are 178 rural hospital-based dialysis facilities, we do not know how many of them are based at hospitals with fewer than 100 beds. However, overall, the 178 rural hospital-based dialysis facilities will experience an estimated 3.4 percent increase in payments. As a result, this proposed rule is estimated to not have a significant impact on small rural hospitals. Therefore, the Secretary has determined that this proposed rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

In addition, section 3201 of The Middle Class Tax Extension and Job Creation Act of 2012 that requires reductions in bad debt reimbursement to all providers, supplies and other

entities eligible to receive bad debt reimbursement will have a significant impact on the operations of a substantial number of small entities and small rural hospitals. However, these provisions are specifically prescribed by the Congress and thus, are self-implementing. Thus, we are not providing a Regulatory Flexibility Act Analysis to codify these mandated reductions in bad debt payments.

IX. Unfunded Mandates Reform Act Analysis

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year $100 million in 1995 dollars, updated annually for inflation. In 2012, that threshold is approximately $139 million. This proposed rule does not include any mandates that would impose spending costs on State, local, or Tribal governments in the aggregate, or by the private sector, of $139 million.

X. Federalism Analysis

Executive Order 13132 on Federalism (August 4, 1999) 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. We have reviewed this proposed rule under the threshold criteria of Executive Order 13132, Federalism, and have determined that it will not have substantial direct effects on the rights, roles, and responsibilities of States, local or Tribal governments.

XI. Files Available to the Public Via the Internet

This section lists the Addenda referred to in the preamble of this proposed rule. Beginning in CY 2012, the Addenda for the annual ESRD PPS proposed and final rulemakings will no longer appear in the **Federal Register**. Instead, the Addenda will be available only through the Internet. We will continue to post the Addenda through the Internet.

Readers who experience any problems accessing the Addenda that are posted on the CMS Web site at *http://www.cms.gov/ESRDPayment/PAY/list.asp*, should contact Michelle Cruse at (410) 786–7540.

List of Subjects

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 417

Administrative practice and procedure, Grant programs—health, Health care, Health insurance, Health maintenance organizations (HMOs), Loan programs—health, Medicare, 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 follows:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; OPTIONAL PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

1. The authority citation for part 413 is revised to read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i), and (n), 1861(v), 1871, 1881, 1883 and 1886 of the Social Security Act (42 U.S.C. 1302, 1395d(d), 1395f(b), 1395g, 1395l(a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww); and sec. 124 of Pub. L. 106–113 (113 Stat. 1501A–332) and sec. 3201 of Pub. L. 112–96 (126 Stat. 156).

Subpart F—Specific Categories of Costs

2. Section 413.89 is amended by revising paragraphs (h)(1) introductory text, (h)(1)(iv), (h)(2), (h)(3), and (i), and by adding paragraphs (h)(1)(v) and (h)(4) to read as follows:

§ 413.89 Bad debts, charity, and courtesy allowances.

* * * * *

(h) * * *

(1) *Hospitals.* In determining reasonable costs for hospitals, the amount of allowable bad debt (as defined in paragraph (e) of this section) is reduced:

* * * * *

(iv) For cost reporting periods beginning during fiscal years 2001 through 2012, by 30 percent.

(v) For cost reporting periods beginning during a subsequent fiscal year, by 35 percent.

(2) *Skilled nursing facilities and swing bed hospitals.* For the purposes of this paragraph (h)(2), a dual eligible individual is defined as an individual that is entitled to benefits under Part A of Medicare and is determined eligible by the State for medical assistance under Title XIX of the Act as described under paragraph (2) of the definition of a ''full-benefit dual eligible individual'' at § 423.772 of this chapter. In determining reasonable costs for a skilled nursing facility and for post-hospital SNF care furnished in a swing bed hospital, as defined in 42 CFR 413.114(b) of this part, the amount of allowable bad debt (as defined in paragraph (e) of this section) is reduced:

(i) *For non-dual eligible individuals*—(A) For cost reporting periods beginning during fiscal years 2006 through 2012, by 30 percent, for a patient in a skilled nursing facility.

(B) For cost reporting periods beginning during a subsequent fiscal year, by 35 percent, for a patient in a skilled nursing facility or receiving post-hospital SNF care in a swing bed hospital.

(ii) *For dual eligible individuals*—(A) For cost reporting periods beginning during fiscal year 2013, by 12 percent, for a patient in a skilled nursing facility or receiving post-hospital SNF care in a swing bed hospital.

(B) For cost reporting periods beginning during fiscal year 2014, by 24 percent, for a patient in a skilled nursing facility or receiving post-hospital SNF care in a swing bed hospital.

(C) For cost reporting periods beginning during a subsequent fiscal year, by 35 percent, for a patient in a skilled nursing facility or receiving post-hospital SNF care in a swing bed hospital.

(3) *End-stage renal dialysis facilities.* In determining reasonable costs for an end-stage renal dialysis facility, the amount of allowable bad debt (as defined in paragraph (e) of this section) is:

(i) For cost reporting periods beginning before October 1, 2012, reimbursed up to the facility's costs.

(ii) For cost reporting periods beginning during fiscal year 2013, reduced by 12 percent and reimbursed up to the facility's costs.

(iii) For cost reporting periods beginning during fiscal year 2014, reduced by 24 percent and reimbursed up to the facility's costs.

(iv) For cost reporting periods beginning during a subsequent fiscal year, reduced by 35 percent and reimbursed up to the facility's costs.

(4) *All other providers.* In determining reasonable costs for all other providers, suppliers and other entities not described elsewhere in paragraph (h) of this section that are eligible to receive

reimbursement for bad debts under this section, the amount of allowable bad debts (as defined in paragraph (e) of this section) is reduced:

(i) For cost reporting periods beginning during fiscal year 2013, by 12 percent.

(ii) For cost reporting periods beginning during fiscal year 2014, by 24 percent.

(iii) For cost reporting periods beginning during a subsequent fiscal year, by 35 percent.

(i) *Exceptions applicable to Bad Debt Reimbursement.* (1) Bad debts arising from covered services paid under a reasonable charge-based methodology or a fee schedule are not reimbursable under the program.

(2) For end-stage renal dialysis services furnished on or after January 1, 2011 and paid for under the end-stage renal dialysis prospective payment system described in § 413.215, bad debts arising from covered items or services that, prior to January 1, 2011 were paid under a reasonable charge-based methodology or a fee schedule, including but not limited to drugs, laboratory tests, and supplies are not reimbursable under the program.

§ 413.178 [Removed and Reserved]

3. Section 413.178 is removed and reserved.

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

4. 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 O—Medicare Payment: Cost Basis

5. Section 417.536 is amended by revising paragraph (f)(1) to read as follows:

§ 417.536 Cost payment principles.

* * * * *

(f) * * *

(1) Bad debts attributable to Medicare deductible and coinsurance amounts are allowable only if the requirements of § 413.89 of this chapter are met, subject to the limitations described under § 413.89(h) and the exceptions for services described under § 413.89(i).

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 22, 2012.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: June 27, 2012.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

[FR Doc. 2012–16566 Filed 7–2–12; 4:15 pm]

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 32

2012–2013 Refuge-Specific Hunting and Sport Fishing Regulations; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

[Docket No. FWS–R9–NWRS–2012–0022; FXRS126509000004A–123–FF09R20000]

RIN 1018–AY37

2012–2013 Refuge-Specific Hunting and Sport Fishing Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service proposes to add one refuge to the list of areas open for hunting and/or sport fishing, close one refuge to hunt activities, close one hunt opportunity at one refuge, and increase the hunting activities available at 16 other refuges, along with pertinent refuge-specific regulations on other refuges that pertain to migratory game bird hunting, upland game hunting, big game hunting, and sport fishing for the 2012–2013 season.

DATES: We will accept comments received or postmarked on or before August 10, 2012.

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

- *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search field, enter Docket No. FWS–R9–NWRS–2012–0022, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting screen, find the correct document and submit a comment by clicking on ''Comment Now!''
- *By hard copy:* Submit by U.S. mail or hand delivery: Public Comments Processing, Attn: FWS–R9–NWRS–2012–0022; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will not accept email or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Request for Comments section below for more information). For information on specific refuges' public use programs and the conditions that apply to them or for copies of compatibility determinations for any refuge(s), contact individual programs at the addresses/phone numbers given in ''Available Information for Specific Refuges'' under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Leslie A. Marler, (703) 358–2397.

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Administration Act of 1966 closes national wildlife refuges in all States except Alaska to all uses until opened. The Secretary of the Interior (Secretary) may open refuge areas to any use, including hunting and/or sport fishing, upon a determination that such uses are compatible with the purposes of the refuge and National Wildlife Refuge System (Refuge System or our/we) mission. The action also must be in accordance with provisions of all laws applicable to the areas, developed in coordination with the appropriate State fish and wildlife agency(ies), consistent with the principles of sound fish and wildlife management and administration, and otherwise in the public interest. These requirements ensure that we maintain the biological integrity, diversity, and environmental health of the Refuge System for the benefit of present and future generations of Americans.

We annually review refuge hunting and sport fishing programs to determine whether to include additional refuges or whether individual refuge regulations governing existing programs need modifications. Changing environmental conditions, State and Federal regulations, and other factors affecting fish and wildlife populations and habitat may warrant modifications to refuge-specific regulations to ensure the continued compatibility of hunting and sport fishing programs and to ensure that these programs will not materially interfere with or detract from the fulfillment of refuge purposes or the Refuge System's mission.

Provisions governing hunting and sport fishing on refuges are in title 50 of the Code of Federal Regulations in part 32 (50 CFR part 32). We regulate hunting and sport fishing on refuges to:

- Ensure compatibility with refuge purpose(s);
- Properly manage the fish and wildlife resource(s);
- Protect other refuge values;
- Ensure refuge visitor safety; and
- Provide opportunities for quality fish- and wildlife-dependent recreation.

On many refuges where we decide to allow hunting and sport fishing, our general policy of adopting regulations identical to State hunting and sport fishing regulations is adequate in meeting these objectives. On other refuges, we must supplement State regulations with more-restrictive Federal regulations to ensure that we meet our management responsibilities, as outlined in the ''Statutory Authority'' section. We issue refuge-specific hunting and sport fishing regulations when we open wildlife refuges to migratory game bird hunting, upland game hunting, big game hunting, or sport fishing. These regulations list the wildlife species that you may hunt or fish, seasons, bag or creel (container for carrying fish) limits, methods of hunting or sport fishing, descriptions of areas open to hunting or sport fishing, and other provisions as appropriate. You may find previously issued refuge-specific regulations for hunting and sport fishing in 50 CFR part 32. In this rulemaking, we are also proposing to standardize and clarify the language of existing regulations.

Statutory Authority

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee, as amended by the National Wildlife Refuge System Improvement Act of 1997 [Improvement Act]) (Administration Act), and the Refuge Recreation Act of 1962 (16 U.S.C. 460k—460k–4) (Recreation Act) govern the administration and public use of refuges.

Amendments enacted by the Improvement Act, built upon the Administration Act in a manner that provides an ''organic act'' for the Refuge System, are similar to those that exist for other public Federal lands. The Improvement Act serves to ensure that we effectively manage the Refuge System as a national network of lands, waters, and interests for the protection and conservation of our Nation's wildlife resources. The Administration Act states first and foremost that we focus our Refuge System mission on conservation of fish, wildlife, and plant resources and their habitats. The Improvement Act requires the Secretary, before allowing a new use of a refuge, or before expanding, renewing, or extending an existing use of a refuge, to determine that the use is compatible with the purpose for which the refuge was established and the mission of the Refuge System. The Improvement Act established as the policy of the United States that wildlife-dependent recreation, when compatible, is a legitimate and appropriate public use of the Refuge System, through which the American public can develop an appreciation for fish and wildlife. The Improvement Act established six wildlife-dependent recreational uses as the priority general public uses of the Refuge System. These uses are: hunting, fishing, wildlife observation and photography, and environmental education and interpretation.

The Recreation Act authorizes the Secretary to administer areas within the Refuge System for public recreation as

an appropriate incidental or secondary use only to the extent that doing so is practicable and not inconsistent with the primary purpose(s) for which Congress and the Service established the areas. The Recreation Act requires that any recreational use of refuge lands be compatible with the primary purpose(s) for which we established the refuge and not inconsistent with other previously authorized operations.

The Administration Act and Recreation Act also authorize the Secretary to issue regulations to carry out the purposes of the Acts and regulate uses.

We develop specific management plans for each refuge prior to opening it to hunting or sport fishing. In many cases, we develop refuge-specific regulations to ensure the compatibility of the programs with the purpose(s) for which we established the refuge and the Refuge System mission. We ensure initial compliance with the Administration Act and the Recreation Act for hunting and sport fishing on newly acquired refuges through an interim determination of compatibility made at or near the time of acquisition. These regulations ensure that we make the determinations required by these acts prior to adding refuges to the lists of areas open to hunting and sport fishing in 50 CFR part 32. We ensure continued compliance by the development of comprehensive conservation plans, specific plans, and by annual review of hunting and sport fishing programs and regulations.

Amendments to Existing Regulations

This document proposes to codify in the Code of Federal Regulations all of the Service's hunting and/or sport fishing regulations that are applicable at Refuge System units previously opened to hunting and/or sport fishing. We are doing this to better inform the general public of the regulations at each refuge, to increase understanding and compliance with these regulations, and to make enforcement of these regulations more efficient. In addition to now finding these regulations in 50 CFR part 32, visitors to our refuges will usually find them reiterated in literature distributed by each refuge or posted on signs.

We have cross-referenced a number of existing regulations in 50 CFR parts 26, 27, 28, and 32 to assist hunting and sport fishing visitors with understanding safety and other legal requirements on refuges. This redundancy is deliberate, with the intention of improving safety and compliance in our hunting and sport fishing programs.

TABLE 1—CHANGES FOR 2012–2013 HUNTING/FISHING SEASON

Refuge/region	State	Migratory bird hunting	Upland game hunting	Big game hunting	Sport fishing
Big Muddy (3)	Missouri	C	C	C	Already open.
Big Oaks (3)	Indiana	Closed	Already open	C	Already open.
Block Island (3)	Rhode Island	Closed	Closed	B deer	Already open.
Bond Swamp (4)	Georgia	B	B	C/D turkey	Already open.
Chickasaw (4)	Tennessee	C	C	C	Already open.
Deer Flat (1)	Idaho	Already open	Already open	C	Already open.
Detroit River International (3)	Michigan	A	A	A	Closed.
Hagerman (2)	Texas	Already open	Already open	D turkey	Already open.
Hakalau Forest (1)	Hawaii	Closed	Closed	E	Closed.
Hanford Reach/Saddle Mt. (1)	Washington	C	C/D chukar	C	Already open.
Julia Butler Hansen (1)	Oregon	C	Closed	Closed	Already open.
Lower Hatchie (4)	Tennessee	C	C	C	Already open.
Minnesota Valley (3)	Minnesota	C	C	C	Already open.
Ninigret (5)	Rhode Island	Closed	Closed	B deer	Already open.
Red Rock Lakes (6)	Montana	C	Closed	C	Already open.
Santee (4)	South Carolina	E	Already open	Already open	Already open.
Upper Ouachita (4)	Louisiana	C	C	C	Already open.
Waccamaw (4)	South Carolina	D Woodcock	Already open	C	Already open.
William L. Finley (1)	Oregon	Closed	Closed	C	Already open.

A = New refuge opened.
B = New activity on a refuge previously opened to other activities.
C = Refuge already open to activity but added new land/waters which increased activity.
D = Refuge already open to activity but added new species to hunt.
E = Refuge closing to previously opened activity.

We are closing and reserving big game hunting on the Hakalau Forest National Wildlife Refuge in the State of Hawaii. We opened the Maulua tract (2,000 acres) of Hakalau Forest NWR to the public for pig and cattle hunting in 1991 (with most of the area never hunted) but closed it in 2000 as hunting had reduced the pig population to such low numbers as to provide an unacceptable hunting experience. As there were few cattle, they were quickly removed. We have received no requests for approval to hunt on Hakalau Forest NWR since 2000.

We are closing and reserving migratory bird game hunting on Santee National Wildlife Refuge in the State of South Carolina. The refuge will remain open both for upland and big game hunting as well as for sport fishing. The refuge established a mourning dove hunt in 1975 when historic land management practices on the refuge were productive for both resident and migratory mourning dove habitat. We farmed over 500 acres of corn, wheat, and soybean annually in the Cuddo Unit of the refuge. Over time, however, land management practices and objectives for habitat management adapted and changed, and farming practices are now minimal. Without habitat suitable for mourning dove or the hunting of mourning dove, the refuge has had no public interest in the morning dove hunt. There have been no recorded mourning dove hunting visits since 2003.

We also added Rainwater Basin Wetland Management District in the State of Nebraska to the list of refuges in part 32. As set forth in 50 CFR 32.1 and 32.4, ''Lands acquired as 'waterfowl production areas' shall annually be open to the hunting of migratory game birds, upland game, big game and sport

fishing subject to the provisions of State law and regulations and the pertinent provisions of parts 25 through 31 of this subchapter: *Provided,* That all forms of hunting or entry on all or any part of the individual areas may be temporarily suspended by posting upon occasions of unusual or critical conditions of, or affecting land, water, vegetation, or wildlife populations.''

The changes for the 2012–13 hunting/fishing season noted in the chart above are each based on a complete administrative record which, among other detailed documentation, also includes a hunt plan, a compatibility determination, and the appropriate National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.)* analysis, all of which were the subject of a public review and comment process. These documents are available upon request.

Fish Advisory

For health reasons, anglers should review and follow State-issued consumption advisories before enjoying recreational sport fishing opportunities on Service-managed waters. You can find information about current fish consumption advisories on the internet at: *http://www.epa.gov/waterscience/fish/*.

Plain Language Mandate

In this proposed rule we made some of the revisions to the individual refuge units to comply with a Presidential mandate to use plain language in regulations; as such, these particular revisions do not modify the substance of the previous regulations. These types of changes include using ''you'' to refer to the reader and ''we'' to refer to the Refuge System, using the word ''allow'' instead of ''permit'' when we do not require the use of a permit for an activity, and using active voice (i.e., ''We restrict entry into the refuge'' vs. ''Entry into the refuge is restricted'').

Request for Comments

You may submit comment and materials on this proposed rule by any one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by email or fax or to an address not listed in the **ADDRESSES** section. We will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in the **DATES** section.

We will post your entire comment on *http://www.regulations.gov.* Before including personal identifying information in your comment, you should be aware that we may make your entire comment—including your personal identifying information—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. We will post all hardcopy comments on *http://www.regulations.gov.*

Public Comment

Department of the Interior policy is, whenever practicable, to afford the public a meaningful opportunity to participate in the rulemaking process. The process of opening refuges is done in stages, with the fundamental work being performed on the ground at the refuge and in the community where the program is administered. In these stages, the public is given other opportunities to comment, for example, on the comprehensive conservation plans and the compatibility determinations. The second stage is this document, when we publish the proposed rule in the **Federal Register** for additional comment, commonly for a 30-day comment period.

There is nothing contained in this annual regulation outside the scope of the annual review process where we determine whether individual refuges need modifications, deletions, or additions made to them. We make every attempt to collect all of the proposals from the refuges nationwide and process them expeditiously to maximize the time available for public review. We believe that a 30-day comment period, through the broader publication following the earlier public involvement, gives the public sufficient time to comment and allows us to establish hunting and fishing programs in time for the upcoming seasons. Many of these rules also relieve restrictions and allow the public to participate in recreational activities on a number of refuges. In addition, in order to continue to provide for previously authorized hunting opportunities while at the same time providing for adequate resource protection, we must be timely in providing modifications to certain hunting programs on some refuges.

We considered providing a 60-day, rather than a 30-day, comment period. However, we determined that an additional 30-day delay in processing these refuge-specific hunting and sport fishing regulations would hinder the effective planning and administration of our hunting and sport fishing programs. Such a delay would jeopardize enacting amendments to hunting and sport fishing programs in time for implementation this year and/or early next year, or shorten the duration of these programs.

Even after issuance of a final rule, we accept comments, suggestions, and concerns for consideration for any appropriate subsequent rulemaking.

When finalized, we will incorporate these regulations into 50 CFR part 32. Part 32 contains general provisions and refuge-specific regulations for hunting and sport fishing on refuges.

Clarity of This Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be a specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where those approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that we must base regulations on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act [SBREFA] of 1996) (5 U.S.C. 601 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for ''significant impact'' and a threshold for a ''substantial number of small entities.'' See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule adds 1 national wildlife refuge to the list of refuges open to hunting, increases hunting activities on 16 national wildlife refuges, closes 1 national wildlife refuge that was previously open to hunting, and closes 1 hunting activity previously open at 1 national wildlife refuge. As a result, visitor use for wildlife-dependent recreation on these national wildlife refuges will change. If the refuges establishing new programs were a pure addition to the current supply of such activities, it would mean an estimated increase of 7,960 user days (one person per day participating in a recreational opportunity) (Table 2). Because the participation trend is flat in these activities since 1991, this increase in supply will most likely be offset by other sites losing participants. Therefore, this is likely to be a substitute site for the activity and not necessarily an increase in participation rates for the activity.

TABLE 2—ESTIMATED CHANGE IN RECREATION OPPORTUNITIES IN 2012/2013

[Dollars in thousands]

Refuge	Additional days	Additional expenditures
Big Muddy	30	$1.0
Big Oaks	100	3.3
Block Island	60	2.0
Bond Swamp	1,000	32.6
Chickasaw	150	4.9
Deer Flat	3,300	107.7
Detroit River International	1,021	33.3
Hagerman	194	6.3
Hakalau Forest	0	0.0
Hanford Reach/Saddle Mountain	260	8.5
Julia Butler Hansen	900	29.4
Lower Hatchie	300	9.8
Minnesota Valley	200	6.5
Ninigret	347	11.3
Red Rock Lakes	52	1.7
Santee	0	0.0
Upper Ouachita	50	1.6
Waccamaw	4	0.1
William L. Finley	−8	*−0.3
Total	7,960	259.7

*Negative number resulting from decreased hunting days available despite increased acres to hunt.

To the extent visitors spend time and money in the area of the refuge that they would not have spent there anyway, they contribute new income to the regional economy and benefit local businesses. Due to the unavailability of site-specific expenditure data, we use the national estimates from the 2006 National Survey of Fishing, Hunting, and Wildlife Associated Recreation to identify expenditures for food and lodging, transportation, and other incidental expenses. Using the average expenditures for these categories with the maximum expected additional participation of the Refuge System yields approximately $259,700 in recreation-related expenditures (Table 2). By having ripple effects throughout the economy, these direct expenditures are only part of the economic impact of these recreational activities. Using a national impact multiplier for hunting activities (2.67) derived from the report ''Economic Importance of Hunting in America'' yields a total economic impact of approximately $693,500 (2011 dollars) (Southwick Associates, Inc., 2007). Using a local impact multiplier would yield more accurate and smaller results. However, we employed the national impact multiplier due to the difficulty in developing local multipliers for each specific region.

Since we know that most of the fishing and hunting occurs within 100 miles of a participant's residence, then it is unlikely that most of this spending would be ''new'' money coming into a local economy; therefore, this spending would be offset with a decrease in some other sector of the local economy. The net gain to the local economies would be no more than $693,500, and most likely considerably less. Since 80 percent of the participants travel less than 100 miles to engage in hunting and fishing activities, their spending patterns would not add new money into the local economy and, therefore, the real impact would be on the order of about $138,700 annually.

Small businesses within the retail trade industry (such as hotels, gas stations, taxidermy shops, bait and tackle shops, etc.) may be impacted from some increased or decreased refuge visitation. A large percentage of these retail trade establishments in the local communities around national wildlife

refuges qualify as small businesses. We expect that the incremental recreational changes will be scattered, and so we do not expect that the rule would have a significant economic effect on a substantial number of small entities in any region or nationally. As noted previously, we expect approximately $259,700 to be spent in total in the refuges' local economies. The maximum increase at most would be less than one-tenth of 1 percent for local retail trade spending (Table 3).

