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WHEN: Tuesday, November 13, 2012
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9601]

RIN 1545–BK94

Amendment of Prohibited Payment Option Under Single-Employer Defined Benefit Plan of Plan Sponsor in Bankruptcy

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide guidance under the anti-cutback rules of section 411(d)(6) of the Internal Revenue Code, which generally prohibit plan amendments eliminating or reducing accrued benefits, early retirement benefits, retirement-type subsidies, and optional forms of benefit under qualified retirement plans. These regulations provide an additional limited exception to the anti-cutback rules to permit a plan sponsor that is a debtor in a bankruptcy proceeding to amend its single-employer defined benefit plan to eliminate a single-sum distribution option (or other optional form of benefit providing for accelerated payments) under the plan if certain specified conditions are satisfied. These regulations affect administrators, employers, participants, and beneficiaries of such a plan.

DATES: *Effective date:* These regulations are effective on November 8, 2012.

Applicability date: These regulations apply to plan amendments that are adopted and effective after November 8, 2012.

FOR FURTHER INFORMATION CONTACT: Neil S. Sandhu or Linda S.F. Marshall at (202) 622–6090.

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 411(d)(6) of the Internal Revenue Code (Code). These final regulations amend § 1.411(d)–4 of the Treasury regulations.

Section 401(a)(7) provides that a trust does not constitute a qualified trust unless its related plan satisfies the requirements of section 411 (relating to minimum vesting standards). Section 411(d)(6)(A) provides that a plan is treated as not satisfying the requirements of section 411 if the accrued benefit of a participant is decreased by an amendment of the plan, other than an amendment described in section 412(d)(2) of the Code or section 4281 of the Employee Retirement Income Security Act of 1974, Public Law 93–406 (88 Stat. 829 (1974)), as amended (ERISA).

Section 411(d)(6)(B) provides that a plan amendment that has the effect of eliminating or reducing an early retirement benefit or a retirement-type subsidy, or eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment is treated as impermissibly reducing accrued benefits. For a retirement-type subsidy, this protection applies only with respect to a participant who satisfies (either before or after the amendment) the preamendment conditions for the subsidy. The last sentence of section 411(d)(6)(B) provides that the Secretary may by regulations provide that section 411(d)(6)(B) does not apply to a plan amendment that eliminates an optional form of benefit (other than a plan amendment that has the effect of eliminating or reducing an early retirement benefit or a retirement-type subsidy).

Section 436(d)(2) provides that a defined benefit plan which is a single-employer plan must provide that, during any period in which the plan sponsor is a debtor in a case under title 11, United States Code, or similar Federal or State law (a ''bankruptcy case''), the plan may not pay any ''prohibited payment.'' However, that limitation does not apply in a plan year on or after the date on which the enrolled actuary of the plan certifies that the adjusted funding target attainment percentage (as defined in section 436(j)(2)) of the plan for the plan year is not less than 100 percent.

Section 436(d)(5) sets forth a definition of the term *prohibited payment.* Under this definition, a ''prohibited payment'' is: (1) Any payment in excess of the monthly amount paid under a single life annuity (plus any social security supplements described in the last sentence of section 411(a)(9)) to a participant or beneficiary whose annuity starting date (as defined in section 417(f)(2)) occurs during any period a limitation under section 436(d)(1) or section 436(d)(2) is in effect; (2) any payment for the purchase of an irrevocable commitment from an insurer to pay benefits; and (3) any other payment specified by the Secretary by regulations. The term ''prohibited payment'' does not include the payment of a benefit which under section 411(a)(11) may be immediately distributed without the consent of the participant.

Section 1.411(d)–4, Q&A–1(a) provides that the term *section 411(d)(6) protected benefit* includes: (1) Benefits described in section 411(d)(6)(A); (2) early retirement benefits (as defined in § 1.411(d)–3(g)(6)(i)) and retirement type subsidies (as defined in § 1.411(d)–3(g)(6)(iv)); and (3) optional forms of benefit described in section 411(d)(6)(B)(ii).

Section 1.411(d)–4, Q&A–1(b)(1) provides that the term *optional form of benefit* for purposes of § 1.411(d)–4 has the same meaning as in § 1.411(d)–3(g)(6)(ii). Section 1.411(d)–3(g)(6)(ii)(A) defines the term ''optional form of benefit'' as ''a distribution alternative (including the normal form of benefit) that is available under the plan with respect to an accrued benefit or a distribution alternative with respect to a retirement-type benefit. Different optional forms of benefit exist if a distribution alternative is not payable on substantially the same terms as another distribution alternative. The relevant terms include all terms affecting the value of the optional form, such as the method of benefit calculation and the actuarial factors or assumptions used to determine the amount distributed. Thus, for example, different optional forms of benefit may result from differences in terms relating to the payment schedule, timing, commencement, medium of distribution (for example, in cash or in kind),

election rights, differences in eligibility requirements, or the portion of the benefit to which the distribution alternative applies.''

Section 1.411(d)–4, Q&A–2(a)(1) provides that a plan is not permitted to be amended to eliminate or reduce a section 411(d)(6) protected benefit that has already accrued, except as provided in § 1.411(d)–3 or § 1.411(d)–4. Under § 1.411(d)–4, Q&A–2(b)(1), the Commissioner is authorized to provide for the elimination or reduction of an optional form of benefit to the extent that plan participants do not lose either a valuable right or an employer-subsidized optional form of benefit when a similar optional form of benefit with a comparable subsidy is not provided.[1] In addition, § 1.411(d)–4, Q&A–2(b)(2)(i) through (xi) sets forth specific situations under which the elimination or reduction of certain section 411(d)(6) protected benefits that have already accrued does not violate section 411(d)(6). These exceptions have been included in regulations pursuant to the IRS's authority under the last sentence of section 411(d)(6)(B) to permit a plan amendment that eliminates or reduces optional forms of benefit (other than a plan amendment that has the effect of eliminating or reducing an early retirement benefit or a retirement-type subsidy).

Section 1.436–1(d)(2) provides that a plan satisfies the requirements of section 436(d)(2) and § 1.436–1(d)(2) only if the plan provides that a participant or beneficiary is not permitted to elect an optional form of benefit that includes a prohibited payment, and the plan will not pay any prohibited payment, with an annuity starting date that occurs during any period in which the plan sponsor is a debtor in a case under title 11, United States Code, or similar Federal or State law, except for payments made with an annuity starting date that occurs on or after the date within the plan year on which the enrolled actuary of the plan certifies that the plan's adjusted funding target attainment percentage for the plan year is not less than 100 percent.

Title IV of ERISA provides for a pension plan termination insurance program that is administered by the Pension Benefit Guaranty Corporation (PBGC). PBGC guarantees nonforfeitable benefits, up to specified limits, for defined benefit pension plans that are covered under the program.[2] If a single-employer plan terminates in a distress termination under section 4041(c) of ERISA or an involuntary termination under section 4042 of ERISA, and the plan assets are not sufficient to provide all guaranteed benefits, PBGC pays benefits to participants and beneficiaries under the provisions of Title IV and PBGC's regulations.[3] PBGC allows a participant who is not in pay status at the time of the termination to elect among the various annuity forms described in 29 CFR 4022.8. In addition, under 29 CFR 4022.7, PBGC does not pay benefits in a single sum in excess of $5,000 (except under certain limited circumstances).

Section 204(g) of ERISA contains rules that are parallel to Code section 411(d)(6). Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713) and section 204(g) of ERISA, the Secretary of the Treasury has interpretive jurisdiction over the subject matter addressed in these regulations for purposes of ERISA, as well as the Code. Thus, these regulations issued under section 411(d)(6) of the Code apply as well for purposes of section 204(g) of ERISA.

On June 21, 2012, the IRS issued proposed regulations under section 411(d)(6) (77 FR 37349) to provide an additional limited exception to the anti-cutback rules to permit a plan sponsor that is a debtor in a bankruptcy proceeding to amend its single-employer defined benefit plan to eliminate a single-sum distribution option (or other optional form of benefit providing for accelerated payments) under the plan if certain conditions are satisfied. Several comments were received on the proposed regulations. No public hearing was requested or held. After consideration of the comments received, the IRS and the Treasury Department are issuing these final regulations to adopt the rules set forth in the proposed regulations with minor modifications.

Explanation of Provisions

These final regulations provide a limited exception under section 411(d)(6)(B) to permit a plan sponsor that is a debtor in a bankruptcy proceeding to amend its single-employer defined benefit plan to eliminate a single-sum distribution option (or other optional form of benefit providing for accelerated payments) if certain conditions are satisfied.

In particular, the regulations permit a single-employer plan that is covered under section 4021 of ERISA to be amended, effective for a plan amendment that is both adopted and effective after November 8, 2012, to eliminate an optional form of benefit that includes a prohibited payment described in section 436(d)(5), provided that four conditions are satisfied on the later of the date the amendment is adopted or effective (the applicable amendment date, as defined in § 1.411(d)–3(g)(4)). First, the enrolled actuary of the plan has certified that the plan's adjusted funding target attainment percentage (as defined in section 436(j)(2)) for the plan year that contains the applicable amendment date is less than 100 percent. Second, the plan is not permitted to pay any prohibited payment, due to application of the requirements of section 436(d)(2) of the Code and section 206(g)(3)(B) of ERISA, because the plan sponsor is a debtor in a bankruptcy case (that is, a case under title 11, United States Code, or under similar Federal or State law). Third, the court overseeing the bankruptcy case has issued an order, after notice to the affected parties and a hearing,[4] finding that the adoption of the amendment eliminating that optional form of benefit is necessary to avoid a distress termination of the plan pursuant to section 4041(c) of ERISA or an involuntary termination of the plan pursuant to section 4042 of ERISA before the plan sponsor emerges from bankruptcy (or before the bankruptcy case is otherwise completed). Fourth, PBGC has issued a determination that the adoption of the amendment eliminating that optional form of benefit is necessary to avoid a distress or involuntary termination of the plan before the plan sponsor emerges from bankruptcy (or before the bankruptcy case is otherwise completed) and that the plan is not sufficient for guaranteed benefits within the meaning of section 4041(d)(2) of ERISA.

These regulations exercise the Secretary's authority under the last sentence of section 411(d)(6)(B) in order to permit this type of amendment that eliminates an optional form of benefit in these limited circumstances. The legislative history of section 411(d)(6)(B), which was added by section 301(a) of the Retirement Equity Act of 1984, Public Law 98–397, states the intent that Treasury regulations could permit the elimination of an optional form of benefit if ''(1) the elimination of the option does not eliminate a valuable right of a participant or beneficiary, and (2) the option is not subsidized or a similar benefit with a comparable subsidy is

[1] Such an amendment can be authorized only through the publication of revenue rulings, notices, and other documents of general applicability. See § 601.601(d)(2)(ii)(*b*).

[2] See section 4021 of ERISA.

[3] See section 4022 of ERISA.

[4] See 11 U.S.C. 102(1).

provided.'' [5] The legislative history further states that the committee ''expects that the regulations will not permit the elimination of a 'lump-sum distribution option' because, for a participant or beneficiary with substandard mortality, the elimination of that option could eliminate a valuable right even if a benefit of equal actuarial value (based on standard mortality) is available under the plan.'' [6]

If the four conditions set forth in the regulations are satisfied, a single-sum distribution option or other optional form of benefit that includes a prohibited payment (generally a payment that is in excess of the monthly amounts payable under a single life annuity) would not currently be available and would not be available in the future. The plan would not currently be permitted to pay that optional form of benefit because section 436(d)(2) (which imposes restrictions on the payment of prohibited payments while the plan sponsor is in bankruptcy) bars the payment of such an optional form of benefit under these conditions. Furthermore, the bankruptcy court and the PBGC would each have issued a determination that the plan would be terminated in a distress or involuntary termination unless that optional form of benefit were eliminated. In addition, the PBGC would have determined that the plan is not sufficient for guaranteed benefits. In such a case, pursuant to § 4022.7 and § 4022.8 of the PBGC regulations, the optional form of benefit would not have been available after the plan termination. Accordingly, the elimination of the optional form of benefit would not result in the loss of a valuable right of a participant or beneficiary.

In addition, the plan amendment would not eliminate or reduce early retirement benefits or retirement-type subsidies, which would continue to be available under the plan. Because the plan would not be terminated in a distress or involuntary termination, participants would continue to be credited with additional service under the plan and could become eligible for early retirement benefits and retirement-type subsidies, regardless of whether participants received benefit accruals with respect to the additional service. Moreover, because the plan would not be terminated, the plan might have the opportunity to recover from its underfunded status.

Under these final regulations, a judicial determination must be made, after notice to the plan participants and beneficiaries, each employee organization representing plan participants, and the PBGC, and a hearing, that the amendment is necessary to avoid termination of the plan in a distress or involuntary termination before the plan sponsor emerges from bankruptcy (or before the bankruptcy case is otherwise completed). The primary purpose of this notice and hearing requirement is to afford plan participants who may be affected the opportunity to be heard on whether the amendment is necessary to avoid plan termination. The proposed regulations required notice to each affected party, within the meaning of section 4001(a)(21) of ERISA, and a hearing. At the suggestion of a commenter, the language with respect to this notice and hearing requirement has been modified slightly from the proposed regulations to clarify that a failure to notify a particular participant or beneficiary does not automatically invalidate the amendment. Specifically, the change clarifies that the standard in 11 U.S.C. 102(1) applies for purposes of determining whether adequate notice has been provided under the requirement in the final regulations that there be a notice and a hearing before the order is issued by the Bankruptcy Court. The final regulations require that notice be provided to the affected parties, as defined in section 4001(a)(21) of ERISA.

The preamble to the proposed regulations requests comments on whether the regulations should impose additional conditions on the prospective elimination of the single-sum distribution option (or other optional form of benefit that includes a prohibited payment), such as a condition that, after the amendment, the plan must offer annuity distribution options that provide substantial survivor benefits, such as both (1) a life annuity with a term certain of 15 or more years and (2) a 100% joint and survivor annuity, in order to give participants who have substandard mortality the opportunity to protect their survivors. Two commenters indicated support for these additional conditions, and one commenter questioned their value to participants. After consideration of the comments received on this issue, the IRS and the Treasury Department have determined not to impose this requirement as a condition of making a plan amendment permitted under these regulations.

If a plan sponsor eliminates a single-sum distribution option (or other optional form of benefit that includes a prohibited payment) pursuant to these regulations under a plan that does not offer other optional forms of benefit that provide substantial survivor benefits, then, in order to continue to provide participants who have substandard mortality the opportunity to protect their survivors, the plan sponsor can add other optional forms of benefit that provide substantial survivor benefits (including other optional forms of benefit that are prohibited payments under section 436(d)(5)) as part of the same amendment that eliminates the single-sum distribution option (or other optional form of benefit that includes a prohibited payment). All provisions of such a plan amendment (including both the elimination of the single-sum distribution option and the addition of optional forms of benefit that provide substantial survivor benefits) would be considered together for purposes of determining whether the plan amendment would be permitted to take effect in accordance with the rules of section 436(c).

Effective/Applicability Dates

These regulations apply to plan amendments that are adopted and effective after November 8, 2012. This date is modified from the proposed regulations to avoid a retroactive effective date.

Special Analyses

It has been determined that these regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these final regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Neil S. Sandhu and Linda S.F. Marshall, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

[5] S. Rep. No. 98–575, at 30 (1984).

[6] Id.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.411(d)–4 is amended by adding a new paragraph A–2(b)(2)(xii) to read as follows:

§ 1.411(d)–4 Section 411(d)(6) protected benefits.

* * * * *

A–2: * * *

(b) * * *

(2) * * *

(xii) *Prohibited payment option under single-employer defined benefit plan of plan sponsor in bankruptcy.* A single-employer plan that is covered under section 4021 of the Employee Retirement Income Security Act of 1974, Public Law 93–406 (88 Stat. 829 (1974)), as amended (ERISA), may be amended, effective for a plan amendment that is both adopted and effective after November 8, 2012, to eliminate an optional form of benefit that includes a prohibited payment described in section 436(d)(5), provided that the following conditions are satisfied on the applicable amendment date (as defined in § 1.411(d)–3(g)(4)):

(A) The enrolled actuary of the plan has certified that the plan's adjusted funding target attainment percentage (as defined in section 436(j)(2)) for the plan year that contains the applicable amendment date is less than 100 percent.

(B) The plan is not permitted to pay any prohibited payment, due to application of the requirements of section 436(d)(2) of the Internal Revenue Code and section 206(g)(3)(B) of ERISA, because the plan sponsor is a debtor in a bankruptcy case (that is, a case under title 11, United States Code, or under similar Federal or State law).

(C) The court overseeing the bankruptcy case has issued an order, after notice to the affected parties (as defined in section 4001(a)(21) of ERISA) and a hearing, within the meaning of 11 U.S.C. 102(1), finding that the adoption of the amendment eliminating that optional form of benefit is necessary to avoid a distress termination of the plan pursuant to section 4041(c) of ERISA or an involuntary termination of the plan pursuant to section 4042 of ERISA before the plan sponsor emerges from bankruptcy (or before the bankruptcy case is otherwise completed).

(D) The Pension Benefit Guaranty Corporation has issued a determination that—

(*1*) The adoption of the amendment eliminating that optional form of benefit is necessary to avoid a distress or involuntary termination of the plan before the plan sponsor emerges from bankruptcy (or before the bankruptcy case is otherwise completed); and

(*2*) The plan is not sufficient for guaranteed benefits within the meaning of section 4041(d)(2) of ERISA.

* * * * *

Approved: November 2, 2012.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2012–27336 Filed 11–7–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 561

Iranian Financial Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control is amending the Iranian Financial Sanctions Regulations in order to implement sections 214 through 216 of the Iran Threat Reduction and Syria Human Rights Act of 2012.

DATES: *Effective Date:* November 8, 2012.

FOR FURTHER INFORMATION CONTACT: Assistant Director for Sanctions Compliance & Evaluation, tel.: 202/622–2490, Assistant Director for Licensing, tel.: 202/622–2480, Assistant Director for Policy, tel: 202/622–4855, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622–2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document 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 August 10, 2012, the President signed into law the Iran Threat Reduction and Syria Human Rights Act of 2012 (Pub. L. 112–158) (the ''TRA''), in order to strengthen the sanctions imposed against Iran. Sections 214 and 215 of the TRA amend section 104(c)(2) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Pub. L. 111–195) (22 U.S.C. 8501–8551) (''CISADA'') by expanding the categories of sanctionable activities set forth in that section.

Section 104(c)(2) of CISADA sets forth the activities for which the Secretary of the Treasury is authorized to prohibit or impose strict conditions on the opening or maintaining in the United States of a correspondent account or a payable-through account by a foreign financial institution if the Secretary finds that the foreign financial institution knowingly engages in one or more of those activities. Under section 104(c)(2)(B) of CISADA, facilitating the activities of a person subject to financial sanctions pursuant to a United Nations Security Council resolution that imposes sanctions with respect to Iran is listed as a sanctionable activity. Section 214 of the TRA amends section 104(c)(2)(B) of CISADA by expanding this sanctionable category to include facilitating the activities of ''a person acting on behalf of or at the direction of, or owned or controlled by,'' a person sanctioned under such United Nations Security Council resolutions.

Section 215 of the TRA amends section 104(c)(2)(E) of CISADA to authorize the imposition of CISADA sanctions on a foreign financial institution that knowingly facilitates significant transactions or provides significant financial services for a ''person'' (formerly, a ''financial institution'') whose property and interests in property are blocked pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) in connection with Iran's proliferation of weapons of mass destruction (''WMD'') or delivery systems for WMD or Iran's support for international terrorism.

Section 216 of the TRA amends CISADA by adding new section 104A after section 104 of CISADA. That new section requires the Secretary of the Treasury to revise the regulations prescribed under CISADA section 104(c) to apply, to the same extent that they apply to a foreign financial institution found to knowingly engage in an activity described in CISADA section

104(c)(2), to a foreign financial institution that the Secretary of the Treasury finds (1) Knowingly facilitates, or participates or assists in, an activity described in section 104(c)(2) of CISADA; (2) attempts or conspires to facilitate or participate in such an activity; or (3) is owned or controlled by a foreign financial institution that the Secretary finds knowingly engages in such an activity.

The Department of the Treasury's Office of Foreign Assets Control (''OFAC'') originally published the Iranian Financial Sanctions Regulations, 31 CFR part 561 (the ''IFSR''), on August 16, 2010, to implement sections 104(c) and (d) and other related provisions of CISADA (75 FR 49836). On February 27, 2012, OFAC amended the IFSR and reissued them in their entirety, in order to implement section 1245(d) of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81), which provides for the imposition of sanctions with respect to the Central Bank of Iran and designated Iranian financial institutions (77 FR 11724).

Today, OFAC is further amending the IFSR to implement the changes to CISADA made by sections 214 through 216 of the TRA. OFAC is revising section 561.201(a)(2) of the IFSR to incorporate the change made by section 214 of the TRA. Section 561.201(a)(5)(ii) and the note to paragraph (a)(5) are being revised to incorporate the change made by section 215 of the TRA. OFAC is revising the chapeau of section 561.201 and adding new paragraph (a)(6) to incorporate the change made by section 216 of the TRA.

In addition, OFAC is amending the definitions of *foreign financial institution* and *Iranian financial institution* in, respectively, sections 561.308 and 561.320 of the IFSR. OFAC is amending these definitions to add ''dealers in precious metals, stones, or jewels'' to the examples of entities included in the definitions.

Public Participation

Because the amendment of the IFSR involves a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collection of information in section 561.601 of the IFSR is made pursuant to OFAC's Reporting, Procedures and Penalties Regulations, 31 CFR part 501. Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget (''OMB'') under control number 1505–0164. *See* 31 CFR 501.901. The collection of information in section 561.504(b) of the IFSR has been approved by OMB under control number 1505–0243. 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.

List of Subjects in 31 CFR Part 561

Administrative practice and procedure, Banking, Banks, Brokers, Electronic funds transfers, Financial institutions, Foreign banking, Foreign trade, International organizations, Investments, Iran, Jewels, Loans, Precious metals, Securities.

For the reasons set forth in the preamble, the Department of the Treasury's Office of Foreign Assets Control amends part 561 of 31 CFR chapter V as follows:

PART 561—IRANIAN FINANCIAL SANCTIONS REGULATIONS

■ 1. The authority citation for part 561 is revised to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); Pub. L. 111–195, 124 Stat. 1312 (22 U.S.C. 8501–8551); Pub. L. 112–81, 125 Stat. 1298; Pub. L. 112–158, 126 Stat. 1214; E.O. 12957, 60 FR 14615, 3 CFR, 1995 Comp., p. 332; E.O. 13553, 75 FR 60567, 3 CFR, 2010 Comp., p. 253; E.O. 13599, 77 FR 6659, February 8, 2012.

Subpart B—Prohibitions

■ 2. Amend § 561.201 by revising the introductory text, paragraphs (a)(2), (a)(4), and (a)(5)(ii), and the Note to paragraph (a)(5) of § 561.201 and adding new paragraph (a)(6) to read as follows:

§ 561.201 CISADA-based sanctions on certain foreign financial institutions.

Upon a finding by the Secretary of the Treasury that a foreign financial institution knowingly engages in one or more of the activities described in paragraphs (a)(1) through (a)(6) of this section, attempts or conspires to facilitate or participate in one or more of such activities, or is owned or controlled by a foreign financial institution that the Secretary finds knowingly engages in one or more of such activities, consistent with the Secretary of the Treasury's authorities under the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Pub. L. 111–195) (22 U.S.C. 8501–8551) (''CISADA''), as amended by the Iran Threat Reduction and Syria Human Rights Act of 2012 (Pub. L. 112–158), either the Secretary of the Treasury will impose one or more strict conditions, as set forth in paragraph (b) of this section, on the opening or maintaining of a correspondent account or a payable-through account in the United States for that foreign financial institution, or, as set forth in paragraph (c) of this section, the Secretary of the Treasury will prohibit a U.S. financial institution from opening or maintaining a correspondent account or a payable-through account in the United States for that foreign financial institution. The name of the foreign financial institution and the relevant prohibition or strict condition(s) will be added to the List of Foreign Financial Institutions Subject to Part 561 (the ''Part 561 List'') on the Office of Foreign Assets Control's Web site (*www.treasury.gov/ofac*) on the Iran Sanctions page and published in the **Federal Register**.

(a) * * *

(2) Facilitates the activities of—

(i) A person subject to financial sanctions pursuant to United Nations Security Council Resolutions 1737, 1747, 1803, or 1929, or any other resolution adopted by the Security Council that imposes sanctions with respect to Iran; or

(ii) A person acting on behalf of or at the direction of, or owned or controlled by, a person described in paragraph (a)(2)(i) of this section;

* * * * *

(4) Facilitates efforts by the Central Bank of Iran or any other Iranian financial institution to carry out an activity described in paragraphs (a)(1) or (a)(2) of this section;

(5) * * *

(ii) A person whose property and interests in property are blocked pursuant to parts 544 or 594 of this chapter in connection with Iran's proliferation of weapons of mass destruction or delivery systems for weapons of mass destruction or Iran's support for international terrorism; or

Note to paragraph (a)(5) of § 561.201: The names of persons whose property and interests in property are blocked pursuant to IEEPA are published in the **Federal Register** and incorporated into the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (the ''SDN List''). The SDN List is accessible through the following page on the Office of

Foreign Assets Control's Web site: *www.treasury.gov/sdn.* Additional information pertaining to the SDN List can be found in appendix A to this chapter. Agents or affiliates of Iran's Islamic Revolutionary Guard Corps (''IRGC'') whose property and interests in property are blocked pursuant to IEEPA are identified by a special reference to the ''IRGC'' at the end of their entries on the SDN List, in addition to the reference to the regulatory part of this chapter pursuant to which their property and interests in property are blocked. For example, an affiliate of the IRGC whose property and interests in property are blocked pursuant to the Weapons of Mass Destruction Proliferators Sanctions Regulations, 31 CFR part 544, will have the tags ''[NPWMD][IRGC]'' at the end of its entry on the SDN List. Persons whose property and interests in property are blocked pursuant to parts 544 or 594 of this chapter in connection with Iran's proliferation of weapons of mass destruction or delivery systems for weapons of mass destruction or Iran's support for international terrorism also are identified by the tag ''[IFSR]'' in addition to the tag referencing part 544 or part 594, as the case may be, located at the end of their entries on the SDN List (e.g., [NPWMD][IFSR] or [SDGT][IFSR]). In addition, see § 561.405 concerning entities that may not be listed on the SDN List but whose property and interests in property are nevertheless blocked.

(6) Facilitates, or participates or assists in, an activity described in paragraphs (a)(1) through (a)(5) of this section, including by acting on behalf of, at the direction of, or as an intermediary for, or otherwise assisting, another person with respect to the activity.

* * * * *

Subpart C—General Definitions

■ 3. Revise § 561.308 to read as follows:

§ 561.308 Foreign financial institution.

The term *foreign financial institution* means any foreign entity that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent. It includes but is not limited to depository institutions, banks, savings banks, money service businesses, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, dealers in precious metals, stones, or jewels, and holding companies, affiliates, or subsidiaries of any of the foregoing. The term does not include the international financial institutions identified in 22 U.S.C. 262r(c)(2), the International Fund for Agricultural Development, the North American Development Bank, or any other international financial institution so notified by the Office of Foreign Assets Control.

■ 4. Revise § 561.320 to read as follows:

§ 561.320 Iranian financial institution.

The term *Iranian financial institution* means any entity (including foreign branches), wherever located, organized under the laws of Iran or any jurisdiction within Iran, or owned or controlled by the Government of Iran, or in Iran, or owned or controlled by any of the foregoing, that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent. It includes but is not limited to depository institutions, banks, savings banks, money service businesses, trust companies, insurance companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, dealers in precious metals, stones, or jewels, and holding companies, affiliates, or subsidiaries of any of the foregoing.

Dated: November 6, 2012.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2012–27420 Filed 11–7–12; 8:45 am]

BILLING CODE 4811–AL–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket No. RM 2012–11]

Registration of Claims to Copyright: Group Registration of Serial Issues Filed Electronically

AGENCY: Copyright Office, Library of Congress.

ACTION: Interim regulations.

SUMMARY: The Copyright Office is adopting interim regulations that allow groups of related serial issues to be filed through the Office's electronic registration system. This interim rule will also allow applicants for groups of related serials, in certain circumstances, to mail physical deposit copies of the serial issues upon submitting an electronic application and payment, when electronic deposit copies do not exist. Regardless of the registration option chosen, applicants must still send two complimentary subscription copies of the serial promptly to the Library of Congress as a condition of eligibility unless directed otherwise by the Office. While filing electronically is not mandatory, the Copyright Office strongly urges applicants to use the electronic filing option since it is more efficient for both the user and the agency.

DATES: *Effective Date:* November 8, 2012.

FOR FURTHER INFORMATION CONTACT: Robert Kasunic, Deputy General Counsel, or Kent Dunlap, Assistant General Counsel, Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

Background

When Congress enacted its major revision to the copyright law in 1976, the Register of Copyrights was granted discretion to provide for a single registration for a group of related works. 17 U.S.C. 408(c)(1). In 1991, final regulations became effective permitting group registration of certain serial publications. 55 FR 50556 (December 7, 1990). Under these regulations, issues of serials published at intervals of a week or longer within a three-month period during the same calendar year can be grouped and registered on a single application and for a single fee. The group registration privilege is contingent upon the prompt submission of two complimentary subscription copies of each issue to the Library of Congress. Additionally, several other conditions apply, e.g., the registered serials must be collective works by the same author and claimant and must be works made for hire. *See* 37 CFR 202.3(b)(6). The option for group registration of related serials does not allow the applicant to claim contributions of component works that were not made for hire.

Since the middle of 2007, the Copyright Office has offered and encouraged the option of submitting applications for copyright registration online. *See* Online Registration of Claims to Copyright, 72 FR 36883 (July 6, 2007). When this electronic system was implemented, it was limited to basic registrations, i.e., claims in single works, while the capacity to process online group registration options was

being developed. Applicants for group registration were required to use the existing paper forms.

On September 29, 2009, the Copyright Office initiated a limited pilot project to allow groups of related serials to be filed electronically. This pilot project involved modifying the information provided on the basic electronic application to obtain information about the group of related serials. Revisions to the electronic registration system will upgrade the capacity of the system to provide a new group serial option for general use by eligible applicants.

Interim Regulation

The interim regulation creates minor changes in sections 202.3, relating to registration of copyright, and 202.20, relating to copyright deposit, in order to create an option of filing electronically to register groups of related serial issues. All conditions for applying for group registration of serial issues using a Form SE/Group will also apply to electronic registration. Therefore, in order to be eligible to apply for electronic registration of a group of serial issues, automatic regular submission of two complimentary subscription copies of each issue for the Library of Congress must be provided, just as is the case for using paper form SE/Group, unless directed otherwise by the Copyright Office. Moreover, group serial claims remain limited to claims in collective works by the same author and claimant and must be works made for hire.

In the pilot phase, all of the volunteers filing electronically for registration of groups of serial issues were required to upload a digital file of a complete copy of each issue. Because some publishers did not have electronic versions of the serial issues and found it difficult to create such deposit copies, these interim rules will allow the applicant to provide either a hard copy deposit, or a digital file format complying with § 202.20(b)(2)(iii) of the regulations. In order to enhance efficiency and expedite the handling of claims, the Office encourages electronic registration generally, and also encourages electronic deposit of groups of serials when applying electronically, where possible. In either case, two complimentary subscription copies of the serial must be sent to the Library of Congress as a condition of eligibility, unless directed otherwise by Copyright Office.

Adoption of Interim Regulations

Section 553(b)(3)(A) of the Administrative Procedure Act states that general notice of proposed rulemaking is not required for rules of agency organization, procedure, or practice. Since the Office finds that the following interim regulations are rules of agency organization, procedure, or practice, no notice of proposed rulemaking is required. Additionally, the interim regulations relieve applicants from procedural restrictions by permitting online registration in situations where, previously, applications were required to be filed on paper. Pursuant to section 553(d) of the Administrative Procedure Act, these regulations may be effective immediately. Moreover, the Register finds that because these regulations provide additional options to applicants for group registration of serial issues, good cause exists for making these interim rules effective immediately and without notice and comment.

List of Subject in 37 CFR Part 202

Copyright, Registration.

Interim Regulation

In consideration of the foregoing, the Copyright Office amends part 202 to Title 37 of the Code of Federal Regulations to read as follows:

PART 202—PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT

■ 1. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 408, 702.

■ 2. Section 202.3 is amended by revising paragraph (b)(6)(v) to read as follows:

§ 202.3 Registration of copyright.

* * * * *

(b) * * *

(6) * * *

(v) To apply for registration of a group of serial issues under 408(c)(1) of title 17 and this section, an applicant may file electronically, or submit a completed Form SE/Group.

(A) For applicants filing electronically:

(1) Furnish the requested information for group of serial issues.

(2) Submit the appropriate filing fee, as required in § 201.3(c) of this chapter, for each issue covered by the group registration.

(3) Submit either a digital format which complies with § 202.20(b)(2)(iii) or a deposit consisting of one complete copy of the best edition of each issue included in the group registration.

(B) For applicants filing a completed Form SE/Group, the following must be sent together in the same package:

(1) A completed Form SE/Group, providing the requested information.

(2) The appropriate filing fee, as required in § 201.3(c) of this chapter, for each issue covered by the group registration.

(3) A deposit consisting of one complete copy of the best edition of each issue included in the group registration.

* * * * *

■ 3. Section 202.20 is amended by revising paragraph (c)(2)(xvii) to read as follows:

§ 202.20 Deposit of copies and phonorecords for copyright registration.

* * * * *

(c) * * *

(2) * * *

(xvii) *Group registration of serials.* For group registration of related serials, as specified in § 202.3(b)(6), for applicants filing electronically, the deposit must consist of one complete copy of the best edition of each issue included in the group registration, or a digital format of a complete copy which complies with § 202.20(b)(2)(iii). For applicants filing a completed Form SE/Group, the deposit must consist of one complete copy of the best edition of each issue included in the group registration. In addition, for all filings for group registration of serial issues, two complimentary subscriptions to any serial for which group registration is sought must be entered and maintained in the name of the Library of Congress, and the copies must be submitted regularly and promptly after publication.

* * * * *

Dated: September 27, 2012.

Maria A. Pallante,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 2012–27231 Filed 11–7–12; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2012–0255; A–1–FRL–9749–8]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Reasonably Available Control Technology Update To Address Control Techniques Guidelines Issued in 2006, 2007, and 2008

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of New Hampshire. The revision establishes Reasonably Available Control Technology (RACT) for several categories of volatile organic compound (VOC) sources. The intended effect of this action is to approve these requirements into the New Hampshire SIP. This action is being taken in accordance with the Clean Air Act.

DATES: This direct final rule will be effective January 7, 2013, unless EPA receives adverse comments by December 10, 2012. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments identified by Docket ID Number EPA–R01–OAR–2012–0255 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: arnold.anne@epa.gov.*
3. *Fax:* (617) 918–0047.
4. *Mail:* ''Docket Identification Number EPA–R01–OAR–2012–0255,'' Anne Arnold, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912.
5. *Hand Delivery or Courier.* Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

Instructions: Direct your comments to Docket ID Number EPA–R01–OAR–2012–0255. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov,* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

In addition, the state's submittal is available for public inspection during normal business hours, by appointment at the State Air Agency: Air Resources Division, Department of Environmental Services, P.O. Box 95, 29 Hazen Drive, Concord, NH 03302–0095.

FOR FURTHER INFORMATION CONTACT: David Mackintosh, Air Quality Planning Unit, U.S. Environmental Protection Agency, New England Regional Office, 5 Post Office Square—Suite 100, (Mail Code OEP05–02), Boston, MA 02109–3912, telephone 617–918–1584, facsimile 617–918–0584, email *mackintosh.david@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

I. What action is EPA taking?
II. What is the background for this action?
III. What is included in New Hampshire's submittal?
IV. What is EPA's evaluation of New Hampshire's submittal?
V. Final Action
VI. Statutory and Executive Order Reviews

I. What action is EPA taking?

EPA is approving New Hampshire's Chapter Env-A 1200 ''Volatile Organic Compounds (VOCs) Reasonably Available Control Technology (RACT),'' specifically PART Env-A 1201 through 1222, submitted by the New Hampshire Department of Environmental Services (NH DES) on July 26, 2011, as meeting RACT for the VOC source categories covered by the Control Technique Guidelines (CTGs) issued by EPA in 2006, 2007, and 2008. EPA is also approving negative declarations for the CTGs for which NH DES determined no applicable sources exist in New Hampshire.

II. What is the background for this action?

In 1997, EPA revised the health-based National Ambient Air Quality Standard (NAAQS) for ozone, setting it at 0.08 parts per million (ppm) averaged over an 8-hour time frame. EPA set the 8-hour ozone standard based on scientific evidence demonstrating that ozone causes adverse health effects at lower ozone concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone standard was set. EPA determined that the 8-hour standard would be more protective of human health, especially with regard to children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.

On April 30, 2004, pursuant to the Federal Clean Air Act (the Act, or CAA), 42 U.S.C. 7401 *et seq.,* EPA designated portions of the country as being in nonattainment of the 1997 8-hour ozone NAAQS (69 FR 23858). In New Hampshire, the Boston-Manchester-Portsmouth (SE), New Hampshire area was designated nonattainment for the 1997 ozone standard and classified as moderate, and the remainder of the state was designated as unclassifiable/attainment. New Hampshire is also part of the Ozone Transport Region (OTR) under Section 184(a) of the CAA.

Sections 182(b)(2) and 184 of the CAA compel states with moderate and above ozone nonattainment areas, as well as areas in the OTR respectively, to submit a SIP revision requiring the implementation of RACT for sources covered by a CTG and for all major sources. A CTG is a document issued by EPA which establishes a ''presumptive norm'' for RACT for a specific VOC source category.

Furthermore, effective on May 27, 2008, EPA made further revisions to the ozone NAAQS setting the 8-hour standard at 0.075 ppm (73 FR 16436, March 27, 2008). Today's action does not address the requirements of the 2008 ozone NAAQS.

On October 5, 2006, EPA issued four new CTGs which states were required to address by October 5, 2007 (71 FR 58745). Then, on October 9, 2007, EPA issued three more CTGs which states were required to address by October 9, 2008 (72 FR 57215). Lastly, on October 7, 2008, EPA issued an additional four CTGs which states were required to address by October 7, 2009 (73 FR 58841). The State of New Hampshire submitted a SIP revision addressing all eleven CTGs on July 26, 2011.

III. What is included in New Hampshire's submittal?

New Hampshire's SIP revision consists of updates to VOC RACT requirements to address the eleven EPA CTGs issued in 2006 through 2008. New Hampshire adopted regulations for nine CTGs: Fiberglass boat manufacturing materials; flat wood paneling coatings; flexible package printing; industrial cleaning solvent; metal furniture coatings; miscellaneous industrial adhesives; miscellaneous metal and plastic parts coatings; offset lithographic printing and letterpress printing; and paper, film, and foil coatings. New Hampshire also submitted negative declarations for two CTGs: Automobile and light-duty truck assembly coatings; and large appliance coatings.

IV. What is EPA's evaluation of New Hampshire's submittal?

New Hampshire's Paper, Film, and Foil Coatings Rule, PART Env-A 1207, was previously approved by EPA on July 23, 2002 (67 FR 48033) and contained a general emissions limit of 0.35 kilograms of VOC per liter (kg VOC/l) of coating for facilities with actual emissions of 3 tons of VOC or more per year. The following are exempt: Application of a coating to vinyl or urethane coated fabric, or vinyl or urethane sheets; coating performed on or in-line with any offset lithographic, screen, letterpress, flexographic, rotogravure, or digital printing press; and size presses and on-machine coaters on papermaking machines that apply sizing, such as starch or water-base-clays. The revised regulation contains the same general emissions limit but now applies to a broader scope of activities consistent with EPA's CTG for Paper, Film, and Foil Coatings (EPA 453/R–07–003, September 2007). The regulation also includes additional requirements for facilities with a potential to emit 25 tons of VOC or more per year on or after January 1, 2016. These facilities must meet lower VOC coating limits or use pollution control equipment meeting 90% control efficiency. There are also updated work practices and recordkeeping requirements for all applicable facilities. New Hampshire's revised rule is consistent with the CTG and satisfies the anti-back sliding requirements in Section 110(l) of the CAA, since it applies to a broader scope of activities than the previously SIP-approved version of the rule.

The New Hampshire Metal Furniture Coatings Rule, PART Env-A 1209, was previously approved by EPA on July 23, 2002 (67 FR 48033) and contained just one general coating limit of 0.36 kg VOC/l. New Hampshire's revised rule includes eight coating categories each of which has limits for baked or air-dried coatings ranging from 0.275 kg to 0.420 kg VOC/l. These limits are consistent with the limits recommended in the EPA CTG for Metal Furniture Coatings (EPA–453/R–07–005, September 2007). While two specialty coating categories, pretreatment coatings and metallic coatings, have a higher limit (0.420 kg VOC/l (baked or air dried)) than the previous general coating limit, the new general use coating limit has been reduced from 0.36 kg to 0.275 kg VOC/l (baked or air dried). Since the general use coatings are applied more frequently than pretreatment and metallic coatings, fewer VOCs will be emitted in New Hampshire as a result of the new regulations. This approach is consistent with the EPA guidance memorandum entitled *Approving SIP Revisions Addressing VOC RACT Requirements for Certain Coating Categories* from Scott Mathias to Regional Air Division Directors dated March 17, 2011. Therefore, the revised rule satisfies the anti-back sliding requirements in Section 110(l) of the CAA. PART Env-A 1209 allows for controls by equivalent emissions limits expressed in terms of mass of VOC per volume of solids as applied or the use of add-on controls capable of achieving an overall VOC efficiency of 90 percent. The revised rule also requires facilities to use work practices that limit VOC emissions and minimize spills during material application, storage, containment, conveyance, and mixing. The rule also updates record keeping requirements and revises the definition of metal furniture coatings in accordance with EPA's Metal Furniture Coating CTG. Specifically, decorative, protective, or functional materials that consist only of protective oils for metal, acids, bases, or any combination of these substances are not considered metal furniture coatings. Additionally, stencil coatings, safety indicating coatings, solid film lubricants, electric-insulating and thermal conducting coatings, touch-up and repair coatings, and coating applications with hand-held aerosol cans are exempt

New Hampshire's Miscellaneous Metal Parts and Plastic Parts Coatings Rule, PART Env-A 1212, was previously approved by EPA on July 23, 2002 (67 FR 48033). The revised rule contains updated work practices, coating application methods, and recordkeeping requirements for all applicable facilities. While the regulation lists multiple types of coating applications methods, other coating application methods capable of achieving a transfer efficiency equivalent to, or better than, that provided by high-volume low-pressure (HVLP) spray application may also be used. The EPA CTG for Miscellaneous Metal and Plastic Parts Coatings (EPA–453/R–08–003, September 2008) defines transfer efficiency as ''the percent of coating applied to the metal furniture component or product.'' Additional control options permit equivalent emissions limits expressed in terms of mass of VOC per volume of solids as applied or the use of add-on controls capable of achieving an overall VOC efficiency of 90 percent.

The new coating limits generally follow the recommendations in EPA's CTG for Miscellaneous Metal and Plastic Parts Coating, with the exception of three coating categories. New Hampshire adopted higher coating limits than the CTG for extreme high gloss topcoat, other substrate antifoulant coating, and antifouling sealer/tire. For these three categories, New Hampshire reviewed industry data and determined that for purpose of functionality, cost, and VOC emissions, the alternative limits adopted for these three coating categories constitute RACT. New Hampshire's approach is consistent with the EPA guidance memorandum entitled *Control Technique Guidelines for Miscellaneous Metal and Plastic Part Coatings—Industry Request for Reconsideration* from Stephen Page to

Air Branch Chiefs, Regions I–X, dated June 1, 2010. The applicability threshold for plastic parts coatings was tightened from 10 tons total potential emissions to 3 tons actual VOC emissions per 12-month period, before controls. New Hampshire's new VOC coating limits are also lower than most of the previously SIP-approved limits. Although some specialty coatings limits are higher than previous limits, since the general use coating limit is lower and these coatings are more frequently used, coupled with the fact that the revised rule's applicability is broader, the revised rule reduces VOC emissions and satisfies the anti-back sliding requirements in Section 110(l) of the CAA. This analysis is also consistent with the EPA guidance memorandum entitled *Approving SIP Revisions Addressing VOC RACT Requirements for Certain Coating Categories.*

New Hampshire's new PART Env-A 1214 Flat Wood Paneling is consistent with the recommendations for RACT found in EPA's CTG for Flat Wood Paneling Coatings (EPA–453/R–06–004, September 2006). This new regulation applies on or after January 1, 2016 to sources whose flat wood paneling coating operations have, before controls, combined actual emissions of 3 tons of VOC or more, during any consecutive 12-month period. Applicable sources are required to limit VOC emissions by one of the following methods: An add-on pollution control device with 90% efficiency; an emission limit of 350 grams of VOC per liter (g VOC/l) of solids; or an emission limit of 250 g VOC/l of material, excluding water and exempt compounds. The rule also requires record keeping and work practices for handling VOC-containing coatings, thinners, cleaning materials, and coatings-related waste materials.

New Hampshire's Rotogravure and Flexographic Printing Rule, PART Env-A 1215, was previously approved by EPA on July 23, 2002 (67 FR 48033). The revised rule is consistent with the recommendations for RACT found in EPA's CTG for Flexible Package Printing (EPA–453/R–06–003, September 2006). The revised rule adds compliance standards for any individual flexible-package printing press with a total potential to emit 25 tons of VOC or more per year on or after January 1, 2016, whereas the previous rule applied to only rotogravure and flexographic printing. Applicable flexible package printing sources are required to limit VOC emissions by one or more of the following techniques: Use of low-VOC content materials; averaging the VOC content of materials to meet low-VOC content standards; or operating add-on VOC pollution controls. The rule also requires record keeping and work practices for handling VOC-containing materials. Since New Hampshire's revised rule applies to more operations than the previously SIP-approved version, it satisfies the anti-back sliding requirements in Section 110(l) of the CAA.

New Hampshire's Offset Lithographic Printing and Letterpress Printing Rule, PART Env-A 1216, was previously approved by EPA on July 23, 2002 (67 FR 48033). The revised rule is consistent with the recommendations for RACT found in EPA's CTG for Offset Lithographic Printing and Letterpress Printing (EPA–453/R–06–002, September 2006). The applicability threshold of the rule was changed from 50 tons per year potential emissions to 3 tons per year actual emissions. The rule also now applies to letterpress printing operations, where it previously only applied to offset lithographic printing. All applicable facilities are required to maintain records and use work practices to reduce VOC emissions.[1] New Hampshire's revised rule satisfies the anti-back sliding requirements in Section 110(l) of the CAA, since it applies to more operations than the previously SIP-approved version of the rule.

New Hampshire's new Fiberglass Boat Manufacturing Rule, PART Env-A 1219, is consistent with the recommendations for RACT found in EPA's CTG for Fiberglass Boat Manufacturing Materials (EPA–453/R–08–004, September 2008). This new regulation applies to fiberglass boat manufacturing operations that on or after January 1, 2016 have, before controls, combined actual emissions of 3 tons of VOC or more, during any consecutive 12-month period, from the use of gel coats, resins, and materials used to clean application equipment. Applicable sources are required to limit VOC emissions by one of the following prescribed techniques: Use of low-VOC content materials; averaging the VOC content of materials to meet low-VOC content standards; use of a facility-specific VOC mass emission limit; or the operation of VOC pollution control devices. The new regulation also specifies work practices to reduce VOC emissions during the application, storage, mixing, and conveyance of coatings, resins, and cleaning materials.

New Hampshire's new Miscellaneous Industrial Adhesives, PART Env-A 1220, is consistent with the recommendations for RACT found in EPA's CTG for Miscellaneous Industrial Adhesives (EPA–453/R–08–005, September 2008). The new regulation applies to miscellaneous industrial adhesive and adhesive primer application processes, including related cleaning activities with combined actual emissions of 3 tons of VOC or more, during any consecutive 12-month period on or after January 1, 2016. The use of industrial adhesives by sources regulated by another CTG category is exempt from the regulation. Applicable sources are required to limit their VOC emissions by using a combination of low-VOC adhesives, specified application methods, and add-on control equipment, or an overall control efficiency of 85%. The new regulation also specifies application methods, as well as work practices for waste and cleaning materials, to further limit VOC emissions from industrial adhesive activities.

New Hampshire's Industrial Cleaning Solvents Rule, PART Env-A 1221, is consistent with the recommendations for RACT found in EPA's CTG for Industrial Cleaning Solvents (EPA–453/R–06–001, September 2006). Previously, this rule only applied to cold cleaning, vapor degreasing, and conveyorized degreasing operations. New provisions were added to address the Industrial Cleaning Solvents CTG. These new provisions apply to sources that use organic solvents in their cleaning activities with actual emissions, before controls, of 3 tons or more during any consecutive 12-month period on or after January 1, 2016. The use of industrial cleaning solvents for certain specialty applications and sources regulated by another CTG category are exempt from the regulation. Applicable sources are required to limit VOC emissions by using cleaning solvents that contain no more than 50 g VOC/l or have a composite vapor pressure of 8.0 millimeters of mercury (mm Hg) at 20 degrees Celsius (with the exception of cold cleaning operations for which the rule prohibits the use of solvents having a vapor pressure of 1.0 mm Hg or greater at 20 degrees Celsius), or by using add-on control equipment. The work practices in the regulation minimize VOC emissions during the use, handling, storage, and disposal of cleaning solvents.

New Hampshire's SIP revision also includes numerous minor revisions such as chapter renumbering, updated citations, and references to the newly adopted regulations. These updates include PARTS Env-A 1201 through 1206, 1208, 1210, 1211, 1213, 1217, 1218, and 1222. Throughout Chapter Env-A 1200, the term ''2011 effective

[1] Env-A 1205.08 subjects all sources that fall under the requirements of Env-A 1200 to record keeping obligations in Env-A 900.

date'' is understood to mean June 1, 2011. PART Env-A 1205 RACT Procedures has been revised to include conducting a public hearing on proposed RACT orders, if requested, rather than always conducting a hearing. Additionally, where PART Env-A 1205 uses the term ''weighted average'' EPA interprets this to be the sum of the VOC emissions divided by the sum of the weights. In PART Env-A 1213.11, the formula for calculating ''percentage reduction'' is now defined in PART Env-A 800 Testing and Monitoring Procedures. PART Env-A 1217.07(d)(3) and (5) both reference ''a,'' ''b,'' and ''c,'' which EPA interprets as actually referencing ''1,'' ''2,'' and ''3,'' respectively.

New Hampshire's SIP revision also includes negative declarations for two CTGs: Automobile and Light-Duty Truck Assembly Coatings (EPA–453/R–08–006, September 2008); and Large Appliance Coatings (EPA–453/R–07–004, September 2007). NH DES based these negative declarations on periodic field inspections, information from their air permitting program, and a search by Standard Industrial Classification (SIC) and North American Industry Classification System (NAICS) code of databases maintained both by the NH DES and by the New Hampshire Manufacturers' Association. A survey was also made of facilities with reported SIC or NAICS codes indicating that they might conduct Large Appliance Coating operations. Upon questioning, it was determined that none of the facilities was subject to the CTG.

In summary, as noted above, EPA has reviewed New Hampshire's new and revised VOC regulations and found that they are consistent with the relevant CTGs. In addition, New Hampshire's process for determining the categories for which the state should make negative declarations was reasonable. Therefore, EPA concludes that New Hampshire has met the CAA requirement to adopt RACT for all the 2006, 2007, and 2008 CTGs.

V. Final Action

EPA is approving and incorporating into the SIP, New Hampshire's Chapter Env-A 1200, Volatile Organic Compounds (VOCs) Reasonably Available Control Technology (RACT), specifically, PART Env-A 1201 through PART Env-A 1222, as meeting RACT for the following CTG categories: Fiberglass boat manufacturing materials; flat wood paneling coatings; flexible package printing; industrial cleaning solvents; metal furniture coatings; miscellaneous industrial adhesives; miscellaneous metal parts and plastic parts coatings; offset lithographic printing and letterpress printing; and paper, film, and foil coatings. EPA is also approving New Hampshire's negative declarations for two categories: Automobile and light-duty truck assembly coatings; and large appliance coatings. New Hampshire has, therefore, met the CAA requirement to adopt RACT for all of the 2006, 2007, and 2008 CTGs.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective January 7, 2013 without further notice unless the Agency receives relevant adverse comments by December 10, 2012.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on January 7, 2013 and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

VI. Statutory and Executive Order Reviews

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

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

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

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

This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 7, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: October 25, 2012.

H. Curtis Spalding,

Regional Administrator, EPA New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart EE—New Hampshire

■ 2. Section 52.1520 is amended by:

■ a. In paragraph (c), in the table titled ''EPA-Approved New Hampshire Regulations'', by revising the entry for existing state citation Env-A 1200; and

■ b. In paragraph (e), in the table titled ''New Hampshire Non Regulatory'', by adding a new entry for Negative Declarations at the end of the table.

The revised and added text reads as follows:

§ 52.1520 Identification of plan.

* * * * *

(c) *EPA approved regulations.*

EPA-APPROVED NEW HAMPSHIRE REGULATIONS

State citation	Title/subject	State effective date	EPA approval date [1]	Explanations
*	*	*	*	*
Env-A 1200	Volatile Organic Compounds (VOCs) Reasonably Available Control Technology (RACT).	05/26/11	11/8/12 [Insert **Federal Register** page number where the document begins].	Approved PART Env-A 1201 through 1222 for the following CTG categories: Fiberglass boat manufacturing materials; flat wood paneling coatings; flexible package printing; industrial cleaning solvent; metal furniture coatings; miscellaneous industrial adhesives; miscellaneous metal parts and plastic parts coatings; offset lithographic printing and letterpress printing; and paper, film, and foil coatings.
*	*	*	*	*

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

* * * * *

(e) *Nonregulatory.*

NEW HAMPSHIRE NON REGULATORY

Name of non regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date [3]	Explanations
*	*	*	*	*
Negative Declarations included in New Hampshire's State Implementation Plan Revision for the 2006, 2007, and 2008 Control Techniques Guidelines.	Statewide	07/26/2011	11/8/12 [Insert **Federal Register** page number where the document begins].	Includes negative declarations for the following CTG categories: Large appliance coatings; and automobile and light-duty truck assembly coatings.

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

* * * * *

[FR Doc. 2012–27217 Filed 11–7–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0382; FRL–9734–6]

Approval and Promulgation of Implementation Plans; Florida 110(a)(1) and (2) Infrastructure Requirements for the 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve the State Implementation Plan (SIP) submissions, submitted by the State of Florida, through the Florida Department of Environmental Protection (FDEP), as demonstrating that the State meets certain SIP requirements of sections 110(a)(1) and (2) of the Clean Air Act (CAA or the Act) for the 1997 annual and 2006 24-hour fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS). Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an ''infrastructure'' SIP. Florida certified that the Florida SIP contains provisions that ensure the 1997 annual and 2006 24-hour PM_2 NAAQS are implemented, enforced, and maintained in Florida (hereafter referred to as ''infrastructure submissions''). Florida's infrastructure submissions, provided to EPA on April 18, 2008, and September 23, 2009, with the exception of element 110(a)(2)(D)(i) which will be addressed in a separate rulemaking action.

DATES: This rule is effective December 10, 2012.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2012–0382. All documents in the docket are listed on the *www.regulations.gov* web site. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9043. Mr. Lakeman can be reached via electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background

Upon promulgation of a new or revised NAAQS, sections 110(a)(1) and (2) of the CAA require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance for that new NAAQS. On July 18, 1997 (62 FR 38652), EPA promulgated a new annual $PM_{2.5}$ NAAQS and on October 17, 2006 (71 FR 61144), EPA promulgated a new 24-hour NAAQS. On June 12, 2012, EPA proposed to approve Florida's April 18, 2008, and September 23, 2009, infrastructure submissions for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. *See* 77 FR 34906. A summary of the background for today's final action is provided below. See EPA's June 12, 2012, proposed rulemaking at 77 FR 34906 for more detail.

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary from depending upon the facts and circumstances. The data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 1997

annual and 2006 24-hour $PM_{2.5}$ NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous PM NAAQS.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for ''infrastructure'' SIP requirements related to a newly established or revised NAAQS. As already mentioned, these requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this final rulemaking are listed below [1] and in EPA's October 2, 2007, memorandum entitled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards.'' and September 25, 2009, memorandum entitled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards.''

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.[2]
- 110(a)(2)(D): Interstate transport.[3]
- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency power.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Areas designated nonattainment and meet the applicable requirements of part D.[4]
- 110(a)(2)(J): Consultation with government officials; public notification; and PSD and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

II. This Action

EPA is taking final action to approve Florida's infrastructure submissions as demonstrating that the State meets certain applicable requirements of sections 110(a)(1) and (2) of the CAA for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an ''infrastructure'' SIP. FDEP certified that the Florida SIP contains provisions that ensure the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS are implemented, enforced, and maintained in Florida.

EPA received no adverse comments on its June 12, 2012, proposed approval of Florida's April 18, 2008, and September 23, 2009, infrastructure submissions. Concerning elements 110(a)(2)(C) and (J), EPA signed a final rulemaking action on September 6, 2012, approving revisions to Florida's New Source Review (NSR) requirements addressing elements 110(a)(2)(C) and (J). EPA is not taking action today on Florida's NSR program, as these requirements are already approved in Florida's SIP. Additionally, on July 30, 2012, EPA published a final rulemaking action addressing the requirements of element 110(a)(2)(E)(ii). *See* 77 FR 44485.

EPA is today finalizing its determination that Florida's infrastructure submissions, provided to EPA on April 18, 2008, and September 23, 2009, satisfy the required infrastructure elements for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS with the exception of 110(a)(2)(D)(i), which will be addressed in a separate rulemaking action.[5] EPA has determined that Florida's April 18, 2008, and September 23, 2009, submissions are consistent with section 110 of the CAA.

III. Final Action

As already described, EPA has determined that FDEP has addressed certain elements of the CAA 110(a)(1) and (2) SIP requirements pursuant to EPA's October 2, 2007, guidance to ensure that 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS are implemented, enforced, and maintained in Florida, with the exception of section 110(a)(2)(D)(i) requirements. EPA is taking final action to approve Florida's April 18, 2008, and September 23, 2009, submissions for 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS because these submissions are consistent with section 110 of the CAA. Today's action is not approving any specific rule, but rather making a determination that Florida's already approved SIP meets certain CAA requirements.

IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

[1] Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA, and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. Today's final rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the nonattainment plan requirements of section 110(a)(2)(C).

[2] This rulemaking only addresses requirements for this element as they relate to attainment areas.

[3] Today's final rule does not address element 110(a)(2)(D)(i) (Interstate Transport) for the 1997 and 2006 $PM_{2.5}$ NAAQS.

[4] This requirement was inadvertently omitted from EPA's October 2, 2007, memorandum entitled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' but as mentioned above is not relevant to today's final rulemaking.

[5] As noted above, today's final rulemaking also does not address section 110(a)(2)(C) requirements related nonattainment area plan requirements and section 110(a)(2)(I) requirements.

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

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 7, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 13, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart K—Florida

■ 2. Section 52.520(e), is amended by adding two new entries for ''110(a)(1) and (2) Infrastructure Requirements for the 1997 Fine Particulate Matter National Ambient Air Quality Standards'' and ''110(a)(1) and (2) Infrastructure Requirements for the 2006 Fine Particulate Matter National Ambient Air Quality Standards'' at the end of the table to read as follows:

§ 52.520 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED FLORIDA NON-REGULATORY PROVISIONS

Provision	State effective date	EPA approval date	**Federal Register** notice	Explanation
* *	*		* *	* *
110(a)(1) and (2) Infrastructure Requirements for 1997 Fine Particulate Matter National Ambient Air Quality Standards.	4/18/2008	11/8/2012	[Insert citation of publication]	With the exception of section 110(a)(2)(D)(i).
110(a)(1) and (2) Infrastructure Requirements for 2006 Fine Particulate Matter National Ambient Air Quality Standards.	9/23/2009	11/8/2012	[Insert citation of publication]	With the exception of section 110(a)(2)(D)(i).

[FR Doc. 2012–27223 Filed 11–7–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2010–0930, FRL9750–1]

Approval and Promulgation of Implementation Plans; State of Idaho; Regional Haze State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve portions of a State Implementation Plan (SIP) revision submitted by the State of Idaho on October 25, 2010, as meeting the requirements of Clean Air Act (CAA or the Act) sections 169A and 169B and federal regional haze regulations. In a previous action on June 22, 2011, EPA approved portions of the October 25, 2010, SIP submittal as meeting the requirements for interstate transport for visibility of CAA section 110(a)(2)(D)(i)(II) and certain requirements of the regional haze rule, including the requirements for best available retrofit technology (BART). On May 22, 2012, EPA proposed to approve the remaining portion of the Regional Haze SIP submittal, including those portions that address CAA provisions that require states to set Reasonable Progress Goals (RPGs) for their Class I areas, and to develop a Long Term Strategy (LTS) to achieve these goals. In this **Federal Register** notice, EPA finalizes its approval of the remaining Regional Haze SIP elements as proposed in the May 22, 2012 notice.

DATES: This action is effective on December 10, 2012.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R10–OAR–2010–0930. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information

may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at EPA Region 10, Office of Air, Waste, and Toxics, AWT–107, 1200 Sixth Avenue, Seattle, Washington 98101. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Steve Body at telephone number (206) 553–0782, *Body.Steve@epa.gov,* or the above EPA Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. Information is organized as follows:

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

I. Background

In the CAA Amendments of 1977, Congress established a program to protect and improve visibility in national parks and wilderness areas. See CAA section 169A. Congress amended the visibility provisions in the CAA in 1990 to focus attention on the problem of regional haze. See CAA section 169B. EPA promulgated regulations in 1999 to implement sections 169A and 169B of the Act. These regulations require states to develop and implement plans to ensure reasonable progress toward improving visibility in mandatory Class I Federal areas [1] (Class I areas). 64 FR 35714 (July 1, 1999); see also 70 FR 39104 (July 6, 2005).

On behalf of the State of Idaho, the Idaho Department of Environmental Quality (IDEQ) submitted its Regional Haze State Implementation Plan (Regional Haze SIP submission or SIP submittal) to EPA on October 25, 2010. In a previous action EPA approved certain provisions in Idaho's Regional Haze SIP submission, 76 FR 36329, June 22, 2011. Specifically, the previous action approved the BART provisions (40 CFR 51.308(e)), the calculation of baseline and natural conditions (40 CFR 51.308(d)(2)), and the statewide emission inventory of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any mandatory Class I area.[2] In that same action, EPA also approved portions of the October 25, 2010 SIP submittal as meeting the requirements for interstate transport for visibility of CAA section 110(a)(2)(D)(i)(II) with respect to the visibility prong for the 1997 8-hour ozone and 1997 $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS).

