FY 2014 PROCESSING AND FILING FEE TABLE—Continued

Document/action	FY 2014 fee
Notice of location*	20
Amendment of location	10
Transfer of mining claim/site	10
Recording an annual FLPMA filing	10
Deferment of assessment work	105
Recording a notice of intent to locate mining claims on Stockraising Homestead Act lands	30
Mineral patent adjudication	2,995 (more than 10 claims) 1,495 (10 or fewer claims)
Adverse claim	105
Protest	65
Oil Shale Management (parts 3900, 3910, 3930)	
Exploration license application	315
Application for assignment or sublease of record title or overriding royalty	65

*To record a mining claim or site location, you must pay this processing fee along with the initial maintenance fee and the one-time location fee required by statute. 43 CFR part 3833.

* * * * *

[FR Doc. 2013–20037 Filed 8–15–13; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 206

[Docket ID: FEMA–2013–0015]

RIN 1660–AA79

Dispute Resolution Pilot Program for Public Assistance Appeals

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Section 1105 of the Sandy Recovery Improvement Act of 2013 directs FEMA to establish a nationwide Dispute Resolution Pilot Program (DRPP) in order to facilitate an efficient recovery from major disasters, including arbitration by an independent review panel, to resolve disputes relating to Public Assistance projects. This final rule establishes an option for arbitration under the Public Assistance Program administered by the Federal Emergency Management Agency (FEMA). The option allows applicants to file for arbitration, instead of a second appeal under FEMA's current Public Assistance Program. The requests for review under the DRPP must be submitted by December 31, 2015. This final rule provides the procedures and the standard of review that FEMA will apply under the arbitration option.

DATES: *Effective Date:* August 16, 2013.

FOR FURTHER INFORMATION CONTACT: William Roche, Infrastructure Branch Chief, Recovery Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC, 20472–3100, Phone: (202) 212–2340 or Email: *william.roche@fema.dhs.gov*.

SUPPLEMENTARY INFORMATION:

Table of Abbreviations

APA—Administrative Procedure Act
ARRA—American Recovery and Reinvestment Act of 2009
CFR—Code of Federal Regulations
DRPP—Dispute Resolution Pilot Program
EA—Environmental Assessment
EIS—Environmental Impact Statement
FEMA—Federal Emergency Management Agency
NEPA—National Environmental Policy Act of 1969
OMB—Office of Management and Budget
PRA—Paperwork Reduction Act of 1995
RFA—Regulatory Flexibility Act
SRIA—Sandy Recovery Improvement Act of 2013
Stafford Act—Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended

Table of Contents

I. Executive Summary
A. Purpose of the Regulatory Action
1. Need for the Regulatory Action
2. Legal Authority for the Regulatory Action
B. Summary of the Major Provisions of the Regulatory Action
C. Summary of Costs and Benefits
II. Background
A. Sandy Recovery Improvement Act of 2013
B. Public Assistance Process for Project Approval
C. Public Assistance Appeal Process under 44 CFR 206.206
III. Discussion of the Rule
A. Scope
B. Definitions
C. Applicability
D. Governing Rules
E. Limitations
F. Request for Arbitration
G. Administrative Record
H. Submissions Related to Arbitration
I. Selection of Panel
J. Challenge of Arbitrator(s)
K. Preliminary Administrative Conference
L. Jurisdictional and Arbitrability Challenges
M. Hearing
N. Standard of Review
O. Ex Parte Communications
P. Decision
Q. Costs
R. Frivolous Requests
S. Deadline
IV. Regulatory Analyses
A. Administrative Procedure Act
B. Executive Order 12866, Regulatory Planning and Review and Executive Order 13563, Improving Regulation and Regulatory Review
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Paperwork Reduction Act (PRA) of 1995
F. National Environmental Policy Act (NEPA) of 1969
G. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments
H. Executive Order 13132, Federalism
I. Executive Order 12630, Taking of Private Property
J. Executive Order 12898, Environmental Justice
K. Executive Order 12988, Civil Justice Reform
L. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks
M. Congressional Review Act

I. Executive Summary

A. Purpose of the Regulatory Action

This section provides a concise description of the major provisions in this final rule. The Federal Emergency Management Agency (FEMA) also provides a summary of the costs and benefits of this final rule in this section.

1. Need for the Regulatory Action

FEMA currently authorizes a two-level appeal process for applicants that dispute a FEMA determination related to an application for Public Assistance. Under the Public Assistance Program, FEMA awards grants to State and local governments, Indian Tribal governments, and certain private nonprofit organizations (applicants) to assist them in responding to and recovering from Presidentially declared emergencies and major disasters. The final rule will add a new section at section 206.10, to 44 CFR Part 206. This new section will provide the procedures under which an applicant may request the use of arbitration instead of a second appeal under FEMA's Public Assistance Program.

In order to facilitate an efficient recovery from major disasters, section 1105 of the Sandy Recovery Improvement Act of 2013 (SRIA) directs FEMA to establish the Dispute Resolution Pilot Program (DRPP). This final rule pertains to SRIA's specific requirement that FEMA provide the option of arbitration by an independent review panel to Public Assistance applicants. Arbitration by an independent review panel will only be available for disputes related to disasters declared on or after October 30, 2012, in an amount equal to or greater than $1,000,000, for projects with a non-Federal cost share requirement (i.e.. the grantee/subgrantee have a State/Tribal/local cost share requirement), and for applicants that have completed a first appeal pursuant to 44 CFR 206.206. The arbitration decisions will be binding. The authority for section 1105 of SRIA sunsets on December 31, 2015; therefore, the requests for review under the DRPP must be submitted by December 31, 2015.

2. Legal Authority for the Regulatory Action

Section 1105 of SRIA [1] mandates that FEMA establish procedures under which an applicant seeking disaster assistance under FEMA's Public Assistance Program may request the use of alternative dispute resolution, including arbitration by an independent review panel, to resolve disputes related to eligibility for such disaster assistance. SRIA identifies this as the DRPP and provides a sunset provision prohibiting requests for arbitration after December 31, 2015. This final rule lays out the procedures for the binding arbitration requirement of the DRPP.

B. Summary of the Major Provisions of the Regulatory Action

This rule provides the procedures FEMA and the independent review panels will apply to requests for arbitration under the DRPP, including deadlines for filing the requests, where the requests must be filed, the documents each party must submit, the manner and timing by which the independent review panel will set up preliminary conferences and hearings, how the independent review panel will evaluate any jurisdictional challenges, a standard of review to be applied at the hearings, and the timing of the independent review panel's decisions.

C. Summary of Costs and Benefits

As this rule provides the option for arbitration instead of a second appeal, it imposes no mandatory costs on the public. FEMA estimates an DRPP annual average net cost of $1,392,147 based on an estimated average 20 arbitration requests per year and costs associated with initial arbitration processing, preliminary administrative conferences, oral hearings, jurisdictional challenges, frivolous requests, and cost savings associated with second appeals not completed in favor of arbitration. This cost includes a $401,142 applicant net cost, $60,937 grantee net cost, and $930,068 FEMA net cost (including independent review panel costs).

Benefits of this rule include providing flexibility for applicant recourse and a likely increase in applicant satisfaction through the use of an independent panel. It also institutes a streamlined process that clearly identifies areas/issues in dispute and encourages the use of arbitration when appropriate, thereby increasing the speed at which disputes are resolved. Furthermore, information from the pilot will help determine if arbitration should be provided as a permanent option in the future.

FEMA uses the net annual average cost identified above to calculate an DRPP total cost of $3.5 million (undiscounted) for the 2.5 years of the pilot program. At a 7 percent discount rate, the total cost equals $3.2 million and $1.4 million annualized. The summary table below presents a summary of the benefits and costs of the rule.

TABLE 1—COMPARISON OF DISPUTE RESOLUTION PILOT PROGRAM NET COSTS AND BENEFITS

Year [1]	Total	7% Discount [2]	3% Discount [3]	Benefits
2013	$696,074	$696,074	$696,074	Provides flexibility for applicant recourse and likely increases applicant satisfaction through use of an independent panel.
2014	1,392,147	1,301,072	1,351,599	Institutes a streamlined process that clearly identifies areas/issues in dispute and encourages use of arbitration, when appropriate, thereby increasing speed at which disputes are resolved.
2015	1,392,147	1,215,955	1,312,232	Information from pilot will help determine if arbitration should be a permanent option.
Total	3,480,368	3,213,101	3,359,905	
Annualized		1,445,344	1,415,041	

[1] Year 2013 only contains 6 months of activity; thus half the annual average cost. Also, as the rule is expected to be published in 2013; the associated discount equates to 1 which does not change 2013 dollar values.
[2] 7% Discount = Total × (1/(1+0.07) − (year-2013)).
[3] 3% Discount = Total ×(1/(1+0.03) − (year-2013)).

[1] Sandy Recovery Improvement Act of 2013, Public Law 113–2, 127 Stat. 43 (Jan. 29, 2013), 42 U.S.C. 5189a note.