TABLE 3—COMPARATIVE EXPENDITURES FOR RETAIL TRADE ASSOCIATED WITH ADDITIONAL REFUGE VISITATION FOR 2012/2013

[Thousands, 2011 dollars]

Refuge/county(ies) or parishes	Retail trade in 2007	Estimated maximum addition from new activities	Addition as % of total	Establishments in 2009	Establ. with <10 emp in 2009
Big Muddy					
Moniteau, MO	$173,206	$1.0	0.001	56	43
Big Oaks					
Ripley, IN	277,024	1.1	<0.001	97	74
Jefferson, IN	415,188	1.1	<0.001	152	118
Jennings, IN	242,792	1.1	<0.001	72	54
Block Island					
Washington, RI	1,873,234	2.0	<0.001	545	398
Bond Swamp					
Bibb, GA	135,291	16.3	0.012	815	575
Twiggs, GA	32,915	16.3	0.050	16	12
Chickasaw					
Lauderdale, TN	164,722	2.4	0.001	85	65
Dyer, TN	557,684	2.4	<0.001	182	140
Deer Flat					
Payette, ID	557,684	107.7	0.019	68	52
Detroit River International					
Wayne, MI	18,741,934	16.7	<0.001	6,069	4,702
Monroe, MI	1,589,678	16.7	0.001	383	267
Hagerman					
Grayson, TX	1,730,094	6.3	<0.001	457	327
Hanford Reach/Saddle Mountain					
Benton, WA	2,302,112	8.5	<0.001	587	399
Julia Butler Hansen					
Columbia, OR	684,891	29.4	0.004	119	83
Lower Hatchie					
Lauderdale, TN	164,722	4.9	0.003	85	65
Tipton, TN	438,464	4.9	0.001	156	119
Minnesota Valley					
Sibley, MN	81,861	3.3	0.004	59	46
Scott, MN	1,268,971	3.3	<0.001	344	234
Ninigret					
Washington, RI	1,873,234	11.3	0.001	545	398
Red Rock Lakes					
Beaverhead, MT	133,341	1.7	0.001	53	37
Upper Ouachita					
Union, LA	160,639	0.8	0.001	68	55
Morehouse, LA	261,859	0.8	<0.001	96	70
Waccamaw					
Georgetown, SC	761,751	0.04	<0.001	295	229
Horry, SC	5,388,805	0.04	<0.001	1,707	1,241
Marion, SC	292,846	0.04	<0.001	135	103
William L. Finley					
Benton, OR	743,322	−0.3	<0.001	275	192

With the small change in overall spending anticipated from this proposed rule, it is unlikely that a substantial number of small entities would have more than a small impact from the spending change near the affected refuges. Therefore, we certify that this proposed rule would not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial/final Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

Small Business Regulatory Enforcement Fairness Act

The proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. We anticipate no significant employment or small business effects. This rule:

a. Would not have an annual effect on the economy of $100 million or more. The minimal impact would be scattered across the country and would most likely not be significant in any local area.

b. Would not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or

geographic regions. This proposed rule would have only a slight effect on the costs of hunting opportunities for Americans. If the substitute sites are farther from the participants' residences, then an increase in travel costs would occur. The Service does not have information to quantify this change in travel cost but assumes that, since most people travel less than 100 miles to hunt, the increased travel cost would be small. We do not expect this proposed rule to affect the supply or demand for hunting opportunities in the United States and, therefore, it should not affect prices for hunting equipment and supplies, or the retailers that sell equipment.

c. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. This proposed rule represents only a small proportion of recreational spending at national wildlife refuges. Therefore, this rule would have no measurable economic effect on the wildlife-dependent industry, which has annual sales of equipment and travel expenditures of $72 billion nationwide.

Unfunded Mandates Reform Act

Since this proposed rule would apply to public use of federally owned and managed refuges, it would not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule would 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 E.O. 12630, this proposed rule would not have significant takings implications. This regulation would affect only visitors at national wildlife refuges and describe what they can do while they are on a refuge.

Federalism (E.O. 13132)

As discussed in the Regulatory Planning and Review and Unfunded Mandates Reform Act sections above, this proposed rule would not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment under E.O. 13132. In preparing this proposed rule, we worked with State governments.

Civil Justice Reform (E.O. 12988)

In accordance with E.O. 12988, the Office of the Solicitor has determined that the proposed rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. The regulation would clarify established regulations and result in better understanding of the regulations by refuge visitors.

Energy Supply, Distribution or Use (E.O. 13211)

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this proposed rule would increase activities at 16 refuges, close hunting at one refuge, stop one hunt at another refuge, and open one new refuge, it is not a significant regulatory action under E.O. 12866, and we do not expect it to significantly affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action and no Statement of Energy Effects is required.

Consultation and Coordination With Indian Tribal Governments (E.O. 13175)

In accordance with E.O. 13175, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects. We coordinate recreational use on national wildlife refuges with Tribal governments having adjoining or overlapping jurisdiction before we propose the regulations.

Paperwork Reduction Act

This regulation does not contain any information collection requirements other than those already approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (OMB Control Numbers are 1018–0102 and 1018–0140). See 50 CFR 25.23 for information concerning that approval. 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.

Endangered Species Act Section 7 Consultation

We comply with section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), when developing Comprehensive Conservation Plans (CCPs) and step-down management plans (which would include hunting and/or fishing plans) for public use of refuges, and prior to implementing any new or revised public recreation program on a refuge as identified in 50 CFR 26.32. We have completed section 7 consultation on each of the affected refuges.

National Environmental Policy Act

We analyzed this proposed rule in accordance with the criteria of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)), 43 CFR part 46, and 516 Departmental Manual (DM) 8.

A categorical exclusion from NEPA documentation applies to publication of proposed amendments to refuge-specific hunting and fishing regulations since they are technical and procedural in nature, and the environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis (43 CFR 46.210 and 516 DM 8). Concerning the actions that are the subject of this proposed rulemaking, we have complied with NEPA at the project level when developing each proposal. This is consistent with the Department of the Interior instructions for compliance with NEPA where actions are covered sufficiently by an earlier environmental document (516 DM 3.2A).

Prior to the addition of a refuge to the list of areas open to hunting and fishing in 50 CFR part 32, we develop hunting and fishing plans for the affected refuges. We incorporate these proposed refuge hunting and fishing activities in the refuge CCPs and/or other step-down management plans, pursuant to our refuge planning guidance in 602 Fish and Wildlife Service Manual (FW) 1, 3, and 4. We prepare these CCPs and step-down plans in compliance with section 102(2)(C) of NEPA, and the Council on Environmental Quality's regulations for implementing NEPA in 40 CFR parts 1500–1508. We invite the affected public to participate in the review, development, and implementation of these plans. Copies of all plans and NEPA compliance are available from the refuges at the addresses provided below.

Available Information for Specific Refuges

Individual refuge headquarters have information about public use programs and conditions that apply to their specific programs and maps of their respective areas. To find out how to contact a specific refuge, contact the appropriate Regional office listed below:

Region 1—Hawaii, Idaho, Oregon, and Washington. Regional Chief, National Wildlife Refuge System, U.S. Fish and

Wildlife Service, Eastside Federal Complex, Suite 1692, 911 NE. 11th Avenue, Portland, OR 97232–4181; Telephone (503) 231–6214.

Region 2—Arizona, New Mexico, Oklahoma, and Texas. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Box 1306, 500 Gold Avenue, Albuquerque, NM 87103; Telephone (505) 248–7419.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1 Federal Drive, Federal Building, Fort Snelling, Twin Cities, MN 55111; Telephone (612) 713–5401. Detroit River International Wildlife Refuge, 9311 Groh Road, Large Lakes Research Station, Grossle Ile, MI 43138; Telephone (734) 692–7608.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the Virgin Islands. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, GA 30345; Telephone (404) 679–7166.

Region 5—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035–9589; Telephone (413) 253–8306.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 134 Union Blvd., Lakewood, CO 80228; Telephone (303) 236–8145.

Region 7—Alaska. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, AK 99503; Telephone (907) 786–3545.

Region 8—California and Nevada. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room W–2606, Sacramento, CA 95825; Telephone (916) 414–6464.

Primary Author

Leslie A. Marler, Management Analyst, Division of Conservation Planning and Policy, National Wildlife Refuge System is the primary author of this rulemaking document.

List of Subjects in 50 CFR Part 32

Fishing, Hunting, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

Proposed Regulation Promulgation

For the reasons set forth in the preamble, we propose to amend title 50, chapter I, subchapter C of the Code of Federal Regulations as follows:

PART 32—[AMENDED]

1. The authority citation for part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd–668ee, and 715i.

§ 32.7 [Amended]

2. Amend § 32.7 ''What refuge units are open to hunting and/or sport fishing?'' by:

a. Revising the entry for ''Mountain Lonleaf National Wildlife Refuge'' to read ''Mountain Longleaf National Wildlife Refuge'' and placing it in alphabetical order in the State of Alabama;

b. Revising the entry for ''Lake Umbagog National Wildlife Refuge'' to read ''Umbagog National Wildlife Refuge'' and placing it in alphabetical order in the State of Maine;

c. Adding an entry for ''Detroit River International Wildlife Refuge'' and placing it in alphabetical order in the State of Michigan;

d. Revising the entry for ''Noxubee National Wildlife Refuge'' to read ''Sam D. Hamilton Noxubee National Wildlife Refuge'' and placing it in alphabetical order in the State of Mississippi;

e. Revising the entry for ''National Bison National Wildlife Refuge'' to read ''National Bison Range'' and placing it in alphabetical order in the State of Montana;

f. Revising the entry for ''Nine-Pipe National Wildlife Refuge'' to read ''Ninepipe National Wildlife Refuge'' and placing it in alphabetical order in the State of Montana;

g. Adding an entry for ''Rainwater Basin Wetland Management District'' and placing it alphabetical order in the State of Nebraska;

h. Adding the entry for ''Umbagog National Wildlife Refuge'' and placing it in alphabetical order in the State of New Hampshire;

i. Placing the entry for ''Currituck National Wildlife Refuge'' in alphabetical order in the State of North Carolina in this section; and

j. Removing the entry for ''Pocasse National Wildlife Refuge'' in the State of South Dakota.

3. Amend § 32.20 Alabama by revising paragraphs B.6., B.8., and B.10., adding paragraph B.11., revising the introductory text of paragraph C., and revising paragraph C.1. under Choctaw National Wildlife Refuge. These revisions and addition reads as follows:

§ 32.20 Alabama.

* * * * *

Choctaw National Wildlife Refuge

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B. Upland Game Hunting. * * *

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6. We prohibit the mooring and storing of boats from ½ hour after legal sunset to ½ hour before legal sunrise.

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8. Persons possessing, transporting, or carrying firearms on the refuge must comply with all provisions of State and local law. Persons may only use (discharge) firearms in accordance with refuge regulations (see § 27.42 and specific refuge regulations in part 32). Persons may only use approved nontoxic shot (see § 32.2(k)) #4 or smaller, .22 caliber rimfire or smaller rifles, or legal archery equipment.

* * * * *

10. We allow squirrel, raccoon, rabbit, and opossum to be hunted with dogs during designated hunts. We prohibit dogs in the Middle Swamp area of the refuge, except during the February small game hunt.

11. Hunt information and hunt dates are available at refuge headquarters and specified in the refuge brochure.

C. Big Game Hunting. We allow archery hunting of white-tailed deer and feral hog in accordance with State regulations subject to the following conditions:

1. Conditions B1 through B9 and B11 apply.

* * * * *

4. Amend § 32.22 Arizona by revising paragraph C.1. under Cibola National Wildlife Refuge to read as follows:

§ 32.22 Arizona.

* * * * *

Cibola National Wildlife Refuge

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C. Big Game Hunting. * * *

1. For units open to mule deer hunting, refer to current Big Game hunt brochure.

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5. Amend § 32.23 Arkansas by:

a. Revising paragraph C.10. under Bald Knob National Wildlife Refuge;

b. Removing paragraph C.7., redesignating paragraphs C.8. through C.12. as paragraphs C.7. through C.11., and revising newly redesignated paragraph C.7. under Big Lake National Wildlife Refuge;

c. Revising paragraph C.10. under Cache River National Wildlife Refuge;

d. Adding paragraph C.16. under Felsenthal National Wildlife Refuge;

e. Revising paragraph A.5., removing paragraph A.19., and redesignating paragraphs A.20. through A.23. as paragraphs A.19. through A.22. under Overflow National Wildlife Refuge;

f. Removing paragraph C.5., redesignating paragraphs C.6. through C.9. as paragraphs C.5. through C.8., and revising newly redesignated paragraph C.6. under Wapanocca National Wildlife Refuge; and

g. Revising paragraphs A.22., B.2., and B.3., removing paragraph B.8., redesignating paragraphs B.9. through B.11. as paragraphs B.8. through B.10., revising newly redesignated paragraphs B.8. and B.9., and revising paragraphs C.10. and C.13. under White River National Wildlife Refuge.

These additions and revisions read as follows:

§ 32.23 Arkansas.

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Bald Knob National Wildlife Refuge

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C. Big Game Hunting. * * *

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10. We allow only portable deer stands capable of being carried in their entirety by a single individual. Hunters may erect stands 7 days prior to the refuge deer season and must remove them from the waterfowl sanctuaries prior to November 15, except for stands used by Quota Gun Deer Hunt permit holders (signature required), which hunters must remove by the last day of the Quota Gun Deer Hunt. Hunters must remove all stands on the remainder of the refuge within 7 days of the closure of archery season (see § 27.93 of this chapter). Hunters must permanently affix the owner's name and address to their deer stands on the refuge.

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Big Lake National Wildlife Refuge

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C. Big Game Hunting. * * *

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7. We allow only portable deer stands capable of being carried in their entirety by a single individual. Hunters may erect stands 7 days prior to the refuge deer season and must remove them within 7 days of the closure of archery season (see § 27.93 of this chapter). Hunters must permanently affix the owner's name and address to stands on the refuge.

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Cache River National Wildlife Refuge

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C. Big Game Hunting. * * *

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10. We allow only portable deer stands capable of being carried in their entirety by a single individual.

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Felsenthal National Wildlife Refuge

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C. Big Game Hunting. * * *

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16. We restrict hunt participants for quota hunts to those drawn for a quota permit (OMB 1018–0140). These permits are nontransferable and permit fees are nonrefundable. If conditions prevent the hunts from taking place, there will be no refunds or permits carried over from year to year. Hunt dates and application procedures will be available at the refuge office in July for deer and January for turkey.

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Overflow National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

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5. We close areas of the refuge by posting ''Area Closed'' signs and identifying them on the refuge hunt brochure map as ''Sanctuary'' and closed to all public entry and public use. Exception: We open the area identified as ''North Sanctuary'' on the refuge hunt brochure map to all authorized public use activities from 2 days prior to the opening of deer archery season through October 31.

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Wapanocca National Wildlife Refuge

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C. Big Game Hunting. * * *

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6. We allow only portable deer stands capable of being carried in their entirety by a single individual. Hunters may erect stands 7 days prior to the refuge deer season and must remove them from the waterfowl sanctuaries by December 1. Hunters must remove all stands on the remainder of the refuge within 7 days of the closure of archery season (see § 27.93 of this chapter). Hunters must permanently affix their name and address on stands on the refuge.

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White River National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

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22. We allow refuge users to leave boats 16 feet (4.8 m) or less in length unattended overnight from March 1 to October 31 as long as the owner clearly and prominently displays their complete name and physical address.

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B. Upland Game Hunting. * * *

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2. We allow hunting of rabbit and squirrel on the North Unit from September 1 until January 31.

3. We allow dogs for hunting of rabbit and squirrel from December 1 through January 31 on the North Unit.

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8. We allow furbearer (as defined by State law) hunting in accordance with season dates posted in the refuge user brochure/permit (signed brochure). We allow furbearer hunting only with rimfire weapons and shotguns.

9. We allow the use of dogs for hunting furbearers from legal sunset to legal sunrise. Hunters must tether or pen all dogs used for furbearer hunting from legal sunrise to legal sunset and any time they are not involved in actual hunting.

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C. Big Game Hunting. * * *

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10. We close refuge lands on the North Unit to all deer hunting and fall turkey hunting when the White River Gauge at St. Charles (station no. 53) reaches 23 feet (7 m) as reported by the following Web site: *http://www.srh.noaa.gov/lzk/html/whitervr.htm.* The season will reopen when the gauge reading reaches 21 feet (6 m) as reported by the same Web site.

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13. We prohibit the use of dogs other than those specified in the user permit.

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6. Amend § 32.28 Florida by:

a. Revising paragraphs D.9., D.10., and D.17. under J.N. ''Ding'' Darling National Wildlife Refuge;

b. Revising paragraphs A.2., B.3., and C.25. under Lower Suwannee National Wildlife Refuge;

c. Revising paragraphs B.1., B.3., and B.4., adding a new paragraph B.11., and revising paragraphs C.8., C.9., and D.11. under St. Marks National Wildlife Refuge;

d. Revising paragraph C.9. under St. Vincent National Wildlife Refuge; and

e. Revising paragraph A.13. under Ten Thousand Islands National Wildlife Refuge.

These additions and revisions read as follows:

§ 32.28 Florida.

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J.N. ''Ding'' Darling National Wildlife Refuge

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D. Sport Fishing. * * *

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9. We allow anglers to launch canoes and kayaks anywhere on the north side of Wildlife Drive. We prohibit launching motorized vessels over 14 feet (4.2 m) in length from Wildlife Drive. We allow launching of motorized vessels only 14 feet (4.2 m) or less in length from designated site #2.

10. We allow public access to Wildlife Drive and Indigo Trail, except on Fridays, when we close Wildlife Drive to all public access. See hours posted at the front gate, on the refuge Web site *http://www.fws.gov/dingdarling/*, or call 239–472–1100.

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17. We prohibit the use of bows and spears from Wildlife Drive or any structure affixed to shore.

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Lower Suwannee National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

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2. We designate open and closed refuge hunting areas on the map in the refuge hunt brochure. The hunter must possess and carry this brochure while hunting on the refuge. The refuge can designate temporary closed hunting areas at the management's discretion for refuge management activities (e.g., prescribed burns, forestry, habitat restoration, wildlife management).

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B. Upland Game Hunting. * * *

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3. You may use only .17, .22, and .22 magnum caliber rimfire rifle firearms (see § 27.42 of this chapter), bows, or shotguns with shot no larger than #4 birdshot when hunting. The refuge retains the discretion to allow the use of a crossbow during refuge hunts.

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C. Big Game Hunting. * * *

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25. We retain the discretion to allow the use of crossbows during all or portions of refuge hunts. We may allow, on a case-by-case basis, individuals with a State-issued disabled-persons crossbow permit use of crossbows. Those individuals will hunt according to State regulations.

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St. Marks National Wildlife Refuge

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B. Upland Game Hunting. * * *

1. We require refuge permits (signed brochure) for hunting upland game. Permits are available at no cost from the refuge office. Each hunter must possess and carry a signed refuge permit while participating in a hunt.

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3. You may use .22 caliber or smaller rim-fire rifles, shotguns with nontoxic shot (#4 bird shot or smaller) (see § 32.2(k)), or muzzleloaders to harvest squirrel, rabbit, and raccoon. In addition, you may use shotgun slugs, buckshot, archery equipment, or pistols to take feral hogs. We prohibit the use of other weapons.

4. We allow the use of leashed dogs for trailing injured or harvested game. We prohibit unleashed dogs.

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11. We limit vehicle access to permitted hunters during the hunt.

C. Big Game Hunting. * * *

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8. The bag limit for white-tailed deer is two deer per scheduled hunt period. We allow hunters to harvest two antlerless deer per scheduled hunt period. We define antlerless deer per State regulations (i.e., deer with no antlers or antlers less than 5 inches (12.5 cm)). Otherwise, hunters may harvest one antlerless deer and one antlered deer per hunt. Hunters must ensure that antlered deer must have at least 3 points, of 1 inch (2.5 cm) or more length.

9. There is one youth hunt, for youth ages 12 to 17, on the St. Marks Unit in an area we will specify in the refuge hunt brochure. Hunters may harvest one deer of either sex or feral hog (no limit). An adult age 21 or older possessing a refuge permit (State permit) must accompany each youth hunter, and each adult may accompany only one youth. Only the youth hunter may handle or discharge firearms. Contact the refuge office for specific dates.

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D. Sport Fishing. * * *

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11. We prohibit commercially registered boats, air-thrust boats, commercial guides, and personal watercraft to launch at the saltwater boat ramp on the St. Marks Unit.

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St. Vincent National Wildlife Refuge

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C. Big Game Hunting. * * *

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9. We limit weapons to primitive weapons (bow and arrow and muzzleloader) on the sambar deer hunt and the primitive weapons white-tailed deer hunt. We limit the archery hunt to bow and arrow. Weapons must meet all State regulations. We prohibit crossbows during the white-tailed deer archery hunt except with a State disabled permit.

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Ten Thousand Islands National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

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13. We allow youth hunt days in accordance with State regulations. We also will designate a special youth hunt day during the second phase of the regular State waterfowl season that we will specify in the annual hunt brochure. Hunters under age 16 may hunt only with a nonhunting adult age 18 or older. Youth hunters must remain within sight and sound of the nonhunting adult.

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7. Amend § 32.29 Georgia by:

a. Removing paragraph C.17. and redesignating paragraphs C.18. through C.20. as paragraphs C.17. through C.19. under Blackbeard Island National Wildlife Refuge;

b. Adding paragraphs A. and B., and revising paragraph C. under Bond Swamp National Wildlife Refuge;

c. Removing paragraph C.18. and redesignating paragraphs C.19. and C.20. as paragraphs C.18. and C.19. under Harris Neck National Wildlife Refuge;

d. Removing paragraph A.4. and redesignating paragraph A.5. as A.4., revising the introductory text of paragraph B., revising paragraph B.3., removing paragraphs B.5. and B.6., redesignating paragraphs B.7. and B.8. as B.5. and B.6, revising newly redesignated paragraphs B.5. and B.6., removing paragraph C.2., redesignating paragraph C.3. as paragraph C.2., revising newly redesignated paragraph C.2., removing paragraph C.4., redesignating paragraph C.5. as paragraph C.3., revising newly redesignated paragraph C.3., redesignating paragraphs C.6. and C.7. as paragraphs C.4. and C.5., removing paragraph C.8, redesignating paragraph C.9. as paragraph C.6., revising newly redesignated paragraph C.6., redesignating paragraph C.10. as paragraph C.7. and revising newly redesignated paragraph C.7., and redesignating paragraphs C.11. and C.12. as paragraphs C.8. and C.9. under Savannah National Wildlife Refuge; and

e. Removing paragraph C.19. and redesignating paragraphs C.20. and

C.21. as paragraphs C.19. and C.20. under Wassaw National Wildlife Refuge.

These additions and revisions read as follows:

§ 32.29 Georgia.

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Bond Swamp National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of waterfowl, mourning dove, snipe, and woodcock on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We coordinate hunting seasons and limits with the State and annually list them in the hunting brochure.

2. We require you to possess and carry a signed refuge hunt brochure while hunting. The hunt brochure will serve as the hunt permit. You may obtain this permit from the refuge Web site, kiosks at designated parking lots, or the refuge office.

3. At the manager's discretion we may zone or restrict some of the areas of the refuge to season of use, while we may close other areas to all public use.

4. Persons possessing, transporting, or carrying firearms on national wildlife refuges must comply with all provisions of State and local law. Persons may only use (discharge) firearms in accordance with refuge regulations (50 CFR 27.42 and specific refuge regulations in part 32).

5. We allow the incidental take of feral hog with legal weapons during open season.

6. We allow only nontoxic shot with the use of a shotgun in designated areas at the manager's discretion (see § 32.2(k)).

7. We require hunters to report all harvested game at the check station before leaving the refuge (see hunting brochure).

8. We allow access to the hunt area from 1 hour before legal sunrise until 1 hour after legal sunset.

9. We allow the use of hunting dogs during migratory bird hunts.

10. We allow motorized boats in designated areas at the manager's discretion.

11. We prohibit flagging, blazing, painting, or any other trail-marking devices.

12. We prohibit hunting within 50 yards (45 m) of a road open to vehicle travel or within 200 yards (180 m) of a building.

13. We prohibit entry into the designated hunt area by nonhunters during the hunts.

14. We prohibit use or possession of alcoholic beverages while hunting on the refuge (see § 32.2(j)).

15. We prohibit target practice or any nonhunting discharge of firearms (see § 27.42 of this chapter).

16. We prohibit walking or trespassing on the railroad tracks to access the refuge.

17. We prohibit removal of live hogs from the refuge.

18. We prohibit the use of organized drives for taking or attempting to take game.

19. Youth hunters age 15 and under must remain within sight and normal voice contact of an adult age 21 or older possessing a valid hunting license. One adult may supervise no more than one youth hunter.

20. We prohibit taking, collecting, or disturbing any artifact, property, plant, wildlife, or part thereof, other than that specifically allowed by refuge regulation (see §§ 27.61 and 27.62 of this chapter).

21. We prohibit littering (see § 27.94 of this chapter).

22. We prohibit disturbing, annoying, or interfering with other persons.

23. We prohibit open fires (see § 27.95(a) of this chapter).

24. We prohibit ATVs on the refuge except by disabled hunters with a refuge Special Use Permit (General Special Use Application and Permit FWS Form 3–1383–G).

25. We prohibit off-road vehicle travel.

26. We prohibit vehicle travel around a closed gate.

27. We prohibit blocking refuge roads, boat ramp, or gate with vehicles, boats, or trailers.

28. We prohibit leaving vehicles, boats, or trailers on the refuge overnight (see § 27.93 of this chapter).

29. We prohibit overnight camping and/or parking.

B. Upland Game Hunting. We allow hunting of squirrel, rabbit, and quail on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A8 and A10 through A29 apply.

2. We allow the use of hunting dogs during small game hunts.

3. We require each small game hunter to wear at least 500 square inches (3,250 cm^2) of hunter orange as an outer garment above the waist during small hunts.

C. Big Game Hunting. We allow hunting for white-tailed deer, feral hog, and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A8 and A10 through A29 apply.

2. We may implement designated feral hunts at the manager's discretion.

3. We prohibit the use of buckshot.

4. We prohibit the use of dogs during deer and feral hog hunts.

5. We require each deer and feral hog hunter to wear at least 500 square inches (3,250 cm^2) of hunter orange as an outer garment above the waist during hunts.