On May 22, 2012, EPA proposed to approve the remaining provisions of Idaho's Regional Haze SIP submission, including the regional haze requirements for establishing RPGs and the LTS, see 77 FR 30248. The public comment period for this proposed rule ended on June 21, 2012.

II. Response to Comments

EPA received five comments on the May 22, 2012, proposed action to approve portions of the Idaho Regional Haze SIP submittal. Responses to issues raised in these comment letters are discussed in this section.

A. Correction of Ownership for Clearwater Paper

Comment: One comment requested a correction of ownership of one of Idaho's regulated facilities, the Clearwater Paper Corporation.

Response: EPA agrees with this request and acknowledges that the pulp mill in Lewiston, Idaho, previously referred to as the Potlatch Pulp and Paper Mill is owned by the Clearwater Paper Corporation.

B. Approach to Identifying Stationary Source Controls To Meet the Reasonable Progress Requirements of the Regional Haze Rule

Comment: Four commenters, the National Park Service (NPS), Safe Air for Everyone (SAFE), Save Our Summers NW (SOS NW), and the Shoshone-Bannock Tribes Air Quality Department, expressed concerns over Idaho's reasonable progress analysis for stationary sources.

The NPS indicated that the Idaho plan did appropriately identify the major source categories to evaluate for controls under reasonable progress, but noted however, that Idaho did not properly consider what emission controls might be reasonable to implement for specific sources within those categories to ''assure reasonable progress towards meeting the national goal of preventing future and remedying any existing impairment of visibility in mandatory Class I federal areas.'' The NPS recommended that Idaho reconsider the decision that no controls are reasonable for sources under the reasonable progress requirements. The commenter noted further that Idaho did not consider controls for stationary sources of sulfur dioxide (SO_2). The NPS pointed out that EPA determined that several of the Idaho stationary sources have visibility impacts between 0.3–1.3 deciviews (dv) and urged EPA and the State to evaluate specific control measures for these sources. The NPS expressed specific concerns regarding J.R. Simplot, a phosphate fertilizer manufacturing facility which is 86 km from Craters of the Moon National Monument and has 1,609 tons per year (tpy) of SO_2 emissions.

SAFE, whose comments were endorsed by SOS NW, asserts that it is not reasonable for Idaho to submit a SIP that provides no additional controls for reasonable progress given that none of Idaho's Class I areas are projected to meet the uniform rate of progress by 2064. This commenter further indicates that the State should adopt low-cost controls on stationary sources that could produce additional progress.

The Shoshone-Bannock Tribes Air Quality Department commented that Idaho needs to demonstrate that it is making reasonable progress within the State, especially with respect to non-BART sources in eastern Idaho. The comment adds that the SIP submittal was not detailed enough to report emissions of haze pollutants from BART and non-BART units for three plants: The J.R. Simplot Don Plant, Nu West/Agrium, and P4 Production LLC (formerly Monsanto) and that EPA

[1] Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977. 42 U.S.C. 7472(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. 44 FR 69122 (November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. 42 U.S.C. 7472(a). Although states and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas.'' Each mandatory Class I Federal area is the responsibility of a ''Federal Land Manager.'' 42 U.S.C. 7602(i). When we use the term ''Class I area'' in this action, we mean a ''mandatory Class I Federal area.''

[2] Upon EPA's final action, The Amalgamated Sugar Company (TASCO) filed a petition for review in the Ninth Circuit Court of Appeals challenging EPA's approval of Idaho's BART determination for TASCO. See *Amalgamated Sugar* v. *EPA,* No. 11–72445 (9th Cir.). The case is pending before the Ninth Circuit.

should require a fast track revision to the SIP submittal which includes the necessary additional details in a four-factor analysis.

For J.R. Simplot, the Shoshone-Bannock Tribes Air Quality Department further notes that the Western Regional Air Partnership (WRAP) identified 31 separate emission units within the plant and that the most significant sources of visibility impairing pollutants were non-BART emission units. This comment adds that the plant has operated with few process changes over the years and has been well characterized and permitted by IDEQ, and that the State should have carried out the four-factor reasonable progress analysis as required by the CAA. The commenter noted that the 2007 Toxic Release Inventory shows that the facility emitted 4 tons per day of SO_2, and that in view of the potential significance of these emissions to visibility at Craters of the Moon National Monument, and Teton and Yellowstone National Parks, the SIP submittal should have included detailed emission sources at the J.R. Simplot plant, potential control technologies, and regulatory plans to limit these non-BART emissions.

The Shoshone-Bannock Tribes Air Quality Department was also critical of IDEQ's claim that an additional five years (i.e., two years for modeling and 3 years to install emission controls) was needed for a thorough four-factor analysis for the J.R. Simplot facility and other large stationary sources, particularly in light of the tardiness of the SIP submittal. The commenter points out that the delay in providing a four-factor analysis is erroneous underscored by the fact that the J.R. Simplot facility recently applied for a construction permit to make improvements at one of the sulfuric acid units at the plant and indicated that only one year was necessary for installing an improved scrubber. Given the projected five-year delay for the analysis plus installation of controls and that the SIP submittal was three years past the deadline, the commenter believes that the deferral is unreasonable and that EPA should require the State to complete the reasonable progress analyses on a realistic schedule and not approve the existing submittal. Finally the commenter offers that the State, by requesting an unreasonable timetable for compliance and projecting the five-year delay, is establishing the possibility that J.R. Simplot and other sources may not be ready for emission reductions even in time for the five year review period (i.e., the five-year progress report). The comment calls for EPA to review this issue and require IDEQ to revise the SIP accordingly.

Response: EPA has conducted a screening analysis to verify that the Idaho plan contains appropriate reasonable progress provisions for stationary sources.

EPA agrees with commenters that as part of its reasonable progress analysis, the State did not thoroughly assess controls for specific sources after having identified cost-effective options for certain source categories. The Idaho SIP submittal, however, concluded that additional controls on stationary sources of SO_2 or oxides of nitrogen (NO_X) would not be helpful in achieving the uniform rate of progress (URP). Because the Idaho SIP submittal did not contain sufficient analysis to support this conclusion, EPA conducted its own independent screening analysis.

As explained in the notice of proposed rulemaking for this action, as part of our review of the Idaho Regional Haze SIP submittal, EPA independently evaluated whether additional control measures were reasonable for non-BART stationary sources located within Idaho's regulatory jurisdiction that would achieve further progress toward the national goal. See 77 FR 30255. In our evaluation, we used a screening methodology referred to as ''Q/d.'' We used the CALPUFF modeling results from a number of BART-eligible sources in combination with the ratio of each of these source's emissions (denoted by the variable Q) divided by the source's distance, in kilometers, from the nearest Class I area (denoted by the variable d). See the memorandum with subject ''Q/d Analysis of BART Sources in Idaho, Oregon and Washington to Establish a Threshold for Estimating Visibility Impacts from non-BART Sources'' from Keith Rose, EPA Region 10, dated March 21, 2012, which can be found in the docket for this action. Based on the CALPUFF modeling results, we concluded that the BART-eligible sources having a Q/d ratio less than 20 would not make a significant contribution to visibility impairment in any Class I area. Likewise, we then assumed that the non-BART sources in Idaho having a Q/d ratio less than 20 would not significantly impair visibility in the Class I areas in Idaho. We calculated the Q/d ratio for all non-BART stationary sources emitting more than 40 tpy of SO_2, NO_X, or PM_{10}. The 40 tpy threshold is consistent with the de minimis level of exemption for the BART determination. As discussed in the proposal, our analysis demonstrated that all 17 of the non-BART stationary sources above 40 tpy in Idaho have a baseline Q/d less than 17. Thus, we agreed with Idaho's conclusion that no additional controls on non-BART stationary sources in Idaho are reasonable for this planning period, because any visibility improvement expected from additional controls would likely be minimal. We are not changing that conclusion in this final action.

Regarding the NPS and Shoshone-Bannock Tribes Air Quality Department comments about assessing SO_2 controls for J.R. Simplot, we agree that the State did not consider SO_2 controls under reasonable progress with a four-factor analysis specific to this facility. The majority of the SO_2 emissions from the facility are emitted from the #300 and #400 sulfuric acid plants, which are not BART-eligible sources. A total of over 1,600 tons of SO_2 was emitted from these two units in 2011. In terms of assessing these units under reasonable progress, we note that they are currently controlled and are regulated under the New Source Performance Standards for sulfuric acid plants at a rate of 4 pounds of SO_2 per ton of sulfuric acid produced. (see 40 CFR 60.2). Further, in May 2012, J.R. Simplot and the State entered a Consent Order to reduce emissions at the #400 plant to less than 2 pounds of SO_2 per ton of sulfuric acid produced. (See J.R. Simplot Company—Don Siding Plant Consent Order—Case No. E–2012.0006 2012AAI287.) The requirement to meet this emission limit became effective September 1, 2012. The Consent Order also requires a Best Available Control Technology (BACT) analysis to be completed for the #400 plant by June 1, 2013. In its SIP submittal, the State did not account for the SO_2 reductions resulting from the Consent Order when it established the RPGs for the Class I areas in Idaho. As part of its interim progress report for regional haze due in October 2015, the State may choose to provide details of the SO_2 reductions resulting from this Consent Order and any corresponding improvements to visibility. In addition to the reasons explained in the proposal, because of the existing controls on the sulfuric acid units and the additional SO_2 reductions and visibility improvement expected to result from the May 2012, Consent Order, we agree with Idaho's conclusion that no additional SO_2 controls for the purposes of meeting the reasonable progress requirements of the regional haze rule are warranted at the J.R. Simplot facility during this planning period. EPA's Q/d analysis supports this conclusion, and EPA notes that taking into account the requirements of the Consent Order, the

Simplot facility has a Q/d of less than 20.

With regard to the Nu West/Agrium facility, we disagree with the commenter that not enough detail about the BART and non-BART units is provided in the SIP submittal. IDEQ appropriately determined that the facility is BART-eligible. SO_2 is the largest emitted pollutant (See Table 10–2 in the Idaho SIP submittal which lists SO_2 emissions at 945 tpy). Modeled visibility impacts for this facility were minimal and the facility was exempt from further BART review (See 76 FR 36334). Emissions from the non-BART units are relatively small and the visibility impact is expected to be very minor as the Q/d ratio for the facility is less than 8. Also, contrary to the comment, the BART determination for Monsanto/P4 Production LLC was discussed thoroughly in Chapter 10 of the Idaho SIP submission and addressed in EPA's final action for BART, dated June 22, 2011 (See 76 FR 36329). Controls installed for BART at P4 are expected to achieve approximately 9,000 tpy of sulfur oxide reductions at the kiln. Among the non-BART units at P4, the largest emitting sources of visibility impairing pollutants are two furnaces, and the State reasonably concluded that additional controls on these furnaces are not technically feasible due to the very high process temperatures.

C. Comments Related to Crop Residue Burning

Comment: Three commenters, SAFE, SOS NW, and the Shoshone-Bannock Tribes Air Quality Department, expressed concerns over Idaho's reasonable progress analysis for assessing additional controls on crop residue burning.[3]

The comment submitted by SAFE, and endorsed by SOS NW, indicates that stronger controls on field burning are reasonable and cost-effective and can achieve some additional progress. SOS NW emphasizes that crop residue burning should not be left out of consideration when it comes to the regional haze plan. The comment from SAFE claims that Idaho's rationale for doing nothing seems to be that wildfires are responsible for most of the visibility problem at Class I areas in the State. SAFE offers additional details on agricultural burning, noting that the SIP submittal estimates a 54% reduction in fine particulate matter ($PM_{2.5}$) emissions from anthropogenic fires by 2018, compared to 2002 data.[4] However, the commenter points out that between 2002 to the present, there has been a 48% increase in agricultural acres burned in Idaho, particularly in the southern areas which are closer to the Class I areas of concern. The commenter also states that it makes good sense to ramp down the emissions from agricultural field burns in those areas to offer the best chance of meeting the Regional Haze goals. The commenter letter from the Shoshone-Bannock Tribes Air Quality Department indicates that the recent increase in acreage burned resulted in emissions that were not recognized in the regional haze SIP submission nor reviewed adequately for visibility impacts.

SAFE also points out that current Idaho regulation limits burn approvals to days when air quality levels are below 75% of any NAAQS. SAFE further noted that the IDEQ recently considered lifting the 75% of NAAQS limit for ozone, and that SAFE is therefore concerned that this would increase the amount of agricultural burning. To ensure the 75% of NAAQS limit remains effective in Idaho and as one way to limit the growth of agricultural burning from contributing to the deterioration of visibility in Class I areas, SAFE requests that EPA establish the limit as a federally enforceable limit in the Regional Haze SIP. The comment states that the long term strategy must contain enforceable emission limits, compliance schedules, and other measures as necessary to achieve the reasonable progress goals. The Shoshone-Bannock Tribes Air Quality Department adds that the strategy of permitting crop residue burns and other prescribed burns is to disperse the smoke by the prevailing winds, and although this reduces downwind concentrations, it increases haze on a regional scale and increases visibility impacts in downwind Class I areas, particularly in the fall when field burning is scheduled. The commenter asserts that the permit program for crop residue burning is allowing burning to increase with the new ''Crop Residue Burning'' section of IDEQ's rules, and is largely a registration program rather than a program with tools to monitor Class I impacts or safeguard Class I air sheds. The commenter indicates that the resulting haze from burning should be reviewed, modeled for impacts, and included in the long term strategy.

SAFE also commented that Idaho contributes significantly to visibility impairment in Montana and Wyoming Class I areas and that Yellowstone National Park, Bridger Wilderness, and Glacier National Park are all significantly off the target of achieving natural conditions by 2064. Referencing 40 CFR 51.308(d)(3)(ii), the comment contends that Idaho cannot demonstrate that it has included all measures necessary to improve visibility in these areas unless it places limits on field burning. Finally, the comment notes that there should be acreage restrictions on burning, and that there would be no special equipment to purchase and no hindrance to growing crops by using alternative methods to burning.

Response: Regarding the comment on the amount of acreage burned, we acknowledge that the reported data does indicate an increase in acreage burned as the commenters point out. However, the likelihood that there has been an increase in acreage burned is attenuated by the fact the registration program has greatly reduced the amount of fires that go unreported. There is considerable uncertainty in comparing the present acreage reported with acreage estimates from 2002. Over time, trends in the data will become more reliable with improved data quality. In addition, we note that Idaho is relying, in part, on the visibility improvement expected due to reduced emission from anthropogenic fires in its SIP. As part of IDEQ's obligation to submit a periodic progress report (see 40 CFR 51.308(g)), it will be incumbent upon the State to accurately assess any significant changes in emissions from anthropogenic fire, including agricultural burning and acreage burned. At that time, IDEQ can assess whether any additional measures are necessary for ensuring that the relevant reasonable progress goals will be met.

In response to comments concerning the State's claim that wildfire is responsible for most of the visibility problem and that the State should do more to control field burning, we note that the emissions from natural fire (i.e. wildfires) are indeed significantly greater than from anthropogenic fire, as shown in the emission inventory of the SIP submittal. Visibility impairment from fire of any type is primarily due to emissions of organic carbon and elemental carbon, and to a lesser extent, direct fine particulate emissions. As shown in Tables 8–4 through 8–6 in the SIP submittal, emissions from natural fires of all three of these pollutant constituents are from three to ten times

[3] The agricultural/crop residue burning of concern to the commenter is included in the SIP under the broader category of ''Anthropogenic fire''.

[4] See Table 8–6 in the Idaho SIP submittal. The emissions inventory, which is used for modeling purposes and categorizes primary and secondarily formed particles separately, was obtained from the WRAP technical Support System at: *http://vista.cira.colostate.edu/TSS/Results/Emissions.aspx.*

greater than anthropogenic fires. For example, the State is projecting about 48,000 tons of organic carbon emissions in 2018 from natural fires compared to 4,100 tons from anthropogenic fires. With regard to visibility impairment from fires, the graphs in Chapter 9 of the SIP submittal show that the overwhelming amount of visibility impairment due to fire on the 20% worst days at Idaho's Class I areas is from natural fire. As shown in Figure 9–9, nearly 70% of the organic carbon on the 20% worst days at Craters of the Moon comes from natural fire while less than 7% comes from anthropogenic fire. Anthropogenic burning makes up such a small portion of the total statewide emissions inventory that the predicted visibility improvement attributable to reductions in agricultural burning emissions is very minor. A reduction in agricultural burning emissions would be expected to have only a minimal overall influence on the glide slopes (i.e., rates of progress) for the State's Class I areas when compared to the dominating influence of natural fire and other sources. The dominant influence of natural fire on visibility can be compounded by the significant year to year variability of natural fire emissions which can easily offset any visibility improvement from reductions in anthropogenic fire. Additional constraints on anthropogenic burning, such as acreage restrictions or alternative burning techniques would therefore not necessarily lead to more progress than that expected from the greater than 50% reductions in $PM_{2.5}$, elemental carbon, and organic carbon emissions that the State is projecting. Consequently, we disagree that the state must do more to control field burning to ensure reasonable progress during this first planning period.

With regard to the comment concerning Idaho's contributions to visibility impairment at Class I areas in Montana and Wyoming and the need to further control crop residue burning, we note that Idaho appropriately satisfied the interstate consultation requirements of Section 51.308(d)(3)(i) of the Regional Haze Rule and collaborated extensively with Montana, Wyoming, and the EPA via numerous Western Regional Air Program (WRAP) forums. See Chapter 2 of the Idaho SIP submittal. Both Idaho and neighboring states agreed that the implementation of BART and other existing measures in state regional haze plans were sufficient, and that future consultation would address any new strategies or measures needed. Source apportionment modeling does show that Idaho contributes significant emissions of primary organic aerosol to the Class I areas in Montana and Wyoming. However, the majority of these emissions are due to natural fire and not anthropogenic fire. As shown in Figure 9–84 of the SIP submittal, anthropogenic burning in Idaho has the greatest impact in the Cabinet Mountain Wilderness Area in Montana, but even though Idaho contributes about 38% of the total primary organic aerosol at Cabinet Mountain Wilderness Area, of that, just 9% is from anthropogenic burning. (Most of the remaining primary organic aerosol emissions are from natural fire). Further, the 9% attributable to anthropogenic burning is projected to decrease to less than 5% in 2018. Also it is important to note that neither Montana nor Wyoming requested that Idaho reduce emissions when setting their reasonable progress goals. Contrary to what the commenter states, we believe Idaho is achieving its share of visibility progress at Class I areas in Montana and Wyoming.

Finally, the requirement prohibiting field burning when air quality is above 75% of any NAAQS is already a federally enforceable SIP measure. See 73 FR 44915 (August 1, 2008) (Final action approving Idaho's Revised Crop residue Disposal rules which included the 75% of NAAQS limit).Thus, adding the 75% limit to the Regional Haze SIP would provide no additional authority to regulate burning. Additionally, as described briefly in the Regional Haze SIP submittal Section 12.65 regarding the Long Term Strategy, crop residue burning is regulated with a permit-by-rule process which EPA has previously approved in the SIP. *Id.*

D. Consultation

Comment: The Shoshone-Bannock Tribes Air Quality Department expressed concerns that the Idaho SIP submittal did not provide enough detail of Wyoming's comments and consultation nor resolve the comments submitted by the federal land managers (FLMs).

Response: EPA disagrees with these comments regarding consultation. EPA's review of Idaho's SIP submittal indicates that Idaho conducted and documented the required consultation with States and FLMs. Appendix I of the Idaho Regional Haze SIP submission includes Idaho's responses to the FLM comments.

III. Final Action

EPA is approving the remaining portions of the Idaho Regional Haze SIP submission of October 25, 2010, as meeting the requirements set forth in section 169A and 169B of the Act and in 40 CFR 51.308 for preventing any future and remedying any existing visibility impairment in mandatory Class I areas caused by emissions of air pollutants from numerous sources located over a wide geographical area. Specifically included is EPA's approval of the reasonable progress provisions and the long term strategies.

IV. Scope of Action

Idaho has not demonstrated authority to implement and enforce IDAPA chapter 58 within ''Indian Country'' as defined in 18 U.S.C. 1151.[5] Therefore, EPA is not extending this SIP approval to ''Indian Country'' in Idaho. *See* CAA sections 110(a)(2)(A) (SIP shall include enforceable emission limits), 110(a)(2)(E)(i) (State must have adequate authority under State law to carry out SIP), and 172(c)(6) (nonattainment SIPs shall include enforceable emission limits). This is consistent with EPA's previous approval of Idaho's prevention of significant deterioration (PSD) program, in which EPA specifically disapproved the program for sources within Indian Reservations in Idaho because the State had not shown it had authority to regulate such sources. See 40 CFR 52.683(b). See 40 CFR 52.683(b). It is also consistent with EPA's approval of Idaho's title V air operating permits program. See 61 FR 64622, 64623 (December 6, 1996) (interim approval does not extend to Indian Country); 66 FR 50574, 50575 (October 4, 2001) (full approval does not extend to Indian Country).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve

[5] ''Indian country'' is defined under 18 U.S.C. 1151 as: (1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (2) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. Under this definition, EPA treats as reservations trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation. In Idaho, Indian country includes, but is not limited to, the Coeur d'Alene Reservation, the Duck Valley Reservation, the Reservation of the Kootenai Tribe, the Fort Hall Indian Reservation, and the Nez Perce Reservation as described in the 1863 Nez Perce Treaty.

state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian Country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Consistent with EPA policy, EPA nonetheless provided a consultation opportunity to Tribes in Idaho, Oregon, and Washington in letters dated January 14, 2011. EPA received one request for consultation, and we have followed up with that Tribe.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 7, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2))

List of Subjects in 40 CFR Part 52

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

Dated: October 24, 2012.

Dennis J. McLerran,

Regional Administrator, Region 10.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart N—Idaho

■ 2. Section 52.670 is amended in paragraph (e) by adding an entry to the end of the table to read as follows:

§ 52.670 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED IDAHO NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
*	*	*	*	*
Regional Haze SIP Revision.	State-wide	10/25/10	11/8/12 [Insert page number where the document begins].	The remaining portion of the regional haze SIP elements as proposed in the May 22, 2012 notice. 77 FR 30248.

■ 3. Section 52.672 is amended by adding paragraph (g)(2) to read as follows:

§ 52.672 Approval of plans.

* * * * *

(g) * * *

(2) EPA approves the remaining portions of the Regional Haze SIP revision submitted by the Idaho Department of Environmental Quality on October 25, 2010, as meeting the requirements of the Clean Air Act section 169A and 169B and 40 CFR 51.308.

[FR Doc. 2012–27216 Filed 11–7–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 02–278; FCC 12–21]

Telephone Consumer Protection Act of 1991

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission (FCC) is correcting a final rule that appeared in the **Federal Register** of October 16, 2012. The document announces the effective date of rules containing information collection requirements approved by the Office of the Management and Budget that were adopted to address unwanted telemarketing calls.

DATES: Effective October 16, 2012.

FOR FURTHER INFORMATION CONTACT: Karen Johnson, Consumer and Governmental Affairs Bureau, Consumer Policy Division, at (202) 418–7706 or email *Karen.Johnson@fcc.gov* *<mailto:Karen.Johnson@fcc.gov>.*

SUPPLEMENTARY INFORMATION: This document makes the following corrections to the final rule published October 16, 2012, at 77 FR 63240:

Corrected

1. On page 63240, column 2, revise the **DATES** section to read as follows:

DATES: The amendments to 47 CFR 64.1200(a)(2) and 64.1200(a)(3), published at 77 FR 34233, June 11, 2012, are effective October 16, 2013. 47 CFR 64.1200(a)(7), except 64.1200(a)(7)(i)(B), published at 77 FR 34233, June 11, 2012 is effective November 15, 2012.

47 CFR 64.1200(a)(7)(i)(B), published at 77 FR 34233, June 11, 2012, is effective January 14, 2013. 47 CFR 64.1200(b)(3), published at 77 FR 34233, June 11, 2012, is effective January 14, 2013.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–27118 Filed 11–7–12; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 77, No. 217
Thursday, November 8, 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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 33

[Docket No. FAA–2012–1085; Notice No. 33–12–02–SC1]

Special Conditions: Turbomeca Ardiden 3K Turboshaft Engine

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Turbomeca Ardiden 3K model engines. This engine model will have a novel or unusual design feature which is a 30-minute all engines operating (AEO) power rating for hovering at increased power (HIP). This rating is primarily intended for high-power hovering operations that are normal mission functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the FAA considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Send your comments on or before December 10, 2012.

ADDRESSES: Send comments identified by docket number FAA–2012–1085 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC, 20590–0001.
- *Hand Delivery of Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 8 a.m., and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: Docket Operations will post all comments it receives, without change, to *http://regulations.gov,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov.*

Docket: You may read background documents or comments received at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m., and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tara Fitzgerald, ANE–111, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; telephone (781) 238–7130; facsimile (781) 238–7199; email *tara.fitzgerald@faa.gov.* For legal questions concerning this proposed rule, contact Vincent Bennett, ANE–7 Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; telephone (781) 238–7044; facsimile (781) 238–7055; email *vincent.bennett@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views to the docket. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments received in the docket on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

Background

On September 15, 2010, Turbomeca S.A. (Turbomeca) applied for a type certificate for their new Ardiden 3K turboshaft engine. The Ardiden 3K engine is the first variant in the new Ardiden 3 series. This engine incorporates a two-stage centrifugal compressor that is driven by a single-stage high-pressure turbine. A two-stage power turbine drives the engine output shaft. The control system includes a dual-channel full-authority digital-electronic control.

The engine will incorporate a novel or unusual design feature, which is a 30-minute hovering at increased power (HIP) rating. The applicant requested this rating to support extended hover operations at high power.

A special condition is necessary to apply additional requirements for rating definition, instructions for continued airworthiness (ICA), instrumentation, and endurance testing because the applicable airworthiness standards do not contain adequate or appropriate airworthiness standards to address this design feature. The ICA requirement addresses the unknown nature of actual rating usage and associated engine deterioration. The applicant is expected to make an assessment of the expected usage, and publish ICAs and Airworthiness Limitations Section limits in accordance with those assumptions, such that engine deterioration is not excessive. The instrumentation requirement is to ensure that operators use this high-power rating within its limits, and that engine integrity is maintained. The endurance test requirement of 25 hours operation at 30-minutes HIP is similar to other special conditions recently issued. Because the Ardiden 3K model has a continuous one-engine inoperative (OEI) rating with limits equal to or higher than the proposed 30-minute HIP rating, the applicant may credit the test time performed at the continuous OEI rating toward the 25-hour requirement. However, test time spent at other rating elements of the test, such as takeoff or other OEI ratings (that are equal to or higher than HIP rating values), cannot

be counted toward the 25 hours of required running.

These special conditions contain the additional airworthiness standards necessary to establish a level of safety equivalent to the level intended by the applicable standards of airworthiness in effect on the date of application.

Type Certification Basis

Under the provisions of 14 CFR 21.17 and 21.101(a), Turbomeca must show that the model Ardiden 3K turboshaft engine meets the provisions of the applicable regulations in effect on the date of application, or later amendment if so elected. Accordingly, the certification basis for the Ardiden model turboshaft engine is determined to be part 33, effective February 1, 1965, as amended by Amendments 33–1 through 33–31.

If the FAA finds that the applicable airworthiness regulations in part 33, as amended, do not contain adequate or appropriate safety standards for the Turbomeca model Ardiden 3K turboshaft engine, because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

The FAA issues special conditions, as defined by 14 CFR 11.19, under 14 CFR 11.38, which become part of the type certification basis as specified in § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. If the type certificate for that model is amended later to include another related model that incorporates the same or similar novel or unusual design feature, or if any other model already included on the same type certificate is modified to incorporate the same or similar novel or unusual design feature, the special conditions would also apply to the other model.

Novel or Unusual Design Features

The Turbomeca model Ardiden 3K turboshaft engine will incorporate a 30-minute HIP rating, for use up to 30 minutes at any time between take-off and landing. The 30 minute time limit applies to each instance the rating is used; however there is no limit to the number of times the rating can be used during any one flight, and there is no cumulative time limitation. Special conditions for a 30-minute HIP rating are proposed to address this novel and unusual design feature. The special conditions are discussed below.

Discussion

The Turbomeca model Ardiden 3K turboshaft engine is a free turbine turboshaft designed for a transport category twin-engine helicopter. The helicopter manufacturer anticipates that extended hovering maneuvers may require more than maximum continuous power for up to 30 minutes. Turbomeca has requested a 30-minute HIP rating for use up to 30 minutes at any time between the take-off and landing phases of a flight. Turbomeca has indicated that the number of times this rating can be accessed in one flight is not limited, and there is no cumulative time limitation.

Applicability

As discussed above, these special conditions are applicable to TM model Ardiden 3K turboshaft engines. If TM applies later for a change to the type certificate to include another closely related model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on the Turbomeca Model Ardiden 3K turboshaft engine. It is not a rule of general applicability, and it affects only Turbomeca, who applied to the FAA for approval of these features on the engine.

List of Subjects in 14 CFR Part 33

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

The Proposed Special Conditions

Accordingly, the FAA proposes the following special conditions as part of the type certification basis for the Turbomeca model Ardiden 3K turboshaft engine.

1. PART 1 DEFINITIONS

Unless otherwise approved by the Administrator and documented in the appropriate manuals and certification documents, the following definition applies to this special condition: ''Rated 30-Minute Hover at Increased Power (HIP),'' means the approved shaft horsepower developed under static conditions at the specified altitude and temperature, and within the operating limitations established under part 33, and limited in use to periods not exceeding 30 minutes.

2. PART 33 REQUIREMENTS

(a) §§ 33.1 Applicability and 33.3 General. As applicable, all documentation, testing and analysis required to comply with the part 33 certification basis must account for the 30-minute HIP rating, limits and usage.

(b) *§ 33.4, Instructions for Continued Airworthiness (ICA).* In addition to the requirements of § 33.4, the ICA must:

(1) Include instructions to ensure that in-service engine deterioration due to rated 30-minute HIP usage will not be excessive, meaning that all approved ratings, including One Engine Inoperative (OEI), are available (within associated limits and assumed usage) for each flight; and that deterioration will not exceed that assumed for declaring a Time Between Overhaul period.

(2) Validate the adequacy of the maintenance actions required under paragraph (b)(1) of this section.

(3) Include in the Airworthiness Limitations section, any mandatory inspections and serviceability limits related to the use of the 30-minute HIP rating.

(c) *§ 33.29, Instrument Connection.* The engine must have a means or a provision for a means, which alerts the pilot when the 30-minute HIP rating time limit has expired.

(d) *§ 33.87, Endurance Test.* In addition to the applicable requirements of §§ 33.87(a), 33.87(d) and 33.87(e) (for engines that combine 2.5 minute and continuous OEI ratings):

(1) The overall test run must include a minimum of 25 hours of operation at 30-minute HIP rating and limits, divided into periods of not less than 30 minutes but not more than 60 minutes, with alternate periods at maximum continuous power or less.

(2) Each § 33.87(d)(3) continuous OEI rating test period of 60 minutes duration run at power and limits equal to or higher than the 30-minute HIP rating, may be credited toward this requirement. Note that the test time required for the takeoff or other OEI ratings may not be counted toward the 25 hours of testing required at the 30-minute HIP rating.

Issued in Burlington, Massachusetts on September 17, 2012.

Colleen M. D'Alessandro,

Assistant Manager, Engine and Propeller Directorate Aircraft Certification Service.

[FR Doc. 2012–25214 Filed 11–7–12; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–136491–09]

RIN 1545–BI91

Utility Allowances Submetering; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels a public hearing on proposed regulations under section 42 of the Internal Revenue Code; relating to the utility allowance regulations.

DATES: The public hearing originally scheduled for November 27, 2012 at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Oluwafunmilayo Taylor of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration) at (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and a notice of public hearing that appeared in the **Federal Register** on August 7, 2012 (77 FR 46987) announced that a public hearing was scheduled for November 27, 2012, at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The subject of the public hearing is under section 42 of the Internal Revenue Code.

The public comment period for these regulations expired on October 9, 2012. The notice of proposed rulemaking and notice of public hearing instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Friday, November 2, 2012, no one has requested to speak. Therefore, the public hearing scheduled for November 27, 2012, is cancelled.

LaNita VanDyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, Procedure and Administration.

[FR Doc. 2012–27333 Filed 11–7–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2012–0898]

RIN 1625–AA08

Special Local Regulations; 2012 Holiday Boat Parades, Captain of the Port Miami Zone; FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish five special local regulations during the month of December when holiday boat parades are scheduled to occur on the navigable waterways in vicinities of Fort Lauderdale, Pompano Beach, Palm Beach, Boynton Beach, Delray Beach, and Miami, Florida. These special local regulations are necessary to protect the public from the hazards associated with marine parades. The special local regulations consist of a series of moving zones, to include buffer areas, around participant vessels as they transit the navigable waters of the United States during these events. Persons and vessels that are not participating in the marine parade are prohibited from entering, transiting through, anchoring in, or remaining within any of the regulated areas unless authorized by the Captain of the Port Miami or a designated representative.

DATES: Comments and related material must be received by the Coast Guard on or before November 15, 2012.

Requests for public meetings must be received by the Coast Guard on or before November 15, 2012.

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

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* 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. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Junior Grade Mike H. Wu, Sector Miami Prevention Department, Coast Guard; telephone (305) 535–7576, email *Mike.H.Wu@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Public Participation and Request for Comments

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

1. Submitting Comments

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

To submit your comment online, go to *http://www.regulations.gov*, type the docket number (USCG–2012–0898) in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility,

please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number (USCG–2012–0898) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

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

4. Public Meeting

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

B. Regulatory History and Information

Previously, special local regulations regarding these maritime parades have been published in the Code of Federal Regulations at 33 CFR 100.701. However, the events, dates, and locations of the events described in this NPRM have changed sufficiently as to render the respective special local regulations set forth in 33 CFR 100.701 inapplicable.

The proposed special local regulations are not new in their entirety, but merely represent changes in the events that necessitate a revision to the special local regulations at 33 CFR 100.701 to more accurately reflect the anticipated details of the respective marine parades.

Section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)) authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not being able to facilitate a full 30 day comment period with respect to this rule because the Coast Guard did not receive necessary information regarding the changes to the events until October 22, 2012. As a result, the Coast Guard did not have sufficient time to both publish an NPRM and to maintain a 30 day comment period prior to the events. There is sufficient time to allow for some amount of comment period which the Coast Guard is facilitating. A full 30 day comment period would result in a delay in the effective date of this rule and such a delay would be contrary to the public interest because immediate action is needed to minimize potential danger to participants, vessels, spectators, and the public.

C. Basis and Purpose

(a) The legal basis for the rule is the Coast Guard's authority to establish special local regulations: 33 U.S.C. 1233.

(b) The purpose of the rule is to provide for the safety of life on the navigable waters during the holiday boat parades in the Captain of the Port Miami Zone.

D. Discussion of Proposed Rule

Multiple marine parades are planned for the holiday season throughout the Captain of the Port Miami Zone. The Coast Guard is establishing five special local regulations for marine parades during the month of December, 2012 within the navigable waters of the Captain of the Port Miami Zone. The special local regulations are listed below.

1. *Fort Lauderdale, Florida.* On December 15, 2012, Winterfest, Inc. is hosting the Seminole Hard Rock Winterfest Boat Parade on the New River and the Intracoastal Waterway in Fort Lauderdale, Florida. The marine parade will consist of approximately 120 vessels, and will begin at Cooley's Landing Marina and transit east on the New River, then head north on the Intracoastal Waterway to Lake Santa Barbara. A special local regulation was previously promulgated at 33 CFR 100.701, however, the promulgated regulation does not extend the special local regulation into the New River, nor does it provide sufficient detail regarding the regulation for the marine parade. Therefore, the special local regulation set forth in 33 CFR 100.701 is inapplicable for this year's marine parade. The proposed special local regulation consists of a moving zone that will include a buffer zone extending 50 yards ahead of the lead parade vessel, 50 yards astern of the last participant vessel, and 50 yards on either side of the parade. Notice of the special local regulation will be provided prior to the marine parade by Local Notice to Mariners and Broadcast Notice to Mariners. This special local regulation will be enforced from 2:30 p.m. until 11:30 p.m. on December 15, 2012.

2. *Pompano Beach, Florida.* On December 9, 2012, Greater Pompano Beach Chamber of Commerce is hosting the Pompano Beach Holiday Boat Parade on the Intracoastal Waterway in Pompano Beach, Florida. The marine parade will consist of approximately 50 vessels. The marine parade will begin at Lake Santa Barbara and transit north on the Intracoastal Waterway to the Hillsboro Bridge. A special local regulation was previously promulgated at 33 CFR 100.701, however, the date of the 2012 marine parade does not correspond with the date published in the Code of Federal Regulations. Therefore, the special local regulation set forth in 33 CFR 100.701 is inapplicable for this year's marine parade. The proposed special local regulation consists of a moving zone that will include a buffer zone extending 50 yards ahead of the lead parade vessel, 50 yards astern of the last participant vessel, and 50 yards on either side of the parade. Notice of the special local regulation will be provided prior to the marine parade by Local Notice to Mariners and Broadcast Notice to Mariners. This special local regulation will be enforced from 5:00 p.m. until 10:00 p.m. on December 9, 2012.

3. *Palm Beach, Florida.* On December 1, 2012, Marine Industries Association of Palm Beach County is sponsoring the Palm Beach Holiday Boat Parade. The marine parade will be held on the waters of the Intracoastal Waterway in Palm Beach, FL. The marine parade will consist of approximately 60 vessels. The marine parade will begin at Lake Worth Daymark 28 in North Palm Beach and end at Loxahatchee River Daymark 7 east of the Glynn Mayo Highway Bridge in Jupiter, FL. A special local regulation was previously promulgated at 33 CFR 100.701, however, the route of the 2012 marine parade does not correspond with the route published in the Code of Federal Regulations. Therefore, the

special local regulation set forth in 33 CFR 100.701 is inapplicable for this year's marine parade. The proposed special local regulation consists of a moving zone that will include a buffer zone extending 50 yards ahead of the lead parade vessel, 50 yards astern of the last participant vessel, and 50 yards on either side of the parade. Notice of the special local regulation will be provided prior to the marine parade by Local Notice to Mariners and Broadcast Notice to Mariners. The special local regulation will be enforced from 5:30 p.m. until 8:30 p.m. on December 1, 2012.

4. *Boynton Beach, Florida.* On December 7, 2012, Boynton Beach Community Development Agency is sponsoring the Boynton and Delray Holiday Boat Parade. The marine parade will be held on the waters of the Intracoastal Waterway in Boynton Beach, Florida. The marine parade will consist of approximately 40 vessels. The marine parade will begin at Boynton Inlet and continue south until the C–15 Canal. A special local regulation was previously promulgated at 33 CFR 100.701, however, the date of the 2012 marine parade does not correspond with the date published in the Code of Federal Regulations. Therefore, the special local regulation set forth in 33 CFR 100.701 is inapplicable for this year's marine parade. The proposed special local regulation consists of a moving zone that will include a buffer zone extending 50 yards ahead of the lead parade vessel, 50 yards astern of the last participant vessel, and 50 yards on either side of the parade. Notice of the special local regulation will be provided prior to the marine parade by Local Notice to Mariners and Broadcast Notice to Mariners. The special local regulation will be enforced from 6:00 p.m. until 8:00 p.m. on December 7, 2012.

5. *Miami, Florida.* On December 15, 2012, Miami Outboard Club is sponsoring the Miami Outboard Holiday Boat Parade. The marine parade will be held on the waters of Biscayne Bay, Miami, Florida and the Intracoastal Waterway. The marine parade will consist of approximately 70 vessels. The marine parade will begin at the Miami Outboard Club on Watson Island, head west around Palm Island and Hibiscus Island, head east between Di Lido Island, south through Meloy Channel, west through Government Cut to Bicentennial Park, south to the Dodge Island Bridge, south in the Intracoastal Waterway to Claughton Island, circling back to the north in the Intracoastal Waterway to end at the Miami Outboard Club. A special local regulation was previously promulgated at 33 CFR 100.701, however, the date of the 2012 marine parade does not correspond with the date published in the Code of Federal Regulations. Therefore, the special local regulation set forth in 33 CFR 100.701 is inapplicable for the 2012 marine parade. The proposed special local regulation consists of a moving zone that will include a buffer zone extending 50 yards ahead of the lead parade vessel, 50 yards astern of the last participant vessel, and 50 yards on either side of the parade. Notice of the special local regulation will be provided prior to the marine parade by Local Notice to Mariners and Broadcast Notice to Mariners. The special local regulation will be enforced from 7:00 p.m. until 11:00 p.m. on December 15, 2012.

Persons and vessels will be prohibited from entering, transiting through, anchoring, or remaining within the five aforementioned moving zones unless authorized by the Captain of the Port Miami or a designated representative. Persons and vessels desiring to enter, transit through, anchor in, or remain within any of the moving zones may contact the Captain of the Port Miami by telephone at 305–535–4472, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within any of the moving zones is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative.

E. Regulatory Analyses

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

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The economic impact of this proposed rule is not significant for the following reasons: (1) No single special local regulation will be enforced in excess of 9 hours, and all five enforcement periods combined will not exceed 23 hours; (2) non-participant persons and vessels may enter, transit through, anchor in, or remain within the regulated areas during their respective enforcement periods if authorized by the Captain of the Port Miami or a designated representative; (3) non-participant persons and vessels not able to enter, transit through, anchor in, or remain within the regulated areas without authorization from the Captain of the Port Miami or a designated representative may operate in the surrounding areas during the respective enforcement periods; (4) the moving zones will travel with the marine parades, allowing the enforcement areas to resume normal traffic patterns in a timely manner; and (5) the Coast Guard will provide advance notification of the special local regulations to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, anchor in, or remain within any of the special local regulations during the respective enforcement period. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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 proposed 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. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

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

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rule 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children from Environmental Health Risks

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

11. Indian Tribal Governments

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

12. Energy Effects

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

14. Environment

We have analyzed this proposed 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 made a preliminary determination 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 proposed rule involves special local regulations issued in conjunction with marine parades. This rule is categorically excluded from further review under paragraph 34(h) and 35(b) of Figure 2–1 of the Commandant Instruction. Preliminary environmental analysis checklists supporting this 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 proposed rule.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. Add a temporary § 100.35T07–0898 to read as follows:

§ 100.35T07–0898 Special Local Regulations; 2012 Holiday Boat Parades, Captain of the Port Miami Zone; FL.

(a) *Regulated Areas.* The following moving zones are regulated areas, with the specified enforcement period for each zone. The identities of the lead parade vessel and the last participating vessel will be provided prior to the marine parade by Broadcast Notice to Mariners.

(1) Fort Lauderdale, Florida. All waters within a moving zone that will begin at Cooley's Landing Marina and end at Lake Santa Barbara, which will include a buffer zone extending 50 yards ahead of the lead parade vessel and 50 yards astern of the last participating vessel and 50 yards on either side of the parade. This special local regulation will be enforced from 2:30 p.m. until 11:30 p.m. on December 15, 2012.

(2) Pompano Beach, Florida. All waters within a moving zone that will begin at Lake Santa Barbara and head north on the Intracoastal Waterway to end at the Hillsboro Bridge, which will include a buffer zone extending 50 yards ahead of the lead parade vessel and 50 yards astern of the last participating vessel and 50 yards on either side of the parade. This special local regulation will be enforced from 5:00 p.m. until 10:00 p.m. on December 9, 2012.

(3) Palm Beach, Florida. All waters within a moving zone that will begin at Lake Worth Daymark 28 in North Palm Beach and end at Loxahatchee River Daymark 7 east of the Glynn Mayo Highway Bridge in Jupiter, FL, which will include a buffer zone extending 50 yards ahead of the lead parade vessel and 50 yards astern of the last participating vessel and 50 yards on either side of the parade. The special local regulation will be enforced from 5:30 p.m. until 8:30 p.m. on December 1, 2012.

(4) Boynton Beach, Florida. All waters within a moving zone that will begin at

Boynton Inlet and end at the C–15 Canal, which will include a buffer zone extending 50 yards ahead of the lead parade vessel and 50 yards astern of the last participating vessel and 50 yards on either side of the parade. The special local regulation will be enforced from 6:00 p.m. until 8:00 p.m. on December 7, 2012.

(5) Miami, Florida. All waters within a moving zone that will transit as follows: The marine parade will begin at the Miami Outboard Club on Watson Island, head west around Palm Island and Hibiscus Island, head east between Di Lido Island, south through Meloy Channel, west through Government Cut to Bicentennial Park, south to the Dodge Island Bridge, south in the Intracoastal Waterway to Claughton Island, circling back to the north in the Intracoastal Waterway to end at the Miami Outboard Club. This will include a buffer zone extending to 50 yards ahead of the lead vessel and 50 yards astern of the last participating vessel and 50 yards on either side of the parade. The special local regulation will be enforced from 7:00 p.m. until 11:00 p.m. on December 15, 2012.

(b) *Definition.* The term ''*designated representative''* means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Miami in the enforcement of the regulated area.

(c) *Regulations.* (1) Non-participant persons and vessels are prohibited from entering the moving zones, to include the buffer zones. Non-participant persons and vessels may request authorization to enter, transit through, anchor in, or remain within the regulated area by contacting the Captain of the Port Miami by telephone at 305–535–4472, or a designated representative via VHF radio on channel 16. If authorization is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative.

(2) The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners and on-scene designated representatives.

(d) *Enforcement dates.* The enforcement dates for all of these rules fall between 12:01 a.m. on December 1, 2012 and 11:30 p.m. on December 31, 2012.

Dated: October 28, 2012.

C. P. Scraba,

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

[FR Doc. 2012–27319 Filed 11–7–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket No. USCG–2012–0103]

RIN 1625–AA01

Anchorages; Lower Mississippi River, Above Head of Passes, Convent, LA and Point Pleasant, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish two anchorage areas on the Lower Mississippi River, above the Head of Passes (AHP). The first would be located at the Belmont Light extending from Mile Marker (MM) 152.9 to 154 on the Left Descending Bank (LDB) of the river, the second at Bayou Goula, extending from MM 197.7 to 198.7 on the Right Descending Bank (RDB) of the river. These proposed anchorages would double the available anchorage area in these sections of the river, which is necessary to help accommodate increased vessel volume and improve navigational safety for vessels transiting these river sections.

DATES: Comments and related material must be received by the Coast Guard on or before December 10, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2012–0103 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* 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. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander (LCDR) Brandon Sullivan, Sector New Orleans, U.S. Coast Guard; telephone (504) 365–2280, email *Brandon.J.Sullivan@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Public Participation and Request for Comments

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

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2012–0103), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov,* or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number (USCG–2012–0103) in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit

comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

The comment period for this NPRM is 30 days from the date of publication in the **Federal Register**. The Lower Mississippi River Waterway Safety Advisory Committee, a Federal Advisory Committee, formally recommended creation of these anchorages at the committee meeting in December 2011. A comment period greater than 30 days is unnecessary in this case due to extensive discussion regarding these proposed anchorages that has occurred since that time. However, we will consider requests to extend the comment period.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2012–0103) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation, West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

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

4. Public Meeting

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

B. Basis and Purpose

The Coast Guard is authorized under section 7 of the Rivers and Harbors Act of 1915 (33 U.S.C. 471) to establish anchorages in the navigable waters of the United States through the regulations found in 33 CFR parts 109 and 110. At its December 2011 meeting, the Lower Mississippi River Waterway Safety Advisory Council (LMRWSAC) recommended the establishment of two anchorage areas in the Lower Mississippi River (LMR), AHP. LMRWSAC, a Congressionally-chartered Federal advisory committee, is responsible for advising, consulting with, and making recommendations to the Secretary of Homeland Security on navigational safety matters relating to the Lower Mississippi River. Participants at the December 2011 LMRWSAC meeting noted that the anchorages are necessary to address navigation safety concerns arising from the increased volume of vessels in the proposed areas. After extensive discussions, including observations of and comments from members of the public in attendance, LMRWSAC recommended that the Coast Guard establish the two anchorages.

Based on the recommendation of LMRWSAC, the Coast Guard proposes the two anchorage areas. The designated anchorage areas would relieve congestion and provide anchorage space to accommodate the increasing volumes of traffic in these areas of the LMR. The grain facility Zen-Noh predicts a steady 10 percent increase of vessels annually over the next 5 years. The recent addition of the Nucor Steel Louisiana iron making facility will further increase traffic; they are predicting the facility will serve 4–5 Panamax sized vessels a month.

In addition, the establishment of the Bayou Goula Anchorage would not only double the anchorage space available between Burnside, LA and Baton Rouge, LA, it would also provide a much needed alternative to anchor vessels during dredging operations at the White Castle Anchorage.

C. Discussion of Proposed Rule

The proposed amendment would create two new anchorage areas to be known as the Belmont Anchorage and Bayou Goula Anchorage. The Belmont Anchorage includes the area 1.1 miles in length along the left descending bank of the river extending from mile 152.9 (Belmont Light) to mile 154.0 above Head of Passes. The width of the anchorage is 300 feet. The inner boundary of the anchorage is a line parallel to the nearest bank 400 feet from the water's edge into the river as measured from the LWRP. The outer boundary of the anchorage is a line parallel to the nearest bank 700 feet from the water's edge into the river as measured from the LWRP. The anchorage may also be viewed by drawing rhumb lines joining points at:

Latitude	*Longitude*
30°00′51.494″	90°46′35.574″
30°00′52.881″	90°46′36.609″
30°00′52.074″	90°46′40.399″
30°00′48.973″	90°46′51.478″
30°00′47.038″	90°46′59.290″
30°00′43.370″	90°47′8.183″
30°00′40.939″	90°47′13.687″
30°00′36.914″	90°47′20.258″
30°00′30.675″	90°47′29.094″
30°00′25.657″	90°47′35.682″
30°00′18.677″	90°47′43.214″
30°00′15.448″	90°47′39.349″

The Bayou Goula anchorage includes the area 1.0 mile in length along the right descending bank of the river extending from mile 197.7 to mile 198.7 above the Head of Passes. The width of the anchorage is 500 feet. The inner boundary of the anchorage is a line parallel to the nearest bank 200 feet from the water's edge in the river as measured from the LWRP. The outer boundary of the anchorage is a line parallel to the nearest bank 700 feet from the water's edge into the river as measured from the LWRP. The anchorage may also be viewed by drawing rhumb lines joining points at:

Latitude	*Longitude*
30°14′18.387″	91°07′31.710″
30°14′20.749″	91°07′34.063″
30°14′15.236″	91°07′49.009″
30°14′11.122″	91°07′56.033″
30°14′7.648″	91°08′1.368″
30°14′1.284″	91°08′10.983″
30°13′56.444″	91°08′19.028″
30°13′51.207″	91°08′23.955″
30°13′47.977″	91°08′20.737″

The anchorage areas would be for temporary use by vessels of all types. Vessels may occupy the anchorage areas during a wide range of conditions and for a broad variety of purposes. For example, vessels would be allowed to anchor temporarily while taking on stores, transferring personnel, or engaging in bunkering operations. Vessels would also be allowed to use anchorage areas while awaiting weather and other conditions favorable to resuming their voyage. The Captain of the Port New Orleans or his designated representative may direct the movement of any vessel anchored or moored within the anchorage areas.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The impacts on routine navigation are expected to be minimal because the proposed anchorage areas would not unnecessarily restrict traffic as they are located outside of the established navigation channel. Vessels would be able to maneuver in, around, and through the anchorages. Operators who choose to maneuver their vessels around a proposed anchorage area would not be significantly impacted because the total distance to transit around each anchorage perimeter to the other side does not exceed more than 1.1 nautical miles.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit through the proposed anchorage areas at both Belmont and Bayou Goula. These anchorages would not have a significant economic impact on a substantial number of small entities for the following reasons: The anchorages would double the anchorage areas in both proposed locations, thus allowing greater vessel volume in order to meet the growing economic needs of facilities along the river, and vessel traffic could pass safely around the anchorages.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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 proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

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

5. Federalism

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

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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children From Environmental Health Risks

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

11. Indian Tribal Governments

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

12. Energy Effects

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

14. Environment

We have analyzed this proposed 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 made a preliminary determination 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 proposed rule involves establishing anchorages and as such is categorically excluded, under figure 2–1, paragraph (34) (f) of the Instruction. A preliminary ''Environmental Analysis Check List'' supporting this determination is 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 proposed rule.

List of Subjects in 33 CFR Part 110

Anchorage Regulations.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

2. In § 110.195(a), add new paragraphs (34) and (35) to read as follows:

§ 110.195 Mississippi River below Baton Rouge, LA, including South and Southwest Passes.

(a) * * *

(34) *Belmont Anchorage.* An area 1.1 miles in length along the left descending bank of the river extending from mile 152.9 (Belmont Light) to mile 154.0 above Head of Passes. The width of the anchorage is 300 feet. The inner boundary of the anchorage is a line parallel to the nearest bank 400 feet from the water's edge into the river as measured from the LWRP. The outer boundary of the anchorage is a line parallel to the nearest bank 700 feet from the water's edge into the river as measured from the LWRP.

(35) *Bayou Goula Anchorage.* An area 1.0 mile in length along the right descending bank of the river extending from mile 197.7 to mile 198.7 above the Head of Passes. The width of the anchorage is 500 feet. The inner boundary of the anchorage is a line parallel to the nearest bank 200 feet from the water's edge in the river as measured from the LWRP. The outer boundary of the anchorage is a line parallel to the nearest bank 700 feet from the water's edge into the river as measured from the LWRP.

* * * * *

Dated: October 30, 2012.

Roy A. Nash,

Rear Admiral, U. S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 2012–27270 Filed 11–7–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2012–0255; A–1–FRL–9749–7]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Reasonably Available Control Technology Update To Address Control Techniques Guidelines Issued in 2006, 2007, and 2008

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of New Hampshire. The revision establishes Reasonably Available Control Technology (RACT) for several categories of volatile organic compound (VOC) sources. The intended effect of this action is to approve these requirements into the New Hampshire SIP. This action is being taken in accordance with the Clean Air Act.

DATES: Written comments must be received on or before December 10, 2012.

ADDRESSES: Submit your comments identified by Docket ID Number EPA–R01–OAR–2012–0255 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: arnold.anne@epa.gov.*
3. *Fax:* (617) 918–0047.
4. *Mail:* ''Docket Identification Number EPA–R01–OAR–2012–0255,'' Anne Arnold, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912.
5. *Hand Delivery or Courier.* Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays. Please see the direct final rule which is located in the Rules Section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: David Mackintosh, Air Quality Planning Unit, U.S. Environmental Protection Agency, New England Regional Office, 5 Post Office Square—Suite 100, (Mail Code OEP05–02), Boston, MA 02109–3912, telephone 617–918–1584, facsimile 617–918–0584, email *mackintosh.david@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

Dated: October 25, 2012.

H. Curtis Spalding,

Regional Administrator, EPA New England.

[FR Doc. 2012–27218 Filed 11–7–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 424

[Docket No. FWS–R9–ES–2011–0073: Docket No. NOAA–120606146–2146–01: 4500030114]

RIN 1018–AY62; 0648–BC24

Endangered and Threatened Wildlife and Plants; Revisions to the Regulations for Impact Analyses of Critical Habitat

AGENCY: U.S. Fish and Wildlife Service, Interior; National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule, reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (collectively referred to as the ''Services'' or ''we''), announce the reopening of the public comment period on our August 24, 2012, proposed rule to revise our regulations pertaining to impact analyses conducted for designations of critical habitat under the Endangered Species Act of 1973, as amended (the Act). We are reopening the comment period to allow all interested parties additional time to review and comment on our proposed rule. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule.

DATES: We will accept comments from all interested parties until February 6, 2013. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES** below), the deadline for submitting an electronic comment is 11:59 p.m. Eastern Standard Time on this date.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Search for FWS–R9–ES–2011–0073, which is the docket number for this rulemaking.
- *U.S. Mail or Hand Delivery:* Public Comments Processing, Attn: FWS–R9–ES–2011–0073; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, PDM–2042; Arlington, VA 22203.

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 Information section below for more information).

FOR FURTHER INFORMATION CONTACT: Douglas Krofta, U.S. Fish and Wildlife Service, Division of Conservation and Classification, 4401 N. Fairfax Drive, Suite 420, Arlington, VA, 22203, telephone 703/358–2171; facsimile 703/358–1735; or Marta Nammack, National Marine Fisheries Service, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910, telephone 301/713–1401; facsimile 301/713–0376. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

On August 24, 2012, we published a proposed rule to amend our implementing regulations at 50 CFR 424.19 to clarify the instructions for making information available to the public, considering the impacts of critical habitat designations, and considering exclusions from critical habitat. These changes are being proposed as directed by the President's February 28, 2012, memorandum, which directed the Secretary of the Interior to revise the regulations implementing the Endangered Species Act to provide that a draft economic analysis be completed and made available for public comment at the time of publication of a proposed rule to designate critical habitat.

Request for Information

We will accept written comments and information during this reopened comment period on our proposed rule to revise our regulations pertaining to impact analyses conducted for designations of critical habitat that was published in the **Federal Register** on August 24, 2012 (77 FR 51503). We will consider information and recommendations from all interested parties. We intend that any final regulation resulting from this proposal be as accurate as possible and based on the best available scientific and commercial data.

If you previously submitted comments or information on the proposed rule, please do not resubmit them. We have incorporated them into the public record, and we will fully consider them in the preparation of our final determination. Any final regulation based on this proposal will consider information and recommendations timely submitted from all interested parties. We solicit comments, information, and recommendations from governmental agencies, Native American tribes, the scientific community, industry groups, environmental interest groups, and any other interested parties on this proposed regulation. All comments and materials received by the date listed in **DATES** above will be considered prior to the approval of a final document.

You may submit your comments and materials concerning the proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**. If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Information and supporting documentation that we receive in response to this proposed rule will be available for you to review at *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Division of Conservation and Classification (see **FOR FURTHER INFORMATION CONTACT**).

Dated: November 1, 2012.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks, U.S. Department of the Interior.

Dated: October 24, 2012.

Paul Doremus,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 2012–27248 Filed 11–7–12; 8:45 am]

BILLING CODE 4310–55–P 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120813331–2562–01]

RIN 0648–XC164

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Proposed Rule to Implement a Targeted Acadian Redfish Fishery for Sector Vessels

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

ACTION: Proposed rule; request for comments.

SUMMARY: This action would expand on a previously approved sector exemption by allowing groundfish sector trawl vessels to harvest redfish using nets with codend mesh as small as 4.5 inches (11.4 cm). In addition, this action proposes to implement an industry-funded at-sea monitoring program for sector trips targeting redfish with trawl nets with mesh sizes that are less than the regulated mesh size requirement.

DATES: Written comments must be received on or before November 23, 2012.

ADDRESSES: A copy of the accompanying environmental assessment and the final draft of Component 2 of the REDNET project are available from the NMFS Northeast Regional Office: John K. Bullard, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. These documents are also accessible via the Federal eRulemaking Portal: *http://www.regulations.gov*.

You may submit comments, identified by NOAA–NMFS–2011–0264, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal: *http://www.regulations.gov*.
- *Fax:* (978) 281–9135, Attn: William Whitmore.
- *Mail:* Paper, disk, or CD–ROM comments should be sent to John K. Bullard, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: ''Comments on Redfish Rule.''

Instructions: All comments received are part of the public record and will generally be posted to *http://www.regulations.gov* without change. No comments will be posted for public viewing until after the comment period has closed. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may 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). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Once submitted to NMFS, copies of addenda to FY 2012 sector operations plans detailing industry-funded monitoring plans, and the supplemental environmental assessment (EA), will be available from the NMFS NE Regional Office at the mailing address above.

FOR FURTHER INFORMATION CONTACT: William Whitmore, Fishery Policy Analyst, phone (978) 281–9182, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

1. Exemption from 6.5-inch (16.5-cm) Codend Mesh Size so Vessels Can Target Redfish

Regulations from Amendment 16 to the Northeast (NE) Multispecies Fishery Management Plan (FMP) allow a sector to request exemptions from Federal fishing regulations through its annual operations plan (for more information on sector operations plans and regulatory exemptions, see the fishing year 2012 sector operations plan proposed rule, 77 FR 8780, February 15, 2012).

In their 2011 and 2012 operations plans, several sectors in the NE multispecies fishery requested an exemption from NE multispecies codend mesh-size restrictions so they could use 5-inch (12.7-cm) codend mesh to target redfish, a fully rebuilt groundfish stock. These requests were denied because, at that time, we were waiting for results from a collaborative redfish research project that was looking at redfish bottom trawl fishing using small-mesh nets. The project, known as REDNET, is comprised of a group of researchers, commercial fishermen, and other interested stakeholders who are working to further improve and develop the redfish fishery. Sectors also requested an exemption to use 6-inch (15.2-cm) mesh to target redfish in their 2012 operations plans. This exemption was approved, and an explanation is provided below.

On December 1, 2011, following the completion of a portion of the REDNET project, the Sustainable Harvest Sector and the Northeast Fishery Sectors submitted an exemption request to us to use 4.5-inch (11.4-cm) codend mesh to target redfish in a portion of the Gulf of Maine, east of the year-round Western Gulf of Maine Closure Area. The sectors submitted preliminary results from the REDNET project to justify their exemption request. Sectors are normally required to submit their exemption requests by September 1 to ensure that any necessary analyses can be included in the required environmental assessment (EA) in time for fishing operations to start at the beginning of the following fishing year (i.e., May 1). Due to the late timing of this 4.5-inch (11.4-cm) codend mesh exemption request, we were unable to include any analyses to accompany the rulemaking for the fishing year 2012 sector operations plans. We explained to the requesting sectors that the initial study results from the REDNET research project showed some potential that 4.5-inch (11.4-cm) codend mesh could be used to successfully target redfish with minimal bycatch of other fish species. But we also commented that the study would need to be completed and reviewed prior to the exemption being considered by NMFS. We also informed the sectors that the study results should be sent through the New England Fishery Management Council's (Council) Research Steering Committee for review.

Preliminary findings from Component 2 (of 6) of the REDNET report were presented to the Council on February 1, 2012. Following the presentation, the Council requested that NMFS expedite approval of a sector exemption allowing vessels to more easily target redfish. In response to the Council's request, and because we determined that a reduction to 6.0-inch (15.2-cm) codend mesh represented a minor change, sectors were granted an exemption from mesh size restrictions for fishing year 2012, and are now able to utilize 6.0-inch (15.2-cm) codend mesh to target redfish (see the final rule approving sector operations plans (77 FR 26129; May 2, 2012)). As proposed by the sectors, vessels fishing with 6.0-inch (15.2-cm) codend mesh size on the exemption trips are required to have a NMFS-certified observer or at-sea monitor on board. In addition, vessels targeting redfish under this exemption must notify their sector manager that they intend to target redfish and must submit daily catch reports to their sector manager.