II. Background

A. Sandy Recovery Improvement Act of 2013

On January 29, 2013, President Obama signed into law the Sandy Recovery Improvement Act of 2013 [2] (SRIA). The law authorizes several significant changes to the way the Federal Emergency Management Agency (FEMA) may deliver disaster assistance under a variety of programs. Section 1105 of SRIA directs FEMA to establish a nationwide Dispute Resolution Pilot Program (DRPP), including arbitration by an independent review panel to resolve disputes relating to Public Assistance projects, in order to facilitate an efficient recovery from major disasters. This final rule establishes the DRPP for arbitration by an independent review panel of second appeals. Arbitration by an independent review panel will only be available for disputes in an amount equal to or greater than $1,000,000, for projects with a non-Federal cost share requirement (i.e., the grantee/subgrantee have a State/Tribal/local cost share requirement), and for applicants that have completed a first appeal pursuant to 44 CFR 206.206. The arbitration decisions will be binding upon the parties to the dispute as required by section 1105(b)(2) of SRIA. Applicants may choose to use for their second appeal either the DRPP or the review already offered under 44 CFR 206.206. Under section 1105 of SRIA, the authority to accept requests for arbitration pursuant to the DRPP sunsets on December 31, 2015; therefore, the requests for review under this Program must be submitted by December 31, 2015. However, pursuant to this rule, FEMA will continue to process and finalize any proper request made on or before December 31, 2015.

The arbitration process available under the DRPP is separate and distinct from the arbitration process established by the Arbitration for Public Assistance Determinations Related to Hurricanes Katrina and Rita (Disasters DR–1603, DR–1604, DR–1605, DR–1606, and DR–1607) final rule. See 74 FR 44761, Aug. 31, 2009, 44 CFR 206.209. The differences between the Hurricanes Katrina and Rita arbitration process and the DRPP include, but are not limited to: (1) The Hurricanes Katrina and Rita arbitration process is limited to just Hurricanes Katrina and Rita claims; (2) there is no sunset date for the Hurricanes Katrina and Rita arbitration process; (3) the amount in dispute for the Hurricanes Katrina and Rita arbitration process is $500,000, whereas the amount in dispute for the DRPP is $1,000,000; (4) there is no standard of review specified for the Hurricanes Katrina and Rita arbitration process, whereas the standard of review for the DRPP is arbitrary, capricious, or an abuse of discretion; (5) the Hurricanes Katrina and Rita arbitration process does not require the applicant to complete a first appeal under 44 CFR 206.206, whereas the DRPP does require the applicant to complete a first appeal; and (6) the DRPP limits the evidence to be presented to the administrative record that was established as of the first appeal, whereas the Hurricanes Katrina and Rita arbitration process does not limit the evidence that may be presented. Despite these differences, various aspects of the Katrina and Rita Arbitration Program provide insight into how the DRPP may operate, such as the frequency of in-person hearings, number of participants at preliminary administrative conferences and hearings, and time spent preparing arbitration materials. FEMA has used such information to help inform its economic analysis.

B. Public Assistance Process for Project Approval

Under the Public Assistance Program, authorized by the Robert T. Stafford Disaster Relief and Emergency Assistance Act [3] (Stafford Act), FEMA awards grants to eligible applicants to assist them in responding to and recovering from Presidentially-declared emergencies and major disasters as quickly as possible. The grantee, as defined at 44 CFR 206.201(e), is the government to which a grant is awarded and which is accountable for the use of the funds provided. Generally, the State for which the emergency or major disaster is declared is the grantee. The applicant, as defined at 44 CFR 206.201(a), is a State agency, local government, or eligible private nonprofit organization submitting an application to the grantee for assistance under the State's grant.

The Public Assistance Program provides Federal funds for debris removal, emergency protective measures, and permanent restoration of infrastructure. When the President declares an emergency or major disaster declaration authorizing the Public Assistance Program, that presidential declaration automatically authorizes FEMA to accept applications from eligible applicants under the Public Assistance Program. To apply for a grant under the Public Assistance Program, the eligible applicant must submit a Request for Public Assistance to FEMA through the grantee, which is usually the State but may be an Indian Tribal government. An eligible applicant may use FF–009–0–49, to apply for public assistance. Upon award, the grantee notifies the applicant of the award, and the applicant becomes a subgrantee.

Project Worksheets for large projects are developed by a FEMA Project Specialist, working with a grantee representative and the applicant, and are submitted directly to a FEMA Public Assistance Crew Leader for review and processing. A Project Worksheet is the primary form used to document the location, damage description and dimensions, scope of work, and cost estimate for a project. Although large projects are funded on documented actual costs, work typically is not complete at the time of project formulation, Project Worksheet development, and approval. Therefore, FEMA obligates large project grants based on estimated costs and relies on financial reconciliation at project closeout for final costs. The obligation process is the process by which funds are made available to the grantee. The funds reside in a Federal account until drawn down by the grantee and disbursed to the applicant, unless partially or otherwise deobligated for reasons including, but not limited to, discrepancies between estimated and actual costs, updated estimates, a determination that a prior eligibility determination was incorrect, additional funds received from other sources that could represent a prohibited duplication of benefits, or expiration of the period of performance.

At times an applicant/grantee or applicant may disagree with FEMA regarding a determination related to their request for Public Assistance. Such disagreements may include, for instance, whether an applicant, facility, item of work, or project is eligible for Public Assistance; whether approved costs are sufficient to complete the work; whether a requested time extension was properly denied; whether a portion of the cost claimed for the work is eligible; or whether the approved scope of work is correct. In such circumstances, the applicant may appeal FEMA's determination. See 44 CFR 206.206.

C. Public Assistance Appeal Process Under 44 CFR 206.206

Traditionally, under the appeals procedures in 44 CFR 206.206, an

[2] Sandy Recovery Improvement Act of 2013, Public Law 113–2, 127 Stat. 43 (Jan. 29, 2013), 42 U.S.C. 5189a note.

[3] Disaster Relief Act of 1974, Public Law 93–288, 88 Stat. 143 (May 22, 1974), as amended, 42 U.S.C. 5121 *et seq.*

eligible applicant may appeal any determination made by FEMA related to an application for or the provision of Public Assistance. There are two levels of appeal. The first level appeal is to the FEMA Regional Administrator. The second level appeal is to the FEMA Assistant Administrator for Recovery.

The applicant must file an appeal with the grantee within 60 days of the appellant's receipt of a notice from FEMA of the Federal determination that is being appealed. The applicant must provide documentation to support the position of the appeal. In this documentation, the applicant will specify the monetary amount in dispute and the provisions in Federal law, regulation, or policy with which the applicant believes the initial action by FEMA was inconsistent. The grantee reviews and evaluates the appeal documentation. The grantee then prepares a written recommendation on the merits of the appeal and forwards that recommendation to the FEMA Regional Administrator within 60 days of the grantee's receipt of the appeal from the applicant.

The FEMA Regional Administrator reviews the appeal and takes one of two actions: (1) Renders a decision on the appeal and informs the grantee of the decision; or (2) requests additional information. If the appeal is granted, the FEMA Regional Administrator takes appropriate action, such as approving additional funding or sending a Project Specialist to meet with the appellant to determine additional eligible funding.

If the FEMA Regional Administrator denies the appeal, the applicant may submit a second appeal. The applicant must submit the second appeal to the grantee within 60 days of receiving notice of the FEMA Regional Administrator's decision on the first appeal. The grantee must forward the second level appeal with a written recommendation to the FEMA Regional Administrator within 60 days of receiving the second appeal. The FEMA Regional Administrator will forward the second appeal for action to the FEMA Assistant Administrator for Recovery as soon as practicable.

The FEMA Assistant Administrator for Recovery reviews the second appeal and renders a decision or requests additional information from the applicant. In a case involving highly technical issues, FEMA may request an independent scientific or technical analysis by a group or person having expertise in the subject matter of the appeal. Upon receipt of requested information from the applicant and any other requested reports, FEMA is required by regulation to render a decision on the second appeal within 90 days. As stated in 44 CFR 206.206(e)(3), this decision constitutes the final administrative decision of FEMA.

III. Discussion of the Rule

A. Scope

The rule implements the DRPP program required by SRIA and sets out the Program's procedures, so that applicants may request the use of binding arbitration instead of the second administrative appeal process set out in 44 CFR 206.206.

B. Definitions

FEMA defines the term *administrative record* introduced in section 1105(b)(3)(D)(ii) of SRIA to make clear that the record which will be used during the arbitration process is based upon the documents and materials considered by the agency when making the first appeal determination.

The term *applicant* is used throughout this regulation text and it refers to the definition in FEMA's regulations at 44 CFR 206.201(a).

FEMA defines the term *arbitration sponsor* in order to clarify that there will be a third party administrator of the arbitration program that FEMA will select so that it may implement the binding arbitration provision introduced in section 1105(b)(1) of SRIA. As set out in section 1105(b)(3)(C), the sponsor must be:

> (i) an individual or entity unaffiliated with the dispute (which may include a Federal agency, an administrative law judge, or a reemployed annuitant who was an employee of the Federal Government) selected by the Administrator; and (ii) responsible for identifying and maintaining an adequate number of independent experts qualified to review and resolve disputes under [section 1105 of SRIA.]