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Savannah National Wildlife Refuge

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B. Upland Game Hunting. We allow hunting of squirrel on designated areas of the refuge in accordance with State regulations subject to the following conditions:

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3. We prohibit hunting on or within 100 yards (90 m) of U.S. Highway 17, GA Highway 25/SC Highway 170, refuge facilities, road and trails, railroad rights of way, and within areas marked as closed.

* * * * *

5. During the period when the squirrel hunt coincides with the refuge gun hunt for deer and hogs, we require hunters to possess a big game license (State) and to wear an outer garment containing a minimum of 500 square inches (3,250 cm^2) of hunter-orange material above the waistline.

6. Condition A4 applies.

C. Big Game Hunting. * * *

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2. We allow only bows, in accordance with State regulations, for deer and hog hunting during the refuge archery hunt.

3. We allow only shotguns (20 gauge or larger; slugs only), center-fire rifles (.22 caliber or larger), muzzleloaders, and bows, in accordance with State regulations, for deer and hog hunting during the gun hunts.

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6. Conditions A4 and B3 apply.

7. Turkey hunters may harvest only three gobblers (male turkey).

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8. Amend § 32.30 Hawaii by revising paragraph C. under Hakalau Forest National Wildlife Refuge to read as follows:

§ 32.30 Hawaii.

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Hakalau Forest National Wildlife Refuge

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C. Big Game Hunting. [Reserved]

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9. Amend § 32.31 Idaho by revising the entry for Deer Flat National Wildlife Refuge to read as follows:

§ 32.32 Idaho.

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Deer Flat National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of goose, duck, coot, common snipe, and dove on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You may hunt only duck, coot, and dove on the Lake Lowell Unit.

2. Duck and coot hunting in the East Side Recreation Area is walk-in only. Duck and coot hunters may use float tubes, nonmotorized boats, or boats equipped with only electric motors within 200 yards (180 m) of the shoreline in the South Side Recreation Area.

3. We allow only portable and temporary blinds. We prohibit permanent structures.

4. You must remove boats, decoys, blinds, other personal property, and any materials brought onto the refuge for blind construction at the end of each day.

5. We allow hunters to enter the refuge 1 hour before official shooting hours (½ hour before legal sunrise), and remain on the refuge until 1 hour after official shooting hours (legal sunset).

6. We allow the use of dogs for hunting. Dogs must be under the immediate control of the handler at all times and not allowed to roam at large.

7. From February 1 through May 31, we prohibit hunting on the Snake River Islands Unit.

B. Upland Game Hunting. We allow hunting of upland game on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You may hunt only pheasant, quail, and partridge on the Lake Lowell Unit.

2. We allow hunters to enter the refuge 1 hour before official shooting hours (½ hour before legal sunrise), and remain on the refuge until 1 hour after official shooting hours (½ hour after legal sunset).

3. We allow the use of dogs for hunting. Dogs must be under the immediate control of the handler at all times and not allowed to roam at large.

C. Big Game Hunting. We allow hunting of deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must obtain a refuge-specific hunting permit (signed brochure) to hunt deer on the Lake Lowell Unit. Hunters must sign and carry the permit in the field while hunting.

2. Only the southern portion of the Lake Lowell Unit is open to deer hunting. We define the deer hunting area on the north by the southern shoreline of Lake Lowell, on the east by the New York Canal, on the south by the southern boundary of the refuge, and on the west by Riverside Road.

3. Hunters may place up to two portable deer stands (including elevated platforms) in the Lake Lowell Unit. Hunters must place stands/platforms by hand, without the use of a vehicle. Hunters may place stands/platforms on the refuge no earlier than the beginning date of the assigned hunt permit and must remove them no later than the ending date of the hunt permit. Each stand must bear the hunter's name, address, and telephone number so that it is legible from the ground.

4. In the Lake Lowell Unit you may only shoot deer while hunting from an elevated tree stand/platform. We prohibit ground stalking and/or still hunting from the ground. We prohibit shooting a firearm or bow while on the ground, except to kill a downed deer.

5. While hunting from a tree stand, you must use a Fall-Arrest System (FAS)/Full Body Harness meeting Treestand Manufacturer's Association (TMA) Standards.

6. Hunters may only access the Lake Lowell Unit deer hunting area from Parking Areas 1–8.

7. Hunters may enter the Lake Lowell Unit no earlier than 2 hours before official shooting hours (½ hour before legal sunrise) and must leave the area within 2 hours after official shooting hours (½ hour after legal sunset). Successful hunters may extend their departure time up to 5 hours past official shooting hours (½ hour after legal sunset) to retrieve dead deer.

8. A refuge employee or State Game Warden must accompany hunters to retrieve a wounded or dead deer from any Closed Area.

D. Sport Fishing. We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. During the waterfowl hunting season, we allow fishing only within 200 yards (180 m) of the shoreline in front of both the Lower Dam (Fishing Area A) and the Upper Dam (Fishing Area B) on the Lake Lowell Unit.

2. From October 1 through April 14, we allow nonmotorized boats from ½ hour before legal sunrise to ½ hour after legal sunset only within 200 yards (180 m) of the shoreline in front of both the Lower Dam (Fishing Area A) and the Upper Dam (Fishing Area B) on the Lake Lowell Unit.

3. From April 15 through September 30, we allow motorized and nonmotorized boats from ½ hour before legal sunrise to ½ hour after legal sunset throughout the Lake Lowell Unit.

4. From February 1 through May 31, we prohibit fishing from the islands within the Snake River Islands Unit.

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10. Amend § 32.32 Illinois by:

a. Revising paragraph D. under Chautauqua National Wildlife Refuge;

b. Adding paragraph A.4., revising paragraph B., revising paragraphs C.1. and C.2., adding paragraph C.3., and revising paragraph D. under Emiquon National Wildlife Refuge; and

c. Revising paragraphs D.1. and D.2. under Meredosia National Wildlife Refuge.

These additions and revisions read as follows:

§ 32.32 Illinois.

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Chautauqua National Wildlife Refuge

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D. Sport Fishing. We allow fishing on designated areas of the refuge from legal sunrise to legal sunset in accordance with State regulations subject to the following conditions:

1. We allow fishing on Lake Chautauqua from February 1 through October 15. We prohibit fishing in the Waterfowl Hunting Area during the waterfowl hunting season.

2. We allow bank fishing year-round between the boat ramp and the fishing trail in the North Pool and from Goofy Ridge Public Access to the west gate of the north pool water control structure.

3. Motorboats must not exceed ''no-wake'' speeds.

4. We prohibit the public entering Weis Lake on the Cameron-Billsbach Unit of the refuge from October 16 through January 31.

5. We prohibit leaving boats on refuge waters overnight (see § 27.93 of this chapter).

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Emiquon National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

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4. We allow access for hunting from 1 hour before legal shooting time (consult the State regulations for the species in question) until 1 hour after legal sunset.

B. Upland Game Hunting. We allow upland game hunting on designated areas of the refuge in accordance with State regulations subject to the following condition: Condition A4 applies.

C. Big Game Hunting. * * *

1. Condition A4 applies.

2. We prohibit the construction or use of permanent blinds, platforms, or ladders (see § 27.93 of this chapter).

3. You must remove all portable hunting stands and blinds from the area at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

D. Sport Fishing. We allow sport fishing throughout the year on designated areas of the refuge. We allow fishing from legal sunrise to legal sunset in accordance with State regulations subject to the following conditions:

1. We prohibit fishing in the Waterfowl Hunting area during the waterfowl hunting season.

2. We prohibit leaving boats on refuge waters overnight (see § 27.93 of this chapter).

3. Condition A3 applies.

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Meredosia National Wildlife Refuge

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D. Sport Fishing. * * *

1. We allow sport fishing on all areas open to public access from legal sunrise to legal sunset from February 1 to October 15.

2. We allow access to Meredosia Lake from the boat ramp and allow foot access on refuge land along the east side of the Meredosia Lake in Morgan county from legal sunrise to legal sunset throughout the year.

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11. Amend § 32.33 Indiana by:

a. Revising paragraphs B., C.1., C.3., D.1., and D.4. under Big Oaks National Wildlife Refuge; and

b. Revising paragraphs B.1., B.4., C., and D. under Muscatatuck National Wildlife Refuge.

These revisions read as follows:

§ 32.33 Indiana.

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Big Oaks National Wildlife Refuge

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B. Upland Game Hunting. We allow hunting of squirrel in accordance with State regulations subject to the following conditions.

1. We require a refuge hunt permit (signature only).

2. We allow the use of hunting dogs only during the squirrel hunting season. You must ensure that all hunting dogs wear a collar displaying the owner's name, address, and telephone number.

3. You must hunt only in assigned areas. We prohibit trespass into an unassigned hunt area.

4. In areas posted ''Area closed,'' we prohibit entry, including hunting.

5. We prohibit the use of flagging tape and reflective tacks.

6. We allow the use of squirrel hunting dogs only in the day-use areas.

7. You may possess only approved nontoxic shot while in the field (see § 32.2(k)).

8. We require that all hunters check all harvested game taken on the refuge at the refuge check station.

9. We require all refuge hunters to hunt with a partner. We require hunting partners to know the location of their partner while hunting. An adult, age 18 or older, must directly supervise youth hunters age 17 or under.

10. We prohibit the use or possession of alcoholic beverages while hunting on the refuge (see § 32.2(j)).

11. Hunters must possess and carry a compass while hunting on the refuge.

C. Big Game Hunting. * * *

1. Conditions B1, B3, B4, B5, and B7 through B11 apply.

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3. We allow the use of portable hunting stands and blinds. You may leave hunting stands and blinds in the field overnight only if you will be hunting that same location the following day. We prohibit tree steps or screw-in steps (see § 32.2(i)).

D. Sport Fishing. * * *

1. We require a refuge access permit (signature only).

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4. We allow boats only if rowed, paddled, or powered by an electric trolling motor on the Old Timbers Lake.

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Muscatatuck National Wildlife Refuge

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B. Upland Game Hunting. * * *

1. We prohibit hunting and the discharge of a firearm within 100 yards (30 m) of any dwelling or any other building that people, pets, or livestock may occupy.

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4. You may possess only approved nontoxic shot while in the field (see § 32.2(k)).

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C. Big Game Hunting. We allow hunting of white-tailed deer and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions B1, B5, and B7 apply.

2. You must possess and carry a State-issued refuge hunting permit to hunt deer during the State muzzleloader season and the youth hunting weekend.

3. We prohibit firearms deer hunting during the State firearms season except in compliance with condition C2.

4. You may take only one deer per day from the refuge.

5. We prohibit the construction or use of permanent blinds, platforms, or ladders (see § 27.92 of this chapter).

6. We allow only spring turkey hunting on the refuge, and hunters must possess a State-issued hunting permit during the first 2 weeks of the season.

7. We require successful deer and turkey hunters to report their harvest on the Big Game Harvest Report (FWS Form 3–2359) at a box at the entrance gate before leaving the refuge.

8. Our late archery season deer hunt is open from the end of the State muzzleloader season to the conclusion of the State late archery season.

9. We allow archery deer hunting in November except during youth hunting weekend.

D. Sport Fishing. We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow the use of boats (hand- or foot-propelled only) on Stanfield Lake. We prohibit the use of electric or gasoline motors.

2. We allow the use of kayaks and nonmotorized canoes on Richart Lake.

3. We allow the use of belly boats or float tubes in all designated fishing areas.

4. We allow fishing only with rod and reel or pole and line.

5. We prohibit harvest of frog and turtle (see § 27.21 of this chapter).

6. We prohibit the use of lead fishing tackle.

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12. Amend § 32.35 Kansas by:

a. Revising paragraph A. and B.1., adding paragraphs B.2. through B.4., revising paragraph C.5., and adding paragraph C.6. under Flint Hills National Wildlife Refuge; and

b. Revising paragraph A.4. and adding paragraph D.8. under Quivira National Wildlife Refuge.

These additions and revisions read as follows:

§ 32.35 Kansas.

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Flint Hills National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of goose, duck, coot, dove, rail, woodcock, crow, and common snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow waterfowl hunting only on portions of the refuge on the south side of the Neosho River.

2. We prohibit hunting on the Neosho River and using boats on the river to gain hunting access.

3. We prohibit shooting from or over roads and parking areas.

4. You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction at the end of each day (see §§ 27.93 and 27.94 of this chapter).

5. You may leave temporary blinds (other than portable blinds) constructed of natural vegetation found on site overnight. We prohibit bringing any type of live or dead vegetation onto the refuge for any purpose at any time. Construction of these temporary blinds does not constitute exclusive use of the blind.

6. Dogs must be under the owner's immediate control at all times.

7. We prohibit hunters or dogs retrieving game in areas closed to hunting.

8. We prohibit leaving decoys unattended at any time.

9. We allow crow hunting on designated areas of the refuge subject to the following conditions:

i. We prohibit the use of centerfire rifles and pistols for hunting on the range.

ii. We close hunting areas on the north side of the Neosho River to all hunting from November 1 through March 1.

iii. Conditions A2, A3, and A7 apply.

B. Upland Game Hunting. * * *

1. Conditions A2, A3, A6, and A7 apply.

2. Hunters may possess only approved nontoxic shot (see § 32.2(k)).

3. We prohibit the use of centerfire rifles and pistols for hunting on the refuge.

4. We close hunting areas on the north side of the Neosho River to all hunting from November 1 through March 1.

C. Big Game Hunting. * * *

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5. We allow portable tree stands and/or portable ground blinds; however, you must remove them along with any other personal property at the end of each day (see §§ 27.93 and 27.94 of this chapter).

6. Conditions A2, A3, A7, B3, and B4 apply.

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Quivira National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

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4. The refuge is open from 1½ hours before legal sunrise to 1½ hours after legal sunset. We prohibit hunters entering refuge hunting areas to set up decoys and other devices until 1 hour prior to legal shooting time (½ hour before legal sunrise). Hunters must remove all decoys within 1 hour following the end of legal shooting time (legal sunset).

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D. Sport Fishing. * * *

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8. The refuge is open 1½ hours before legal sunrise to 1½ hours after legal sunset.

13. Amend § 32.37 Louisiana by:

a. Revising paragraphs A.3., A.5., and A.13., adding paragraph A.20., and revising paragraph D.2. under Bayou Sauvage National Wildlife Refuge;

b. Revising paragraph A.6. and A.17., adding paragraph A.18., and revising paragraphs B.4., C.8., and D.1. under Big Branch Marsh National Wildlife Refuge;

c. Adding paragraph D.9. under Black Bayou Lake National Wildlife Refuge;

d. Revising paragraphs A.9., A.13., B.4., C.1., and C.5., redesignating paragraphs C.6. through C.10. as paragraphs C.8. through C.12., and adding new paragraphs C.6. and C.7. under Bogue Chitto National Wildlife Refuge;

e. Revising paragraphs A.7. and D.10. under Lacassine National Wildlife Refuge;

f. Revising paragraphs A.16., D.8.i., D.8.ii., D.8.iv., and D.8.vi., removing paragraph D.8.ix., and redesignating paragraph D.8.x. as paragraph D.8.ix. under Sabine National Wildlife Refuge; and

g. Revising the entry for Upper Ouachita National Wildlife Refuge.

These additions and revisions read as follows:

§ 32.37 Louisiana.

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Bayou Sauvage National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

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3. We allow waterfowl (duck, goose, and coot) hunting until 12 p.m. (noon) on Wednesdays, Thursdays, Saturdays, and Sundays, including early teal season, youth waterfowl hunt season, or other such special seasons that may be promulgated by law or statute. We will close the refuge to waterfowl and coot hunting during any segment of goose season that extends beyond the regular duck season.

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5. We allow hunting only on those portions of the refuge that lie outside of the confines of the hurricane protection levee, unless we post areas closed to hunting or designated areas closed on the refuge hunt permit (signed brochure).

* * * * *

13. We prohibit air-thrust boats, aircraft, mud boats, and air-cooled propulsion engines on the refuge, except hunters may use air-cooled propulsion engines to traverse the refuge through the Intracoastal Waterway and the Irish Bayou Straight Canal.

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20. We close all portions of the refuge outside of the Hurricane Protection Levee to public entry other than waterfowl hunting until 12 p.m. from November 1 through January 31 and during the State teal season.

* * * * *

D. Sport Fishing. * * *

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2. We allow sport fishing and shell fishing year-round on designated areas of the refuge and only after 12 p.m. on portions of the refuge outside of the Hurricane Protection Levee from November 1 through January 31 and during the State teal season. We close the remainder of the refuge from November 1 through January 31.

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Big Branch Marsh National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

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6. We prohibit air-thrust boats, aircraft, mud boats, and air-cooled propulsion engines on the refuge.

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17. We prohibit the use of any type of material used as flagging or trail markers except reflective tacks.

18. We designate refuge areas closed to public hunting on the refuge hunt permit (signed brochure) or posted with no hunting signs.

B. Upland Game Hunting. * * *

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4. Conditions A5 through A10 and A12 through A18 apply.

C. Big Game Hunting. * * *

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8. Conditions A5 through A10 and A12 through A18 apply.

* * * * *

D. Sport Fishing. * * *

1. You may fish only from ½ hour before legal sunrise until ½ hour after legal sunset, except we allow night fishing from the bank and pier on Lake Road.

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Black Bayou Lake National Wildlife Refuge

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D. Sport Fishing. * * *

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9. We prohibit crossing the water hyacinth booms in a boat or traveling over idle speed within the booms.

Bogue Chitto National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

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9. We allow primitive camping within 100 feet (30 m) of designated streams.

These include either bank of the Bogue Chitto River, Wilson Slough, and West Pearl River south of Wilson Slough, refuge lands along the East Pearl River, and Holmes Bayou. Campers must mark their campsite with their name, address, and phone number placed in a conspicuous location in the center of camp.

* * * * *

13. We prohibit the use of any type of material used as flagging or trail markers, except reflective tacks.

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B. Upland Game Hunting. * * *

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4. All hunters in Louisiana (including archery hunters and small game hunters), except waterfowl hunters, must wear and display not less than 400 square inches (2,600 cm^2) of unbroken hunter-orange as the outermost layer of clothing on the chest and back and a hunter-orange cap during deer gun seasons. We require all deer hunters to display a minimum of 400 square inches of hunter-orange or a hunter-orange cap or hat while walking to and from elevated stands. All hunters in Mississippi must wear not less than 500 square inches of hunter-orange in place of the 400 square inches requirement described above. All hunters, including archers (while on the ground), except waterfowl hunters, must wear a hunter-orange cap during the dog season for squirrels and rabbits.

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C. Big Game Hunting. * * *

1. Conditions A5 through A7, A9 through A11, A13 through A17, B2, and B4 apply.

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5. We list specific dates for the primitive weapons big game hunts in the refuge hunt brochure.

6. Legal primitive firearms used for hunting the primitive firearms season in Louisiana include:

i. Rifles or pistols, 44 caliber minimum, or shotguns 10 gauge or smaller, all of which must load exclusively from the muzzle or cap and ball cylinder; use of black powder or approved substitute only; use of ball or bullet projectile only, including saboted bullets, including primitive firearms known as ''inline'' primitive firearms; and

ii. Single shot, breech-loading rifles, .38 caliber or larger of a kind or type manufactured prior to 1900; and replicas, reproductions, or reintroductions of that type of rifle having an exposed hammer that use metallic cartridges loaded with black power or modern smokeless powder. Hunters may fit all of the above with magnified scopes.

7. Legal primitive firearms/weapons used for hunting the primitive firearms season in Mississippi are crossbows and primitive firearms, which include:

i.a. Single or double-barreled-muzzle-loading rifles of at least .38 caliber; single shot, breech-loading-metallic-cartridge rifles (.35 caliber or larger) and replicas, reproductions, or reintroductions of those type rifles with an exposed hammer; and

b. Single or double-barreled-muzzle-loading shotguns, with single ball or slug.

ii. All muzzle-loading primitive firearms must use black powder or a black powder substitute with either percussion caps or #209 shotgun primers or flintlock ignition. Hunters may load metallic cartridges with black powder or modern smokeless powder. Hunters may fit all of the above with magnified scopes.

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Lacassine National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

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7. We prohibit all boat motors, excluding trolling motors, within refuge marshes. We prohibit air-thrust boats and ATVs on the refuge (see § 27.31(f) of this chapter), unless otherwise permitted.

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D. Sport Fishing. * * *

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10. We prohibit boat and bank fishing in Lacassine Pool Unit D and refuge waters from October 16 through March 14.

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Sabine National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

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16. An adult at least age 21 must supervise youth hunters under age 16 during all hunts. One adult may supervise two youths during migratory game bird hunts. Youth must remain within normal voice contact of the adult who is supervising them. Parents or adult guardians are responsible for ensuring that hunters under age 16 do not engage in conduct that would constitute a violation of refuge regulations.

* * * * *

D. Sport Fishing. * * *

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8. * * *

i. We allow recreational cast netting from boats only from legal sunrise to legal sunset during the Louisiana inshore shrimp season.

ii. Anglers must immediately return all incidental take (bycatch) to the water before continuing to cast.

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iv. The daily bait shrimp limit is one gallon (3.8 L) per day, per boat, outside the Louisiana inshore shrimp season.

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vi. We prohibit all cast netting activities from the banks, wharves, and water control structures.

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Upper Ouachita National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of waterfowl (duck, goose, coot, gallinule, rail, snipe), woodcock, and dove on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Hunters must possess and carry a signed refuge permit (brochure).

2. We allow dove hunting during the first 3 days of the State season.

3. We allow waterfowl hunting until 12 p.m. (noon) during the State season.

4. Hunters may enter the refuge no earlier than 4 a.m.

5. We prohibit hunting within 100 feet (30 m) of the maintained rights of ways of roads, from or across ATV trails, and from above-ground oil, gas, or electrical transmission facilities.

6. We prohibit leaving boats, blinds, and decoys unattended.

7. We allow only recognized dog breeds to locate, point, and retrieve when hunting for migratory game birds.

8. Youth hunters under age 16 must remain within sight and normal voice contact of an adult age 21 or older. Each adult may supervise no more than two youth hunters.

9. We prohibit any person or group to act as a hunting guide, outfitter, or in any other capacity that pay other individual(s), pays or promises to pay directly or indirectly for service rendered to any other person or persons hunting on the refuge, regardless of whether such payment is for guiding, outfitting, lodging, or club membership.

B. Upland Game Hunting. We allow hunting of quail, squirrel, rabbit, raccoon, beaver, coyote, and opossum on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 and A9 (to hunt upland game) apply.

2. We prohibit firearm ammunition used for hunting small game larger than a .22 caliber rim-fire, shotgun slugs, and buckshot.

3. We allow hunting of raccoon and opossum during the daylight hours (legal sunrise to legal sunset) of rabbit and squirrel season. We allow night hunting (legal sunset to legal sunrise) during December and January, and we allow use of dogs for night hunting. We prohibit the selling of raccoon and opossum taken on the refuge for human consumption.

4. We allow the use of dogs to hunt squirrel and rabbit after the last refuge gun deer hunt.

5. To use horses and mules to hunt raccoon and opossum at night, hunters must first obtain a General Special Use Application and Permit (FWS Form 3–1383–G) at the refuge office.

6. Hunters may enter the refuge no earlier than 4 a.m. and must exit no later than 2 hours after legal shooting hours.

7. We allow hunting of beaver and coyote during all open refuge hunts with weapons legal for the ongoing hunt.

8. Youth hunters under age 18 must remain within sight and normal voice contact of an adult age 21 or older. Each adult may supervise no more than two youth hunters.

C. Big Game Hunting. We allow hunting of white-tailed deer, feral hog, and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A9, B6, and B8 (to hunt big game) apply.

2. We allow deer gun hunts subject to State regulations. Specific open dates will appear in the Annual Public Use Regulations Brochure.

3. The daily bag limit is one either-sex deer. The State season limit applies.

4. We prohibit leaving deer stands, blinds, and other equipment unattended.

5. Deer hunters must wear hunter orange as per State deer hunting regulations on Wildlife Management Areas.

6. We prohibit hunters placing stands or hunting from stands on pine trees with white-painted bands and/or rings.

7. We will hold a limited lottery youth turkey hunt on the Saturday of the State youth turkey hunt weekend.

8. We prohibit possession or distribution of bait or hunting with the aid of bait, including any grain, salt, minerals, or other feed or nonnaturally occurring attractant on the refuge (see § 32.2(h)).

9. We allow hunting of hog during all open refuge hunts with weapons legal for the ongoing hunt.

10. We prohibit the use of dogs for hog hunting.

D. Sport Fishing. We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow sport fishing year-round except within closed areas of the refuge, as designated by the Annual Public Use Regulations Brochure.

2. We prohibit outboard motors in the Wigeon Ponds.

3. We prohibit launching boats from a trailer or from a nondesignated boat ramp within the Mollicy levee.

4. We prohibit leaving boats and other personal property on the refuge unattended (see § 27.93 of this chapter).

5. You must tend trotlines daily. You must attach ends of trotlines by a length of cotton line that extends into the water.

6. We prohibit commercial fishing. Recreational fishing using commercial gear (slat traps, etc.) requires a special refuge permit (General Special Use Application and Permit, FWS Form 3–1383–G) that you must possess and carry and that is available at the refuge office.