A report summarizing the results of Component 2 of the REDNET project was completed in April 2012. Although the results were encouraging, the report lacked detail with regard to the actual design of the gear tested, the operational procedures vessels used when targeting redfish and what a ''significant'' amount of minimal bycatch of other fish species is. Also, Component 2 of the REDNET project was considered exploratory/demonstration fishing and was not a designed study.

In a May 21, 2012, letter to the Council, we requested that the Council's Research Steering Committee review the summary report mentioned above at its June 25, 2012, meeting and provide comments on the report, as well as on the feasibility for granting a regulatory exemption to allow sector vessels to use codend mesh as small as 4.5 inches (11.4-cm) to target redfish. The Research Steering Committee reviewed the REDNET report and identified concerns similar to those listed above. The Committee recommended that an exemption allowing vessels to use 4.5-inch (11.4-cm) mesh codend to target redfish be approved annually based on catch information from the previous year.

As explained above, exemptions are normally proposed, reviewed, and approved through the final rule implementing the annual sector operations plans; however, sectors can request exemptions at any time within the fishing year. Because the Council has requested that NMFS pursue exemptions allowing sector vessels to more efficiently target redfish, and the Research Steering Committee has endorsed the approval of a 4.5-inch (11.4-cm) mesh exemption, this action proposes a 4.5-inch (11.4-cm) codend trawl mesh exemption for potential mid-year implementation. All measures proposed for this exemption are also being extended to the currently approved 6-inch (15.2-cm) codend mesh exemption.

To aid in identifying trips targeting redfish with small-mesh nets, all sector trawl vessels that intend to target redfish with codend mesh greater than or equal to 4.5 inches (11.4-cm) but less than 6.5 inches (16.5-cm) (the required regulated codend mesh size for the area fished), would be required to have an observer or at-sea monitor on board, and would be required to submit a trip start hail prior to leaving port. Sector vessels intending to utilize this exemption would also be required to submit a trip start hail identifying the trip as one that will target redfish under the exemption.

To ensure that this exemption does not negatively impact fish stocks, we are proposing two catch thresholds that, if exceeded by a sector, could, taking into account the circumstances, result in the NMFS Northeast Regional Administrator rescinding approval of the exemption for the sector in question. To help ensure that vessels do not direct on other species of fish while using small mesh, monthly catch amounts under this exemption must be comprised of at least 80 percent redfish. Additionally, to help mitigate catches of sub-legal sized groundfish, total groundfish discards (excluding redfish discards), may not exceed 5 percent of all groundfish caught when directing on redfish with small-mesh nets. These thresholds were determined to be consistent with catch information from REDNET trips. The final report for Component 2 of the REDNET project is available for review and the analyses for these thresholds are included in the accompanying EA (see **ADDRESSES** section). This rule also proposes that the Regional Administrator could further adjust these two thresholds, if necessary, to help ensure that vessels are directing on redfish and catching minimal amounts of undersized groundfish.

Sector catch utilizing this exemption would be analyzed monthly with a cumulative calculation. If a sector exceeds either of the thresholds, it would have 1 month to correct this overage. If, after 1 month, the sector has still exceeded either threshold, the exemption for that particular sector could be revoked by the Regional Administrator for the remainder of the fishing year through a notice published consistent with the Administrative Procedure Act. An interim reporting process would be developed to monitor catch under this exemption. Because of these catch thresholds, a catch monitoring program, and the requirement to submit a trip start hail, sector vessels would no longer be required to submit daily catch reports they currently submit when utilizing the 6.0-inch (15.2-cm) codend mesh exemption. The reporting mechanisms used for submitting catch data may be adjusted at any time if deemed necessary by the Regional Administrator.

In addition, the Regional Administrator would reserve the right to revoke this exemption if it is determined that the exemption is negatively impacting spawning fish, rebuilding efforts for any groundfish stocks, or populations of stocks that the current minimum codend mesh size of 6.5 inches (16.5-cm) was intended to protect.

Vessels requesting this exemption have asked that they be allowed to fish under this exemption with small mesh and fish with regulated codend mesh nets for other groundfish stocks on the same trip. Supporters of this request claim that vessels need this additional flexibility on a trip to maximize profits, arguing that catch information could be linked to the mesh size fished by observers or at-sea monitors. NMFS has some concern about vessels fishing multiple mesh sizes on the same trip. Both NMFS' Office of Law Enforcement and the U.S. Coast Guard have commented that allowing vessels to fish multiple mesh sizes on the same trip undermines the ability to monitor the catch composition that corresponds with each mesh size fished, and to ensure that groundfish are not targeted with undersized mesh. Because observers and at-sea monitors do not observe every haul (fishing operations may occur while they are sleeping), exact catch from these hauls cannot be identified and included in catch thresholds. Also, during unmonitored times, vessels have an opportunity to either illegally discard fish caught with smaller mesh in an effort to remain within the catch thresholds or target groundfish with the smaller mesh nets. Because adequate catch monitoring is necessary to apply the proposed bycatch thresholds and to differentiate catch between small and standard groundfish mesh sizes, we are expecting that the majority of hauls be recorded by an at-sea monitor or observer on a trip targeting redfish. If the majority of haul backs are not observed, the Regional Administrator could revoke the exemption.

Despite the concerns described above, we are proposing that trawl vessels targeting redfish using nets of codend mesh less than the regulated mesh size be allowed; however, we are specifically requesting public comment on this issue. If this flexibility measure is approved, the thresholds would only be applied to portions of the trip when vessels are trawling with small mesh.

2. Request To Develop Industry-Funded At-Sea Monitoring Programs for Trips Targeting Redfish

Currently, any sector vessel targeting redfish under a mesh size exemption is required to have an at-sea monitor or observer on board. Some sectors are concerned that their ability to utilize this exemption is restricted because vessels have to wait to be randomly selected for a federally funded observer or at-sea monitor. As a result, several sectors have asked to work with us to develop an industry-funded at-sea

monitoring program so they could take more trips targeting redfish. After considering the request, we have determined that we could support a small-scale industry-funded program. Limitations to the size of the program are due to a limited pool of available at-sea monitors and observers.

Specifically, 4 sectors (26 vessels) have expressed interest in funding additional at-sea monitoring coverage for trips targeting redfish. Here, NMFS proposes that any sector interested in developing an industry-funded at-sea monitoring program be required to develop a monitoring plan and include this plan in its operations plan. The monitoring plan would be reviewed by NMFS, and if it is determined that the plan is sufficient, it would be approved along with the rest of the sector's operations plan. For fishing year 2012, any approved at-sea monitoring program would be included as an addendum to the sector's operations plan.

NMFS also proposes that a vessel in a sector that has an approved industry-funded at-sea monitoring program must notify NMFS of its intent to take a small-mesh trip targeting redfish at least 48 hours in advance. Instead of calling into the Pre-Trip Notification System currently established for sector vessels, the vessel would call into a separate system when intending to fish under the small-mesh exemption. Vessels enrolled in a sector that has an approved industry-funded monitoring program would forfeit the opportunity to have a federally funded observer or at-sea monitor assigned for coverage. In other words, any vessel in a sector that has an approved industry-funded program and that elects to target redfish under the redfish exemption would be required to pay for at-sea monitoring coverage for that trip. Once a sector has an approved at-sea monitoring program for targeted redfish trips, the sector may not opt-out of the program until the following fishing year.

Alternatively, vessels could elect to target redfish under the small-mesh exemption only when randomly assigned a federally funded observer or at-sea monitor. Importantly, under this proposal, all groundfish catch from a declared small-mesh redfish trip would be debited against the sector's allocation. Catch from small-mesh redfish trips would not be factored into a sector's overall discard rate, regardless of whether the monitor is federally or industry funded. Because normal groundfish trips and targeted redfish trips may exhibit different behavior and/or catch rates, the discarded fish should be treated differently based on the trip that is taken.

Classification

The NMFS Assistant Administrator has made a preliminary determination that this proposed rule is consistent with the NE Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment. This action is exempt from review under Executive Order (E.O.) 12866.

This proposed rule would expand on a previously approved regulatory exemption for NE multispecies sector trawl vessels by allowing them to target redfish with codend mesh nets as small as 4.5 inches (11.4-cm). In addition, this action would allow sectors to develop and fund their own at-sea monitor program for trips targeting redfish.

Public comments on the proposed rule must be received by the end of the comment period. All comments received by the end of the comment period will be considered in the approval/disapproval decision. To be considered, comments must be received by close of business on the last day of the comment period; that does not mean postmarked or otherwise transmitted by that date.

Pursuant to section 605 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–12, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this action, if implemented, would not have a significant economic impact on a substantial number of small entities; therefore, an Initial Regulatory Flexibility Analysis (IRFA) has not been prepared. The factual basis for this determination is explained below.

There are two objectives of this proposed action. The first is to authorize a regulatory exemption that would allow NE multispecies sector vessels to fish bottom trawls with codend mesh sizes greater or equal to 4.5 inches (11.4-cm) but less than 6.5 inches (16.5-cm) when targeting redfish. The second is to allow sectors to develop an industry-funded at-sea monitoring program for trips targeting redfish. All sector vessels could potentially utilize the mesh-size exemption. Currently, approximately 4 sectors, or 26 of 850 sector vessels signed into the 2012 fishing year sector program, have expressed interest in developing an industry-funded at-sea monitoring program.

Because of the limited scope of this proposed rule, the impacts of the preferred alternatives would only directly affect a small number of small businesses. As stated above, four sectors have expressed interest in funding an at-sea monitoring program. The SBA size standard for small fishing entities is $4 million in gross sales. No groundfish entity (vessel) exceeds this threshold. Therefore, all permitted and participating vessels in the groundfish fishery are considered to be small fishing entities. It is anticipated that the approximately 26 vessels from these sectors that have expressed interest will target redfish with small mesh on 102 trips. This represents roughly 6 percent of active groundfish vessels and 0.7 percent of the groundfish trips taken by those vessels. Importantly, the proposals in this rule are strictly voluntary; these actions were requested by fishermen to enhance fishing opportunities, improve operational flexibility, and increase profits.

The RFA requires Federal agencies to consider disproportionality and profitability to determine the significance of regulatory impacts. If approved, all sector vessels would have the same opportunity to utilize smaller codend mesh to target redfish. Accordingly, no small entities would be disproportionately impacted in relation to large entities.

Allowing sector vessels to fish with smaller mesh while targeting redfish would increase fishing efficiency and, therefore, revenue. Due to limits in Federal funding for observer coverage, sector vessels are unable to fish for redfish with small mesh as frequently as they would like, because observers or at-sea monitors are not available to monitor trips. Allowing sectors to pay for additional at-sea monitoring, as they requested, would increase operational flexibility by allowing vessels to take more trips. The catch from these additional trips would increase profits. These provisions are not restrictions, but requests by sectors that could improve efficiencies and increase profits. Therefore, the profitability criterion is not met because no reductions in profit are expected for any small entities.

Because this proposal would only provide economic benefits to the affected small entities, there is no significant economic impact to a substantial number of small entities. No assumptions are necessary to conduct the analyses in support of this conclusion. As a result, an IRFA is not required and none has been prepared.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule

This proposed rule contains no collection-of-information requirement subject to the Paperwork Reduction Act.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on proposed sector operations plan addenda.

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

Dated: November 1, 2012.

Samuel D. Rauch III,

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

[FR Doc. 2012–27245 Filed 11–7–12; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 77, No. 217
Thursday, November 8, 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 COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Highly Migratory Species Tournament Registration and Reporting.

OMB Control Number: 0648–0323.

Form Number(s): NA.

Type of Request: Regular submission (revision and extension of a current information collection).

Number of Respondents: 300.

Average Hours per Response: Registration, 2 minutes; reporting, 20 minutes.

Burden Hours: 110.

Needs and Uses: This request is for revision and extension under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), NOAA's National Marine Fisheries Service (NMFS) is responsible for management of the nation's marine fisheries. Existing regulations require operators of tournaments involving Atlantic highly migratory species (HMS), specifically Atlantic swordfish, sharks, billfish, and tunas, to register four weeks in advance of the tournament. Operators must provide contact information and the tournament's date(s), location(s), and target HMS. If selected by NMFS, operators are required to submit an HMS tournament summary report within seven days after tournament fishing has ended. Most of the catch data in the summary report is routinely collected in the course of regular tournament operations. NMFS uses the data to estimate the total annual catch of HMS and the impact of tournament operations in relation to other types of fishing activities. In addition, HMS tournament registration provides a method for tournament operators to request educational and regulatory outreach materials from NMFS.

Revision: There have been changes to the forms, to simplify completion.

Affected Public: Business or other for-profit organizations, individuals or households.

Frequency: Annually and on occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: OIRA_Submission@omb.eop.gov.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: November 2, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–27264 Filed 11–7–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Proposed Information Collection; Comment Request; BIS Program Evaluation

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before January 7, 2013.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Larry Hall, BIS ICB Liaison, (202) 482–4895, *Lawrence.Hall@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information is necessary to obtain feedback from seminar participants. This information helps BIS determine the effectiveness of its programs and identifies areas for improvement. The gathering of performance measures on the BIS seminar program is also essential in meeting the agency's responsibilities under the Government Performance and Results Act (GPRA).

II. Method of Collection

Paper questionnaires.

III. Data

OMB Control Number: 0694–0125.

Form Number(s): N/A.

Type of Review: Regular submission (extension of a currently approved information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 3,000.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 500.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

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 (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 2, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–27261 Filed 11–7–12; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–918]

Steel Wire Garment Hangers From the People's Republic of China: Antidumping Duty Administrative Review, 2010–2011

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

SUMMARY: The Department of Commerce (''the Department'') is conducting the third administrative review of steel wire garment hangers from the People's Republic of China (''PRC'') for the period October 1, 2010, through September 30, 2011. The Department has preliminarily determined that Shanghai Wells Hanger Co., Ltd., Hong Kong Wells Ltd., (USA), and Hong Kong Wells Ltd.,[1] did not sell subject merchandise in the United States at prices below normal value (''NV'').

DATES: Effective November 8, 2012.

FOR FURTHER INFORMATION CONTACT: Kabir Archuletta, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2593.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise that is subject to the order is steel wire garment hangers. The products subject to the order are currently classified under U.S. Harmonized Tariff Schedule (''HTSUS'') subheadings 7326.20.0020, 7323.99.9060, and 7323.99.9080. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise remains dispositive.[2]

Withdrawal of Requests for Review

On February 28, 2012, M&B Metal Products Co., Inc (''Petitioner''), withdrew its request for an administrative review of 52 of the 59 companies under review.[3] On July 11, 2012, the Department published a notice of rescission in the **Federal Register** for those companies for which the request for review was withdrawn and which also had a separate rate from a previous segment of this proceeding.[4] The Department stated that it would address the disposition of the remaining withdrawn companies that do not have a separate rate in the preliminary results of this review.[5]

The deadline to file a separate rate application, separate rate certification, or a notification of no sales, exports or entries, is 60 days after the initiation of the administrative review,[6] which in this case was January 29, 2012. Therefore, as of January 30, 2012, the remaining companies under review that did not demonstrate eligibility for a separate rate effectively became part of the PRC-wide entity. Accordingly, while the requests for review of those companies were withdrawn by Petitioner on February 28, 2012, those withdrawn companies remain under review as part of the PRC-wide entity, and the Department will make a determination with respect to the PRC-wide entity in these preliminary results and, ultimately, the final results.[7]

Methodology

The Department is conducting this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (''the Act''). Constructed export prices and export prices have been calculated in accordance with section 772 of the Act. Because the PRC is a nonmarket economy within the meaning of section 771(18) of the Act, normal value has been calculated in accordance with section 773(c). Specifically, the Shanghai Wells Group's factors of production have been valued using Philippine prices, a country that is economically comparable to the PRC and that is a significant producer of comparable merchandise.

For a full description of the methodology underlying our conclusions, please see the Preliminary Decision Memorandum.[8] The

[1] The Department previously found that Shanghai Wells Hanger Co., Ltd. (''Shanghai Wells''), Hong Kong Wells Ltd. (''HK Wells'') and Hong Kong Wells Ltd. (USA) (''Wells USA'') are affiliated and that Shanghai Wells and HK Wells comprise a single entity (collectively, ''Shanghai Wells Group''). Because there were no changes in this review, we continue to find Shanghai Wells, HK Wells, and USA Wells are affiliated and that Shanghai Wells and HK Wells comprise a single entity. *See Steel Wire Garment Hangers From the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the First Antidumping Duty Administrative Review,* 75 FR 68758, 68761 (November 9, 2010), unchanged in *First Administrative Review of Steel Wire Garment Hangers From the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 76 FR 27994, 27996 (May 13, 2011).

[2] *See* Notice of Antidumping Duty Order: Steel Wire Garment Hangers from the People's Republic of China, 73 FR 58111 (October 6, 2008).

[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).

[4] *See Steel Wire Garment Hangers From the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review,* 77 FR 40853, 40854 (July 11, 2012).

[5] *See id.* at 77 FR 40854 n.5.

[6] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation In Part,* 76 FR 74041, 74041 (November 30, 2011).

[7] The following companies are considered part of the PRC-wide entity for these preliminary results: Brightwell (Hong Kong) Enterprise Ltd.; Delmar International (China Inc.; Hangzhou Chenyang Plastic Dipping Co., Ltd.; Hezhou City Yaolong Trade Co Ltd; Jiaxing Boyi Medical Device Co. Ltd.; Jingdezhen Honghe Im. & Ex. Trade Co. Ltd.; Kingtex Imp & Exp Co., Ltd.; Mao's Clothes Hangers Co., Ltd.; Ningbo Beilun Huafa Metal Products; Quanzhou Xiongxin Trade Co., Ltd.; Quyky Yanglei International Co., Ltd.; Shaan Xi Succeed Tradeing Co., Ltd.; Shandong Autjinrong Found-Assemble Co., Ltd.; Shanghai Almex Co., Ltd.; Shanghai China Light Industry International; Shanghai Jinda Imp & Exp Inc.; Shanghai M2M Imp. Exp. Co., Ltd.; Shanghai Mosta Wath & Clock Imp. Exp.; Shanghai Ruishan Metal Products Co., Ltd.; Shanghai Sagacity International; Shanghai Sanmao Import & Export; Shanghai Shengsing Enterprise Co.; Shanghai Textile Raw Materials; Shanghai Textile United Co., Ltd.; Shanghai Yangfan Industrial Co., Ltd.; Shanghai Zonghui Int Trade Co., Ltd.; Shaoxing Guochao Metallic Products Co., Ltd.; Shaoxing Kinglaw Metal Products Co., Ltd.; Shaoxing Leiluo Metal Manufactured; Shaoxing Meideli Metal Manufactured Co., Ltd.; Shenzhen SED Industry Co., Ltd., a/k/a Shenzhen SED Electronics Co.; Suzhou Daoyuan Import & Export Co., Ltd.; Suzhou Hengsheng Import & Export Co., Ltd.; Wesken International (Kunshan) Co., Ltd.; Winwell Industrial Ltd.; Yiwu An'tai Imp. Exp. Co., Ltd.; Yiwu Ao-si Metal Products Co., Ltd.; Zhejiang Jiashan Rigging Industry Co., Ltd.; Zhejiang Perfect Arts & Crafts Co., Ltd.; Zhejiang Tatzhou Hongda Metal Products Co., Ltd. (a/k/a Taizhou Hongda Metal Materials Co., Ltd.); Zhejiang Willing Foreign Trading Co. Ltd.; and Zhuocheng Plastic Co., Ltd. Petitioner also withdrew its requests for review of Angang Clothes Rack Manufacture Co. (''Angang'') and Laidlaw Company, LLC (''Laidlaw''), neither of which are producers/exporters located in the PRC. However, if these preliminary results are adopted in our final results, any of Angang or Laidlaw's PRC-origin exports of subject merchandise made during the POR shall be liquidated at the PRC-wide rate.

[8] See ''Decision Memorandum for Preliminary Results for the Antidumping Duty Administrative Review of Steel Wire Garment Hangers from the People's Republic of China,'' (''Preliminary Decision Memorandum'') from Christian Marsh, Deputy Assistant Secretary for Antidumping and

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

Preliminary Results of Review

The Department determines that the following preliminary dumping margins exist for the period October 1, 2010, through September 30, 2011:

Manufacturer/Exporter	Weighted-average dumping margin (percent)
Shanghai Wells Group [9]	0.00
PRC-Wide Entity	187.25

[9] The Shanghai Wells Group consists of Shanghai Wells Hanger Co., Ltd., and Hong Kong Wells Ltd., (USA).

Disclosure and Public Comment

The Department will disclose the calculations used in our analysis to parties in this review within five days of the date of publication of this notice.[10] Interested parties are invited to comment on the preliminary results of this review. The Department will consider case briefs filed by interested parties within 30 days after the date of publication of this notice in the **Federal Register**.[11] Interested parties may file rebuttal briefs, limited to issues raised in the case briefs.[12] The Department will consider rebuttal briefs filed not later than five days after the time limit for filing case briefs.[13] Parties who submit arguments are requested to submit with each argument a statement of the issue, a brief summary of the argument, and a table of authorities cited.[14]

Interested parties, who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, filed electronically using IA ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.[15] Requests should contain the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed.[16] Issues raised in the hearing will be limited to those raised in the respective case briefs. If a request for a hearing is made, the Department will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, the Department intends to issue the final results of this administrative review, including the results of our analysis of issues raised in the written comments, within 120 days of publication of these preliminary results in the **Federal Register,** pursuant to section 751(a)(3)(A) of the Act.

Deadline for Submission of Publicly Available Surrogate Value Information

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of this administrative review, interested parties may submit publicly available information to value factors of production (''FOPs'') within 20 days after the date of publication of these preliminary results. Interested parties must provide the Department with supporting documentation for the publicly available information to value each FOP. Additionally, in accordance with 19 CFR 351.301(c)(1), for the final results of this administrative review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally cannot accept the submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1).[17]

Assessment Rates

Upon issuance of the final results, the Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries covered by this review.[18] The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. In these preliminary results, the Department applied the assessment rate calculation method adopted in *Final Modification for Reviews, i.e.,* on the basis of monthly average-to-average comparisons using only the transactions associated with that importer with offsets being provided for non-dumped comparisons.[19]

Where the respondent has reported reliable entered values, we calculated importer (or customer)-specific ad valorem rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer).[20] Where the Department calculated a weighted-average dumping margin by dividing the total amount of dumping for reviewed sales to that party by the total sales

Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, dated concurrently with these results and hereby adopted by this notice.

[10] *See* 19 CFR 351.224(b).

[11] *See* 19 CFR 351.309(c)(1)(ii).

[12] *See* 19 CFR 351.309(d)(1)–(2).

[13] *See id.*

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

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

[16] *See id.*

[17] *See Glycine From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part,* 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

[18] *See* 19 CFR 351.212(b).

[19] *See Antidumping Proceeding: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification,* 77 FR 8101, 8103 (February 14, 2012) (''Final Modification for Reviews'').

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

quantity associated with those transactions, the Department will direct CBP to assess importer-specific assessment rates based on the resulting per-unit rates.[21] Where an importer- (or customer-) specific *ad valorem* or per-unit rate is greater than *de minimis,* the Department will instruct CBP to collect the appropriate duties at the time of liquidation.[22] Where an importer- (or customer-) specific *ad valorem* or per-unit rate is zero or *de minimis,* the Department will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[23]

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 entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be established in the final results of this review (except, if the rate is zero or *de minimis,* then no cash deposit will be required); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that received a separate rate in a prior segment of this proceeding, 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 that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 187.25 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 exporter 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 preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

[21] *See id.*

[22] *See id.*

[23] *See* 19 CFR 351.106(c)(2).

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: November 1, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–27337 Filed 11–7–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–830]

Carbon and Certain Alloy Steel Wire Rod From Mexico: Preliminary Results of Antidumping Duty Administrative Review; 2010–2011

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

SUMMARY: In response to requests from interested parties, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on carbon and certain alloy steel wire rod (wire rod) from Mexico. The period of review is October 1, 2010, through September 30, 2011, and the review covers one producer/exporter of the subject merchandise, Deacero S.A. de C.V. and Deacero USA, Inc. (collectively, Deacero). We have preliminarily found that sales of the subject merchandise have been made at prices below normal value.

DATES: Effective November 8, 2012.

FOR FURTHER INFORMATION CONTACT: Patricia M. Tran or Eric B. Greynolds, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington DC 20230; telephone (202) 482–1503 or (202) 482–6071, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise subject to this order is carbon and certain alloy steel wire rod. The product is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059. Although the HTS numbers are provided for convenience and customs purposes, the written product description, available in *Notice of Antidumping Duty Orders: Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine,* 67 FR 65945 (October 29, 2002), remains dispositive.

On October 1, 2012, the Department published *Carbon and Certain Alloy Steel Wire Rod from Mexico: Affirmative Final Determination of Circumvention of the Antidumping Duty Order.*[1] The Department found that shipments of wire rod with an actual diameter of 4.75 mm to 5.00 mm produced in Mexico and exported to the United States by Deacero constitute merchandise altered in form or appearance in such minor respects that it should be included within the scope of the order on wire rod from Mexico.

Methodology

The Department is conducting this review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act). Constructed export prices have been calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. Petitioners filed an allegation demonstrating that Deacero made sales below the cost of production. We have reasonable grounds to believe or suspect that Deacero's sales of the foreign like product under consideration for the determination of normal value in this review may have been made at prices below the cost of production (COP) as provided by section 773(b)(2)(A)(ii) of the Act. Accordingly, pursuant to section 773(b)(1) of the Act, we have conducted a COP analysis of Deacero's sales in Mexico in this review. Based on this test, we disregarded certain sales made by Deacero in its comparison markets which were made at below-cost prices.

For a full description of the methodology underlying our conclusions, please see the memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Mexico'' (Preliminary Decision

[1] *See Carbon and Certain Alloy Steel Wire Rod from Mexico: Affirmative Final Determination of Circumvention of the Antidumping Duty Order,* 77 FR 59892 (October 1, 2012).

Memorandum), dated concurrently with these results and hereby adopted by this notice. The Preliminary 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). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/ia/.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that a dumping margin of 12.31 percent exists for Deacero for the period October 1, 2010, through September 30, 2011.

Disclosure and Public Comment

The Department intends to disclose to interested parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice.[2] Pursuant to 19 CFR 351.309(c), interested parties may submit cases briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[3] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.[4]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, filed electronically via IA ACCESS within 30 days after the date of publication of this notice.[5] Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. The Department will issue the final results of this administrative review, including the results of its analysis of the issues raised by the parties in any written briefs, not later 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rate

Upon issuance of the final results, the Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review. Deacero reported the name of the importer of record and the entered value for all of its sales to the United Stated during the POR. If Deacero's weighted-average dumping margin is above *de minimis,* we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).[6] We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is above *de minimis (i.e.,* 0.50 percent). Where either the respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review where applicable.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. This clarification will apply to entries of subject merchandise during the POR produced by each respondent for which they did not know that their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

We intend to issue instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for Deacero will be the rate established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original 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 20.11 percent, the all-others rate established in the investigation.[7] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

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

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213.

[2] *See* 19 CFR 351.224(b).

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

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

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

[6] In these preliminary results, the Department applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

[7] *See Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Mexico,* 67 FR 55800 (August 30, 2002).

Dated: November 1, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

1. Universe of U.S. Sales
2. Targeted Dumping
3. Fair Value Comparisons
4. Product Comparisons
5. Date of Sale
6. Constructed Export Price
7. Normal Value
8. Affiliated Respondents
9. Cost of Production Analysis
10. Currency Conversion

[FR Doc. 2012–27341 Filed 11–7–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–828, A–823–805]

Silicomanganese From the People's Republic of China and Ukraine: Continuation of Antidumping Duty Orders

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

SUMMARY: As a result of the determinations by the Department of Commerce (''the Department'') that revocation of the antidumping duty (''AD'') orders on silicomanganese from the People's Republic of China (''PRC'') and Ukraine would likely lead to continuation or recurrence of dumping, and the determinations by the U.S. International Trade Commission (''the ITC'') that revocation of these AD orders would likely lead to a continuation or recurrence of material injury to an industry in the United States, the Department is publishing this notice of the continuation of these AD orders.

DATES: Effective November 8, 2012.

FOR FURTHER INFORMATION CONTACT: Andrew Medley, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4987.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2011, the Department initiated and the ITC instituted sunset reviews of the AD orders on silicomanganese from the PRC and Ukraine, pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended (''the Act'').[1] As a result of its reviews, the Department found that revocation of the AD orders would likely lead to continuation or recurrence of dumping and notified the ITC of the margins of dumping likely to prevail were the orders revoked.[2]

On October 31, 2012, the ITC published its determination, pursuant to section 751(c) of the Act, that revocation of the AD orders on silicomanganese from the PRC and Ukraine would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.[3]

Scope of the Orders

The merchandise covered by the orders is silicomanganese. Silicomanganese, which is sometimes called ferrosilicon manganese, is a ferroalloy composed principally of manganese, silicon and iron, and normally contains much smaller proportions of minor elements, such as carbon, phosphorus, and sulfur. Silicomanganese generally contains by weight not less than 4 percent iron, more than 30 percent manganese, more than 8 percent silicon, and not more than 3 percent phosphorous. All compositions, forms, and sizes of silicomanganese are included within the scope of the order, including silicomanganese slag, fines, and briquettes. Silicomanganese is used primarily in steel production as a source of both silicon and manganese.

Silicomanganese is currently classifiable under subheading 7202.30.0000 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Some silicomanganese may also currently be classifiable under HTSUS subheading 7202.99.5040. The orders cover all silicomanganese, regardless of its tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the orders remain dispositive.

[1] *See Initiation of Five-Year (''Sunset'') Review,* 76 FR 45778 (August 1, 2011) and *Silicomanganese From Brazil, China, and Ukraine Institution of a Five-Year Review Concerning the Antidumping Duty Orders on Silicomanganese From Brazil, China, and Ukraine,* 76 FR 45856 (August 1, 2011).

[2] *See Silicomanganese From Brazil, the People's Republic of China, and Ukraine: Final Results of the Expedited Third Sunset Reviews of the Antidumping Duty Orders,* 76 FR 73587 (November 29, 2011).

[3] *See Silicomanganese From Brazil, China, and Ukraine,* 77 FR 65906 (October 31, 2012); *see also Silicomanganese from Brazil, China, and Ukraine* (Inv. Nos. 731–TA–671–673 (Third Review), USITC Publication 4354, October 2012). With regard to the AD order on silicomanganese from Brazil, the ITC determined that the revocation of that order would not be likely to lead to the continuation or recurrence of material injury to an industry in the United States.

Continuation of the Orders

As a result of the determinations by the Department and the ITC that revocation of these AD orders would likely lead to continuation or recurrence of dumping and of material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the AD orders on silicomanganese from the PRC and Ukraine.

U.S. Customs and Border Protection will continue to collect cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of these orders is the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of these orders not later than 30 days prior to the fifth anniversary of the effective date of the continuations.

These five-year (sunset) reviews and notice are in accordance with section 751(c) of the Act and published pursuant to sections 751(c) and 777(i)(1) of the Act, as well as 19 CFR 351.218(f)(4).

Dated: November 1, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–27339 Filed 11–7–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2012–OS–0137]

Proposed Collection; Comment Request

AGENCY: United States Transportation Command, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the United States Transportation Command (USTRANSCOM) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity

of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 7, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the United States Transportation Command, Command Change Management, ATTN: Diana Roach, 508 Scott Drive, Scott Air Force Base, IL 62225 or call at (618) 220–1724.

Title; Associated Form; and OMB Number: Industry Executive Officer Survey of United States Transportation Command; OMB Control Number 0704–TBD.

Needs and Uses: The information collection requirement is necessary to assist USTRANSCOM pursue process improvements and set priorities to enable us to gain efficiencies and improve effectiveness.

Affected Public: Chief executive officers of companies.

Annual Burden Hours: 3 hours.

Number of Respondents: 20.

Responses per Respondent: 1.

Average Burden per Response: 10 minutes.

Frequency: Annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The annual survey measures the perceptions of executives from companies that support the USTRANSCOM missions such as those companies in the Civil Reserve Air Fleet and Voluntary Intermodal Sealift Agreement. The information is used to improve our processes, structures, and culture to be more effective in providing global mobility solutions to support customer requirements in peace and war, developing and maintaining professional relationships, and keeping overhead and operating costs down.

Dated: November 2, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–27259 Filed 11–7–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2012–OS–0136]

Proposed Collection; Comment Request

AGENCY: United States Transportation Command, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the United States Transportation Command (USTRANSCOM) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 7, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the United States Transportation Command, Command Change Management, ATTN: Diana Roach, 508 Scott Drive, Scott Air Force Base, IL 62225 or call at (618) 220–1724.

Title; Associated Form; and OMB Number: United States Transportation Command Stakeholder Survey; OMB Control Number 0704–TBD.

Needs And Uses: The information is necessary to assist United States Transportation Command (USTRANSCOM) pursue process improvements and set priorities to enable us to gain efficiencies and improve effectiveness.

Affected Public: DoD contractors.

Annual Burden Hours: 33 hours.

Number of Respondents: 200.

Responses per Respondent: 1.

Average Burden per Response: 10 minutes.

Frequency: Annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The annual survey allows the United States Transportation Command (USTRANSCOM) to measure DoD stakeholder perceptions about the command's performance. The survey asks DOD stakeholders to provide feedback on the command's support to DoD organizations and the mission. The information is used to improve our processes, structures, and culture to be more effective in providing global mobility solutions to support customer requirements in peace and war, developing and maintaining professional relationships, and keeping overhead and operating costs down.

Dated: November 2, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–27260 Filed 11–7–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2012–ICCD–0048]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Perkins Discretionary Grant Performance Report

AGENCY: Department of Education (ED), Office of Vocational and Adult Education (OVAE).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before December 10, 2012.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2012–ICCD–0048 or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E117, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov.* Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Perkins Discretionary Grant Performance Report.

OMB Control Number: Pending.

Type of Review: New collection; request for a new OMB Control Number.

Respondents/Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 88.

Total Estimated Number of Annual Burden Hours: 1,556.

Abstract: The Perkins Discretionary Grant Performance Report form and instructions will be used by grantees to meet Department of Education deadline dates for submission of performance and financial reports for the Office of Vocational Adult Education (OVAE) Division of Academic and Technical Education (DATE) discretionary grant programs, as required by the Education Department General Administrative Regulations (EDGAR 34 CFR 74.51, 74.52, 75.118, 75.253, 75.590, and 80.40). The Perkins Discretionary Grant Performance Report will be used by OVAE discretionary grant recipients in lieu of the ED 524B Grant Performance Report and instructions because the ED 524B is not compatible with OVAE–DATE's new Perkins Information Management System. Recipients of multi-year discretionary grants must submit interim performance reports, usually annually, for each year funding has been approved in order to receive a continuation award. The annual performance report should demonstrate whether substantial progress has been made toward meeting the approved goals and objectives of the project. OVAE also requires recipients of 'forward funded' grants that are awarded funds for their entire multi-year project up-front in a single grant award to submit an annual performance report. The Perkins Discretionary Grant Performance Report will be used for interim and final performance reporting. In both the annual and final performance reports, grantees are required to provide data on established performance measures for the grant program (e.g., Government Performance and Results Act measures) and on project performance measures that were included in the grantee's approved grant application, in order to demonstrate project success, impact and outcomes. The Perkins Discretionary Grant Performance Report form will also be used by grant recipients for other interim reporting such as quarterly or semi-annual performance and/or financial reporting.

Dated: November 2, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–27239 Filed 11–7–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2012–ICCD–0049]

Agency Information Collection Activities; Comment Request; Form for Maintenance of Effort Waiver Requests Under the Elementary and Secondary Education Act of 1965, As Amended

AGENCY: Department of Education (ED), Office of Elementary and Secondary Education (OESE).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before January 7, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2012–ICCD–0049 or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW, LBJ, Room 2E117, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov*. Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed,

revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Form for Maintenance of Effort Waiver Requests Under the Elementary and Secondary Education Act of 1965, as amended.

OMB Control Number: 1810–0693.

Type of Review: Extension of an existing information collection.

Respondents/Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 202.

Total Estimated Number of Annual Burden Hours: 5,360

Abstract: Section 9521(a) of the Elementary and Secondary Education Act of 1965, as amended (ESEA) provides that a local educational agency (LEA) may receive funds under Title I, Part A and other ESEA covered programs for any fiscal year only if the State educational agency (SEA) finds that either the combined fiscal effort per student or the aggregate expenditures of the LEA with respect to the provision of free public education by the LEA for the preceding fiscal year was not less than 90 percent of the combined fiscal effort or aggregate expenditures for the second preceding fiscal year. This provision is the maintenance of effort (MOE) requirement for LEAs under the ESEA. If an LEA fails to meet the MOE requirement, under section 9521(b) of the ESEA, the SEA must reduce the amount of funds allocated under the programs covered by the MOE requirement in any fiscal year in the exact proportion by which the LEA fails to maintain effort by falling below 90 percent of either the combined fiscal effort per student or aggregate expenditures. In reducing an LEA's allocation because it failed to meet the MOE requirement, the SEA uses the measure most favorable to the LEA. Section 9521(c) gives ED the authority to waive the ESEA's MOE requirement for an LEA if it would be equitable to grant the waiver due to an exceptional or uncontrollable circumstance such as a natural disaster or a precipitous decline in the LEA's financial resources. Once an MOE waiver is granted, the reduction required by section 9521(b) does not occur for that year. To review MOE waiver requests, ED relies primarily on expenditure, revenue, and other data relevant to an LEA's request provided by the SEA. To assist SEAs with submitting this information, ED developed an MOE waiver form as part of the 2009 Title I, Part A Waiver Guidance, which covered a range of waivers that ED invited at that time. The purpose of this collection is to renew approval for the MOE waiver form. ED believes that the proposed form, which is slightly modified from the currently approved version, will enable an SEA to provide the information needed in an efficient manner.

Dated: November 2, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–27327 Filed 11–7–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No: ED–2012–OSERS–0037]

Request for Information on the Future Direction of the Rehabilitation Training Program

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Request for information.

SUMMARY: The Department is requesting input to revitalize its training and technical assistance (TA) activities funded under the Rehabilitation Training Program. The Department will use the information and data gathered in response to this notice to support the design and implementation of future training and TA that is aligned with the current and future economic trends, reflects the needs of vocational rehabilitation (VR) consumers and ensures that VR counselors are equipped with new and emerging skills. The goal of these training and TA activities is to increase the achievement of high-quality integrated employment for individuals with disabilities.

DATES: We must receive your submission at or before January 7, 2013.

ADDRESSES: Submit your response to this RFI through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept submissions by fax or by email. To ensure that we do not receive duplicate copies, please submit your comments only one time. In addition, please include the Docket ID and the term ''Future Direction of the Rehabilitation Training Program'' at the top of your comments.

Federal eRulemaking Portal: Go to *www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''How To Use This Site.''

Postal Mail, Commercial Delivery, or Hand Delivery: If you mail or deliver your comments, address them to Roseann Ashby, Office of Special Education and Rehabilitative Services, Attention: Future Direction of Rehabilitation Training Program, U.S. Department of Education, 400 Maryland Avenue SW., Potomac Center Plaza (PCP), Room 5055, Washington, DC 20202–2800.

Privacy Note: The Department's policy for comments received from members of the public (including comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at: *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available on the Internet.

Given the subject matter, some comments may include proprietary information as it relates to confidential commercial information. The Freedom of Information Act defines ''confidential commercial information'' as information the disclosure of which could reasonably be expected to cause substantial competitive harm. You may wish to request that we not disclose what you regard as confidential commercial information.

To assist us in making a determination on your request, we encourage you to identify in your submission any specific information that you consider confidential commercial information. Please list the information by page and paragraph numbers.

FOR FURTHER INFORMATION CONTACT: RoseAnn Ashby, U.S. Department of Education, 400 Maryland Avenue SW., PCP, Room 5055, Washington, DC 20202–2800. Telephone: (202) 245–7258.

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: The Rehabilitation Training Program is authorized by Title III of the Rehabilitation Act of 1973, as amended (Rehabilitation Act), and is administered by the Rehabilitation Services Administration (RSA) of the Office of Special Education and Rehabilitative Services.

Through this Request for Information (RFI), the Department is seeking input across four areas:

(1) The preparation of rehabilitation professionals through the Rehabilitation Long-Term Training Program.

(2) Methods for disseminating information to rehabilitation professionals, including grant-funded information, promising practices, and research.

(3) Mechanisms for providing TA and continuing education (CE) to VR professionals, State agencies, and other grantees.

(4) Use of the set-aside under section 21 of the Rehabilitation Act to (a) improve services to individuals with disabilities who are members of minority groups; and (b) conduct outreach and technical assistance to minority entities to promote their participation in activities funded under the Rehabilitation Act.

We are issuing this RFI solely for informational and planning purposes. This notice is not a request for proposals (RFP) or a promise to issue an RFP or a notice inviting applications (NIA). Further, the RFI does not commit the Department to contract for any supply or service. At this time, we are not seeking proposals and will not accept unsolicited proposals. We will not pay for any information or administrative costs a respondent may incur in responding to this RFI.

If you do not respond to this RFI, you may still apply for future contracts and grants. The Department posts RFPs on the Federal Business Opportunities Web site: *www.fbo.gov.* The Department announces grant competitions in the **Federal Register** at: *www.gpo.gov/fdsys.* It is your responsibility to monitor these sites to determine whether the Department issues an RFP or NIA after considering the information received in response to this RFI.

The documents and information submitted in response to this RFI become the property of the U.S. Government and will not be returned.

Context for Responses

The Department is interested in responses that contain data, specific examples, and other relevant documentation to support the Department in revitalizing its training and TA activities. The Department is not seeking letters of support in each of the four targeted areas. Rather, it is the Department's expectation that respondents will consider the questions RSA has developed in the context of their responses. A response to each question is not required.

The Department is seeking responses from a knowledgeable and diverse range of individuals including but not limited to the following—

(1) State VR agency staff, including directors, supervisors, and counselors;

(2) Current or former project directors or principal investigators of grants funded under the Rehabilitation Training Program;

(3) Recipients of TA and CE provided by a Technical Assistance and Continuing Education (TACE) Center;

(4) Users of materials posted on the Web site currently maintained by the National Clearinghouse of Rehabilitation Training Materials (NCRTM);

(5) Contributors of materials posted on the Web site currently maintained by NCRTM;

(6) Current and former scholars funded under the Rehabilitation Long-Term Training Program;

(7) Recipients of TA currently provided under grants funded by the set-aside under section 21 of the Rehabilitation Act; and

(8) Consumers.

I. Rehabilitation Long-Term Training Program

The Rehabilitation Long-Term Training Program supports academic training grants awarded to colleges and universities with undergraduate and graduate programs in the field of rehabilitation. Grantees must direct 75 percent of the funds they receive to trainee scholarships. The Rehabilitation Act requires trainees who receive assistance either (1) to work two years in public or private nonprofit rehabilitation or related agencies for every year of assistance, or (2) to pay back the assistance they received.

Grantees must build close relationships with State VR agencies, promote careers in VR, identify potential employers who would meet the trainees' payback requirements, and ensure that data on the employment of students are accurate.

The Department currently funds 153 grants under the long-term training program. These grants support bachelors', masters', and doctoral programs, as well as certificate programs. Some grants support more than one degree. The breakdown of the degree programs offered by the 153 grants follows:

Specialty area	Number of Grantees	Number of Cert. programs	Number of Bachelors' programs	Number of Masters' programs	Number of Doctoral programs
Rehabilitation Counseling (H129B)	81	2	1	74	12
Rehabilitation Administration (H129C)	1	1	0	0	0
Rehabilitation Technology (H129E)	4	3	1	3	1
Vocational Evaluation (H129F)	7	0	1	6	0
Rehabilitation of Individuals with Mental Illnesses (H129H)	10	1	0	10	3
Rehabilitation Psychology (H129J)	2	1	0	1	1
Undergraduate Education in Rehabilitation (H129L)	5	0	5	0	0
Rehabilitation of Individuals Who Are Blind or Who Have Low Vision (H129P)	15	9	1	14	0
Rehabilitation of Individuals Who Are Deaf or Hard of Hearing (H129Q)	7	3	0	7	0
Job Placement and Job Development (H129R)	9	2	0	7	0

Specialty area	Number of Grantees	Number of Cert. programs	Number of Bachelors' programs	Number of Masters' programs	Number of Doctoral programs
Grants to Assist VR Agency Staff to Meet Comprehensive System of Personnel Development (CSPD) Requirements (H129W)	11	5	0	11	0

Current data indicate that only about 80 percent of the individuals who are provided scholarships under these programs and who graduate with masters' degrees obtain employment that qualifies to repay their service obligation, and slightly fewer than 50 percent of these individuals obtain employment in State VR agencies.

The following questions examine the Department's pre-service programs that prepare rehabilitation professionals. Responses will assist the Department in designing funding priorities for grants funded under the Rehabilitation Long-Term Training Program that—

(1) Reflect current knowledge and skills needed by rehabilitation professionals;

(2) Effectively link the employment needs of individuals with disabilities with current workforce demands;

(3) Demonstrate cost-effective practices; and

(4) Address personnel shortages in the field of rehabilitation counseling.

1.1. In your State or local area, what are the current and projected employment opportunities in the field of rehabilitation counseling and related specialty areas, and what are the degree requirements for these employment opportunities (e.g., bachelor's, master's, or doctoral)?

1.2. What are your recommendations for adding new specialty areas to the list of eleven specialty areas the Department currently funds, eliminating some specialty areas, or combining two or more specialty areas?

1.3. Should the Department continue to fund bachelor's-level programs, and, if so, in what specialty areas?

1.4. Should the Department continue to fund doctoral programs, and, if so, in what specialty areas?

1.5. Currently, the Department supports certificate programs (e.g., a certificate in vocational evaluation and work adjustment, a certificate in rehabilitation counseling for the deaf, and a certificate in psychiatric vocational rehabilitation). What certificate programs, if any, should the Department fund? Should the Department support a stand-alone certificate program, or should the Department support a certificate program only when it is incorporated into a degree program?

1.6. How do rehabilitation counseling degree programs ensure that they are adequately preparing rehabilitation counselors to meet skill demands now and in the future?

1.7. How do universities ensure that programs to support employed State VR agency staff remain current and effective in meeting State VR agency's CSPD requirements?

1.8. In recent years a number of rehabilitation counseling programs have closed. What could the Department do to support the continuation of viable programs? For example, should the Department fund a model for training rehabilitation counselors that involves collaboration among several universities across one or more geographic areas?

1.9. How can the Department increase the percentage of students (a) who complete a rehabilitation counseling program, (b) who obtain qualifying employment after completing the program, and (c) who obtain employment in State VR agencies?

1.10. Currently the Department provides universities with grants of $150,000 annually for rehabilitation counseling programs and grants of $100,000 annually for the other specialty areas. At least 75 percent of these grant funds are to be used for scholarships. Are these funding levels appropriate?

1.11. Universities vary in the amount of scholarship funds they provide. Some cover all or part of tuition and fees, others also cover books, and still others provide stipends for living expenses. What expenses should these scholarships cover? Should universities award more substantial scholarships to fewer scholars rather than varied amounts to a number of scholars? Would this approach increase overall outcomes in terms of successful completion of the rehabilitation counseling program and in obtaining employment that qualifies to repay the students' service obligations?

1.12. What do you anticipate will be the cost to fund tuition and stipends for a scholar in the next 5 to 10 years? Based on this cost, approximately how many scholars could be adequately served with a $750,000 grant (i.e., $150,000 each year for five years)?

II. Dissemination

The Department funds the National Clearinghouse of Rehabilitation Training Materials (NCRTM) at $300,000 annually. The NCRTM is a central repository for information and training materials to assist in the pre-service and in-service training of rehabilitation professionals. The NCRTM also responds to inquiries from researchers, Federal and State agencies, and individuals with disabilities and their families. The NCRTM reported 66,607 visits to its Web site in FY 2011, and 6,558 documents downloaded. The NCRTM also arranges for webinars at the request of RSA.

The Department is seeking information about the need for and use of a centralized repository of rehabilitation training materials, as well as information on how a national clearinghouse can be used to benefit rehabilitation professionals, particularly those working in State VR agencies and in community rehabilitation programs. The following questions are designed to support respondents in thinking about what technology and information is necessary for a state-of-the-art centralized repository of rehabilitation training materials:

2.1. Should RSA continue to fund a centralized repository of rehabilitation training materials?

2.2. How have you used materials available on the NCRTM Web site? Did you customize these materials for your own use? Did these materials support your work as a grantee, as a professional in the field of rehabilitation counseling, as a student, etc.?

2.3. If you have not used materials available on the NCRTM Web site, why not? Were you unaware of the Web site? Did you access the Web site and find the materials and information there limited, unhelpful, or of low quality?

2.4. What rehabilitation training materials currently missing from the NCRTM site would be beneficial to grantees, students, counselors, employers, job seekers, etc.?

2.5. How can the dissemination of rehabilitation training materials be improved?

2.6. What new functions could a national clearinghouse provide to meet your needs?

2.7. What new technologies might be used to disseminate information to rehabilitation professionals to keep their skills current?

III. Technical Assistance and Continuing Education

The Department currently funds 10 regional TACE Centers, each at just under $800,000 annually, to provide TA and CE to State VR agencies and their partners. The Department also supports a National Technical Assistance Project to provide TA on topics of national scope through a variety of methods, including conferences and webinars. This one-time, two-year grant was awarded in FY 2010 for $800,000. The following questions are designed to obtain information and feedback that reflects future delivery and coordination of TA and CE that will directly result in high-quality employment outcomes for individuals with disabilities.

3.1. How do providers and recipients of TA and CE assess TA and CE needs, and how can the needs assessment process be improved?

3.2. What are the most important TA needs for State VR agencies and other grantees, and what are the most effective and efficient ways for TA to be delivered?

3.3. What are the most critical CE needs of State VR agencies and other grantees, and what are the effective and efficient ways to provide CE?

3.4. Are current Federal funding levels for addressing TA needs and delivering CE adequate?

3.5. What is the best structure for delivering TA and CE (e.g., a system comprised of centers providing TA on topical areas such as program management or quality assurance, a system of regional TA Centers, or a combination of these or other structures)?

3.6. How can national collaboration among all TA and CE providers be improved so that the resources devoted to TA and CE are efficiently and effectively used?

3.7. How should disability and employment research and evaluation on promising and evidenced-based practices be incorporated into TA and CE?

3.8. What outcomes should we expect from a TA and CE delivery system, and what performance measures can effectively measure these outcomes?

IV. Use of Section 21 Set-Aside

Research indicates that individuals with disabilities who are members of minority groups are less likely to access VR services and achieve employment outcomes at lower rates than other individuals with disabilities. Funds made available under section 21 of the Rehabilitation Act are intended to improve services and outcomes for individuals with disabilities who are members of minority groups. The statute requires that the Department set aside for this purpose one percent of all funds appropriated for programs authorized under each of Titles II, III, VI, and VII. In fiscal year 2012 RSA set aside approximately $2.1 million for grants funded under section 21.

Currently the Department provides section 21 funds to four minority institutions of higher education to develop rehabilitation training programs for individuals wishing to enter the field of rehabilitation counseling. In addition, the Department funds five grants to provide outreach, capacity building, TA, and training to minority entities that are seeking grants under the Rehabilitation Act, including grant-writing workshops and training on disability legislation. Under the Act, the term minority entity means an entity that is a historically black college or university, a Hispanic-serving institution of higher education, an American Indian Tribal college or university, or another institution of higher education whose minority student enrollment is at least 50 percent. Respondents may use the questions below to guide their input on how to use the section 21 funds most effectively to improve services and outcomes for individuals with disabilities who are members of minority groups.

4.1. Is the current use of section 21 funds effective in improving services to and outcomes for individuals with disabilities who are members of minority groups, and if so, what specific activities or strategies currently funded by section 21 have been most effective?

4.2. What activities and strategies currently funded under section 21 are least effective in improving services to and outcomes for individuals with disabilities who are members of minority groups?

4.3. In what new ways should the Department use section 21 funds to improve outcomes for individuals with disabilities being served by State VR agencies who are members of minority groups? Are there new or emerging TA or training needs that should be addressed?

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.

Program Authority: 20 U.S.C. 6771.

Dated: November 5, 2012.

Michael Yudin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2012–27332 Filed 11–7–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, November 28, 2012, 5:00 p.m.

ADDRESSES: National Atomic Testing Museum, 755 E. Flamingo Road, Las Vegas, Nevada 89119.

FOR FURTHER INFORMATION CONTACT: Barbara Ulmer, Board Administrator, 232 Energy Way, M/S 505, North Las Vegas, Nevada 89030. Phone: (702) 630–0522; Fax (702) 295–5300 or Email: *NSSAB@nv.doe.gov*.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

Tentative Agenda

1. U–233 Waste Briefing/Update
2. Site-Wide Environmental Impact Statement Briefing/Update
3. Nye County Drilling Presentation
4. Industrial Sites-Closing Use Restriction Sites Presentation

Public Participation: The EM SSAB, Nevada, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Barbara Ulmer at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Barbara Ulmer at the telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing to Barbara Ulmer at the address listed above or at the following Web site: *http://nv.energy.gov/nssab/MeetingMinutes.aspx*.

Issued at Washington, DC on November 2, 2012.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2012–27300 Filed 11–7–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

[BPA File No. OS–14]

Public Hearing and Opportunities for Public Review and Comment

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of Proposed 2014 Oversupply Rates.

SUMMARY: On March 6, 2012, BPA filed its Oversupply Management Protocol with the Federal Energy Regulatory Commission (Docket No. EL11–44) as an amendment to BPA's Open Access Transmission Tariff. The protocol authorizes BPA to displace generation in its balancing authority area with Federal hydropower and provide compensation to generators for certain costs related to the displacement. BPA is holding the OS–14 rate proceeding to establish a rate to recover the costs incurred under the protocol.

DATES: Persons wishing to intervene and become parties to the proceeding must file a petition to intervene, via U.S. Mail or electronic mail, no later than 5:00 p.m. on November 15, 2012. A prehearing conference will be held at 9:00 a.m. on November 14, 2012. Written comments by non-party participants must be received by February 15, 2013, to be considered in the Administrator's Record of Decision.

ADDRESSES:

1. Petitions to intervene should be directed to Hearing Clerk—L–7, Bonneville Power Administration, 905 NE 11th Ave., Portland, Oregon 97232, or may be emailed to *rateclerk@bpa.gov*. In addition, copies of the petition must be served concurrently on BPA's General Counsel directed to Mr. Allen Chan, LT–7, Office of General Counsel, 905 NE 11th Ave., Portland, Oregon 97232, or via email to *acchan@bpa.gov* (see section III.A. for more information regarding interventions).

2. Written comments by participants should be submitted to the Public Engagement Office—DKE–7, Bonneville Power Administration, P.O. Box 14428, Portland, Oregon 97293. You may also email your comments to *www.bpa.gov/comment*. BPA requests that all comments and documents intended to be part of the Official Record in this rate proceeding contain the designation OS–14 in the subject line of the email.

3. The prehearing conference will be held in the BPA Rates Hearing Room, 2nd floor, 911 NE 11th Ave., Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT:

Heidi Helwig—DKE–7, Public Affairs Specialist, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208–3621; by phone at 503–230–3458 or toll free at 1–800–622–4519; or via email to *hyhelwig@bpa.gov*.

Responsible Officials: Mr. Raymond D. Bliven, Power Rates Manager, and Ms. Rebecca E. Fredrickson, Transmission Rates Manager.

BPA Attorney Advisor: Mr. Allen Chan is the principal BPA attorney in this matter. Mr. Chan may be contacted by U.S. Mail at: Mr. Allen Chan, Office of General Counsel, LT–7, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208–3621 or via email at: *acchan@bpa.gov*.

SUPPLEMENTARY INFORMATION:

Part I—Introduction and Procedural Background

The Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) provides that BPA must establish and periodically review and revise its rates so that they recover, in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, including amortization of the Federal investment in the Federal Columbia River Power System (FCRPS) over a reasonable number of years and BPA's other costs and expenses. The Northwest Power Act also requires that BPA's rates be established based on the record of a formal hearing, and for transmission rates only, that the costs of the Federal transmission system be equitably allocated between Federal and non-Federal power utilizing the system.

This proceeding is being conducted under the rule for general rate proceedings, section 1010.9 of BPA's Procedures. A proposed schedule for the proceeding is provided below. A final schedule will be established by the Hearing Officer at the prehearing conference.

BPA Direct Case November 14, 2012
Prehearing Conference November 14, 2012
Parties File Petition to Intervene November 15, 2012
Motions to Strike December 7, 2012
Data Request Deadline December 7, 2012
Answers to Motions to Strike December 14, 2012
Data Response Deadline December 14, 2012
Parties file Direct Case January 18, 2013
Clarification January 29–February 1, 2013
Motions to Strike February 6, 2013
Data Request Deadline February 6, 2013
Answers to Motions to Strike February 13, 2013
Data Response Deadline February 13, 2013
Close of Participant Comments February 15, 2013
Litigants file Rebuttal March 5, 2013
Clarification March 7–8, 2013
Motions to Strike March 13, 2013
Data Request Deadline March 13, 2013
Answers to Motions to Strike March 20, 2013
Data Response Deadline March 20, 2013
Cross-Examination March 25–29, 2013
Initial Briefs Filed April 29, 2013
Oral Argument May 9, 2013

Draft ROD issued June 11, 2013
Briefs on Exceptions June 28, 2013
Final ROD—Final Studies July 22, 2013

Section 1010.7 of BPA's Procedures prohibits *ex parte* communications. The *ex parte* rule applies to all BPA and DOE employees and contractors. Except as provided below, any outside communications with BPA and/or DOE personnel regarding the merits of any issue in BPA's rate proceeding by other Executive Branch agencies, Congress, existing or potential BPA customers (including tribes), and nonprofit or public interest groups are considered outside communications and are subject to the *ex parte* rule. The general rule does not apply to communications relating to: (1) Matters of procedure only (the status of the rate proceeding, for example); (2) exchanges of data in the course of business or under the Freedom of Information Act; (3) requests for factual information; (4) matters for which BPA is responsible under statutes other than the ratemaking provisions; or (5) matters which all parties agree may be made on an *ex parte* basis. The *ex parte* rule remains in effect until the Administrator's Final ROD is issued, which is scheduled to occur on or about July 22, 2013.

Part II—Description of the Rate Proceeding

A. Purpose of the Hearing

During periods of high water flows on the Columbia River, primarily during the spring and early summer, BPA, the Army Corps of Engineers (Corps), and the Bureau of Reclamation (Bureau) must take all reasonable actions to avoid excess spill in order to protect endangered fish and other aquatic species in accordance with the Clean Water Act, Endangered Species Act, and court orders. At times, spilling water over the dams, rather than running water through the turbines to generate electricity, increases the levels of nitrogen, oxygen, and other gases in the water, beyond state water quality standards. To meet applicable environmental responsibilities, during periods of high flows BPA, the Corps, and the Bureau attempt to moderate spill and avoid total dissolved gases (TDG) beyond state water quality standards by running more water through the turbines.

To avoid spilling water beyond approved TDG levels, other generation serving load is reduced or shut down and an equal amount of additional hydroelectric generation is delivered to that load. In May 2011, the BPA Administrator issued a Final Record of Decision adopting an Interim Environmental Redispatch policy, under which BPA could displace generation within its balancing authority area with free Federal hydropower. On June 13, 2011, a group of wind customers filed a complaint with the Commission, requesting, among other things, that the Commission use its authority under section 211A of the Federal Power Act to order BPA to cease its environmental redispatch policy because it failed to provide transmission service on terms and conditions that are comparable to those under which BPA provides service to itself and that are not unduly discriminatory or preferential.

On December 7, 2011, the Commission issued an order finding that BPA's environmental redispatch policy failed to provide comparable transmission service and ordered BPA to file revisions to its Open Access Transmission Tariff to comply with the order. On March 6, 2012, BPA filed the Oversupply Management Protocol with the Commission, under which generators can elect to be compensated for certain costs related to displacement. Such costs are limited to (1) Production tax credits; (2) renewable energy credits unbundled from the sale of energy; and (3) for contracts executed prior to March 6, 2012, costs related to bundled sales of renewable energy credits and energy. The Oversupply Management Protocol is set to expire on March 30, 2013.

This OS–14 rate proceeding will establish rates to recover the costs already incurred under the Oversupply Management Protocol, and any future costs incurred up to September 30, 2015, in the event the Oversupply Management Protocol is renewed after it expires on March 30, 2013. The extension of the effective period of the rates is contingent on further guidance from the Commission. BPA will revise its proposal as necessary to conform to such guidance. BPA is proposing to adopt a power rate to collect 50 percent of the costs from power customers and a new control area services rate to collect the other 50 percent of the costs from those generators that elect to be compensated for displacement.

B. The National Environmental Policy Act

BPA is in the process of assessing the potential for environmental effects resulting from implementation of the proposed OS–14 rates, consistent with the National Environmental Policy Act (NEPA). BPA has previously prepared an Environmental Clearance Memorandum, dated March 23, 2012, for the Oversupply Management Protocol, which considered environmental implications of the protocol and documented the categorical exclusion of the protocol from further NEPA review. BPA will evaluate whether the OS–14 rate proposal is covered within the scope of this previous NEPA documentation or whether additional NEPA documentation is necessary for any aspects of the OS–14 rate proposal. If additional NEPA documentation is necessary, a preliminary review of the OS–14 rate proposal indicates that it involves primarily administrative and financial matters that appear to fall within a class of actions that are also categorically excluded from further NEPA review pursuant to applicable NEPA regulations. Persons may submit comments regarding potential environmental effects of the proposal to Katherine Pierce, NEPA Compliance Officer, KEC–4, Bonneville Power Administration, 905 NE 11th Avenue, Portland, OR 97232. Any such comments received by the comment deadline for Participant Comments identified in section III.A. below will be considered by BPA's NEPA compliance staff in its environmental evaluation of the OS–14 rate proposal.

C. Oversupply Workshops

In preparation for the OS–14 rate proceeding, BPA staff held three public workshops with customers and interested parties from March 2012 through May 2012. BPA published notices for all workshops, which were well attended. During the workshops, BPA staff presented and discussed information about the potential costs arising from oversupply conditions, the functionalization of oversupply costs between power and transmission, and the allocation of the functionalized costs among customers. BPA also shared drafts of rate schedule language for the oversupply rates and potential procedural schedules. Staff has used the comments received at the workshops to assist in constructing the Initial Proposal.