FEMA defines the term *frivolous* introduced in section 1105(b)(3)(F) of SRIA to set a standard for when an arbitration may be dismissed and costs awarded to FEMA from the applicant.

The term *grantee* is used throughout this regulation text and it refers to the definition in FEMA's regulations at 44 CFR 206.201(e).

FEMA defines the term *legitimate amount in dispute* introduced in section 1105(a)(2)(B) of SRIA to make clear that the $1,000,000 or more threshold for arbitrations will be based on the difference between the funding amount sought by the applicant as reimbursable under the Public Assistance Program for a project and the funding amount FEMA has determined eligible for a project and not to be based on some other amount, such as the total dollar value of the project including agreed upon costs.

Non-Federal share means that the project is not 100% federally funded and the applicant or grantee bear a percentage of the costs pursuant to the cost sharing provisions established in the FEMA-State Agreement and the Stafford Act.

FEMA defines *notice* to make clear that the phrase ''notice of determination'' contained in FEMA's regulations at 44 CFR 206.206 means deadlines must be calculated based upon the applicant initially receiving actual notice of the determination at issue regardless of whether the grantee receives notice simultaneously or the grantee forwards the notice to the applicant a second time.

Panel means an independent review panel referenced in section 1105(b)(1) of SRIA. A panel consists of three members who are qualified to review and resolve disputes under section 1105 of the SRIA.

C. Applicability

The DRPP will only be available to applicants if the dispute is for Public Assistance funding provided under disasters declared on or after October 30, 2012. As required by section 1105(a)(2)(B) of SRIA, the legitimate amount in dispute must be equal to or greater than $1,000,000. The legitimate amount in dispute is determined based on the difference between the funding amount sought by the applicant as reimbursable under the Public Assistance Program for a project and the funding amount FEMA has determined eligible for a project. The dollar amount for the legitimate amount in dispute will be adjusted annually to reflect changes in the Consumer Price Index for all Urban Consumers published by the Department of Labor. FEMA will publish a **Federal Register** Notice to announce when the dollar amount for the legitimate amount in dispute has been adjusted.

As required by section 1105(a)(2)(C) of SRIA, the project must have a cost-share such that the applicant and/or the grantee bear a portion of the costs. As required by section 1105(a)(2)(D) of SRIA, the applicant must have received a decision on a first appeal, and choose to file an arbitration instead of filing a second appeal pursuant to 44 CFR 206.206. The DRPP is a voluntary program; as such, the applicant may still file a second appeal pursuant to 44 CFR 206.206. However, the applicant must make a choice: it may either file a second appeal pursuant to 44 CFR 206.206 or an arbitration pursuant to the DRPP, but may not pursue both options.

D. Governing Rules

The governing rules are found within sections 403, 406, or 407 of the Stafford Act. Further, the dispute will be decided pursuant to FEMA's interpretations of those sections of the Stafford Act. These interpretations may include, but are not limited to, 44 CFR Part 13; 44 CFR Part 206; the FEMA Public Assistance Guide (FEMA Publication 321); the FEMA Public Assistance Digest (FEMA Publication 322); policies published in the 9500 series related to FEMA's Public Assistance Program; any applicable Public Assistance guidance, fact sheets, or standard operating procedures; evidence of FEMA's practical applications of those policies to other applicants with similar requests for Public Assistance; and Federal caselaw interpreting FEMA's Public Assistance Program.

E. Limitations

Arbitration is only available for any Public Assistance funding dispute arising from disasters declared on or after October 30, 2012. Further, arbitration procedures are only available if the applicant chooses to file an arbitration instead of filing a second appeal under 44 CFR 206.206.

Historically, FEMA has interpreted new statutory authorizations that lack retroactive language to apply to all disaster declarations occurring on or after the date of enactment. Section 1105 of SRIA, however, is included in an act expressly intended to improve recovery from Hurricane Sandy and it is likely that Congress intended FEMA to apply section 1105 of SRIA to disputes arising from the disasters declared for Hurricane Sandy (October 30, 2012), even if that disaster declaration has already occurred, and in future disasters. In addition, because arbitration is optional, applicants can continue to use previously promulgated procedures and would not be negatively impacted by this arbitration rule, even though the rule is being promulgated after the declaration has occurred.

F. Request for Arbitration

To file a Request for Arbitration, an applicant must electronically submit the form to FEMA, the grantee, and the arbitration sponsor. FEMA will provide the applicants with the specific, required information to make such electronic submissions in the first appeal determination.

G. Administrative Record

FEMA will provide a copy of the administrative record to the applicant, the grantee, and the arbitration sponsor, 15 calendar days after it receives the Request for Arbitration. The administrative record will constitute the whole of the evidence that may be considered by the panel when it makes a determination on the claim. This administrative record may include, but is not limited to, Project Worksheets (all versions) and supporting backup documentation, correspondence, photographs, and technical reports.

H. Submissions Related to Arbitration

The grantee must submit the name and address of the grantee's chosen authorized representative(s) within 15 calendar days of receipt of the Request for Arbitration. The grantee may also include a written recommendation in support or opposition to the applicant's Request for Arbitration.

The applicant will provide a statement of claim in order to clarify the disputed aspects of the first appeal determination. The applicant must cite to specific sections of the administrative record to clarify the issues, and specifically must identify which statutes, regulations, policies, or guidance support their claim.

Within 30 calendar days of receipt of the applicant's statement of claim, FEMA will provide a memorandum in support of its position and the name and address of its authorized representative.

I. Selection of Panel

As required by section 1105(b)(3)(C) of SRIA, FEMA will choose an arbitration sponsor that is unaffiliated with the dispute to ensure independence of the arbitration process. FEMA may select a sponsor that is a commercial entity through a competitive procurement process or it may select a sponsor from another Federal Agency or entity. This sponsor will be responsible for choosing the panel which will be comprised of three members who are qualified to review and resolve disputes under section 1105 of SRIA. The arbitrators must be neutral and independent and must not have had any prior involvement with the contested appeal.

J. Challenge of Arbitrator(s)

SRIA specifically provides FEMA authority to establish independent review panels as part of its appeals process. As such, it is important to allow the parties to assess whether the selected arbitrators are impartial and independent.

This paragraph sets forth the procedures by which a party may challenge the impartiality or independence of the arbitrators, if circumstances exist that give rise to justifiable doubt as to the arbitrator's impartiality or independence. The procedures are based on an industry standard. A party challenging an arbitrator will send notice stating the reasons for the challenge. The other party will have the right to respond to the challenge. The other party may agree to the challenge and in such circumstances the arbitration sponsor will appoint a replacement arbitrator. If the other party does not agree to the challenge and the challenged arbitrator does not withdraw, the decision on the challenge will be made by the arbitration sponsor. If the arbitration sponsor orders the withdrawal of the challenged arbitrator, the arbitrator sponsor will appoint a replacement arbitrator.

K. Preliminary Administrative Conference

The preliminary conference will be held within 15 calendar days of receipt of FEMA's response to the applicant's statement of claim. The parties will have the opportunity to discuss the conduct of the hearing, such as whether there will be witnesses, the nature and duration of witness testimony, whether the parties will make additional statements, when the hearing will take place, and any preliminary requests, including a request for an in-person hearing. The panel will memorialize the preliminary conference in a scheduling order setting forth the agreements the parties reached and the deadlines the panel set during the preliminary conference.

L. Jurisdictional and Arbitrability Challenges

The panel may consider jurisdictional and arbitrability challenges to the Request for Arbitration. Jurisdictional and arbitrability challenges include, but are not limited to, disputes over whether the Request for Arbitration is appropriately filed according to the scope (Section A), applicability (Section C), and limitations (Section E) of this section and whether the applicant has filed a timely Request for Arbitration. The panel may suspend the arbitration proceedings while it considers the challenge, and may dismiss the request prior to any hearing if the panel determines the challenge has merit.

M. Hearing

This paragraph describes the hearings that may take place under this section and specifically allows for hearings in person or by teleconference, such that all parties may hear all other participants. The applicant selects whether the hearing is in-person or via

teleconference. The hearings should take place within 60 calendar days of the preliminary conference, schedules permitting, and the hearing may be postponed upon a showing of good cause such as unexpected unavailability of the authorized representative or witnesses, jurisdictional or arbitrability challenges, or challenges to the independence of the arbitrators. The witnesses may only present testimony related to issues that were previously included in the first appeal determination and may only refer to evidence already in the administrative record, per section 1105(b)(3)(D)(ii) of SRIA. A party may specifically request and arrange for a written transcript of the hearing at its own expense. The requesting party must also pay for a copy of the transcript for the Panel members. The non-requesting party may not object to a written transcript but may also request a copy of the transcript and will be responsible for paying for its own copy.

N. Standard of Review

This paragraph sets forth the standard of review for the hearings. The panel will only set aside the agency determination if it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. In the case of a FEMA finding of material fact adverse to the applicant on the first appeal, the panel will only set aside or reverse such a finding if the finding was clearly erroneous.