7. We prohibit the taking of turtle (see § 27.21 of this chapter).

15. Amend § 32.38 Maine by:

a. Revising the listing of ''Lake Umbagog National Wildlife Refuge'' to read ''Umbagog National Wildlife Refuge'' and placing the newly titled entry in alphabetical order within the section;

b. Revising paragraph A.12., redesignating paragraphs C.6. through C.14. as paragraphs C.7. through C.15., adding a new paragraph C.6., and revising newly redesignated paragraph C.8. under Moosehorn National Wildlife Refuge;

c. Revising paragraph A., and the introductory text of paragraph B., adding paragraph B.5., revising paragraphs C.1. and C.2., redesignating paragraphs C.3. and C.4. as paragraphs C.4. and C.5., and adding a new paragraph C.3. under Petit Manan National Wildlife Refuge;

d. Revising paragraph A., revising the introductory text of paragraph B., revising paragraph B.3., adding paragraph B.4., revising the introductory text of paragraph C., revising paragraphs C.1. and C.2., and adding paragraph C.4. under Sunkhaze Meadows National Wildlife Refuge; and

e. Revising paragraphs A.1., A.3., A.4., and A.5., revising the introductory text of paragraph B., revising paragraphs B.3., B.5., and B.6., adding paragraph B.7., and revising paragraphs C.1., C.2., and C.4., under the newly titled Umbagog National Wildlife Refuge.

These additions and revisions read as follows:

§ 32.38 Maine.

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Moosehorn National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

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12. You must follow the State hunter-orange clothing requirements.

C. Big Game Hunting. * * *

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6. The hunter must retrieve all species, including coyotes, harvested on the refuge.

* * * * *

8. All tree stands, blinds, and ladders must be portable.

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Petit Manan National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of duck, goose, woodcock, rail, gallinule, and snipe on designated areas of the refuge (Gouldsboro Bay and Sawyers Marsh Divisions) in accordance with State regulations subject to the following conditions:

1. We allow waterfowl hunting on the following islands: Little Libby, Eastern Brothers, Halifax, Schoppee, Inner Sand, Jordans Delight, Petit Manan, Sally, Abbott, Egg Rock, South Twinnie, John's, Little Marshall, Ship, Trumpet, East and West Barge, Matinicus Rock, Two Bush, Hart, Little Thrumcap, Outer White, Outer Heron, Upper Flag, and Ram.

2. We prohibit erection of permanent waterfowl blinds.

3. You must remove all temporary blinds, concealment materials, boats, and decoys (see § 27.93 of this chapter) each day.

B. Upland Game Hunting. We allow hunting of upland game on designated areas of the refuge (Gouldsboro Bay and Sawyers Marsh Division) in accordance with State regulations subject to the following conditions:

* * * * *

5. The hunter must retrieve all species, including coyotes, harvested on the refuge.

C. Big Game Hunting. * * *

1. We allow white-tailed deer hunting on designated areas of the Petit Manan Point, Sawyers Marsh, and Gouldsboro Bay Division and Bois Bubert Island. Petit Manan Point is open only during the State-prescribed muzzleloader season.

2. We allow black bear hunting only on designated areas of the Sawyers Marsh and Gouldsboro Bay Divisions during the firearm season for white-tailed deer.

3. We prohibit the use of dogs.

* * * * *

Sunkhaze Meadows National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of migratory game birds on all areas of the refuge in accordance with State regulations.

B. Upland Game Hunting. We allow hunting of upland game on all areas of the refuge in accordance with State regulations subject to the following conditions:

* * * * *

3. We allow hunters to enter the refuge 1 hour before legal shooting hours (½ hour before legal sunrise in the State of Maine), and they must exit the refuge by 1 hour past legal shooting hours (½ hour after legal sunset in the State of Maine), except for hunters pursuing raccoons and coyotes at night.

4. The hunter must retrieve all species, including coyotes, harvested on the refuge.

C. Big Game Hunting. We allow hunting of black bear, bobcat, moose, and white-tailed deer on all areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require hunter-orange clothing in accordance with State of Maine regulations.

2. We allow hunters to enter the refuge 1 hour before legal shooting hours (½ hour before legal sunrise in the State of Maine), and they must exit the refuge by 1 hour past legal shooting hours (½ hour after legal sunset in the State of Maine).

* * * * *

4. You must remove all tree stands by the last day of the white-tailed deer hunting season (see § 27.93 of this chapter).

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Umbagog National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

1. Hunters must comply with State regulations regarding hunter-orange clothing or material.

* * * * *

3. Pursuant to State regulations, you may use dogs to assist in hunting and retrieval of harvested birds.

4. We prohibit dog training on the refuge.

5. We open the refuge to hunting during the hours stipulated under the State's hunting regulations. Hunters will unload all hunting firearms outside of legal hunting hours.

* * * * *

B. Upland Game Hunting. We allow hunting of coyote (see C. Big Game Hunting), fox, raccoon, woodchuck, squirrel, porcupine, skunk, snowshoe hare, ring-necked pheasant, and ruffed grouse in accordance with State regulations, seasons, and bag limits, subject to the following conditions:

* * * * *

3. We open the refuge to hunting during the hours stipulated under State hunting regulations. Hunters must unload all hunting firearms (see § 27.42 of this chapter) and nock no arrows outside of legal hunting hours (½ hour before legal sunrise and ½ hour after legal sunset in the State of Maine).

* * * * *

5. Each hunter must wear hunter-orange clothing or material as specified by State hunting regulations.

6. We allow hunting of showshoe hare, ring-necked pheasant, and ruffed grouse with dogs during State hunting seasons in accordance with State regulations.

7. We prohibit dog training on the refuge.

C. Big Game Hunting. * * *

1. Condition B3 applies, and we prohibit night hunting.

2. We allow bear and coyote hunting with dogs during State hunting seasons. We prohibit dog training on the refuge.

* * * * *

4. Each hunter must wear hunter-orange clothing or material in accordance with State regulations.

* * * * *

16. Amend § 32.39 Maryland by revising paragraphs A.9.i., A.9.ii., A.10.i., A.12., B.2., C.6., C.11., C.12., D.1., and D.4. through D.6., removing paragraphs D.9. and D.10., redesignating paragraphs D.11. through D.18. as paragraphs D.9. through D.16., and revising newly redesignated paragraphs D.15.i., D.15.iii., and D.16.i. under Patuxent Research Refuge to read as follows:

§ 32.39 Maryland.

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Patuxent Research Refuge

A. Migratory Game Bird Hunting. * * *

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9. * * *

i. You must be more than 50 yards (135 m) beyond the gate at Blue Heron Pond before hunting.

ii. You must be more than 50 yards (135 m) from the road beyond the barricade at Wood Duck Pond before hunting.

* * * * *

10. * * *

i. You must wear a solid-colored-fluorescent hunter orange that must be visible 360° while carrying-in and carrying-out equipment (e.g., portable blinds).

* * * * *

12. We prohibit hunting of goose, duck, and dove during the youth deer firearms hunts, deer firearms seasons, and the early deer muzzleloader season. The only exceptions are that Blue Heron Pond, Lake Allen, and Area Z will remain open for duck hunters and the Junior Waterfowl hunt day during the early muzzleloader season.

* * * * *

B. Upland Game Hunting. * * *

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2. Hunters may possess only approved nontoxic shot while in the field (see § 32.2(k)), except for the use of .22-caliber rimfire rifles during the month of January only to hunt squirrel.

* * * * *

C. Big Game Hunting. * * *

* * * * *

6. We require bow hunters to wear either a cap of solid-fluorescent-orange color at all times or a vest or jacket containing back and front panels of at least 250 square inches (1,625 cm^2) of solid-fluorescent-orange color when moving to and from their vehicle to their deer stand or their hunting spot and while tracking or dragging out their deer. We do not require bow hunters to wear solid-colored-fluorescent hunter orange when positioned to hunt except during the North Tract Youth Firearms Deer Hunts, the muzzleloader seasons, and the firearms seasons, when they must wear it at all times.

* * * * *

11. We prohibit the use of dogs to hunt or track wounded deer.

12. If you wish to track wounded deer beyond 2 hours after legal sunset, you must gain consent from a refuge law enforcement officer. We prohibit tracking 3 hours after legal sunset. You must make a reasonable effort to retrieve the wounded deer. This may include next-day tracking except Sundays and Federal holidays.

* * * * *

D. Sport Fishing. * * *

1. We require all anglers, age 16 and older, to present their current Maryland State nontidal fishing license and complete the Fishing/Shrimping/Crabbing Application (FWS Form 3–2358). Anglers age 18 and older will receive a free Patuxent Research Refuge Fishing Vehicle Parking Pass. Organized groups must complete the Fishing/Shrimping/Crabbing Application (FWS Form 3–2358), and the group leader must stay with the group at all times while fishing.

* * * * *

4. Anglers must display a copy of the Fishing Vehicle Parking Pass in the vehicle windshield while fishing at Cash Lake.

5. We require anglers, ages 16 and 17, to have a parent or guardian cosign the Fishing/Shrimping/Crabbing Application (FWS Form 3–2358). We will not issue a Fishing Vehicle Parking Pass to anglers ages 16 and 17.

6. An adult age 21 or older possessing a Fishing Vehicle Parking Pass must accompany anglers age 17 or younger in the field; they must maintain visual contact with each other within a 50-yard (45 m) distance; and they may take 3 youths, age 15 or younger, to fish under their Fishing Vehicle Parking Pass.

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15. * * *

i. Conditions D1 through D14 apply.

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iii. Anglers age 18 and older must complete an Emergency Contact Information/warning/waiver form (PRR Fishing Form #1) prior to receiving a free North Tract Vehicle Access Pass. Anglers must display the North Tract Vehicle Access Pass in the vehicle windshield at all times and return the Pass to the North Tract Visitor Contact Station at the end of each visit.

* * * * *

16. * * *

i. Conditions D1 through D13 apply.

* * * * *

17. Amend § 32.40 Massachusetts by removing paragraph A.2., revising paragraphs C.1. and C.2., redesignating paragraphs C.4. through C.11. as paragraphs C.5. through C.12, adding new paragraph C.4., revising newly redesignated paragraphs C.8., C.9., and C.11., and revising paragraph D. under Parker River National Wildlife Refuge.

These additions and revisions read as follows:

§ 32.40 Massachusetts.

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Parker River National Wildlife Refuge

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C. Big Game Hunting. * * *

1. All hunters, regardless of age, must possess and carry a refuge permit (Quota Deer Hunt Application, FWS Form 3–2354). This is a quota hunt, and we will randomly select a limited number of hunters from those that apply. You may apply by mail from September 1 until October 1.

2. If selected from the random drawing, you must attend a refuge-specific hunter orientation session prior to the hunt. We will charge a fee of participating hunters.

* * * * *

4. We prohibit discharge of a firearm on or across the refuge road. You must unload hunting weapons when walking upon the refuge road.

* * * * *

8. We prohibit loaded hunting firearms (see § 27.42 of this chapter) on or within 150 feet (45 m) of the refuge road.

9. You must bring all deer to the refuge deer check station located at our Headquarters on the Plum Island Turnpike in Newburyport, Massachusetts.

* * * * *

11. We prohibit vehicular travel (emergency excepted) on refuge roads from ½ hour before legal sunrise until 8:30 a.m. Refuge and Sandy Point State Reservation hunters may enter or reenter the refuge until 2:30 p.m. during the refuge deer hunt.

* * * * *

D. Sport Fishing. We allow saltwater fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow saltwater fishing on the ocean beach and the surrounding waters of the Broad Sound with the following conditions:

i. We prohibit fishing during closures.

ii. Anglers are subject to State licensing requirements and catch limits.

iii. We allow persons using refuge fishing areas access from legal sunrise to legal sunset without a refuge permit. They are, however, subject to entrance fee requirements.

iv. Nelson Island is open to fishing from legal sunrise to legal sunset, except during waterfowl seasons, or other closures. We limit access to the trail, and fishing within 100 feet (30 m) on either side of the trail at the shoreline of Broad Sound.

v. The south-facing shoreline of Stage Island is open to fishing when accessed from the shore from Sandy Point State Reservation. We allow access from the Sandy Point State Reservation, along the shoreline below mean high tide, to a point 250 feet (73 m) beyond the terminus, or most western point, of the Stage Island peninsula known as Ipswich Bluff.

2. We require a Fishing Application (Fishing/Shrimping/Crabbing Application, FWS Form 3–2358) and application fee, as well as an entrance fee for night fishing and for the use of over-the-sand, surf-fishing vehicles (ORVs) with the following conditions:

i. We prohibit fishing in closed areas.

ii. Anglers must enter the refuge through the entrance gate and arrive prior to legal sunset.

iii. We generally allow fishing after legal sunset with a permit (vehicle sticker issued by the refuge office) sometime in mid-July until October 31 of the same year. Those persons are subject to additional listed environmental and/or emergency conditions.

iv. We will issue persons wishing access to the refuge beach with ORVs a separate Fishing/Shrimping/Crabbing Application (FWS Form 3–2358), generally valid between September 1 and October 31 of the same year. Those persons are subject to additional listed permit conditions. We may restrict ORV use due to beach, weather, tide, and other conditions.

18. Amend § 32.41 Michigan by adding an entry in alphabetical order for Detroit River International Wildlife Refuge to read as follows:

§ 32.41 Michigan.

* * * * *

Detroit River International Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of duck, goose, rail, gallinule, coot, woodcock, and snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit cutting of woody vegetation (see § 27.51 of this chapter) on the refuge for blinds.

2. All blinds must be portable; and you must remove all of your blinds, boats, and decoys (see § 27.93 of this chapter) from the refuge each day.

3. We prohibit the construction or use of permanent blinds, stands, platforms, or scaffolds (see § 27.92 of this chapter).

4. You may possess only approved nontoxic shot (see § 32.2(k)) while in the field.

5. We allow refuge access from 1½ hours prior to legal sunrise until 1 hour after legal sunset.

6. We prohibit the use of paint, flagging, reflectors, tacks, or other human-made materials to mark trails or hunting locations (see § 27.93 of this chapter).

7. We allow the use of hunting dogs, provided the dog is under the immediate control of the hunter at all times.

8. You must park all vehicles in designated parking areas.

9. We prohibit camping.

10. We allow hunting of waterfowl only on the Plum Creek Bay Unit of the refuge in accordance with State regulations subject to the following conditions:

i. Conditions A1 through A7 and A9 apply.

ii. Access to this unit is by boat only.

11. We allow hunting of waterfowl only on the Brancheau Unit of the

refuge in accordance with State regulations subject to the following conditions:

i. You must obtain permits for this unit by entering the Michigan Department of Natural Resources daily drawing at the Point Mouilee State Game Area.

ii. You must possess a valid permit for the date you are hunting in the Brancheau Unit.

iii. Conditions A1, A2, A4, and A6 through A9 apply.

iv. You must remain with 75 feet (22.5 m) of your assigned blind or numbered post. We allow an exception for unarmed (hunting weapons) retrieval of waterfowl.

v. We prohibit boats. You may access all blinds or areas by walking.

vi. You may possess a maximum of 18 shells per hunter containing only approved nontoxic shot (see § 32.2(k)).

vii. We prohibit shot size larger than BBB.

B. Upland Game Hunting. We allow hunting of pheasant, squirrel, rabbit, fox, raccoon, and coyote on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A3, and A5 through A9 apply.

2. You may possess only approved nontoxic shot (see § 32.2(k)) while in the field with the following exception: while hunting fox, coyote, and raccoon in units where we allow it, hunters may use single-projectile shot such as bullets, slugs, or muzzleloader bullets containing lead. We prohibit the use of buckshot for any hunting on the refuge.

C. Big Game Hunting. We allow hunting of deer and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A3, A5, A6, A8, and A9 apply.

2. We prohibit the distribution of bait or hunting with the aid of bait, salt, minerals, or other ingestible attractant (see § 32.2(h)).

3. For deer hunting, we allow only single-projectile shot. We prohibit the use of buckshot for any hunting on the refuge.

4. For turkey hunting, you must possess only approved nontoxic shot (see § 32.2(k)) while in the field.

5. We allow only portable tree stands for deer hunting.

6. We allow only one tree stand per hunter per refuge unit.

7. We do not require hunters to remove tree stands at the end of each day's hunt. However, we strictly enforce State rules on tree stands.

D. Sport Fishing. [Reserved]

19. Amend § 32.42 Minnesota by:

a. Revising paragraph A.4. under Agassiz National Wildlife Refuge;

b. Revising paragraph B.2. and adding paragraph B.3. under Glacial Ridge National Wildlife Refuge;

c. Revising paragraphs A.1., B.2., and B.3., removing paragraphs B.4. and B.5., revising the introductory text of paragraph C., removing paragraphs C.3 through C.6., revising the introductory text of paragraph D., and revising paragraph D.4. under Minnesota Valley National Wildlife Refuge;

d. Revising paragraph B. under Minnesota Valley Wetland Management District; and

e. Revising paragraph C.7. and adding paragraph C.8. under Sherburne National Wildlife Refuge.

These additions and revisions read as follows:

§ 32.42 Minnesota.

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Agassiz National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

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4. We prohibit the construction or use of permanent blinds (see § 27.92 of this chapter).

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Glacial Ridge National Wildlife Refuge

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B. Upland Game Hunting. * * *

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2. You may possess only approved nontoxic shot while in the field, including shot used for hunting wild turkey (see § 32.2(k)).

3. Condition A2 applies.

* * * * *

Minnesota Valley National Wildlife Refuge

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A. Migratory Game Bird Hunting. * * *

1. We require refuge authorization for refuge-specific special hunts.

* * * * *

B. Upland Game Hunting. * * *

* * * * *

2. We allow hunters to possess and use small-caliber rimfire rifles, .22 caliber and smaller, on designated areas of the refuge.

3. You may possess only approved nontoxic shotshells while in the field, including shotshells used for hunting wild turkey (see § 32.2(k)).

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

* * * * *

D. Sport Fishing. We allow sport fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

* * * * *

4. We prohibit the taking of any turtle species by any method on the refuge (see § 27.21 of this chapter).

Minnesota Valley Wetland Management District

* * * * *

B. Upland Game Hunting. We allow upland game hunting throughout the District in accordance with State regulations subject to the following conditions:

1. Conditions A4 and A5 apply.

2. You may possess only approved nontoxic shot for hunting wild turkey (see § 32.2(k)).

* * * * *

Sherburne National Wildlife Refuge

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C. Big Game Hunting. * * *

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7. You may possess only approved nontoxic shot while in the field, including shot used for hunting wild turkey (see § 32.2(k)).

8. Conditions A4 and A7 apply.

* * * * *

20. Amend § 32.43 Mississippi by:

a. Revising paragraphs A., D.1., and D.2., removing paragraph D.4., redesignating paragraphs D.5. through D.9. as paragraphs D.4. through D.8. under Coldwater River National Wildlife Refuge;

b. Revising paragraphs A.1., A.3., and A.4., removing paragraph A.6., redesigating paragraphs A.7. through A.12. as paragraphs A.6. through A.11., adding new paragraph A.12., revising the introductory text of paragraph B., revising paragraphs B.1., B.3., B.5., C.1., and C.8., adding paragraphs C.9. and C.10., revising paragraphs D.1. and D.2., removing paragraph D.3., and redesignating paragraphs D.4. through D.8. as paragraphs D.3. through D.7. under Dahomey National Wildlife Refuge;

c. Revising paragraphs A.2. and A.3., adding paragraphs A.17. and A.18., and revising paragraphs B.1. and C.1. under Hillside National Wildlife Refuge;

d. Revising paragraphs B.2., B.3., and B.14., adding paragraph B.16., and revising paragraph C.1. under Holt Collier National Wildlife Refuge;

e. Revising paragraphs A.3. and A.4., adding paragraphs A.16. and A.17., and revising paragraphs B.1. and C.1. under

Mathews Brake National Wildlife Refuge;

f. Revising paragraphs A.2. and A.3., adding paragraphs A.16. and A.17., and revising paragraphs B.1., C.1., and D.7. under Morgan Brake National Wildlife Refuge;

g. Revising the entry for ''Noxubee National Wildlife Refuge'' to read ''Sam D. Hamilton Noxubee National Wildlife Refuge'' and placing it in alphabetical order in this section, revising paragraphs A.1., A.3., and A.8., adding paragraph A.12., revising the introductory text of paragraph B., revising paragraphs B.4., B.7., B.8., and B.11., revising the introductory text of paragraph C., revising paragraphs C.1. and C.2., removing paragraph C.3., redesignating paragraphs C.4. through C.9. as paragraphs C.3. through C.8., revising newly redesignated paragraph C.8., and revising paragraphs D.1. and D.9. under Sam D. Hamilton Noxubee National Wildlife Refuge;

h. Revising paragraphs A.1. through A.3., A.10., and A.18., adding paragraph A.19., and revising paragraphs B.1., C.1., and D.7. under Panther Swamp National Wildlife Refuge;

i. Revising paragraphs A.1., A.3., and A.5., removing paragraph A.7., redesignating paragraphs A.8. through A.13. as paragraphs A.7. through A.12., adding new paragraph A.13., revising the introductory text of paragraph B., revising paragraphs B.1., B.3., B.5., and C.8., adding paragraphs C.9. and C.10., revising paragraphs D.1. and D.2., removing paragraph D.4., and redesignating paragraphs D.5. through D.9. as paragraphs D.4. through D.8 under Tallahatchie National Wildlife Refuge; and

j. Revising paragraphs A.1. through A.3., adding paragraphs A.16. and A.17., and revising paragraphs B.2., B.7., B.8., C.1., and C.12. under Yazoo National Wildlife Refuge.

These additions and revisions read as follows:

§ 32.43 Mississippi.

* * * * *

Coldwater River National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of migratory waterfowl and coot on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. All hunters must comply with all State hunter education requirements. All hunters age 16 and older must possess and carry a valid signed refuge hunting permit (name and address).

2. We restrict all public use to the period beginning 2 hours before legal sunrise and ending 2 hours after legal sunset. We prohibit entering or remaining on the refuge before or after hours.

3. We allow hunting of migratory game birds, including the Light Goose Conservation Order, only on Wednesdays, Fridays, Saturdays, and Sundays from ½ hour before legal sunrise and ending at 12 p.m. (noon). Hunters must remove all decoys, blind materials (see § 27.93 of this chapter), and harvested waterfowl from the area no later than 1 p.m. each day.

4. Each hunter must obtain a daily Harvest Report Card (OMB 1018–0140) available at each refuge information station and follow the printed instructions on the card. You must display the card in plain view on the dashboard of your vehicle so that the personal information is readable. Prior to leaving the refuge, you must complete the reverse side of the card/form and deposit it at one of the refuge information stations. Include all game harvested; if you harvested no game, report ''0''. Hunters may possess only one Harvest Report Card at a time.

5. We close certain areas of the refuge for sanctuary or administrative purposes. We will mark such areas with ''No Hunting'' or ''Area Closed'' signs.

6. Waterfowl hunters may leave boats meeting all State registration requirements on the refuge water bodies throughout the waterfowl season. You must remove boats (see § 27.93 of this chapter) within 72 hours after the season closes.

7. All hunters, or persons on the refuge for any reason, must wear a minimum of 500 square inches (3,250 cm^2) of visible, unbroken, fluorescent-orange-colored material above the waistline. Waterfowl hunters must comply with this while walking/boating to and from actual hunting area. We do not require fluorescent orange for turkey season, for hunting raccoons at night, or for waterfowl hunters while actually hunting.

8. We allow dogs on the refuge only when specifically authorized for hunting. We encourage the use of dogs to retrieve dead or wounded waterfowl. Dogs must remain under the immediate control of their handlers at all times (see § 26.21(b) of this chapter).

9. You must remove decoys, blinds, other personal property, and litter (see §§ 27.93 and 27.94 of this chapter) from the hunting area following each morning's hunt. We prohibit cutting or removing trees and other vegetation (see § 27.51 of this chapter). We prohibit the use of flagging, paint, blazes, tacks, or other types of markers.

10. We prohibit ATVs/UTVs (see § 27.31(f) of this chapter), horses, and mules on the refuge.

11. We prohibit the use or possession of alcoholic beverages while hunting on the refuge (see § 32.2(j)).

* * * * *

D. Sport Fishing. * * *

1. Condition A11 applies.

2. All anglers must possess and carry a valid, signed refuge fishing permit (name and address) certifying that they understand and will comply with all regulations.

* * * * *

Dahomey National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

1. All hunters must comply with all State hunter education requirements. All hunters age 16 and older must possess and carry a valid, signed refuge hunting permit (name and address).

* * * * *

3. We allow hunting of migratory game birds, including Light Goose Conservation Order, only on Wednesdays, Fridays, Saturdays, and Sundays from ½ hour before legal sunrise until 12 p.m. (noon). Hunters must remove all decoys, blind material (see § 27.93 of this chapter), and harvested waterfowl from the area no later than 1 p.m. each day.

4. Each hunter must obtain a Harvest Report Card (OMB 1018–0140) available at each refuge information station and follow the printed instructions on the card. Hunters must place the card in plain view on the dashboard of their vehicle so the personal information is readable. Prior to leaving the refuge, you must complete the reverse side of the card and deposit it at one of the hunter information stations. Include all game harvested, and if there is none, report ''0''. We prohibit hunters possessing more than one Harvest Report Card at a time.