Part III—Public Participation

A. Distinguishing Between ''Participants'' and ''Parties''

BPA distinguishes between ''participants in'' and ''parties to'' the hearing. Apart from the formal hearing process, BPA will receive written comments, views, opinions, and information from ''participants,'' who are defined in BPA's Procedures as persons who may submit comments without being subject to the duties of, or having the privileges of, parties. Participants' written comments will be

made part of the official record and considered by the Administrator. Participants are not entitled to participate in the prehearing conference; may not cross-examine parties' witnesses, seek discovery, or serve or be served with documents; and are not subject to the same procedural requirements as parties. BPA customers whose rates are subject to this proceeding, or their affiliated customer groups, may not submit participant comments. Persons who are members or employees of organizations that have intervened in the rate proceeding may submit general comments as participants but may not use the comment procedures to address specific issues raised by their intervenor organization.

Written comments by participants will be included in the record if they are received by February 15, 2013, and should be submitted to the address listed in the **ADDRESSES** section of this notice.

Entities or persons become parties to the proceeding by filing petitions to intervene, which must state the name and address of the entity or person requesting party status and their interest in the hearing. BPA customers and affiliated customer groups will be granted intervention based on a petition filed in conformance with BPA's Procedures. Other petitioners must explain their interests in sufficient detail to permit the Hearing Officer to determine whether such petitioners have a relevant interest in the hearing. Pursuant to Rule 1010.1(d) of BPA's Procedures, BPA waives the requirement in Rule 1010.4(d) that an opposition to an intervention petition be filed and served 24 hours before the prehearing conference. Any opposition to an intervention petition must instead be made at the prehearing conference. Any party, including BPA, may oppose a petition for intervention. All timely petitions will be ruled on by the Hearing Officer. Late interventions are strongly disfavored. Opposition to an untimely petition to intervene must be filed and received by BPA within two days after service of the petition.

BPA is holding the OS–14 rate proceeding at the same time as the BP–14 rate proceeding for power, transmission, and ancillary and control area service rates. However, these proceedings are separate. As a result, entities or persons wishing to intervene in both dockets must file separate petitions to intervene, and all filings must be made in the rate proceeding to which the filing pertains.

B. Developing the Record

The record will include, among other things, the transcripts of the hearing; testimony, evidence, and argument entered into the record by BPA and the parties; written comments from participants; and other material accepted into the record by the Hearing Officer. The Hearing Officer then will review the record and certify the record to the Administrator for final decision.

Parties will have the opportunity to file initial briefs after the close of cross-examination. BPA then will issue a Draft Record of Decision that will include the Administrator's preliminary decisions. Parties may file briefs on exceptions, after which the Administrator will issue the Final Record of Decision establishing the rate.

The Administrator will develop a final rate based on the entire record. The Administrator will serve copies of the Final Record of Decision on all parties and will file its rates with the Commission for confirmation and approval.

Part IV—Oversupply OS–14

A. Scope of the Oversupply Rate Proceeding

Pursuant to Rule 1010.3(f) of BPA's Procedures, the Administrator limits the scope of this proceeding to issues concerning the rates for recovering the costs of the Oversupply Management Protocol described in Part II.A of this notice. In particular, the following issues are not part of the scope of the case, and the Hearing Officer is directed to strike all testimony concerning these issues: the terms of the Oversupply Management Protocol; whether the Oversupply Management Protocol complies with the Commission's Order issued on December 7, 2011; whether BPA took all actions to avoid using the Oversupply Management Protocol, including the payment of negative prices to generators outside of BPA's balancing authority area; the scope of BPA's environmental obligations; program levels and program level forecasts for any BPA program; and rates previously established or to be established in any other rate case. In addition, potential environmental impacts are not an issue in this proceeding. Environmental impacts are addressed in a concurrent NEPA process. See section II.B. Pursuant to § 1010.3(f) of BPA's Procedures, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to address the potential environmental impacts of the rate being developed in this OS–14 rate proceeding.

B. Summary of the 2014 Oversupply Rate Proposal

The proposed OS–14 rates are formula rates designed to recover BPA's oversupply costs. See Part II.A for a description of oversupply, the Oversupply Management Protocol, and BPA's incurrence of costs to mitigate oversupply conditions.

The rates will recover the following costs incurred between March 31, 2012, and September 30, 2015 (again, costs will be recovered for periods after March 30, 2013, if the protocol is renewed and pending Commission guidance): (1) Costs of an independent evaluator; and (2) payments to generators for (a) production tax credits, (b) renewable energy credits, and (3) losses with respect to certain power sales contracts. Under the proposed formula rates, BPA would recover actual costs rather than forecast costs, therefore avoiding the need to perform a later true-up between forecast costs and actual costs.

The OS–14 rate proposal consists of two parts: (1) A power rate that applies as a separate charge to the Priority Firm Power (PF–14) rate, the Industrial Firm Power (IP–14) rate, and the New Resource Firm Power (NR–14) rate; and (2) a new control area service rate. The oversupply costs to be recovered would be allocated equally between the power rate and the control area services rate—one-half of the costs to the power Oversupply rate and the other half to the control area service Oversupply rate. The costs would then be charged to the customers that are subject to the two rates.

The power Oversupply rate would be charged to customers subject to PF–14, IP–14, and NR–14 rates. The Oversupply charge would be 50 percent of the costs incurred under the Oversupply Management Protocol multiplied by the customer's load, divided by the sum of all power customers' load. For PF customers' loads, BPA proposes to use the lesser of each customer's Rate Period High Water Mark (RHWM) and the customer's net requirement. For IP customers' loads, BPA proposes to use each customer's contract energy load. Currently, there are no customers being served at the NR rate and BPA does not expect any such customers during the effective period of the OS–14 rates.

The control area service Oversupply rate would be charged to each generator that elects compensation pursuant to the Oversupply Management Protocol, based on the facility nameplate capacity

in kilowatts. The control area service charge would be 50 percent of the costs incurred under the Oversupply Management Protocol multiplied by the nameplate capacity of each participating generator, divided by the sum of all generating facility nameplate capacities of all participating generators.

BPA proposes to bill for costs incurred prior to the effective date of the OS–14 rate after the effective date of the OS–14 rate. BPA would include charges for costs incurred after the effective date on the bill for the month those costs were incurred, subject to a rate cap as discussed below. BPA proposes to make the OS–14 rates effective until all costs have been billed and such bills have been fully paid.

BPA is proposing to cap the total amount that would be billed under each Oversupply rate at $4,000,000 in any one month. The rate cap would allow the billing to be spread over several months to ease the cash flow effect on customers. Any oversupply costs in excess of the cap will carry over to subsequent months' bills until the balance is completely billed.

Part V—Proposed Oversupply Rate Schedules

BPA's proposed 2014 control area service Oversupply Rate Schedule and power General Rate Schedule Provision Oversupply Rate are a part of this notice and are available for viewing and downloading on BPA's Web site at *www.bpa.gov/goto/OS14Schedule* Copies of the proposed rate schedules also are available for viewing in BPA's Public Reference Room at the BPA Headquarters, 1st Floor, 905 NE 11th Avenue, Portland, OR 97232.

Issued this 29th day of October, 2012.

Stephen J. Wright,

Administrator and Chief Executive Officer.

[FR Doc. 2012–27306 Filed 11–7–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

[BPA File No. BP–14]

Fiscal Year (FY) 2014–2015 Proposed Power and Transmission Rate Adjustments; Public Hearing and Opportunities for Public Review and Comment

AGENCY: Bonneville Power Administration (BPA or Bonneville), Department of Energy (DOE).

ACTIONS: Notice of FY 2014–2015 Proposed Power and Transmission Rate Adjustments.

SUMMARY: BPA is holding a consolidated rate proceeding, Docket No. BP–14, to establish power and transmission rates for FY 2014–2015.

The Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) provides that BPA must establish and periodically review and revise its rates so that they recover, in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, including amortization of the Federal investment in the Federal Columbia River Power System (FCRPS) over a reasonable number of years and BPA's other costs and expenses. The Northwest Power Act also requires that BPA's rates be established based on the record of a formal hearing, and for transmission rates only, that the costs of the Federal transmission system be equitably allocated between Federal and non-Federal power utilizing the system. By this notice, BPA announces the commencement of a power and transmission rate adjustment proceeding for power, transmission, control area services, and ancillary services rates proposed to be effective on October 1, 2013.

DATES: Anyone wishing to become a party to the BP–14 proceeding must provide written notice, via U.S. Mail or electronic mail, which must be received by BPA no later than 3:00 p.m. on November 15, 2012.

The BP–14 rate adjustment proceeding begins with a prehearing conference at 9:00 a.m. on November 14, 2012, in the BPA Rates Hearing Room, 2nd floor, 911 NE 11th Avenue, Portland, Oregon 97232.

Written comments by non-party participants must be received by February 15, 2013, to be considered in the Administrator's Record of Decision (ROD).

ADDRESSES:

1. Petitions to intervene should be directed to: Hearing Clerk—L–7, Bonneville Power Administration, 905 NE 11th Avenue, Portland, Oregon 97232, or may be emailed to *rateclerk@bpa.gov.* In addition, copies of the petition must be served concurrently on BPA's General Counsel and directed to both Mr. Peter J. Burger, LP–7, and Mr. Barry Bennett, LC–7, Office of General Counsel, 905 NE 11th Avenue, Portland, Oregon 97232, or via email to *pjburger@bpa.gov* and *bbennett@bpa.gov* (see section III.A. for more information regarding interventions).

2. Written comments by participants should be submitted to the Public Engagement Office, DKE–7, Bonneville Power Administration, P.O. Box 14428, Portland, Oregon 97293. Participants may also submit comments by email at: *www.bpa.gov/comment.* BPA requests that all comments and documents intended to be part of the Official Record in this rate proceeding contain the designation BP–14 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Heidi Y. Helwig, DKC–7, Public Affairs Specialist, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208; by phone toll free at 1–800–622–4520; or via email to *hyhelwig@bpa.gov.*

Responsible Officials: Mr. Raymond D. Bliven, Power Rates Manager, is the official responsible for the development of BPA's power rates, and Ms. Rebecca E. Fredrickson, Transmission Rates Manager, is the official responsible for the development of BPA's transmission, ancillary and control area services (ACS) rates.

SUPPLEMENTARY INFORMATION:

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Part I—Introduction and Procedural Background

Section 7(i) of the Northwest Power Act, 16 U.S.C. 839e(i), requires that BPA's rates be established according to certain procedures, including publication in the **Federal Register** of this notice of the proposed rates; one or more hearings conducted as expeditiously as practicable by a Hearing Officer; opportunity for both oral presentation and written submission of views, data, questions, and arguments related to the proposed rates; and a decision by the Administrator based on the record. BPA's rate proceedings are further governed by BPA's Procedures Governing Bonneville Power Administration Rate Hearings, 51 **Federal Register** 7611 (1986), which implement and expand the statutory requirements.

This proceeding is being conducted under the rule for general rate proceedings, section 1010.4 of BPA's Procedures. A proposed schedule for the proceeding is provided below. A final schedule will be established by the Hearing Officer at the prehearing conference.

BPA Direct Case November 14, 2012

Prehearing Conference November 14, 2012
Parties File Petition to Intervene November 15, 2012
Clarification November 27–30, 2012
Motions to Strike December 7, 2012
Data Request Deadline December 7, 2012
Answers to Motions to Strike December 14, 2012
Data Response Deadline December 14, 2012
Parties file Direct Case January 18, 2013
Clarification January 29–February 1, 2013
Motions to Strike February 6, 2013
Data Request Deadline February 6, 2013
Answers to Motions to Strike February 13, 2013
Data Response Deadline February 13, 2013
Close of Participant Comments February 15, 2013
Litigants file Rebuttal March 5, 2013
Clarification March 7–8, 2013
Motions to Strike March 13, 2013
Data Request Deadline March 13, 2013
Answers to Motions to Strike March 20, 2013
Data Response Deadline March 20, 2013
Cross-Examination March 25–29, 2013
Initial Briefs Filed April 29, 2013
Oral Argument May 9, 2013
Draft ROD issued June 11, 2013
Briefs on Exceptions June 28, 2013
Final ROD—Final Studies July 22, 2013

Section 1010.7 of BPA's Procedures prohibits *ex parte* communications. The *ex parte* rule applies to all BPA and DOE employees and contractors. Except as provided below, any outside communications with BPA and/or DOE personnel regarding the merits of any issue in BPA's rate proceeding by other Executive Branch agencies, Congress, existing or potential BPA customers (including tribes), or nonprofit or public interest groups are considered outside communications and are subject to the *ex parte* rule. The rule does not apply to communications relating to: (1) Matters of procedure only (the status of the rate proceeding, for example); (2) exchanges of data in the course of business or under the Freedom of Information Act; (3) requests for factual information; (4) matters for which BPA is responsible under statutes other than the ratemaking provisions; or (5) matters which all parties agree may be made on an *ex parte* basis. The *ex parte* rule remains in effect until the Administrator's Final ROD is issued, which is scheduled to occur on or about July 22, 2013.

Part II—Scope of 2014 Rate Proceeding

A. Joint Rate Proceeding

BPA is holding one power and transmission rate proceeding with one procedural schedule, one record, and one ROD.

B. 2012 Integrated Program Review

BPA began its 2012 Integrated Program Review (IPR) process in June 2012. The IPR process is designed to allow persons interested in BPA's program levels an opportunity to review and comment on BPA's expense and capital spending level estimates prior to the use of those estimates in setting rates.

The 2012 IPR focused on FY 2014 and FY 2015 program levels for BPA's Power Services and Transmission Services as well as a review of FY 2013 program levels. After the opening workshop on June 5 and release of information, participants were allowed three weeks to request specific workshops. Participants requested additional information through the end of July 2012. BPA responded to participants' requests for additional information and held two days of technical workshops through July 18, 2012. BPA took public comment through August 10, 2012.

Between March and April 2012, prior to the initiation of the IPR, BPA hosted the 2012 Capital Investment Review (CIR), a new public process focused on reviewing and discussing draft asset strategies and 10-year capital forecasts. Public comments received during the CIR informed capital cost projections for FY 2014–2015 in the 2012 IPR.

On October 26, 2012, BPA issued the Final Close-Out Report for the IPR. In the Final Close-Out Report, BPA established the program level cost estimates that are used in the Initial Proposal to establish both the power and transmission rates. BPA does not anticipate additional public review of proposed spending levels. However, BPA is open to revisiting spending levels in an ''IPR–2'' process if conditions in FY 2013 warrant it. BPA would conduct this process separately from the rate proceeding to share updates and solicit feedback from customers and constituents before the final program levels are incorporated into the final rates.

C. Rate Case Workshops

In preparation for the BP–14 rate proceeding, BPA held several public pre-rate case workshops with customers and interested parties from March through early October 2012. During the workshops, BPA staff presented and discussed information about costs, load and resource forecasting, generation inputs pricing, segmentation, cost allocation, redispatch, utility delivery, Montana Intertie, revenue forecasts, load forecasts, risk analysis and mitigation, products, pricing, and rate design. Customers and interested parties had extensive opportunity to participate, raise issues, present alternative proposals, and comment on the information BPA staff presented. The comments and alternative proposals received during these workshops have assisted in the preparation of the Initial Proposal.

D. Scope of the Rate Proceeding

This section provides guidance to the Hearing Officer as to those matters that are within the scope of the rate proceeding and those that are outside the scope.

1. Program Cost Estimates

Some of the decisions that determine program costs and spending levels have been made in the IPR public review process outside the rate proceeding. See section II.B. BPA's spending levels for investments and expenses are not determined or subject to review in rate proceedings.

Pursuant to section 1010.3(f) of BPA's Procedures, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that challenges the appropriateness or reasonableness of the Administrator's decisions on cost and spending levels. If, and to the extent that, any re-examination of spending levels is necessary, such re-examination will occur outside of the rate proceeding. This exclusion does not extend to those portions of the revenue requirements related to interest rate forecasts, interest expense and credit, Treasury repayment schedules, forecasts of depreciation and amortization expense, forecasts of system replacements used in repayment studies, Residential Exchange Program benefits, purchased power expenses, transmission acquisition expense incurred by Power Services, generation acquisition expense incurred by Transmission Services, minimum required net revenue, and the costs of risk mitigation actions resulting from the expense and revenue uncertainties included in the risk analysis. The Administrator also directs the Hearing Officer to exclude argument and evidence regarding BPA's debt management practices and policies. See section II.D.5.

2. Tiered Rate Methodology (TRM)

The TRM restricts BPA and customers with Contract High Water Mark (CHWM) contracts from proposing changes to the TRM's ratesetting guidelines unless certain procedures have been successfully concluded. No proposed changes have been subjected to the required procedures.

Pursuant to § 1010.3(f) of BPA's Procedures, the Administrator hereby directs the Hearing Officer to exclude from the record all argument, testimony,

or other evidence that seeks in any way to propose revisions to the TRM made by BPA, customers with a CHWM contract, or their representatives, unless it can be established that the TRM procedures for proposing a change to the TRM have been concluded. This restriction does not extend to a party or customer that does not have a CHWM contract.

3. Service to the Direct Service Industries (DSIs)

The manner and method by which BPA provides service to its DSI customers was recently addressed in the *Alcoa* v. *Bonneville Power Administration* decision, ___ F3d ___, 2012 WL 4873329, which reflected the Courts' prior decisions in *Pacific Northwest Generating Cooperative, et al.,* v. *Bonneville Power Administration,* 580 F3d 792 (9th Cir. 2008) (PNGC I) and *Pacific Northwest Generating Cooperative, et al.,* v. *Bonneville Power Administration,* 590 F3d 1065 (9th Cir. 2010) (PNGC II). BPA is assuming for the Initial Proposal that BPA will continue to serve Alcoa, Inc. (Alcoa) as well as Port Townsend Paper Corporation (Port Townsend) during FY 2014–2015. BPA's decisions to serve Alcoa, along with the method and level of service to be provided DSIs in the FY 2014–2015 rate period, will not be determined in this proceeding but instead will be made and documented in a Record of Decision following a currently open public comment period on a proposed ten year power sales contract with Alcoa.

Pursuant to § 1010.3(f) of BPA's Procedures, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to revisit the appropriateness or reasonableness of BPA's decisions regarding service to the DSIs, including BPA's decision to offer contracts to the DSIs and the method or level of service.

4. Generation Inputs

BPA provides a portion of the available generation from the FCRPS to enable Transmission Services to meet its various requirements. Transmission Services uses these generation inputs to provide ancillary and control area services. To recover the costs associated with providing generation inputs, BPA determines prices for the generation inputs that become the basis of the reserves-based ancillary and control area services. The forecast amount of generation inputs, the pricing methodologies BPA is proposing to use to determine the generation input costs, and associated proposed Ancillary and Control Area Service rates are matters that are included within the scope of the BP–14 proceeding.

Pursuant to § 1010.3(f) of BPA's Procedures, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to revisit the appropriateness or reasonableness of any other issues related to the generation inputs or Ancillary and Control Area Services. This exclusion includes, but is not limited to, issues regarding reliability of the transmission system, dispatcher standing orders, e-Tag requirements and definitions, open acess transmission tariff provisions, and business practices. These non-rates issues are generally addressed by BPA in accordance with industry, reliability, and other compliance standards and criteria and are not matters appropriate for the rate proceeding.

5. Federal and Non-Federal Debt Service and Debt Management

During the 2012 IPR and in other forums, BPA provided the public with background information on BPA's internal Federal and non-Federal debt management policies and practices. While these policies and practices are not decided in the IPR forum, these discussions were intended to inform interested parties about these matters so that they would better understand BPA's debt structure. BPA's debt management policies and practices remain outside the scope of the rate proceeding.

Pursuant to § 1010.3(f) of BPA's Procedures, the Administrator hereby directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to address the appropriateness or reasonableness of BPA's debt management policies and practices. This exclusion does not encompass how debt management actions are reflected in ratemaking.

6. Potential Environmental Impacts

Environmental impacts are addressed in a concurrent National Environmental Policy Act (NEPA) process. See section II.E.

Pursuant to § 1010.3(f) of BPA's Procedures, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to address the potential environmental impacts of the rates being developed in this rate proceeding.

7. Average System Cost Methodology and Average System Cost Determinations

Section 5(c) of the Northwest Power Act established the Residential Exchange Program, which provides benefits to residential and small-farm consumers of Pacific Northwest utilities based, in part, on a utility's ''average system cost'' (ASC) of resources. Section 5(c)(7) of the Act requires the Administrator to consult with regional interests to develop an ASC Methodology (ASCM), which prescribes the methodology that the Administrator uses to calculate a utility's ASC. On September 4, 2009, the Federal Energy Regulatory Commission (Commission) granted final approval of BPA's 2008 ASCM. The 2008 ASCM is not subject to challenge or review in a section 7(i) proceeding. Determinations of the ASCs of participating utilities are made in separate processes conducted pursuant to the ASCM. Those processes began with ASC filings on June 1, 2012, and are continuing through July 2013. The determinations of ASCs are not subject to challenge or review in a section 7(i) proceeding.

Pursuant to § 1010.3(f) of BPA's Procedures, the Administrator hereby directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to visit or revisit the appropriateness or reasonableness of the 2008 ASCM. The Administrator also directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to visit or revisit the appropriateness or reasonableness of any of the ongoing ASC determinations.

8. Rate Period High Water Mark (RHWM) Process

Under the Tiered Rate Methodology (TRM), BPA has established FY 2014–2015 RHWMs for Public customers that signed contracts for firm requirements power service providing for tiered rates, referred to as CHWM contracts. In this RHWM Process, which preceded the BP–14 rate proceeding, BPA established the maximum planned amount of power a customer is eligible to purchase at Tier 1 rates during the rate period, the Above-RHWM Loads for each customer, the System Shaped Load for each customer, the Tier 1 System Firm Critical Output, RHWM Augmentation, the Rate Period Tier 1 System Capability (RT1SC), and the monthly/diurnal shape of RT1SC. The RHWM Process provided customers an opportunity to review, comment, and, if necessary, challenge BPA's determinations

regarding certain RHWM determinations.

Pursuant to § 1010.3(f) of BPA's Procedures, the Administrator hereby directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to visit or revisit BPA's determination of a customer's FY 2014–2015 RHWM or other RHWM Process determinations.

9. 2012 Residential Exchange Program Settlement Agreement (2012 REP Settlement)

On July 26, 2011, the Administrator executed the 2012 REP Settlement with over one hundred customers and other regional parties resolving longstanding litigation over BPA's implementation of the Residential Exchange Program (REP) under section 5(c) of the Northwest Power Act, 16 U.S.C. 839c(c). Parties were afforded an opportunity to challenge the legal, factual, and policy merits of the 2012 REP Settlement in the REP–12 administrative hearing, an eight-month administrative proceeding conducted under the procedural rules of section 7(i) of the Northwest Power Act, 16 U.S.C. 839e(i). The Administrator's findings regarding the legal, factual, and policy challenges to the 2012 REP Settlement are thoroughly explained in the 419-page REP–12 Record of Decision (REP–12 ROD). The 2012 REP Settlement and REP–12 ROD are currently under review before the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit).

Because BPA's decision to adopt the 2012 REP Settlement was made as part of the REP–12 ROD, which is already under review by the Court, challenges to BPA's decision to adopt the 2012 REP Settlement and implement its terms in BPA's rate proceedings are not within the scope of this case. Pursuant to § 1010.3(f) of BPA's Procedures, the Administrator hereby directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to visit or revisit BPA's determination to adopt the 2012 REP Settlement or implement its terms in this rate proceeding.

Although challenges to BPA's decision to adopt the 2012 REP Settlement and implement its terms in BPA's rate proceedings are not within the scope of this case, the Hearing Officer shall permit BPA and the rate case parties, through a ''standstill'' agreement, to incorporate by reference material from the BP–12 proceeding, which includes the record from the REP–12 proceeding.

E. The National Environmental Policy Act (NEPA)

BPA is in the process of assessing the potential environmental effects of its proposed power and transmission rates, consistent with NEPA. The NEPA process is conducted separately from the rate proceeding. As discussed in section II.D.6., all evidence and argument addressing potential environmental impacts of rates being developed in the BP–14 rate proceeding are excluded from the rate proceeding hearing record. Instead, comments on environmental effects should be directed to the NEPA process.

Because this proposal involves BPA's ongoing business practices related to rates, BPA is reviewing the proposal for consistency with BPA's Business Plan Environmental Impact Statement (Business Plan EIS), completed in June 1995 (BOE/EIS–0183). This policy-level EIS evaluates the environmental impacts of a range of business plan alternatives for BPA that could be varied by applying various policy modules, including one for rates. Any combination of alternative policy modules should allow BPA to balance its costs and revenues. The Business Plan EIS also includes response strategies, such as adjustments to rates, that BPA could implement if BPA's costs exceed its revenues.

In August 1995, the BPA Administrator issued a ROD (Business Plan ROD) that adopted the Market-Driven Alternative from the Business Plan EIS. This alternative was selected because, among other reasons, it allows BPA to: (1) Recover costs through rates; (2) competitively market BPA's products and services; (3) develop rates that meet customer needs for clarity and simplicity; (4) continue to meet BPA's legal mandates; and (5) avoid adverse environmental impacts. BPA also committed to apply as many response strategies as necessary when BPA's costs and revenues do not balance.

In April 2007, BPA completed and issued a Supplement Analysis to the Business Plan EIS. This Supplement Analysis found that the Business Plan EIS's relationship-based and policy-level analysis of potential environmental impacts from BPA's business practices remains valid, and that BPA's current business practices remain consistent with BPA's Market-Driven Alternative approach. The Business Plan EIS and ROD thus continue to provide a sound basis for making determinations under NEPA concerning BPA's policy-level decisions, including rates.

Because the proposed rates likely would assist BPA in accomplishing the goals identified in the Business Plan ROD, the proposal appears consistent with these aspects of the Market-Driven Alternative. In addition, this rate proposal is similar to the type of rate designs evaluated in the Business Plan EIS; thus, implementation of this rate proposal would not be expected to result in environmental impacts significantly different from those examined in the Business Plan EIS. Therefore, BPA expects that this rate proposal will likely fall within the scope of the Market-Driven Alternative that was evaluated in the Business Plan EIS and adopted in the Business Plan ROD.

As part of the Administrator's ROD that will be prepared for the BP–14 rate proceeding, BPA may tier its decision under NEPA to the Business Plan ROD. However, depending upon the ongoing environmental review, BPA may instead issue another appropriate NEPA document. Comments regarding the potential environmental effects of the proposal may be submitted to Katherine Pierce, NEPA Compliance Officer, KEC–4, Bonneville Power Administration, 905 NE 11th Avenue, Portland, OR 97232. Any such comments received by the comment deadline for Participant Comments identified in section III.A. below will be considered by BPA's NEPA compliance staff in the NEPA process that will be conducted for this proposal.

Part III—Public Participation in BP–14

A. Distinguishing Between ''Participants'' and ''Parties''

BPA distinguishes between ''participants in'' and ''parties to'' the hearings. Apart from the formal hearing process, BPA will receive written comments, views, opinions, and information from ''participants,'' who may submit comments without being subject to the duties of, or having the privileges of, parties. Participants' written comments will be made part of the official record and considered by the Administrator. Participants are not entitled to participate in the prehearing conference; may not cross-examine parties' witnesses, seek discovery, or serve or be served with documents; and are not subject to the same procedural requirements as parties. BPA customers whose rates are subject to this proceeding, or their affiliated customer groups, may not submit participant comments. Members or employees of organizations that have intervened in the rate proceeding may submit general comments as participants but may not

use the comment procedures to address specific issues raised by their intervenor organizations.

Written comments by participants will be included in the record if they are received by February 15, 2013. Written views, supporting information, questions, and arguments should be submitted to the address listed in the **ADDRESSES** section of this notice.

Entities or persons become parties to the proceeding by filing petitions to intervene, which must state the name and address of the entity or person requesting party status and the entity's or person's interest in the hearing. BPA customers and affiliated customer groups will be granted intervention based on petitions filed in conformance with BPA's Procedures. Other petitioners must explain their interests in sufficient detail to permit the Hearing Officer to determine whether the petitioners have a relevant interest in the hearing. Pursuant to Rule 1010.1(d) of BPA's Procedures, BPA waives the requirement in Rule 1010.4(d) that an opposition to an intervention petition be filed and served 24 hours before the prehearing conference. The time limit for opposing a timely intervention will be established at the prehearing conference. Any party, including BPA, may oppose a petition for intervention. All petitions will be ruled on by the Hearing Officer. Late interventions are strongly disfavored. Opposition to an untimely petition to intervene must be filed and received by BPA within two days after service of the petition. BPA is holding the OS–14 Oversupply rate proceeding at the same time as the BP–14 rate proceeding. However, these proceedings are separate. As a result, entities or persons wishing to intervene in both dockets must file a separate petition to intervene in each rate proceeding, and all filings must be made in the rate proceeding to which the filing pertains.

B. Developing the Record

The hearing record will include, among other things, the transcripts of the hearing, written evidence and argument entered into the record by BPA and the parties, written comments from participants, and other material accepted into the record by the Hearing Officer. The Hearing Officer will review the record and certify the record to the Administrator for final decision.

The Administrator will develop final rates based on the record and such other materials and information as may have been submitted to or developed by the Administrator. The Administrator will serve copies of the Final ROD on all parties. BPA will file its rates with the Commission for confirmation and approval after issuance of the Final ROD.

Part IV—Summary of Rate Proposals

A. Summary of the Power Rate Proposal

1. Power Rates

BPA is proposing five different rates for Federal power sales and services. In 2012, BPA signed the 2012 REP Settlement. See section II.D.9. Ratesetting in this proceeding implements the Settlement according to its terms.

Priority Firm Power Rate (PF–14)—The PF rate schedule applies to net requirements power sales to public body, cooperative, and Federal agency customers made pursuant to section 5(b) of the Northwest Power Act and includes the PF Public rates for the sale of firm requirements power under CHWM Contracts and the PF Exchange rates for sales under Residential Purchase and Sale Agreements. The PF Public rate applies to customers taking load following or Slice/block service. Consistent with the TRM, Tier 1 rates include three charges: (1) Customer charges; (2) a demand charge; and (3) a load shaping charge. In addition, three Tier 2 rates, corresponding to contract options, are provided for customers that have chosen to purchase power from BPA for service to their load above high water mark.

About 75 percent of BPA's power revenues are paid under the PF rate schedule and 95 percent of the power revenues under rates adjusted in this proceeding (PF, IP, NR and FPS). Therefore, BPA expresses its overall rate increase in terms measured by the increase in the PF rate. However, the PF rate is a collection of rates charged on the basis of percentage of cost responsibility, marginal changes in demand and energy usage, purchase elections for loads in excess of power purchased at Tier 1 rates, product and service choices, and applicability of rate discounts. Very few of BPA's customers have exactly the same mix of PF rate components in common. Therefore, BPA has developed a quantification of the PF rate that measures the impact on an average customer purchasing at Tier 1 rates. This quantification, the Tier 1 Average Net Cost, is increasing 9.6 percent in this proposal. Individual customer impacts vary around this increase, but most PF customers will experience a lower increase in its power bills, and customers that purchase the Slice product will experience a large portion of this increase through the lower value of Slice surplus power rather than through their BPA power bills. Altogether, BPA expects that this rate proposal will increase its revenues by $158 million per year, an 8 percent increase over revenues if rates did not change.

The Base PF Exchange rate and its associated surcharges apply to the sale of power to regional utilities that participate in the REP established under section 5(c) of the Northwest Power Act. 16 U.S.C. 839c(c). The Base PF Exchange rate establishes the threshold for participation in the REP; only utilities with ASCs above the appropriate Base PF Exchange rate may receive REP benefits. If a utility meets the threshold, a utility-specific PF Exchange rate will be established in this proceeding for each eligible utility. The utility-specific PF Exchange rate is used in calculating the REP benefits each participant will receive during FY 2014–2015.

In addition, the proposed PF–14 rate schedule includes rates for customers with non-Federal resources that have elected to take Diurnal Flattening Service or Secondary Crediting Service, and a melded PF rate for any Public customers that elects a power sales contract other than a CHWM Contract for firm requirements service.

New Resource Firm Power Rate (NR–14)—The NR–14 rate applies to net requirements power sales to investor-owned utilities (IOUs) made pursuant to section 5(b) of the Northwest Power Act for resale to ultimate consumers, direct consumption, construction, testing and start-up, and station service. The NR–14 rate is also applied to sales of firm power to Public customers serving new large single loads. In the Initial Proposal BPA is forecasting no sales at the NR rate. The average NR–14 rate in the Initial Proposal is $73.63/MWh, an increase of 5.9 percent from the NR–12 rate.

Industrial Firm Power Rate (IP–14)—The IP rate is applicable to firm power sales to DSI customers authorized by section (5)(d)(1)(A) of the Northwest Power Act. 16 U.S.C. 839c(d)(1)(A). In the Initial Proposal BPA is forecasting annual sales of 312 average megawatts (aMW) to DSIs. See section IV.A.2c. The average IP–14 rate in the Initial Proposal is $38.98/MWh, an increase of 7.4 percent over the IP–12 rate.

Firm Power Products and Services Rate (FPS–14)—The FPS rate schedule is applicable to purchasers of Firm Power, Capacity Without Energy, Supplemental Control Area Services, Shaping Services, Reservation and Rights to Change Services, and Reassignment or Remarketing of Surplus Transmission Capacity, for use inside and outside the Pacific Northwest. The

rates for these products are negotiated between BPA and the purchaser. In addition, the FPS–14 rate schedule includes rates for customers with non-Federal resources that have elected to take Resource Support Services, Resource Shaping Services, or Transmission Scheduling Service/ Transmission Curtailment Management Service and Forced Outage Reserve Service.

General Transfer Agreement Service Rate (GTA–14)—The GTA rate schedule includes the GTA Delivery Charge and Transfer Service Operating Reserve Charge. The GTA Delivery Charge applies to customers that purchase Federal power that is delivered over non-Federal low-voltage transmission facilities. BPA is proposing to change the basis for determining the GTA Delivery Charge. The proposed rate is based on the cost of low-voltage non-Federal delivery service provided by third-party transmission providers. In addition, the proposed billing determinant uses the customer system peak. BPA is also proposing to continue an Operating Reserves rate for transfer service customers that will become effective when proposed changes to Western Electricity Coordinating Council (WECC) Operating Reserve Requirements become effective.

2. Important Features of the BP–14 Initial Rate Proposal for Power Rates and Ancillary Service and Control Area Service Rates

a. Tiered PF Rate

No significant changes are proposed for the tiered PF rate. Several minor changes are proposed to address issues that have arisen during the first year of application of the tiered rate design, including modifications to the demand rate billing determinants and to certain aspects of Tier 2 rates, and wording corrections to some power rate schedules.

b. Generation Inputs; Ancillary and Control Area Services

For FY 2014–2015, BPA expects to purchase balancing reserve capacity from non-Federal sources to provide balancing services within its balancing authority area. BPA is proposing a methodology to assign the costs of Federal balancing reserve capacity and non-Federal balancing reserve capacity.

VERBS provides the generation capability (ability to both increase and decrease generation) to follow within-hour variations of variable energy resources in the BPA Balancing Authority Area. The proposed methodology for calculating the Variable Energy Resource Balancing Service rate for service from Federal resources is similar to the BP–12 methodology. However, BPA is proposing to make several changes to its rate options under VERBS. The proposed VERBS rate recovers the cost of regulating reserves, following reserves, and imbalance reserves that are necessary to balance the within-hour schedule deviations of variable energy resources. The proposed VERBS rate will also recover certain directly assigned costs that are associated with providing VERBS.

The proposed VERBS rate is comprised of a base rate and four formula rate adjustments, which are designed to recover the costs associated with: (1) The purchase of non-Federal balancing reserve capacity on a planning basis to provide VERBS; (2) replacing, if necessary, FCRPS balancing reserve capacity that becomes unavailable during the rate period with reserve acquisitions from non-Federal sources in order to continue providing VERBS and Dispatchable Energy Resource Balancing Service (DERBS) for the rate period; (3) purchases of non-Federal balancing reserve capacity to support a ''Full Service'' VERBS option for customers that elect this service; and (4) acquisitions of non-Federal balancing reserve capacity to support an unplanned increase in balancing services. BPA is also proposing to provide a rate credit to VERBS customers for embedded and variable costs associated with FCRPS balancing reserve capacity that becomes unavailable during the rate period because of hydro-related conditions.

BPA is proposing to provide a discounted base rate to VERBS customers that participate in ''committed intra-hour scheduling,'' in which customers agree to schedule on a half-hour basis in every schedule interval at a specific level of scheduling accuracy.

BPA is proposing to discontinue Provisional Variable Energy Resource Balancing Service (also known as ''Provisional Balancing Service'') and its associated rate.

DERBS is necessary to support the within-hour deviations of thermal generation from the hourly generation estimate (*i.e.,* schedule). BPA proposes to base its calculation of the DERBS rate on 5-minute average revenue meter data instead of 1-minute average SCADA meter data, which is currently used. In addition, BPA proposes a formula rate adjustment to the DERBS rate to recover the cost of any planned purchases of non-Federal balancing reserve capacity that are necessary to provide DERBS and VERBS. BPA also proposes to exempt specific 5-minute average periods from the DERBS rate calculation for schedule deviations that were caused by automatic voltage control systems that corrected a grid frequency deviation.

BPA proposes to change the calculation of its incremental cost for Energy and Generation Imbalance Services from an hourly market index to a weighted average cost of energy deployed. BPA also proposes to provide no credit for generator imbalances (actual generation exceeds scheduled amounts) under Generation Imbalance Service that occur during a scheduling period in which BPA issues a curtailment order. In addition, BPA proposes to exempt customers that participate in committed intra-hour scheduling from Deviation Band 2 penalty charges under Generation Imbalance Service. Finally, BPA proposes to exempt customers that participate in committed intra-hour scheduling or committed hourly scheduling from the Persistent Deviation penalty charge.

c. DSI Service for FY 2014–2015

In the Initial Proposal, BPA is forecasting sales of 312 aMW to Alcoa and Port Townsend Paper for the FY 2014–2015 rate period. BPA proposed and received public comment on a ten-year contract with Port Townsend Paper that would provide service through FY 2022. BPA is currently receiving public comment on a proposed ten-year contract with Alcoa that would also provide service through FY 2022. The Initial Proposal does not make an explicit assumption about the outcome of either proposed contract; however, the Initial Proposal does assume that BPA will serve the two industries during the forthcoming rate period.

d. Risk Mitigation Tools

The main financial risk mitigation tool BPA relies upon is financial liquidity, comprising cash, other investments in the Bonneville Fund at the U.S. Treasury, and a short-term liquidity facility with the U.S. Treasury. BPA proposes to include provisions for two rate adjustments: the Cost Recovery Adjustment Clause (CRAC), which can generate additional cash within the rate period, and the Dividend Distribution Clause (DDC), which can return cash to customers when BPA's financial reserves are larger than needed to meet its Treasury Payment Probability (TPP) standard. When available liquidity and the CRAC are insufficient to meet the TPP standard, BPA includes Planned

Net Revenues for Risk (PNRR) in its rates.

In the Initial Proposal, BPA proposes to include no PNRR and to cap the maximum revenue recoverable through the CRAC at $300 million per year. BPA is proposing some minor changes to the risk mitigation tools in the BP–14 Initial Proposal, including a revision to the metric used to determine whether a CRAC or DDC triggers. The thresholds for triggering the CRAC and DDC remain unchanged from the BP–12 rate case (equivalent reserve levels of $0 and $750 million respectively in financial reserves attributed to Power). BPA also proposes to continue the National Marine Fisheries Service FCRPS Biological Opinion Adjustment (NFB Adjustment) and the Emergency NFB Surcharge, given that litigation regarding the Biological Opinion continues.

B. Summary of the Transmission Rate Proposal

1. Transmission Rates

BPA is proposing an overall 13 percent increase in transmission rates. This increase includes a proposed 25 percent increase in the Utility Delivery rate.

BPA is proposing four different rates for the use of its Integrated Network segment, four different rates for use of intertie segments, and several other rates for various purposes.

The four rates for use of the Integrated Network segment are:

Formula Power Transmission Rate (FPT–14)—The FPT rate is based on the cost of using specific types of facilities, including a distance component for the use of transmission lines, and is charged on a contract demand basis.

Integration of Resources Rate (IR–14)—The IR rate is a postage stamp, contract demand rate for the use of the Integrated Network, similar to Point-to-Point (PTP) service (see below).

Network Integration Transmission Rate (NT–14)—The NT rate applies to customers taking network integration service under the Open Access Transmission Tariff (OATT) and allows customers to flexibly serve their retail load.

Point-to-Point Rate (PTP–14)—The PTP rate is a contract demand rate that applies to customers taking point-to-point service on BPA's network facilities under the OATT. It provides customers with flexible service from identified Points of Receipt to identified Points of Delivery. There are separate PTP rates for long-term firm service; daily firm and non-firm service; and hourly firm and non-firm service.

BPA is proposing four rates for intertie use:

The Southern Intertie Rate (IS–14) and the Montana Intertie Rate (IM–14) are contract demand rates that apply to customers taking Point-to-Point service under the OATT on the Southern Intertie and Montana Intertie. These rates are structured similarly to the rate for Point-to-Point service on Network facilities.

The Townsend-Garrison Transmission Rate (TGT–14) and the Eastern Intertie Rate (IE–14) are developed pursuant to the Montana Intertie agreement.

Other proposed transmission rates are:

The Use-of-Facilities Rate (UFT–14) establishes a formula for charging for the use of a specific facility based on the annual cost of that facility.

The Advance Funding Rate (AF–14) allows Transmission Services to collect the capital and related costs of specific facilities through an advance-funding mechanism.

Other charges that may apply include a Delivery Charge for the use of low-voltage delivery substations; a Power Factor Penalty Charge; a Reservation Fee for customers that postpone their service commencement dates; incremental rates for transmission requests that require new facilities; a penalty charge for failure to comply with dispatch, curtailment, redispatch, or load shedding orders; and an Unauthorized Increase Charge for customers that exceed their contracted amounts.

2. Ancillary and Control Area Services Rates

BPA is proposing rates for six ancillary services: Scheduling, System Control, and Dispatch Service; Reactive Supply and Voltage Control from Generation Sources Service; Regulation and Frequency Response Service; Energy Imbalance Service; Operating Reserve–Spinning Reserve Service; and, Operating Reserve–Supplemental Reserve Service. In addition to the rates for Ancillary Services, BPA is proposing rates for six control area services: Regulation and Frequency Response Service; Generation Imbalance Service; Operating Reserve–Spinning Reserve Service; Operating Reserve–Supplemental Reserve Service; Variable Energy Resource Balancing Service; and Dispatchable Energy Resource Balancing Service.

3. Significant Changes in the BP–14 Initial Rate Proposal for Transmission Rates

a. Network Cost Allocation

BPA is proposing to change its cost allocation methodology for allocating Integrated network costs to NT and PTP rates from a 1 coincidental peak (1CP) method to a 12 non-coincidental peak (12 NCP) method. The rate impact of this change is approximately a 1.5 percent increase in the PTP rate and a 5.9 percent decrease in the NT rate.

b. Billing Determinants for NT and Utility Delivery Service

BPA is proposing to change the billing determinants for NT service and Utility Delivery service to be consistent with the Network cost allocation methodology.

Changes to ancillary and control area services rates are discussed in section IV.A.2.b.

C. Overview of Studies

The initial rate proposal for power rates, transmission rates, and ancillary service and control area service rates is explained and documented in the following studies.

1. Power Rates Study

The Power Rates Study explains and documents the development of power rates and billing determinants for BPA's power products and services. The results of the study are reflected in the proposed power rate schedules.

2. Power Loads and Resources Study

The Power Loads and Resources Study explains and documents the compilation of the load and resource data and forecasts necessary for developing BPA's wholesale power rates. The Study has three major interrelated components: the Federal system load forecast; the Federal system resource forecast; and the Federal system loads and resources balance.

3. Power Revenue Requirement Study

The Power Revenue Requirement Study explains and documents the level of revenues from power rates necessary to recover, in accordance with sound business principles, the FCRPS costs associated with the production, acquisition, marketing, and conservation of electric power. Cost estimates in the Power Revenue Requirement Study are based on the results of the IPR, as presented in the Final Close-Out Report dated October 26, 2012. The repayment studies reflect actual and projected repayment obligations and transactions related to

BPA's Debt Optimization program. All new capital investments are assumed to be financed from debt or appropriations. The adequacy of projected revenues to recover the rate test period revenue requirement and to recover the Federal investment over the prescribed repayment period is tested and demonstrated for the generation function.

4. Power Risk and Market Price Study

The Power Risk and Market Price Study has three major components: the electricity market price forecast used in setting power rates; the quantification of the risks accounted for in setting power rates; and the set of risk mitigation measures to include in rates that ensure that power rates meet the established TPP. The TPP is a measure of the probability that BPA will make its Treasury payments on time and in full during the rate period. If the TPP is below BPA's two-year 95 percent standard, a combination of risk mitigation tools is proposed to meet the TPP standard.

The electricity market price forecast portion of the study explains and documents forecasts of the variable cost of the marginal resource for transactions in the wholesale energy market. The market used in this analysis is the Mid-Columbia trading hub in the state of Washington, although this forecast is influenced by conditions in other regions within the Western Interconnection. The Power Risk and Market Price Study also explains and documents the natural gas price forecast used in setting rates.

5. Generation Inputs Study

The Generation Inputs Study includes the study and documentation for generation inputs costs and other inter-business line costs. The study also includes the development and design of the proposed ACS–14 Ancillary and Control Area Services rate schedule. The forecasts for balancing reserve capacity to provide regulation and frequency response, variable energy resource balancing service, dispatchable energy resource balancing service, operating reserve, and load following are explained and documented in the Generation Inputs Study. The Study explains and documents the embedded and variable cost methodologies for these balancing reserve capacity obligations and the resulting revenue credits reflected in the power rates.

6. Transmission Rates Study (TRS)

The Transmission Rates Study explains the rate design process for developing transmission, ancillary and control area service rates. The purpose of the TRS is to derive rates that will recover transmission costs. The rate study also explains proposed changes to the Transmission Service Rate Schedules and General Rate Schedule Provisions.

7. Transmission Revenue Requirement Study

The Transmission Revenue Requirement Study establishes the level of revenue needed from transmission rates to recover, in accordance with sound business principles, the costs associated with the transmission of electric power. The Transmission Revenue Requirement Study includes a risk analysis to ensure that the proposed transmission rates are sufficient to achieve a 95 percent probability of making end-of-year U.S. Treasury payments in full and on time during the two-year rate period.

8. Transmission Segmentation Study

The Transmission Segmentation Study classifies transmission facilities by usage and assigns them to segments. Segments are groups of facilities that serve distinct functions (for example, integration of power into the transmission system or delivery of power at low voltage). The Segmentation Study also determines the plant investment and historical operations and maintenance expense for each segment based on the facilities that have been assigned to that segment.

Part V—Proposed 2014 Rate Schedules

BPA's proposed 2014 Power Rate Schedules and proposed 2014 Transmission Rate Schedules are a part of this notice and are available for viewing and downloading on BPA's Web site at *www.bpa.gov/goto/BP14Schedule*. Copies of the proposed rate schedules also are available for viewing in BPA's Public Reference Room at the BPA Headquarters, 1st Floor, 905 NE 11th Avenue, Portland, OR 97232.

Issued this 29th day of October, 2012.

Stephen J. Wright,

Administrator and Chief Executive Officer.

[FR Doc. 2012–27299 Filed 11–7–12; 8:45 am]

BILLING CODE 6450–01–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: CP13–9–000.
Applicants: Dominion Transmission, Inc.
Description: Application to Abandon Gas Transportation with NSTAR of Dominion Transmission, Inc.
Filed Date: 10/25/12.
Accession Number: 20121025–5162.
Comments Due: 5 p.m. ET 11/6/12.

Docket Numbers: RP13–196–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Withdraw filing in Docket No. RP13–196–000.
Filed Date: 10/31/12.
Accession Number: 20121031–5039.
Comments Due: 5 p.m. ET 11/13/12.

Docket Numbers: RP13–208–000.
Applicants: Gulf South Pipeline Company, LP.
Description: EFT to FTS One Time Conversion filing to be effective 12/1/2012.
Filed Date: 10/31/12.
Accession Number: 20121031–5060.
Comments Due: 5 p.m. ET 11/13/12.

Docket Numbers: RP13–209–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Create Umbrella Service to be effective 12/3/2012.
Filed Date: 10/31/12.
Accession Number: 20121031–5064.
Comments Due: 5 p.m. ET 11/13/12.

Docket Numbers: RP13–210–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Agent Agreement Option filing to be effective 12/1/2012.
Filed Date: 10/31/12.
Accession Number: 20121031–5065.
Comments Due: 5 p.m. ET 11/13/12.

Docket Numbers: RP13–211–000.
Applicants: Boardwalk Storage Company, LLC.
Description: Cancellation of First Revised Volume No. 1 to be effective 10/31/2012.
Filed Date: 10/31/12.
Accession Number: 20121031–5068.
Comments Due: 5 p.m. ET 11/13/12.

Docket Numbers: RP13–212–000.
Applicants: Boardwalk Storage Company, LLC.
Description: Baseline filing of Second Revised Volume No. 1 to be effective 10/1/2012.

Filed Date: 10/31/12.
Accession Number: 20121031–5069.
Comments Due: 5 p.m. ET 11/13/12.

Docket Numbers: RP13–213–000.
Applicants: Gulf Crossing Pipeline Company LLC.
Description: Create Umbrella Service to be effective 12/3/2012.
Filed Date: 10/31/12.
Accession Number: 20121031–5108.
Comments Due: 5 p.m. ET 11/13/12.

Docket Numbers: RP13–214–000.
Applicants: Kinder Morgan Interstate Gas Transmissio.
Description: Neg Rate 2012–10–31—Mieco to be effective 11/1/2012.
Filed Date: 10/31/12.
Accession Number: 20121031–5112.
Comments Due: 5 p.m. ET 11/13/12.

Docket Numbers: RP13–215–000.
Applicants: Fayetteville Express Pipeline LLC.
Description: FEP 2012 Semi-Annual Fuel Filing 10/31/2012 to be effective 12/1/2012.
Filed Date: 10/31/12.
Accession Number: 20121031–5122.
Comments Due: 5 p.m. ET 11/13/12.

Docket Numbers: RP13–216–000.
Applicants: Gulf South Pipeline Company, LP.
Description: HK 37731 to Texla 40212 Cap Rel Neg Rate Agmt to be effective 11/1/2012.
Filed Date: 10/31/12.
Accession Number: 20121031–5126.
Comments Due: 5 p.m. ET 11/13/12.

Docket Numbers: RP13–217–000.
Applicants: Gulf South Pipeline Company, LP.
Description: HK 37731 to Sequent 40215 Cap Rel Neg Rate Agmt to be effective 11/1/2012.
Filed Date: 10/31/12.
Accession Number: 20121031–5128.
Comments Due: 5 p.m. ET 11/13/12.

Docket Numbers: RP13–218–000.
Applicants: Carolina Gas Transmission Corporation.
Description: BG Negotiated Rate Agreement to be effective 11/1/2012.
Filed Date: 10/31/12.
Accession Number: 20121031–5143.
Comments Due: 5 p.m. ET 11/13/12.

Docket Numbers: RP13–219–000.
Applicants: Gulf Crossing Pipeline Company LLC.
Description: JP Morgan 156–2 Amendment to neg rate agmt to be effective 11/1/2012.
Filed Date: 10/31/12.
Accession Number: 20121031–5144.
Comments Due: 5 p.m. ET 11/13/12.

Docket Numbers: RP13–220–000.
Applicants: Southern Star Central Gas Pipeline, Inc.
Description: Misc Tariff Filing October 2012 to be effective 12/1/2012.
Filed Date: 10/31/12.
Accession Number: 20121031–5148.
Comments Due: 5 p.m. ET 11/13/12.

Docket Numbers: RP13–221–000.
Applicants: Gulf South Pipeline Company, LP.
Description: HK 37733 to Texla 40218 Cap Rel Neg Rate Agmt filing to be effective 11/1/2012.
Filed Date: 10/31/12.
Accession Number: 20121031–5157.
Comments Due: 5 p.m. ET 11/13/12.

Docket Numbers: RP13–222–000.
Applicants: Gulf South Pipeline Company, LP.
Description: HK 37731 to Texla 40219 Cap Rel Neg Rate Agmt filing to be effective 11/1/2012.
Filed Date: 10/31/12.
Accession Number: 20121031–5158.
Comments Due: 5 p.m. ET 11/13/12.

Docket Numbers: RP13–223–000.
Applicants: Gulf South Pipeline Company, LP.
Description: HK 37637 to Sequent 40220 Cap Rel Neg Rate Agmt filing to be effective 11/1/2012.
Filed Date: 10/31/12.
Accession Number: 20121031–5159.
Comments Due: 5 p.m. ET 11/13/12.

Docket Numbers: RP13–224–000.
Applicants: Gulf South Pipeline Company, LP.
Description: ONEOK 34951 to BG 40185 cap rel neg rate agmt filing to be effective 11/1/2012.
Filed Date: 10/31/12.
Accession Number: 20121031–5160.
Comments Due: 5 p.m. ET 11/13/12.

Docket Numbers: RP13–225–000.
Applicants: Gulf South Pipeline Company, LP.
Description: QEP 37657–26 Amendment to neg rate agmt to be effective 11/1/2012.
Filed Date: 10/31/12.
Accession Number: 20121031–5162.
Comments Due: 5 p.m. ET 11/13/12.

Docket Numbers: RP13–226–000.
Applicants: Wyoming Interstate Company, L.L.C.
Description: FL&U October 2012 Filing to be effective 12/1/2012.
Filed Date: 10/31/12.
Accession Number: 20121031–5170.
Comments Due: 5 p.m. ET 11/13/12.

Docket Numbers: RP13–227–000.
Applicants: Midcontinent Express Pipeline LLC.
Description: Fuel Tracking Filing to be effective 12/1/2012.
Filed Date: 10/31/12.
Accession Number: 20121031–5191.
Comments Due: 5 p.m. ET 11/13/12.

Docket Numbers: RP13–228–000.
Applicants: ANR Pipeline Company.
Description: Centra Gas Manitoba to be effective 11/1/2013.
Filed Date: 10/31
Accession Number: 20121031–5194.
Comments Due: 5 p.m. ET 11/13/12.

Docket Numbers: RP13–229–000.
Applicants: Dominion Transmission, Inc.
Description: DTI—October 31, 2012 Negotiated Rate Agreements to be effective 11/1/2012.
Filed Date: 10/31/12.
Accession Number: 20121031–5196.
Comments Due: 5 p.m. ET 11/13/12.

Docket Numbers: RP13–232–000.
Applicants: WBI Energy Transmission, Inc.
Description: Non-conforming Negotiated Rate Agreement—MDU to be effective 12/1/2012.
Filed Date: 10/31/12.
Accession Number: 20121031–5198.
Comments Due: 5 p.m. ET 11/13/12.

Docket Numbers: RP13–233–000.
Applicants: Natural Gas Pipeline Company of America.
Description: Negotiated Rate Filing—Tenaska Gas Storage to be effective 10/31/2012.
Filed Date: 10/31/12.
Accession Number: 20121031–5200.
Comments Due: 5 p.m. ET 11/13/12.

Docket Numbers: RP13–234–000.
Applicants: Pine Needle LNG Company, LLC.
Description: PN Limited Section 4 Rate Filing to be effective 12/1/2012.
Filed Date: 10/31/12.
Accession Number: 20121031–5239.
Comments Due: 5 p.m. ET 11/13/12.

Docket Numbers: RP13–235–000.
Applicants: Elba Express Company, L.L.C.
Description: Miscellaneous Filing to be effective 12/1/2012.
Filed Date: 10/31/12.
Accession Number: 20121031–5241.
Comments Due: 5 p.m. ET 11/13/12.

Docket Numbers: RP13–236–000.
Applicants: Colorado Interstate Gas Company, L.L.C.
Description: High Plains PAL Service to be effective 12/1/2012.
Filed Date: 10/31/12.
Accession Number: 20121031–5249.
Comments Due: 5 p.m. ET 11/13/12.

Docket Numbers: RP13–237–000.
Applicants: Texas Eastern Transmission, LP.
Description: ASA TETLP DEC 2012 FILING to be effective 12/1/2012.
Filed Date: 10/31/12.
Accession Number: 20121031–5252.
Comments Due: 5 p.m. ET 11/13/12.

Docket Numbers: RP13–238–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: AGT FRQ 2012 FILING to be effective 12/1/2012.

Filed Date: 10/31/12.
Accession Number: 20121031–5254.
Comments Due: 5 p.m. ET 11/13/12.

Docket Numbers: RP13–239–000.
Applicants: Northern Natural Gas Company.
Description: 20121031 Negotiated Rate to be effective 11/1/2012.
Filed Date: 10/31/12.
Accession Number: 20121031–5257.
Comments Due: 5 p.m. ET 11/13/12.

Docket Numbers: RP13–240–000.
Applicants: Trailblazer Pipeline Company LLC.
Description: Rate Schedule FTB to be effective 12/1/2012.
Filed Date: 10/31/12.
Accession Number: 20121031–5258.
Comments Due: 5 p.m. ET 11/13/12.

Docket Numbers: RP13–241–000.
Applicants: ETC Tiger Pipeline, LLC.
Description: ETC Tiger 2012 Semi-Annual Fuel Filing 10/31/12 to be effective 12/1/2012.
Filed Date: 10/31/12.
Accession Number: 20121031–5282.
Comments Due: 5 p.m. ET 11/13/12.

Docket Numbers: RP13–242–000.
Applicants: Texas Gas Transmission, LLC.
Description: Atmos 32658 Neg Rate Agmt to be effective 11/1/2012.
Filed Date: 11/1/12.
Accession Number: 20121101–5011.
Comments Due: 5 p.m. ET 11/13/12.

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: RP13–102–001.
Applicants: Northwest Pipeline GP
Description: NAESB 2.0 Compliance Filing—Substitute Sheet to be effective 12/1/2012.
Filed Date: 10/31/12.
Accession Number: 20121031–5212.
Comments Due: 5 p.m. ET 11/13/12.

Docket Numbers: RP13–180–001.
Applicants: Natural Gas Pipeline Company of America.
Description: Amended Filing—EDF Trading Negotiated Rate Agreement to be effective 11/1/2012.
Filed Date: 10/31/12.
Accession Number: 20121031–5267.
Comments Due: 5 p.m. ET 11/13/12.

Docket Numbers: RP13–39–001.
Applicants: CenterPoint Energy—Mississippi River T.
Description: Compliance Filing—NAESB Compliance Filing (Version 2.0) to be effective 12/1/2012.
Filed Date: 10/31/12.
Accession Number: 20121031–5253.
Comments Due: 5 p.m. ET 11/13/12.

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: November 1, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–27298 Filed 11–7–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–203–000]

Black Bear SO, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Black Bear SO, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 23, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 2, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–27301 Filed 11–7–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–215–000]

Haverhill Cogeneration Company LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Haverhill Cogeneration Company LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214

of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 23, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 2, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–27303 Filed 11–7–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–281–000]

Star Energy Partners LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Star Energy Partners LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is November 23, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 2, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–27305 Filed 11–7–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–217–000]

Beacom Energy, Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Beacom Energy, Inc.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 23, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email

FERCOnlineSupport@ferc.gov. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 2, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–27304 Filed 11–7–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–214–000]

Middletown Cogeneration Company LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Middletown Cogeneration Company LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 23, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 2, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–27302 Filed 11–7–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2012–0817; FRL–9749–9]

Access by EPA Contractors to Information Claimed as Confidential Business Information (CBI) Submitted under Title II of the Clean Air Act and Related Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA's Office of Transportation and Air Quality (OTAQ) plans to authorize various contractors to access information which will be submitted to EPA under Title II of the Clean Air Act that may be claimed as, or may be determined to be, confidential business information (CBI). Access to this information, which is related to 40 CFR Part 79; 40 CFR Part 80; and 40 CFR Part 98, Subparts A, LL and MM will begin on November 19, 2012.

DATES: EPA will accept comments on this Notice through November 13, 2012.

FOR FURTHER INFORMATION CONTACT: Jaimee Dong, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., MC 6405J; telephone number: 202–343–9672; fax number: 202–343–2802; email address: *dong.jaimee@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this notice apply to me?

This action is directed to the general public. However, this action may be of particular interest to parties who submit or have previously submitted information to EPA regarding the following programs: Fuel and fuel additive registration (40 CFR part 79); and various fuels programs including reformulated gasoline, anti-dumping, gasoline sulfur, ultra low sulfur diesel, benzene content, and the renewable fuel standard (40 CFR part 80). This action may also be of particular interest to parties such as suppliers of coal-based liquid fuels and suppliers of petroleum products, as described in 40 CFR part 98 subparts LL and MM, respectively. (40 CFR part 98, subpart A contains general provisions related to registration and reporting.) Parties who may be interested in this notice include refiners, importers, and exporters of these products.

This **Federal Register** notice may be of particular relevance to parties that have submitted data under the above-listed programs. Since other parties may also be interested, the Agency has not attempted to describe all the specific parties that may be affected by this action. If you have further questions regarding the applicability of this action to a particular party, please contact the person listed in **FOR FURTHER INFORMATION CONTACT.**

II. How can I get copies of this document and other related information?

A. Electronically

EPA has established a public docket for this **Federal Register** notice under Docket EPA–HQ–OAR–2012–0817.

All documents in the docket are identified in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, such as confidential business information (CBI) or other information for which disclosure is restricted by statute. Certain materials, such as copyrighted material, will only be available in hard copy at the EPA Docket Center.

B. EPA Docket Center

Materials listed under Docket EPA–HQ–OAR–2012–0817 will be available either electronically through *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20460. 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 Air Docket is (202) 566–1742.

III. Description of Programs and Potential Disclosure of Information Claimed as Confidential Business Information (CBI) to Contractors

EPA's Office of Transportation and Air Quality (OTAQ) has responsibility for protecting public health and the environment by regulating air pollution from motor vehicles, engines, and the fuels used to operate them, and by encouraging travel choices that minimize emissions. In order to implement various Clean Air Act programs, and to permit regulated entities flexibility in meeting regulatory requirements (e.g., compliance on average), we collect compliance reports and other information from them. Occasionally, the information submitted is claimed to be confidential business information (CBI). Information submitted under such a claim is handled in accordance with EPA's regulations at 40 CFR part 2, subpart B and in accordance with EPA procedures, including comprehensive system security plans (SSPs) that are consistent with those regulations. When EPA has determined that disclosure of information claimed as CBI to contractors is necessary, the corresponding contract must address the appropriate use and handling of the information by the contractor and the contractor must require its personnel who require access to information claimed as CBI to sign written non-disclosure agreements before they are granted access to data.