O. Ex Parte Communications

This paragraph prohibits ex parte communication between the panel and a party. This means that neither the applicant, the grantee, nor FEMA may communicate with an arbitrator without the participation of the other parties or their representatives. If a party violates this provision, the panel will direct the violating part to write a memorandum of the communication that will be included in the record. The panel will give the non-violating party an opportunity for rebuttal. The panel may require the party who engages in an unauthorized ex parte communication to show cause why the panel should continue the matter instead of finding in favor of the opposing party as a result of the improper conduct.

P. Decision

The panel must issue a written and reasoned decision that sets forth the findings of fact and conclusions of law within 60 days of the hearing. If the applicant does not request a hearing, the panel must issue a written and reasoned decision within 60 calendar days of administrative conference. The majority decision of the panel will be in writing, signed by each member of the panel in agreement with the decision. A dissenting member may file a separate written dissent. The decision by the panel is binding and is not subject to judicial review, except as permitted by 9 U.S.C. 10 of the Federal Arbitration Act.

Q. Costs

FEMA will pay the fees associated with the panel including arbitrator compensation, and the arbitration facility costs, if any. However each party will be responsible for its own expenses, including but not limited to: attorney's fees, expert witness fees, copying costs, and travel or other expenses associated with the parties and all witnesses attending the hearing. Any other expenses not listed in this paragraph will be paid by the party who incurred the expense.

R. Frivolous Requests

The panel will deny any frivolous request, defined as the applicant knew or reasonably should have known that its actions lack an arguable basis in law, policy, or in fact. An example of a frivolous claim is one where FEMA has informed the applicant that specific information is required in order to prove the applicant's claim and the applicant failed to provide the information in the project formulation process or first appeal process. An applicant determined to have submitted a frivolous claim will be directed to pay the fees associated with the panel including arbitrator compensation, and the arbitration facility costs, if any, to prevent the inappropriate use of Federal funds for arbitrations for claims.

S. Deadline

This section addresses the sunset provision in the SRIA which provides that an applicant cannot make a request for review by the panel under this section after December 31, 2015. However, pursuant to this rule, FEMA will continue to process and finalize any proper request made on or before December 31, 2015.

IV. Regulatory Analyses

A. Administrative Procedure Act

The Administrative Procedure Act (APA) requires an agency to publish a rule for public comment prior to implementation. 5 U.S.C. 553. The APA, however, provides an exception to the notice and comment requirements for rules of agency procedure or practice. 5 U.S.C. 553(b)(3)(A).

This final rule implements section 1105 of SRIA by detailing how a Public Assistance applicant may request arbitration instead of the currently offered second appeal. This final rule is a procedural rule because it is an agency rule of practice governing the conduct of proceedings. It establishes procedures for making an arbitration request and the procedures FEMA will follow in providing an arbitration decision. The rule does not affect eligibility under the Public Assistance Program; rather, it adds an option for review of Public Assistance determinations to expedite recovery efforts by providing greater flexibility within the Public Assistance Program. FEMA already provides for review determinations on public assistance grants through the appeal provisions of 44 CFR 206.206. This final rule simply provides an alternate procedure for seeking such a review of FEMA determinations.

This does not confer any substantive rights, benefits, or obligations and only sets out the agency's procedure for how to voluntarily request an arbitration. Since this rule is procedural in nature, it is excepted from the notice and comment requirements under 5 U.S.C. 553(b)(A). FEMA finds there is good cause not to require a 30-day delayed effective date because delaying implementation of the rule by 30 days reduces the opportunity for applicants to fully participate in this time-limited pilot program. 5 U.S.C. 553(d)(3).

B. Executive Order 12866, Regulatory Planning and Review and Executive Order 13563, Improving Regulation and Regulatory Review

FEMA has prepared and reviewed this rule under the provisions of Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, Oct. 4, 1993) as supplemented by Executive Order 13563, ''Improving Regulation and Regulatory Review'' (76 FR 3821, Jan. 21, 2011). Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a ''significant regulatory action,'' under section 3(f) of Executive Order 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget

(OMB). A Regulatory Evaluation with details and calculations related to the costs and benefits of the rule is available in the docket. A summary of the evaluation follows:

This rule establishes the procedures for the DRPP which provides an option for applicants in the FEMA Public Assistance Program to file for arbitration when they want to dispute a FEMA eligibility determination that involves an amount in dispute greater than or equal to $1,000,000. Eligibility disputes are presently resolved through a two level administrative appeals process within FEMA, and arbitration will be an option to applicants instead of a second appeal. This rule is entirely voluntary. By statute, the DRPP will accept Requests for Arbitration until December 31, 2015.

Traditionally, under the appeals procedures in 44 CFR 206.206, an eligible applicant may appeal any determination made by FEMA related to an application for or the provision of Public Assistance. There are two levels of appeal; the first level appeal is to the FEMA Regional Administrator and the second level appeal is to the FEMA Assistant Administrator for Recovery. Typical appeals involve disputes regarding whether an applicant, facility, item of work, or project is eligible for Public Assistance; whether approved costs are sufficient to complete the work; whether a requested time extension was properly denied; whether a portion of the cost claimed for the work is eligible; or whether the approved scope of work is correct. The first appeal process will be the same for all applicants. Under this rule, applicants who seek further review of the first appeal will have the option of choosing a second appeal or arbitration. The second appeal process is similar to the first appeal process, but constitutes a review of the first appeal, is considered at FEMA headquarters, and the decision on the second appeal is the final administrative decision of the Agency. Despite some similarities, arbitrations under the DRPP will include a few procedural differences to second appeals. Key differences include a formal process to interact with FEMA and provide explanatory information (e.g., statement of claim) as well as the opportunity to interact and present one's case to an independent panel. See Table 2 for a comparison of the baseline second appeals process to the DRPP.

TABLE 2—COMPARISON BETWEEN SECOND APPEAL & DISPUTE RESOLUTION PILOT PROGRAM

	Second appeal	Arbitration
Steps After First Appeal Decision.	Decision to request a 2nd appeal within 60 days of receiving notice of the Regional Administrator's decision.	Decision to request arbitration instead of a 2nd appeal within 15 days of receiving notice of the Regional Administrator's decision.
Applicant File for 2nd Appeal.	Appellant submits 2nd appeal request to the grantee; typically a letter which reiterates the information provided in the 1st appeal.	Applicant files a Request for Arbitration form electronically to FEMA, the grantee, and the arbitration sponsor.
Grantee Recommendation.	Grantee forwards 2nd appeal with a written recommendation to the FEMA Regional Administrator; typically a letter addressing any changes to previous recommendation.	Grantee submits the name and address of an authorized representative and may provide a written recommendation to FEMA, the grantee, and the arbitration sponsor.
Transmission to FEMA HQ.	FEMA Regional Administrator reviews the information provided with the 2nd appeal and forwards it with a recommendation for action to the FEMA Assistant Administrator.	Transmission covered by simultaneous distribution between applicant, grantee, FEMA, and arbitration sponsor.
Additional Dispute Resolution Pilot Program Steps		*Administrative record*—FEMA provides a copy of all the documents and materials directly or indirectly considered by the agency and relied upon in making the 1st appeal determination. *Appointment of Panel*—An independent review panel consisting of three Administrative Law Judges. *Applicant statement of claim*—applicant provides a statement clarifying the disputed aspects of the 1st appeal determination and support for their claim. *FEMA response*—FEMA provides a memorandum in support of its position and the name and address of its authorized representative.
Additional Info ..	FEMA Regional Administrator or FEMA Assistant Administrator may request additional information if necessary. This may include independent scientific or technical analysis regarding the subject matter of the appeal.	The administrative record will constitute the whole of the evidence that may be considered in order to make a determination on the claim.
FEMA Final Decision.	FEMA Headquarters reviews the appeal and the FEMA Assistant Administrator renders a decision on the appeal and informs the grantee of the decision.	*Preliminary admin conference*—provides opportunity to discuss the conduct of the hearing and answer procedural questions. *Hearing*—presentation of positions and witnesses, as appropriate, to an independent panel either in person or by teleconference. *Panel decision*—The panel issues a written and reasoned decision that sets forth the findings of fact and conclusions of law.

To estimate second appeal applicants who may choose arbitration, FEMA uses disaster related second appeals received in FY 2011 and FY 2012 with amounts in dispute greater than or equal to $1,000,000 (adjusted for inflation).[4]

[4] Data on appeal dollar amounts are only available for FY11 and FY12.

There were 23 second appeals in FY 2011 and 8 second appeals in FY 2012. Based on this data, FEMA rounds up to estimate a range of 10 to 30 second appeal applicants per year who may choose arbitration.

FEMA uses its experience from arbitrations statutorily mandated (section 601 of the American Recovery and Reinvestment Act of 2009, Public Law 111–5, 123 Stat. 115 (Feb. 17, 2009, 26 U.S.C. 1 note)) and codified in 44 CFR 206.209 for the Hurricanes Katrina and Rita disasters to help inform many of its estimates. In particular, FEMA's experiences related to Mississippi arbitrations—where the relevant Public Assistance Program is almost completed, the issues encountered have involved all phases of disaster operations, and the disputes are comparable to what FEMA historically encounters—has been particularly useful in informing our estimates. To calculate the DRPP costs, FEMA estimates average annual costs associated with all aspects of the arbitration process, including initial arbitration processing, preliminary administrative conferences, oral hearings, jurisdictional challenges, and frivolous requests.