* * * * *

12. We prohibit the use or possession of alcoholic beverages while hunting on the refuge (see § 32.2(j)).

B. Upland Game Hunting. We allow hunting of quail, squirrel, rabbit, and raccoon (raccoon by General Special Use Application and Permit [FWS Form 3–1383–G] only) on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A4, A5, A7, A8, A11, and A12 apply.

* * * * *

3. You may possess shotguns with approved nontoxic shotgun shot (see § 32.2(k)), .17, .22, .22-magnum rifles, and legal archery equipment.

* * * * *

5. We allow use of dogs, but they must remain under the immediate control of their handlers at all times (see § 26.21(b) of this chapter).

* * * * *

C. Big Game Hunting. * * *

1. Conditions A1, A4, A5, A8, A11, and A12 apply.

* * * * *

8. You may erect portable deer stands (see § 32.2(i)) 2 weeks prior to the opening of archery season on the refuge, and you must remove them by January 31 (see § 27.93 of this chapter). We prohibit hunters leaving their stands in the tree at the end of each hunting day. If they wish to leave the stands on the refuge, they may be chained to the base of the tree and labeled with the hunter's name and phone number legibly written on or attached to the stand. This does not reserve the site for their exclusive use. All hunting sites are on a first-come, first-served basis. We may confiscate and dispose of deer stands not in compliance with these regulations.

9. Hunters using a climbing tree stand must use a fall-arrest system manufactured to Treestand Manufacturers Association standards.

10. We prohibit cutting or removing trees and other vegetation (see § 27.51 of this chapter). We prohibit the use of flagging, paint, blazes, tacks, or other types of markers. We prohibit nailing deer stands and/or steps to trees and attaching any blind or stand to a tree by any metal object driven, screwed, or otherwise inserted into the tree (see § 32.2(i)).

9. *D. Sport Fishing.* * * *

1. Condition A12 applies.

2. All anglers must possess and carry a valid, signed refuge fishing permit (name and address) certifying that they understand and will comply with all regulations.

* * * * *

Hillside National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

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2. Before hunting or fishing, all participants must display their User Information/Harvest Report Card (OMB 1018–0140) in plain view on the dashboard of their vehicle so that the card number is readable.

3. Failure to display the User Information/Harvest Report Card will result in the loss of the participant's annual refuge public use permit (name, address, and phone number).

* * * * *

17. For instances of lost or stolen public use permits, management may issue duplicates at their discretion, and we may charge a fee.

18. We allow retriever dogs while hunting migratory birds.

B. Upland Game Hunting. * * *

1. Conditions A1 through A10 and A17 apply.

* * * * *

C. Big Game Hunting. * * *

1. Conditions A1 through A10, A17, B5, and B8 apply.

* * * * *

Holt Collier National Wildlife Refuge

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B. Upland Game Hunting. * * *

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2. Before hunting or fishing, all participants must display their User Information/Harvest Report Card (OMB 1018–0140) in plain view on the dashboard of their vehicle so that the card number is readable.

3. Failure to display the User Information/Harvest Report Card (OMB 1018–0140) will result in the loss of the participant's annual refuge public use permit (name, address, and phone number).

* * * * *

14. We prohibit ATVs, horses, and mules.

* * * * *

16. For instances of lost or stolen public use permits, management may issue duplicates at their discretion, and we may charge a fee.

C. Big Game Hunting. * * *

1. Conditions B1 through B7, B9, and B13 through B16 apply.

* * * * *

Mathews Brake National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

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3. All participants must display the User Information/Harvest Report Card (OMB 1018–0140) in plain view on the dashboard of their vehicle so that the card number is readable.

4. Failure to display the User Information/Harvest Report Card will result in the loss of the participant's annual refuge public use permit (name, address, and phone number).

* * * * *

16. For instances of lost or stolen public use permits, management may issue duplicates at their discretion, and the hunter may incur a fee.

17. We allow retriever dogs while hunting migratory birds.

B. Upland Game Hunting. * * *

1. Conditions A2 through A9, A15, and A16 apply.

* * * * *

C. Big Game Hunting. * * *

1. Conditions A1 through A9, A15, A16, and B5 through B7 apply.

* * * * *

Morgan Brake National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

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2. Before hunting and fishing, all participants must display their User Information/Harvest Report Card (OMB 1018–0140) in plain view on the dashboard of their vehicle so that the card number is readable.

3. Failure to display the User Information/Harvest Report Card will result in the loss of the participant's annual refuge public use permit (name, address, and phone number).

* * * * *

16. For instances of lost or stolen public use permits, management may issue duplicates at their discretion, and the hunter may incur a fee.

17. We allow retriever dogs while hunting migratory birds.

B. Upland Game Hunting. * * *

1. Conditions A1 through A11 and A16 apply.

* * * * *

C. Big Game Hunting. * * *

1. Conditions A1 through A7, A9, A10, A16, and B5 through B7 apply.

* * * * *

D. Sport Fishing. * * *

* * * * *

7. Conditions A2 through A10 and A16 apply.

* * * * *

Panther Swamp National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

1. Youth hunters age 15 and younger must possess and carry a hunter safety course card or certificate. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. Each hunter age 16 and older must possess and carry a valid, signed refuge public use permit (name, address, and phone number) certifying that he or she understands and will comply with all regulations. One adult may supervise no more than one youth hunter.

2. Before hunting or fishing, all participants must display their User Information/Harvest Report Card (OMB 1018–0140) in plain view on the

dashboard of their vehicle so that the card number is readable.

3. Failure to display the User Information/Harvest Report Card will result in the loss of the participant's annual public use permit.

* * * * *

10. We allow ATVs/UTVs only on designated trails (see § 27.31 of this chapter) (see refuge brochure map) from September 15 through February 28. Size limitations may apply (see refuge brochure).

* * * * *

18. For instances of lost or stolen public use permits, management may issue duplicates at their discretion, and the hunter may incur a fee.

19. We allow retriever dogs while hunting migratory birds.

B. Upland Game Hunting. * * *

1. Conditions A1 through A10 and A18 apply.

* * * * *

C. Big Game Hunting. * * *

1. Conditions A1 through A7, A9, A10, A18, and B6 through B8 apply.

* * * * *

D. Sport Fishing. * * *

* * * * *

7. Conditions A1 through A7, A10, and A18 apply.

Sam D. Hamilton Noxubee National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

1. We require a $15 fee permit (name and address) for waterfowl hunting, and only two companions may accompany each permit holder. Permits are nontransferable and only one application per hunter. We do not guarantee preferred dates.

* * * * *

3. Hunts and hunt dates are available at refuge headquarters and specified in the refuge brochure. You must possess and carry a signed refuge hunt permit (signed brochure) when hunting.

* * * * *

8. Persons possessing, transporting, or carrying firearms on the refuge must comply with all provisions of State and local law. Persons may only use (discharge) firearms in accordance with refuge regulations (see § 27.42 and specific refuge regulations in part 32).

* * * * *

12. We allow dogs for retrieval of migratory game birds.

B. Upland Game Hunting. We allow hunting of squirrel, rabbit, quail, opossum, and raccoon on designated areas of the refuge in accordance with State regulations subject to the following conditions:

* * * * *

4. We allow hunting of squirrel, raccoon, rabbit, quail, and opossum with dogs during designated hunts.

* * * * *

7. Conditions A3, A7, A8, and A10 apply.

8. We prohibit the use of ATVs, horses, and mules.

* * * * *

11. Valid permit holders (signed brochure) may take incidental species (coyote, beaver, nutria, and feral hog) during any hunt with those weapons legal during those hunts.

C. Big Game Hunting. We allow hunting of white-tailed deer and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A3, A5, A7, A8, A10, B8, B9, and B11 apply.

2. We require a $15 fee permit (name and address) for all refuge deer hunts. Hunters must sign this permit and have it in their possession at all times while hunting. Permits are nontransferable and only one application per hunter.

* * * * *

8. We will make special deer hunting blinds available for persons limited to the use of a wheelchair by General Special Use Application and Permit (FWS Form 3–1383–G). Contact the refuge office for information.

D. Sport Fishing. * * *

1. The sport fishing, boating, and bow fishing season extends from March 1 through October 31, except for the Noxubee River and borrow pit areas along Highway 25 that are open year-round. Persons must possess and carry a signed refuge fishing permit (signed brochure) when fishing.

* * * * *

9. We prohibit fishing tournaments on all refuge waters.

Tallahatchie National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

1. All hunters must comply with all State hunter education requirements. All hunters age 16 and older must possess and carry a valid, signed refuge hunting permit (name and address).

* * * * *

3. We allow hunting of migratory game birds, including Light Goose Conservation Order, only on Wednesdays, Fridays, Saturdays, and Sundays from ½ hour before legal sunrise and ending at 12 p.m. (noon). Hunters must remove all decoys, blind material (see § 27.93 of this chapter), and harvested waterfowl from the area no later than 1 p.m. each day.

* * * * *

5. Each hunter must obtain a daily User Information/Harvest Report Card (OMB–1018–0140) available at each refuge information station and follow the printed instructions on the card. You must display the card in plain view on the dashboard of your vehicle so that the personal information is readable. Prior to leaving the refuge, you must complete the reverse side of the card and deposit it at one of the refuge information stations. Include all game harvested, and if you harvest no game, report ''0.'' We prohibit hunters possessing more than one User Information/Harvest Report Card at a time.

* * * * *

13. We prohibit the use or possession of alcoholic beverages while hunting on the refuge (see § 32.2(j)).

B. Upland Game Hunting. We allow hunting of quail, squirrel, rabbit, and raccoon (raccoon by General Special Use Permit [FWS Form 3–1383–G] only) on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A4 through A6, A8, A9, and A11 through A13 apply.

* * * * *

3. You may possess shotguns only with approved nontoxic shotgun shot (see § 32.2(k)), .17, .22., .22-magnum rifles, and legal archery equipment.

* * * * *

5. Hunters may use dogs, but they must remain under the immediate control of their handlers at all times (see § 26.21(b) of this chapter).

* * * * *

C. Big Game Hunting. * * *

* * * * *

8. You may erect portable deer stands (see § 32.2(i)) 2 weeks prior to the opening of archery season on the refuge, and you must remove them by January 31 (see § 27.93 of this chapter). We prohibit hunters leaving their stands in the tree at the end of each hunting day. If they wish to leave the stands on the refuge, they may be chained to the base of the tree and labeled with the hunter's name and phone number legibly written on or attached to the stand. This does not reserve the site for their exclusive use. All hunting sites are on a first-come, first-served basis. We may confiscate and dispose of deer stands not in compliance with these regulations.

9. Hunters using a climbing tree stand must use a fall-arrest system manufactured to Treestand Manufacturers Association standards.

10. We prohibit cutting or removing trees and other vegetation (see § 27.51 of this chapter). We prohibit the use of

flagging, paint, blazes, tacks, or other types of markers. We prohibit nailing deer stands and/or steps to trees and attaching any blind or stand to a tree by any metal object driven, screwed, or otherwise inserted into the tree (see § 32.2(i)).

D. Sport Fishing. * * *

1. Condition A13 applies.

2. All anglers must possess and carry a valid, signed refuge fishing permit (name and address) certifying that they understand and will comply with all regulations.

* * * * *

Yazoo National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

1. Youth hunters age 15 and under must possess and carry a hunter safety course card or certificate. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. Each hunter age 16 and older must possess and carry a valid, signed refuge public use permit (name, address, and phone number) certifying that he or she understands and will comply with all regulations. One adult may supervise no more than one youth hunter.

2. Before hunting or fishing, all participants must display their User Information/Harvest Report Card (OMB 1018–0140) in plain view on the dashboard of their vehicle so that the card number is readable.

3. Failure to display the User Information/Harvest Report Card will result in the loss of the participant's annual refuge public use permit.

* * * * *

16. For instances of lost or stolen public use permits, management may issue duplicates at their discretion, and hunters may incur a fee.

17. We allow retriever dogs while hunting migratory birds.

B. Upland Game Hunting. * * *

* * * * *

2. Conditions A1 through A9 and A16 apply.

* * * * *

7. We prohibit ATVs, horses, and mules.

8. We allow rabbit hunting on the Herron and Brown Tracts.

* * * * *

C. Big Game Hunting. * * *

1. Conditions A1 through A7, A9, A16, B6, B7, and B9 apply.

* * * * *

12. We allow archery deer hunting on the Brown Tract.

* * * * *

21. Amend § 32.44 Missouri by removing paragraph B.3., and revising paragraphs C.4. through C.6., and removing paragraph C.7. under Big Muddy National Fish and Wildlife Refuge to read as follows:

§ 32.44 Missouri.

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Big Muddy National Fish and Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

* * * * *

4. We restrict deer and turkey hunters on the Boone's Crossing Unit, including Johnson Island, to archery methods only.

5. The Cora Island Unit is open to deer hunting for archery methods only. We restrict hunting for other game to shotgun only with shot no larger than BB.

6. You may possess only approved nontoxic shot while hunting on the refuge (see § 32.2(k)); this includes turkey hunting.

* * * * *

22. Amend § 32.45 Montana by:

a. Revising the entry for ''National Bison National Wildlife Refuge'' to read ''National Bison Range'' and placing it in alphabetical order in this section, and revising paragraph D. under the newly titled National Bison Range;

b. Revising the entry for ''Nine-Pipe National Wildlife Refuge'' to read ''Ninepipe National Wildlife Refuge'' and placing it in alphabetical order in this section, and revising paragraph D. under Ninepipe National Wildlife Refuge;

c. Revising the entry for Northwest Montana Wetland Management District;

d. Revising paragraph D. under Pablo National Wildlife Refuge; and

e. Revising paragraph A.1., adding paragraphs A.4. and A.5., revising paragraphs C.2. through C.6., adding paragraphs C.7. through C.11., and revising paragraph D. under Red Rock Lakes National Wildlife Refuge;

These additions and revisions read as follows:

§ 32.45 Montana.

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National Bison Range

* * * * *

D. Sport Fishing. We allow sport fishing on designated areas of the refuge in accordance with State laws and regulations and per Joint State and Confederated Salish and Kootenai Tribal regulations subject to the following conditions:

1. We allow public access by walk-in only. All anglers must remain within 100 feet (30 m) of the creek except they may use the canal road to access the creek.

2. We prohibit the use of lead or lead-based lures or sinkers.

3. We prohibit leaving or dumping any dead animal, fish or fish entrails, garbage, or litter on the refuge (see § 27.94 of this chapter).

Ninepipe National Wildlife Refuge

* * * * *

D. Sport Fishing. We allow sport fishing on designated areas of the refuge in accordance with State laws and regulations and per joint State and Confederated Salish and Kootenai Tribal regulations subject to the following conditions:

1. We prohibit the use of lead or lead-based tackle.

2. We prohibit the use of boats, float tubes, and other flotation devices.

3. You must remove ice fishing shelters and other personal property at the end of each day (see § 27.93 of this chapter).

4. We prohibit leaving or dumping any dead animal, fish or fish entrails, garbage, or litter on the refuge (see § 27.94 of this chapter).

* * * * *

Northwest Montana Wetland Management District

A. Migratory Game Bird Hunting. We allow migratory game bird hunting on Waterfowl Production Areas (WPAs) throughout the wetland district in accordance with State law (Flathead County WPAs) and per Joint State and Confederated Salish and Kootenai Tribal regulations (Lake Count WPAs) subject to the following conditions:

1. Hunters must remove all boats, decoys, portable blinds, boat blinds, and other personal property at the end of each day (see § 27.93 of this chapter).

2. Hunters must construct blinds, other than portable blinds, of native materials only. They must label all nonportable blinds with their name, Automated License System (ALS) number, address, and phone number. Construction and labeling of these blinds does not constitute exclusive use of the blind. Hunters must remove these blinds within 7 days of the close of the migratory game bird hunting season.

3. We prohibit the use or possession of alcoholic beverages while hunting (see § 32.2(j)).

B. Upland Game Hunting. We allow upland game hunting on Waterfowl Production Areas (WPAs) throughout the wetland district in accordance with State law (Flathead County WPAs) and per Joint State and Confederated Salish and Kootenai Tribal regulations (Lake

County WPAs) subject to the following conditions:

1. Hunters may possess only approved nontoxic shot (see § 32.2(k)).

2. We prohibit hunting with a shotgun capable of holding more than three shells on all Lake County WPAs.

3. We prohibit the use or possession of alcoholic beverages while hunting (see § 32.2(j)).

C. Big Game Hunting. We allow big game hunting on Lake County Waterfowl Production Areas (WPAs) per Joint State and Confederated Salish and Kootenai Tribal regulations. We allow big game hunting on Flathead County WPAs in accordance with State regulations subject to the following conditions:

1. We allow portable tree stands and/or portable ground blinds; however, hunters must remove them daily (see § 27.93 of this chapter). We prohibit construction and/or use of tree stands or portable ground blinds from dimensional lumber. We prohibit the use of nails, wire, screws, or bolts to attach a stand to a tree or hunting from a tree into which a metal object has been driven (see § 32.2(i)).

D. Sport Fishing. We allow sport fishing on all Waterfowl Production Areas (WPAs) throughout the wetland district in accordance with State law (Flathead County WPAs) and per Joint State and confederated Salish and Kootenai Tribal regulations (Lake County WPAs) subject to the following condition: Anglers must remove all motorboats, boat trailers, vehicles, fishing equipment, and other personal property from the WPAs at the end of each day (see § 27.93 of this chapter).

Pablo National Wildlife Refuge

* * * * *

D. Sport Fishing. We allow sport fishing on designated areas of the refuge in accordance with State laws and per Joint State and Confederated Salish and Kootenai Tribal regulations subject to the following conditions:

1. We prohibit the use of lead or lead-based lures or sinkers.

2. We prohibit the use of boats, float tubes, and other flotation devices.

3. You must remove ice fishing shelters and other personal property at the end of each day (see § 27.93 of this chapter).

4. We prohibit leaving or dumping any dead animal, fish or fish entrails, garbage, or litter on the refuge (see § 27.94 of this chapter).

Red Rock Lakes National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

1. We allow only goose, duck, and coot hunting in the area surrounding Lower Red Rock Lake. The north boundary is the east-west running fence line 1 mile (1.6 km) north of the River Marsh. The west boundary is the west boundary of the refuge. The south boundary is the South Valley Road and Sparrow Pond Trail. The east boundary is 50 yards (45 m) east of Odell Creek northward from Sparrow Pond Trail Bridge to Lower Red Rock Lake then continuing due north from the mouth of Odell Creek to the north boundary. (Consult the refuge manager prior to hunting to learn the specific boundary of the hunting area.)

* * * * *

4. We prohibit the use of motorized decoys.

5. We prohibit camping along roadsides. We allow camping only in two established campgrounds. We restrict camping to 16 consecutive days within any 30-day period. We prohibit horses in the campgrounds. All bear attractants including, but not limited to, food, garbage, and carcasses, must be acceptably stored at night (unless in immediate use) and during the day if unattended.

* * * * *

C. Big Game Hunting. * * *

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2. We restrict moose hunting to the willow fen area south of Elk Springs Creek, east of Upper Red Rock Lake and north and west of the South Valley Road, at the southeast corner of the refuge. We prohibit moose hunting in all other areas of the refuge.

3. We allow big game hunting (elk, white-tailed deer, mule deer, and pronghorn antelope) on the refuge except we prohibit big game hunting in the moose hunting area (willow fen area), in Alaska Basin (far east end of the refuge), on those areas of the refuge east of Elk Lake Road (Culver Pond/Widgeon Pond Area) and east of the willow fen.

4. We prohibit hunting near the Lakeview town site, near refuge headquarters, and on portions of Odell Creek Trail. We close those areas for protection of nearby residences. (Consult the refuge manager prior to hunting to learn the specific boundary of the closed areas.)

5. We limit the number of hunters per day during the ''general'' big game season for the area north of South Valley Road, south of Red Rock River Mash, west of Upper Red Rock Lake to the west refuge boundary. We close this area to hunting by other big game hunters during the general big game season. We select the hunters per day by annual lottery. (Consult the refuge manager to participate in the lottery.)

6. You may hire outfitters or ranchers for the retrieval of big game only. We prohibit outfitted or guided hunting on the refuge.

7. We prohibit retrieval of game from closed areas of the refuge without consent of a refuge employee.

8. We prohibit use of wheeled game carts or other mechanical transportation devices for game retrieval on portions of the refuge designated as Wilderness Area.

9. We prohibit horses north of South Valley Road except for the retrieval of big game. We only allow horses for back-country access to the Centennial Mountains south of South Valley Road. We require the use of certified weed-free hay or pellets in refuge parking lots and on refuge roads or trails.

10. We prohibit shooting and/or hunting until the hunter is more than 50 yards (45 m) from the center line of South Valley Road. We prohibit shooting from any refuge or county roadway.

11. Condition A5 applies.

D. Sport Fishing. We allow fishing on designated areas of the refuge in accordance with State fishing regulations subject to the following conditions:

1. We allow fishing on all refuge streams in accordance with State River and Stream regulations, unless closure is necessary to protect nesting trumpeter swans or Arctic grayling restoration efforts.

2. We allow fishing on Widgeon Pond and Culver Pond. These are open under State River and Stream regulations to fishing from the bank, except for necessary closures to protect nesting trumpeter swans or Arctic grayling restoration efforts.

3. We prohibit fishing on all other refuge waters.

4. We prohibit all means of fishing except the use of pole and line or rod and reel while fishing on the refuge.

5. We prohibit the use of felt-soled wading boots on all refuge waters.

6. We prohibit bait fishing and allow only artificial lures or flies when fishing refuge waters.

7. We prohibit the use or possession of lead sinkers or any lead fishing product while fishing.

8. We prohibit tubes and other flotation devices while fishing on Widgeon and Culver Ponds.

9. Condition A5 applies.

* * * * *

23. Amend § 32.46 Nebraska by adding an entry for Rainwater Basin Wetland Management District and

placing it in alphabetical order to read as follows:

§ 32.46 Nebraska.

* * * * *

Rainwater Basin Wetland Management District

A. Migratory Game Bird Hunting. We allow migratory game bird hunting on Waterfowl Production Areas (WPA) throughout the District, excluding McMurtrey Waterfowl Production Area in Clay County, in accordance with State regulations subject to the following conditions:

1. We prohibit the use of motorboats. We allow only nonpowered motorboats and those powered by electric motors (see § 27.32 of this chapter).

2. You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction at the end of each day (see §§ 27.93 and 27.94(a) of this chapter).

3. You may leave temporary blinds, other than portable blinds, constructed of natural vegetation found on site overnight. We prohibit bringing any type of live or dead vegetation onto the WPAs for any purpose at any time (see § 27.52 of this chapter). Construction of these temporary blinds does not constitute exclusive use of the blind (see § 27.92 of this chapter).

4. We prohibit exercising, running, training, or hunting with dogs from May 1 to July 31; and dogs must be on a leash during this time period. At all other times during the hunting season, dogs must be under the owner's immediate control (see § 26.21(b) of this chapter).

5. We prohibit camping and/or open fires (see § 27.95(a) of this chapter).

6. We restrict the use of all motorized vehicles, including ATVs and/or snowmobiles, to designated parking lots only (see § 27.31 of this chapter).

7. We prohibit the use of all firearms for target practice (see § 27.41 of this chapter).

8. We prohibit the use of horses for any purpose (see § 26.21(b) of this chapter).

B. Upland Game Hunting. We allow upland game hunting on Waterfowl Production Areas throughout the District, excluding McMurtrey WPA in Clay County, in accordance with State regulations subject to the following conditions:

1. Hunters may possess only approved nontoxic shot (see § 32.2(k)).

2. We prohibit the shooting or harvesting of black-tailed prairie dogs.

3. Conditions A4 through A8 apply.

C. Big Game Hunting. We allow big game hunting on Waterfowl Production Areas throughout the District, excluding McMurtrey WPA in Clay County, in accordance with State regulations subject to the following conditions:

1. We allow portable tree stands and/or portable ground blinds; however, you must remove them along with any other personal property at the end of each day (see §§ 27.93 and 27.94(a) of this chapter).

2. Conditions A3 through A8 apply.

D. Sport Fishing. We allow sport fishing on Waterfowl Production Areas throughout the District, excluding McMurtrey WPA in Clay County, in accordance with State regulations subject to the following conditions;

1. You must remove all boats, boat trailers, vehicles, fishing equipment, and other personal property from the WPAs at the end of each day (see §§ 27.93 and 27.94(a) of this chapter).

2. Conditions A1 and A5 apply.

* * * * *

24. Amend § 32.48 New Hampshire by:

a. Revising paragraph A.2., removing paragraph A.4., revising paragraphs C.3., C.10., and C.11., and removing paragraphs C.12. through C.17. under Great Bay National Wildlife Refuge; and

b. Revising the entry for ''Lake Umbagog National Wildlife Refuge'' to read ''Umbagog National Wildlife Refuge,'' placing the newly titled entry in alphabetical order within the section, and revising paragraphs A.1., A.3., A.4., B.3., B.5., B.6., C.1., C.2., and C.4. under Umbagog National Wildlife Refuge.

These revisions read as follows:

§ 32.48 New Hampshire.