In accordance with 40 CFR 2.301(h), we have determined that the contractors, subcontractors, and grantees (collectively referred to as ''contractors'') listed below require access to CBI submitted to us under the Clean Air Act and in connection with the Mandatory Greenhouse Gas (GHG) Reporting Rule [40 CFR part 98, subparts A (general registration and reporting provisions) LL, and MM], as well as various OTAQ programs related to fuels, vehicles, and engines (40 CFR parts 79 and 80) and we are providing notice and an opportunity to comment. OTAQ collects this data in order to monitor compliance with Clean Air Act programs and, in many cases, to permit regulated parties flexibility in meeting regulatory requirements. For example, data that may contain CBI is collected in order to register fuels and fuel additives prior to introduction into commerce and to certify engines. Certain programs are designed to permit regulated parties an opportunity to comply on average, or to engage in transactions using various types of credits. For example, OTAQ collects information about batches of gasoline that refiners produce in order to ensure compliance with reformulated gasoline standards. We are issuing this **Federal Register** notice to inform all affected submitters of information that we plan to grant access to material that may be claimed as CBI to the contractors identified below on a need-to-know basis.

Under Contract Number EP–C–11–007, SRA International, Inc., 4300 Fair Lakes Court, Fairfax, VA 22033, and its subcontractor, PowerSolv, 1801 Robert Fulton Drive, Suite 550, Reston, VA 20191, provide report processing, program support, technical support, and information technology services that involve access to information claimed as CBI related to 40 CFR part 79, 40 CFR part 80, and 40 CFR part 98 subparts A, LL, and MM. Access to data, including information claimed as CBI, will commence on November 19, 2012 and will continue until December 31, 2015. If the contract is extended, this access will continue for the remainder of the contract without further notice.

OTAQ utilizes the services of enrollees under the Senior Environmental Employment (SEE) program. SEE enrollees are provided through Grant Number CQ–834621, the National Association for Hispanic Elderly (NAHE), 234 E. Colorado Blvd., Suite 300, Pasadena, California 91101. Access to data relating to all of OTAQ's programs and to subparts A, LL, and MM of the Mandatory GHG Reporting Rule, including information claimed as CBI, is ongoing and will continue until March 16, 2013. If the grant is extended, this access will continue for the remainder of the grant and any future extensions without further notice.

Parties who wish further information about this **Federal Register** notice or about OTAQ's disclosure of information claimed as CBI to contactors may contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects

Environmental protection; confidential business information.

Dated: October 18, 2012.

Byron J. Bunker,

Acting Director, Compliance Division, Office of Transportation & Air Quality, Office of Air and Radiation.

[FR Doc. 2012–27329 Filed 11–7–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9750–5]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''CAA''), notice is hereby given of a proposed consent decree to resolve a lawsuit filed by the Environmental Integrity Project, Sierra Club, and Texas Campaign for the Environment (collectively, ''Plaintiffs'') in the United States District Court for the District of Columbia: *Environmental Integrity Project, et al.,* v. *Jackson,* No. 1:12–cv–00867–RMC (D. D.C.). Plaintiffs filed a deadline suit to compel the Administrator to respond to an administrative petition seeking EPA's objection to a CAA Title V operating permit issued by the Texas Commission on Environmental Quality to the Luminant Generation Company to operate the Sandow 5 Generating Plant, a power plant located in Milam County, Texas. Under the proposed consent decree, EPA would agree to respond to the petition by January 15, 2013.

DATES: Written comments on the proposed consent decree must be received by December 10, 2012.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2012–0847 online at *www.regulations.gov* (EPA's preferred method); by email to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: David Coursen, Office of General Counsel (Mail Code 2344A), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone: (202) 564–0781; fax number (202) 564–5603; email address: *coursen.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

This proposed consent decree would resolve a lawsuit alleging that the Administrator failed to perform a nondiscretionary duty to grant or deny, within 60 days of submission, an administrative petition to object to a CAA Title V permit issued by the Texas Commission on Environmental Quality to the Luminant Generation Company to operate the Sandow 5 Generating Plant, a power plant located in Milam County, Texas. Under the proposed consent decree, EPA would agree to respond to the petition by January 15, 2013. In addition, the proposed consent decree further states that following signature, EPA shall expeditiously deliver notice of such action to the Office of the Federal Register for publication and, if EPA's response includes the granting of any portion of the petition in whole or in part, EPA shall promptly transmit the response to the Texas Commission on Environmental Quality. Plaintiffs and EPA agree that this Consent Decree shall constitute a complete and final settlement of all claims that Plaintiffs have asserted against the United States, including EPA, under any provision of law in connection with *Environmental Integrity Project, et al.* v. *Jackson,* Case No. 12–cv–00867 (D.D.C.), except as provided in Paragraph 4 of the proposed Consent Decree, addressing any claim for costs of litigation.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this consent decree should be withdrawn, the terms of the consent decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How can I get a copy of the consent decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2012–0847) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *www.regulations.gov.* You may use the *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search''.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (email) system is not an ''anonymous access'' system. If you send an email comment directly to the Docket without going through *www.regulations.gov,* your email address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Lorie J. Schmidt,

Associate General Counsel.

[FR Doc. 2012–27320 Filed 11–7–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 9750–7; CERCLA–04–2010–3768]

Ellis Road/American Electric Corporation, Jacksonville, Duval County, FL, Notice of Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of settlement.

SUMMARY: Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has entered into a settlement to conduct sampling, perform a clean-up and compromise cost with over 80 settling parties at the Ellis Road/American Electric Corporation Superfund Site located in Jacksonville, Duval County, Florida.

DATES: The Agency will consider public comments on the settlement until December 10, 2012. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received

disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the settlement are available from Ms. Paula V. Painter. Submit your comments by Site name Ellis Road/American Electric Corporation Site by one of the following methods:

- *www.epa.gov/region4/superfund/programs/enforcement/enforcement.html.*
- Email. *Painter.Paula@epa.gov.*
- U.S. Environmental Protection Agency, 61 Forsyth Street SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Paula V. Painter at 404/562–8887.

Dated: October 18, 2012.

Anita L. Davis,

Chief, Superfund Enforcement & Information Management Branch, Superfund Division.

[FR Doc. 2012–27321 Filed 11–7–12; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Sunshine Act Meeting; Notice of a Partially Open Meeting of the Board of Directors of the Export-Import Bank of the United States

TIME AND PLACE: Thursday, November 15, 2012 at 9:30 a.m. The meeting will be held at Ex-Im Bank in Room 321, 811 Vermont Avenue NW., Washington, DC 20571.

OPEN AGENDA ITEMS: Item No. 1: Ex-Im Bank Advisory Committee for 2013.

Note: This item was originally scheduled for discussion on November 1, 2012. However, the meeting was cancelled due to Federal Government closures because of inclement weather earlier in the week.

PUBLIC PARTICIPATION: The meeting will be open to public observation for Item No. 1 only.

FURTHER INFORMATION: For further information, contact: Office of the Secretary, 811 Vermont Avenue NW., Washington, DC 20571, (202) 565–3336.

Lisa V. Terry,

Assistant General Counsel.

[FR Doc. 2012–27474 Filed 11–7–12; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Notice

November 2, 2012.

TIME AND DATE: 1:00 p.m., Friday, November 16, 2012.

PLACE: The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW., Washington, DC 20004 (entry from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor* v. *The American Coal Co.,* Docket No. LAKE 2010–408–R. (Issues include whether the Administrative Law Judge erred in vacating an order issued under section 103(k) of the Mine Act, 30 U.S.C. 813(k).)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Emogene Johnson,

Administrative Assistant.

[FR Doc. 2012–27322 Filed 11–6–12; 11:15 am]

BILLING CODE 6735–01–P

FEDERAL RESERVE SYSTEM

[Docket No. OP–1448]

Federal Reserve Bank Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) has approved the private sector adjustment factor (PSAF) for 2013 of $14.1 million and the 2013 fee schedules for Federal Reserve priced services and electronic access. These actions were taken in accordance with the requirements of the Monetary Control Act of 1980, which requires that, over the long run, fees for Federal Reserve priced services be established on the basis of all direct and indirect costs, including the PSAF.

DATES: The new fee schedules become effective January 2, 2013.

FOR FURTHER INFORMATION CONTACT: For questions regarding the fee schedules: Susan V. Foley, Associate Director, (202/452–3596); Samantha J. Pelosi, Manager, Retail Payments, (202/530–6292); Linda S. Healey, Senior Financial Services Analyst, (202/452–5274), Division of Reserve Bank Operations and Payment Systems. For questions regarding the PSAF and earnings credits on clearing balances: Gregory L. Evans, Deputy Associate Director, (202/452–3945); Brenda L. Richards, Manager, Financial Accounting, (202/452–2753); or John W. Curle, Senior Financial Analyst, (202/452–3916), Division of Reserve Bank Operations and Payment Systems. For users of Telecommunications Device for the Deaf (TDD) *only,* please call 202/263–4869. Copies of the 2013 fee schedules for the check service are available from the Board, the Federal Reserve Banks, or the Reserve Banks' financial services web site at *www.frbservices.org.*

SUPPLEMENTARY INFORMATION:

I. Private Sector Adjustment Factor and Priced Services

A. Overview—Each year, as required by the Monetary Control Act of 1980, the Reserve Banks set fees for priced services provided to depository institutions. These fees are set to recover, over the long run, all direct and indirect costs and imputed costs, including financing costs, taxes, and certain other expenses, as well as the return on equity (profit) that would have been earned if a private business firm provided the services. The imputed costs and imputed profit are collectively referred to as the PSAF.[1] From 2002 through 2011, the Reserve Banks recovered 98.6 percent of their total expenses (including imputed costs) and targeted after-tax profits or return on equity (ROE) for providing priced services.[2][3]

[1] The methodology for computing imputed profit and imputed costs was changed for 2013 (see Attachment I). This change follows the elimination of the clearing balance program (77 FR 21846, April 12, 2012). In the 2012 methodology, investment income is imputed and netted with related direct costs associated with clearing balances to estimate net income on clearing balances (NICB).

[2] The ten-year recovery rate is based on the pro forma income statement for Federal Reserve priced services published in the Board's *Annual Report.* Effective December 31, 2006, the Reserve Banks implemented Statement of Financial Accounting Standards (SFAS) No. 158: *Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans* [Accounting Standards Codification (ASC) 715 *Compensation—Retirement Benefits*], which resulted in recognizing a reduction in equity related to the priced services' benefit plans. Including this reduction in equity results in cost recovery of 95.3 percent for the ten-year period. This measure of long-run cost recovery is also published in the Board's *Annual Report.*

[3] Over this period, the Reserve Banks have undertaken a range of cost-reduction and revenue-generation initiatives as part of their long-term business strategy. These initiatives have included streamlining management structures, reducing

Table 1 summarizes 2011 actual, 2012 estimated, and 2013 budgeted cost-recovery rates for all priced services. Cost recovery is estimated to be 101.4 percent in 2012 and budgeted to be 102.7 percent in 2013. The check service accounts for nearly half of the total cost of priced services and thus significantly influences the aggregate cost-recovery rate.

TABLE 1—AGGREGATE PRICED SERVICES PRO FORMA COST AND REVENUE PERFORMANCE [a]

[$ millions]

Year	1 [b] Revenue	2 [c] Total expense	3 Net income (roe) [1–2]	4 [d] Targeted roe	5 [e] Recovery rate after targeted roe [1/(2+4)]
2011 (actual)	478.6	444.4	34.1	16.8	103.8%
2012 (estimate)	446.3	431.0	15.3	9.1	101.4%
2013 (budget)	423.6	408.3	15.3	4.2	102.7%

[a] Calculations in table 1 and subsequent pro forma cost and revenue tables may be affected by rounding.

[b] For 2011 and 2012, revenue includes net income on clearing balances (NICB). Clearing balances were assumed to be invested in short-term Treasury securities and federal funds. NICB equals the imputed income from these investments less earnings credits granted to holders of clearing balances. The cost of earnings credits is based on the discounted three-month Treasury bill rate. For 2013, revenue includes imputed investment income from additional equity imputed to meet minimum capital requirements.

[c] The calculation of total expense includes operating, imputed, and other expenses. Imputed and other expenses include taxes, FDIC insurance, Board of Governors' priced services expenses, the cost of float, and interest on imputed debt, if any. Credits or debits related to the accounting for pension plans under FAS 158 [ASC 715] are also included.

[d] Targeted ROE is the after-tax ROE included in the PSAF. For the 2012 estimate and 2011 actuals, the targeted ROE reflects average actual clearing balance levels through July 2012 and December 2011, respectively. The clearing balance program was eliminated in 2012; therefore, the clearing balances are not included in the 2013 budget.

[e] The recovery rates in table 1 and subsequent tables do not reflect the unamortized gains or losses that must be recognized in accordance with FAS 158 [ASC 715]. Future gains or losses, and their effect on cost recovery, cannot be projected.

Table 2 portrays an overview of cost-recovery performance for the ten-year period from 2002 to 2011, 2011 actual, 2012 budget, 2012 estimate, and 2013 budget by priced service.

TABLE 2—PRICED SERVICES COST RECOVERY

[Percent]

Priced service	2002–2011	2011 Actual	2012 Budget	2012 Estimate	2013 Budget [a]
All services	98.6	103.8	101.2	101.4	102.7
Check	97.6	105.4	102.2	103.8	107.2
FedACH	102.4	100.8	100.7	100.3	100.4
Fedwire Funds and NSS	101.8	103.0	99.2	98.3	98.0
Fedwire Securities	102.2	103.1	102.6	98.2	100.9

[a] 2013 budget figures reflect the initial budget submissions from the Reserve Banks. The Reserve Banks will transmit final budget data to the Board in November 2012, for Board consideration in December 2012. 2012 budget figures reflect the final budget as approved by the Board in December 2011.

1. *2012 Estimated Performance*—The Reserve Banks estimate that they will recover 101.4 percent of the costs of providing priced services in 2012, including imputed costs and targeted ROE, compared with a budgeted recovery rate of 101.2 percent, as shown in table 2. Overall, the Reserve Banks estimate that they will fully recover actual and imputed costs and earn net income of $15.3 million, compared with the target of $9.1 million. While the check service and the FedACH Service are expected to achieve full cost recovery in 2012, the Fedwire Funds and National Settlement Services and the Fedwire Securities Service are expected to recover 98.3 and 98.2 percent of their costs, respectively. The shortfalls are due to both lower revenue, associated with less-than-anticipated volume growth, and greater costs, associated with technological upgrades. Greater-than-expected check volume processed by the Reserve Banks has been the single most significant factor influencing priced services cost recovery.

2. *2013 Private Sector Adjustment Factor*—The 2013 PSAF for Reserve Bank priced services is $14.1 million. This amount represents a decrease of $8.7 million from the revised 2012 PSAF estimate of $22.8 million. This reduction is primarily the result of a decrease in the cost of equity, which is due to a lower amount of imputed equity associated with the elimination of clearing balances, and the elimination of the FDIC assessment.[4] [5]

staffing levels, increasing productivity, and selectively raising fees. These initiatives largely involved the check service, which contributes significantly to overall cost recovery and drove several years of under recovery earlier in the time period. For instance, the Reserve Banks restructured the number of offices at which paper checks were processed from forty-five at the beginning of 2003 to one location in 2010. The System's electronic check processing was also consolidated at one Federal Reserve site.

[4] In October 2011, the Board approved a budgeted 2012 PSAF of $29.9 million, which was based on the July 2011 clearing balance level of $2,661.1 million. The 2012 estimated PSAF of $22.8 million, which is based on actual average clearing balances that were $2,073.3 at July 2012, reflects the

Continued

3. *2013 Projected Performance*—The Reserve Banks project that the check, FedACH, and Fedwire Securities Services will fully recover their costs in 2013. The Reserve Banks also project that the Fedwire Funds and National Settlement Service will achieve close to full-cost recovery. Overall, the Reserve Banks project a priced services cost-recovery rate of 102.7 percent in 2013, with a net income of $15.3 million, compared to a targeted ROE of $4.2 million.

The primary risks to the Reserve Banks' ability to achieve their targeted cost recovery rates are unanticipated volume and revenue reductions and the potential for cost overruns or delays with technological upgrades. In light of these risks, the Reserve Banks will continue to refine their business and operational strategies to manage aggressively operating costs, take advantage of efficiencies gained from technological upgrades, and increase product revenue.

4. *2013 Pricing*—The following summarizes the Reserve Banks' changes in fee schedules for priced services in 2013:

Check

• The Reserve Banks will retain at current levels FedForward and FedReturn fees for checks presented and returned electronically. At the same time, the Reserve Banks will increase fees for items destined for endpoints that receive substitute checks for forward items and for return items.[6] The per item fee charged for electronic deposits that are presented as substitute checks will increase from $0.12 to $0.15 and the per item fee charged for electronic returns that are delivered to the depositary bank as substitute checks will increase from $1.40 to $1.45. The effective average fee for collecting a check destined to a substitute check endpoint is expected to be $.1564, an increase of 19 percent, for forward items and $1.4500, an increase of 4 percent, for return items.

• The projected weighted effective average price to collect a check deposited electronically in 2013 will decline 4 percent to $0.0186 and the weighted effective average price to return a check deposited electronically will decline 3 percent to $0.6505. Virtually all forward and return items are now delivered electronically.

• The Reserve Banks also will simplify the fee structure for paper check forward and return collection deposits. The Reserve Banks will charge for two categories of forward collection deposits: encoded and unencoded. The fees are $10.00 per cash letter and $2.00 for each encoded item and $3.00 for each unencoded item. Additionally, the Reserve Banks will charge for two categories of return item deposits: qualified and unqualified. The fees are $15.00 per cash letter and $5.00 for each qualified item and $12.00 for each unqualified return. The fee to encode Canadian items will increase from $0.50 to $1.00 per item.

• The Reserve Banks project that approximately 0.01 percent of check forward deposit volume and approximately 0.53 percent of return check volume will be in paper-based products. The weighted effective average price for clearing a forward paper item and processing a return paper item in 2013 is projected to be $6.76 and $7.89 (increases of 55 and 5 percent), respectively, which reflects the high costs of handling the remaining paper volume.

• The Reserve Banks will reduce their forward presentment and return delivery options to FedReceipt Plus, PDF (for returns only), and paper.[7] Additionally, the Helena Pilot, in which paying banks in the former Helena zone received FedReceipt Plus at no charge, will be discontinued.[8]

• The Reserve Banks also will introduce incentive pricing for depository institutions that designate the Reserve Banks as their electronic presentment and return point. Such depository institutions will receive discounts on fees charged for electronically deposited and returned items of $0.002 and $0.10, respectively. To receive the discounts, depository institutions will be required to register for the incentive, which will then begin the first full month after registration.

• With the 2013 fees, the price index for the total check service will have increased 54 percent since 2003. In comparison, since 2005, the first full year in which the Reserve Banks offered Check 21 services, the price index for Check 21 services will have decreased about 51 percent.

FedACH

• The Reserve Banks will raise the fee charged to receivers of ACH returns from $0.005 to $0.0075. The Reserve Banks will also increase the FedACH monthly settlement fee from $45 to $50 per routing number and the monthly international ACH transaction (IAT) output file sort fee from $50 to $75 per routing number. The fee for facsimile exception return and notification of change will rise from $30 to $45.

• The Reserve Banks will also introduce volume-tiered package pricing for the FedACH Risk Management and FedPayments Reporter Services, to make more attractive the usage of these services.

• With the 2013 fees, the price index for the FedACH service will have decreased 6 percent since 2003.

Fedwire Funds and National Settlement

• The Reserve Banks will implement a new per item fee of $0.30 on all transfers sent and received that exceed $100 million (high-value transfer surcharge). The Reserve Banks will also increase the end-of-day origination surcharge from $0.20 to $0.21, the surcharge for offline transfers from $40 to $45, and the monthly fee for the usage of the FedPayments Manager import/export tool from $20 to $30.[9]

• The Reserve Banks will increase the Tier 1 per item pre-incentive fee from $0.58 to $0.65 per transaction, the Tier 2 per item pre-incentive fee from $0.24 to $0.25, and the Tier 3 per item pre-incentive fee from $.0135 to $.0145.[10]

• The Reserve Banks will increase the National Settlement Service's settlement file charge from $21 to $25 and the settlement charge per entry from $1.00 to $1.20. The Reserve Banks will also increase the National Settlement Service's surcharge for offline file origination from $40 to $45.

• With the 2013 fees, the price index for the Fedwire Funds and National

elimination of the clearing balance program effective July 12, 2012 (77 FR 21846, April 12, 2012). Clearing balances after July 12, 2012 were zero.

[5] The Board has changed its methodology for calculating the PSAF from a correspondent bank model to a publicly traded firm (PTF) model. These changes affect the comparative analysis of the 2013 and 2012 PSAF. (Published elsewhere in today's **Federal Register**.)

[6] A substitute check is a paper reproduction of an original check that contains an image of the front and back of the original check and is suitable for automated processing in the same manner as the original check.

[7] FedReceipt is electronic presentment with accompanying images of all items delivered to a paying bank or depositary bank.

[8] The Helena pilot was put in place in mid-2007 before the Helena office closed to encourage Helena zone customers to move to FedReceipt Plus, which would minimize the transportation costs associated with delivering paper items once the office closed.

[9] This fee is charged to any Fedwire Funds participant that originates a Fedwire Funds transfer message via the FedPayments Manager (FPM) Funds tool and has the import/export processing option setting active at any point during the month.

[10] The per item pre-incentive fee is the fee that the Reserve Banks charge for transfers that do not qualify for incentive discounts. The Tier 1 per item pre-incentive fee applies to the first 14,000 transfers, the Tier 2 per item pre-incentive fee applies to the next 76,000 transfers, and the Tier 3 per item pre-incentive fee applies to any additional transfers. The Reserve Banks apply an 80 percent incentive discount to every transfer over 50 percent of a customer's historic benchmark volume.

Settlement Services will have increased 77 percent since 2003.

Fedwire Securities

- The Reserve Banks will increase the online transfer fee from $0.45 to $0.54.
- The Reserve Banks will increase the monthly issue maintenance fee from $0.45 to $0.54 per issue. The Reserve Banks will also increase the claim adjustment fee from $0.66 to $0.75.
- With the 2013 fees, the price index for the Fedwire Securities Service will have increased 65 percent since 2003.

FedLine Access Solutions

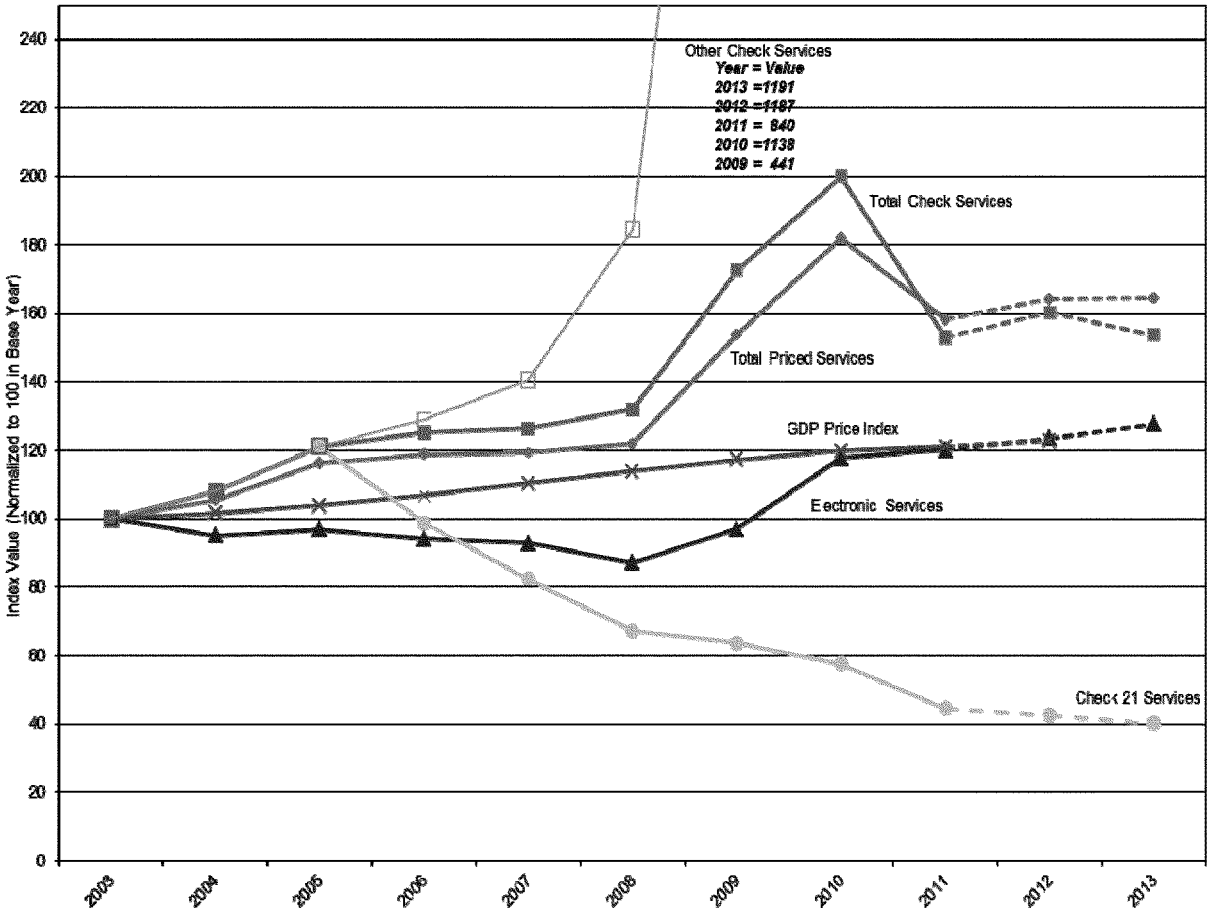
- The Reserve Banks will increase the fees on legacy services, such as an additional $10 per month for FedMail Fax, $450 per month for FedLine Direct (56K), and $100 per month for the Dial-Only VPN surcharge. The Reserve Banks will also increase the monthly fees for basic cash management reports within the accounting services.
- The Reserve Banks will increase the monthly fees for FedLine Direct Plus (256K) and FedLine Direct Premier (T1) by $100 and $300, respectively. Fees for additional 256K and T1 connections will also increase by $50, as well as the fees for additional FedLine Command and FedLine Direct certificates by $20 per month. The Reserve Banks will also increase FedMail Email by $10 per month. Monthly fees for enhanced cash management reports, which include respondent and subaccount activity will also increase.
- Although the Reserve Banks will not change published fees, they will raise certain volume thresholds for FedComplete packages, which will improve the business case for customers.
- Electronic access fees are allocated to each priced service and are not separately reflected in comparison with the GDP price index.

5. *2013 Price Index*—Figure 1 compares indexes of fees for the Reserve Banks' priced services with the GDP price index. Compared with the price index for 2012, the price index for all Reserve Bank priced services is projected to increase less than 1 percent in 2013. The price index for total check services is projected to decrease approximately 4 percent. The price index for Check 21 services is projected to decrease approximately 5 percent, reflecting a slight decrease in the effective prices paid to collect and return checks using Check 21 services and wide adoption of electronic check services. The price index for all other check services is projected to increase less than 1 percent. The price index for electronic payment services, which include the FedACH Service, Fedwire Funds and National Settlement Services, and Fedwire Securities Service, is projected to increase approximately 3 percent. For the period 2003 to 2013, the price index for all priced services is expected to increase 64 percent. In comparison, for the period 2003 to 2011, the GDP price index increased 20 percent.

FIGURE 1

2013 Price Index

PRICE INDEXES FOR FEDERAL RESERVE PRICED SERVICES



B. Private Sector Adjustment Factor—The method for calculating the financing and equity costs in the PSAF requires determining the appropriate imputed levels of debt and equity and then applying the applicable financing rates. In this process, a pro forma balance sheet using estimated assets and liabilities associated with the Reserve Banks' priced services is developed, and the remaining elements that would exist are imputed, as if these priced services were provided by a private business firm. The same generally accepted accounting principles that apply to commercial-entity financial statements apply to the relevant elements in the priced services pro forma financial statements.

The portion of Federal Reserve assets that will be used to provide priced services during the coming year is determined using information on actual assets and projected disposals and acquisitions. The priced portion of these assets is determined based on the allocation of the related depreciation expense. The priced portion of actual Federal Reserve liabilities consists of pension and other benefits, accounts payable, and other liabilities.

The equity financing rate is the targeted ROE rate produced by the capital asset pricing model (CAPM). In the CAPM, the required rate of return on a firm's equity is equal to the return on a risk-free asset plus a market risk premium. To implement the CAPM, the risk-free rate is based on the three-month Treasury bill; the beta is assumed to equal 1.0, which approximates the risk of the market as a whole; and the monthly returns in excess of the risk-free rate over the most recent 40 years are used as the market risk premium. The resulting ROE influences the dollar level of the PSAF because this is the return a shareholder would require in order to invest in a private business firm.

For simplicity, given that federal corporate income tax rates are graduated, state income tax rates vary, and various credits and deductions can apply, an actual income tax expense is not calculated for Reserve Bank priced services. Instead, the Board targets a pretax ROE that would provide sufficient income to fulfill the priced services' imputed income tax obligations. To the extent that actual performance results are greater or less than the targeted ROE, income taxes are adjusted using an imputed income tax rate.

The Board has changed its methodology for calculating the PSAF from a correspondent bank model to a publicly traded firm (PTF) model. These

changes affect the comparative analysis of the 2013 and 2012 PSAF. (Published elsewhere in today's **Federal Register**.)

Capital structure. In the new PTF model, the capital structure is imputed based on the funding need (assets less liabilities), subject to minimum equity constraints. If estimated assets are in excess of estimated liabilities, the Board imputes first debt funding (either short- or long-term) and then equity to meet the capital structure of the U.S. publicly traded firm market or minimum equity constraints. Minimum equity follows the FDIC requirements for a well-capitalized institution of at least 5 percent of total assets and 10 percent of risk-weighted assets. If minimum equity constraints are not met after imputing equity based on all other financial statement components, additional equity is imputed to meet these constraints. Additional equity imputed to meet minimum equity requirements is imputed as invested in Treasury securities.

The capital structure in the correspondent bank model was derived from the portion of Federal Reserve assets and liabilities associated with priced services. Short-term debt was imputed only when short-term liabilities were insufficient to fund short-term assets. Long-term debt was imputed only when core clearing balances, other long-term liabilities, and equity were not sufficient to fund long-term assets.[11] Short-term debt was imputed only when other short-term liabilities and clearing balances not used to finance long-term assets were insufficient to fund short-term assets. A portion of clearing balances was used as a funding source for short-term priced-services assets. In addition, long-term assets have been partially funded from core clearing balances. Imputed equity was set to meet the FDIC requirements for a well-capitalized institution for insurance premium purposes and represents the market capitalization, or shareholder value, for Reserve Bank priced services.[12]

Effective tax rate. As with the imputed capital structure, the effective tax rate in the PTF model is based on data from U.S. publicly traded firms. This tax rate is the mean of the weighted average rates of the U.S. publicly traded firm market over the past 5 years.

The effective tax rate used in the correspondent bank model was an imputed income tax rate that is the median of the rates paid by the top 50 bank holding companies based on deposit balances over the past five years, adjusted to the extent that they invested in tax-free municipal bonds.

Debt and equity financing. In the PTF model, the imputed short- and long-term debt financing rates are derived from nonfinancial commercial paper rates from the Federal Reserve Board's H.15 Selected Interest Rates release and the annual Merrill Lynch Corporate & High Yield Index rate, respectively. The rates for debt and equity financing are applied to the priced services estimated imputed liabilities and imputed equity derived from the target capital structure. In the correspondent bank model, the debt financing rate, where applicable, was based on the debt financing rate observed from data from the top 50 bank holding companies.

Net income on clearing balances. In 2012, the correspondent bank model imposed investment constraints based on interest rate fluctuations. Because of cost recovery sensitivity constraints to interest rate fluctuations, the investment of clearing balances in 2012 was limited to three-month Treasury bills (with no additional imputed constant spread from an imputed investment portfolio). Clearing balances were eliminated in July 2012, and therefore are no longer a factor in calculating the PSAF.

1. *Calculating Cost Recovery*—In 2012, the PSAF and NICB are incorporated into the projected and actual cost-recovery calculations for Reserve Bank priced services. When calculating actual cost recovery for the priced services at the end of each year, the Board historically has used the PSAF derived during the price-setting process with only minimal adjustments for actual rates or balance levels.[13] Beginning in 2009, in light of the uncertainty about the long-term effect that the payment of interest on reserve balances would have on the level of clearing balances, the Board adjusted the PSAF used in the actual cost-recovery calculation to reflect the actual clearing balance levels maintained throughout the year.

The NICB in the correspondent bank model was imputed based on the assumption that the Reserve Banks invest clearing balances net of an imputed reserve requirement and balances used to finance priced services assets.[14] The Reserve Banks imputed a constant spread, determined by the return on a portfolio of investments, over the three-month Treasury bill rate and applied this investment rate to the net level of clearing balances.[15] A return on the imputed reserve requirement, which was based on the level of clearing balances on the pro forma balance sheet, was imputed to reflect the return that would be earned on a required reserve balance held at a Reserve Bank. The clearing balance program was eliminated effective July 12, 2012 as a part of reserve simplification efforts.[16]

The calculation also involved determining the priced services cost of earnings credits (amounts available to offset service fees) on contracted clearing balances held, net of expired earnings credits, based on a discounted three-month Treasury bill rate. Rates and clearing balance levels used in the 2012 estimated NICB were based on July 2012 rates and clearing balance levels.

2. *Analysis of the 2013 PSAF*—The decrease in the 2013 PSAF is due primarily to the elimination of the clearing balance program and the resulting reduction in the level of imputed investments and equity.

Projected 2013 Federal Reserve priced-services assets, reflected in table 3, have decreased $3,324.3 million as compared to 2012, as a result of the decline in imputed investments associated with the elimination of clearing balances.

Credit float, which represents the difference between items in process of

[11] For 2012, $1 billion of core clearing balances were considered the portion of the balances that has remained stable over time without regard to the magnitude of actual clearing balances.

[12] For 2013 and 2012 PSAF, the FDIC requirements for a well-capitalized depository institution are 1) a ratio of total capital to risk-weighted assets of 10 percent or greater, 2) a ratio of Tier 1 capital to risk-weighted assets of 6 percent or greater, and 3) a leverage ratio of Tier 1 capital to total assets of 5 percent or greater. The priced services balance sheet has no components of Tier 1 or total capital other than equity; therefore, requirements 1 and 2 are essentially the same measurement.

As used in this context, the term ''shareholder'' does not refer to the member banks of the Federal Reserve System, but rather to the implied shareholders that would have an ownership interest if the Reserve Banks' priced services were provided by a private firm.

[13] The largest portion of the PSAF, the target ROE, historically has been fixed. Imputed sales tax, income tax, and the FDIC assessment (where applicable) are recalculated at the end of each year to adjust for actual expenditures, net income, and clearing balance levels.

[14] Reserve requirements are the amount of funds that a depository institution must hold, in the form of vault cash or deposits with Federal Reserve Banks, in reserve against specified deposit liabilities. The dollar amount of a depository institution's reserve requirement is determined by applying the reserve ratios specified in the Board's Regulation D to the institution's reservable liabilities. The Reserve Banks priced services impute a reserve requirement of 10 percent, which is applied to the amount of clearing balances held with the Reserve Banks and to credit float.

[15] The allowed portfolio of investments is comparable to a bank holding company's investment holdings, such as short-term Treasury securities, government agency securities, federal funds, commercial paper, long-term corporate bonds, and money market funds. The investments imputed for 2012 are three-month Treasury bills and federal funds.

[16] 77 FR 21846, April 12, 2012.

collection and deferred credit items, decreased to $550.0 million in 2013 from $1,100.0 million in 2012.[17] The decrease is primarily a result of decreased use of products that tend to generate credit float.

As previously mentioned, the clearing balance program was discontinued in 2012, eliminating clearing balances as a funding source in 2013. The PTF methodology for calculating PSAF in 2013 does not incorporate clearing balances; therefore, funding for assets is derived exclusively from debt and equity. In 2013, $14.4 million in short-term debt was imputed to meet financing needs of short-term assets. Additional equity was imputed to meet the minimum capital to risk-weighted asset ratio constraint of the PTF model. In 2012, clearing balances are available as a funding source for priced-services assets. As shown in table 4, in 2012, $19.2 million in clearing balances was used as a funding source for short-term assets. Long-term liabilities and equity exceeded long-term assets by $124.9 million; therefore, no core clearing balances were used to fund long-term assets. In 2013, additional equity imputed was $58.1 million and the corresponding investment income was $0.1 million.

In 2013, minimum equity constraints were not met after imputing equity based on all other financial statement components. The calculation of cost recovery included imputing investment income associated with additional equity that resulted from imputing equity to meet the equity constraints in the model. If additional equity is imputed to meet these constraints, it is invested in Treasury securities.

As shown in table 3, the amount of equity imputed for the 2013 PSAF is $72.3 million, a decrease of $162.4 million from the imputed equity for 2012. In accordance with FAS 158 [ASC 715], this amount includes an accumulated other comprehensive loss of $615.3 million. In 2013, the capital-to-total-assets ratio and the capital-to-risk-weighted-assets ratio must be equal to or greater than the regulatory requirements for a well-capitalized depository institution. The ratio of capital to risk-weighted assets is calculated at 10 percent, and equity exceeds 5 percent of total assets.[18] For 2013, with the replacement of the correspondent bank model, the FDIC assessment no longer applies. For 2012, the Reserve Banks imputed an FDIC assessment of $2.2 million for the priced services based on the FDIC's assessment rates and the level of total priced services assets on the pro forma balance sheet.[19]

Table 5 shows the imputed PSAF elements for 2013 and 2012, including the pretax ROE and other required PSAF costs. The $13.1 million decline in the 2012 ROE of $19.9 million is mainly caused by a lower amount of imputed equity. Imputed sales taxes decreased to $3.3 million in 2013 from $3.7 million in 2012. The effective income tax rate used in 2013 increased to 38.5 percent from 30.9 percent in 2012. The priced services portion of the Board's expenses decreased $0.1 million to $4.0 million in 2013 from $4.1 million in 2012.

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[17] Credit float occurs when the Reserve Banks present transactions to the paying bank prior to providing credit to the depositing bank.

[18] In December 2006, the Board, the FDIC, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision announced an interim ruling that excludes FAS 158 [ASC 715]-related accumulated other comprehensive income or losses from the calculation of regulatory capital. The Reserve Banks, however, elected to include accumulated other comprehensive income or losses, as indicated above, until the regulators announce a final ruling.

[19] The FDIC changed the base of its assessments from deposits to total assets. For information on the FDIC assessment rates, see the Final Rule at *http://www.fdic.gov/news/news/press/2011/pr11028.html.*

Table 3

Comparison of Pro Forma Balance Sheets for Budgeted Federal Reserve Priced Services[20]
(millions of dollars – projected average for year)

	2013	2012	Change
Short-term assets			
Imputed reserves requirements on reserveable liabilities[21]	$ -	$ 376.1	$ (376.1)
Receivables	35.3	36.3	(1.0)
Materials and supplies	0.9	0.9	-
Prepaid expenses	5.5	10.3	(4.8)
Items in process of collection[22]	150.0	250.0	(100.0)
Total short-term assets	191.7	673.6	(481.9)
Imputed investments	$ 608.1	$ 3,490.7	$ (2,882.6)
Long-term assets			
Premises[23]	$ 135.0	$ 148.2	$ (13.2)
Furniture and equipment	32.8	36.3	(3.5)
Leasehold improvements and long-term prepayments	75.3	75.9	(0.6)
Prepaid FDIC asset[21]	-	19.4	(19.4)
Deferred tax asset	326.0	249.1	76.9
Total long-term assets	569.1	528.9	40.2
Total assets	$ 1,368.9	$ 4,693.2	$ (3,324.3)
Short-term liabilities			
Clearing balances[21]	$ -	$ 2,661.1	$ (2,661.1)
Deferred credit items[22]	700.0	1,350.0	(650.0)
Short-term debt	14.4	-	14.4
Short-term payables	27.3	28.3	(1.0)
Total short-term liabilities	741.7	4,039.4	(3,297.7)
Long-term liabilities			
Postemployment/postretirement benefits liability and pension liabilities[24]	$ 554.9	$ 419.1	$ 135.8
Total liabilities	$ 1,296.6	$ 4,458.5	$ (3,161.9)
Equity[25]	$ 72.3	$ 234.7	$ (162.4)
Total liabilities and equity	$ 1,368.9	$ 4,693.2	$ (3,324.3)

[20] The 2012 PSAF values in tables 3, 4, and 5 reflect the budgeted 2012 PSAF of $29.9 million approved by the Board in October 2011 when determining fees for priced services. 2013 budget figures reflect the latest data from the Reserve Banks. The Reserve Banks will transmit final budget data to the Board in November 2012 for Board consideration in December 2012. 2012 budget figures reflect the budget as approved by the Board. Calculations in table 3 and subsequent pro forma tables may be affected by rounding.
[21] Imputed reserve requirements on reservable liabilities, Prepaid FDIC asset, and Clearing balances do not exist in the 2013 PSAF methodology.
[22] Represents float that is directly estimated at the service level.
[23] Includes the allocation of Board of Governors assets to priced services of $0.6 million and $0.6 million for 2013 and 2012, respectively.
[24] Includes the allocation of Board of Governors liabilities to priced services of $0.5 million and $0.5 million for 2013 and 2012, respectively.
[25] Includes an accumulated other comprehensive loss of $615.3 million for 2013 and $537.7 million for 2012, which reflects the ongoing amortization of the accumulated loss in accordance with FAS 158 [ASC 715]. Future gains or losses, and their effects on the pro forma balance sheet, cannot be projected. See table 5 for calculation of required imputed equity amount.

Table 4
Portion of Clearing Balances Used to Fund Priced-Services Assets
(millions of dollars)

	2013	2012
A. Short-term asset financing		
Short-term assets to be financed:		
Receivables	$ 35.3	$ 36.3
Materials and supplies	0.9	0.9
Prepaid expenses	5.5	10.3
Total short-term assets to be financed	$ 41.7	$ 47.5
Short-term funding sources:		
Short-term payables	$ 27.3	$ 28.3
Short-term debt	14.4	-
Portion of short-term assets funded with clearing balances[26]	$ -	$ 19.2
B. Long-term asset financing		
Long-term assets to be financed:		
Premises	$ 135.0	$ 148.2
Furniture and equipment	32.8	36.3
Leasehold improvements and long-term prepayments	75.3	75.9
Prepaid FDIC asset[26]	-	19.4
Deferred tax asset	326.0	249.1
Total long-term assets to be financed	$ 569.1	$ 528.9
Long-term funding sources:		
Postemployment/postretirement benefits liability	$ 554.9	$ 419.1
Imputed equity[27]	72.3	234.7
Total long-term funding sources	$ 627.2	$ 653.8
Portion of long-term assets funded with core clearing balances[26]	$ -	$ -
C. Total clearing balances used for funding priced-services assets	$ -	$ 19.2

[26] Prepaid FDIC asset and clearing balances do not exist in the 2013 PSAF methodology.

Clearing balances for 2012 shown in table 3 were available for financing priced-services assets. Using these balances reduced the amount available for investment in the NICB calculation. Long-term assets were financed with long-term liabilities, equity, and core clearing balances; a total of $1 billion in clearing balances was available for this purpose in 2012. Short-term assets for 2013 and 2012 are financed with short-term debt, payables, and clearing balances that are not used to finance long-term assets.

[27] See table 5 for calculation of required imputed equity amount.

Table 5

Derivation of the 2013 and 2012 PSAF
(millions of dollars)

	2013	2012
A. Imputed elements		
Short-term debt[28]	$ 14.4	$ 0.0
Long-term debt[29]	0.0	0.0
Equity[30]		
Total assets (table 3)	$ N/A	$ 4,693.2
Total risk-weighted assets (table 6)	722.6	N/A
Required capital ratio	10%	5%
Total equity	$ 72.3	$ 234.7
B. Cost of capital		
Elements of capital costs		
Short-term debt	$14.4 x 0.4%= $0.1	$ - x 0.3% = $ 0.0
Long-term debt	-x 6.4% = $0.0	- x 6.7% = 0.0
Equity[31]	72.3 x 9.4% = $6.8	234.7 x 8.5% = 19.19
	$6.9	$19.9
C. Other required PSAF costs		
Sales taxes	$ 3.3	$ 3.7
FDIC assessment	-	2.2
Board of Governors	4.0	4.1
	7.3	10.0
D. Total PSAF	$14.1	$ 29.9
As a percent of assets	1.0%	0.6%
As a percent of expenses	3.3%	6.5%
E. Tax rates	38.5%	30.9%

[28] In 2012, no short-term debt is imputed because clearing balances are a funding source for those assets that are not financed with short-term payables.

[29] In 2013 and 2012, no long-term debt is imputed because imputed funding of priced services assets was met with other long-term funding sources (see table 4).

[30] The minimum equity constraint is defined by FDIC requirements and equity must be equal to or greater than 10% of risk-weighted assets and 5% of total assets. In 2013, the model constrained equity to be imputed based on risk-weighted assets, or 10%. In 2012, the model constrained equity to be imputed based on total assets, or 5%.

If minimum equity constraints are not met after imputing equity based on all other financial statement components, additional equity is imputed to meet these constraints. Additional equity imputed to meet minimum equity requirements is invested in Treasury securities. Income from these investments is included revenue.

[31] The 2013 ROE is equal to a risk-free rate plus a risk premium (beta * market risk premium). The 2013 after-tax CAPM ROE is calculated as 0.10% + (1.0 * 5.68%) = 5.78%. Using a tax rate of 38.5%, the after-tax ROE is converted into a pretax ROE, which results in a pretax ROE of (5.78% / (1-38.5%)) = 9.4%. Calculations may be affected by rounding.

Table 6
Computation of 2013 Capital Adequacy for Federal Reserve Priced Services
(millions of dollars)

	Assets	Risk Weight	Weighted Assets
Imputed investments:			
3-month Treasury bills[32]	$ 58.1	0.0	$ 0.0
Federal funds[33]	550.0	0.2	110.0
Total imputed investments	608.1		110.0
Receivables	$ 35.3	0.2	$ 7.1
Materials and supplies	0.9	1.0	0.9
Prepaid expenses	5.5	1.0	5.5
Items in process of collection	150.0	0.2	30.0
Premises	135.0	1.0	135.0
Furniture and equipment	32.8	1.0	32.8
Leasehold improvements and long-term prepayments	75.3	1.0	75.3
Deferred tax asset	326.0	1.0	326.0
Total	$ 1,368.9		$ 722.6
Imputed equity			$ 72.3
Capital to risk-weighted assets	10.0 %		
Capital to total assets	5.3 %		

[32] If minimum equity constraints are not met after imputing equity based on all other financial statement components, additional equity is imputed to meet these constraints. Additional equity imputed to meet minimum equity requirements is invested solely in Treasury securities. The imputed investments are similar to those for which rates are available on the Federal Reserve's H.15 statistical release, which can be located at http://www.federalreserve.gov/releases/h15/data.htm.

[33] The investments are computed from the amounts arising from the collection of items prior to providing credit according to established availability schedules. These imputed amounts are invested in federal funds.

C. *Check Service*—Table 8 shows the 2011 actual, 2012 estimated, and 2013 budgeted cost recovery performance for the commercial check service.

Table 8

Check Service Pro Forma Cost and Revenue Performance
($ millions)

YEAR	1 REVENUE	2 TOTAL EXPENSE	3 NET INCOME (ROE) [1-2]	4 TARGETED ROE	5 RECOVERY RATE AFTER TARGETED ROE [1/(2+4)]
2011 (actual)	259.9	237.8	22.2	8.8	105.4%
2012 (estimate)	217.6	205.3	12.2	4.3	103.8%
2013 (budget)	185.3	171.1	14.2	1.7	107.2%

1. *2012 Estimate*—For 2012, the Reserve Banks estimate that the check service will recover 103.8 percent of total expenses and targeted ROE, compared with the budgeted recovery rate of 102.2 percent. The Reserve Banks expect to recover all actual and imputed costs of providing check services and earn a net income of $12.2 million (see table 8). Greater-than-expected check volume processed by the Reserve Banks has influenced significantly the check services cost recovery as additional fee revenue has exceeded the costs of processing new volumes.[34]

The general decline in the number of checks written continues to influence the decline in checks collected by the Reserve Banks. Through August, total forward check volume and return check volume is 3 percent and 19 percent lower, respectively, than for the same period last year. For full-year 2012, the Reserve Banks estimate that their total forward check collection volume will decline nearly 5 percent and return check volume will decline 21 percent from 2011 levels.[35] The proportion of checks deposited and presented electronically continues to grow (see table 9). The Reserve Banks expect that year-end 2012 FedForward deposit and FedReceipt presentment penetration rates will exceed 99.9 percent.[36] The Reserve Banks also expect that year-end 2012 FedReturn and FedReceipt Return volume penetration rates will reach 99.2 percent and 95.0 percent, respectively.[37]

Table 9

Check 21 Product Penetration Rates
(percent)[a]

	FORWARD DEPOSIT VOLUME				RETURN VOLUME[b]			
	FEDFORWARD		FEDRECEIPT		FEDRETURN		FEDRECEIPT RETURN	
	Full-year	Year-end	Full-year	Year-end	Full-year	Year-end	Full-year	Year-end
2005	1.9	5.0	<0.1	0.1	4.0	6.9	N/A	N/A
2006	14.4	26.0	1.0	3.5	19.7	30.5	<0.1	<0.1
2007	42.6	57.9	12.5	22.7	37.8	45.4	0.5	1.1
2008	76.8	91.8	41.5	60.7	58.4	72.0	6.4	13.2
2009	96.5	98.6	80.4	91.7	81.2	91.2	34.1	50.8
2010	99.4	99.7	95.7	98.4	94.5	96.8	63.0	71.7
2011	99.9	>99.9	99.3	99.7	97.5	98.0	84.5	90.8
2012 (estimate)	>99.9	>99.9	99.9	>99.9	98.8	99.2	93.2	95.0
2013 (budget)	>99.9	>99.9	>99.9	>99.9	99.3	99.5	96.1	97.0

[a] Deposit and presentment statistics are calculated as a percentage of total forward collection volume. Return statistics are calculated as a percentage of total return volume.
[b] The Reserve Banks began offering PDF delivery of returned checks in 2009. Starting in 2011, volume associated with the delivery of returned checks in PDF files is included in FedReceipt Return volume.

[34] The greater-than-expected check volume is attributed to two new FedForward deposit options, which were introduced in late 2011: premium mixed and select mixed. The premium mixed option allows customers to send forward collection items in a mixed cash letter for a higher cash letter fee and lower electronic per-item fee. The select mixed option offers similar incentives; however, the customer sends forward collection items drawn on specific forward collection routing numbers in separate cash letters.

[35] Total Reserve Bank forward check volumes are expected to drop from roughly 6.7 billion in 2011 to 6.4 billion in 2012. Total Reserve Bank return check volumes are expected to drop from roughly 60.4 million in 2011 to 47.7 million in 2012.

[36] FedForward is the electronic forward check collection product. FedReceipt is electronic presentment with accompanying images.

[37] FedReturn is the electronic check return product. FedReceipt Return is the electronic delivery of returned checks with accompanying images.

2. *2013 Pricing*—In 2013, the Reserve Banks project that the check service will recover 107.2 percent of total expenses and targeted ROE. Revenue is projected to be $185.3 million, a decline of 15 percent from 2012. This decline is driven largely by projected reductions in both forward check collection and return check volume. Total expenses for the check service are projected to be $171.1 million, a decline of 17 percent from 2012. The reduction in check costs is driven primarily by the cost savings associated with a mature electronic check environment and the implementation of a more efficient check processing platform.[38]

The Reserve Banks estimate that total Reserve Bank forward check volumes will decline approximately 8 percent to 5.9 billion and return check volumes will decline approximately 16 percent to 40.2 million. The decline in Reserve Bank check volume can be attributed to the continued decline in check use nationwide.[39]

The Reserve Banks will retain at current levels FedForward and FedReturn fees for checks presented and returned electronically. At the same time, the Reserve Banks will increase fees for items destined for endpoints that receive substitute checks for forward items and for return items.[40] The per item fee charged for FedForward items that are presented as substitute checks will increase from $0.12 to $0.15 and the per item fee charged for FedReturn items that are delivered to the depositary bank as substitute checks will increase from $1.40 to $1.45. The effective average fee for collecting a check for a substitute check endpoint is expected to be $.1564, an increase of 19 percent, for forward items and $1.4500, an increase of 4 percent, for return items.

The projected weighted effective average price to collect a check deposited electronically in 2013 will decline 4 percent to $0.0186 and the weighted effective average price to return a check deposited electronically will decline 3 percent to $0.6505.[41] This result is because virtually all forward and return items are now delivered electronically.

The Reserve Banks will also simplify the fee structure for paper check forward and return collection deposits. The Reserve Banks will charge for two categories of forward collection deposits: encoded and unencoded. The fees are $10.00 per cash letter and $2.00 for each encoded item and $3.00 for each unencoded item. Additionally, the Reserve Banks will charge for two categories of return item deposits: qualified and unqualified. The fees are $15.00 per cash letter and $5.00 for each qualified item and $12.00 for each unqualified. The fee to encode Canadian items will increase from $0.50 to $1.00 per item.

The Reserve Banks project that approximately 0.01 percent of check forward deposit volume and approximately 0.53 percent of return check volume will be in paper-based products. The weighted effective average price for clearing a forward paper item and processing a return paper item in 2013 is projected to be $6.7586 and $7.8891 (increases of 55 and 5 percent), respectively, which reflects the high costs of handling the remaining paper volume.

The Reserve Banks will reduce their forward presentment and return delivery options to FedReceipt Plus, PDF (for Returns only), and paper.[42] Additionally, the Helena Pilot, in which paying banks in the former Helena zone received FedReceipt Plus at no charge, will be discontinued.[43]

The Reserve Banks will introduce incentive pricing for depository institutions that designate the Reserve Banks as their electronic presentment and return point. Such depository institutions will receive discounts on fees charged for electronically deposited and returned items of $0.002 and $0.10, respectively. To receive the discounts, depository institutions will be required to register for the incentive, which will then begin the first full month after registration.

Risks to the Reserve Banks' ability to achieve budgeted 2013 cost recovery for the check service include greater-than-expected check volume losses to correspondent banks, aggregators, and direct exchanges, which would result in lower-than-anticipated revenue, and higher-than-expected support and overhead costs.

D. *FedACH Service*—Table 11 shows the 2011 actual, 2012 estimate, and 2013 budgeted cost-recovery performance for the commercial FedACH service.

Table 11

FedACH Service Pro Forma Cost and Revenue Performance
($ millions)

YEAR	1 REVENUE	2 TOTAL EXPENSE	3 NET INCOME (ROE) [1-2]	4 TARGETED ROE	5 RECOVERY RATE AFTER TARGETED ROE [1/(2+4)]
2011 (actual)	111.9	106.9	5.1	4.1	100.8%
2012 (estimate)	114.6	111.9	2.7	2.4	100.3%
2013 (budget)	116.1	114.4	1.6	1.2	100.4%

[38] The Reserve Banks are scheduled to complete a multi-year check platform modernization initiative in October 2012.

[39] In addition, return items have declined due to posting practices at paying banks.

[40] A substitute check is a paper reproduction of an original check that contains an image of the front and back of the original check and is suitable for automated processing in the same manner as the original check.

[41] The weighted average prices are dependent on deposit product mix, deadlines, and electronic receipt penetration rates. The weighted average fees are based on continued movement to lower priced deposit options and increased electronic receipt penetration rates for full year 2012 and projected for full year 2013.

[42] FedReceipt is electronic presentment with accompanying images of all items delivered to a paying bank or depositary bank. For those depository institutions that do not have the ability to accept forward or return items in X9.37 format, the Reserve Banks can send a PDF file of the depository institution's inclearings and incoming returns directly to a printer located at the depository institution. The PDF file takes the place of physical delivery of paper checks.

[43] The Helena pilot was put in place in mid-2007 before the Helena office closed to encourage Helena zone customers to move to FedReceipt Plus, which would minimize the transportation costs associated with delivering paper items once the office closed.

1. *2012 Estimate*—The Reserve Banks estimate that the FedACH service will recover 100.3 percent of total expenses and targeted ROE. The Reserve Banks expect to recover all actual and imputed costs of providing FedACH services and earn net income of $2.7 million. Through August, FedACH commercial origination volume was nearly 4 percent higher than it was during the same period last year. For the full year, the Reserve Banks estimate that volume growth will continue at current trends.

2. *2013 Pricing*—The Reserve Banks project that the FedACH service will recover 100.4 percent of total expenses and targeted ROE in 2013. Total revenue is expected to increase $1.5 million from the 2012 estimate, primarily due to projected growth in FedACH commercial origination and receipt volume of 3.0 percent. Total expenses are budgeted to increase $3.7 million from the 2012 estimate, generally due to costs associated with development of a new FedACH technology platform.

The Reserve Banks will maintain core transaction fees at current levels with one exception. The Reserve Banks will increase the per item fee charged to receivers of ACH returns from $0.005 to $0.0075. In addition, the Reserve Banks will increase fees for select FedACH services. Specifically, the Reserve Banks will increase monthly fees for FedACH settlement and IAT output file sort, as well as, the per item fees for facsimile exception return and notification of change. The Reserve Banks will also introduce volume-tiered package pricing for the FedACH Risk Management and FedPayments Reporter Services, to make these services more attractive to customers. The Reserve Banks will also standardize the on-demand report fee for the FedPayments Reporter Service.

The primary risk to the Reserve Banks' ability to achieve budgeted 2013 cost recovery for the FedACH service is higher-than-expected support and overhead costs. Other risks include lower-than-expected volume due to unanticipated mergers and acquisitions, direct exchanges, and the competitive environment, which would result in lower-than-anticipated revenue, and cost overruns associated with unanticipated problems with technology upgrades.

E. *Fedwire Funds and National Settlement Services*—Table 12 shows the 2011 actual, 2012 estimate, and 2013 budgeted cost-recovery performance for the Fedwire Funds and National Settlement Services.

Table 12

Fedwire Funds and National Settlement Services Pro Forma Cost and Revenue Performance
($ millions)

YEAR	1 REVENUE	2 TOTAL EXPENSE	3 NET INCOME (ROE) [1-2]	4 TARGETED ROE	5 RECOVERY RATE AFTER TARGETED ROE [1/(2+4)]
2011 (actual)	84.2	78.8	5.4	3.0	103.0%
2012 (estimate)	90.4	90.1	0.3	1.9	98.3%
2013 (budget)	97.9	98.9	-1.0	1.0	98.0%

1. *2012 Estimate*—The Reserve Banks estimate that the Fedwire Funds and National Settlement Services will recover 98.3 percent of total expenses and targeted ROE, compared with a 2012 budgeted recovery rate of 99.2 percent. The lower-than-projected recovery rate is primarily attributed to higher-than-expected information technology costs. Through August, average daily Fedwire Funds volume was up 4.3 percent from the same period in 2011. For the full year, the Reserve Banks estimate that Fedwire Funds volume will increase by 2.5 percent. With respect to the National Settlement Service, the volume of settlement files increased 29.4 percent and the volume of settlement files increased 21.5 percent through August.[44] For the full year, the Reserve Banks estimate that the volume of settlement files will increase by 20.0 percent while the volume of settlement entries will increase by 15.1 percent. The Board believes full-year volume growth will likely exceed the Reserve Banks' volume projections, which would raise marginally the 2012 cost recovery rate.

2. *2013 Pricing*—The Reserve Banks expect the Fedwire Funds and National Settlement Services to recover 98.0 percent of total expenses and targeted ROE. The Reserve Banks project total expenses to increase $9.8 million from the 2012 estimate. This increase is primarily due to their ongoing projects to upgrade the Fedwire application and related information technology infrastructure. The Reserve Banks project total revenue to increase $7.5 million from the 2012 estimate. This projected revenue increase is primarily the result of price increases for the Fedwire Funds and the National Settlement Services and a 2.0 percent projected growth in Fedwire Funds volume.

The Reserve Banks will introduce a $0.30 surcharge for transfers exceeding $100 million.[45] The Reserve Banks believe that high-value transfer surcharges are an equitable way to shift more of the cost associated with Fedwire resiliency to those high-value payments that drive the need for such resiliency.

The Reserve Banks will also adjust various existing fees for the Fedwire Funds Service. First, the Reserve Banks will increase the Tier 1 per item pre-incentive fee (the fee before volume discounts are applied) from $0.58 to $0.65, the Tier 2 per item pre-incentive fee from $0.24 to $0.25, and the Tier 3 per item pre-incentive fee from $0.135 to $0.145. Second, the Reserve Banks will increase the late-day (after 5 p.m. ET) origination surcharge from $0.20 to $0.21. Third, the Reserve Banks will increase the Fedwire Funds offline transfer fee from $40 to $45. Lastly, the Reserve Banks will increase the FedPayments Manager import/export

[44] Although large in percentage terms, the increase in National Settlement Service activity is relatively small in magnitude. For instance, the 29.4 percent increase in settlement files represents about 7 new files per day.

[45] In 2012, the Reserve Banks introduced a $0.12 high-value surcharge for both the senders and receivers of transfers exceeding $10 million and outlined plans to introduce additional high-value surcharges in future years.

monthly fee from $20 to $30. The Reserve Banks estimate that the new surcharge and price increases will result in an approximate 9.4 percent average price increase for Fedwire Funds customers.

With respect to the National Settlement Service, the Reserve Banks will increase the settlement file fee from $21 to $25, the settlement entry fee from $1.00 to $1.20, and the offline origination fee per file from $40 to $45. In calculating projected revenue, the Reserve Banks project no volume growth.

F. *Fedwire Securities Service*—Table 13 shows the 2011 actual, 2012 estimate, and 2013 budgeted cost recovery performance for the Fedwire Securities Service.[46]

Table 13

Fedwire Securities Service Pro Forma Cost and Revenue Performance
($ millions)

YEAR	1 REVENUE	2 TOTAL EXPENSE	3 NET INCOME (ROE) [1-2]	4 TARGETED ROE	5 RECOVERY RATE AFTER TARGETED ROE [1/(2+4)]
2011 (actual)	22.5	21.0	1.5	0.8	103.1%
2012 (estimate)	23.8	23.7	0.1	0.5	98.2%
2013 (budget)	24.3	23.9	0.5	0.2	100.9%

1. *2012 Estimate*—The Reserve Banks estimate that the Fedwire Securities Service will recover 98.2 percent of total expenses and targeted ROE, compared with a 2012 budgeted recovery rate of 102.6 percent. The lower-than-projected recovery is primarily attributed to higher-than-expected pension and information technology costs combined with lower revenue due to decreased transfer volume and claims adjustment requests. Through August, securities transfer volume was down 13.9 percent from the same period in 2011 while claims adjustment requests were down 48 percent. For the full year, the Reserve Banks estimate that Fedwire Securities transfer volume will decline by 13.6 percent, reflecting lower issuance of mortgage-backed securities and the implementation of expanded multilateral pool netting of mortgage-backed securities by the Fixed Income Clearing Corporation (FICC). Claims adjustments are estimated to decline by about 55 percent for the year, reflecting corresponding declines in settlement fails in the marketplace.