Initial arbitration processing costs largely include time spent by applicants, grantees, and FEMA developing and providing process documentation. Using the existing second appeal information collection (1660–0017) as a guide, FEMA estimates an applicant will spend 1 hour of a State government management employee's time (or equivalent) submitting a Request for Arbitration and a grantee will spend 2 hours of a State government management employee's time (or equivalent) providing a recommendation. In addition, based on its experience from Hurricane Katrina and Rita Mississippi arbitrations, FEMA estimates that an applicant's authorized representative will spend approximately 40 hours composing the statement of claim. Also based on Hurricane Katrina and Rita Mississippi arbitration experience, FEMA estimates the equivalent of a General Service (GS) 11 employee located in Washington, DC will spend 2 hours processing the aforementioned material and the equivalent of a GS 14 employee located in Washington, DC will spend 40 hours composing its memorandum of response. The estimated number of arbitration requests and associated wage rates are applied to the hour estimates for an average annual cost of $131,659.[5] The benefits of the initial arbitration process include a formal process which further clarifies the area and issues in dispute, as well as articulating each party's position.

FEMA anticipates that all Requests for Arbitration will require a preliminary administrative conference with the selected panel. Preliminary administrative conference costs include applicant, grantee, and FEMA participant time spent preparing for the conference plus time actually in conference. The number of participants is a key cost contributor. Based on Hurricane Katrina and Rita Mississippi arbitrations, FEMA estimates conferences will last 1 hour and each participant will spend 2 hours preparing for the conference. Also based on Hurricane Katrina and Rita Mississippi arbitrations, FEMA estimates an average of 3 applicant participants (authorized representative), 2 grantee participants (State government management employee), and 3 FEMA participants (GS 14 (2 from Washington, DC)). The estimated number of conferences and associated wage rates are applied to the hour estimates and the number of participants for an average annual cost of $34,198. The benefits of a preliminary administrative conference include addressing any prehearing questions and matters, including conduct of the arbitration, clarification of the disputed issues, request for disqualification of an arbitrator (if applicable), and any other preliminary matters.

Based on the Hurricane Katrina and Rita Mississippi arbitrations, FEMA estimates that 60 percent (9/15 = 0.6) of all Requests for Arbitration will result in oral hearings, and, last 2 days. Oral hearing costs include applicant, grantee, and FEMA participant time preparing for the hearing plus time actually spent in the hearing. The number of participants is a key cost contributor. Based on Hurricane Katrina and Rita Mississippi arbitrations, FEMA estimates an average of 5 applicant participants (2 authorized representatives plus 3 witnesses (State government management employee)), 1 grantee participant (State government management employee), and 6 FEMA participants (GS14 (1 from Washington, DC)). Furthermore, based on experience from Hurricanes Katrina and Rita Mississippi arbitrations, FEMA estimates that all participants will appear in-person.

The FEMA employees who typically decide second appeals and the litigators who will defend the Agency will be based out of FEMA's Washington, DC office. The closest facility the arbitration sponsor maintains near Washington, DC is in Baltimore, MD. Further, based on the current disaster activity, FEMA anticipates that a significant number of arbitration requests that will be eligible for the DRPP will arise out of FEMA Region II (NY, NJ, PR, VI). In addition, the arbitration sponsor's New York facility is larger and will hold more participants, if necessary. Therefore, FEMA anticipates that half of the oral hearings will take place in New York, New York and half in Baltimore, MD. As such, FEMA also accounts for travel to New York and to Baltimore including airfare (round trip), lodging for 3 nights, meals and incidentals for 4 days, and travel time (2 days) per traveling participant. The meals and incidental expenses are comprised of 2 days of the oral hearing plus 2 days for the travel time, so the total is 4 days. Application of the estimated number of hearings to the associated wage rates, hour estimates, number of participants, and travel costs, and transcript costs results in an average annual cost of $698,177. Benefits of an oral hearing include the opportunity to enter into a dialogue with FEMA and present one's case to an independent panel, who will make a decision that is more likely to be accepted. FEMA expects presentation of an applicant's views and positions in a neutral forum will solidify the finding and reduce requests for reconsideration (despite first and second appeal limitations in regulations) and the solicitation of involvement from other entities at the local, State, or Federal level to advocate on behalf of an applicant regarding an unsatisfactory final determination.

Under this rule, jurisdictional or arbitrability challenges may be raised at any time and are typically addressed independently of an oral hearing. Such challenges include disputes over whether the Request for Arbitration is appropriately filed according to the scope, applicability, and limitations put forth by this rule and whether the applicant has filed a timely Request for Arbitration. Based on Hurricane Katrina and Rita Mississippi arbitrations, FEMA estimates a 13-percent likelihood of such challenges.[6] Although time to address such matters will vary, FEMA's Response and Recovery Legal Division Litigation Branch estimates an applicant will spend on average 15 hours reviewing and responding to a challenge

[5] See the Regulatory Evaluation available in the docket for additional details and calculations used to develop this and other cost estimates summarized in this rule.

[6] Hurricane Katrina and Rita arbitration data shows 2 challenges from the 15 Mississippi arbitrations related to jurisdiction and arbitrability, which is about 13 percent (2/15 × 100 = 13.33).

per presenter (2 authorized representatives), plus 1 hour of applicant and grantee (1 State government management employee) time per participant for resolution. In addition, FEMA's Response and Recovery Legal Division Litigation Branch estimates an average of 25 hours of FEMA presenter time (2 GS 14 (1 from Washington, DC)) per challenge. Application of the associated wage rates results in an annual average challenge cost of $15,729. A benefit of allowing jurisdictional and arbitrability challenges is that it encourages the use of the arbitration process when appropriate and provides the ability to stop or adjust an arbitration if it is not appropriate or did not follow the proper process.

Frivolous requests for arbitration, as determined by the panel, will be denied and the applicant will be required to pay reasonable costs to FEMA relating to the review by the panel, including fees and expenses. Such costs will be assessed on a case-by-case basis. FEMA assumes the cost to address such requests is comparable to jurisdictional challenges—16 hours of an applicant's presenter(s) time (2 authorized representatives), 1 hour of a grantee's participant time (1 State government management employee), and 25 hours of FEMA's presenter time (2 GS14 (1 from Washington, DC)) on average. Based on experience from Hurricane Katrina and Rita arbitrations, FEMA estimates the potential for such claims is 1 out of 40 (2.5 percent). Application of the associated wage rates results in an annual average frivolous request cost of $3,024. This provision discourages the use of the arbitration when inappropriate, by penalizing the filing of requests without merit.

In addition, FEMA estimates cost savings associated with avoided second appeals for applicants, grantees, and FEMA, because arbitration must be selected instead of a second appeal. Based on FEMA's existing Public Assistance Program Information Collection Request (1660–0017), FEMA estimates a second appeal request takes a State government management employee approximately 2 hours and a grantee recommendation takes a State government management employee approximately 1 hour. In addition, FEMA's Recovery Office estimates that additional information will be necessary approximately 33 percent of the time (⅓ = 0.3333) and will take applicants, on average, 1 hour to locate, copy, and provide the information to FEMA. FEMA also estimates processing second appeals takes approximately 40 hours of a GS 13 employee's time (located in Washington, DC), 20 hours of a GS 15 employee's time (located in Washington, DC), and 3 hours of an Senior Executive Service (SES) employee's time. Therefore, cost savings due to avoided second appeals include 2.33 hours of applicant time, 1 hour of grantee time, and 63 hours of FEMA time. Application of the estimated number of arbitration requests and associated wage rates, results in an annual average cost savings of $90,640.

Furthermore, FEMA would incur costs associated with providing panels through an arbitration sponsor. Consistent with section 1105(b)(3)(C) of SRIA, FEMA intends to have arbitration services provided by the U.S. Coast Guard's Administrative Law Judge (ALJ) Program. Based on the prior costs of cases handled by the Coast Guard ALJ Program, FEMA estimates that the cost of arbitration services will be approximately $600,000 annually.

The Dispute Resolution Pilot Program total annual average cost equals $1,392,147. See Table 3 for details.