* * * * *

Great Bay National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

* * * * *

2. We allow hunting within the refuge boundary upon navigable waters from within a boat. We prohibit access to land areas, mud flats, rocks, or marsh grass above mean high tide within the refuge. We prohibit hunters retrieving birds inland of the boundary signs.

* * * * *

C. Big Game Hunting. * * *

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3. We require a fee for a Quota Deer Hunt Application (FWS Form 3–2354) which you must possess and carry. We draw, by lottery, 20 hunters for each day for a total of 40 hunters. We also draw 20 alternate hunters.

* * * * *

10. Refuge hunting regulations, as listed in the Hunter Information Package and map, will be in effect, and hunters must be in compliance with State law.

11. The refuge is located in Newington, New Hampshire, along the eastern shoreline of Great Bay. McIntyre Road borders the refuge to the east. The southern boundary begins approximately ¼ mile (.4 km) north of the intersection of Fabyan Point Road and McIntyre Road and continues west to the shoreline of Great Bay. The northern boundary begins approximately 150 feet (45 m) south of the intersection of McIntyre Road and Little Bay Road and continues west to the shoreline of Great Bay. The western boundary is the shoreline of Great Bay.

* * * * *

Umbagog National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

1. You must wear hunter-orange clothing or material in accordance with State of Maine regulations for the season and/or species you are hunting.

* * * * *

3. You may use dogs to assist in hunting and retrieval of harvested birds. We prohibit dog training on the refuge.

4. We open the refuge to hunting during the hours stipulated under the State's hunting regulations. We close the refuge to night hunting. Hunters must unload all hunting firearms (see § 27.42 of this chapter) outside of legal hunting hours.

* * * * *

B. Upland Game Hunting. * * *

* * * * *

3. We open the refuge to hunting during the hours stipulated under the State's hunting regulations. We close the refuge to night hunting. Hunters must unload all hunting firearms (see § 27.42 of this chapter) and nock no arrows outside of legal hunting hours.

* * * * *

5. Condition A1 applies.

6. We allow hunting of snowshoe hare, ring-necked pheasant, and ruffed grouse with dogs during State hunting seasons. We prohibit dog training on the refuge.

C. Big Game Hunting. * * *

1. We open the refuge to hunting during the hours stipulated under the State's hunting regulations. We prohibit night hunting. Hunters must unload all hunting firearms (see § 27.42 of this chapter) and nock no arrows outside of legal hunting hours.

2. We allow bear and coyote hunting with dogs during State hunting seasons. We prohibit dog training on the refuge.

* * * * *

4. Each hunter must wear hunter-orange clothing or material in accordance with State of Maine

regulations for the season and/or species you are hunting.

* * * * *

25. Amend § 32.49 New Jersey by revising paragraph C.2., removing paragraph C.3., redesignating paragraphs C.4. through C.6. as paragraphs C.3. through C.5., and revising newly redesignated paragraph C.5. under Great Swamp National Wildlife Refuge.

These revisions read as follows:

§ 32.49 New Jersey.

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Great Swamp National Wildlife Refuge

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C. Big Game Hunting. * * *

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2. In addition to the State permit, we require a Deer Hunting Permit (Big/Upland Game Hunt Application, FWS Form 3–2356) along with a fee, issued by the refuge. We must stamp this permit for validation.

* * * * *

5. Refuge hunting regulations, as listed in the ''Great Swamp National Wildlife Refuge Public Deer Hunt Map,'' will be in effect.

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26. Amend § 32.50 New Mexico by revising the entry for Bitter Lake National Wildlife Refuge to read as follows:

§ 32.50 New Mexico.

* * * * *

Bitter Lake National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of goose, duck, coot, mourning dove, and sandhill crane on designated areas of the refuge in accordance with State regulations and any special posting or publications subject to the following conditions:

1. On the North Tract (including Salt Creek Wilderness Area and the portion of the refuge located north of U.S. Highway 70), all hunting must be in accordance with State seasons and regulations.

2. On the Middle Tract (the portion of the refuge located between U.S. Highway 70 and U.S. Highway 380), we restrict hunting to goose, duck, sandhill crane, and American coot (no dove):

i. In the designated public hunting area;

ii. In the southern portion of the Tract that never approaches closer than 100 yards (90 m) to the public auto tour route;

iii. In the southern portion of the Tract only, we limit hunting to Tuesdays, Thursdays, and Saturdays during the period when the State seasons for that area are open simultaneously for most of these species; and

iv. All hunting must cease at 1 p.m. (local time) on each hunt day.

3. On the South Tract (the portion of the refuge located south of U.S. Highway 380), we allow hunting only during Special Hunts (hunters with disabilities and/or youth hunters age 17 and younger).

4. You may use only approved nontoxic shot while hunting (see § 32.2(k)).

5. We prohibit pit or permanent blinds and require removal of all waterfowl decoys and all temporary blinds/stands (see § 27.93 of this chapter).

6. We allow unleashed hunting and/or retrieving dogs on the refuge when hunters are legally present in areas where we allow hunters, only if the dogs are under the immediate control of hunters at all times (see § 26.21(b) of this chapter), and only to pursue species legally in season at that time.

7. We prohibit hunters and their dogs from entering closed areas for retrieval of game.

8. We do not require refuge or other special hunt permits other than those required by the State (e.g., sandhill crane permits).

9. Visit the refuge office or Web site, and/or refer to additional on-site brochures, leaflets, or postings for additional information.

B. Upland Game Hunting. We allow hunting of pheasant, quail, cottontail, and jack rabbit on designated areas of the refuge in accordance with State regulations and any special postings or publications subject to the following conditions:

1. On the North Tract (including Salt Creek Wilderness Area and the portion of the refuge located north of U.S. Highway 70), all hunting must be in accordance with State seasons and regulations with the specification that we allow rabbit hunting only during the season that is concurrently open for quail hunting within the State.

2. On the Middle Tract (the portion of the refuge located between U.S. Highway 70 and U.S. Highway 380), we allow only pheasant hunting:

i. In the designated public hunting area in the southern portion of the Tract;

ii. No closer than 100 yards (90 m) to the public auto tour route; and

iii. We limit hunting to Tuesdays, Thursdays, and Saturdays during the appropriate State season for that area.

3. On the South Tract (the portion of the refuge located south of U.S. Highway 380), we allow public hunting only during Special Hunts (hunters with disabilities and/or youth hunters age 17 and younger) as per State seasons and regulations.

4. Conditions A4 and A6 through A9 apply.

5. We prohibit the use of archery equipment at any time on the refuge except when hunting deer and hogs (see C. Big Game Hunting).

C. Big Game Hunting. We allow hunting of mule deer, white-tailed deer, and feral hog on designated areas of the refuge in accordance with State regulations and any special postings or publications subject to the following conditions:

1. We restrict all hunting to the North Tract (including Salt Creek Wilderness Area and the portion of the refuge located north of U.S. Highway 70) in accordance with State seasons and regulations, with the specification that you may hunt and take feral hog (no bag limit) only while legally hunting deer and only with the weapon legal for deer on that day in that area.

2. Conditions A4 and A7 through A9 apply.

3. We allow use of only portable blinds or stands and require daily removal of all blinds and stands (see § 27.93 of this chapter).

D. Sport Fishing. [Reserved]

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27. Amend § 32.52 North Carolina by:

a. Removing paragraph A.5. and revising paragraph C.2. under Currituck National Wildlife Refuge;

b. Redesignating paragraphs C.2. through C.5. as paragraphs C.3. through C.6., and adding new paragraph C.2. under Mackay Island National Wildlife Refuge;

c. Adding paragraphs A.5. and A.6., and revising paragraphs B.1., C.1., and C.7. under Pee Dee National Wildlife Refuge; and

d. Revising the introductory text of paragraph A., revising paragraphs A.1., A.2., A.4., and A.6., revising the introductory text of paragraph B., and revising paragraphs B.4., B.5., C.2., C.3., C.5., C.7., C.9., D.2., and D.3. under Pocosin Lakes National Wildlife Refuge;

These additions and revisions read as follows:

§ 32.52 North Carolina.

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Currituck National Wildlife Refuge

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C. Big Game Hunting. * * *

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2. Each hunter must pay an annual $15 hunt permit (signed brochure) fee.

* * * * *

Mackay Island National Wildlife Refuge

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C. Big Game Hunting. * * *

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2. Each hunter must pay an annual $15 hunt permit (signed brochure) fee.

* * * * *

Pee Dee National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

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5. We prohibit hunting on Sundays.

6. We prohibit the use of trail cameras. We define a trail camera as any unattended, self-powered photographic device that records photographic images.

B. Upland Game Hunting. * * *

1. Conditions A1 through A6 apply (with the following exception to condition A2: Each adult may supervise no more than one youth hunter).

* * * * *

C. Big Game Hunting. * * *

1. Conditions A1 through A6 apply (with the following exception to condition A2: Each adult may supervise no more than one youth hunter).

* * * * *

7. We prohibit placing a tree stand on the refuge more than 4 days prior to the opening day of the deer hunt in which hunters will be participating, except for participants of the youth deer hunt, who may place tree stands no more than 7 days prior to the hunt day. Archery hunters must remove the tree stands (see § 27.93 of this chapter) by the last day of that hunt. Muzzleloader and firearms hunters must remove tree stands by the day after the last day of that hunt.

* * * * *

Pocosin Lakes National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of duck, goose, swan, dove, woodcock, rail, and snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit hunting on the Davenport and Deaver tracts (which include the area surrounding the Headquarters/Visitor Center and Scuppernong River Interpretive Boardwalk), the Pungo Shop area, New Lake, refuge lands between Lake Phelps and Shore Drive, that portion of the Pinner Tract east of SR 1105, the portion of Western Road between the intersection with Seagoing Road and the gate to the south, and the unnamed road at the southern boundary of the refuge land located west of Pettigrew State Park's Cypress Point Access Area. We prohibit all public entry on Pungo Lake year-round. During November, December, January, and February, we prohibit all public entry on New Lake, Duck Pen Road (except that portion that forms the Duck Pen Wildlife Trail and Pungo Lake Observation point when the trail and observation point are open), and the Pungo Lake, Riders Creek, and Dunbar Road waterfowl banding sites.

2. We require consent from refuge personnel to enter and retrieve legally taken game animals from closed areas including ''No Hunting Zones.'' We prohibit hunting firearms in all closed areas and No Hunting Zones.

* * * * *

4. We open the refuge for daylight use only (½ hour before legal sunrise to ½ hour after legal sunset), except that we allow hunters to enter and remain in open hunting areas from 2 hours before legal sunrise until 2 hours after legal sunset except on the Pungo Unit (see condition C6).

* * * * *

6. Persons may only use (discharge) firearms in accordance with refuge regulations (50 CFR 27.42 and specific regulations in part 32). We prohibit hunting, taking, and attempting to take any wildlife from a vehicle while the passenger area is occupied or when the engine is running, except that:

i. We allow hunting from ATVs and other similarly classed vehicles (where we authorize them) as long as they are stationary and the engine is turned off; and

ii. We allow hunting from boats (where we authorize them) when the motor is off and all forward momentum from a motor has ceased.

* * * * *

B. Upland Game Hunting. We allow hunting of quail, squirrel, raccoon, opossum, rabbit, beaver, nutria, and fox on designated areas of the refuge in accordance with State regulations subject to the following conditions:

* * * * *

4. We prohibit the hunting of raccoon and opossum during, 5 days before, and 5 days after the State bear seasons. Outside of these periods, we allow the hunting of raccoon and opossum at night but only while possessing a General Special Use Application and Permit (FWS Form 3–1383–G).

5. We allow those weapons authorized by the North Carolina Wildlife Resources Commission for taking upland game species except that we prohibit the use of rifles, other than .22-caliber rimfire rifles for hunting, and we prohibit the use of pistols for hunting.

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C. Big Game Hunting. * * *

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2. You may hunt spring turkey only if you possess and carry a valid permit (General Special Use Application and Permit, FWS Form 3–1383–G). These permits are valid only for the dates and areas shown on the permit. We require an application and a fee for those permits and hold a drawing, when necessary, to select the permittees.

3. We allow those weapons authorized by the North Carolina Wildlife Resources Commission for taking big game species except that we prohibit the use of rifles or pistols for hunting. We allow hunters to take feral hog in any area that is open to hunting deer using only those weapons authorized for taking deer. We also allow hunters to take feral hogs with shotgun, muzzleloader, bow and arrow, and crossbow on the Frying Pan area tracts whenever we open those tracts to hunting any game species with firearms.

* * * * *

5. We allow deer hunting with shotgun and muzzleloader on the Pungo Unit only while possessing a valid permit from the North Carolina Wildlife Resources Commission for the Pocosin Lakes National Wildlife Refuge Pungo Unit-either-sex deer special hunts that we hold in late September and October. We require a fee that validates the State permit to participate in these special hunts.

* * * * *

7. Prior to December 1, we allow deer hunting with archery equipment as described by the North Carolina Wildlife Resources Commission on the Pungo Unit during all State deer seasons, except during the muzzleloader season and except during the special hunts described in C5.

* * * * *

9. We allow the use of only portable deer stands (tree climbers, ladders, tripods, etc.). Hunters with a valid permit (State permit) for the special hunts described in condition C5 may install one deer stand on the Pungo Unit the day before the start of their hunt and leave it until the end of their hunt. Hunters must tag any stands left overnight on the refuge with their name, address, and telephone number. Hunters may use ground blinds, chairs, buckets, and other such items for hunting, but we require that you remove all of these items at the end of each day (see § 27.93 of this chapter).

* * * * *

D. Sport Fishing. * * *

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2. We prohibit boats on Pungo Lake. We prohibit leaving a boat anywhere on the refuge overnight.

3. We allow fishing only from ½ hour before legal sunrise until ½ hour after legal sunset.

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28. Amend § 32.55 Oklahoma by adding paragraph A.10., revising paragraph B.2., adding paragraphs B.11., C.10., and C.11., and revising paragraphs D.2. and D.3. under Deep Fork National Wildlife Refuge. These additions and revisions read as follows:

§ 32.55 Oklahoma.

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Deep Fork National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

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10. An adult at least age 18 must directly supervise youth age 14 or younger while hunting.

B. Upland Game Hunting. * * *

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2. We allow shotguns, .22- and .17-caliber rimfire rifles, and pistols for rabbit and squirrel hunting.

* * * * *

11. An adult at least age 18 must directly supervise youth hunters age 14 or younger while hunting.

C. Big Game Hunting. * * *

* * * * *

10. An adult at least age 18 must directly supervise youth age 14 or younger while hunting.

11. During the refuge archery deer season/hunt, we follow the archery legal means of taking found in the Oklahoma Department of Wildlife Conservation's annual official Hunting Guide. No person may use any firearm in conjunction with this hunt.

D. Sport Fishing. * * *

* * * * *

2. No person may use any firearm in conjunction with fishing.

3. We allow year-round fishing on the Deep Fork River and at the Montezuma Creek Fishing Area. We allow fishing on all other sloughs, farm ponds, and impoundments not connected to the River from March 1 through October 31.

* * * * *

29. Amend § 32.56 Oregon by:

a. Removing paragraph C.5. and redesignating paragraph C.6. as C.5. under Hart Mountain National Antelope Refuge;

b. Revising paragraph A. under Julia Butler Hansen Refuge for the Columbian White-Tailed Deer; and

c. Revising paragraph C. under William L. Finley National Wildlife Refuge.

These revisions read as follows:

§ 32.56 Oregon.

* * * * *

Julia Butler Hansen Refuge for the Columbian White-Tailed Deer

A. Migratory Game Bird Hunting. We allow hunting of goose, duck, coot, and common snipe on the shorelines of refuge-owned portions of Crims, Price, Hunting, and Wallace Islands subject to the following conditions:

1. You may possess only approved nontoxic shot for hunting on the refuge (see § 32.2(k)).

2. We prohibit hunting along refuge-owned shorelines of Hunting and Price Islands where it parallels Steamboat Slough.

3. We prohibit permanent blinds. You must remove all personal property, including decoys and boats, by 1 hour after legal sunset (see §§ 27.93 and 27.94 of this chapter).

* * * * *

William L. Finley National Wildlife Refuge

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C. Big Game Hunting. We allow deer hunting on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow restricted firearms and archery deer hunting on designated dates from ½ hour before legal sunrise until ½ hour after legal sunset. We post these refuge-specific regulations at self-service hunt kiosks.

2. We allow only shotguns using buckshot or slugs and muzzleloaders for the restricted firearms deer hunt during the designated dates.

3. You may harvest either-sex deer with appropriate State-issued tags.

4. We prohibit overnight camping or after-hours parking on the refuge.

5. We prohibit hunting from any refuge structure, observation blind, or boardwalk.

6. All hunters must complete a Big Game Harvest Report (FWS Form 3–2359), available at the self-service hunt kiosks, after each hunt day.

7. Hunters may use portable or climbing deer stands but must remove them from the refuge daily (see § 27.93 of this chapter).

8. Persons possessing, transporting, or carrying firearms on national wildlife refuges must comply with all provisions of State and local law. Persons may only use (discharge) firearms in accordance with refuge regulations (see § 27.42 of this chapter and specific refuge regulations in part 32).

* * * * *

30. Amend § 32.59 Rhode Island by:

a. Revising paragraph C. under Block Island National Wildlife Refuge;

b. Revising paragraph C. under Ninigret National Wildlife Refuge; and

c. Revising the heading of the entry for ''Pettaquamscutt Cove National Wildlife Refuge'' to read ''John H. Chafee National Wildlife Refuge'' and placing that newly titled entry in alphabetical order within the section.

§ 32.59 Rhode Island.

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Block Island National Wildlife Refuge

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C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require hunters to submit a Big/Upland Game Hunt Application (FWS Form 3–2356) to be selected to hunt on the refuge. Hunting brochures containing hunting application procedures, seasons, bag limits, methods of hunting, maps depicting areas open to hunting, and the terms and conditions under which we issue hunting permits are available at the refuge administration office and on the refuge's Web site.

2. We require hunters to possess a valid State hunting license and all required stamps, a valid government-issued photo identification, and a valid hunting permit issued by the refuge at all times while on refuge property.

3. We prohibit hunters from taking any other wildlife.

4. We require hunters to notify a refuge representative if they need to enter a closed area to retrieve game.

5. We allow only shotguns (slugs only), muzzleloaders, and archery equipment to harvest deer.

6. We prohibit the use of any drug on any arrow for bow hunting, including crossbows, on national wildlife refuges (see § 32.2(g)). We prohibit archers possessing any arrows employing such drugs on any national wildlife refuge.

7. We prohibit the distribution of bait and/or hunting over bait (see § 32.2(h)).

8. We prohibit the use of nails, wire, screws, or bolts to attach a stand to a tree, or hunting from a tree into which a metal object has been driven to support a hunter (see § 32.2(i)).

9. We prohibit the use or possession of alcoholic beverages while hunting (see § 32.2(j)).

10. We prohibit the use of spotlights, automotive headlights, or other artificial

light for the purpose of spotting, locating, or taking any animal. This regulation applies even if no weapons are in the vehicle.

11. Anytime State hunting regulations specify the requirement that hunters wear blaze-orange clothing, hunters must adhere to those regulations both in amount of blaze-orange clothing required and in specified seasons. For example, we require both archery and firearms hunters to wear blaze-orange clothing during the firearm seasons in areas open to both types of hunts.

12. We prohibit permanent tree stands. Hunters must remove all portable tree stands from the refuge daily (see § 27.93 of this chapter). The Service takes no responsibility for the loss or theft of tree stands left in the field.

13. Hunters must mark tree stands with owner information (name, address, and phone number). We allow only portable stands.

14. We will prohibit the use of motorized or nonmotorized vehicles on the refuge unless the refuge manager grants prior approval (e.g., accessibility for disabled individuals). This includes, but we do not limit it to, vehicles, all-terrain vehicles, dirt bikes, motorcycles, and bicycles.

15. We prohibit marking (including, but we do not limit it to, the use of flagging, bright eyes, tacks, and paint), cutting, and/or removal of trees or vegetation (see § 27.51).

16. We prohibit hunting in areas designated as closed.

17. We prohibit hunting within 100 feet (30 m) of a State, county, city roadway, or refuge trail.

18. We prohibit hunting with the use of firearms within 500 feet (150 m) of an occupied dwelling.

19. We prohibit archery deer hunting within 200 feet (60 m) of an occupied dwelling.

20. We prohibit the use of buckshot.

21. We prohibit hunters field dressing deer within 100 feet (30 m) of a road or trail.

22. We prohibit tracking later than 2½ hours after legal sunset. Hunters must make a reasonable effort to retrieve all wounded deer. This may include next-day tracking except on Federal holidays.

23. We prohibit deer drives or anyone taking part in any deer drive. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause deer to move in the direction of any person or persons who are part of the organized or planned hunt and known to be waiting for the deer.

24. Refuge hunting information and the Rhode Island Hunting and Trapping Abstract will inform hunters of both State and refuge regulations. Refuge-specific hunting regulations, as listed in the ''Block Island National Wildlife Refuge Hunting Regulations'' handout, will be in effect.

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Ninigret National Wildlife Refuge

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C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require hunters to submit a Big/Upland Game Hunt Application (FWS Form 3–2356) to be selected to hunt on the refuge. Hunting brochures containing hunting application procedures, seasons, bag limits, methods of hunting, maps depicting areas open to hunting, and the terms and conditions under which we issue hunting permits are available at the refuge administration office and on the refuge's web site.

2. We require hunters to possess a valid State hunting license and all required stamps, a valid government-issued photo identification, and a valid hunting permit issued by the refuge at all times while on refuge property.

3. We prohibit hunters from taking any other wildlife.

4. We require hunters to notify a refuge representative if they need to enter a closed area to retrieve game.

5. We allow only shotguns (slugs only), muzzleloaders, and archery equipment to harvest deer.

6. We prohibit the use of any drug on any arrow for bow hunting, including crossbows, on national wildlife refuges (see § 32.2(g)). We prohibit archers possessing any arrows employing such drugs on any national wildlife refuge.

7. We prohibit the distribution of bait and/or hunting over bait (see § 32.2(h)).

8. We prohibit the use of nails, wire, screws, or bolts to attach a stand to a tree, or hunting from a tree into which a metal object has been driven to support a hunter (see § 32.2(i)).

9. We prohibit the use or possession of alcoholic beverages while hunting (see § 32.2(j)).

10. We prohibit the use of spotlights, automotive headlights, or other artificial light for the purposes of spotting, locating, or taking any animal. This regulation applies even if no weapons are in the vehicle.

11. Anytime State hunting regulations specify the requirement that hunters wear blaze-orange clothing, hunters must adhere to those regulations both in amount of blaze-orange clothing required and in specified seasons. For example, we require both archery and firearms hunters to wear blaze-orange clothing during the firearm seasons in areas open to both types of hunts.

12. We prohibit permanent tree stands. Hunters must remove all portable tree stands from the refuge daily (see § 27.93 of this chapter). The Service takes no responsibility for the loss or theft of tree stands left in the field.

13. Hunters must mark tree stands with owner information (name, address, and phone number). We allow only portable stands.

14. We will prohibit the use of motorized or nonmotorized vehicles on the refuge unless the refuge manager grants prior approval (e.g., accessibility for disabled individuals). This includes, but we do not limit it to, vehicles, all-terrain vehicles, dirt bikes, motorcycles, and bicycles.

15. We prohibit marking (including, but we do not limit it to, the use of flagging, bright eyes, tacks, and paint), cutting, and/or removal of trees or vegetation (see § 27.51).

16. We prohibit hunting in areas designated as closed.

17. We prohibit hunting within 100 feet (30 m) of a State, county, city roadway, or refuge trail.

18. We prohibit hunting on the Kettle Pond Unit within 200 feet (60 m) of the visitor center and parking lots.

19. We prohibit hunting with the use of firearms within 500 feet (150 m) of an occupied dwelling.

20. We prohibit archery deer hunting within 200 feet (60 m) of an occupied dwelling.

21. We prohibit the use of buckshot.

22. We prohibit hunters field dressing deer within 100 feet (30 m) of a road or trail.

23. We prohibit tracking later than 2½ hours after legal sunset. Hunters must make a reasonable effort to retrieve all wounded deer. This may include next-day tracking except we prohibit tracking on Federal holidays.

24. We prohibit deer drives or anyone taking part in any deer drive. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause deer to move in the direction of any person or persons who are part of the organized or planned hunt and known to be waiting for the deer.

25. Refuge hunting information and the Rhode Island Hunting and Trapping Abstract will inform hunters of both State and refuge regulations. Refuge-specific hunting regulations, as listed in the ''Ninigret National Wildlife Refuge

Hunting Regulations'' handout, will be in effect.

* * * * *

31. Amend § 32.60 South Carolina by:

a. Revising paragraphs A.7., C.1., and C.3., adding paragraphs C.15. through C.20., and adding paragraphs D.7. through D.9. under Carolina Sandhills National Wildlife Refuge;

b. Removing paragraph C.15., redesignating paragraphs C.16. and C.17. as paragraphs C.15. and C.16., removing paragraph D.2., and redesignating paragraph D.3. as D.2. under Pinckney Island National Wildlife Refuge;

c. Revising the entry for Santee National Wildlife Refuge; and

d. Revising the introductory text for paragraph A., revising paragraphs A.2., A.7., and B.3., adding paragraph B.5., revising the introductory text of paragraph C., revising paragraphs C.1., C.2., C.5., C.10., C.14., and C.18., and adding paragraphs C.19. and C.20. of Waccamaw National Wildlife Refuge.