2. *2013 Pricing*—The Reserve Banks project that the Fedwire Securities Service will recover 100.9 percent of total expenses and targeted ROE. The Reserve Banks project that revenue and expenses will each increase by $0.5 million compared with the 2012 estimates.

In calculating projected Fedwire Securities revenue for 2013, the Reserve Banks project that securities transfer activity will decline by 17.9 percent and the number of accounts maintained will decrease by 7.5 percent. The estimated decrease in transfer volumes reflects the projected lower issuance of mortgage-backed securities and the full-year impact of multilateral pool netting at FICC. The number of accounts is also expected to continue to decrease because of prior year account maintenance fee increases and customers continuing to assess their account structures in light of changes to the maximum amount of deposits insured by the Federal Deposit Insurance Corporation.[47]

The Reserve Banks will adjust various existing fees for the Fedwire Securities Service. First, the Reserve Banks will increase the online transfer fee from $0.45 to $0.54. Second, the Reserve Banks will increase the monthly issue maintenance fee from $0.45 to $0.54 per issue. Lastly, the Reserve Banks will increase the claim adjustment fee from $0.66 to $0.75. The Reserve Banks' fees will represent an 11.6 percent increase in average prices to achieve a target recovery rate of approximately 100.9 percent.

G. *FedLine Access*—The Reserve Banks charge fees for the electronic connections that depository institutions use to access priced services and allocate the costs and revenue associated with this electronic access to the various priced services. There are currently five FedLine channels through which customers can access the Reserve Banks' priced services: FedMail®, FedLine Web®, FedLine Advantage®, FedLine Command®, and FedLine Direct®.[48] The Reserve Banks package these channels into ten FedLine packages that are supplemented by a number of premium (or à la carte) access and accounting information options. In addition, the Reserve Banks offer three FedComplete packages, which are bundled offerings of a FedLine Advantage connection and a fixed number of FedACH, Fedwire Funds, and Check 21-enabled services.

Attended access packages offer access to critical payment and information services via a web-based interface. The FedMail email package provides access to basic information services via fax or email, while two FedLine Web packages offer FedMail email options plus online attended access to a broad range of informational services, including cash services, FedACH services, and check services. Three FedLine Advantage packages expand upon the FedLine Web informational service packages and offer attended access to transactional services: Check, FedACH, Fedwire Funds, and Fedwire Securities.

Unattended access packages are computer-to-computer, IP-based

[46] The Reserve Banks provide transfer services for securities issued by the U.S. Treasury, federal government agencies, government-sponsored enterprises, and certain international institutions. The priced component of this service, reflected in this memorandum, consists of revenues, expenses, and volumes associated with the transfer of all non-Treasury securities. For Treasury securities, the U.S. Treasury assesses fees for the securities transfer component of the service. The Reserve Banks assess a fee for the funds settlement component of a Treasury securities transfer; this component is not treated as a priced service.

[47] The increase in the maximum deposit insurance amount has reduced the demand by certain Fedwire Securities customers to hold deposits in collateral-backed accounts.

[48] FedLine Direct, FedLine Command, FedLine Advantage, FedLine Web, and FedMail are registered trademarks of the Federal Reserve Banks. These channels may also be used to access nonpriced services provided by the Reserve Banks.

interfaces designed for medium-to high-volume customers. The FedLine Command package offers an unattended connection to FedACH, as well as most accounting information services. The final three packages are FedLine Direct packages, which allow for unattended connections at one of three connection speeds to FedACH, Fedwire Funds, and Fedwire Securities transactional and information services and to most accounting information services.

Many of the FedLine access solutions fee changes in 2013 are designed to encourage customers to migrate to more efficient payments solutions. Customers that continue to use legacy solutions will see greater increases in fees for those services. To that end, the Reserve Banks will increase the fees on legacy services, such as an additional $10 per month for FedMail Fax, $450 per month for FedLine Direct (56K), and $100 per month for the Dial-Only VPN surcharge. The Reserve Banks will also increase the monthly fees for basic cash management reports within the accounting services.

In addition, the Reserve Banks will make other changes to FedLine pricing for 2013 in order to improve the alignment of value and revenue. In particular, the Reserve Banks will increase the monthly fees for FedLine Direct Plus (256K) and FedLine Direct Premier (T1) by $100 and $300, respectively. Fees for additional 256K and T1 connections will also increase by $50, as well as the fees for additional FedLine Command and FedLine Direct certificates by $20 per month. The Reserve Banks will also increase FedMail Email by $10 per month. Monthly fees for two enhanced cash management reports, which include respondent and subaccount activity will also increase.

The Reserve Banks will not change published fees for FedComplete packages; however, the Reserve Banks will raise certain volume thresholds for each of the packages to improve the business case for customers.

II. Analysis of Competitive Effect

All operational and legal changes considered by the Board that have a substantial effect on payments system participants are subject to the competitive impact analysis described in the March 1990 policy, ''The Federal Reserve in the Payments System.'' [49] Under this policy, the Board assesses whether proposed changes would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services because of differing legal powers or constraints or because of a dominant market position deriving from such legal differences. If any proposed changes create such an effect, the Board must further evaluate the changes to assess whether the associated benefits—such as contributions to payment system efficiency, payment system integrity, or other Board objectives—can be achieved while minimizing the adverse effect on competition.

The Board projects that the 2013 fees, fee structures, and changes in service will not have a direct and material adverse effect on the ability of other service providers to compete effectively with the Reserve Banks in providing similar services. The fees should permit the Reserve Banks to earn a ROE that is comparable to overall market returns and provide for full cost recovery over the long run.

[49] Federal Reserve Regulatory Service (FRRS) 9–1558.

FEDACH SERVICE 2013 FEE SCHEDULE

EFFECTIVE JANUARY 2, 2013. **BOLD INDICATES CHANGES FROM 2012 PRICES.**

	Fee
FedACH minimum monthly fee:[50]	
Originating Depository Financial Institution (ODFI)	$35.00
Receiving Depository Financial Institution (RDFI)	$25.00
Origination (per item or record):[51,52]	
Forward or return items in small files	$0.0030
Forward or return items in large files	$0.0025
Addenda record	$0.0015
FedLine Web origination returns and notification of change (NOC) fee[53]	$0.35
Facsimile exception returns/NOC[54]	**$45.00**
Automated NOC fee[55]	$0.15
Volume-based discounts (based on monthly receipt volume)	
Per item when receipt volume is 10,000,000 to 17,500,000 per month	$0.0002 discount
Per item when receipt volume is 17,500,001 to 25,000,000 per month	$0.0003 discount
Per item when receipt volume is more than 25,000,000 per month	$0.0005 discount
Receipt (per item or record):[56]	
Forward item	$0.0025
Return items	**$0.0075**
Addenda record	$0.0015
Volume-based discounts (excluding FedACH SameDay service items)	
RDFIs receiving less than 90 percent of total network volume through FedACH	
Per item when volume is 1,000,001 to 12,500,000 items per month	$0.0007 discount
Per item when volume is more than 12,500,000 items per month	$0.0016 (all items)
RDFIs receiving at least 90 percent of FedACH-originated volume through FedACH	
Per item when volume is 1,000,001 to 2,500,000 items per month	$0.0007 discount
Per item when volume is 2,500,001 to 12,500,000 items per month	$0.0017 (all items)
Per item when volume is more than 12,500,000 items per month	$0.0015 (all items)
RDFIs receiving at least 90 percent of ACH volume originated through FedACH or EPN	
Per item when volume is 1,000,001 to 2,500,000 items per month	$0.0007 discount
Per item when volume is 2,500,001 to 12,500,000 items per month	$0.0016 (all items)
Per item when volume is more than 12,500,000 items per month	$0.0014 (all items)
FedACH SameDay Service:	
Origination[57,58]	

[50] An ODFI is subject to a $35 minimum fee on its origination volume; an RDFI that does not originate forward items is subject to a $25 minimum fee on its receipt volume.
[51] Small files contain fewer than 2,500 items and large files contain 2,500 or more items. These origination fees do not apply to items that the Reserve Banks receive from EPN.
[52] Origination discounts apply only to those items received by FedACH receiving points.
[53] The fee includes the item and addenda fees in addition to the conversion fee.
[54] The fee includes the item and addenda fees in addition to the conversion fee. Reserve Banks also assess a $30 fee for every government paper return/NOC they process.
[55] The fee includes the functionality usage fee and notification of change processing fee.
[56] Receipt fees do not apply to items that the Reserve Banks send to EPN.
[57] This per-item surcharge is in addition to the standard origination fees for forward items.
[58] This per-item discount is a reduction to the standard origination fees for return items.

Forward item in a small file	$0.0030 surcharge
Forward item in a large file	$0.0035 surcharge
Addenda record	$0.0015 surcharge
Return item in a small file	$0.0030 discount
Return item in a large file	$0.0025 discount
Return addenda record	$0.0015 discount
Receipt[59]	
Forward item	$0.0025 discount
Return item	**$0.0075 discount**
Addenda record/ return addenda record	$0.0015 discount
Monthly FedACH Risk Management Services: [60]	
Risk Origination Monitoring Service/RDFI Alert Service package pricing	
For up to 5 criteria sets	**$35.00**
For 6 through 11 criteria sets	**$70.00**
For 12 through 23 criteria sets	**$125.00**
For 24 through 47 criteria sets	**$150.00**
For 48 through 95 criteria sets	**$250.00**
For 96 through 191 criteria sets	**$425.00**
For 192 through 383 criteria sets	**$675.00**
For 384 through 584 criteria sets	**$850.00**
For 585+ criteria sets	**$1,100.00**
Risk origination monitoring batch	$0.0025/batch

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[59] This per-item discount is a reduction to the standard receipt fees.
[60] Criteria may be set for both the origination monitoring service and the RDFI alert service.

Monthly FedPayments Reporter Service:	
FedPayments Reporter Service package pricing includes	
Standard reports[61]	
ACH volume summary by SEC code report - customer[62]	
Daily return ratio report	
Monthly return ratio report	
Receiver setup report	
Report delivery via FedLine file access solution	
For up to 50 reports	**$35.00**
For 51 through 150 reports	**$55.00**
For 151 through 500 reports	**$100.00**
For 501 through 1,000 reports	**$180.00**
For 1,001 through 1,500 reports	**$260.00**
For 1,501 through 2,500 reports	**$420.00**
For 2,501 through 3,500 reports	**$580.00**
For 3,501 through 4,500 reports	**$740.00**
For 4,501 through 5,500 reports	**$900.00**
For 5,501 through 7,000 reports	**$1,100.00**
For 7,001 through 8,500 reports	**$1,300.00**
For 8,501+ reports	**$1,500.00**
Premier reports[63]	
ACH volume summary by SEC code report - depository financial institution	
Reports 1 through 5	$10.00/report
Reports 6 through 10	$6.00/report
Reports 11+	$1.00/report
On Demand	**$1.00/report surcharge**
Monthly ACH routing number activity report	
Reports 1 through 5	$10.00/report
Reports 6 through 10	$6.00/report
Reports 11+	$1.00/report
On-us inclusion	
Participation fee	$10.00/month/RTN
Per item fee	$0.0030
Per addenda fee	$0.0015
Report delivery via encrypted email	$0.20/email
Other fees:	
Monthly fee (per routing number)	
Account servicing fee[64]	$37.00
FedACH settlement[65]	**$50.00**

[61] Standard reports include Customer Transaction Activity, Death Notification, International (IAT), Notification of Change, Payment Data Information File, Remittance Advice Detail, Remittance Advice Summary, Return Item, Social Security Beneficiary, and Originator Setup Reports.

[62] ACH volume summary by SEC code reports generated on demand are subject to a $1.00 per report surcharge.

[63] Premier reports generated on demand are subject to the tiered fees plus a surcharge.

[64] The account servicing fee applies to routing numbers that have received or originated FedACH transactions. Institutions that receive only U.S. government transactions through the Reserve Banks or that elect to use EPN exclusively are not assessed this fee.

[65] The FedACH settlement fee is applied to any routing number with activity during a month. This fee does not apply to routing numbers that use the Reserve Banks for only U.S. government transactions.

Information extract file	$100.00
IAT Output File Sort	**$75.00**
Non-electronic input/output fee:[66]	
CD or DVD input/output	$50.00
Paper input/output	$50.00
NACHA network administration fees[67]	
NACHA administration network fee/month	$12.00
NACHA administration network fee/entry	$0.000145
FedGlobal ACH Payments	
Canada service fee:	
Item originated to Canada[68]	$0.62
Return received from Canada[69]	$0.99
Trace of item at receiving gateway	$5.50
Trace of item not at receiving gateway	$7.00
Mexico service fee:	
Item originated to Mexico[68]	$0.67
Return received from Mexico[69]	$0.91
Item trace	$13.50
A2R item originated to Mexico[68]	$3.45
F3X item originated to Mexico[68]	$0.67
Panama service fee:	
Item originated to Panama[68]	$0.72
Return received from Panama[69]	$1.00
Item trace	$7.00
NOC	$0.72
Latin America service fee:	
A2R item originated to Latin America[68]	$4.40
Return received from Latin America[69]	$0.72
Item trace	$5.00
Europe service fee:	
Item originated to Europe[68]	$1.25
F3X item originated to Europe[68]	$1.25
Return received from Europe[69]	$1.35
Item trace	$7.00

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[66] Limited services are offered in contingency situations.
[67] NACHA network administration fees are established by NACHA in accordance with *NACHA Operating Rules*, Article One (General Rules), Section 1.11 (Network Administration Fees).
[68] This per-item surcharge is in addition to the standard domestic origination and input file processing fees.
[69] This per-item surcharge is in addition to the standard domestic receipt fees.

FEDWIRE FUNDS AND NATIONAL SETTLEMENT SERVICES 2013 FEE SCHEDULE

EFFECTIVE JANUARY 2, 2013. **BOLD INDICATES CHANGES FROM 2012 FEE SCHEDULE.**

Fedwire Funds Service

	Fee
Monthly participation fee	$85.00
Basic volume-based pre-incentive transfer fee (originations and receipts)	
Per transfer for the first 14,000 transfers per month	**$0.65**
Per transfer for additional transfers up to 90,000 per month	**$0.25**
Per transfer for every transfer over 90,000 per month	**$0.145**
Volume-based transfer fee with the incentive discount (originations and receipts)[70]	
Per eligible transfer for the first 14,000 transfers per month	**$0.13**
Per eligible transfer for additional transfers up to 90,000 per month	**$0.05**
Per eligible transfer for every transfer over 90,000 per month	**$0.029**
Surcharge for offline transfers (originations and receipts)	**$45.00**
Surcharge for high value payments > $10 million	$0.12
Surcharge for high value payments > $100 million	**$0.30**
Surcharge for payment notification	$0.20
Surcharge for end-of-day transfer originations[71]	**$0.21**
Monthly FedPayments Manager import/export fee[72]	**$30.00**

National Settlement Service

Basic	
Settlement entry fee	**$1.20**
Settlement file fee	**$25.00**
Surcharge for offline file origination	**$45.00**
Minimum monthly charge (account maintenance)[73]	$60.00
Special settlement arrangements[74]	
Fee per day	$150.00

[70] The incentive discounts apply to the volume that exceeds 50 percent of a customer's historic benchmark volume. Historic benchmark volume is based on a customer's average daily activity over the previous five calendar years. If a customer has fewer than five full calendar years of previous activity, its historic benchmark volume is based on its daily activity for as many full calendar years of data as are available. If a customer has less than one full calendar year of prior activity, historic benchmark volume is set retroactively at actual volume for the current month. The applicable incentive discounts are as follows: $0.520 for transfers up to 14,000; $0.200 for transfers 14,001 to 90,000; and $0.116 for transfers over 90,000.

[71] This surcharge applies to originators of transfers that are processed by the Reserve Banks after 5:00 p.m. ET.

[72] This fee is charged to any Fedwire Funds participant that originates a transfer message via the FedPayments Manager (FPM) Funds tool and has the import/export processing option setting active at any point during the month.

[73] This minimum monthly charge is only assessed if total settlement charges during a calendar month are less than $60.

[74] Special settlement arrangements use Fedwire Funds transfers to effect settlement. Participants in arrangements and settlement agents are also charged the applicable Fedwire Funds transfer fee for each transfer into and out of the settlement account.

FEDWIRE SECURITIES SERVICE 2013 FEE SCHEDULE

(NON-TREASURY SECURITIES)

EFFECTIVE JANUARY 2, 2013. **BOLD INDICATES CHANGES FROM 2012 FEE SCHEDULE.**

	Fee
Basic transfer fee	
Transfer or reversal originated or received	**$0.54**
Surcharge	
Offline origination & receipt surcharge	$66.00
Monthly maintenance fees	
Account maintenance (per account)	$40.00
Issues maintained (per issue/per account)	**$0.54**
Claim adjustment fee	**$0.75**
Joint custody fee	$40.00

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FEDLINE 2013 FEE SCHEDULE

EFFECTIVE JANUARY 2, 2013 **BOLD PRICES INDICATE CHANGES FROM 2012 FEE SCHEDULE**

FedComplete Packages (monthly)[75]

FedComplete 100 $750.00

Includes: **7,500** FedForward transactions
70 FedReturn transactions
14,000 FedReceipt transactions
35 Fedwire funds origination transfers
35 Fedwire funds receipt transfers
Fedwire participation fee
1,000 FedACH origination items
FedACH minimum fee
7,500 FedACH receipt items
FedACH receipt minimum fee
10 FedACH web return/NOC
500 FedACH addenda originated
1,000 FedACH addenda received
FedACH account servicing
FedACH settlement
FedLine Advantage

FedComplete 100 Plus $775.00

Includes: **7,500** FedForward transactions
70 FedReturn transactions
14,000 FedReceipt transactions
35 Fedwire funds origination transfers
35 Fedwire funds receipt transfers
Fedwire participation fee
1,000 FedACH origination items
FedACH minimum fee
7,500 FedACH receipt items
FedACH receipt minimum fee
10 FedACH web return/NOC
500 FedACH addenda originated
1,000 FedACH addenda received
FedACH account servicing
FedACH settlement
FedLine Advantage Plus

[75] FedComplete packages are all-electronic service options that bundle payment services with an access solution for one monthly fee.

FedComplete 200 Plus	$1,300.00
Includes: **25,000** FedForward transactions	
225 FedReturn transactions	
25,000 FedReceipt transactions	
100 Fedwire funds origination transfers	
100 Fedwire funds receipt transfers	
Fedwire participation fee	
2,000 FedACH origination items	
FedACH minimum fee	
25,000 FedACH receipt items	
FedACH receipt minimum fee	
20 FedACH web return/NOC	
750 FedACH addenda originated	
1,500 FedACH addenda received	
FedACH account servicing	
FedACH settlement	
FedLine Advantage or FedLine Advantage Plus	
Excess Volume Surcharge[76]	
FedForward	$0.01/item
FedReturn	$0.7500/item
Fedwire funds origination	$0.7000/item
FedACH origination	$0.0025/item
FedComplete package credit incentive[77]	($1,500.00)
FedLine Packages (monthly)	
FedMail Email	**$40.00**
FedLine Web	$110.00
Includes: FedMail e-mail	
FedLine Web with three individual subscriptions	
FedACH information services (includes RDFI file alert service)	
Check 21 services[78]	
Check 21 duplicate notification	
Cash management system basic - own report only	
Service charge information	
Account management information[79]	
End of day accounting file (PDF)	

[76] Per-item surcharges are in addition to the standard fees listed in the applicable priced services fee schedules.

[77] New FedComplete package customers with a new FedLine Advantage connection are eligible for a one-time $1,500 credit applied to their Federal Reserve service charges. Customers receiving credit must continue using the FedComplete package for a minimum of six months or forfeit the $1,500 credit.

[78] Check 21 services can be accessed via three options: FedLine Web, an Internet connection with Axway Secure Transport Client, or a dedicated connection using Connect:Direct.

[79] Daylight Overdraft Report, Ex-Post Activity Snapshot, and Integrated Accounting Statement of Account are available via FedMail.

FedLine Web Plus $140.00

Includes: FedLine Web traditional package
FedLine Web with five individual subscriptions
FedACH risk management services
FedACH FedPayments Reporter Service via secure e-mail
Check payor bank services
Account management information

FedLine Advantage $380.00

Includes: FedLine Web traditional package
FedLine Web with five individual subscriptions
FedACH transactions
Fedwire funds transactions
Fedwire securities transactions
Fedwire cover payments
Check payor bank services
Account management information with intra-day search

FedLine Advantage Plus $425.00

Includes: FedLine Advantage traditional package
FedLine Advantage with five individual subscriptions
FedACH risk management services
FedACH FedPayments Reporter Service via secure e-mail
FedTransaction Analyzer

FedLine Advantage Premier $500.00

Includes: FedLine Advantage traditional package
FedLine Advantage with five individual subscriptions
FedACH risk management services
FedACH FedPayments Reporter Service via secure e-mail
FedTransaction Analyzer large volume

FedLine Command Plus $800.00

Includes: FedLine Advantage Plus package
FedLine Advantage with five individual subscriptions
FedLine Command with two certificates
ACTS Report <20 subaccounts
Statement of account spreadsheet file (SASF)
FedTransaction Analyzer

FedLine Direct **$3,700.00**

Includes:
FedLine Advantage traditional package
56K Dedicated WAN Connection
FedLine Advantage with five individual subscriptions

FedLine Command with two certificates
FedLine Direct with two certificates
Intra-day file
Statement of account spreadsheet file
End of day (machine readable) file
Service charge information
Billing data format file

FedLine Direct Plus	**$3,600.00**
Includes: FedLine Direct traditional package	
56K or 256K Dedicated WAN Connection	
FedACH risk management services	
FedACH FedPayments Reporter Service via secure e-mail	
FedTransaction Analyzer	
FedLine Direct Premier	**$6,500.00**
Includes: FedLine Direct Plus package	
T1 Dedicated WAN Connection	
One dedicated unattended wide area network connection for FedLine Direct	
FedTransaction Analyzer large volume	

Premium Options (monthly)[80]

Additional subscribers package (each package contains 5 additional subscribers)	$80.00
Additional FedLine Command certificate[81]	**$100.00**
Additional FedLine Direct certificate[82]	**$100.00**
Maintenance of additional virtual private network	$60.00
FedLine Advantage 800# Usage (per hour)	**$3.00**
Additional dedicated connections[83]	
56K	**$2,600.00**
256K	**$2,500.00**
T1	**$3,200.00**
Dial Only VPN surcharge	**$200.00**
Expedited VPN device order/change	$500.00
FedLine international setup (one-time fee)	$5,000.00
FedLine Direct contingency solution[84]	$1,000.00
Check 21 large file delivery	Various
FedMail fax (monthly per routing number)	**$50.00**
VPN modify, move, replace, etc.	**Various**

Accounting Information Services
Cash Management System[85]

[80] Premium options for FedLine Web are limited to FedMail Fax.
[81] Additional FedLine Command Certificates available for FedLine Command and Direct packages only.
[82] Additional FedLine Direct Certificates available for FedLine Direct packages only.
[83] Network diversity supplemental charge of $2,000 a month may apply in addition to these fees.
[84] Transparent contingency is available only for FedLine Direct Plus & Premier packages.
[85] Cash Management Service options are limited to Plus and Premier packages.

Basic – Individual respondent and/or sub-account reports (per report/month)	**$25.00**
Basic – Respondent/sub-account recap report (per month)	**$100.00**
Plus – Own report—up to six files with no respondent/sub-account activity (per month)	$60.00
Plus – Own report—up to six files with less than 10 respondent and/or sub-accounts (per month)	$125.00
Plus – Own report—up to six files with 10-50 respondent and/or sub-accounts (per month)	**$250.00**
Plus – Own report—up to six files with 51-100 respondents and/or sub-accounts (per month)	**$500.00**
Plus – Own report—up to six files with 101-500 respondents and/or sub-accounts (per month)	$750.00
Plus - Own report—up to six files with >500 respondents and/or sub-accounts	$1,000.00
Statement of account end of day reconcilement file (per month)[86]	$150.00
Statement of account spreadsheet file (per month)[87]	$150.00
Intra-day download search file (with AMI) (per month)[88]	$150.00
ACTS Report – < 20 sub-accounts	$250.00
ACTS Report – 21-40 sub-accounts	$500.00
ACTS Report – 41-60 sub-accounts	$750.00
ACTS Report - >60 sub-accounts	$1,000.00

[86] End of Day Reconcilement File option is available to FedLine Web Plus and FedLine Advantage Plus packages.
[87] Statement of Account Spreadsheet File option is available to FedLine Web Plus and FedLine Advantage Plus packages.
[88] ACTS Report options are limited to FedLine Command Plus and FedLine Direct Plus and Premier packages.

BILLING CODE 6210–01–P

By order of the Board of Governors of the Federal Reserve System, October 25, 2012.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2012–26864 Filed 11–7–12; 8:45 am]

BILLING CODE 6210–01–C

FEDERAL RESERVE SYSTEM

[Docket No. OP–1447]

Federal Reserve Bank Services Private Sector Adjustment Factor

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board has approved modifications to its method for calculating the private-sector adjustment factor (PSAF). The PSAF is part of the Board's calculation, as required by the Monetary Control Act of 1980 (MCA), to establish the fees that Federal Reserve Banks (Reserve Banks) charge for certain financial services provided to depository institutions. Because the Federal Reserve priced services have historically had characteristics most analogous to correspondent banks, clearing balances held by depository institutions at Reserve Banks were a primary component in computing the PSAF. The clearing balance program was largely modeled after similar programs offered by correspondent banks, wherein banks maintain balances with their correspondents. The Board was prompted to consider a new PSAF methodology because clearing balances held at Reserve Banks were declining following the Board's implementation of the payment of interest on required reserve and excess balances held at Reserve Banks. Effective July 2012, the Board eliminated the contractual clearing balance program in connection with its simplification of reserve policies. Changes in the priced services market and the elimination of clearing balances have made the correspondent bank analogy less applicable to the priced services provided by the Federal Reserve. Accordingly, the Board is adopting a publicly traded firm model to set the PSAF. Use of the new methodology is reflected in priced services fees for 2013, which is published elsewhere in today's **Federal Register**.

DATES: *Effective Date:* November 8, 2012. The revised method will be used to calculate the PSAF that is reflected in the 2013 priced services fees.

FOR FURTHER INFORMATION CONTACT: Gregory L. Evans, Deputy Associate Director (202) 452–3945, Brenda L. Richards, Manager (202) 452–2753, or John W. Curle, Senior Financial Analyst (202) 452–3916; Division of Reserve Bank Operations and Payment Systems; for users of Telecommunications Device for the Deaf (TDD), contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

Under the MCA, the Federal Reserve Banks must establish fees for ''priced services,'' to recover, over the long run, all direct and indirect costs actually incurred in providing these services as well as the imputed costs that would have been incurred had the services been provided by a private-sector firm.[1] [2] The imputed costs—sales and income taxes, debt costs, and a required return on equity (profit)—are collectively referred to as the PSAF and are an additional cost considered when setting fees and determining cost recovery.

The Board's current method for calculating the PSAF involves developing an estimated Federal Reserve priced services pro forma balance sheet using actual priced services assets and liabilities. The remaining components on the balance sheet, such as equity, are imputed as if these services were provided by a correspondent bank. Equity is imputed at a level necessary for a well-capitalized depository institution and the target return on equity capital (ROE) is estimated based on the capital asset pricing model (CAPM). Finally, the PSAF includes an estimated share of the Board of Governors' expenses incurred to oversee Reserve Bank priced services, imputed sales and income taxes, and an imputed Federal Deposit Insurance Corporation (FDIC) assessment.

The methodology underlying the PSAF is reviewed periodically to ensure that it is appropriate and relevant in light of Reserve Bank priced services activities, accounting standards, finance theory, and regulatory and business practices.[3] The Board considers five principles when reviewing the PSAF methodology: (1) Providing a conceptually sound basis for efficient pricing in the market for payments services, (2) using Reserve Bank financial information as applicable, (3) maintaining consistency with private-sector practice, (4) using data in the public domain to make the PSAF replicable, and (5) avoiding any undue cost or complexity of the PSAF methodology.

Under the current correspondent bank model, clearing balances maintained by Reserve Bank customers have been a significant component of the pro forma financial statements and an important driver in calculating nearly all of the imputed costs considered in setting fees for priced services. Similar to how a correspondent bank would use its respondent balances, the clearing balances are a funding source for short- and long-term assets, including investments, and affect the level of imputed equity. Clearing balance levels, therefore, affect the overall size of the balance sheet, influence the need to impute debt funding, and contribute to total cost recovery through imputed net income on clearing balances.

The payment of interest on balances in Federal Reserve accounts and related monetary policy actions have affected the level of clearing balances and the similarity between correspondent banks and Federal Reserve priced services.[4] Following the implementation of interest on required reserve and excess balances, the Board recognized a significant decline in clearing balances and anticipated that the trend would continue.

The Board requested comment on modifications to its computation of the PSAF in April 2009[5] (2009 notice) and in October 2011[6] (2011 notice) (concurrent with the Board's request for comment on reserves simplification). Because clearing balances were a significant component of the pro forma balance sheets under the current method and because of the decline in clearing balance levels, the Board requested in its 2009 notice comment on the anticipated level of clearing balances given certain interest rate scenarios, the relevance of the clearing balance program, and whether the clearing balance program should continue.[7] The Board requested comment on whether a new methodology and its associated data sources and computations would be

[1] These priced services include check, FedACH®, Fedwire® Funds, and Fedwire® Securities services (for activity unrelated to Treasury).

[2] 12 U.S.C. 248a(c)(3).

[3] The previous review of the PSAF was completed in 2005 and changes were implemented for the 2006 PSAF. 70 FR 60341 (Oct. 17, 2005).

[4] In 2008, Congress amended the Federal Reserve Act to authorize Reserve Banks to pay interest on balances of eligible institutions. (See section 19 of the Federal Reserve Act (12 U.S.C. 461(b).) Since then, interest has been paid on balances maintained to satisfy reserve balance requirements and excess reserves at a rate determined by the Board (currently 25 basis points for required and excess reserve balances).

[5] 74 FR 15481 (Apr. 6, 2009).

[6] 76 FR 64250 (Oct. 18, 2011).

[7] 74 FR at 15484.

appropriate for the priced services. The Board also requested comment on the appropriate term for the risk-free rate that is used to calculate the target ROE.[8]

In the 2009 notice, the Board proposed a publicly traded firm (PTF) model for calculating the imputed costs that factor into priced services fees and cost recovery.[9] The imputed PSAF costs under the proposed PTF model were principally based on the U.S. publicly traded firm market and not limited to one sector of the market. Because the analogy between correspondent banks and the Reserve Banks' priced services had become less applicable with the decline in the level of clearing balances held and in Reserve Bank paper check collection volume for which correspondent banks were the primary competitors, the design of the PTF model uses the U.S. publicly traded firm market to simplify the peer group assumption. This simplifying assumption is intended to address the limited comparable private sector firm data in the public domain as well as avoid undue cost or complexity.

In the 2009 notice, the Board also considered and requested comment on two other PSAF models: the user-owned utility model, which incorporated the financial characteristics of a user-owned utility to derive its priced services balance sheet, and the cost plus model, which incorporated a markup to the priced services operating expenses for the year. In addition, the Board considered and requested comment on whether it should continue using the correspondent bank model.

In the 2011 notice, the Board requested comment on eliminating the contractual clearing balance program, the appropriate level of minimum equity for the previously proposed PTF model, and whether the level of float should be considered before replacing the correspondent bank model.[10] Although the level of clearing balances did not decline to the degree anticipated in 2009, the contractual clearing balance program was subsequently eliminated in 2012 as part of the Board's reserves simplification.[11]

In these notices, the Board proposed and requested comment on the following considerations and elements of the new PSAF methodology:

- Adopting an imputed capital structure, effective tax rate, and debt financing rates of the priced services based on the U.S. publicly traded firm market using specific market data and time frames;
- Basing the capital structure on the most recent full-year value-weighted average capital structure (that is, total long-term debt to total long-term debt plus equity) of all U.S. publicly traded firms included in the Standard & Poor's Compustat® database;[12]
- Basing the long-term debt financing rate on the five-year mean of the Aaa and Baa Moody's bond yields published on the Federal Reserve Board's H.15 Statistical Release and the reasonableness of including only investment grade bonds in the calculation;[13]
- When short-term assets exceed short-term liabilities, imputing short-term debt financing rate on the average of the three-month AA and A2/P2 nonfinancial commercial paper rates as published on the Federal Reserve Board's Commercial Paper Release;[14]
- Basing the imputed effective income tax rate on the five-year mean of the value-weighted average ratios of current tax expense to total net income for all U.S. publicly traded firms in the financial database; and
- Considering the user-owned utility model, the cost-plus model, or a continuation of the correspondent bank model as alternative methodologies to the PTF model.

II. Summary of Comments and Analysis

The Board received eight comments in response to its 2009 notice. Comments were submitted by three bankers' banks, two industry groups, one bank holding company, one association, and one individual. Overall, the comments on the proposed PSAF methodology were mixed. Some commenters disagreed with the proposed methodology and suggested alternative approaches that required using financial data that are not publicly available. Three of the four who commented on the overall proposed PSAF methodology did not support the proposed PTF model. One of these commenters supported a continuation of the correspondent bank model and one supported a cost-plus model. One commenter supported the PTF model but encouraged evaluation of the cost-plus methodology for computing the PSAF. The remaining four commenters expressed neither support for nor opposition to the proposed PTF model but provided other, more general comments. Four commenters requested an extension of the comment period for further analysis or dialogue. The Board received one response to its October 2011 request for comment related to the PSAF. This commenter stated that the Board should conduct further analysis and provide the public with additional information before adopting a new methodology.

A. The Contractual Clearing Balance Program

The Board requested comment on the general relevance of the clearing balances in the computation of PSAF as a consequence of anticipated continued declines in clearing balance levels. Three commenters acknowledged the effect interest on required reserve and excess balances would have on the level of clearing balances maintained when the rates paid on required and excess reserve balances are greater than the earnings credit rate on clearing balances. Subsequently, the Board eliminated the clearing balance program. As a result, there is no longer a need to consider the levels of balances as they relate to the PSAF calculation.

B. Publicly Traded Firm Model

In response to its request for comment, the Board received various comments regarding the proposed assumptions used in the PTF model related to peer group benchmarking, capital structure, effective tax rate, and debt financing.

(1) Peer Group Benchmarking

The cost of equity, a key component of priced services cost structure, is computed based on the CAPM, which uses the U.S. publicly traded firm market to determine the average risk premium. Three commenters stated that the U.S. publicly traded firm market was too broad of a benchmark and suggested narrowing the peer group to specific financial institutions or publicly-traded payments processors. One of these three commenters recommended a list of participants in the payment processing industry as a peer group benchmark and also suggested commissioning a peer-group study to benchmark payment processing industry costs.

Because of the concentration of the market activity of the suggested peer group in a few entities, the financial results of such a peer group would likely be volatile.[15] The Board found

[8] *Id.* at 15488.

[9] *Id.* at 15489–15490.

[10] 76 FR at 64255–64256.

[11] 77 FR 21846 (Apr. 12, 2012).

[12] The Standard & Poor's Compustat database contains information on more than 6,000 U.S. publicly traded firms, which approximate the entirety of the U.S. market.

[13] *http://www.federalreserve.gov/releases/h15/update/.*

[14] *Id.*

[15] Although the MCA's requirement for cost recovery over the long run allows the Board to set fees to over- or under-recover costs in a given year

that one entity accounted for approximately 43 percent of the group's total assets and the range of the individual effective tax rates of the entities was broad (from 18 to 71 percent). The Board believes that a peer group or proxy for competitors to Federal Reserve priced services should consist of enough participants with publicly available financial data to mitigate the potentially volatile effects of the financial characteristics of a few firms. Because of the challenges in identifying a viable peer group, the U.S. publicly traded firm market is an attractive alternative. The use of averages based on the U.S. publicly traded firm market minimizes the effect of extreme or anomalous financial characteristics in the PTF model.

In reviewing appropriate peer group benchmarks for computing the PSAF, the Board considered adopting a user-owned utility model, which recognizes that the Reserve Banks' major competitors in the provision of priced services are increasingly user-owned utilities rather than traditional correspondent banks. One commenter noted that the definition of user-owned utilities was not adequately described in the request for comment. Another commenter requested additional insight on the Board's conclusion that user-owned utilities have become its predominant competitors. None of the commenters specifically supported a user-owned utility model.

Financial information regarding some significant user-owned utilities is not publicly available. The primary user-owned utility that provides services similar to those provided by the Reserve Banks is The Clearing House Payments Company, LLC, which operates CHIPS, the primary competitor for the Reserve Bank's Fedwire® Funds Service, and the Electronic Payments Network, the only private-sector automated clearinghouse operator.[16] Establishing the method to calculate the requisite imputed elements—capital structure, debt financing rates, and income taxes—using theoretical assumptions or academic studies could be challenging. In the absence of publicly available data on a significant number of user-owned utilities or substantial academic literature regarding the financial characteristics of these organizations, the Board does not consider adopting user-owned utilities to be an appropriate peer group benchmark.

The Board also considered continuing to use the correspondent bank model, without clearing balances and with minor modifications, to impute costs. One commenter supported the continued use of the correspondent bank model and stated that private market participants are affected by factors similar to the Federal Reserve in setting fees for services. One commenter noted that a reduction in clearing balances does not necessarily indicate a failure of the PSAF and that the correspondent bank model has been reasonably effective over time. Others who commented on the proposal did not comment on the Board's continued use of this model.

A principal disadvantage of the correspondent bank model is the decreasing similarity between the characteristics of the Reserve Bank priced services without the contractual clearing balance program and traditional correspondent banks. Historically, the Board recognized that the financial characteristics of correspondent banks were not driven primarily by the payment services that compete with those offered by Reserve Banks, but considered correspondent banks as an appropriate peer group because both entities held customer balances for the purpose of facilitating payments services and they were the primary competitors to the Reserve Banks' check services. Because the contractual clearing balance program was eliminated and the check service has declined as a percentage of the Reserve Banks' priced services revenue and expenses, comparing priced services to correspondent banks for the purpose of establishing a PSAF methodology is increasingly difficult. Accordingly, the Board has determined that the peer group of correspondent banks is no longer appropriate to impute priced services costs.

Based on its review of possible benchmarks, the Board believes the use of market wide averages of U.S. publicly traded firms is an appropriate proxy that avoids the challenges associated with the potential financial data volatility associated with the small size of the peer group of payment processors or user-owned utilities, the lack of public financial data of user-owned utilities, and the decreasing similarity between the characteristics of the Reserve Banks' priced services and correspondent banks. The use of the publicly-traded firm model builds on the approach used in the current PSAF methodology that uses the U.S. publicly traded firm market to determine the average risk premium in determining the cost of capital.

(2) Capital Structure

In the PTF model, the capital structure will be derived from the U.S. publicly traded firm market, subject to minimum equity constraints consistent with those required by the FDIC for a well-capitalized institution. One commenter, who supported the correspondent bank model for computing the PSAF, objected to the absence of an FDIC assessment, related capital requirements, and regulatory overhead. Although the PTF methodology does not model depository institution requirements, the Board requested comment on whether it should use FDIC minimum equity requirements, but did not receive any comments on this matter. To ensure a reasonable level of equity is imputed to protect against financial, operating, and business risks, the Board will use the minimum equity constraints established by the FDIC, with equity set at a level of at least five percent of assets or ten percent of risk weighted assets. The Board, however, will not include an FDIC assessment, because the peer group is not composed primarily of depository institutions.

(3) Effective Tax Rate

In the PTF model, the imputed effective income tax rate will be the five-year mean of the value-weighted average ratios of current tax expense to total net income for all U.S. publicly traded firms in Standard & Poor's Compustat® database. One commenter assumed an upward trend of tax rates and objected to the tax rate derivation from historical data rather than future tax rates. To maintain consistency in the PTF model, the Board will use tax rates from the U.S. publicly traded firm market. The Board considered alternatives to calculating the tax rate, including expanding the period of the mean calculation from five to ten or twenty years, filtering key parameters on tax expense or total net income, and using additional statistical measures. Because the results of the alternative approaches reflected only a small subset of the U.S. publicly traded firm market, the Board did not adopt these alternatives.

(4) Debt Financing

Due to the elimination of clearing balances, a key source of financing of priced services assets in the correspondent bank model, the Board recognizes that additional debt and equity may need to be imputed in the PTF model to meet funding needs. The

to minimize price volatility in imputed costs makes the pricing process more complex. As a result, the Board has typically preferred to adopt PSAF methodologies that provide for stable rather than volatile imputed costs.

[16] The Board identified 15 user-owned utilities, 4 of which have some membership ownership.

Board initially proposed using the five-year mean of the Aaa and Baa Moody's bond yield for the long-term debt financing rate. To include non-investment grade debt in the PTF model, however, the Board will use the five-year mean of the annual Merrill Lynch Corporate & High Yield Index rate. Using the corporate and high yield index rating is also consistent with the Board's assumption of comparing the priced services to the U.S. publicly traded firm market. The Board will use a five-year mean when imputing a debt financing rate to maintain consistency with the effective tax rate and to reduce year-to-year volatility due to changes in the yield curve.

C. Alternative Methodology—The Cost-Plus Model

In response to previous Board proposals related to the PSAF, some commenters have suggested adopting variations on a cost-plus model. In 2005, while commenting on proposed changes to the PSAF methodology for calculating the ROE, two commenters suggested a cost-plus model as a simple, straightforward method for calculating the PSAF. The Board reconsidered this methodology in its 2009 notice. One commenter noted that the Board should consider using a cost-plus model, but expressed concern that its estimated 700 percent increase in the PSAF under a cost-plus model compared to the correspondent bank model may be too much to impose on the financial-services industry. In implementing a cost-plus PSAF model, the Board considered deriving the MCA-required imputed costs by establishing a fixed markup over operating expenses. Each time the Board has considered this model, developing a viable method for calculating the markup has been challenging.

The Board considered a cost-based model with the markup percentage derived from either historical PSAF values or the income statement operating margins of all U.S. publicly traded firms. The Board evaluated the PSAF results after applying a markup over expenses ratio based on value-weighted average data for all publicly traded U.S. firms in the Standard & Poor's Computstat® database and applying a markup over expenses ratio based on historical PSAF. Although a cost-plus model is simple, transparent, and replicable by the public, it also has limitations. A cost-plus model based on historical PSAF values is static and assumes continued use of the current correspondent bank model, which is of diminishing relevance. In addition, basing a cost-plus model on accounting-based values captures only book, not market, values of financing and other costs, which is not consistent with current finance theory. Accordingly, the Board does not consider this a viable alternative model to the correspondent bank model.

D. Other General Comments

The Board received comments that focused on the Federal Reserve priced services involvement in payment services more generally. Four commenters suggested that the Federal Reserve work to further lower costs. Three of these four commenters believe that the Federal Reserve should continue to provide payment services. Two commenters requested that the Federal Reserve explicitly state its intent regarding continuing involvement in payment systems and the proposed PSAF methodology changes. Two commenters addressed the effect of proposed changes on market competition, pricing, and payment systems generally.

The Board received other comments that requested additional analysis or information related to the notice and requests for comment. Two commenters requested more specific information on the effect of the PSAF changes to the Federal Reserve's price schedule. One commenter recommended that the notice and request for comment include the effect of the proposed changes on community banks. One commenter requested illustrative example calculations to demonstrate how the PSAF would be affected by shrinking contractual clearing balances. The same commenter also stated that it would be informative to the public if the Board provided a side-by-side comparison of the correspondent banking model with the PTF model, displaying numerical results of the financial models under different scenarios. One commenter suggested that the PTF model leaves too much to interpretation.

Consistent with MCA requirements, the Board evaluates and considers the costs of priced services, competitive factors, and the adequacy of payment services nationwide when approving the prices of Federal Reserve Bank services.[17] Because the Federal Reserve seeks to recover only its actual and imputed costs, the effect of the PSAF changes on Reserve Bank prices can be approximated by estimating the impact of the PSAF change to total costs. The effect of the PSAF methodology changes on a variety of organizations, including community banks, is largely dependent on the extent to which an organization uses payment services provided by the Federal Reserve.[18] With respect to comments requesting additional information and the degree of interpretation in the PTF model, the Board believes that the analyses it has conducted, and the information provided in this and previous notices, have provided the analysis and information necessary for the public to understand its proposal.

The Board received other comments on issues not related to the proposal and are not addressed in this notice.

After considering the comments received, the Board has adopted the PTF methodology for the 2013 PSAF. The PTF methodology is transparent, consistent with current financial theory and practice, and is conceptually sound as a basis for efficient pricing in the market of payment services. It uses relevant Reserve Bank financial information as input to the model, and can be replicated by the public. In its analysis, the Board evaluated computations in the models considered for imputing the capital structure, effective tax rate, and long- and short-term debt financing rates. The Board evaluated the advantages and obstacles surrounding the use of each alternative methodology. The Board believes the new methodology is appropriate in light of the elimination of clearing balances and the evolution of payment system providers beyond commercial banking.

E. Future Industry and Regulatory Changes

The MCA requires the Federal Reserve Banks to impute costs that would have been incurred had the services been provided by a private sector firm. Accordingly, the Board considers industry and regulatory changes relevant to the private sector. The Board applies its payment system risk policies, which incorporate relevant international risk-management standards to the Federal Reserve Banks' Fedwire® Funds and Fedwire® Securities services. In considering revisions to payment system risk policies to address the new Principles for Financial Market Infrastructures (PFMI), the Board will also consider whether revisions to the PSAF are necessary.[19]

III. Summary and Effect of New PSAF Methodology

Based on comments received and further consideration of the issues

[17] 12 U.S.C. 248a (c)(3) & (d).

[18] A side-by-side comparison of the correspondent bank model and the PTF model was provided in the 2009 notice (74 FR at 15494).

[19] The PFMI are available at *http://www.bis.org/publ/cpss101a.pdf.*

around the appropriate computation of the PSAF, the Board has adopted the PTF model for computing the PSAF as proposed with a minor adjustment.[20] The Board will develop pro forma financial statements under the PTF model using an estimate of assets and liabilities used in priced services and incorporate the following elements:

• *Peer Group Benchmarking:* The imputed capital structure, debt and ROE rates, and effective income tax rate will be based on data for the U.S. publicly traded firm market and calculated using time frames that minimize volatility from year-to-year. The model will incorporate a one-year period for elements that historically have been more stable and, to minimize volatility, a five-year average period for elements that have been more volatile historically. When averaging data, the Board will use value-weighted averages to more accurately reflect the financial characteristics of the U.S. publicly traded firm market rather than those of the simple average firm in the market. Data for computing the market-based debt-to-equity ratios and effective tax rates will be derived from Standard & Poor's Compustat® database. The database contains information on more than 6,000 U.S. publicly traded firms, which approximates the entirety of the U.S. market.

• *Capital Structure:* The capital structure will be imputed based on the net funding (assets less liabilities), subject to minimum equity constraints. If estimated assets are in excess of estimated liabilities, the Board will impute first debt funding (either short- or long-term) and then equity funding to meet the capital structure of the U.S. publicly traded firm market or minimum equity constraints. Minimum equity will follow FDIC requirements of at least 5 percent of total assets and 10 percent of risk-weighted assets. If minimum equity constraints are not met after imputing equity based on all other financial statement components, additional equity is imputed to meet these constraints.

• *Effective Tax Rate:* As with the imputed capital structure, the effective tax rate will be based on data from the U.S. publicly traded firm market. This tax rate will be the mean of the weighted average rates of the U.S. publicly traded firm market over the past five years.

• *Debt and Equity Financing:* The imputed short- and long-term debt financing rates will be derived from the Federal Reserve Board's release of nonfinancial commercial paper rates from the H.15 Selected Interest Rates release and the annual Merrill Lynch Corporate & High Yield Index rate, respectively.[21] There will be no change to the methodology for computing the ROE rate. The Board will continue calculating the required rate of ROE using the CAPM with a beta of 1.0 and a 40-year average historical market premium with a 3-month Treasury rate. The rates for debt and equity financing will be applied to the priced services' estimated imputed liabilities and imputed equity derived from the target capital structure. Additional equity imputed to meet minimum equity requirements will be invested solely in Treasury securities.

Using the 2012 PSAF for illustrative purposes, the data below illustrate the effect of implementing a PTF model approach. For comparative purposes, amounts illustrated for the correspondent bank model exclude the effect of clearing balances. The tax rate computation differences between the correspondent bank model and the PTF model are reflected in the pretax ROE. Equity under both models is imputed at five percent of assets to satisfy the FDIC minimum equity requirements for well-capitalized institutions.

PSAF ILLUSTRATION

[$ in millions]

	Pretax ROE (percent)	Equity	Cost of equity	PSAF
Correspondent Bank Model[22]	8.5	$96.0	$8.2	$17.9
PTF Model[23] (estimate)	9.3	96.0	8.9	16.7

IV. Competitive Impact Analysis

In its March 1990 policy statement ''The Federal Reserve in the Payments System,'' the Board stated that all operational and legal changes considered by the Board that could have a substantial effect on payment system participants are subject to a competitive-impact analysis.[24] Under this policy, the Board evaluates whether a proposed change would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Reserve Banks in providing similar services. These effects could be caused by differences in legal authority or constraints between Reserve Banks and private-sector competitors or by a dominant market position that the Reserve Banks might derive from such legal differences. If the proposed change creates such an effect, the Board must further evaluate the changes to determine whether its benefits—such as contributions to payment system efficiency, payment system integrity, or other Board objectives—can be retained while reducing the hindrances to competition.

The intent of the PSAF, and more broadly of setting priced services fees to fully recover the costs (including imputed costs and profits) to provide them, is to facilitate competition between Reserve Banks and private-sector providers of payment services to foster a more efficient payment system. Identifying a meaningful private-sector peer group for the purpose of calculating the PSAF, however, has been difficult given the specific nature of the priced services provided by the Reserve Banks. The correspondent bank model historically provided a reasonable proxy for Reserve Bank priced services because correspondent banks hold balances for the purpose of facilitating payment services and they were the primary competitors to the Reserve Banks' check service, although

[20] The PTF model will incorporate the Merrill Lynch Corporate & High Yield Index rate instead of the Aaa and Baa Moody's bond yield as initially proposed.

[21] Data for the H.15 Selected Interest Rates release is supplied by The Depository Trust & Clearing Corporation, a national clearinghouse for the settlement of securities trades and a custodian for securities. The Merrill Lynch US Corporate & High Yield Index tracks the performance of U.S. dollar denominated investment grade and below investment grade corporate debt publicly issued in the U.S. domestic market. Index constituents are capitalization-weighted based on their current amount outstanding.

[22] Amounts approved by the Board in its 2012 fees were $234.7 million, $19.9 million, and $29.9 million for imputed equity, the cost of equity, and total PSAF, respectively. 76 FR 68440 (Nov. 4, 2011).

[23] Amounts for the PTF model were estimated.

[24] Federal Reserve Regulatory Service 9–1558.

the Board recognized that correspondent bank balance sheets and ROE are typically driven largely by services that are not similar to those provided by the Reserve Banks. Because the contractual clearing balance program has been eliminated and correspondent banks are not the primary competitors of the Reserve Banks' priced services, correspondent banks no longer serve as the best PSAF benchmark peer group. User-owned utilities are increasingly becoming the Reserve Banks' key priced services competitors; however, because no reliable comparative data are publicly available for the user-owned utilities, it also does not provide a viable model for the PSAF. Lacking a more specific viable peer group, the Board believes modeling the PSAF on a PTF model is appropriate. The Board believes that such a change in the PSAF methodology does not have a direct and material adverse effect on the ability of other service providers to compete effectively with Reserve Banks in providing similar services. Rather, the Board believes that this PSAF revision will facilitate competition between the Reserve Banks and private-sector providers.

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. ch. 3506; 5 CFR part 1320 appendix A.1), the Board has reviewed the proposal under the authority delegated to the Board by the Office of Management and Budget. The proposal contains no provisions subject to the Paperwork Reduction Act.

By order of the Board of Governors of the Federal Reserve System, October 25, 2012.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2012–26918 Filed 11–7–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 3, 2012.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Townsend Holding Company,* Grove, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Grove, Grove, Oklahoma.

Board of Governors of the Federal Reserve System, November 5, 2012.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2012–27313 Filed 11–7–12; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Advisory Committee on Blood and Tissue Safety and Availability

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 Services is hereby giving notice that the Advisory Committee on Blood and Tissue Safety and Availability (ACBTSA) will hold a meeting.

The meeting will be open to the public.

DATES: The meeting will take place Thursday, December 6, and Friday, December 7, 2012, from 8:00 a.m. to 4:00 p.m. on both days.

ADDRESSES: National Institutes of Health Conference Room, 5635 Fisher Lane, Terrace Level, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Mr. James Berger, Senior Advisor for Blood Policy and Executive Secretary ACBTSA, Division of Blood and Tissue Safety and Availability, Office of HIV/AIDS and Infectious Disease Policy, Office of the Assistant Secretary for Health, U.S. Department of Health and Human Services, 1101 Wootton Parkway, Suite 250, Rockville, MD 20852, (240) 453–8809, Fax (240) 453–8456, email *ACBSA@hhs.gov*.

SUPPLEMENTARY INFORMATION: The ACBTSA shall provide advice to the Secretary through the Assistant Secretary for Health. The Committee shall advise on a range of policy issues to include: innovations in blood and tissue products and their potential impact on emergency preparedness.

The public will have the opportunity to present their views to the Committee during a public comment session scheduled for December 7, 2012. Comments will be limited to five minutes per speaker and must be pertinent to the discussion. Pre-registration is required for participation in the public comment session. Any member of the public who would like to participate in this session is encouraged to contact the Executive Secretary to register for time (limited to 5 minutes); individuals must register prior to close of business on December 3, 2012. If it is not possible to provide 30 copies of the material to be distributed, then individuals are requested to provide a minimum of one (1) copy of the document(s) to be distributed prior to the close of business on December 5, 2012. It is also requested that any member of the public who wishes to provide comments to the Committee utilizing electronic data projection submit the necessary material to the Executive Secretary prior to the close of business on December 3, 2012.

Dated: November 2, 2012.

James J. Berger,

Senior Advisor for Blood Policy, Executive Secretary ACBTSA.

[FR Doc. 2012–27307 Filed 11–7–12; 8:45 am]

BILLING CODE 4150–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Decision To Evaluate a Petition To Designate a Class of Employees From the Battelle Laboratories King Avenue Facility in Columbus, OH, To Be Included in the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: NIOSH gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees from the Battelle Laboratories King Avenue facility in Columbus, OH, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

Facility: Battelle Laboratories King Avenue Location: Columbus, Ohio.

Job Titles and/or Job Duties: All Atomic Weapons Employees who worked at the King Avenue facility in Columbus, Ohio.

Period of Employment: April 16, 1943 through June 30, 1956.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV*.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2012–27346 Filed 11–7–12; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–0848]

Draft Compliance Policy Guide Sec. 550.050 Canned Ackee, Frozen Ackee, and Other Ackee Products—Hypoglycin A Toxin; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of a draft Compliance Policy Guide entitled ''Compliance Policy Guide Sec. 550.050 Canned Ackee, Frozen Ackee, and Other Ackee Products—Hypoglycin A Toxin (the draft CPG).'' The draft CPG, when finalized, will provide guidance for FDA staff on our enforcement criteria for canned ackee, frozen ackee, and other ackee products that contain hypoglycin A.

DATES: Although you can comment on any CPG at any time (see 21 CFR 10.115(g)(5)), to ensure that FDA considers your comment on the draft CPG before it begins work on the final version of the CPG, submit electronic or written comments on the draft CPG by January 7, 2013.

ADDRESSES: Submit written requests for single copies of the draft CPG to the Division of Compliance Policy (HFC–230), Office of Enforcement, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 240–632–6861. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft CPG.

Submit electronic comments on the draft CPG to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Yinqing Ma, Center for Food Safety and Applied Nutrition (HFS–317), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1700.

SUPPLEMENTARY INFORMATION:

I. Background

We are announcing the availability of the draft CPG entitled ''Compliance Policy Guide Sec. 550.050 Canned Ackee, Frozen Ackee, and Other Ackee Products—Hypoglycin A Toxin.'' The draft CPG is intended to provide guidance for FDA staff regarding hypoglycin A in canned ackee, frozen ackee, and other ackee products. We have concluded that canned ackee, frozen ackee, and other ackee products containing concentrations of hypoglycin A above 100 parts per million (ppm) have not been processed properly, and that the finished product may be injurious to health. As stated in the draft CPG, canned ackee, frozen ackee, and other ackee products may be considered adulterated within the meaning of section 402(a)(4) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342(a)(4)) when hypoglycin A is present in the food at levels greater than 100 ppm. The draft CPG also contains information that may be useful to the regulated industry and to the public.

The draft CPG is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft CPG, when finalized, will represent our current thinking on hypoglycin A in ackee products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternate approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit either written comments regarding the draft CPG to the Division of Dockets Management (see **ADDRESSES**) or electronic comments to *http://www.regulations.gov*. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

III. Electronic Access

Persons with access to the Internet may obtain the draft CPG either from FDA's Office of Regulatory Affairs history page at *http://www.fda.gov/ora/compliance_ref/cpg/default.htm* or from *http://www.regulations.gov*. Always access an FDA guidance document by using FDA's Web site listed in the previous sentence to find the most current version of the guidance.

Dated: November 1, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–27225 Filed 11–7–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Blood Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee

of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Blood Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 4, 2012, from 12 noon to 5:30 p.m. and on December 5, 2012, from 8 a.m. to 4:30 p.m.

Location: 5630 Fishers Lane, FDA Conference Room 1066, Rockville, MD 20857. For those unable to attend in person, the meeting will also be Webcast. The Webcast will be available at the following links:

December 4, 2012: Blood Products Advisory Committee Day 1: *http://fda.yorkcast.com/webcast/Viewer/?peid=fea7b950961349e88d443de17679b20c1d.*

December 5, 2012: Blood Products Advisory Committee Day 2: *http://fda.yorkcast.com/webcast/Viewer/?peid=9528ed4e66ca4fbb862be35598b621321d.*

Contact Person: Bryan Emery or Pearline Muckelvene, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–1277 or 301–827–1281, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: On December 4, 2012, the Committee will meet in open session to discuss labeling of Red Blood Cells with historical antigen typing results. On December 5, 2012, the Committee will meet in open session to discuss performance data considerations for infectious disease assays used to screen organ donors.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before November 27, 2012. On December 4, oral presentations from the public will be scheduled between approximately 3 p.m. and 4 p.m. On December 5, oral presentations will be scheduled between approximately 11:20 a.m. and 12:20 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before November 19, 2012. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by November 20, 2012.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets. Seating for this meeting may be limited, so the public is encouraged to watch the free Webcast if you are unable to attend. The link for the Webcast will be available at 8 a.m. on December 4 and 5, 2012 (see *Location*).

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Bryan Emery at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 5, 2012.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2012–27323 Filed 11–7–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on Migrant Health; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: National Advisory Council on Migrant Health.

Dates and Times: December 4, 2012, 8:30 a.m. to 5:00 p.m.

December 5, 2012, 8:00 a.m. to 12:00 p.m.

Place: Health Resources and Services Administration, 5600 Fishers Lane, Room 18–67, Rockville, Maryland 20857, Telephone: (301) 594–4303, Fax: (301) 443–0248.

Status: The meeting will be open to the public.

Purpose: The purpose of the meeting is to discuss services and issues related to the health of migrant and seasonal agricultural workers and their families and to formulate recommendations for the Secretary of Health and Human Services.

Agenda: The agenda includes an overview of the Council's general business activities. The Council will also hear presentations from experts on agricultural worker issues, including the status of agricultural workers' health at the local and national levels.

Agenda items are subject to change as priorities indicate.

FOR FURTHER INFORMATION CONTACT: Gladys Cate, Office of Special Population Health, Bureau of Primary Health Care, Health Resources and Services Administration, 5600 Fishers Lane, Room 15–74, Rockville, Maryland 20857; telephone (301) 594–0367.

Dated: October 31, 2012.

Wendy Ponton,

Director, Office of Management.

[FR Doc. 2012–27312 Filed 11–7–12; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel. Program Project: Mitosis and Meiosis.
Date: November 27–28, 2012.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Elena Smirnova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5187, MSC 7840, Bethesda, MD 20892, 301–435–1236, *smirnove@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel: Small Business: HIV/AIDS Innovative Research Applications.
Date: November 27, 2012.
Time: 11:00 a.m. to 1:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Mark P Rubert, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1775, *rubertm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Fellowships: AIDS and AIDS Related Applications.
Date: November 28, 2012.
Time: 10:00 a.m. to 7:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.
Contact Person: Mary Clare Walker, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7852, Bethesda, MD 20892, (301) 435–1165, *walkermc@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 2, 2012.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–27268 Filed 11–7–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel NCI Omnibus and Cancer Therapy.
Date: November 14–15, 2012.
Time: 2:00 p.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Doubletree Hotel Bethesda, (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Donald L Coppock, Ph.D., Scientific Review Officer, Scientific Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Room 7151, Bethesda, MD 20892, 301–451–9385, *donald.coppock@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Cancer Institute Special Emphasis Panel NCI Omnibus Review Meeting.
Date: December 4, 2012.
Time: 8:00 a.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Conference Room 8018, 6116 Executive Boulevard, Rockville, MD 20852.
Contact Person: Michael B. Small, Ph.D., Scientific Review Officer, Program & Review Extramural Staff Training Office, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8127, Bethesda, MD 20892–8328, 301–402–0996, *smallm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 2, 2012.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–27267 Filed 11–7–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4085–DR; Docket ID FEMA–2012–0002]

New York; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New York (FEMA–4085–DR), dated October 30, 2012, and related determinations.

DATES: Effective November 2, 2012.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New York is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of October 30, 2012.

Rockland and Westchester Counties for Individual Assistance and debris removal and emergency protective measures (Categories A and B), including direct federal assistance, under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034,

Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2012–27342 Filed 11–7–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2012–0003; Internal Agency Docket No. FEMA–B–1272]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before February 6, 2013.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1272, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Community	Community map repository address
Osage County, Oklahoma, and Incorporated Areas	
Maps Available for Inspection Online at: *http://riskmap6.com/Community.aspx?cid=229&sid=4*	
Unincorporated Areas of Osage County	Osage County Planning and Zoning, 628 Kihekah Avenue, Pawhuska, OK 74056.