TABLE 3—SUMMARY OF ANNUAL AVERAGE COSTS AND BENEFITS BY CATEGORY

Categories	Applicant	Grantee	FEMA	Annual average cost	Benefit
Initial Arbitration	$71,357	$2,170	$58,132	$131,659	Clearly identifies the areas/issues in dispute and each party's position.
Preliminary Administrative Conference.	$15,811	$6,510	$11,877	$34,198	Addresses prehearing questions, sets schedule, and resolves an annual average of 40 percent or 8 cases.
Oral Hearing	$307,789	$53,174	$337,214	$698,177	Provides opportunity to state one's case and interact with FEMA in coming to a decision which contributes to it being accepted as final.
Jurisdictional Challenges	$7,308	$141	$8,280	$15,729	Encourages use of arbitration process when appropriate and provides ability to stop or adjust arbitration if not appropriate.
Frivolous Requests	$1,405	$27	$1,592	$3,024	Encourages use of arbitration process when appropriate by penalizing the filing of requests without merit.
Second Appeal Cost Savings.	−$2,528	−$1,085	−$87,027	−$90,640	Accounts for costs otherwise spent on second appeals.
Arbitration Sponsor	N/A	N/A	$600,000	$600,000	Independent panel decision improves perception of objectivity and adds to acceptance of decision.
Overarching	N/A	N/A	N/A	N/A	Increases flexibility for applicant recourse, speed at which disputes are resolved, and provides information that can be used to determine if arbitration should be a permanent option.
Total	$401,142	$60,937	$930,068	$1,392,147	

Based on the Dispute Resolution Pilot Program annual average costs above, FEMA calculates a total pilot program cost of $3,480,368 over the DRPP's duration: $3,213,101 discounted at 7 percent ($1,445,344 annualized) and $3,359,905 discounted at 3 percent ($1,415,041 annualized). See Table 4 for details.

TABLE 4—DISPUTE RESOLUTION PILOT PROGRAM TOTAL COSTS

Year [1]	Applicant	Grantee	FEMA	Total	7% Discount [2]	3% Discount [3]
2013	$200,571	$30,469	$465,034	$696,074	$696,074	$696,074
2014	401,142	60,937	930,068	1,392,147	1,301,072	1,351,599
2015	401,142	60,937	930,068	1,392,147	1,215,955	1,312,232
Total	1,002,855	152,343	2,325,170	3,480,368	3,213,101	3,359,905
Annualized					1,445,344	1,415,041

[1] Year 2013 only contains 6 months of activity; thus half the annual average cost. Also, as the rule is expected to be published in 2013; the associated discount equates to 1 which does not change 2013 dollar values.
[2] 7% Discount = Total × (1/(1 + 0.07) − (year-2013).
[3] 3% Discount = Total × (1/(1 + 0.03) − (year-2013).

The anticipated overarching benefits of the pilot include increased flexibility and the perception of objectivity, which likely increases acceptance of final decisions. In addition, the time to resolve disputes may be faster than the current second appeal process. For instance, when comparing maximum process step timeframes for second appeals (44 CFR 206.206) and maximum process step timelines identified in this rule, the total number of days for arbitration with an oral hearing (225 days) versus a second appeal with one additional information request (270 days) is 45 days faster (270 days − 225 days = 45 days). Furthermore, the information gathered from the pilot will inform the Comptroller General's recommendation to Congress on whether an arbitration program should be implemented permanently. See Table 5 for a comparison of pilot program net costs and benefits.

TABLE 5—COMPARISON OF DISPUTE RESOLUTION PILOT PROGRAM NET COSTS AND BENEFITS

Year [1]	Total	7% Discount [2]	3% Discount [3]	Benefits
2013	$696,074	$696,074	$696,074	Provides flexibility for applicant recourse and likely increases applicant satisfaction through use of an independent panel.
2014	1,392,147	1,301,072	1,351,599	Institutes a streamlined process that clearly identifies areas/issues in dispute and encourages use of arbitration, when appropriate, thereby increasing speed at which disputes are resolved.
2015	1,392,147	1,215,955	1,312,232	Information from pilot will help determine if arbitration should be a permanent option.
Total	3,480,368	3,213,101	3,359,905	
Annualized		1,445,344	1,415,041	

[1] Year 2013 only contains 6 months of activity; thus half the annual average cost. Also, as the rule is expected to be published in 2013; the associated discount equates to 1 which does not change 2013 dollar values.
[2] 7% Discount = Total × (1/(1 + 0.07) − (year-2013)).
[3] 3% Discount = Total × (1/(1 + 0.03) − (year-2013)).

While the provision of arbitration by a panel is statutorily mandated, based on the subsequent analysis, FEMA believes that the benefits of the rule justify the costs.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), and section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, 110 Stat. 847, 858–9 (Mar. 29, 1996) (5 U.S.C. 601 note) require that special consideration be given to the effects of proposed regulations on small entities. The RFA mandates that an agency conduct an RFA analysis when an agency is ''required by section 553 . . . to publish general notice of proposed rulemaking for any proposed rule.'' 5 U.S.C. 603(a). An RFA analysis is not required when a rule is exempt from notice and comment rulemaking under 5 U.S.C. 553(b). FEMA has determined that this rule is exempt from notice and comment rulemaking because it is a rule of agency procedure. See 5 U.S.C. 553(b)(3)(A). Therefore, an RFA analysis under 5 U.S.C. 603 is not required for this rule.

As previously discussed, this rule establishes the procedures for a Dispute Resolution Pilot Program at 44 CFR 206.210, which provides an option for applicants in the FEMA Public Assistance Program to file for arbitration when they want to dispute a FEMA eligibility determination that involves an amount in dispute greater than or equal to $1,000,000. This rule is entirely voluntary and has no mandatory costs to affected applicants.

D. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995, Public Law 104–4, 109 Stat. 48 (Mar. 22, 1995) (2 U.S.C. 1501 *et seq.*), requires Federal agencies to assess the effects of their discretionary regulatory 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 or more in any one year. As the final rule would not have an impact greater than $100,000,000 or more in any one year, it is not an unfunded Federal mandate.

E. Paperwork Reduction Act (PRA) of 1995

As required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, 109 Stat. 163, (May 22, 1995) (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number. The information collection in this rule is approved by OMB under control number 1660–0017, Public Assistance Program.

F. National Environmental Policy Act (NEPA) of 1969

Section 102 of the National Environmental Policy Act of 1969 (NEPA), Public Law 91–190, 83 Stat. 852 (Jan. 1, 1970) (42 U.S.C. 4321 *et seq.*) requires agencies to consider the impacts in their decision-making on the quality of the human environment. The Council on Environmental Quality's procedures for implementing NEPA, 40 CFR 1500 through 1508, require Federal agencies to prepare Environmental Impact Statements (EIS) for major Federal actions significantly affecting the quality of the human environment. Each agency can develop categorical exclusions to cover actions that typically do not trigger significant impacts to the human environment individually or cumulatively. Agencies develop environmental assessments (EA) to evaluate those actions that do not fit an agency's categorical exclusion and for which the need for an EIS is not readily apparent. At the end of the EA process the agency will determine whether to make a Finding of No Significant Impact or whether to initiate the EIS process.

Rulemaking is a major Federal action subject to NEPA. The List of exclusion categories at 44 CFR 10.8(d)(2)(ii) excludes the preparation, revision, and adoption of regulations from the preparation of an EA or EIS, where the rule relates to actions that qualify for categorical exclusions.

Action taken or assistance provided under sections 403, 406, and 407 of the Stafford Act are statutorily excluded from NEPA and the preparation of EIS and EA by section 316 of the Stafford Act. 42 U.S.C. 5159; 44 CFR 10.8(c). NEPA implementing regulations governing FEMA activities at 44 CFR 10.8(d)(2)(ii) categorically exclude the preparation, revision, and adoption of regulations from the preparation of an EA or EIS, where the rule relates to actions that qualify for categorical exclusions. Action taken or assistance provided under sections 403 and 407 of the Stafford Act are categorically excluded under 44 CFR 10.8(d)(2)(xix). This final rule establishes an option for arbitration under FEMA's Public Assistance Program. Arbitration is an administrative action for FEMA's Public Assistance Program. Therefore, the activity this rule applies to meets FEMA's Categorical Exclusion in 44 CFR 10.8(d)(2)(i). Because no other extraordinary circumstances have been identified, this rule does not require the preparation of either an EA or an EIS as defined by NEPA.

G. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, ''Consultation and Coordination With Indian Tribal Governments,'' 65 FR 67249, Nov. 9, 2000, applies to agency regulations that have Tribal implications, that is, regulations that 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. Under this Executive Order, to the extent practicable and permitted by law, no agency will promulgate any regulation that has Tribal implications, that imposes substantial direct compliance costs on Indian Tribal governments, and that is not required by statute, unless funds necessary to pay the direct costs incurred by the Indian Tribal government or the Tribe in complying with the regulation are provided by the Federal Government, or the agency consults with Tribal officials.

Indian Tribes have the same opportunity to participate in the DRPP as other eligible applicants; however, given the participation criteria of the DRPP and its voluntary nature, FEMA estimates only 10 to 30 requests for arbitration, per year, until the DRPP sunsets. As such, FEMA anticipates a very small number, if any Indian Tribes, will participate in the voluntary DRPP before it sunsets. As a result, FEMA does not expect the DRPP to have a substantial direct effect on one or more Indian tribes or impose direct compliance costs on Indian Tribal governments. Additionally, since FEMA anticipates a very small number, if any Indian Tribes will participate in the voluntary DRPP, FEMA does not expect the regulations to 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. Therefore, FEMA finds that this final rule complies with Executive Order 13175.

H. Executive Order 13132, Federalism

A rule has implications for federalism under Executive Order 13132, ''Federalism'' (64 FR 43255, Aug. 10, 1999), 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. FEMA has analyzed this final rule under Executive Order 13132 and determined that it does not have implications for federalism.

I. Executive Order 12630, Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, ''Governmental Actions and Interference With Constitutionally Protected Property Rights'' (53 FR 8859, Mar. 18, 1988).