These additions and revisions read as follows:

§ 32.60 South Carolina.

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Carolina Sandhills National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

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7. Legal shooting hours for September dove hunts are 12 p.m. (noon) to 6 p.m.

* * * * *

C. Big Game Hunting. * * *

1. Conditions A1 through A5 and A8 apply (with the following exception for condition A4: Each adult may supervise no more than one youth hunter.).

3. During deer and turkey hunts, we prohibit hunters from entering the refuge earlier than 4 a.m. and staying on the refuge later than 2 hours after legal sunset.

* * * * *

15. We prohibit the use of game and trail cameras.

16. We prohibit placing stands on the refuge more than 3 days prior to the opening day of each big game hunt period and leaving stands at the end of each hunt period.

17. We prohibit the use of a tree stand or climbing equipment without a safety belt or harness.

18. We prohibit the use of permanent, nonportable tree stands (see § 27.93 of this chapter).

19. We prohibit inserting a nail, screw, spike, or other metal object into a tree or hunting from a tree into which the hunter has inserted a metal object (see § 32.2(i)).

20. We prohibit baiting or hunting in the vicinity of bait (see § 32.2(h)).

* * * * *

D. Sport Fishing. * * *

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7. At Mays and Honkers Lakes, the creel limit on largemouth bass is five fish per person per day. All bass must be a minimum length of 12 inches (30 cm).

8. We designate Oxpen Lake as adult-youth fishing only. A youth (under age 16) must be actively fishing and accompanied by no more than two adults at least age 18. We prohibit adults fishing unless a youth accompanies them. The creel limit on channel catfish is five fish per person per day.

9. We prohibit the use or possession of alcoholic beverages while hunting (see § 32.2(j)).

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Santee National Wildlife Refuge

A. Migratory Game Bird Hunting. [Reserved]

B. Upland Game Hunting. We allow hunting of raccoon and opossum on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunters to use only weapons, firearms, and ammunition specifically authorized for each hunt.

2. All refuge hunters under age 16 must show proof of successfully completing a hunter education/safety course. A properly licensed adult at least age 21 must directly supervise (within sight and normal voice contact) hunters under age 16. An adult may supervise only one youth.

3. We require hunters to possess a refuge hunt permit (brochure signed by the hunter), a valid State hunting license, and photo identification while hunting.

4. Hunters must check all animals taken on the refuge at the check station prior to removing the animal from the refuge.

5. We require hunters to make a reasonable effort to retrieve wounded game. Hunters must obtain permission from refuge personnel to enter a ''No Hunting Zone'' or ''Closed Area'' for any purpose.

6. We allow vehicles only on established roads marked open for vehicular traffic. Hunters may travel roads marked ''Closed to all vehicles'' on foot or by bicycle. The speed limit for all roads is 15 mph. We prohibit blocking travel through refuge access gates or roads. We prohibit ATVs.

7. Hunters must unload and dismantle (or case) hunting firearms when transporting them in vehicles and boats during refuge hunts. We define a loaded firearm as having ammunition in the chamber or magazine. We will consider muzzleloaders unloaded if the percussion cap is not seated in the chamber.

8. We prohibit possession of bait, baiting, and/or hunting in the vicinity of bait (see § 32.2(h)).

9. We prohibit camping, overnight parking, open fires, and littering (see §§ 27.95(a) and 27.94 of this chapter).

10. We prohibit game and trail cameras.

11. We prohibit entry beyond ''Closed Area'' or ''No Hunting Zone'' signs. We prohibit discharging weapons within, into, or across a ''No Hunting Zone'' or ''Closed Area.''

12. We prohibit discharging a firearm from, on, or across any refuge road, or designated refuge foot trail.

13. We prohibit hunting from within 100 feet (30 m) of any roadway, whether open or closed to vehicular traffic, or from or within 300 yards (270 m) of any residence or designated hunter check station.

14. We prohibit use or possession of alcoholic beverages while hunting (see § 32.2(j)).

15. We prohibit man or dog drives, stalk hunting, and/or hunting from artificially pruned trees.

16. We allow hunting on each refuge unit only within specified hunt periods and only for raccoon or opossum, and white-tailed deer (see paragraph C. Big Game Hunting below).

17. We allow unlimited harvest of feral hog as an incidental take while hunting.

18. We allow use of dogs only for raccoon hunting. The dogs must wear a collar displaying the owner's name, address, and telephone number.

19. We allow take of raccoon and opossum only during night hunting. Special State regulations apply for night hunting.

20. We allow take of raccoon and opossum with a shotgun using nontoxic shot size no larger than #4 or a .22-caliber rimfire rifle. We prohibit possession of buckshot or slugs. We prohibit the use of all other weapons for hunting.

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions B1 through B17 apply.

2. We prohibit the use of dogs during deer hunts. We prohibit night hunting.

3. We prohibit the use of nails, screws, or bolts to attach a tree stand to a tree or hunting from a tree where a metal object has been driven to support a hunter (see § 32.2(i)).

4. We prohibit destroying or cutting vegetation (see § 27.51 of this chapter). We prohibit the possession of axes, saws, machetes, or other tools used for cutting vegetation on the refuge while scouting or hunting.

5. We allow flagging only along the edges of roads and trails and at the tree in which the hunter places the stand. Hunters may use clothes pins with reflective tape to mark the path to the tree, but they must mark all pins and flagging with the hunter's full name, date, and phone number. Hunters must remove all flagging and pins at the end of the hunt; we will consider any flagging or pins found after the end of the hunt to be littering (see § 27.94 of this chapter), and we will remove them immediately.

6. We require hunters to wear 500 square inches (3,250 cm^2) of solid fluorescent-orange above the waist consisting of a hat and vest or jacket during all refuge big game firearm hunts.

7. Deer hunting must occur from elevated deer stands; we prohibit ground blinds. We allow only one stand per hunter, and the hunters must clearly mark stands with their full name, date, and phone number.

8. We allow scouting on both the Pine Island and Cuddo Units during periods when these units are open to general public access. We allow vehicles only on roads designated as open for vehicular traffic. All other roads and trails are open to walk-in or bicycle traffic. We prohibit hunting weapons and dogs during scouting activities.

9. Hunters may place stands, cloth pins, and flagging only on respective hunt areas on the Friday and Saturday immediately prior to each hunt (from 8 a.m. until 5 p.m.) and must remove them by 8:30 p.m. on the last day of each hunt. We will confiscate any stands found within the designated hunt areas outside of allowed periods.

10. We will open access roads, closed to the general public for driving, only during each deer hunt and on the Friday and Saturday prior to each hunt.

11. We will open hunting areas from 5 a.m. until 8:30 p.m. during designated hunt periods. We require all hunters to check out at the hunter check station by 8:30 p.m.

12. We open the Plantation Islands (Cuddo Unit) to hunting only from 5 a.m. until 2:30 p.m. All hunters hunting Plantation Islands must indicate on the check-in sheet that they are hunting on an island.

13. Shooting hours are from ½ hour before legal sunrise until ½ hour after legal sunset.

14. The refuge conducts one lottery draw hunt (using Quota Deer Hunt Application FWS 3–2354) for the Family, Friends, and Kids (Family Friendly) hunts conducted on the Bluff Unit of the refuge. Contact the refuge office for dates, application information, and more information about this special hunt opportunity.

D. Sport Fishing. We allow fishing on the refuge in accordance with State regulations subject to the following conditions:

1. A valid State fishing license and a signed refuge fishing permit (signed brochure) must be in each angler's possession while fishing on the refuge.

2. We allow public fishing on all four refuge units. We open waters of Lake Marion within refuge boundaries for fishing 24 hours a day, except in areas posted as ''Closed Areas'' or closed for migratory bird management. We allow fishing only on the inland ponds and canals during times the refuge units are open for general public access or as posted.

3. Cantey Bay (Bluff Unit), Black Bottom (Cuddo Unit), and Savannah Branch (Pine Island Unit) are only open to public access, including boating and fishing, from March 1 through October 31.

4. We limit access to the interior freshwater canals and ponds to canoes or kayaks, or by foot or bicycle travel only. We prohibit use of internal combustion engines on interior ponds and canals.

5. We prohibit littering, camping and/or overnight parking, open fires, swimming or wading, collecting or searching for or taking of any items of antiquity, and overnight mooring of boats (see §§ 27.62, 27.94, 27.95(a)). We allow pets only in designated areas, and they must remain on a leash or within vehicles/vessels.

6. We prohibit fishing or boating within 100 feet (30 m) of any nesting bird or bird rookeries within refuge boundaries.

7. We prohibit commercial fishing, air-thrust boats, hovercraft, airboats, and personal watercraft within the waters of and/or boundary of the refuge.

8. We prohibit fishing at night, except by boat in Lake Marion. We prohibit bank fishing and fishing within interior ponds, canals, and impoundments at night.

9. We prohibit nighttime access to boat launching areas.

* * * * *

Waccamaw National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of duck, goose, coot, woodcock, and snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

* * * * *

2. Each youth hunter age 15 and younger must remain within sight, within normal voice contact, and under the supervision of an adult age 21 or older. We do not require youth hunters to have a hunter education card, but they must possess the refuge hunting regulations permit. The supervising adult must comply with all State and Federal hunting license requirements and possess a signed refuge hunting regulations permit (signed brochure). Each supervising adult may supervise no more than two youths.

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7. We allow use of retrieving dogs only while hunting. We require dogs to wear a collar displaying the owner's name, address, and phone number.

* * * * *

B. Upland Game Hunting. * * *

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3. We require nontoxic shot no larger than #2 in shotguns when hunting. We allow .22-caliber rimfire rifles.

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5. We require the use of retrieving dogs for hunting raccoon and opossum.

C. Big Game Hunting. We allow hunting of white-tailed deer, feral hog, and turkey on designated areas of the refuge. The State of South Carolina does not classify feral hog as big game; however, for the purpose of hunting regulations, we put feral hog in the big game category. We allow big game hunting on the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A9, A10, B2, and B4 apply.

2. We allow hunting for designated species only on days designated annually by the refuge, within the State season, and according to refuge unit-specific regulations.

* * * * *

5. We prohibit blow guns and drugged arrows (see § 32.2(g)). We allow muzzleloading rifles that use only a single projectile on the muzzleloader hunts. We prohibit buckshot, rimfire ammunition, and full-metal-jacketed military ammunition.

* * * * *

10. The refuge limit on deer is two antlered bucks per year. Hunters can harvest up to three antlerless deer per year during coinciding State doe days or by using personal doe tags.

* * * * *

14. We allow only one portable tree stand per hunter, and the hunter must

clearly mark it with their full name and phone number. We prohibit placing deer stands on the refuge more than 3 days prior to the opening day of a hunting session. Hunters must remove stands from the refuge no later than 3 days after each refuge big game hunt (see § 27.93 of this chapter).

* * * * *

18. We prohibit possession of bait, distribution of bait, or hunting over a baited area (see § 32.2(h)).

19. We allow crossbows only during the big game hunting sessions where we allow muzzleloaders and modern weapons. We may also allow them during special hunts if we determine they are appropriate.

20. Each youth hunter age 15 and younger must remain within sight, within normal voice contact, under supervision of an adult age 21 or older, and must possess the refuge hunting regulations permit (signed brochure). We do not require youth hunters who are sitting in the same hunting stand as the supervising adult to possess a hunter education card. We require youth hunters who are sitting in a hunting stand by themselves to possess a valid hunter education card. The supervising adult must comply with all State and Federal hunting license requirements and possess a signed refuge hunting regulations permit. Each supervising adult may supervise a maximum of one youth.

* * * * *

32. Amend § 32.61 South Dakota by revising the entry for LaCreek National Wildlife Refuge and placing that entry in alphabetical order to read as follows:

§ 32.61 South Dakota.

* * * * *

LaCreek National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow the hunting of goose, duck, coot, common snipe, sandhill crane, American crow, and mourning dove only within the Little White River Recreation Area in accordance with State regulations.

B. Upland Game Hunting. We allow the hunting of ring-necked pheasant and sharp-tailed grouse on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Hunters may remain on the refuge no longer than ½ hour after legal sunset.

2. You must park vehicles in a designated hunter parking area.

3. Hunters must access and exit the hunting area only from a designated hunter parking area.

4. We prohibit hunting with the aid of a motor vehicle.

C. Big Game Hunting. We allow hunting of white-tailed and mule deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require a State permit for muzzleloader deer hunting.

2. All archery deer hunters must possess and carry a refuge permit (signature required).

3. Deer hunters may enter the refuge ½ hours before legal sunrise and remain no longer than 1½ hours after legal sunset.

4. Hunters may leave portable tree stands and free-standing elevated platforms on the refuge from the first Saturday after August 25 through February 15. Hunters must remove all other personal property by the end of the day (see § 27.93 of this chapter).

5. Portable tree stands and free-standing elevated platforms must bear the name and address of the owner or user, or that person's current hunting license number. The labeling must be legible from the ground.

6. We close the refuge to archery hunting during refuge firearm seasons.

7. Conditions B1 through B3 apply.

D. Sport Fishing. We allow sport fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Areas open for fishing include: Pools 3, 4, 7, and 10, the Little White River Recreation Area, and the Cedar Creek Trout Ponds. We prohibit fishing in all other areas of the refuge.

2. We allow boat use only on Pools 3, 4, 7, and 10, and the Little White River Recreation Area.

3. We prohibit the use of internal combustion motors in Pools 3, 4, 7, and 10.

4. We prohibit the use or possession of live minnows or bait fish in Pools 3, 4, 7, and 10 and the Cedar Creek Trout Ponds.

5. We will open designated fishing areas from ½ hour before legal sunrise to ½ hour after legal sunset, except the Little White River Recreation Area.

* * * * *

33. Amend § 32.62 Tennessee by:

a. Revising paragraphs A.1., A.2., and A.4. through A.7., removing paragraph A.8., redesignating paragraphs A.9. and A.10. as paragraphs A.8. and A.9., revising newly redesignated paragraph A.9., adding new paragraphs A.10. through A.12., revising paragraphs B.1., B.4., and B.5., removing paragraph B.7., redesignating paragraph B.8. as paragraph B.7., adding new paragraph B.8., and revising paragraphs C.1., C.4., and D.6. under Chickasaw National Wildlife Refuge;

b. Revising the introductory text of paragraph A., revising paragraphs A.1., A.2., A.4., A.5., A.7., A.8., and A.10., adding paragraphs A.11. and A.12., revising paragraphs B.1. and B.2., removing paragraph B.6., redesignating paragraph B.7. as B.6., adding new paragraphs B.7. and B.8., and revising paragraphs C.1., C.4., and D.9. under Hatchie National Wildlife Refuge;

c. Revising paragraphs B.1. through B.5., B.9., and B.10., adding paragraphs B.13. through B.16., revising paragraph C.1., revising the introductory text of paragraph D., and adding paragraphs D.4. through D.7. under Lake Isom National Wildlife Refuge;

d. Revising paragraphs A.1., A.2., and A4. through A.7., removing paragraph A.8., redesignating paragraphs A.9. through A.11. as paragraphs A.8. through A.10., revising newly redesignated paragraph A.9., adding new paragraphs A.11. through A.13., revising paragraphs B.1., B.4., and B.5., removing paragraph B.7., redesignating paragraphs B.8. and B.9. as paragraphs B.7. and B.8., adding new paragraph B.9., revising paragraphs C.1. and C.4., and adding paragraph D.8. under Lower Hatchie National Wildlife Refuge; and

e. Revising paragraphs B.1. through B.5., B.9., and B.10., adding paragraphs B.13. through B.16., revising paragraphs C.1., C.4., and C.5., revising the introductory text of paragraph D., and adding paragraphs D.5. through D.8. of Reelfoot National Wildlife Refuge.

These additions and revisions read as follows:

§ 32.62 Tennessee.

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Chickasaw National Wildlife Refuge

A. Migratory Game Bird Hunting.

* * *

1. The refuge is a day-use area only. We close the refuge from legal sunset to legal sunrise, with the exception of legal hunting/fishing activities.

2. We prohibit the use of all motorized off-road vehicles (e.g., ATVs, UTVs) on the refuge (see § 27.31(f) of this chapter).

* * * * *

4. You must possess and carry a signed refuge permit (signed refuge brochure) and comply with all permit provisions and other applicable State and Federal law.

5. We allow hunting for duck, goose, coot, and merganser from ½ hour before legal sunrise to 12 p.m. (noon) CST. We allow hunters to access the refuge no more than 2 hours before legal sunrise.

6. Mourning dove, woodcock, and snipe seasons close during all firearms, youth, and muzzleloader deer seasons.

7. You may use only portable blinds, and you must remove all boats, blinds, and decoys (see § 27.93 of this chapter) from the refuge by 1 p.m. CST daily.

* * * * *

9. You may possess only approved nontoxic shot while hunting with a shotgun (see § 32.2(k)).

10. We prohibit cutting of holes, lanes, or other manipulation of vegetation (e.g., cutting bushes and trees, mowing, herbicide use, and other actions) or hunting from manipulated areas (see § 27.51 of this chapter).

11. We prohibit use or possession of alcoholic beverages while hunting on refuge lands (see § 32.2(j)).

12. We prohibit hunting over or the placement of bait (see § 32.2(h)). Baiting means the direct or indirect placing, exposing, depositing, or scattering of any salt, grain, powder, liquid, or other feed substance to attract game.

B. Upland Game Hunting. * * *

1. Conditions A1 through A4 and A8 through A12 apply.

* * * * *

4. Squirrel, rabbit, and quail seasons close during all firearms, youth, and muzzleloader deer seasons.

5. Raccoon and opossum seasons close Friday and Saturday nights during all firearms, youth, and muzzleloader deer hunts and seasons, including the Friday night prior to any hunt or season that opens on a Saturday morning.

* * * * *

8. We prohibit trapping.

C. Big Game Hunting. * * *

1. Conditions A1 through A4, A8, A10 through A12, B6, and B7 apply.

* * * * *

4. Hunters may possess lead-rifled slugs while deer hunting on the refuge (see § 32.2(k)).

* * * * *

D. Sport Fishing. * * *

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6. We prohibit use or possession of alcoholic beverages while fishing on refuge lands and waters (see § 32.2(j)).

* * * * *

Hatchie National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of duck, goose, coot, merganser, mourning dove, woodcock, and snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. The refuge is a day-use area only. We close the refuge from legal sunset to legal sunrise, with the exception of legal hunting/fishing activities.

2. We prohibit use of all motorized off-road vehicles (e.g., ATVs, UTVs) on the refuge (see § 27.31(f) of this chapter).

* * * * *

4. You must possess and carry a signed refuge permit (signed refuge brochure) and comply with all permit provisions and other applicable State and Federal laws.

5. We allow waterfowl hunting only on Tuesdays, Thursdays, and Saturdays. We allow hunting for duck, goose, coot, and merganser from ½ hour before legal sunrise until 12 p.m. (noon) CST. We allow hunters to access the refuge no earlier than 2 hours before legal sunrise.

* * * * *

7. You may use only portable blinds, and you must remove all boats, blinds, and decoys (see § 27.93 of this chapter) from the refuge by 1 p.m. CST daily.

8. We prohibit use or possession of alcoholic beverages while hunting on refuge lands (see § 32.2(j)).

* * * * *

10. You may possess only approved nontoxic shot while hunting with a shotgun (see § 32.2(k)).

11. We prohibit cutting of holes, lanes, or other manipulation of vegetation (e.g., cutting bushes and trees, mowing, herbicide use, and other actions) or hunting from manipulated areas (see § 27.51 of this chapter).

12. We prohibit hunting over or the placement of bait (see § 32.2(h)). Baiting means the direct or indirect placing, exposing, depositing, or scattering of any salt, grain, powder, liquid, or other feed substance to attract game.

B. Upland Game Hunting. * * *

1. Conditions A1 through A4 and A8 through A12 apply.

2. We allow hunters to access the refuge no earlier than 2 hours before legal sunrise to no later than 2 hours after legal sunset, with the exception of raccoon and opossum hunters. We will allow access to those hunters from legal sunset to legal sunrise.

* * * * *

7. We prohibit camping and fires on the refuge.

8. We prohibit trapping.

C. Big Game Hunting. * * *

1. Conditions A1 through A4, A8, A10 through A12, and B5 through B7 apply.

* * * * *

4. Hunters may possess lead-rifled slugs while deer hunting on the refuge (see § 32.2(k)).

* * * * *

D. Sport Fishing. * * *

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9. We prohibit use or possession of alcoholic beverages while fishing on refuge lands and waters (see § 32.2(j)).

Lake Isom National Wildlife Refuge

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B. Upland Game Hunting. * * *

1. The refuge is a day-use area only. We close the refuge from legal sunset to legal sunrise, with the exception of legal hunting activities.

2. We prohibit the use of all motorized off-road vehicles (e.g., ATVs, UTVs) on the refuge (see § 27.31(f) of this chapter).

3. We set season dates and bag limits annually and publish them in the refuge brochure available at the refuge office.

4. You must possess and carry a signed refuge permit (signed refuge brochure) and comply with all permit provisions and other applicable State and Federal laws.

5. We allow hunters to access the refuge no earlier than 2 hours before legal sunrise to no later than 2 hours after legal sunset, with the exception of raccoon and opossum hunters. We will allow access to those hunters from legal sunset to legal sunrise.

* * * * *

9. We prohibit use or possession of alcoholic beverages while hunting on refuge lands (see § 32.2(j)).

10. You may possess only approved nontoxic shot while hunting with a shotgun (see § 32.2(k)).

* * * * *

13. We prohibit cutting of holes, lanes, or other manipulation of vegetation (e.g., cutting bushes and trees, mowing, herbicide use, and other actions) or hunting from manipulated areas (see § 27.51 of this chapter).

14. We prohibit hunting over or the placement of bait (see § 32.2(h)). Baiting means the direct or indirect placing, exposing, depositing, or scattering of any salt, grain, powder, liquid, or other feed substance to attract game.

15. We do not open for spring squirrel season on the refuge.

16. We prohibit trapping.

C. Big Game Hunting. * * *

1. Conditions B1 through B6 and B8 through B14 apply.

* * * * *

D. Sport Fishing. We allow sport fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

* * * * *

4. We allow fishing only with pole and line or rod and reel.

5. We prohibit possession of unauthorized fishing gear, including trotlines, limblines, juglines, yo-yos, nets, spears, and snag hooks while fishing on the refuge.

6. We allow use of a bow and arrow or a gig to take nongame fish on refuge waters.

7. We prohibit use or possession of alcoholic beverages while fishing on refuge lands and waters (see § 32.2(j)).

Lower Hatchie National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

1. The refuge is a day-use area only. We close the refuge from legal sunset to legal sunrise, with the exception of legal hunting/fishing activities.

2. We prohibit the use of all motorized off-road vehicles (e.g., ATVs, UTVs) on the refuge (see § 27.31(f) of this chapter).

* * * * *

4. You must possess and carry a signed refuge permit (signed refuge brochure) and comply with all permit provisions and other applicable State and Federal law.

5. We allow hunting for duck, goose, coot, and merganser from ½ hour before legal sunrise to 12 p.m. (noon) CST. We allow hunters to access the refuge no earlier than 2 hours before legal sunrise.

6. Mourning dove, woodcock, and snipe seasons close during all firearms, youth, and muzzleloader deer seasons.

7. You may use only portable blinds, and you must remove all boats, blinds, and decoys (see § 27.93 of this chapter) from the refuge by 1 p.m. CST daily.

* * * * *

9. You may possess only approved nontoxic shot while hunting with a shotgun (see § 32.2(k)).

* * * * *

11. We prohibit cutting of holes, lanes, or other manipulation of vegetation (e.g., cutting bushes and trees, mowing, herbicide use, and other actions) or hunting from manipulated areas (see § 27.51 of this chapter).

12. We prohibit use or possession of alcoholic beverages while hunting on refuge lands (see § 32.2(j)).

13. We prohibit hunting over or the placement of bait (see § 32.2(h)). Baiting means the direct or indirect placing, exposing, depositing, or scattering of any salt, grain, powder, liquid, or other feed substance to attract game.

B. Upland Game Hunting. * * *

1. Conditions A1 through A4 and A8 through A13 apply.

* * * * *

4. Squirrel, rabbit, and quail seasons close during all firearms, youth, and muzzleloader deer seasons.

5. Raccoon and opossum seasons close Friday and Saturday nights during all firearms, youth, and muzzleloader deer hunts and seasons, including the Friday night prior to any hunt or season that opens on a Saturday morning.

* * * * *

9. We prohibit trapping.

C. Big Game Hunting. * * *

1. Conditions A1 through A4, A8, A10 through A13, and B6 through B8 apply.

* * * * *

4. Hunters may possess lead-rifled slugs while deer hunting on the refuge (see § 32.2(k)).

* * * * *

D. Sport Fishing. * * *

* * * * *

8. We prohibit use or possession of alcoholic beverages while fishing on refuge lands and waters (see § 32.2(j)).

Reelfoot National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

1. The refuge is a day-use area only. We close the refuge from legal sunset to legal sunrise, with the exception of legal hunting/fishing activities.