Community	Community map repository address
Jefferson County, Colorado, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.bakeraecom.com/index.php/colorado/jefferson-5*	
City of Arvada	Engineering Department, 8101 Ralston Road, Arvada, CO 80001.
City of Edgewater	5845 West 25th Avenue, Edgewater, CO 80214.
City of Golden	1445 10th Street, Golden, CO 80401.
City of Lakewood	480 South Allison Parkway, Lakewood, CO 80226.
City of Westminster	4800 West 92nd Avenue, Westminster, CO 80031.
City of Wheat Ridge	Planning and Development, 7500 West 92nd Avenue, Wheat Ridge, CO 80033.
Town of Morrison	Town Offices, 321 Highway 8, Morrison, CO 80465.
Unincorporated Areas of Jefferson County	Jefferson County Department of Planning and Zoning, 100 Jefferson County Parkway, Suite 3, Golden, CO 80401.
Franklin County, Indiana, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.in.gov/dnr/water/6644.htm*	
Town of Brookville	Franklin County Government Center, Area Planning Office, 1010 Franklin Avenue, Brookville, IN 47012.
Town of Cedar Grove	Franklin County Government Center, Area Planning Office, 1010 Franklin Avenue, Brookville, IN 47012.
Unincorporated Areas of Franklin County	Franklin County Government Center, Area Planning Office, 1010 Franklin Avenue, Brookville, IN 47012.
Union County, Indiana, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.in.gov/dnr/water/6415.htm*	
Town of Liberty	Union County Area Plan Commission, 6 West South Street, Liberty, IN 47353.
Unincorporated Areas of Union County	Union County Area Plan Commission, 6 West South Street, Liberty, IN 47353.
Vermillion County, Indiana, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.in.gov/dnr/water/6493.htm*	
City of Clinton	City Hall, 259 Vine Street, Clinton, IN 47842.
Town of Cayuga	Town Hall, 301 South 1st Street, Cayuga, IN 47928.
Town of Newport	Vermillion County Area Plan Commission, 255 South Main Street, Newport, IN 47966.
Town of Perrysville	Town Hall, 130 West Main Street, Perrysville, IN 47974.
Town of Universal	Vermillion County Area Plan Commission, 255 South Main Street, Newport, IN 47966.
Unincorporated Areas of Vermillion County	Vermillion County Area Plan Commission, 255 South Main Street, Newport, IN 47966.
Rankin County, Mississippi, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.geology.deq.ms.gov/floodmaps/Projects/FY2009/?county=Rankin*	
City of Brandon	City Hall, 204 East Government Street, Brandon, MS 39042.
City of Florence	City Hall, 201 North Church Street, Florence, MS 39073.
City of Flowood	City Hall, 2101 North Airport Road, Flowood, MS 39232.
City of Jackson	Department of Public Works, 200 South President Street, Jackson, MS 39205.
City of Pearl	City Hall, 2420 Old Brandon Road, Pearl, MS 39208.
City of Richland	City Hall, 380 Scarborough Street, Richland, MS 39218.
Pearl River Valley Water Supply District	Pearl River Valley Water Supply District, 115 Madison Landing Circle, Ridgeland, MS 39157.
Town of Pelahatchie	Town Hall, 705 2nd Street, Pelahatchie, MS 39145.
Township of Puckett	Town Hall, 118 Cemetary Road, Puckett, MS 39042.
Unincorporated Areas of Rankin County	Rankin County Courthouse, 211 East Government Street, Brandon, MS 39042.

Community	Community map repository address
Albany County, New York (All Jurisdictions)	
Maps Available for Inspection Online at: *http://www.rampp-team.com/ny.htm*	
City of Albany	City Hall, 24 Eagle Street, Albany, NY 12207.
City of Cohoes	City Hall, 97 Mohawk Street, Cohoes, NY 12047.
City of Watervliet	City Hall, 2 15th Street, Watervliet, NY 12189.
Town of Berne	Town Hall, 1615 Helderberg Trail, Berne, NY 12023.
Town of Bethlehem	Bethlehem Town Hall, 445 Delaware Avenue, Delmar, NY 12054.
Town of Coeymans	Coeymans Town Hall, 18 Russell Avenue, Ravena, NY 12143.
Town of Colonie	Colonie Town Hall, 534 Loudon Road, Newtonville, NY 12128.
Town of Guilderland	Guilderland Town Hall, 5209 Western Turnpike, Altamont, NY 12009.
Town of New Scotland	New Scotland Town Hall, 2029 New Scotland Road, Slingerlands, NY 12159.
Town of Rensselaerville	Rensselaerville Town Hall, 87 Barger Road, Medusa, NY 12120.
Town of Westerlo	Town Hall, 671 County Route 401, Westerlo, NY 12193.
Township of Knox	Town Hall, 2192 Berne-Altamont Road, Knox, NY 12107.
Village of Altamont	Village Hall, 115 Main Street, Altamont, NY 12009.
Village of Green Island	Village Hall, 20 Clinton Street, Green Island, NY 12183.
Village of Menands	Village Hall, 250 Broadway, Menands, NY 12204.
Village of Ravena	Village Hall, 15 Mountain Road, Ravena, NY 12143.
Village of Voorheesville	Village Hall, 29 Voorheesville Avenue, Voorheesville, NY 12186.
Kay County, Oklahoma and Incorporated Areas	
Maps Available for Inspection Online at: *http://riskmap6.com/Community.aspx?cid=208&sid=4*	
City of Ponca City	City Hall, 516 East Grand Avenue, Ponca City, OK 74607.
Unincorporated Areas of Kay County	Kay County Courthouse, 115 South Maple Avenue, Newkirk, OK 74647.
Travis County, Texas, and Incorporated Areas	
Maps Available for Inspection Online at: *http://riskmap6.com/Community.aspx?cid=476&sid=5*	
City of Austin	Watershed Engineering Division, 505 Barton Springs Road, 12th Floor, Austin, TX 78704.
City of Manor	City Hall, 201 East Parson Street, Manor, TX 78653.
City of Pflugerville	City Hall, 101 South 3rd, Pflugerville, TX 78660.
City of Round Rock	City Hall, 221 East Main Street, Round Rock, TX 78664.
Unincorporated Areas of Travis County	Travis County Transportation and Natural Resources Department, 411 West 13th Street, 8th Floor Permit Counter, Austin, TX 78701.

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

Dated: October 23, 2012.

James A. Walke,

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

[FR Doc. 2012–27366 Filed 11–7–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0054]

Agency Information Collection Activities: Notice of Naturalization Oath Ceremony, Form Number N–445; Extension, Without Change, of a Currently Approved Collection

ACTION: 60-Day Notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information or new collection of information. In accordance with the Paperwork Reduction Act of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (i.e. the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for sixty days until January 7, 2013.

ADDRESSES: Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to: DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW.,

Washington, DC 20529–2140. Comments may be submitted to DHS via email at *uscisfrcomment@uscis.dhs.gov* and must include OMB Control Number 1615–0054 in the subject box. Comments may also be submitted via the Federal eRulemaking Portal Web site at *http://www.Regulations.gov* under e-Docket ID number USCIS–2006–0005.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Notice of Naturalization Oath Ceremony.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* N–445; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The information furnished on Form N–445 refers to events that may have occurred since the applicant's initial interview and prior to the administration of the oath of allegiance. Several months may elapse between these dates and the information that is provided assists the officer to make and render an appropriate decision on the application. USCIS will use this information to determine if any changes to the respondent's prior statements affect the decisions the agency has made in regards to the respondent's ability to be naturalized.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 900,000.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 149,400.

If you need a copy of the information collection instrument with instructions, or additional information, please visit the Federal eRulemaking Portal site at: *http://www.regulations.gov.* We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529, Telephone number 202–272–8377.

Dated: November 5, 2012.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–27314 Filed 11–7–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0019]

Agency Information Collection Activities: Application for Removal, Form Number I–243; Extension, Without Change, of a Currently Approved Collection

ACTION: 30-Day Notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on August 17, 2012, at 77 FR 49822, allowing for a 60-day public comment period. USCIS did receive a comment in connection with the 60-day notice.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until December 10, 2012. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer and to DHS. Comments should be submitted to the OMB USCIS Desk Officer via email at *oira_submission@omb.eop.gov.* All submissions received must include the agency name, OMB Control Number [1615–0019].

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Note: The address listed in this notice should only be used to submit comments concerning this information collection.

Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Removal.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–243; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. The information provided on this form allows the USCIS to determine eligibility for an applicant's request for removal from the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10 responses at 50 hours (30 minutes) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 5 annual burden hours.

If you need a copy of the information collection instrument with supplementary documents, or need additional information, please visit *http://www.regulations.gov.* We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2020; Telephone 202–272–8377.

Dated: November 5, 2012.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–27315 Filed 11–7–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Performance Review Board Appointments

AGENCY: Department of the Interior.

ACTION: Notice of SES Performance Review Board Appointments.

SUMMARY: This notice provides the names of individuals who have been appointed to serve as members of the Department of the Interior SES Performance Review Board.

DATES: These appointments are effective upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Thomas Mulhern, Director, Office of Human Resources, Office of the Secretary, Department of the Interior, 1849 C Street NW., Washington, DC 20240, Telephone Number: (202) 208–6761.

The members of the Department of the Interior SES Performance Review Board are as follows:

Name:

Adams, Gail
Anderson, Allyson
Andrew, Jonathan
Atkinson, Karen
Bathrick, Mark
Bean, Michael
Beaudreau, Tommy
Beck, Richard
Belin, Alletta
Berrigan, Michael
Black, Michael
Black, Steven
Blanchard, Mary Josie
Bolton, Hannibal
Burden, John
Burzyk, Carla
Carter-Pfisterer, Carole
Clement, Joel
Cruickshank, Walter
Cruzan, Darren
Davis, Mark
Ditmanson, Dale
Dohner, Cynthia
Eller, Sharon
Ellis, Steven
Estenoz, Shannon
Faeth, Lorraine
Farquhar, Ned
Caramanian, Lori
Ferriter, Olivia
Flanagan, Denise
Frazer, Gary
Frost, Herbert
Gibbs Tschudy, Deborah
Gidner, Jerold
Glenn, Douglas
Gonzales-Schreiner, Roseann
Gould, Gregory
Graziano, Angela
Gross, Lawrence
Gunderson, Linda
Haugrud, Kevin
Hawbecker, Karen
Ishee, Mary Katherine
Iudicello, Fay
Jackson, Andrew
Keable, Edward
Kelly, Katherine
Kimball, Suzette
Kinsinger, Anne
Koenigsberg, Melissa
Kornze, Neil
Laverdure, Donald
Lee, Lorri
Malam, Pamela
Mansour, Christopher
Masica, Sue
More, Robert
Moss, Adrianne
Nedd, Michael
O'Dell, Margaret
Orr, Renee
Payne, Grayford
Pula, Nikolao
Quint, Robert
Reidenbach, Dennis
Reynolds, Michael
Rice, Bryan
Roberson, Edwin
Rountree, Carl
Russ, David
Salotti, Christopher
Schneider, Margaret
Sheaffer, C. Bruce
Sholly, Cameron
Sobeck, Eileen
Stevens, Elizabeth
Suazo, Raymond
Taylor, Ione
Taylor, Willie
Thompson, Thomas
Thornhill, Alan
Thorson, Robyn
Toothman, Stephanie
Tuggle, Benjamin
Vela, David
Velasco, Janine
Ward, Joseph
Weber, Wendi
Welch, Ruth
Wells, Sandra
Wenk, Daniel
Wessels, John
Wheeler, Kathleen
Williams, Martha
Williams, L.C.

Woody, William

Dated: October 27, 2012.

Thomas Mulhern,

Director, Human Resources.

[FR Doc. 2012–27316 Filed 11–7–12; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLES956000–L19100000–BK0000–LRCMM1E04057]

Eastern States: Filing of Plat of Survey; Maine

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM-Eastern States office in Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management—Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey. 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: This survey was requested by the Bureau of Indian Affairs.

The lands surveyed are:

Argyle Township, Penobscot County, Maine

The plat of survey represents the dependent resurvey of the boundaries of lands held in trust by the United States for the Penobscot Indian Nation, of the Argyle Township, in the State of Maine, and was accepted September 25, 2012.

We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest against the survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file the plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: November 2, 2012.

Dominica Van Koten,

Chief Cadastral Surveyor.

[FR Doc. 2012–27351 Filed 11–7–12; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVS00560 L58530000 EU0000 241A; N–81988; 12–08807; MO# 4500036691; TAS: 14X5232]

Notice of Realty Action: Competitive Sealed-Bid Sale of Public Land in Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) proposes to offer by competitive sealed-bid sale, one parcel of public land totaling approximately 12.5 acres in the Las Vegas Valley at not less than the appraised fair market value (FMV) of $520,000. The parcel will be offered pursuant to the Southern Nevada Public Land Management Act of 1998 (SNPLMA), Public Law 105–263, as amended. The sale will be subject to the applicable provisions of Section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1713, and BLM land sale conveyance regulations at 43 CFR part 2710. If not sold, the parcel described in this notice may be identified for sale at a later date without further legal notice. Publication of this notice temporarily segregates the identified public lands to the extent that they will not be subject to appropriation under the public land laws, including the mining laws, for up to 2 years while.

DATES: Interested parties may submit written comments regarding the proposed sale of public land until December 24, 2012. Sealed bids may be mailed or delivered to the BLM Las Vegas Field Office, at the address below, beginning December 24, 2012. Sealed bids must be received by the BLM Las Vegas Field Office no later than 4:30 p.m. Pacific Time on January 7, 2013, in accordance with the competitive sealed-bid procedures. The bid opening for the proposed competitive sealed-bid sale will be conducted by the BLM on January 8, 2013, at 10:00 a.m. Pacific Time at the BLM Las Vegas Field Office at the address listed below.

ADDRESSES: Mail written comments to the BLM Las Vegas Field Office Assistant Field Manager, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130.

FOR FURTHER INFORMATION CONTACT: Jill Pickren at email: *jill_pickren@blm.gov* or telephone: 702–515–5194. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Federal parcel proposed for sale is located on the northeast corner of Haleh Avenue and Polaris Street in southwestern Las Vegas Valley. The parcel is described as:

Mount Diablo Meridian

T. 22 S., R. 61 E.,
Sec. 29, SE¼NE¼NW¼SW¼, W½NW¼NE¼SW¼, and W½SW¼NE¼SW¼.

The area described contains 12.5 acres, more or less, in Clark County.

The map delineating the proposed sale is available for public review at the BLM Las Vegas Field Office at the address listed above.

The parcel identified for disposal was previously offered for sale in June 2008; however, no bids were received. The proposed sale was analyzed in the Las Vegas Valley Disposal Boundary Environmental Impact Statement (EIS), approved by Record of Decision on December 23, 2004. The parcel, serialized as N–81988, was analyzed in EA number DOI–BLM–NV–050–2006–294–EA, which tiers to the EIS. The Decision Record and Finding of No Significant Impact were signed on March 5, 2007. No comments were received.

This proposed public sale is in conformance with the BLM Las Vegas Resource Management Plan (RMP), approved by Record of Decision on October 5, 1998. The BLM has determined that the proposed action conforms to the RMP decision LD–1 under the authority of the FLPMA.

Sale Procedures: Sealed bids must be presented for the parcel described above. Sealed-bid envelopes must be marked on the lower front left corner with the BLM serial number N–81988 and the proposed sale date of January 8, 2013. Bids must be for not less than the federally approved FMV.

Each sealed bid shall be accompanied by a certified check, U.S. postal money order, bank draft, or cashier's check, and made payable in U.S. dollars to ''Department of the Interior—Bureau of Land Management'' for not less than 20 percent of the bid amount. Personal or

company checks will not be accepted. The sealed-bid envelope shall also include a completed and signed Certificate of Eligibility. Certificate of Eligibility forms are available at the BLM Las Vegas Field Office at the address listed above and on the BLM Web site at: *http://www.blm.gov/nv/st/en/snplma/Land_Auctions.html.* Pursuant to 43 CFR 2711.3–1(c), if two or more sealed-bid envelopes containing valid bids of the same amount are received, the determination of the highest bid shall be by supplemental biddings. Supplemental bidding may be oral or sealed bids as designated by the authorized officer. Following the end of the sale, all bid deposits will be returned to the unsuccessful bidders in person or by certified mail. If a bidder purchases the parcel and defaults on the parcel, the BLM may retain the bid deposit and cancel the sale. If the high bidder is unable to consummate the transaction for any other reasons, the second highest bid may be considered. The BLM will send the successful bidder(s) a high-bidder letter with detailed information for full payment.

Federal law requires that bidders must be (1) A citizen of the United States 18 years of age or over; (2) A corporation subject to the laws of any State or of the United States; (3) A State, State instrumentality or political subdivision authorized to hold property; and (4) An entity legally capable of conveying and holding lands or interests therein under the laws of the State within which the lands to be conveyed are located. United States citizenship is evidenced by presenting a birth certificate, passport, or naturalization papers. Failure to submit the above requested documents to BLM within 30 days from receipt of the high-bidder letter shall result in cancellation of the sale and forfeiture of the bid deposit.

Within 30 days of the sale, the BLM will, in writing, either accept or reject all bids received. No contractual or other rights against the United States may accrue until the BLM officially accepts the offer to purchase and the full bid price is paid.

Publication of this Notice in the **Federal Register** segregates the subject lands from all forms of appropriation under the public land laws, including the mining laws. Any subsequent application will not be accepted, will not be considered as filed, and will be returned to the applicant if the notice segregates from the use applied for in the application. The segregative effect of this Notice terminates upon issuance of a patent or other document of conveyance to such lands; publication in the **Federal Register** of a termination of the segregation; or 2 years after the date of this publication, whichever occurs first. The segregation period may not exceed 2 years unless extended by the BLM State Director, Nevada, in accordance with 43 CFR 2711.1–2(d) prior to the termination date. *Terms and Conditions:* All minerals for the parcel will be reserved in accordance with the BLM's approved Mineral Potential Report, dated January 22, 1999, which was reviewed and revised on May 16, 2012. Information pertaining to the reservation of minerals specific to the parcel is located in the case file and is available for public review at the BLM Las Vegas Field Office at the addressed listed above.

The patent, when issued for the parcel, N–81988, will contain a mineral reservation to the United States for all minerals.

The parcel is subject to limitations prescribed by law and regulation, and prior to patent issuance, a holder of any right-of-way within the parcel may be given the opportunity to amend the right-of-way for conversion to a new term, including perpetuity, if applicable, or an easement. The BLM will notify valid existing right-of-way holders of their ability to convert their compliant rights-of-way to a perpetual rights-of-way or easement. In accordance with Federal regulations at 43 CFR 2807.15, once notified, each valid holder may apply for the conversion of their current authorization.

The following numbered terms and conditions will appear on the conveyance document for this parcel:

1. All minerals are reserved to the United States. Permittees, licensees, and lessees of the United States retain the right to prospect for, mine, and remove such leasable and saleable minerals owned by the United States under applicable law and any regulations that the Secretary of the Interior may prescribe, together with all necessary access and exit rights;

2. A right-of-way is reserved for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945);

3. The parcel is subject to valid existing rights;

4. Rights-of-way N–43890 and N–43913 for telephone line purposes granted to Central Telephone Company, its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761);

5. Rights-of-way N–02557 and N–81438 for distribution line purposes granted to Nevada Power Company, its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761);

6. Rights-of-way N–62316 and N–63015 for road purposes granted to Clark County, its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761);

7. The parcel is subject to reservations for road, public utilities and flood control purposes, both existing and proposed, in accordance with the local governing entities' transportation plans;

8. By accepting this patent, the patentee agrees to indemnify, defend and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the patentee, its employees, agents, contractors, or lessees, or any third-party, arising out of, or in connection with, the patentee's use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentee, its employees, agents, contractors, or lessees, or third party arising out of or in connection with the use and/or occupancy of the patented real property resulting in: (1) Violations of Federal, State, and local laws and regulations applicable to the real property; (2) Judgments, claims or demands of any kind assessed against the United States; (3) Costs, expenses, damages of any kind incurred by the United States; (4) Other releases or threatened releases on, into or under land, property and other interests of the United States by solid or hazardous waste(s) and/or hazardous substances(s), as defined by Federal or State environmental laws; (5) Other activities by which solid or hazardous substances or wastes, as defined by Federal and State environmental laws were generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action, or other actions related in any manner to said solid or hazardous substances or wastes; or (6) Natural resource damages as defined by Federal and State law. This covenant shall be construed as running with the patented real property, and may be enforced by the United States in a court of competent jurisdiction; and,

9. Pursuant to the requirements established by Section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9620(h) (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1988, 100 Stat. 1670, notice is hereby given that the described land has been

examined and no evidence was found to indicate that any hazardous substances have been stored for 1 year or more, nor had any hazardous substances been disposed of or released on the subject property.

No warranty of any kind, express or implied, is given by the United States as to the title, whether or to what extent the land may be developed, its physical condition, future uses, or any other circumstance or condition. The conveyance of this parcel will not be on a contingency basis. However, to the extent required by law, the parcel is subject to the requirements of Section 120(h) of the CERCLA.

Unless other satisfactory arrangements are approved in advance by a BLM authorized officer, conveyance of title shall be through the use of escrow. Designation of the escrow agent shall be through mutual agreement between the BLM and the prospective patentee, and costs of escrow shall be borne by the prospective patentee. Requests for all escrow instructions must be received by the BLM Las Vegas Field Office 30 days before the prospective patentee's scheduled closing date. There are no exceptions.

No contractual or other rights against the United States may accrue until the BLM officially accepts the offer to purchase, and the full bid price is submitted by the 180th day following the sale.

All name changes and supporting documentation must be received at the BLM Las Vegas Field Office 30 days from the date on the high-bidder letter by 4:30 p.m., Pacific Time. Name changes will not be accepted after that date. To submit a name change, the apparent high bidder must submit the name change in writing on the Certificate of Eligibility form to the BLM Las Vegas Field Office.

The remainder of the full bid price for the parcel must be paid prior to the expiration of the 180th day following the close of the sale. Payment must be submitted in the form of a certified check, U.S. postal money order, bank draft or cashier's check made payable in U.S. dollars to the ''Department of the Interior—Bureau of Land Management.'' Personal or company checks will not be accepted.

Arrangements for electronic fund transfer to BLM for payment of the balance due must be made a minimum of 2 weeks prior to the payment date. Failure to pay the full bid price prior to the expiration of the 180th day will disqualify the apparent high bidder and cause the entire 20 percent bid deposit to be forfeited to the BLM. Forfeiture of the 20 percent bid deposit is in accordance with 43 CFR 2711.3–1(d). No exceptions will be made. The BLM cannot accept the remainder of the bid price after the 180th day of the sale date.

The BLM will not sign any documents related to 1031 Exchange transactions. The timing for completion of an exchange is the bidder's responsibility in accordance with Internal Revenue Service regulations. The BLM is not a party to any 1031 Exchange.

In accordance with 43 CFR 2711.3–1(f), the BLM may accept or reject any or all offers to purchase, or withdraw any parcel of land or interest therein from sale, if, in the opinion of a BLM authorized officer, consummation of the sale would be inconsistent with any law, or for other reasons.

On publication of this Notice and until completion of the sale, the BLM is no longer accepting land use applications affecting the parcel identified for sale. However, land use applications may be considered after the sale if the parcel is not sold. The parcel may be subject to land use applications received prior to publication of this Notice if processing the application would have no adverse effect on the marketability of title, or the FMV of the parcel. Encumbrances of record that may appear in the BLM public files for the parcel proposed for sale are available for review during business hours, 7:30 a.m. to 4:30 p.m., Pacific Time, Monday through Friday, at the Las Vegas Field Office, except during federally recognized holidays.

In order to determine the FMV, certain assumptions may have been made concerning the attributes and limitations of the lands and potential effects of local regulations and policies on potential future land uses. Through publication of this Notice, the BLM advises that these assumptions may not be endorsed or approved by units of local government. It is the buyer's responsibility to be aware of all applicable Federal, State, and local government laws, regulations and policies that may affect the subject lands, including any required dedication of lands for public uses. It is also the buyer's responsibility to be aware of existing or prospective uses of nearby properties. When conveyed out of Federal ownership, the lands will be subject to any applicable laws, regulations, and policies of the applicable local government for proposed future uses. It will be the responsibility of the purchaser to be aware through due diligence of those laws, regulations, and policies, and to seek any required local approvals for future uses. Buyers should also make themselves aware of any Federal or State law or regulation that may impact the future use of the property. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

Information concerning the sale, appraisals, reservations, procedures and conditions, CERCLA and other environmental documents are available for review at the BLM Las Vegas Field Office at the address listed above. Only written comments will be considered properly filed.

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.

Any adverse comments regarding the proposed sale will be reviewed by the BLM Nevada State Director, who may sustain, vacate, or modify this realty action. In the absence of any valid adverse comments, this realty action will become the final determination of the Department of the Interior.

Authority: 43 CFR 2711.1–2.

Vanessa L. Hice,

Assistant Field Manager Division of Lands.

[FR Doc. 2012–27297 Filed 11–7–12; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCON03000.LF2200000 .JS0000.LFESGZT40000]

Notice of Temporary Closure on Public Lands in Mesa County, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Temporary Closure.

SUMMARY: Notice is hereby given that a temporary closure is in effect on public lands administered by the Bureau of Land Management (BLM), Grand Junction Field Office, Grand Junction, Colorado.

DATES: This Temporary Closure will be in effect from 12:01 a.m. (Mountain Time) on Thursday, July 12, 2012, until 11:59 p.m. (Mountain Time) on Friday, July 12, 2013.

ADDRESSES: The Grand Junction Field Office address is 2815 H Road, Grand Junction, Colorado 81506.

FOR FURTHER INFORMATION CONTACT: Catherine Robertson, Grand Junction Field Office Manager, at the above address or by phone at 970–244–3000. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 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: This temporary closure affects public lands burned in the Pine Ridge Fire northeast of Grand Junction, Mesa County, Colorado. The public lands within the temporary closure are administered by the BLM, Grand Junction Field Office. The northern boundary of the temporary closure is located at Route 7729A; the western boundary of the temporary closure is located approximately 8 miles west of De Beque, Colorado; the eastern boundary of the temporary closure is located at Interstate 70 and the Colorado River; and the southern boundary of the temporary closure is located at Cottonwood Creek. The legal description of the affected lands is:

Colorado, Sixth Principal Meridian

T. 9 S., R. 97 W., Sections 18, 19, and 30;
T. 9 S., R. 98 W., Sections 13 to 36, inclusive;
T. 10 S., R. 98 W., Sections 1 to 3, inclusive;
T. 9 S., R. 99 W., Sections 25 and 36.

This temporary closure is necessary due to the severe intensity of the Pine Ridge Fire. The fire destroyed much of the natural vegetation that held soils in place. A temporary closure of public land to vehicle and foot traffic within the burned area is necessary to stabilize soils, prevent erosion and protect public health and safety. The BLM spread a quick germinating, hybrid annual seed and plans to disperse native species seeds in the affected area. The dispersed seeds need to be left undisturbed to create root structure and stabilize soils. Soil erosion prevention, re-seeding operations and damage surveys are required for successful stabilization and rehabilitation of the burn area. Public use of the burned area will hamper these efforts and delay rehabilitation.

The BLM will post closure signs at main entry points to the temporary closure area. The closure notice will be posted in the Grand Junction Field Office along with maps of the affected area and other documents associated with this closure including the Environmental Assessment for the Pine Ridge Fire (DOI–BLM–CO–130–2012–0048–EA). Under the authority of Section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), 43 CFR 8360.0–7 and 43 CFR 8364.1, the BLM will enforce the following rule on public land affected by the Pine Ridge Fire described as follows: You must not enter the Pine Ridge Fire Temporary Closure Area by any means of transportation, including by vehicle or foot.

The following persons are exempt from this order: Federal, state, and local officers and employees in the performance of their official duties; members of organized rescue or firefighting forces in the performance of their official duties; and persons with written authorization from the BLM.

Any person who violates the above rule(s) and/or restriction(s) may be tried before a United States Magistrate and fined no more than $1,000, imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Helen M. Hankins,

BLM Colorado State Director.

[FR Doc. 2012–27296 Filed 11–7–12; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

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

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request for its General provisions has been forwarded to the Office of Management and Budget (OMB) for review and approval. This information collection request describes the nature of the information collection and its expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collection request but may respond after 30 days. Therefore, public comments should be submitted to OMB by December 10, 2012, in order to be assured of consideration.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Department of the Interior Desk Officer, via email at *OIRA submission@omb.eop.gov,* or by facsimile to (202) 395–5806. Also, please send a copy of your comments to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave NW., Room 203—SIB, Washington, DC 20240, or electronically to *JTrelease@osmre.gov.* Please reference 1029–0094 in your correspondence.

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request, contact John Trelease at (202) 208–2783. You may also contact Mr. Trelease at *JTrelease@osmre.gov.*

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require 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)]. OSM has submitted the request to OMB to renew its approval for the collection of information found at 30 CFR part 700. OSM is requesting a 3-year term of approval for this information collection activity. 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 number for this collection of information is 1029–0094, and may be found in OSM's regulations at 30 CFR 700.10. Individuals are required to respond to obtain a benefit.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on this collection was published on August 2, 2012 (77 FR 46121). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: 30 CFR Part 700—General.

OMB Control Number: 1029–0094.

Summary: The information establishes procedures and requirements for terminating jurisdiction of surface coal mining and reclamation operations, petitions for rulemaking, and citizen suits filed under the Surface Mining Control and Reclamation Act of 1977.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: State and Tribal regulatory authorities, private citizens and citizen groups, and surface coal mining companies.

Total Annual Responses: 3.

Total Annual Burden Hours: 50 hours.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the places listed in **ADDRESSES**. Please refer to control number 1029–0094 in all correspondence.

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.

Dated: October 31, 2012.

Andrew F. DeVito,

Chief, Division of Regulatory Support.

[FR Doc. 2012–27060 Filed 11–7–12; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

[OMB Number 1190–NEW]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), Civil Rights Division, United States Department of Justice OSC Charge Form

ACTION: 60-Day Notice.

The Department of Justice (DOJ), Civil Rights Division, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until January 7, 2013. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Seema Nanda, Deputy Special Counsel, USDOJ–CRT–OSC, 950 Pennsylvania Avenue NW–NYA, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* OSC Charge Form.

(3) *Agency form number:* [Form OSC–1].

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* General Public. Information is used to find jurisdiction to investigate the alleged discrimination, to seek whether a referral to another agency is necessary and to provide information needed to initiate investigation of the charge. Respondents are individuals.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 300 respondents will complete each form annually; each response will be completed in approximately 30 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There is an estimated 2000 total annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Suite 3W–1407B, Washington, DC 20530.

Dated: November 5, 2012.

Jerri Murray,

Department Clearance Officer, PRA, Department of Justice.

[FR Doc. 2012–27308 Filed 11–7–12; 8:45 am]

BILLING CODE 4410–13–P

DEPARTMENT OF JUSTICE

Notice of Extension to Public Comment Period for Supplemental Consent Decree Lodged Under the Comprehensive Environmental Response, Compensation, and Liability Act

On October 10, 2012, the Department of Justice lodged a proposed Supplemental Consent Decree with the United States District Court for the District of Massachusetts in the lawsuit entitled, *United States and Massachusetts* v. *AVX Corporation,* Civil Action No. 83–3882–Y, resolving AVX Corporation's liability under the unknown conditions/new information and cost-related reopeners in the 1992 Consent Decree between United States and the Commonwealth of Massachusetts and AVX in connection with the New Bedford Harbor Superfund Site. 77 FR 63871. Under the terms of the Supplemental Consent Decree, AVX will pay an additional $366.25 million with interest (in addition to the $59 million, plus interest, that AVX paid for response costs in the 1992 Consent Decree) in three payments spanning two years and will provide financial assurance to secure the required payments. The governments will release their claims for all response costs and injunctive relief without new ''reopeners'' under Sections 106 and 107 of CERCLA, among other alleged claims. The governments retain their rights to additional relief for natural resource damages pursuant to a reservation of rights in the 1992 Consent Decree.

The prior notice indicated that the Department of Justice would receive comments concerning the settlement for a period of thirty (30) days from the date of publication of the notice on October 17, 2012. Having received a request for an extension of the initial comment period and given the public interest in this settlement, the United States is extending the comment period for an additional thirty (30) days. The United States Environmental Protection Agency has also adjourned the effective date of the Unilateral Administrative Order, issued by EPA Region 1 to AVX on

April 18, 2012, from November 1, 2012 to January 2, 2013, and EPA has posted additional information related to the settlement and the Site at the following Web site: *http://www.epa.gov/nbh/index.html.*

The Department of Justice will receive, for a period of thirty (30) days from November 16, 2012, any comments relating to the proposed Supplemental Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and Massachusetts* v. *AVX Corporation,* D.J. Ref. No. 90–11–2–32/2. All comments must be submitted not later than December 17, 2012. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ–ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the comment period, a person may request an opportunity for a public meeting in the affected area in accordance with Section 7003 of RCRA, 42 U.S.C. 6973, regarding the Decree's covenant not to sue under Section 7003. This extended comment period may not be extended if a request for a meeting is not timely received to allow for the submission of comments within the comment period. During the public comment period, the Supplemental Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Supplemental Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ–ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $19.50 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits, the cost is $6.50.

Ronald G. Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–27287 Filed 11–7–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0077]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Report of Stolen or Lost ATF Form 5400.30, Intrastate Purchase of Explosives Coupon

ACTION: 60-day notice.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until January 7, 2013. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Anita Scheddel, Explosives Industry Programs Branch at *eipb@atf.gov,* 99 New York Avenue NE., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Summary of Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Report of Stolen or Lost ATF F 5400.30, Intrastate Purchase Explosives Coupon.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 5400.30. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* Individuals or households.

Need for Collection

When any Intrastate Purchase of Explosives Coupon is stolen, lost or destroyed, the person losing possession will, upon discovery of the theft, loss, or destruction, immediately, but in all cases before 24 hours have elapsed since discovery, report the matter to the Director, Alcohol, Tobacco, Firearms and Explosives.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 10 respondents will complete a 20 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 3.5 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: November 5, 2012.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2012–27309 Filed 11–7–12; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Wage and Hour Division

RIN 1235–0023

Proposed Extension of the Approval of Information Collection Requirements

AGENCY: Wage and Hour Division, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce

paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95). 44 U.S.C. 3056(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Wage and Hour Division is soliciting comments concerning its proposal to extend Office of Management and Budget (OMB) approval of the Information Collection: Requests to Approve Conformed Wage Classifications and Unconventional Fringe Benefit Plans Under the Davis-Bacon and Related Acts and Contract Work Hours and Safety Standards Act. A copy of the proposed information request can be obtained by contacting the office listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before January 7, 2013.

ADDRESSES: You may submit comments identified by Control Number 1235–0023, by either one of the following methods: *Email: WHDPRAComments@dol.gov; Mail, Hand Delivery, Courier:* Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210. *Instructions:* Please submit one copy of your comments by only one method. All submissions received must include the agency name and Control Number identified above for this information collection. Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via email or to submit them by mail early. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Mary Ziegler, Director, Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this notice must be obtained in alternative formats (Large Print, Braille, Audio Tape, or Disc), upon request, by calling (202) 693–0023 (not a toll-free number). TTY/TTD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

I. Background

The Wage and Hour Division of the Department of Labor administers the Davis-Bacon Act and Davis-Bacon Related Acts, 40 U.S.C. 3141 et seq., and the Contract Work Hours and Safety Standards Act, 40 U.S.C. 3701 et seq. Regulations 29 CFR part 5 prescribe labor standards for federally financed and assisted construction contracts subject to the Davis-Bacon Act, the Davis-Bacon Related Acts, and labor standards for all contracts subject to the Contract Work Hours and Safety Standards Act. The Davis-Bacon Act and the Davis-Bacon Related Acts require payment of locally prevailing wages and fringe benefits, as determined by the Department of Labor, to laborers and mechanics on most federally financed or assisted construction projects. The Contract Work Hours and Safety Standards Act requires the payment of one and one-half times the basic rate of pay for hours worked over forty in a week on most federal contracts involving the employment of laborers or mechanics. The requirements of this information collection consist of: (1) Reports of conformed classifications and wage rates, and (2) requests for approval of unfunded fringe benefit plans.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Enhance the quality, utility, and clarity of the information to be collected;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks an approval for the extension of this information collection that requires the submission and approval of conformed wage classifications and unconventional fringe benefit plans under the Davis-Bacon and Related Acts and the Contract Work Hours and Safety Standards Act in accordance with statutory and regulatory requirements.

Type of Review: Extension.

Agency: Wage and Hour Division.

Title: Requests to Approve Conformed Wage Classifications and Unconventional Fringe Benefit Plans Under the Davis-Bacon and Related Acts and Contract Work Hours and Safety Standards Act.

OMB Number: 1235–0023.

Affected Public: Business or other for-profit, Not-for-profit institutions, Farms.

Total Respondents: Conformance Reports—8,500; Unfunded Fringe Benefit Plans—3.

Total Annual Responses: Conformance Reports—8,500; Unfunded Fringe Benefit Plans—3.

Estimated Total Burden Hours: 2,128.

Estimated Time per Response: 30–45 minutes.

Frequency: On occasion.

Total Burden Cost (capital/startup): $3996.

Total Burden Costs (operation/maintenance): $54,732.

Dated: October 31, 2012.

Mary Ziegler,

Director, Division of Regulations, Legislation, and Interpretation.

[FR Doc. 2012–27076 Filed 11–7–12; 8:45 am]

BILLING CODE 4510–27–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 12- 091]

NASA Advisory Council; Science Committee; Earth Science Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Earth Science Subcommittee of the

NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

DATES: Wednesday, November 28, 2012, 8:30 a.m. to 5:00 p.m., and Thursday, November 29, 2012, 8:30 a.m. to 2:00 p.m., Local Time.

ADDRESSES: NASA Headquarters, 300 E Street SW., Room 9H40, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4452, fax (202) 358–4118, or *mnorris@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Earth Science Division Overview and Key Issues Discussion

—Decadal Survey Midterm Review Follow-Up Discussion

—Earth Science Division Airborne Science Program Issues

—NASA Science Data Center Study

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID to Security before access to NASA Headquarters. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee; and home address to Marian Norris via email at *mnorris@nasa.gov* or by fax at (202) 358–4118. U.S. citizens and Permanent Residents (green card holders) are requested to submit their name and affiliation 3 working days prior to the meeting to Marian Norris.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2012–27230 Filed 11–7–12; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 12–092]

NASA Advisory Council; Information Technology Infrastructure Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announce a meeting for the Information Technology Infrastructure Committee (ITIC) of the NASA Advisory Council (NAC).

DATES: Tuesday, November 27, 2012, 1:00 to 5:00 p.m., Local Time.

ADDRESSES: NASA Marshall Space Flight Center, Building 4200, Room P–110, Marshall Space Flight Center, AL 35812.

FOR FURTHER INFORMATION CONTACT: Jason Gillis, ITIC Executive Secretary, NASA Headquarters, 300 E Street SW., Washington, DC 20546, Phone: 202–358–0431.

SUPPLEMENTARY INFORMATION: The agenda topics for the meeting will include:

- Information Technology—The Effects on and Utilization in Earth Science Research
- Human Space Flight Operations at Marshall Space Flight Center
- Chandra/X-Ray Astronomy
- Mobile Applications
- Wide Area Networks

The meeting will be open to the public up to the seating capacity of the room. This meeting is also available telephonically and by WebEx. You must use a touch tone phone to participate in this meeting. Any interested person may call the USA toll free conference call number (866) 731–2093 and then enter the numeric participant passcode: 8467465 followed by the # sign. To join via WebEx the link is *https://nasa.webex.com,* meeting number 994 547 552, and password NAC@MSFC1127. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. All U.S. citizens desiring to attend the NAC Information Technology Infrastructure Committee meeting at the Marshall Space Flight Center (MSFC) must provide his or her full name, company affiliation (if applicable), citizenship, place of birth, and date of birth to the MSFC Protective Services Office no later than the close of business on November 19, 2012. All non-U.S. citizens must submit his or her name, current address, citizenship, company affiliation (if applicable) to include address, telephone number, and title, place of birth, date of birth, U.S. visa information to include type, number, and expiration date, U.S. Social Security Number (if applicable), Permanent Resident card number and expiration date (if applicable), place and date of entry into the U.S., and passport information to include country of issue, number, and expiration date to the MSFC Protective Services Office no later than the close of business on November 12, 2012. If the above information is not received by the noted dates, attendees should expect a minimum delay of two (2) hours. All visitors to this meeting will be required to process in through the Redstone/MSFC Joint Visitor Control Center located on Rideout Road, north of Gate 9 prior to entering MSFC. Please provide the appropriate data, via fax 256–544–2101, noting at the top of the page ''Public Admission to the NAC Information Technology Infrastructure Committee Meeting.'' For security questions, please call Becky Hopson at 256–544–4541.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2012–27232 Filed 11–7–12; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 12–093]

NASA Advisory Council; Commercial Space Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–462, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Commercial Space Committee of the NASA Advisory Council (NAC). This Committee reports to the NAC. The

meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

DATES: Monday, November 26, 2012, 1:00 p.m.–4:00 p.m., Local Time.

ADDRESSES: NASA Headquarters, 300 E Street SW., Glennan Conference Room, 1Q39, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas W. Rathjen, Human Exploration and Operations Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–0552, fax (202) 358–2885, or *thomas.rathjen-1@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. This meeting is also available telephonically and by WebEx. Any interested person may call the USA toll free conference call number (800) 857–4810 or toll number (773) 799–3416, pass code 7840548 to participate in this meeting by telephone. The WebEx link is *https://nasa.webex.com/,* the meeting number is 995 242 262, and the password is Monday1126!. The agenda for the meeting includes the following topics:

—Status of NASA's Commercialization Efforts
—Overview of NASA's Facility Utilization and Disposition Planning

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be required to comply with NASA security procedures; visitors must show a valid State or Federal issued picture ID, green card, or passport to enter into NASA Headquarters, and must state they are attending the NASA Advisory Council Commercial Space Committee session in the Glennan Conference Room, 1Q39. All U.S. citizens and Permanent Residents (green card holders) desiring to attend must provide their full name, company affiliation (if applicable), and citizenship to Thomas Rathjen via email at *thomas.rathjen-1@nasa.gov,* no later than the close of business November 15, 2012. Permanent Residents will need to show residency status (valid green card) and a valid, officially issued picture identification such as a driver's license and must state they are attending the Commercial Space Committee meeting in the Glennan Conference Room, 1Q39. Foreign Nationals must submit, no later than the close of business November 14, 2012, their full name, gender, current address, citizenship, company affiliation (if applicable) to include address, telephone number, and their title, place of birth, date of birth, U.S. visa information to include type, number and expiration date, U.S. Social Security Number (if applicable), and an electronically scanned or faxed copy of their passport and visa to Thomas Rathjen, Executive Secretary, Commercial Space Committee, via email at *thomas.rathjen-1@nasa.gov.*

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2012–27233 Filed 11–7–12; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (12–094)]

NASA Advisory Council Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council.

DATES: Wednesday, November 28, 2012, from 1:00 to 5:00 p.m. Thursday, November 29, 2012, from 9:00 a.m. to 4:30 p.m. Friday, November 30, 2012, from 9:00 a.m. to 11:30 a.m. **Note:** All times listed are local time.

ADDRESSES: NASA Marshall Space Flight Center, Building 4200, Room P–110, Marshall Space Flight Center, AL 35812.

FOR FURTHER INFORMATION CONTACT: Marla King, NAC Administrative Officer, NASA Headquarters, 300 E Street SW., Washington, DC 20546, Phone: 202–358–1148.

SUPPLEMENTARY INFORMATION: The agenda topics for the meeting will include:

- Aeronautics
- Audit, Finance and Analysis
- Commercial Space
- Education and Public Outreach
- Human Exploration and Operations
- Information Technology Infrastructure
- Science
- Technology and Innovation

The meeting will be open to the public up to the seating capacity of the room. This meeting is also available telephonically and by WebEx. You must use a touch tone phone to participate in this meeting. Any interested person may call the USA toll free conference call number (866) 731–2093 and then enter the numeric participant passcode: 8467465 followed by the # sign. To join via WebEx the link is *https://nasa.webex.com,* meeting number 998 094 377, and password Nov12NAC@MSFC. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. All U.S. citizens desiring to attend the NASA Advisory Council (NAC) meeting at the Marshall Space Flight Center (MSFC) must provide his or her full name, company affiliation (if applicable), citizenship, place of birth, and date of birth to the MSFC Protective Services Office no later than the close of business on November 19, 2012. All non-U.S. citizens must submit his or her name, current address, citizenship, company affiliation (if applicable) to include address, telephone number, and title, place of birth, date of birth, U.S. visa information to include type, number, and expiration date, U.S. Social Security Number (if applicable), Permanent Resident card number and expiration date (if applicable), place and date of entry into the U.S., and passport information to include country of issue, number, and expiration date to the MSFC Protective Services Office no later than the close of business on November 12, 2012. If the above information is not received by the noted dates, attendees should expect a minimum delay of two (2) hours. All visitors to this meeting will be required to process in through the Redstone/MSFC Joint Visitor Control Center located on Rideout Road, north of Gate 9 prior to entering MSFC. Please provide the appropriate data, via fax 256–544–2101, noting at the top of the page ''Public Admission to the NASA Advisory Council (NAC) Meeting.'' For security questions, please call Becky Hopson at 256–544–4541.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2012–27263 Filed 11–7–12; 8:45 am]

BILLING CODE 7510–12–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30255; 812–14062]

Arden Investment Series Trust and Arden Asset Management LLC; Notice of Application

November 2, 2012.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as from certain disclosure requirements.

SUMMARY OF THE APPLICATION: Applicants request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval and would grant relief from certain disclosure requirements.

APPLICANTS: Arden Investment Series Trust (the ''Trust'') and Arden Asset Management LLC (the ''Initial Advisor'').

DATES: *Filing Dates:* The application was filed on July 23, 2012, and amended on October 22, 2012.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 27, 2012 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants, Arden Investment Series Trust, 375 Park Avenue, 32nd Floor, New York, New York 10152 and Arden Asset Management LLC, 375 Park Avenue, 32nd Floor, New York, New York 10152.

FOR FURTHER INFORMATION CONTACT: David J. Marcinkus, Attorney-Advisor, at (202) 551–6882, or David P. Bartels, Branch Chief, at (202) 551–6821 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust, a Delaware statutory trust, is registered under the Act as an open-end management investment company. The Trust currently consists of a single series that will be advised by the Initial Advisor.[1] The Initial Advisor, a Delaware limited liability company, is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). Any other Advisor will be registered as an investment adviser under the Advisers Act. Applicants state that the Initial Advisor serves as investment adviser to the initial Fund under an investment advisory agreement with the Trust (the ''Advisory Agreement'')[2] that has been approved by each respective Fund's shareholders and the Trust's Board of Trustees (''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of either the Trust or the Advisor (''Independent Trustees'') in the manner required by sections 15(a) and (c) of the Act and rule 18f–2 under the Act.

2. Under the terms of the Advisory Agreement, the Advisor manages the Fund in accordance with its investment objective and policies and oversees, implements and administers the Fund's investment program, subject to the supervision of, and policies established by, the Board. For the investment management services it will provide to each Fund, the Advisor will receive the fee specified in the Advisory Agreement from such Fund based on the average daily net assets of the Fund. The Advisory Agreement permits the Advisor, subject to the approval of the Board, to delegate certain responsibilities to one or more subadvisers (''Subadvisors''). The Advisor expects to enter into subadvisory agreements with various Subadvisors (''Subadvisory Agreements'') to provide investment advisory services to the Funds.[3] Each Subadvisor will be an investment adviser as defined in section 2(a)(20) of the Act as well as registered with the Commission as an ''investment adviser'' under the Advisers Act. The Advisor evaluates, allocates assets to and oversees the Subadvisors, and makes recommendations about their hiring, termination and replacement to the Board, at all times subject to the authority of the Board. The Advisor will compensate the Subadvisors out of the advisory fee paid by a Fund to the Advisor under the Advisory Agreement.

3. Applicants request an order to permit the Advisor, subject to Board approval, to select certain Subadvisors to manage all or a portion of the assets of a Fund or Funds pursuant to a Subadvisory Agreement and materially amend Subadvisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Subadvisor that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Trust, a Fund or the Advisor, other than by reason of serving as a subadviser to one or more of the Funds (''Affiliated Subadvisor'').

4. Applicants also request an order exempting the Funds from certain disclosure provisions described below that may require a Fund to disclose fees paid by the Advisor to each Subadvisor. Applicants seek an order to permit the Trust to disclose for a Fund (as both a dollar amount and as a percentage of the Fund's net assets): (a) the aggregate fees paid to the Advisor and any Affiliated Subadvisor; and (b) the aggregate fees paid to Subadvisors other than Affiliated Subadvisors (collectively, ''Aggregate Fee Disclosure''). Any Fund that employs an Affiliated Subadvisor will provide separate disclosure of any fees paid to the Affiliated Subadvisor.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by a vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series investment company affected by a

[1] Applicants request relief with respect to any existing and any future series of the Trust or any other registered open-end management company that: (a) Is advised by the Initial Advisor or a person controlling, controlled by, or under common control with the Initial Advisor or its successor (each, an ''Advisor''); (b) uses the manager of managers structure described in the application (''Manager of Managers Structure''); and (c) complies with the terms and conditions of the requested order (any such series, a ''Fund'' and collectively, the ''Funds''). The only existing registered open-end management investment company that currently intends to rely on the requested order is named as an applicant and the only series that currently intends to rely on the requested order as a Fund is identified in the application. For purposes of the requested order, ''successor'' is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization. If the name of any Fund contains the name of a Subadvisor (as defined below), that name will be preceded by the name of the Advisor.

[2] ''Advisory Agreement'' includes advisory agreements with an Advisor for future Funds.

[3] As of the date of the application the Advisor has not entered in Subadvisory Agreements with Subadvisors.

matter must approve that matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 19(a)(3) of Form N–1A requires disclosure of the method and amount of the investment adviser's compensation.

3. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 (''1934 Act''). Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fees,'' a description of the ''terms of the contract to be acted upon,'' and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Regulation S–X sets forth the requirements for financial statements required to be included as part of a registered investment company's registration statement and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require a registered investment company to include in its financial statement information about investment advisory fees.

5. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that the requested relief meets this standard for the reasons discussed below.

6. Applicants assert that the shareholders expect the Advisor, subject to the review and approval of the Board, to select the Subadvisors who are best suited to achieve the Fund's investment objectives. Applicants assert that, from the perspective of the shareholder, the role of the Subadvisors is substantially equivalent to that of the individual portfolio managers employed by traditional investment company advisory firms. Applicants state that requiring shareholder approval of each Subadvisory Agreement would impose unnecessary delays and expenses on the Funds and may preclude the Funds from acting promptly when the Advisor and Board consider it appropriate to hire Subadvisors or amend Subadvisory Agreements. Applicants note that the Advisory Agreements and any Subadvisory Agreements with Affiliated Subadvisors will remain subject to the shareholder approval requirements of section 15(a) of the Act and rule 18f–2 under the Act.

7. If a new Subadvisor is retained in reliance on the requested order, the Funds will inform shareholders of the hiring of a new Subadvisor pursuant to the following procedures (''Modified Notice and Access Procedures''): (a) within 90 days after a new Subadvisor is hired for any Fund, that Fund will send its shareholders either a Multi-manager Notice or a Multi-manager Notice and Multi-manager Information Statement; [4] and (b) the Fund will make the Multi-manager Information Statement available on the Web site identified in the Multi-manager Notice no later than when the Multi-manager Notice (or Multi-manager Notice and Multi-manager Information Statement) is first sent to shareholders, and will maintain it on that Web site for at least 90 days. In the circumstances described in the application, a proxy solicitation to approve the appointment of new Subadvisors provides no more meaningful information to shareholders than the proposed Multi-manager Information Statement. Moreover, the Board will comply with the requirements of sections 15(a) and 15(c) of the 1940 Act before entering into or amending Subadvisory Agreements.

8. Applicants assert that the requested disclosure relief would benefit shareholders of the Funds because it would improve the Advisor's ability to negotiate the fees paid to Subadvisors. Applicants state that the Advisor may be able to negotiate rates that are below a Subadvisor's ''posted'' amounts if the Advisor is not required to disclose the Subadvisors' fees to the public.

[4] A ''Multi-manager Notice'' will be modeled on a Notice of Internet Availability as defined in rule 14a–16 under the Exchange Act, and specifically will, among other things: (a) Summarize the relevant information regarding the new Subadvisor; (b) inform shareholders that the Multi-manager Information Statement is available on a Web site; (c) provide the Web site address; (d) state the time period during which the Multi-manager Information Statement will remain available on that Web site; (e) provide instructions for accessing and printing the Multi-manager Information Statement; and (f) instruct the shareholder that a paper or email copy of the Multi-manager Information Statement may be obtained, without charge, by contacting the Funds.

A ''Multi-manager Information Statement'' will meet the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Exchange Act for an information statement, except as modified by the requested order to permit Aggregate Fee Disclosure. Multi-manager Information Statements will be filed electronically with the Commission via the EDGAR system.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the order requested in the application, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities, as defined in the Act, or, in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder before offering the Fund's shares to the public.

2. The prospectus for each Fund will disclose the existence, substance, and effect of any order granted pursuant to the application. Each Fund will hold itself out to the public as employing the Manager of Managers Structure. The prospectus will prominently disclose that the Advisor has ultimate responsibility (subject to oversight by the Board) to oversee the Subadvisors and recommend their hiring, termination, and replacement.

3. Funds will inform shareholders of the hiring of a new Subadvisor within 90 days after the hiring of a new Subadvisor pursuant to the Modified Notice and Access Procedures.

4. The Advisor will not enter into a Subadvisory Agreement with any Affiliated Subadvisor without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. At all times, at least a majority of the Board will be Independent Trustees, and the nomination and selection of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

6. When a Subadvisor change is proposed for a Fund with an Affiliated Subadvisor, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the applicable Board minutes, that such change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Advisor or the Affiliated Subadvisor derives an inappropriate advantage.

7. Independent legal counsel, as defined in rule 0–1(a)(6) under the Act, will be engaged to represent the Independent Trustees. The selection of such counsel will be within the discretion of the then existing Independent Trustees.

8. Each Advisor will provide the Board, no less frequently than quarterly,

with information about the profitability of the Advisor on a per-Fund basis. The information will reflect the impact on profitability of the hiring or termination of any Subadvisor during the applicable quarter.

9. Whenever a Subadvisor is hired or terminated, the Advisor will provide the Board with information showing the expected impact on the profitability of the Advisor.

10. The Advisor will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of the Fund's assets and, subject to review and approval of the Board, will (i) Set each Fund's overall investment strategies; (ii) evaluate, select and recommend Subadvisors to manage all or part of a Fund's assets; (iii) when appropriate, allocate and reallocate a Fund's assets among multiple Subadvisors; (iv) monitor and evaluate the performance of Subadvisors; and (v) implement procedures reasonably designed to ensure that the Subadvisors comply with each Fund's investment objective, policies and restrictions.

11. No trustee or officer of the Trust, or of a Fund, or director or officer of the Advisor, will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Subadvisor, except for (a) ownership of interests in the Advisor or any entity that controls, is controlled by, or is under common control with the Advisor; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either a Subadvisor or an entity that controls, is controlled by, or is under common control with a Subadvisor.

12. Each Fund will disclose in its registration statement the Aggregate Fee Disclosure.

13. In the event the Commission adopts a rule under the Act providing substantially similar relief to that in the order requested in the application, the requested order will expire on the effective date of that rule.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–27288 Filed 11–7–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68131; File No. SR–CBOE–2012–101]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

November 1, 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 October 25, 2012, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''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

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its marketing fee. The marketing fee is assessed on certain transactions of Market-Makers, Designated Primary Market-Makers (''DPMs'') and e-DPMs.[3] The funds collected via this marketing fee are then put into pools controlled by DPMs and Preferred Market-Makers (''PMMs'').[4] The DPM or PMM controlling a certain pool of funds can then determine the order flow provider(s) to which the funds should be directed in order to encourage such order flow provider(s) to send orders to the Exchange. On each order, an order flow provider that receives marketing fee funds can designate the PMM to which the funds generated from the order sent by the order flow provider should be allocated (a ''Preferred order'').

Currently, Footnote 6 to the Exchange Fees Schedule, which relates to the marketing fee, states that a PMM will only be given access to the marketing fee funds generated from a Preferred order if the PMM has an appointment in the class in which the Preferred order is received and executed. However, CBOE recently learned that other options exchanges allow a PMM (or similar positions) to have access to the marketing fee funds generated from a Preferred order (or similar order type) regardless of whether the PMM has an appointment in the class in which the Preferred order is received and executed. As such, the Exchange decided to examine permitting this activity on CBOE.[5]

Permitting a PMM to access marketing fee funds generated from a Preferred order, regardless of whether the order is for a class in which the PMM has an appointment, may allow PMMs to encourage greater order flow to be sent to the Exchange. A PMM could be able to amass a greater pool of funds with which to use to incent order flow providers to send order flow to the Exchange. This increased order flow would benefit all market participants on the Exchange. Indeed, a PMM would likely often not even be the direct beneficiary of the increased order flow, since the PMM would not trade with that order (as the PMM is not appointed in that class). The market participants

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* CBOE Fees Schedule, table entitled ''Marketing Fee'' and Footnote 6 for more details regarding the marketing fee.

[4] *See* CBOE Rule 8.13 for details of the PMM program.

[5] *See* NASDAQ OMX Phlx, LLC (''Phlx'') Pricing Schedule, section on Payment for Order Flow Fees, and NYSE Amex Options Fee Schedule, Footnote 10, and also International Securities Exchange, LLC (''ISE'') Schedule of Fees, Section IV(D), none of which contain requirements that a PMM (or similar position) have an appointment in the class in which a Preferred order (or similar order type) is received and executed in order to have access to the marketing fee funds generated from that Preferred order.

who can trade with that order would be the direct beneficiaries. Allowing a PMM to access marketing fee funds generated from a Preferred order, regardless of whether the order is for a class in which the PMM has an appointment, would provide a PMM with an incentive to encourage the routing of order flow into classes in which the PMM otherwise would not (classes in which the PMM is not appointed and quoting). Further, this will also provide PMMs with more flexibility to change their appointments, as they will not have to be concerned with whether or not they have made arrangements to pay for order flow in a specific class prior to changing appointments.

Therefore, the Exchange proposes to eliminate the requirement that a PMM will only be given access to the marketing fee funds generated from a Preferred order if the PMM has an appointment in the class in which the Preferred order is received and executed. The Exchange proposes to amend the relevant sentence in Footnote 6 to simply state that a PMM will be given access to the marketing fee funds generated from a Preferred order. The purpose of this change is to encourage the direction of increased order flow to the Exchange, allow PMMs more flexibility to change classes to which they are appointed, and place the Exchange on even competitive footing with other exchanges.

The proposed change is to take effect on November 1, 2012.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[6] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. By removing a requirement that other exchanges do not possess, CBOE puts its PMMs on an even footing with PMMs (or similar positions) on other exchanges. This evening of the playing field removes an impediment to and perfects the mechanism for a free and open market and a national market system.

The Exchange also believes that permitting a PMM to access marketing fee funds generated from a Preferred order, regardless of whether the order is for a class in which the PMM has an appointment, is consistent with Section 6(b)(4) of the Act,[8] which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. The proposed change is reasonable because it will allow PMMs greater access to marketing fee funds. The proposed change is equitable and not unfairly discriminatory because it is designed to allow PMMs to encourage greater order flow to be sent to the Exchange. A PMM could be able to amass a greater pool of funds with which to use to incent order flow providers to send order flow to the Exchange. This increased order flow would benefit all market participants on the Exchange. Further, allowing a PMM to access marketing fee funds generated from a Preferred order, regardless of whether the order is for a class in which the PMM has an appointment, would provide a PMM with an incentive to encourage the routing of order flow into classes in which the PMM otherwise would not (classes in which the PMM is not appointed and quoting).

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

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)[9] of the Act and paragraph (f) of Rule 19b–4[10] thereunder. 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–CBOE–2012–101 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2012–101. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2012–101 and should be submitted on or before November 29, 2012.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–27265 Filed 11–7–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68146; File No. SR–NYSE–2012–59]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Transaction Fees on the New York Block Exchange

November 2, 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 November 1, 2012, the New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. NYSE has designated the proposed rule change as ''establishing or changing a due, fee or other charge'' under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes certain changes to the transaction fees within its Price List for its facility, the New York Block Exchange℠ (''NYBX''). The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, 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 is proposing to reduce certain transaction fees within its Price List for NYBX transactions and that such reductions become operative on November 1, 2012.

NYBX is the electronic facility of the Exchange that provides for the continuous matching and execution of all non-displayed NYBX orders with the aggregate of liquidity in the NYBX facility, the Exchange's Display Book® (''DBK'') as provided in NYSE Rule 1600, and considers the protected quotations of all automated trading centers for securities listed on the Exchange.[5]

The Exchange currently offers a per share charge of $0.0030 for the execution of all orders entered into NYBX regardless of whether the order executes in NYBX, DBK, or in another market center, such as NYSE Arca,[6] NASDAQ, and BATS BZX. The Exchange proposes to reduce the transaction fee for orders entered into NYBX as follows:

1. The Exchange proposes to reduce the per share charge from $0.0030 to $0.0005 for all orders executing in NYBX.

2. The Exchange proposes to reduce the per share charge from $0.0030 to $0.0005 for all executions of Midpoint Pegging Orders[7] entered into NYBX, whether such orders execute occur in NYBX, in DBK, or on another market center.

3. The Exchange proposes to reduce the per share charge from $0.0030 to $0.0025 for all orders executing in DBK other than Midpoint Pegging Orders entered into NYBX.

All other executions of orders entered into NYBX will maintain a per share charge of $0.0030.

The Exchange believes that the proposed reduction of charges for NYBX orders executing in NYBX and DBK and executions of Midpoint Pegging Orders entered into NYBX, as specified, will reduce transaction costs for and potentially offer additional block trading liquidity to NYBX participants. In addition, the scope of the reduction generally aligns with costs associated with NYBX's routing orders to other market centers to access more favorable prices. When an NYBX order executes outside of NYBX, the market center on which the order executes charges NYBX, with the per share charge being as high as $0.0030.[8] As a result, to cover NYBX's cost, NYBX orders executed outside of NYBX are currently charged, and will continue to be charged, a per share charge of $0.0030. When two orders are matched in NYBX, NYBX does not incur a fee from another market, and therefore, the Exchange believes it is appropriate to reduce the per share charge from $0.0030 to $0.0005.