J. Executive Order 12898, Environmental Justice

Under Executive Order 12898, as amended, ''Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, Feb. 16, 1994), FEMA incorporates environmental justice into its policies and programs. Executive Order 12898 requires each Federal agency to conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that those programs, policies, and activities do not have the effect of excluding persons from participation in, denying persons the benefit of, or subjecting persons to discrimination because of their race, color, or national origin or income level.

Implementation of section 1105 of SRIA will facilitate an efficient recovery from major disasters, including arbitration by an independent review panel, to resolve disputes relating to Public Assistance projects. This rulemaking deals only with Public Assistance projects, which provide for Federal funds for debris removal, emergency protective measures, and permanent restoration of infrastructure does not provide Federal funds directly to persons. Accordingly, this rulemaking does not implicate the Executive Order's provisions related to discrimination.

No action that FEMA can anticipate under this rule will have a disproportionately high and adverse human health or environmental effect on any segment of the population.

K. Executive Order 12988, Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, Feb. 7, 1996), to minimize litigation, eliminate ambiguity, and reduce burden.

L. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

This rule will not create environmental health risks or safety risks for children under Executive Order 13045, ''Protection of Children From Environmental Health Risks and Safety Risks'' (62 FR 19885, Apr. 23, 1997).

M. Congressional Review Act

FEMA has sent this final rule to the Congress and to the Government Accountability Office under the Congressional Review of Agency Rulemaking Act, (''Congressional Review Act''), Public Law 104–121, 110 Stat. 873 (Mar. 29, 1996) (5 U.S.C. 804). This rule is not a ''major rule'' within the meaning of the Congressional Review Act.

List of Subjects in 44 CFR Part 206

Administrative practice and procedure, Coastal zone, Community facilities, Disaster assistance, Fire prevention, Grant programs-housing and community development, Housing, Insurance, Intergovernmental relations, Loan programs—housing and community development, Natural resources, Penalties, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Federal Emergency Management Agency amends 44 CFR part 206, subpart G, as follows:

PART 206—FEDERAL DISASTER ASSISTANCE

■ 1. The authority citation for part 206 is revised to read as follows:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5207; Homeland Security Act of 2002, 6 U.S.C. 101 *et seq.;* Department of Homeland Security Delegation 9001.1; sec. 1105, Pub. L. 113–2, 127 Stat. 43 (42 U.S.C. 5189a note).

■ 2. Add § 206.210 to read as follows:

§ 206.210 Dispute Resolution Pilot Program.

(a) *Scope.* Pursuant to section 1105 of the Sandy Recovery Improvement Act of 2013, Public Law 113–2, this section establishes procedures for a Dispute Resolution Pilot Program under which an applicant or subgrantee (hereinafter ''applicant'' for purposes of this section) may request the use of binding arbitration by a panel to resolve disputes arising under section 403, 406, or 407 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170b, 5172, 5173).

(b) *Definitions.* In this section, the following definitions apply:

Administrative record means all the documents and materials directly or indirectly considered by the agency and relied upon in making the first appeal determination pursuant to § 206.206. This record may include, but is not limited to, Project Worksheets (all versions) and supporting backup documentation, correspondence, photographs, and technical reports.

Applicant is used throughout this regulation text and refers to the definition in FEMA's regulations at 44 CFR 206.201(a).

Arbitration sponsor means the entity or entities FEMA selects to administer the arbitrations requested under this rule.

Frivolous means the applicant knew or reasonably should have known that its actions lack an arguable basis in law, policy, or in fact.

Grantee is used throughout this regulation text and it refers to the definition in FEMA's regulations at 44 CFR 206.201(e).

Legitimate amount in dispute means the difference between the amount of grant funding sought by the applicant for a project as reimbursable under the Public Assistance Program and the amount of grant funding which FEMA has determined eligible for a project under the Public Assistance Program.

Non-Federal share means that the project is not 100% federally funded and the applicant or grantee bear a percentage of the costs pursuant to the cost sharing provisions established in the FEMA-State Agreement and the Stafford Act;

Notice means actual notice that is transmitted to and received by a representative of the applicant either via regular mail, facsimile, or electronic transmission. The notice may be transmitted simultaneously to the grantee and the applicant.

Panel means an independent review panel referenced in section 1105(b)(1) of SRIA. A panel consists of three members who are qualified to review and resolve disputes under section 1105 of the SRIA.

(c) *Applicability.* This section applies to an applicant that wants to request arbitration of a determination FEMA has previously made on an applicant's application for Public Assistance for disasters declared on or after October 30, 2012. The following criteria apply:

(1) The legitimate amount in dispute is equal to or greater than $1,000,000, which sum the FEMA Administrator will adjust annually via a **Federal Register** Notice to reflect changes in the Consumer Price Index for all Urban Consumers published by the Department of Labor;

(2) The applicant bears a non-Federal share of the cost; and,

(3) The applicant has received a decision on a first appeal, but not a decision on a second appeal, pursuant to § 206.206.

(d) *Governing rules.* The arbitration will be governed by applicable requirements in section 403, 406, or 407 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170b, 5172, 5173) and the interpretations of those sections of the Stafford Act.

(e) *Limitations*—(1) *Date of disaster.* FEMA can only consider an applicant's Request for Arbitration of a public assistance grant for disasters declared on or after October 30, 2012.

(2) *Election of remedies.* An applicant can only request arbitration under this section if the applicant has not previously filed a second appeal under § 206.206. If an applicant requests arbitration under this section, the applicant waives the option of filing a second appeal under § 206.206.

(3) *Final agency action under § 206.206.* Arbitration under this section is not available for any request submitted by an applicant for which FEMA issued a final agency action in the form of a decision on a second appeal pursuant to § 206.206.

(f) *Request for Arbitration.* (1) An applicant who is dissatisfied with a decision on a first appeal may initiate binding arbitration by submitting a Request for Arbitration simultaneously to the grantee, the arbitration sponsor and FEMA.

(2) An applicant must submit the Request for Arbitration no later than 15 calendar days of applicant's receipt of notice of the first appeal decision that is the subject of the arbitration request.

(g) *Administrative record.* Within 15 calendar days of receipt of the Request for Arbitration, FEMA will simultaneously provide a copy of the administrative record to the arbitration sponsor, the applicant and the grantee.

(h) *Submissions related to arbitration*—(1) *Grantee recommendation.*

(i) Within 15 calendar days of receipt of the Request for Arbitration, the grantee must forward to FEMA the name and address of the grantee's authorized representative.

(ii) The grantee may submit a written recommendation in support or opposition of the applicant's claim via electronic submission simultaneously to the applicant, the arbitration sponsor, and FEMA.

(2) *Applicant statement of claim.* (i) Within 30 calendar days of applicant's receipt of the administrative record, the

applicant must submit a written arbitration statement of claim that makes the circumstances of the dispute clear. The written arbitration statement of claim must include sufficient detail and citation to supporting documents from the administrative record and specific section references, so that the circumstances of the dispute are clear.

(ii) The applicant will only include issues directly raised and decided in the first appeal and will also cite to applicable statutes, regulations, policies, or guidance in support of their claim.

(iii) The applicant must provide the written statement of claim via electronic submission simultaneously to FEMA, the grantee, and the arbitration sponsor.

(3) *FEMA response.* Within 30 calendar days of receipt of the applicant's statement of claim, FEMA will submit a memorandum in support of its position and the name and address of its authorized representative via electronic submission simultaneously to the arbitration sponsor, the grantee, and the applicant.

(i) *Selection of panel.* The arbitration sponsor will select the panel. All arbitrators must be neutral, independent, and impartial.

(j) *Challenge of arbitrator(s).* Any arbitrator may be challenged by a party, if circumstances exist that give rise to justifiable doubt as to the arbitrator's impartiality or independence.

(1) A party challenging an arbitrator will send notice stating the reasons for the challenge within 15 calendar days after being notified of that arbitrator's appointment or after becoming aware of the circumstances that give rise to the party's justifiable doubt as to that arbitrator's impartiality or independence.

(2) When an arbitrator has been challenged by a party, the other party will have the right to respond to the challenge within 15 calendar days after receipt of the notice of the challenge.

(3) The other party may agree to the challenge and in such circumstances the arbitration sponsor will appoint a replacement arbitrator. If the other party does not agree to the challenge and the challenged arbitrator does not withdraw, the decision on the challenge will be made by the arbitration sponsor. If the arbitration sponsor orders the withdrawal of the challenged arbitrator, the arbitrator sponsor will appoint a replacement arbitrator.

(k) *Preliminary administrative conference.* The panel will hold a preliminary administrative conference with the parties and/or representatives of the parties within 15 calendar days of the panel's receipt of FEMA's response to the applicant's statement of claim. The panel and the parties will discuss the future conduct of the arbitration, including clarification of the disputed issues, request for disqualification of an arbitrator (if applicable), and any other preliminary matters. The panel will provide the parties with the opportunity to request a hearing and, if requested,

(1) A party must request a hearing to the panel no later than the time of the preliminary administrative conference.