2. We prohibit the use of all motorized off-road vehicles (e.g., ATVs, UTVs) on the refuge (see § 27.31(f) of this chapter).

3. We set season dates and bag limits annually and publish them in the refuge brochure available at the refuge office.

4. You must possess and carry a signed refuge permit (signed refuge brochure) and comply with all permit provisions and other applicable State and Federal law.

5. We allow hunters to access the refuge no earlier than 2 hours before legal sunrise to no later than 2 hours after legal sunset, with the exception of raccoon and opossum hunters. We will allow access to those hunters from legal sunset to legal sunrise.

* * * * *

9. We prohibit use or possession of alcoholic beverages while hunting on refuge lands (see § 32.2(j)).

10. You may possess only approved nontoxic shot while hunting with a shotgun (see § 32.2(k)).

* * * * *

13. We prohibit cutting of holes, lanes, or other manipulation of vegetation (e.g., cutting bushes and trees, mowing, herbicide use, and other actions) or hunting from manipulated areas (see § 27.51 of this chapter).

14. We prohibit hunting over or the placement of bait (see § 32.2(h)). Baiting means the direct or indirect placing, exposing, depositing, or scattering of any salt, grain, powder, liquid, or other feed substance to attract game.

15. We do not open for spring squirrel season on the refuge.

16. We prohibit trapping.

C. Big Game Hunting. * * *

1. Conditions B1 through B6 and B8 through B14 apply.

* * * * *

4. Hunters may possess lead-rifled slugs while deer hunting on the refuge (see § 32.2(k)).

5. We allow the use of only portable blinds and tree stands on the refuge. You must remove blinds, tree stands, and all other personal equipment (see § 27.93 of this chapter) from the refuge at the end of each day's hunt.

* * * * *

D. Sport Fishing. We allow sport fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

* * * * *

5. We allow fishing only with pole and line or rod and reel.

6. We prohibit possession of unauthorized fishing gear, including trotlines, limblines, juglines, yo-yos, nets, spears, and snag hooks while fishing on the refuge.

7. We allow use of a bow and arrow or a gig to take nongame fish on refuge water.

8. We prohibit use or possession of alcoholic beverages while fishing on refuge lands and waters (see § 32.2(j)).

* * * * *

34. Amend § 32.63 Texas by:

a. Revising paragraph C.1. and adding paragraph C.11. under Balcones Canyonlands National Wildlife Refuge; and

b. Revising the entry under Hagerman National Wildlife Refuge; and

c. Revising paragraphs C.6. and C.8. under Laguna Atascosa National Wildlife Refuge.

These revisions and additions read as follows:

§ 32.63 Texas.

* * * * *

Balcones Canyonlands National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

1. Conditions A1, A4, A5, and A8 through A11 apply.

* * * * *

11. Hunters must be at least age 12. A Texas-licensed adult (age 21 or older), who has successfully completed a Hunter Education Training Course, must accompany hunters between ages 12 and 17 (inclusive). We exempt those persons born prior to September 2, 1971, from the Hunter Education Training Course requirement. We define accompanied as being within normal voice contact of an adult. This adult may supervise no more than two hunters.

* * * * *

Hagerman National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of mourning dove in the month of September on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must possess and carry a signed refuge brochure (which serves as your Migratory Game Bird/Upland Game permit). The permit is available free of charge at the refuge headquarters.
2. We require the hunter to self check-in and check out.
3. We allow only shotguns for hunting.
4. You may possess shot for hunting no larger than #4 in the hunting area.
5. Hunters may possess only approved nontoxic shot while in the field (see § 32.2(k)).
6. We prohibit hunting within 150 feet (45 m) of any Day Use Area or walking trail.
7. We prohibit target practice or any nonhunting discharge of firearms.
8. We prohibit falconry.
9. We allow retriever dogs, but the dogs must be under the control of the handler at all times (see § 26.21(b) of this chapter).
10. We prohibit airboats, hovercraft, and personal watercraft (jet skis, wave runner, jet boats, etc.) year-round on refuge waters.
11. We prohibit building or hunting from permanent blinds.
12. We prohibit blocking of gates and roads (see § 27.31(h) of this chapter).
13. We prohibit ATVs.
14. We prohibit horses.
15. We prohibit glass containers.
16. We prohibit use or possession of alcoholic beverages while hunting (see § 32.2(j)).
17. We prohibit hunting over feeders or feed (see § 32.2(h)).

B. Upland Game Hunting. We allow hunting of squirrel and rabbit in the months of February and September on designated areas of the refuge in accordance with State regulations subject to the following conditions: Conditions A1 through A17 apply.

C. Big Game Hunting. We allow hunting of white-tailed deer, feral hog, and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require a limited hunt permit (Big/Upland Game Hunting Application, FWS Form 3–2356) for archery deer, feral hog, and spring turkey hunts. For additional information on how to apply, contact the refuge headquarters at 903–786–2826.
2. Conditions A2, A5 through A7, and A11 through A17 apply.
3. We restrict hunt participants for quota hunts to those drawn for and in possession of a limited hunt permit. The permits are nontransferable. Hunt dates and application procedures will be available annually at the refuge headquarters.
4. We allow limited hunts for feral hog (March), archery deer (November, December), and spring turkey (April). We allow muzzleloaders, bow and arrow, and shotguns for feral hog and spring turkey hunts. You may possess and use only lead free, nontoxic (steel, bismuth, copper, or tungsten) bullets, slugs, and shot (00 buck for hogs, no shell larger than No. 4 shot size for turkey).
5. We require all hunters to check-in, show proof of personal identification, and produce a valid limited hunt permit (see C1) prior to the hunt.
6. We limit each hunter to one stand which the hunter may place on the refuge during the day preceding each hunt. Hunters must remove all stands by legal sunset on the last day of each hunt (see §§ 27.93 and 27.94 of this chapter).
7. We prohibit the use of nonbiodegradable flagging, blazing, tacks, nails, or other trail marking devices to locate stands or for any other purpose.
8. Hunters must check all game harvested during limited hunts at the refuge check station the same day of the kill and prior to leaving the refuge for the day.
9. We prohibit crossbows except by special permit (General Special Use Application and Permit FWS Form 3–1383–G) issued on a case-by-case basis by the refuge manager to accommodate hunter accessibility needs.
10. We divide the refuge into six hunting units, and we may rotate areas open to hunting annually. We allow hunting only on designated days and only on areas identified annually by the refuge.
11. We require proof of completion of a bow hunter education course for all archery hunting.
12. We require annual successful completion of archery proficiency test with a score of 80 percent or higher for all deer and turkey hunt permit holders.
13. Hunting is from stands, blinds, or by stalking only.
14. We prohibit cutting of trees or limbs greater than 1 inch (2.5 cm).
15. We will close the hunt units to public entry the day prior to each hunt segment.
16. We will allow hunters with valid limited permits to place hunt stands on trees the day before their hunt segment begins, but they must first check-in at the hunter check station. They may not enter any hunt unit until 8 a.m., and they must leave the unit by 2 p.m. We will disqualify anyone in violation from hunting.
17. There is no bag or size limit on the harvesting of feral hogs.
18. We prohibit scouting the day prior to and during each hunt segment.
19. We require hunters to wear a safety harness while hunting in elevated stands.

D. Sport Fishing. We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Lake Texoma and connected streams are open to fishing year-round. We require a valid State of Texas or Lake Texoma fishing license as per State regulations.
2. Conditions A10, and A12 through A15 apply.
3. You may bank and wade fish with pole and line, rod and reel, or hand line year-round in all areas open to public fishing.
4. We allow fishing in refuge ponds March 15 through September 30 annually. We require a valid State of Texas or Lake Texoma fishing license as per State regulations.
5. Anglers may not use any glass containers, plastic jugs, or plastic bottles as floats.
6. We prohibit discarding any type of fishing line.
7. You may take bait only for personal use while fishing in refuge waters in accordance with Texas State law. We prohibit removal of bait from the refuge for commercial sales or use.
8. We prohibit fishing from bridges.
9. We allow the use of bow and arrow to take nongame fish on refuge waters.
10. We prohibit limb lines, throw lines, jug lines, seine nets, and yo-yos.
11. We prohibit taking frog, turtle, and mussel from refuge lands and waters (see § 27.21 of this chapter).
12. We prohibit entry into refuge impoundments and ponds by any means (i.e., foot, boat, other floating device), for any purpose, year-round.
13. We prohibit boats and all other floating devices on all open waters of Lake Texoma, except Big Mineral Creek from October 1 through March 14 annually.
14. At the point where Big Mineral Creek joins Lake Texoma, Big Mineral Creek becomes a year-round no-wake zone to the end of upstream navigable waters.
15. From October 1 through March 14, we allow only nonmotorized boats in Big Mineral Creek from the point where it joins Lake Texoma to the upstream end of navigable waters. This includes any type of gas or electric motor that is

onboard and capable of use. We allow launching only from L Pad Road or by hand at the Big Mineral Day Use Area.

Laguna Atascosa National Wildlife Refuge

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C. Big Game Hunting. * * *

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6. We define youth hunters as ages 9 through 16. A Texas-licensed adult hunter, age 21 or older who has successfully completed a Hunter Education Training Course or is exempt, must accompany the youth hunter. We exempt those persons born prior to September 2, 1971, from the Hunter Education Training course requirement. We define accompanied as being within normal voice contact of the adult. Each adult hunter may supervise only one youth hunter.

* * * * *

8. We allow a scouting period prior to the commencement of the refuge deer hunting season. A permitted hunter and a limit of two nonpermitted individuals may enter the hunt units during the scouting period. We allow access to the units during the scouting period from 1½ hours before legal sunrise to legal sunset. You must clearly display the refuge-issued Hunter Vehicle Validation Tag/Scouting Permit (available from the refuge office) face up on the vehicle dashboard when hunting and scouting.

* * * * *

35. Amend § 32.64 Utah by:

a. Revising paragraphs A. and B., and adding paragraphs D.2. through D.4. under Bear River Migratory Bird Refuge; and

b. Revising paragraph B.3., adding paragraph B.4., revising paragraphs C.3., C.4., C.6., C.7., and adding paragraphs C.8. and C.9. under Ouray National Wildlife Refuge.

These additions and revisions read as follows:

§ 32.64 Utah.

* * * * *

Bear River Migratory Bird Refuge

A. Migratory Game Bird Hunting. We allow hunting of goose, duck, coot, and tundra swan on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit hunting or shooting within 100 yards (90 m) of refuge roads, parking areas, and observation platforms.

2. You may possess only approved nontoxic shot while in the field (see § 32.2(k)).

3. We allow only portable blinds and blinds made from natural vegetation. We prohibit the construction or use of permanent blinds and/or pits for blinds (see § 27.92 of this chapter).

4. You must remove boats, decoys, portable blinds, and other personal property from the refuge at the end of each day (see §§ 27.93 and 27.94 of this chapter).

5. We allow airboats only in Refuge Unit 9 and Block C.

6. You may possess only 10 shells while hunting on or within 50 feet (15 m) from the center of Unit 1A or 2C dike.

7. We prohibit hunters or dogs to enter closed areas to retrieve downed birds.

8. We prohibit the consumption or possession of alcoholic beverages while hunting (see § 32.2(j)).

9. We are closed for spring and extended season goose hunts.

10. You must possess a valid State permit to hunt swans on the refuge.

11. We prohibit all commercial guiding and outfitter activities on the refuge.

12. We prohibit entering the refuge hunting units prior to the opening day of waterfowl season.

13. We prohibit archery hunting on the refuge.

14. You may enter the refuge 2 hours before legal sunrise and must exit the refuge by 2 hours after legal sunset.

15. You may park only in designated areas.

16. We allow only legally licensed vehicles on the refuge. We prohibit use of unlicensed off-highway vehicles and all-terrain vehicles on the refuge.

17. We prohibit fires, camping, and overnight RV parking on the refuge.

18. You may discharge firearms only during legal hunting activities. We prohibit target shooting.

19. Persons possessing, transporting, or carrying firearms on national wildlife refuges must comply with all provisions of State and local law. Persons may only use (discharge) hunting firearms in accordance with refuge regulations (see § 27.42 of this chapter and part 32).

20. You must abide by all terms and conditions in the refuge hunting brochure.

B. Upland Game Hunting. We allow hunting of pheasants on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit hunting or taking of pheasants with a shotgun of any description capable of holding more than three shells, unless it is plugged with a one-piece filler incapable of removal without disassembling the gun, so its total capacity does not exceed three shells.

2. Condition A2 applies.

* * * * *

D. Sport Fishing. * * *

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2. You may fish only in designated areas west of the Auto Tour Road access gate from legal sunrise to legal sunset.

3. We prohibit fishing from refuge bridges and water control structures.

4. You must remove all fishing equipment, personal property, and trash from the refuge at the end of each day (see §§ 27.93 and 27.94 of this chapter).

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Ouray National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

* * * * *

3. You may possess only approved nontoxic shot while in the field (see § 32.2(k)).

4. We allow turkey hunting for youth hunters only during the youth-only and general turkey seasons. We are closed for all limited-entry turkey hunts.

C. Big Game Hunting. * * *

* * * * *

3. You may use portable tree stands and hunting blinds that do not require drilling or nailing into a tree (see § 32.2(i)). You must remove all tree stands and blinds no later than the last day of the hunting season for which you have a permit (see § 27.93).

4. We allow any-legal-weapon elk hunting for youth, disabled, and depredation pool hunters only prior to October 1. We allow additional youth, disabled, and depredation-pool elk hunts after October 1 according to refuge and State regulations.

* * * * *

6. We are closed for the general season any-legal-weapon (rifle) and muzzleloader bull elk hunts.

7. We allow any-legal-weapon elk hunting during limited late season antlerless elk hunts starting on December 1.

8. We prohibit the use of bait or hunting over bait (see § 32.2(i)).

9. We prohibit the use of trail or game cameras.

* * * * *

36. Amend § 32.66 Virginia by:

a. Revising paragraphs C.1. through C.4., C.8. through C.10., and C.15., and adding paragraphs C.18. and C.19. under James River National Wildlife Refuge;

b. Revising the introductory text of paragraph A., and revising paragraphs A.1. and A.2. under Plum Tree Island National Wildlife Refuge;

c. Revising paragraphs C.1. through C.8. and C.12., and adding paragraph

C.16. of Presquile National Wildlife Refuge; and

d. Revising paragraphs C.1. through C.3., C.11., and C.15., and adding paragraph C.16. of Rappahannock River Valley National Wildlife Refuge;

These additions and revisions read as follows:

§ 32.66 Virginia.

* * * * *

James River National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

1. We require hunters to possess and carry a refuge hunting permit (contains date selected to hunt and permit number), along with their State hunting license while on refuge property. We require hunters to display a vehicle permit (contains date selected to hunt and permit number) provided by the refuge on the dashboard of their vehicle while on the refuge so that the permit is visible through the windshield.

2. We require firearm hunters to complete and sign a Quota Deer Hunt Application (FWS Form 3–2354) and provide the application and hunt fee to the hunt administrator at the Refuge Hunter Check Station on the morning of each hunt on a first-come-first-served basis. The hunt administrator will then provide the applicant a one-day refuge hunting permit.

3. We require persons who wish to hunt during the refuge's archery season to obtain a refuge hunting permit through a lottery administered by the Virginia Department of Game and Inland Fisheries. We notify successful applicants by mail or email, and if we receive the hunting fee by the date identified in the mailing, we mail refuge hunting permits to successful applicants.

4. We allow archery, muzzleloader, and shotgun hunting on designated days as indicated on refuge hunting permits.

* * * * *

8. We require hunters during archery-only seasons to wear, in a visible manner, a minimum of 100 square inches (645 cm^2) of solid-colored-hunter-orange clothing or material while moving to and from their stand and/or hunting location.

9. We require hunters during firearms and muzzleloader seasons to wear in a conspicuous manner on head, chest, and back a minimum of 400 square inches (2,600 cm^2) of solid-colored-hunter-orange clothing or material.

10. We require that hunters during firearms and muzzleloader seasons remain within 100 feet (30 m) of their assigned stand while hunting.

* * * * *

15. An adult age 21 or older, possessing and carrying a valid hunting license and refuge hunting permit, must accompany and directly control youth hunters ages 12 to 17. We prohibit persons under age 12 to hunt on the refuge.

* * * * *

18. We require hunters to unload hunting bows, crossbows, muzzleloaders, and shotguns while in or around vehicles or on refuge roads (see § 27.42 of this chapter). We define unloaded as: arrows or bolts removed from bow or crossbow, primer removed from muzzleloader or shotgun shell removed from chamber of shotgun.

19. We require hunters during archery-only seasons to sign in and out at the Hunter Sign-In/Sign-Out stations, and record deer harvest information on the Big Game Harvest Report (FWS Form 3–2359).

* * * * *

Plum Tree Island National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of migratory waterfowl, gallinule, and coot on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require hunters to possess and carry a refuge hunting permit (see condition A2 below) along with their State hunting license and stamps, while hunting migratory game birds on the refuge. We open the Cow Island unit of the refuge only to migratory game bird hunting. We close all other areas of the refuge to all public entry.

2. We require migratory game bird hunters to obtain a permit through a lottery administered by the Virginia Department of Game and Inland Fisheries. We mail permits to successful applicants.

* * * * *

Presquile National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

1. We require big game hunters to obtain a permit through a lottery administered by the Virginia Department of Game and Inland Fisheries. We require a fee to obtain a refuge hunting permit. We will notify successful applicants by mail or email, and if we receive the hunting fee by the date identified in the mailing, we will mail refuge hunting permits to successful applicants.

2. We require hunters to possess a refuge hunting permit (contains date selected to hunt and permit number), along with their State hunting license, while on refuge property.

3. We require stand hunting only. Stand hunting means the use of portable hunting blinds, portable tree stands, or stationary ground hunting. We prohibit the use of nails, screws, bolts, or screw-in steps. We prohibit damage to trees (see § 32.2(i)). Hunters must remove stands and blinds daily (see § 27.93 of this chapter).

4. We prohibit the use of ''man drives,'' defined as individual or group efforts intended to ''push'' or ''jump'' deer for the purposes of hunting.

5. We allow shotgun hunting on designated days as indicated on refuge hunting permits, in the State hunting guide, and on the refuge Web site, *http://www.fws.gov/northeast/presquile/.*

6. We allow the take of two deer of either sex per day.

7. We prohibit dogs.

8. We prohibit the discharge of a weapon within 300 feet (90 m) of any building.

* * * * *

12. An adult age 21 or older, possessing and carrying a valid hunting license and refuge hunting permit, must accompany and directly control youth hunters ages 12 to 17. We prohibit persons younger than age 12 to hunt on the refuge.

* * * * *

16. We require hunters to unload hunting bows, crossbows, muzzleloaders, and shotguns while in or around vehicles or on refuge roads (see § 27.42 of this chapter). We define unloaded as: arrows or bolts removed from bow or crossbow, primer removed from muzzleloader, or shotgun shell removed from chamber of shotgun.

* * * * *

Rappahannock River Valley National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

1. We require big game hunters to obtain a permit through a lottery administered by the Virginia Department of Game and Inland Fisheries. We require a fee to obtain a refuge hunting permit (signed and dated sheet). We will notify successful applicants by mail or email, and if we receive the hunting fee by the date identified in the mailing, we will mail refuge hunting permits to successful applicants. We offer walk-in registration to fill hunting slots not filled during the lottery process.

2. We require hunters to possess a refuge hunting permit (contains date selected to hunt and permit number), along with their State hunting license, while on refuge property. We require

hunters to display a vehicle permit (contains date selected to hunt and permit number) provided by the refuge on the dashboard of their vehicle while on the refuge so that the permit is visible through the windshield.

3. We require stand hunting only. Stand hunting means the use of portable hunting blinds, portable tree stands, or stationary ground hunting. We prohibit the use of nails, screws, bolts, or screw-in steps. We prohibit damage to trees (see § 32.2(i)). Hunters must remove stands and blinds daily (see § 27.93 of this chapter). We prohibit deer drives, still hunting, and roaming.

* * * * *

11. Persons possessing, transporting, or carrying firearms on the refuge must comply with all provisions of State and local law. Persons may only use (discharge) firearms in accordance with refuge regulations (see § 27.42 of this chapter).

* * * * *

15. We prohibit the discharge of hunting firearms or archery equipment within 300 feet (90 m) of any building. We prohibit the discharge of hunting firearms or archery equipment in or across a refuge road as marked on the refuge hunt maps.

16. We require hunters to unload hunting bows, crossbows, muzzleloaders, and shotguns while in or around vehicles or on refuge roads (see § 27.42 of this chapter). We define unloaded as: arrows or bolts removed from bow or crossbow, primer removed from muzzleloader, or shotgun shell removed from chamber of shotgun.

* * * * *

37. Amend § 32.67 Washington by:

a. Revising paragraph A.1., removing paragraph A.6., and revising paragraph C.3. under Columbia National Wildlife Refuge; and

b. Revising the entry for Hanford Reach National Monument/Saddle Mountain National Wildlife Refuge.

The revisions read as follows:

§ 32.67 Washington.

* * * * *

Columbia National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

1. We prohibit overnight parking and/or camping.

* * * * *

C. Big Game Hunting. * * *

* * * * *

3. We allow hunting with shotgun, muzzleloader, and archery only.

* * * * *

Hanford Reach National Monument/Saddle Mountain National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of goose, duck, coot, dove, and snipe on designated areas of the Monument/Refuge in accordance with State regulations subject to the following conditions:

1. We prohibit overnight camping and/or parking.

2. You may possess only approved nontoxic shot for hunting (see § 32.2(k)).

3. We prohibit discharge of any firearm within ¼ mile (396 m) of any maintained building or Federal facility, such as, but not limited to, a structure designed for storage, human occupancy, or shelter for animals.

4. We allow only portable blinds and temporary blinds constructed of nonliving natural materials. Hunters must remove all decoys and other equipment (see § 27.93 of this chapter) at the end of each day.

5. We allow only nonmotorized boats and boats with electric motors on the WB–10 Pond (Wahluke Lake) and with walk-in access only.

6. We close all islands within the Columbia River to all access.

B. Upland Game Hunting. We allow hunting of pheasant, quail, grey partridge, and chukar partridge on designated areas of the Monument/Refuge in accordance with State regulations subject to the following conditions: Conditions A1, A2, A3, and A6 apply.

C. Big Game Hunting. We allow hunting of deer and elk on designated areas of the Monument/Refuge in accordance with State regulations subject to the following conditions:

1. We allow sport hunting of deer and elk on designated areas of the Monument/Refuge.

i. Conditions A1, A3, and A6 apply.

ii. We allow hunting with shotgun, muzzleloader, and archery only.

2. We allow population control hunting of elk on the Rattlesnake Unit of the Monument/Refuge.

i. Condition A1 applies, and we also prohibit smoking.

ii. We require elk population control hunters to participate in a Service-directed, hunt-specific training session each year prior to hunting and receive a Service-provided permit (signed brochure) that hunters must carry at all times.

iii. We allow hunting with modern firearms only.

iv. We allow authorized vehicles only on designated roads and only in designated parking areas.

v. We prohibit the use of bicycles and carts.

vi. We allow hunting Monday through Friday only.

vii. Hunters must sign in and out each day and report success and/or failure of any hit-but-not-retrieved animals when signing out each day.

viii. We allow foot access only beyond designated roads and parking areas.

ix. We prohibit retrieval of animals outside the hunt area without prior Service approval.

x. All hunt assistants must check-in and out and be under the supervision of the permitted hunter at all times.

D. Sport Fishing. We allow fishing on the Wahluke and Ringold Units in accordance with State regulations subject to the following conditions:

1. Conditions A1, A5, and A6 apply.

2. We allow access from legal sunrise to legal sunset, except that we allow access to the Wahluke Unit's White Bluffs boat launch from 2 hours before legal sunrise until 2 hours after legal sunset for launch and recovery activities only.

* * * * *

38. Amend § 32.68 West Virginia by revising paragraph A.2., adding paragraph A.9., revising paragraph B.1., removing paragraph B.2., redesignating paragraphs B.3. through B.6. as paragraphs B.2. through B.5., revising paragraph C.1., and removing paragraph C.12. under Canaan Valley National Wildlife Refuge.

This addition and these revisions read as follows:

§ 32.68 West Virginia.

* * * * *

Canaan Valley National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

* * * * *

2. We allow hunting on refuge lands with the following exceptions: the area surrounding the refuge headquarters, safety zones, areas marked as no hunting zones, areas marked as closed to all public entry, and areas within 500 feet (150 m) of any dwelling in accordance with State regulations.

* * * * *

9. We close the Research Natural Area except for deer hunting, which we allow for management purposes.

B. Upland Game Hunting. * * *

1. Conditions A1 (Upland/Small Game/Furbearer Report, FWS Form 3–2362), A2, A4, A6, A7, and A9 apply.

* * * * *

C. Big Game Hunting. * * *

1. Conditions A1 (Big Game Harvest Report, FWS Form 3–2359), A2, A4, A6, A7, A9, and B3 apply.

* * * * *

Dated: June 21, 2012.

Eileen Sobeck,

Assistant Secretary for Fish and Wildlife and Parks.

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