(2) If a hearing is requested, the panel will set the date and place of any hearing and set a deadline for the parties to exchange witness lists. Within 10 calendar days of the preliminary conference, the independent review panel will issue a scheduling order which memorializes the matters heard at the conference and the upcoming deadlines.

(l) *Jurisdictional and arbitrability challenges.* Any party may raise a jurisdictional or arbitrability challenge at any time during the arbitration.

(1) When jurisdiction or arbitrability has been challenged by a party, the other party will have the right to respond to the challenge within 15 calendar days after receipt of the notice of the challenge.

(2) The panel may suspend or continue the arbitration proceedings during the pendency of the challenge. The panel must rule upon the challenge prior to any hearing in the matter and will dismiss any matter that is untimely or outside the panel's jurisdiction. The panel's dismissal will be with prejudice and there will be no further arbitration of the issue giving rise to the Request for Arbitration.

(m) *Hearing*—(1) *Request for hearing.* The panel will provide the applicant and FEMA with an opportunity to make an oral presentation on the substance of the applicant's claim, by telephone conference, or other means during which all parties may simultaneously hear all other participants.

(2) *Location of hearing.* If an in-person hearing is requested and authorized by the panel, it will be held at a hearing facility of the panel's choosing.

(3) *Conduct of hearing.* Each party must present its position at the hearing through oral presentations by witnesses the party has identified pursuant to the deadline and terms established by the panel. The presentations will only relate to those issues raised and decided in the first appeal and only reference documents included in the administrative record.

(4) *Time limits.* The panel should hold the hearing within 60 calendar days of the preliminary conference.

(5) *Postponement or continuance.* The panel may postpone or continue a hearing upon agreement of the parties, or upon request of a party for good cause shown. Within 10 calendar days of the date the panel grants a party's request for postponement or continuance, the panel will notify the parties of the rescheduled date of the hearing.

(6) *Transcript of the hearing.* A party may specifically request and arrange for a written transcript of the hearing at its own expense.

(n) *Standard of review.* The panel will only set aside the agency determination if it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. In the case of a FEMA finding of material fact adverse to the applicant on the first appeal, the panel will only set aside or reverse such a finding if the finding was clearly erroneous.

(o) *Ex parte communications.* No party will have any ex parte communication with the arbitrators unless the parties agree otherwise. If a party violates this provision, the panel will ensure that a memorandum of the communication is included in the record and that an opportunity for rebuttal is allowed. The panel may require the party who engages in an unauthorized ex parte communication, to show cause why the issue should not be resolved against it for the improper conduct.

(p) *Decision*—(1) *Time limits.*

(i) The panel will issue a written decision within 60 calendar days from the conclusion of the hearing.

(ii) If a hearing was not requested and approved, the panel will issue a written decision within 60 calendar days from the preliminary administrative conference.

(2) *Form and content.* The panel will issue a reasoned decision that includes findings of fact and conclusions of law that will set forth the reasons for the decision, with citations to the record or testimony taken during the hearing under this section which support the panel's disposition of a decision. The majority decision of the panel will be in writing, signed by each member of the panel in agreement with the decision. A dissenting member of the panel may issue a separate written dissent that will set forth the reasons for the dissent.

(3) *Finality of decision.* A decision of the majority of the panel will constitute a final decision, binding on all parties, but will not be binding precedent for any future arbitration hearings or FEMA administrative decisions. Final decisions are not subject to further administrative review. Final decisions are not subject to judicial review, except as permitted by 9 U.S.C. 10.

(4) *Delivery of decision.* The panel will deliver its decision via simultaneous electronic submission to each party or its authorized representative.

(q) *Costs*—(1) *Fees.* FEMA will pay all fees associated with the independent review panel, including arbitrator compensation, and the arbitration facility costs.

(2) *Expenses.* Expenses for each party will be paid by the party who incurred the expense.

(r) *Frivolous requests.* If, upon notification by FEMA, or on its own initiative the panel determines the applicant's Request for Arbitration to be frivolous, the panel will deny the Request for Arbitration and direct the applicant to reimburse FEMA for reasonable costs FEMA incurred, including fees and expenses.

(s) *Deadline.* FEMA cannot consider an applicant's request for review by a panel under this section if the request is made after December 31, 2015. However, pursuant to this rule, FEMA will continue to process and finalize any proper request made on or before December 31, 2015.

Dated: August 8, 2013.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2013–19887 Filed 8–15–13; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 1037, 1039, 1042, and 1068

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 535

[EPA–HQ–OAR–2012–0102; NHTSA–2012–0152; FRL 9900–11–OAR]

RIN 2060–AR48; 2127–AL31

Heavy-Duty Engine and Vehicle and Nonroad Technical Amendments

AGENCIES: Environmental Protection Agency (EPA) and National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Partial withdrawal of direct final rule; direct final rule.

SUMMARY: Because EPA and NHTSA, on behalf of the Department of Transportation, received adverse comment on certain elements of the Heavy-Duty Engine and Vehicle and Nonroad Technical Amendments direct final rule published on June 17, 2013, we are withdrawing those elements of the direct final rule and republishing the affected sections without those elements.

DATES: Effective August 16, 2013, EPA withdraws the amendments to 40 CFR 1037.104, 037.150, 1039.104, 1039.625, 1042.615, and 1068.240 published at 78 FR 36388 on June 17, 2013, and NHTSA withdraws the amendment to 49 CFR 535.5 published at 78 FR 36388 on June 17, 2013. The direct final rule amendments are effective August 16, 2013.

FOR FURTHER INFORMATION CONTACT: Lily Smith, Office of Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone: (202) 366–2992. Angela Cullen, Environmental Protection Agency, Office of Transportation and Air Quality, Assessment and Standards Division, 2000 Traverwood Drive, Ann Arbor, Michigan 48105; telephone number: 734–214–4419; email address: *cullen.angela@epa.gov.*

SUPPLEMENTARY INFORMATION: Because EPA and NHTSA received adverse comment on certain elements of the Heavy-Duty Engine and Vehicle and Nonroad Technical Amendments direct final rule published on June 17, 2013, at 78 FR 36370, we are withdrawing those elements of the direct final rule and republishing the affected sections without those elements. The withdrawal relates to four principal EPA provisions and one principal NHTSA provision. The EPA provisions are: (1) Test requirements for heavy-duty greenhouse gas emissions in 40 CFR part 1037, (2) optional chassis certification for heavy-duty greenhouse gas emissions in 40 CFR part 1037, (3) expanded technical hardship for equipment manufacturers installing nonroad diesel engines, and (4) the replacement engine exemption in 40 CFR part 1068, along with the corresponding changes to 40 CFR 1042.615. The NHTSA withdrawal relates to the provision for optional chassis certification for heavy-duty fuel efficiency requirements in 49 CFR 535.5(a)(6).

We stated in the direct final rule that if we received adverse comment by July 17, 2013 as to any part of the direct final rule, those parts would be withdrawn by publishing a timely notice in the **Federal Register**. Because EPA and NHTSA received adverse comment related to certain provisions, we are withdrawing those amendments and they will not take effect. The specific provisions that are being withdrawn are identified below. To avoid any confusion with respect to 40 CFR 1068.240, concerning an exemption for replacement nonroad engines, the effect of this withdrawal is that the current provisions of that section remain in effect through § 1068.240(d). The direct final rule also republished paragraphs (e) and (f) and removed paragraph (g) of § 1068.240, and these are not being withdrawn.

EPA published a parallel proposed rule on the same day as the direct final rule. The proposed rule invited comment on the substance of the direct final rule with respect to EPA's amendments to 40 CFR parts 1037, 1039, 1042, and 1068. EPA intends to consider the comments received and proceed with a new final rule, including but not limited to addressing the amendments that relate to replacement nonroad engines that are withdrawn by this notice. As stated in the parallel proposal, EPA will not institute a second comment period for the proposed action with respect to the provisions that are withdrawn by this notice. One adverse comment relates to EPA's provision in 40 CFR 1037.150(l) and NHTSA's provision in 49 CFR 535.5(a) (6). NHTSA may issue a notice of proposed rulemaking (NPRM) and provide another opportunity to comment for the withdrawn amendment to 49 CFR 535.5(a) (6). Both agencies would coordinate any final actions on 40 CFR 1037.150(l) and 49 CFR 535.5(a) (6). The amendments for which we did not receive adverse comment are not being withdrawn and will become effective on August 16, 2013, as provided in the June 17, 2013 direct final rule.

Accordingly, the amendments to 40 CFR 1037.104(d)(9)(i), 1037.104(d)(9)(iii), 1037.104(g)(3)(iv), 1037.104(g)(7), 1037.150(l), 1039.104(g), 1039.625(m), 1042.615, and 1068.240 introductory text and paragraphs (a) through (d) published on June 17, 2013 (78 FR 36388), are withdrawn by EPA as of August 16, 2013, and the amendment to 49 CFR 535.5 published on June 17, 2013 (78 FR 36388) is withdrawn by DOT as of August 16, 2013.

List of Subjects

40 CFR Part 1037

Administrative practice and procedure, Air pollution control, Confidential business information, Environmental protection, Incorporation by reference, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Warranties.