The Exchange believes that the lower per share charge of $0.0005 should also be applied to an NYBX execution of a Midpoint Pegging Order, regardless of whether the order is executed in NYBX, in DBK, or in another market center. While Midpoint Pegging Orders could potentially execute outside of NYBX, such an execution outside of NYBX is uncommon. Reducing the transaction fee for all NYBX executions of Midpoint Pegging Orders affords pricing certainty for such orders. Midpoint Pegging Orders provide price improvement for both sides of the transaction between the quoted spread, and therefore, the lower charges will facilitate price improvement.

Finally, the Exchange proposes to reduce the charges for all executions in

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* NYSE Rule 1600. NYBX is a joint venture between the Exchange and BIDS Holdings L.P. (''BIDS''). Under the governance structure approved by the Commission, the Exchange and BIDS each own a 50% economic interest in New York Block Exchange LLC, the entity that owns and operates NYBX. In addition, the Exchange, through its wholly-owned subsidiary NYSE Market, Inc., owns less than 10% of the aggregate limited partnership interest in BIDS. *See* Securities Exchange Act Release No. 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009) (SR–NYSE–2008–120); *see also* Securities Exchange Act Release No. 61257 (December 30, 2009), 75 FR 500 (January 5, 2010) (SR–NYSE–2009–116).

[6] Other NYSE affiliated market centers operate independently of NYBX and offer distinct pricing.

[7] An NYBX ''Midpoint Pegging Order'' is a limit order with an instruction to execute it at the midpoint of the National Best Bid and Best Offer (''NBBO''). The Midpoint Pegging Order will not permit an instruction to peg to the midpoint of the NBBO plus or minus the Exchange's minimum price variation. *See* NYSE Rule 1600(c)(2)(A)(i).

[8] As examples, NASDAQ currently charges $0.0030 per share, and BATS BZX charges $.0029 per share. *See* NASDAQ Price List—Trading & Connectivity, available at *http://www.nasdaqtrader.com/trader.aspx?id=pricelisttrading2;* and BATS BZX Exchange Fee Schedule, available at *http://cdn.batstrading.com/resources/regulation/rule_book/BATS-Exchanges_Fee_Schedules.pdf.*

DBK of orders entered into NYBX, excepting Midpoint Pegging Orders. The proposed reduction in the per share charge, from $0.0030 to $0.0025, will result in the fee for such executions being equal to the fee charged if a non-Floor broker member enters an order removing liquidity into DBK directly, with the exception of orders in stocks with a per share stock price lower than $1.00.[9]

The proposed change is not otherwise intended to address any other matter, and the Exchange is not aware of any significant problem that the affected market participants would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[10] in general, and Section 6(b)(4) of the Act,[11] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

Specifically, the Exchange believes that reducing transaction charges for NYBX executions is reasonable because it will lower participants' trading costs and the Exchange expects that it will enhance trading liquidity available to NYBX participants. The Exchange believes that the limitation of the reduction to those orders occurring inside NYBX is equitable and not unfairly discriminatory because it is aligned with the costs experienced by NYBX, in that when two orders are matched in NYBX, NYBX does not incur a fee from another market, while when an order is routed to other market centers the other market center on which the order executes charges NYBX.

The Exchange believes that reducing the per share charge for all executions of Midpoint Pegging Orders entered into NYBX is reasonable because it will incentivize Midpoint Pegging Orders by lowering participants' trading costs and providing pricing certainty for such orders. The Exchange believes that limiting the proposed change to Midpoint Pegging Orders is equitable and not unfairly discriminatory because, unlike other types of orders, Midpoint Pegging Orders execute at the midpoint of the NBBO, and therefore encouraging Midpoint Pegging Orders will further the Exchange's goal to facilitate price improvement on both sides of a trade.

The Exchange believes that reducing the charges for all executions in DBK of orders entered into NYBX, excepting Midpoint Pegging Orders, is reasonable because as a result of the change members will be charged the same fee for an NYBX order executed in DBK as the fee charged to non-Floor broker members entering orders into DBK directly, with the exception of orders in stocks with a per share stock price lower than $1.00,[12] which the Exchange believes will ensure that the rate structure does not disincentivize the use of NYBX. The Exchange believes that the proposed change is equitable and not unfairly discriminatory because as a result of the change all similarly situated members would be subject to the same fee.

Additionally, the proposed changes to the fee schedule allows NYBX to compete with other market centers for block liquidity and to deliver the benefits of competition in the form of reduced transaction costs to investors utilizing block trading venues.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange continually reviews, and considers adjusting its fees to remain competitive with other market centers. For the reasons described above, the Exchange believes that the proposed rule change both meets the needs of NYBX and benefits the users of NYBX.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[13] of the Act and subparagraph (f)(2) of Rule 19b–4[14] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE.

At any time within 60 days of the filing of such 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–NYSE–2012–59 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–NYSE–2012–59. 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

[9] The equity per share charge for Designated Market Makers when taking liquidity from the Exchange is $0.0025 per transaction, which is also the charge for all other non-Floor broker transactions when taking liquidity from the Exchange, with the exception of transactions in stocks with a per share stock price below $1.00, which charge is 0.3% of the total dollar value of the transaction. The equity per share fee for Floor broker transactions when taking liquidity from the NYSE is $0.0024. NYBX is charged $0.0015 by the Exchange for the execution of an NYBX order in DBK.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] *See* note 8, *supra.*

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(2).

printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of NYSE. 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–NYSE–2012–59, and should be submitted on or before November 29, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–27291 Filed 11–7–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68148; File No. SR–OCC–2012–17]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Margining of Segregated Futures Customer Accounts on a Gross Basis

November 2, 2012.

I. Introduction

On September 14, 2012, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change SR–OCC–2012–17 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder.[2] The proposed rule change was published in the **Federal Register** on September 26, 2012.[3] On October 11, 2012, OCC filed Amendment No. 1 to the proposed rule change.[4] The Commission did not receive any comments on this proposal. This order approves the proposed rule change.[5]

II. Description of the Proposed Rule Change

The purpose of this proposed rule change is to provide for the calculation of initial margin for OCC segregated futures customer accounts on a gross basis, as required by CFTC Rule 39.13(g)(8)(i).[6]

The CFTC's Customer Gross Margin Rule

On October 18, 2011, the CFTC issued final regulations implementing many of the new statutory core principles for CFTC-registered derivatives clearing organizations (''DCOs'') enacted under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act''). As a registered DCO (as well as a registered securities clearing agency), OCC has previously implemented rule changes designed to bring OCC into compliance with CFTC rules applicable to DCOs that went into effect on January 9, 2012[7] and May 7, 2012.[8] OCC believes it is necessary to amend its Rules in order to ensure compliance with the gross margin rule, which requires a DCO to ''collect initial margin on a gross basis for each clearing member's customer account(s) equal to the sum of the initial margin amounts that would be required by the derivatives clearing organization for each individual customer within that account if each individual customer were a clearing member''[9] as required by CFTC Rule 39.13(g)(8)(i). The gross margin rule goes into effect on November 8, 2012; however, OCC proposed to begin complying with the gross margin rule on November 5, 2012 as described herein.

OCC's System for Calculating Margin

OCC currently calculates margin requirements for each clearing member's segregated futures customer account held at OCC on a net basis by applying OCC's System for Theoretical Analysis and Numerical Simulations (''STANS''). STANS calculates initial margin with respect to each account of a clearing member, including each clearing member's futures customer account(s), on a net basis. STANS includes both a net asset value (''NAV'') component and a risk component, with the risk component being the equivalent of ''initial margin'' as that term is defined under CFTC Rules. The NAV component marks all positions to market and nets long and short positions to determine the NAV of each clearing member's portfolio of customer positions. The NAV component represents the cost to liquidate the portfolio at current prices by selling the net long positions and buying in the net short positions. The risk component is estimated by means of an expected shortfall risk measure obtained from ''Monte Carlo'' simulations designed to measure the additional asset value required in any portfolio to eliminate an unacceptable level of risk that the portfolio would liquidate to a deficit.

OCC presently lacks sufficient information about individual customer positions to calculate initial margin at the level of each individual customer. However, OCC has been coordinating with other DCOs to establish an industry-wide mechanism for complying with the customer gross margin rule. Pursuant to this new system, each DCO's clearing members will submit data files to the DCO identifying positions by numerical customer identifiers.[10] OCC will use this information to calculate initial margins, using STANS, for each customer identifier of a clearing member and to aggregate those initial margin calculations to determine the total futures customer margin requirement for the clearing member's segregated futures customer account(s) held at OCC.[11] OCC

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[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ''Notice of Filing of Proposed Rule Change Relating to the Margining of Segregated Futures Customer Accounts on a Gross Basis,'' Release No. 34–67896 (September 20, 2012), 77 FR 59231 (September 26, 2012).

[4] In Amendment No. 1, OCC proposed wording changes and responded to a CFTC interpretation concerning what constitutes initial margin. Specifically, it amended the text of Rule 601 by inserting the word ''initial'' before the word ''margin,'' to more closely parallel CFTC Rule 39.13(g)(8)(i)[4] which references ''initial margin.'' It also amended Item 3 of Form 19b–4 to, first, include CFTC's definition of ''initial margin'' and second, to clarify which components of OCC's margin calculations meets the definition of ''initial margin'' as the term is defined under CFTC Rules. Amendment No. 1 is technical in nature, and therefore the Commission is not publishing Amendment No. 1 for public comment.

[5] OCC also filed an advanced notice relating to these proposed changes. The advance notice was published on October 1, 2012. ''Advance Notice Relating to the Margining of Segregated Futures Customer Accounts on a Gross Bases,'' Release No. 34–67921 (September 25, 2012), 77 FR 59998 (October 1, 2012). The Commission did not receive any comments on this publication.

[6] 17 CFR 39.13(g)(8)(i).

[7] *See* SR–OCC–2011–18.

[8] *See* SR–OCC–2012–06.

[9] Derivatives Clearing Organization General Provisions and Core Principles, 76 FR 69334, 69439 (November 8, 2011).

[10] The position data provided to OCC by clearing members will not include (a) information with respect to the allocation of margin assets to particular customers, nor (b) information with respect to settlement obligations arising from the exercise, assignment or maturity of cleared contracts. For this reason, OCC will treat all margin assets and settlement obligations for each account to which the gross margin rule applies as being in sub-accounts of the Clearing Member. OCC will calculate margin, using STANS, separately for each sub-account and will aggregate the calculated margin requirements at the level of the clearing member's segregated futures customer account to which the sub-accounts relate.

[11] OCC currently carries the following account types that are segregated pursuant to Section 4d of the Commodity Exchange Act: Segregated Futures Accounts, Segregated Futures Professional Accounts, non-Proprietary X–M accounts, and

will then compare the aggregate positions reported by each clearing member with its own records and make any needed adjustments to the initial margin calculation to ensure all positions on OCC's books are properly margined.

Proposed By-Law and Rule Changes

The proposed changes to OCC's Rules provide for the calculation of initial margin for segregated futures customer accounts on a gross basis and mandate submission of the clearing member data files necessary to allow OCC to calculate initial margin at the level of each futures customer. In the event that the data included in these data files is incomplete (for example, if OCC shows positions held in a clearing member's segregated futures accounts, but those positions are not reflected in the data file), OCC will create a separate sub-account to be used for initial margin calculation purposes only. Positions recorded on OCC's books and records, but not reflected in the data file, will be attributed to this sub-account and an initial margin amount will be calculated for the sub-account. This initial margin amount will be added to a clearing member's initial margin requirement. OCC has determined to adopt this approach to dealing with discrepancies between its own records and clearing member data files in order to ensure that OCC does not collect an inadequate amount of initial margin from clearing members.

III. Discussion of the Proposed Rule Change

Section 19(b)(2)(C) of the Exchange Act [12] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Exchange Act [13] requires that the rules of the clearing agency, among other things, are designed to promote the prompt and accurate clearance and settlement of securities transactions, and, to the extent applicable, derivative agreements, contracts, and transactions.

The Commission finds that the proposed rule change is consistent with the requirements of Section 17A of the Exchange Act [14] because it is designed to permit OCC to perform clearing services for products that are subject to the jurisdiction of the CFTC without adversely affecting OCC's obligations with respect to the prompt and accurate clearance and settlement of securities transactions or the protection of securities investors and the public interest.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act [15] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (File No. SR–OCC–2012–17) be and hereby is *approved* [17] as of the date of this order or the date of the ''Notice of No Objection to Advance Notice Filing, as Modified by Amendment No. 1 Thereto, Relating to the Margining of Segregated Futures Customer Accounts on a Gross Basis'' (File No. SR–2012–17), whichever is later.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

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internal non-proprietary cross-margining accounts. All such accounts would be margined on a gross basis under the proposed amendments to OCC Rule 601.

[12] 15 U.S.C. 78s(b)(2)(C).

[13] 15 U.S.C. 78q–1(b)(3)(F).

[14] 15 U.S.C. 78q–1.

[15] 15 U.S.C. 78q–1.

[16] 15 U.S.C. 78s(b)(2).

[17] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68144; File No. SR–CBOE–2012–103]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to CBSX Rule 53.24

November 2, 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 October 25, 2012, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the filing is to amend Rule 53.24 (Quote Maintenance) of the CBOE Stock Exchange, LLC (''CBSX'') to delete references to the automatic quote regeneration and quote risk monitor functions. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the filing is to eliminate Rule 53.24(b) (Automatic Quote Regeneration) and Rule 53.24(c) (Quote Risk Monitor Function) from CBOE Stock Exchange, LLC's (''CBSX'') Rule 53.24 (Quote Maintenance). Pursuant to Rule 53.24(b), once the CBSX system is so enabled, a CBSX Remote Market-Maker may have the CBSX system automatically regenerate its quote when its bid or offer is filled. Pursuant to Rule 53.24(c), the CBSX system may provide a CBSX Market-Maker the opportunity to establish a share volume limit for a specific security for a specific period of time. In the event that trades against a CBSX Market-Maker's quotes exceed the established volume limit, the CBSX System will cancel that Market-Maker's remaining quotes for that security. To date, neither the automatic quote regeneration nor the quote risk monitor function has been made available or been used. The Exchange also has no

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

intention of enabling the CBSX system to provide for either function. Reference to these features is therefore unnecessary and accordingly, the Exchange proposes to eliminate Rule 53.24(b) (Automatic Quote Regeneration) and Rule 53.24(c) (Quote Risk Monitor Function) from its rules.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') [3] and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[4] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [5] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. Since neither the automatic quote regeneration nor the quote risk monitor functions have ever been made available or used, and as the Exchange has no intention of providing for such, the Exchange would like to remove reference to them from its rules, which would maintain clarity in the rules and reduce possible confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule does not (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [6] and Rule 19b–4(f)(6) thereunder.[7] At any time within 60 days of the filing of such 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–CBOE–2012–103 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–CBOE–2012–103. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml.*) Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. 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–CBOE–2012–103 and should be submitted on or before November 29, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–27318 Filed 11–7–12; 8:45 am]

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[3] 15 U.S.C. 78s(b)(1).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68142; File No. SR–FINRA–2012–040]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Amend the By-Laws of FINRA Dispute Resolution, Inc. To Clarify That Services Provided by Mediators Should Not Cause Them To Be Classified as Industry Members Under the By-Laws

November 2, 2012.

I. Introduction

On August 23, 2012 the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the By-Laws of FINRA Dispute Resolution, Inc. (''By-Laws'') to clarify that services provided by mediators, when acting in such capacity and not representing parties in mediation, should not cause the individuals to be classified as Industry Members under the By-Laws. Specifically, the proposed rule change would amend the definitions of Industry

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Members [3] and Public Members [4] in the By-Laws to except any services provided in the capacity as a mediator of disputes involving a broker or dealer and not representing any party in such mediations from being considered professional services provided to brokers or dealers. The amended definitions would allow mediators who are otherwise qualified to be eligible to become Public Members of the National Arbitration and Mediation Committee (''NAMC''), a committee appointed by the Board of Directors of FINRA Dispute Resolution, Inc. (''DR Board''). The proposed rule change was published for comment in the **Federal Register** on September 11, 2012.[5] The Commission received one comment letter, from an anonymous commenter on the proposed rule change.[6] The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA, on the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room.

This order approves the proposed rule change.

II. Description of the Proposal

The proposed rule change would amend the By-Laws to clarify that services provided by mediators when acting in such capacity and not representing parties in mediation should not cause the individuals to be classified as Industry Members under the By-Laws. Consequently, mediators who were otherwise qualified would be eligible to become Public Members of the NAMC would not be excluded because of the mediation activity excepted by the proposed rule. Currently, those mediators cannot become members of the NAMC because of the definitions of Industry Member and Public Member in the By-Laws.

In a FINRA mediation, all parties agree on the selection of a mediator, agree on the compensation of the mediator, and agree on how to allocate the mediator's compensation among the parties; the mediator receives part of the compensation in each case from an industry party. However, for mediations to which investors are parties, mediators represent neither the investors nor the FINRA-registered individuals or entities. Similarly, for mediations involving industry parties only, mediators represent neither the FINRA-registered individuals nor entities.

Pursuant to the Plan of Allocation and Delegation of Functions by FINRA to Subsidiaries (''Delegation Plan''), the NAMC has the power and authority pursuant to FINRA's Rules to advise the FINRA DR Board on the development and maintenance of an equitable and efficient system of dispute resolution that will equally serve the needs of public investors and FINRA members, to monitor rules and procedures governing the conduct of dispute resolution, and to have such other powers and authority as is necessary to effectuate the purposes of FINRA's Rules.[7] The Delegation Plan provides that the FINRA DR Board must appoint the NAMC, whose membership must consist of a majority of Public Members.[8]

Currently, under the By-Laws, a mediator could be classified as an Industry Member rather than a Public Member for purposes of Committee participation because of the services provided by a mediator to an industry party. In FINRA's mediation forum, mediators are retained only by agreement of all parties to a dispute rather than by any one party and the parties compensate mediators jointly pursuant to that agreement. While mediators derive some of their revenue from brokers or dealers, FINRA has indicated that it does not believe the compensation earned in the capacity as a mediator compromises the mediator's neutrality.

The proposed rule change would amend the definitions of Industry Members and Public Members in the By-Laws to except any services provided in the capacity as a mediator of disputes involving a broker or dealer and not representing any party in such mediations from being considered professional services provided to brokers or dealers.

As explained in the Notice, FINRA believes that the proposed rule change is consistent with the provisions of Section 15A of the Act, including Section 15A(b)(2) of the Act,[9] in that it provides for the organization of FINRA and FINRA Dispute Resolution in a manner that will permit FINRA to carry out the purposes of the Act, to comply with the Act, and to enforce compliance by FINRA members and persons associated with FINRA members with the Act, the rules and regulations thereunder, FINRA rules and other federal securities laws. FINRA also believes that the proposed rule change is consistent with Section 15A(b)(4) of the Act,[10] which requires, among other things, that FINRA's rules assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of FINRA, broker or dealer. FINRA believes that the proposal would assure fair administration of its Dispute Resolution affairs by providing another source of qualified and experienced candidates from which to select public members for the NAMC.

III. Discussion of Comment Letters

The Commission received one comment letter on the proposed rule change in response to the Notice.[11] The Comment Letter states that ''the purpose of mediating or having a mediator is to forego the formalness. An industry member would have an upper-hand and expert knowledge. [T]hen the situation could be deemed a legal case.'' The Commission believes that the commenter is suggesting that members with industry experience would introduce formality into what is supposed to be an informal process.[12] Notwithstanding its interpretation or the merit of the statement underlying its interpretation, the Commission believes that the proposed rule change simply prevents mediation activity from automatically qualifying the mediator as an Industry Member. It does not shield the mediator from being classified as an Industry Member for other activities that would otherwise cause the mediator to be considered an Industry Member.[13]

IV. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and the comment received. Based on its review, the Commission finds that the proposed rule change is consistent with

[3] *See* Dispute Resolution By-Laws, Article I(s) (Definitions—Industry Member).

[4] *See* Dispute Resolution By-Laws, Article I(x) (Definitions—Public Member).

[5] *See* Exchange Act Release No. 67784 (Sept. 5, 2012), 77 FR 55885 (Sept. 11, 2012). (''Notice''). The comment period closed on October 2, 2012.

[6] *See* Letter from anonymous commenter, dated October 2, 2012 (''Comment Letter'').

[7] *See* Plan of Allocation and Delegation of Functions by FINRA to Subsidiaries—NASD Dispute Resolution, § III(C)(1)(b).

[8] *Id. See also* Rules 12102(a) and 12102(a)(1) of the Code of Arbitration Procedure for Customer Disputes and Rules 13102(a) and 13102(a)(1) of the Code of Arbitration Procedure for Industry Disputes.

[9] 15 U.S.C. 78*o*–3(b)(2).

[10] 15 U.S.C. 78*o*–3(b)(4).

[11] *Supra* note 6.

[12] Because the commenter submitted the Comment Letter anonymously, neither the Commission not FINRA is able to seek clarification of the subject matter of the letter.

[13] In a telephone call with Mignon McLemore of FINRA on October 12, 2012, she stated that FINRA believes the Comment Letter is unclear and could not be clarified due to the anonymity of its author. Accordingly, FINRA believes that it could not respond to the letter.

the requirements of the Act and the rules and regulations thereunder applicable to a national securities association. In particular, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A of the Act, including Section 15A(b)(2) of the Act, in that it facilitates the organization of FINRA and FINRA Dispute Resolution in a manner that will permit FINRA to carry out the purposes of the Act, to comply with the Act, and to enforce compliance by FINRA members and persons associated with FINRA members with the Act, the rules and regulations thereunder, FINRA rules and other federal securities laws. The Commission also finds that the proposed rule change is consistent with Section 15A(b)(4) of the Act, which requires, among other things, that FINRA's rules assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of FINRA, broker or dealer.

More specifically, the Commission finds that by enlarging the pool from which to draw Public Members for the NAMC, the proposed rule change facilitates the organization of FINRA and FINRA Dispute Resolution in a manner consistent with Section 15A(b)(2) of the Act; the Commission also finds that enlarging the pool from which to draw Public Members for the NAMC facilitates compliance with and thus is consistent with the provision of Section 15A(b)(4) of the Act to provide that one or more of FINRA's directors shall be representative of issuers and investors and not be associated with a member of FINRA, broker-dealer.

The Commission appreciates the commenter's letter about members with industry experience acting as mediators. However, the Commission believes that the proposed rule change simply prevents mediation activity from automatically qualifying the mediator as an Industry Member. It does not shield the mediator from being classified as an Industry Member for other activities that would otherwise cause the mediator to be considered an Industry Member.

The Commission has reviewed the record for the proposed rule change and believes that the record does not contain any information to indicate that the proposed rule would have a significant effect on efficiency, competition, or capital formation. In light of the record, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation and has concluded that the proposed rule is unlikely to have any significant effect.[14]

For the reasons stated above, the Commission finds that the rule change is consistent with the Act and the rules and regulations thereunder.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–FINRA–2012–040) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–27317 Filed 11–7–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68141; File No. SR–BOX–2012–016]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposal Regarding Quote Mitigation

November 2, 2012.

Pursuant to Section 19(b)(1) under the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 26, 2012, BOX Options Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

BOX Options Exchange LLC (the ''Exchange'') proposes to amend Rule 7250 (Quote Mitigation) and refine the current quote mitigation strategy for its options trading facility, BOX Market LLC (''BOX'') by replacing the current quote mitigation rule with a ''holdback timer'' mechanism. The text of the proposed rule change is available from the principal office of the Exchange, on the Exchange's Internet Web site at *http://boxexchange.com,* 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 Exchange proposes to refine the BOX quote mitigation strategy. Specifically, the Exchange proposes to amend Rule 7250 (Quote Mitigation) and replace the current rule with a mechanism that systemically limits the dissemination of quotations and other changes to the BOX best bid and offer according to prescribed time criteria (a ''holdback timer''). For instance, if there is a change in the price of a security underlying an option, multiple market participants may adjust the price or size of their quotes. Rather than disseminating each individual change, the holdback timer permits BOX to wait until multiple Participants have adjusted their quotes and then disseminates a new quotation. This mechanism will help to prevent the ''flickering'' of quotations.

The Exchange believes the proposed modification to its holdback timer mechanism within the overall BOX quote mitigation strategy will allow the Exchange to more effectively monitor quotation traffic and mitigate as needed. BOX's current Quote Mitigation mechanism was adopted as a response to the implementation of Penny Pilot Program [4] amid concerns that market

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[14] *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release Nos. 55073 (January 19, 2007) 72 FR 2047 (January 17, 2007)(Order Approving BSE Quote Mitigation Plan)(SR–BSE–2006–48), and 55155 (January 23, 2007) 72 FR 4714 (February 1, 2007)(Order Approving Penny Pilot Program on BSE)(SR–BSE–2006–49).

quality and system capacity would be overwhelmed by the increase in options market data traffic created by the Program. The Exchange sought to reduce both peak and overall market data traffic by bundling order updates within a certain timeframe. The current mechanism subjects all order updates to bundling when the underlying instrument has been listed for more than ten (10) trading days and for which open interest is fewer than 300 to 400 contracts. The frequency at which these updates are bundled varies from 200 to 1000 milliseconds and depends on a number of factors.[5] Additionally, the current rule provides that at a minimum, all updates for instruments listed for at least 10 days and having open interest below 50 contracts will be bundled at 200 millisecond intervals.

The Exchange believes that replacing the current mechanism with a holdback timer will allow BOX to more efficiently reduce quotation traffic when necessary instead of bundling all order updates that meet the restrictive criteria set forth in the current rule. The Exchange believes that the holdback timer mechanism taken together with the other tools it currently employs as part of the overall BOX quote mitigation strategy will allow BOX to continue to effectively mitigate quote message traffic.

The other tools in place are:

• Monitoring. BOX actively monitors the quotation activity of its market makers. When the Exchange detects that a market maker is disseminating an unusual number of quotes, the Exchange contacts that market maker and alerts it to such activity. Such monitoring frequently reveals that the market maker may have internal system issues or has incorrectly set system parameters that were not immediately apparent. Alerting a market maker to possible excessive quoting usually leads the market maker to take steps to reduce the number of its quotes.

• Delisting. BOX has a policy of withdrawing approval of underlying securities with low trading volume, thereby eliminating the quotation traffic attendant to such listings.[6]

Further, BOX notes that the holdback timer mechanism is currently part of the quote mitigation strategies of the International Securities Exchange's (''ISE''), C2 Options Exchange (''C2''), and the Chicago Board Options Exchange (''CBOE'')[7]; and the Exchange believes implementation of this proposed change on BOX will increase uniformity among the exchanges and cause less confusion among market participants.

BOX will utilize a holdback timer that delays quotation updates to OPRA for no longer than one (1) second. BOX may vary the holdback timer by option class. BOX does not intend to disclose the length of the holdback timer to its Participants or non-Participants. BOX notes that the holdback timer addresses the dissemination to OPRA of quotation updates and other changes to BOX's best bid and offer, and not the execution of orders.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[8] in general, and Section 6(b)(5) of the Act,[9] in particular, that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. Several of the options exchanges have codified their use of a holdback timer as a quote mitigation strategy which has been endorsed over the last few years by the Securities Information and Financial Markets Association. The Exchange believes the addition of the holdback timer mechanism within its quote mitigation strategy will more effectively allow BOX to monitor quotation traffic and mitigate as needed. Additionally, this mechanism is currently part of the quote mitigation strategies of the International Securities Exchange's (''ISE''), C2 Options Exchange (''C2''), and the Chicago Board Options Exchange (''CBOE'')[10]; and the Exchange believes implementation of this proposed change on BOX will increase uniformity among the exchanges and cause less confusion among Participants. As such, the Exchange believes the proposed change is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b-4(f)(6)(iii) thereunder.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or

• Send an email to *rule-comments@sec.gov.* Please include File

[5] *See* BOX Rule 7250(b)(1) through (3).

[6] *See* BOX Rule 5030(b)(3).

[7] *See* Securities Exchange Act Release Nos. 55166 (January 24, 2007) 72 FR 62024 (February 1, 2007) (Order Approving ISE Rule 804(h)) (SR–ISE–2006–62), 61152 (December 10, 2009) 74 FR 66699 (December 16, 2009) (Order Approving C2 Application as National Securities Exchange and Finding the C2 Rules, including Rule 6.34(b), Consistent with the Act), and 55772 (May 16, 2007), 72 FR 28732 (May 22, 2007) (SR–CBOE–2007–45) (Notice of Filing and Immediate Effectiveness of CBOE Rule 6.23A(b)).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *See* Securities Exchange Act Release Nos. 55166 (January 24, 2007) 72 FR 62024 (February 1, 2007) (Order Approving ISE Rule 804(h)) (SR–ISE–2006–62), 61152 (December 10, 2009) 74 FR 66699 (December 16, 2009) (Order Approving C2 Application as National Securities Exchange and Finding the C2 Rules, including Rule 6.34(b), Consistent with the Act), and 55772 (May 16, 2007), 72 FR 28732 (May 22, 2007) (SR–CBOE–2007–45) (Notice of Filing and Immediate Effectiveness of CBOE Rule 6.23A(b)).

[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 Commission notes that the Exchange has satisfied this requirement.

Number SR–BOX–2012–016 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–BOX–2012–016. 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, on official business days between the hours of 10 a.m. and 3 p.m., located at 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 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–BOX–2012–016 and should be submitted on or before November 29, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–27294 Filed 11–7–12; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68147; File No. SR–OCC–2012–17]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of No Objection to Advance Notice Filing, as Modified by Amendment No. 1 Thereto, Relating to the Margining of Segregated Futures Customer Accounts on a Gross Basis

November 2, 2012.

I. Introduction

On September 14, 2012, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') an advance notice concerning a proposed rule change SR–OCC–2012–17 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder.[2] The proposed rule change was published in the **Federal Register** on September 26, 2012.[3] The advance notice was published in the **Federal Register** on October 1, 2012.[4] On October 11, 2012, OCC filed Amendment No. 1 to the proposed rule change and the advance notice.[5] The Commission received no comment letters on either publication. This publication serves as a notice of no objection to the advance notice.

II. Description of the Proposed Rule Change

This advance notice concerns a proposed rule change. The purpose of this proposed rule change is to provide for the calculation of initial margin for OCC segregated futures customer accounts on a gross basis, as required by CFTC Rule 39.13(g)(8)(i).[6]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ''Notice of Filing of Proposed Rule Change Relating to the Margining of Segregated Futures Customer Accounts on a Gross Basis,'' Release No. 34–67896 (September 20, 2012), 77 FR 59231 (September 26, 2012).

[4] ''Advance Notice Relating to the Margining of Segregated Futures Customer Accounts on a Gross Basis,'' Release No. 34–67921 (September 25, 2012), 77 FR 59998 (October 1, 2012).

[5] In Amendment No. 1, OCC proposed wording changes and responded to a CFTC interpretation concerning what constitutes initial margin. Specifically, it amended the text of Rule 601 by inserting the word ''initial'' before the word ''margin,'' to more closely parallel CFTC Rule 39.13(g)(8)(i)1 which references ''initial margin.'' It also amended Item 3 of Form 19b–4 to, first, include CFTC's definition of ''initial margin'' and second, to clarify which components of OCC's margin calculations meets the definition of ''initial margin'' as the term is defined under CFTC Rules. Amendment No. 1 is technical in nature, and therefore the Commission is not publishing Amendment No. 1 for public comment.

[6] 17 CFR 39.13(g)(8)(i).

The CFTC's Customer Gross Margin Rule

On October 18, 2011, the CFTC issued final regulations implementing many of the new statutory core principles for CFTC-registered derivatives clearing organizations (''DCOs'') enacted under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act''). As a registered DCO (as well as a registered securities clearing agency), OCC has previously implemented rule changes designed to bring OCC into compliance with CFTC rules applicable to DCOs that went into effect on January 9, 2012 [7] and May 7, 2012.[8] OCC believes it is necessary to amend its Rules in order to ensure compliance with the gross margin rule, which requires a DCO to ''collect initial margin on a gross basis for each clearing member's customer account(s) equal to the sum of the initial margin amounts that would be required by the derivatives clearing organization for each individual customer within that account if each individual customer were a clearing member'' [9] as required by CFTC Rule 39.13(g)(8)(i). The gross margin rule goes into effect on November 8, 2012; however, OCC proposed to begin complying with the gross margin rule on November 5, 2012 as described herein.

OCC's System for Calculating Margin

OCC currently calculates margin requirements for each clearing member's segregated futures customer account held at OCC on a net basis by applying OCC's System for Theoretical Analysis and Numerical Simulations (''STANS''). STANS calculates initial margin with respect to each account of a clearing member, including each clearing member's futures customer account(s), on a net basis. STANS includes both a net asset value (''NAV'') component and a risk component, with the risk component being the equivalent of ''initial margin'' as that term is defined under CFTC Rules. The NAV component marks all positions to market and nets long and short positions to determine the NAV of each clearing member's portfolio of customer positions. The NAV component represents the cost to liquidate the portfolio at current prices by selling the net long positions and buying in the net short positions. The risk component is estimated by means of an expected shortfall risk measure obtained from

[7] *See* SR–OCC–2011–18.

[8] *See* SR–OCC–2012–06.

[9] Derivatives Clearing Organization General Provisions and Core Principles, 76 FR 69334, 69439 (November 8, 2011).

''Monte Carlo'' simulations designed to measure the additional asset value required in any portfolio to eliminate an unacceptable level of risk that the portfolio would liquidate to a deficit.

OCC presently lacks sufficient information about individual customer positions to calculate initial margin at the level of each individual customer. However, OCC has been coordinating with other DCOs to establish an industry-wide mechanism for complying with the customer gross margin rule. Pursuant to this new system, each DCO's clearing members will submit data files to the DCO identifying positions by numerical customer identifiers.[10] OCC will use this information to calculate initial margins, using STANS, for each customer identifier of a clearing member and to aggregate those initial margin calculations to determine the total futures customer margin requirement for the clearing member's segregated futures customer account(s) held at OCC.[11] OCC will then compare the aggregate positions reported by each clearing member with its own records and make any needed adjustments to the initial margin calculation to ensure all positions on OCC's books are properly margined.

Proposed By-Law and Rule Changes

The proposed changes to OCC's Rules provide for the calculation of initial margin for segregated futures customer accounts on a gross basis and mandate submission of the clearing member data files necessary to allow OCC to calculate initial margin at the level of each futures customer. In the event that the data included in these data files is incomplete (for example, if OCC shows positions held in a clearing member's segregated futures accounts, but those positions are not reflected in the data file), OCC will create a separate sub-account to be used for initial margin calculation purposes only. Positions recorded on OCC's books and records, but not reflected in the data file, will be attributed to this sub-account and an initial margin amount will be calculated for the sub-account. This initial margin amount will be added to a clearing member's initial margin requirement. OCC has determined to adopt this approach to dealing with discrepancies between its own records and clearing member data files in order to ensure that OCC does not collect an inadequate amount of initial margin from clearing members.

III. Description of the Advance Notice

OCC filed its proposed rule change as an advance notice pursuant to Section 806(e)(1) of the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act'') because OCC believed it could be deemed to materially affect the nature or level of risks presented by OCC. OCC's proposed rule changes would require the collection of futures customer margin on a gross basis in order to comply with CFTC Rule 39.13(g)(8)(i). This is expected to lead to an increase in the amount of margin OCC collects from its clearing members with respect to their segregated futures customer accounts held at OCC, as well as a corresponding decrease in OCC's default risk with respect to those accounts. This decreased risk may be material. While the amount of initial margin collected by OCC with respect to segregated futures customer accounts of clearing members will increase, the fundamental processes used by OCC to calculate such initial margin requirements will continue to rely on STANS, which OCC is not proposing to change as a result of the gross margin rule. OCC therefore does not expect that the nature of its risks with respect to segregated futures customer accounts will change, merely that the level of such risk will change.

The industry-wide effort to implement gross initial margining for segregated futures customer accounts could pose operational risks to OCC due to the complexities involved in the exchange of customer-level position data between clearing members and OCC and in ensuring that OCC is prepared to process the information received and incorporate it into its own margin calculations. Implementing the customer gross margin rule changes on November 8, 2012 (a Thursday) could also exacerbate the operational challenges involved in implementing customer gross margining. In order to mitigate these challenges, OCC and other DCOs have determined that it is advisable to implement these changes in advance of the CFTC's mandatory November 8, 2012 compliance date, on November 5, 2012 (a Monday). This is being done in coordination with other DCOs and in order to avoid a mid-week implementation date. As the Rule change described herein is mandated by regulations to which OCC is subject as a registered DCO, OCC has no discretion in whether to implement these Rule changes. Nevertheless, OCC believes that these Rule changes will not diminish OCC's ability to ensure the safeguarding of securities and funds in OCC's custody or control or for which OCC is responsible.

IV. Analysis of Advance Notice

Standard of Review

A registered clearing agency that has been designated as a systemically important financial market utility (''FMU'') by the Financial Stability Oversight Council (''FSOC'') must provide advance notice of all changes to its rules, procedures or operations that could, as defined in the rules of the supervisory agency, materially affect the nature or level of risk presented by the clearing agency.[12] Absent an extension or request for additional information, as discussed in greater detail below, the Commission is required to notify the clearing agency of any objection regarding the proposed change within the 60 day time frame established by Title VIII of the Dodd-Frank Act (''Title VIII'').[13] A designated clearing agency may not implement a change to which its supervisory agency has objected;[14] however, the clearing agency is explicitly permitted to implement a change if it has not received an objection from its supervisory agency within the same 60 day time period.[15]

Although Title VIII does not specify a standard that the Commission must apply to determine whether to object to an advance notice, the Commission believes that the purpose of Title VIII, as stated under Section 802(b),[16] is relevant to the review of advance notices.

[10] The position data provided to OCC by clearing members will not include (a) information with respect to the allocation of margin assets to particular customers, nor (b) information with respect to settlement obligations arising from the exercise, assignment or maturity of cleared contracts. For this reason, OCC will treat all margin assets and settlement obligations for each account to which the gross margin rule applies as being in sub-accounts of the Clearing Member. OCC will calculate margin, using STANS, separately for each sub-account and will aggregate the calculated margin requirements at the level of the clearing member's segregated futures customer account to which the sub-accounts relate.

[11] OCC currently carries the following account types that are segregated pursuant to Section 4d of the Commodity Exchange Act: Segregated Futures Accounts, Segregated Futures Professional Accounts, non-Proprietary X–M accounts, and internal non-proprietary cross-margining accounts. All such accounts would be margined on a gross basis under the proposed amendments to OCC Rule 601.

[12] 12 U.S.C. 5465(e). *See also,* Process for Submissions for Review of Security-Based Swaps for Mandatory Clearing and Notice Filing Requirements for Clearing Agencies; Technical Amendments to Rule 19b–4 and Form 19b–4 Applicable to All Self-Regulatory Organizations, Rel. No. 34–63557 (December 15, 2010), 75 FR 82490 (December 30, 2010) (Proposing Release); Rel. No. 34–67286 (June 28, 2012), 77 FR 41602 (July 13, 2012) (Adopting Release).

[13] 12 U.S.C. 5465(e)(1)(E).

[14] 12 U.S.C. 5465(e)(1)(F).

[15] 12 U.S.C. 5465(e)(1)(G).

[16] 12 U.S.C. 5461(b).

The stated purpose of Title VIII is to mitigate systemic risk in the financial system and promote financial stability, by (among other things) authorizing the Federal Reserve Board to promote uniform risk management standards for systemically important FMUs, and providing an enhanced role for the Federal Reserve Board in the supervising of risk management standards for systemically important FMUs.[17] Therefore, the Commission believes that when reviewing advance notices for FMUs, the consistency of an advance notice with Title VIII may be judged principally by reference to the consistency of the advance notice with applicable rules of the Federal Reserve Board governing payment, clearing, and settlement activity of the designated FMU.[18]

Section 805(a) requires the Federal Reserve Board and authorizes the Commission to prescribe standards for the payment, clearing, and settlement activities of FMUs designated as systemically important, in consultation with the supervisory agencies. Section 805(b) of the Clearing Supervision Act[19] requires that the objectives and principles for the risk management standards prescribed under Section 805(a) shall be to:

- Promote robust risk management and safety and soundness;
- Reduce systemic risks; and
- Support the stability of the broader financial system.

The relevant rules of the Federal Reserve Board prescribing risk management standards for designated FMUs by their terms do not apply to designated FMUs that are clearing agencies registered with the Commission.[20] Therefore, the Commission believes that the objectives and principles by which the Federal Reserve Board is required and the Commission is authorized to promulgate such rules, as expressed in Section 805(b) of Title VIII,[21] are the appropriate standards at this time by which to evaluate advance notices.[22]

Accordingly, the analysis set forth below is organized by reference to the stated objectives and principles in Section 805(b).

Discussion of Advance Notice

OCC's proposed rule changes are expected to increase the amount of margin collected with respect to clearing members' segregated futures accounts held at OCC. This higher level of margin is expected to lead to a corresponding decrease in OCC's default risk with respect to those accounts. And while the level of risk is expected to change, OCC does not expect that the nature of its risks to change because the fundamental processes used to calculate initial margin will continue to rely on the same system for margin calculations. In addition, OCC represents that the rule change does not diminish OCC's ability to ensure the safeguarding of the securities and funds in OCC's custody or control.

Moreover, OCC is making these changes in order to facilitate compliance with a CFTC requirement. Its ability to comply with relevant regulatory requirements and to not be faced with inconsistent regulatory requirements (as would be the case if the Commission objected to the proposal) promotes legal certainty and predictability as to what OCC will require from its clearing members. This legal certainty and predictability promotes the objectives and principles described above.

For these reasons, the Commission finds that OCC's proposed rule change promotes robust risk management and safety and soundness, reduces systemic risks and supports the stability of the broader financial system, and therefore does not object to the advance notice.

V. Conclusion

It is therefore noticed, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act,[23] that, the Commission *does not object* to proposed rule change (File No. SR–OCC–2012–17) and that OCC be and hereby is *authorized* to implement proposed rule change (File No. SR–OCC–2012–17) as of the date of this notice or the date of the ''Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Margining of Segregated Futures Customer Accounts on a Gross Basis'' (File No. SR–OCC–2012–17), whichever is later.

By the Commission.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–27292 Filed 11–7–12; 8:45 am]

BILLING CODE 8011–01–P

[17] 12 U.S.C. 5461(b).

[18] *See* Financial Market Utilities, 77 FR 45907 (Aug. 2, 2012).

[19] 12 U.S.C. 5464(b).

[20] 12 CFR 234.1(b).

[21] 12 U.S.C. 5464(b).

[22] The risk management standards that have been adopted by the Commission in Rule 17Ad–22 are substantially similar to those of the Federal Reserve Board applicable to designated FMUs other than those designated clearing organizations registered with the CFTC or clearing agencies registered with the Commission. *See* Clearing Agency Standards, Exchange Act Release No. 34–68080 (Oct. 22, 2012). To the extent such Commission standards are in effect at the time advance notices are reviewed in the future, the standards would be relevant to the analysis. Moreover, the analysis of clearing agency rule filings under the Exchange Act would incorporate such standards directly.

[23] 12 U.S.C. 5465(e)(1)(I).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68145; File No. SR–CBOE–2012–102]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Extending the FLEX Exercise Settlement Values Pilot

November 2, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 25, 2012, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to extend the operation of its Flexible Exchange Options (''FLEX Options'') pilot program regarding permissible exercise settlement values for FLEX Index Options, which pilot program is currently set to expire on November 2, 2012 or the date on which the pilot program is approved on a permanent basis.[5] The text of the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] FLEX Options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. FLEX Options can be FLEX Index Options or FLEX Equity Options. In addition, other products are permitted to be traded pursuant to the FLEX trading procedures. For example, credit options are eligible for trading as FLEX Options pursuant to the FLEX rules in Chapters XXIVA and XXIVB. *See* CBOE Rules 24A.1(e) and (f), 24A.4(b)(1) and (c)(1), 24B.1(f) and (g), 24B.4(b)(1) and (c)(1), and 28.17. The rules governing the trading of FLEX Options on

change is available on the Exchange's Web site (*www.cboe.org/Legal*), at the Exchange's Office of the Secretary and at the Commission.

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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, 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

On January 28, 2010, the Exchange received approval of a rule change that, among other things, established a pilot program regarding permissible exercise settlement values for FLEX Index Options. The pilot program is currently set to expire on the earlier of November 2, 2012 or the date on which the pilot program is approved on a permanent basis.[6] The purpose of this rule change filing is to extend the pilot program through the earlier of November 2, 2013 or the date on which the pilot program is approved on a permanent basis. This filing simply seeks to extend the operation of the pilot program and does not propose any substantive changes to the pilot program.

Background on the Pilot

Under Rules 24A.4, *Terms of FLEX Options,* and 24B.4, *Terms of FLEX Options,* a FLEX Option may expire on any business day specified as to day, month and year, not to exceed a maximum term of fifteen years. In addition, the exercise settlement value for a FLEX Index Option can be specified as the index value determined by reference to the reported level of the index as derived from the opening or closing prices of the component securities (''a.m. settlement'' or ''p.m. settlement,'' respectively) or as a specified average, provided that the average index value must conform to the averaging parameters established by the Exchange.[7] However, prior to the initiation of the exercise settlement values pilot, only a.m. settlements were permitted if a FLEX Index Option expires on, or within two business days of, a third-Friday-of-the-month expiration (''Expiration Friday'').[8]

Under the exercise settlement values pilot, this restriction on p.m. and specified average price settlements in FLEX Index Options was eliminated.[9] The exercise settlement values pilot is currently set to expire on the earlier of November 2, 2012 or the date on which the pilot program is approved on a permanent basis.

Proposal

CBOE is proposing to extend the pilot program through the earlier of November 2, 2013 or the date on which the pilot program is approved on a permanent basis. CBOE believes the pilot program has been successful and well received by its membership and the investing public for the period that it has been in operation as a pilot. In support of the proposed extension of the pilot program, and as required by the pilot program's Approval Order, the Exchange has submitted to the Commission pilot program reports regarding the pilot, which detail the Exchange's experience with the program. Specifically, the Exchange provided the Commission an annual report analyzing volume and open interest for each broad-based FLEX Index Options class overlying an Expiration Friday, p.m.-settled FLEX Index Options series.[10] The annual report also contained information and analysis of FLEX Index Options trading patterns. The Exchange also provided the Commission, on a periodic basis, interim reports of volume and open interest. The reports were provided to the Commission on a confidential basis.[11]

The Exchange believes there is sufficient investor interest and demand in the pilot program to warrant its extension. The Exchange believes that, for the period that the pilot has been in operation, the program has provided investors with additional means of managing their risk exposures and carrying out their investment objectives. Furthermore, the Exchange believes that it has not experienced any adverse market effects with respect to the pilot program, including any adverse market volatility effects that might occur as a result of large FLEX exercises in FLEX Option series that expire near Non-FLEX expirations and use a p.m. settlement (as discussed below).

In that regard, based on the Exchange's experience in trading FLEX Options to date and over the pilot period, CBOE continues to believe that the restrictions on exercise settlement values are no longer necessary to insulate Non-FLEX expirations from the potential adverse market impacts of FLEX expirations.[12] To the contrary,

the FLEX Request for Quote (''RFQ'') System platform are contained in Chapter XXIVA. The rules governing the trading of FLEX Options on the FLEX Hybrid Trading System platform are contained in Chapter XXIVB.

[6] At the same time the permissible exercise settlement values pilot was established for FLEX Index Options, the Exchange also established a pilot program eliminating the minimum value size requirements for all FLEX Options. Securities Exchange Act Release Nos. 61439 (January 28, 2010), 75 FR 5831 (February 4, 2010) (SR–CBOE–2009–087) (Approval Order); 61676 (March 9, 2010), 75 FR 13191 (March 18, 2010) (SR–CBOE–2010–026) (technical rule change to include original pilots' conclusion date of March 28, 2011 in the rule text); 64110 (March 24, 2011), 76 FR 17463 (March 29, 2011) (SR–CBOE–2011–024) (extending the pilots through March 30, 2012); and 66701 (March 30, 2012), 77 FR 20673 (April 5, 2012) (SR–CBOE–2012–027) (extending the pilots through the earlier of November 2, 2012 or the date on which the respective pilot program is approved on a permanent basis). The pilot program eliminating the minimum value size requirements has been approved on a permanent basis in a separate rule change filing. *See* Securities Exchange Act Release No. 67624 (August 8, 2012), 77 FR 48580 (August 14, 2012) (SR–CBOE–2012–040).

[7] *See* Rules 24A.4(b)(3) and 24B.4(b)(3); *see also* Securities Exchange Act Release No. 31920 (February 24, 1993), 58 FR 12280 (March 3, 1993) (SR–CBOE–92–17). The Exchange has determined to limit the averaging parameters to three alternatives: the average of the opening and closing index values on the expiration date; the average of the intra-day high and low index values on the expiration date; and the average of the opening, closing, and intra-day high and low index values on the expiration date. Any changes to the averaging parameters established by the Exchange would be announced to Trading Permit Holders via circular.

[8] For example, prior to the pilot, the exercise settlement value of a FLEX Index Option that expires on the Tuesday before Expiration Friday could have an a.m., p.m. or specified average settlement. However, the exercise settlement value of a FLEX Index Option that expires on the Wednesday before Expiration Friday could only have an a.m. settlement.

[9] No change was necessary or requested with respect to FLEX Equity Options. Regardless of the expiration date, FLEX Equity Options are settled by physical delivery of the underlying.

[10] The annual report also contained certain pilot period and pre-pilot period analyses of volume and open interest for Expiration Friday, a.m.-settled FLEX Index series and Expiration Friday Non-FLEX Index series overlying the same index as an Expiration Friday, p.m.-settled FLEX Index option.

[11] The Commission notes that although CBOE requested confidential treatment of the pilot reports under the Freedom of Information Act (''FOIA''), such confidentiality is subject to the provisions of FOIA. 5 U.S.C. 552.

[12] In further support, the Exchange also notes that the p.m. and specified average price settlements are already permitted for FLEX Index Options on any other business day except on, or within two business days of, Expiration Friday. The Exchange is not aware of any market disruptions or problems caused by the use of these settlement methodologies on these expiration dates (or on the expiration dates addressed under the pilot program). The Exchange is also not aware of any market disruptions or problems caused by the use of customized options

Continued

CBOE believes that the restriction actually places the Exchange at a competitive disadvantage to its OTC counterparts in the market for customized options, and unnecessarily limits market participants' ability to trade in an exchange environment that offers the added benefits of transparency, price discovery, liquidity, and financial stability.

The Exchange also notes that certain position limit, aggregation and exercise limit requirements continue to apply to FLEX Index Options in accordance with Rules 24A.7, *Position Limits and Reporting Requirements,* 24A.8, *Exercise Limits,* 24B.7, *Position Limits and Reporting Requirements,* and 24B.8, *Exercise Limits.* Additionally, all FLEX Options remain subject to the position reporting requirements in paragraph (a) of CBOE Rule 4.13, *Reports Related to Position Limits.*[13] Moreover, the Exchange and its Trading Permit Holder organizations each have the authority, pursuant to CBOE Rule 12.10, *Margin Required is Minimum,* to impose additional margin as deemed advisable. CBOE continues to believe these existing safeguards serve sufficiently to help monitor open interest in FLEX Option series and significantly reduce any risk of adverse market effects that might occur as a result of large FLEX exercises in FLEX Option series that expire near Non-FLEX expirations and use a p.m. settlement.

CBOE is also cognizant of the OTC market, in which similar restrictions on exercise settlement values do not apply. CBOE continues to believe that the pilot program is appropriate and reasonable and provides market participants with additional flexibility in determining whether to execute their customized options in an exchange environment or in the OTC market. CBOE continues to believe that market participants benefit from being able to trade these customized options in an exchange environment in several ways, including, but not limited to, enhanced efficiency in initiating and closing out positions, increased market transparency, and heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of FLEX Options.

If, in the future, the Exchange proposes an additional extension of the pilot program, or should the Exchange propose to make the pilot program permanent (which the Exchange currently intends to do), the Exchange will submit, along with any filing proposing such amendments to the pilot program, an additional pilot program report covering the extended period during which the pilot program was in effect and including the details referenced above and consistent with the pilot program's Approval Order. The pilot program report would be submitted to the Commission at least two months prior to the new expiration date of the pilot program. The Exchange will also continue, on a periodic basis, to submit interim reports of volume and open interest consistent with the terms of the exercise settlement values pilot program as described in the pilot program's Approval Order. All such pilot reports would continue to be provided on a confidential basis.[14] As noted in the pilot program's Approval Order, any positions established under the pilot program would not be impacted by the expiration of the pilot program.[15]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act[16] in general and furthers the objectives of Section 6(b)(5) of the Act[17] in particular in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. Specifically, the Exchange believes that the proposed extension of the pilot program, which permits additional exercise settlement values, would provide greater opportunities for investors to manage risk through the use of FLEX Options. Further, the Exchange believes that it has not experienced any adverse effects from the operation of the pilot program, including any adverse market volatility effects that might occur as a result of large FLEX exercises in FLEX Option series that expire near Non-FLEX expirations and use a p.m. settlement. The Exchange also believes that the extension of the exercise settlement values pilot does not raise any unique regulatory concerns. In particular, although p.m. settlements may raise questions with the Commission, the Exchange believes that, based on the Exchange's experience in trading FLEX Options to date and over the pilot period, market impact and investor protection concerns will not be raised by this rule change. The Exchange also believes that the proposed rule change would continue to provide Trading Permit Holders and investors with additional opportunities to trade customized options in an exchange

in the OTC markets that expire on or near Expiration Friday and have a p.m. or specified average exercise settlement value. In addition, the Exchange believes the reasons for limiting expirations to a.m. settlement, which is something the SEC has imposed since the early 1990s for Non-FLEX Options, revolved around a concern about expiration pressure on the New York Stock Exchange (''NYSE'') at the close that are no longer relevant in today's market. Today, however, the Exchange believes stock exchanges are much better able to handle volume. There are multiple primary listing and unlisted trading privilege (''UTP'') markets, and trading is dispersed among several exchanges and alternative trading systems. In addition, the Exchange believes that surveillance techniques are much more robust and automated. In the early 1990s, it was also thought by some that opening procedures allow more time to attract contra-side interest to reduce imbalances. The Exchange believes, however, that today order flow is predominantly electronic and the ability to smooth out openings and closes is greatly reduced (*e.g.,* market-on-close procedures work just as well as openings). Also other markets, such as the NASDAQ Stock Exchange, do not have the same type of pre-opening imbalance disseminations as the NYSE, so many stocks are not subject to the same procedures on Expiration Friday. In addition, the Exchange believes that the NYSE has reduced the required time a specialist has to wait after disseminating a pre-opening indication. So, in this respect, the Exchange believes there is less time to react in the opening than in the close. Moreover, to the extent there may be a risk of adverse market effects attributable to p.m. settled options (or certain average price settled options related to the closing price) that would otherwise be traded in a non-transparent fashion in the OTC market, the Exchange continues to believe that such risk would be lessened by making these customized options eligible for trading in an exchange environment because of the added transparency, price discovery, liquidity, and financial stability available.

[13] CBOE Rule 4.13(a) provides that ''[i]n a manner and form prescribed by the Exchange, each Trading Permit Holder shall report to the Exchange, the name, address, and social security or tax identification number of any customer who, acting alone, or in concert with others, on the previous business day maintained aggregate long or short positions on the same side of the market of 200 or more contracts of any single class of option contracts dealt in on the Exchange. The report shall indicate for each such class of options, the number of option contracts comprising each such position and, in the case of short positions, whether covered or uncovered.'' For purposes of this Rule, the term ''customer'' in respect of any Trading Permit Holder includes ''the Trading Permit Holder, any general or special partner of the Trading Permit Holder, any officer or director of the Trading Permit Holder, or any participant, as such, in any joint, group or syndicate account with the Trading Permit Holder or with any partner, officer or director thereof.'' Rule 4.13(d).

[14] If the Exchange seeks permanent approval of the pilot program, the Exchange recognizes that certain information in the pilot reports may need to be made available on a public basis. The Commission notes that although CBOE requested confidential treatment of the pilot reports under FOIA, such confidentiality is subject to the provisions of FOIA. 5 U.S.C. 552.

[15] For example, a position in a pm-settled FLEX Index Option series that expires on Expiration Friday in January 2015 could be established during the exercise settlement values pilot. If the pilot program were not extended (or made permanent), then the position could continue to exist. However, the Exchange notes that any further trading in the series would be restricted to transactions where at least one side of the trade is a closing transaction. *See* Approval Order, *supra* note 6, footnotes 9 and 10.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

environment (which offers the added benefits of transparency, price discovery, liquidity, and financial stability as compared to the over-the-counter market) and subject to exchange-based rules, and investors would benefit as a result.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [18] and Rule 19b–4(f)(6) thereunder.[19]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [20] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6) [21] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that waiving the 30-day operative delay would prevent the expiration of the pilot programs on November 2, 2012, prior to the extension of the pilot program becoming operative. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[22]

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–CBOE–2012–102 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–CBOE–2012–102. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2012–102 and should be submitted on or before November 29, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–27290 Filed 11–7–12; 8:45 am]

BILLING CODE 8011–01–P

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 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, 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.

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6).

[22] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68134; File No. SR–MSRB–2012–08]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Consisting of Amendments to Streamline New Issue Information Submission Requirements Under MSRB Rules G–32 and G–34

November 1, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 23, 2012, the Municipal Securities Rulemaking Board (''MSRB'') 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 MSRB. 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 MSRB is filing with the Commission a proposed rule change consisting of amendments to Rules G–8, on books and records, G–14 RTRS Procedures, G–32, on disclosures in connection with primary offerings, G–34, on CUSIP numbers, new issue, and market information requirements, and the Electronic Municipal Market Access

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(EMMA®) [3] system facility (the ''proposed rule change''). The MSRB requested an effective date for the proposed amendments no later than May 6, 2013, or such earlier date to be announced by the MSRB in a notice published on the MSRB Web site with at least a thirty day advance notification prior to the effective date.

The text of the proposed rule change is available on the MSRB's Web site at *www.msrb.org/Rules-and-Interpretations/SEC-Filings/2012-Filings.aspx*, at the MSRB'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 MSRB 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 MSRB 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 proposed rule change amends Rules G–32 and G–34 to allow underwriters to satisfy certain of their submission requirements under Rule G–32 in connection with new issues of municipal securities by their submission of data, pursuant to Rule G–34, to the New Issue Information Dissemination Service (''NIIDS'') operated by the Depository Trust and Clearing Corporation (''DTCC''). In addition, the proposed rule change revises deadlines for the submission of data to NIIDS, removes certain exceptions from the NIIDS submission requirements under Rule G–34 for certain short term instruments, modifies the EMMA system to include certain elements of the NIIDS data on the EMMA Web site, and eliminates language describing auction rate securities as having a short ''effective maturity,'' as further described below under ''Summary of Proposed Rule Change'' and under ''Discussion of Comments.''

[3] EMMA is a registered trademark of the MSRB.

Background

Rule G–32 requires underwriters to submit selected information about most new issues of municipal securities to the MSRB by completing electronic Form G–32 through EMMA's Primary Market Disclosure Service. This information includes, among other items, the issuer name and issue description for the new issue and, for each maturity of the new issue, the CUSIP numbers, principal amounts and initial offering prices or yields. Separately, Rule G–34 requires underwriters for most new issues to submit comprehensive information to NIIDS. Information required to be submitted to NIIDS generally includes all of the information required for dealers to produce a ''when, as and if issued'' [4] customer trade confirmation and also includes many of the same items of information included in Form G–32.

New Issue EMMA Submission Requirements Under Rule G–32. EMMA is an information facility of the MSRB for receiving electronic submissions of official statements, initial offering prices and other information about new issues as well as on-going municipal securities disclosure and other key documents and related information. EMMA makes such documents and information, together with trade price and interest rate information, available to the public at no charge on an Internet Web site or by paid subscription. The submission of data under Rule G–32 to EMMA's Primary Market Disclosure Service in connection with new issues is required to be commenced by no later than the end of the day of first execution of transactions in the offered municipal securities.[5] The submission of documents relating to issues of municipal securities, including official statements or preliminary official statements (if applicable), and of certain additional items of information, is subject to other submission deadlines as outlined in Rule G–32.[6]

New Issue NIIDS Submission Requirements Under Rule G–34. NIIDS is a centralized system for collecting from underwriters and disseminating to market participants standardized electronic information describing new issue securities. It was developed to ensure that all market participants have access to information necessary for processing transactions once the underwriter executes its first transactions in the new issue. The information submitted by underwriters to NIIDS, required to be completed by no later than two hours after Time of Formal Award [7] for most new issues of municipal securities,[8] is disseminated in real time to DTCC participants and other subscribers, such as information vendors. Submissions to NIIDS also provide a mechanism for underwriters to communicate the Time of Formal Award and Time of First Execution [9] to market participants that may trade in the new issue to promote orderly trade execution and processing on the first day of trading in a new issue. Consistent communication of these events ensures that all market participants have sufficient data to process and time to prepare pending trades in new issues for execution, real-time trade reporting [10]

[4] The term, ''when, as and if issued'' is used to describe the time period in the life of a new issue of municipal securities from the original date of the sale by the issuer to the delivery of the securities to, and payment by, the underwriter. Sales made during the ''when, as and if issued'' period (also called the ''when-issued' period'') are subject to issuance of the securities.

[5] Under Rule G–32(b)(vi)(C)(1) and Section 2.6.2 of the EMMA Dataport Manual (Information by the Date of First Execution of Transactions), underwriters are required to initiate the Form G–32 submission process by no later than the date of first execution of transactions in securities sold in the offering by submitting certain issue-specific information about the new issue. ''Date of first execution'' is defined in Rule G–32(d)(xi) as: ''the date on which the underwriter executives its first transactions with a customer or another broker, dealer or municipal securities dealer in any security offered in a primary offering; provided that, for offerings subject to Rule G–34(a)(ii)(C), 'date of first execution' shall mean the date corresponding to the Time of First Execution as defined in Rule G–34(a)(ii)(C)(1)(b); further provided that, solely for purposes of this rule, the date of first execution shall be deemed to occur by no later than the closing date.''

[6] Securities 2.6.4 and 2.6.5 of the EMMA Dataport Manual set out the basic timeframes for submitting documents and information to EMMA in connection with a new issue.

[7] ''Time of Formal Award'' is defined in Rule G–34(a)(ii)(C)(1)(a) as: ''for competitive issues, the later of the time the issuer announces the award or the time the issuer notifies the underwriter of the award, and, for negotiated issues, the later of the time the contract to purchase the securities from the issuer is executed or the time the issuer notifies the underwriter of its execution. If the underwriter and issuer have agreed in advance on a Time of Formal Award, that time may be submitted to the new issue information dissemination system in advance of the actual Time of Formal Award.''

[8] Rule G–34(a)(ii)(C) currently provides exceptions to the submission requirements for certain short-term instruments, including variable rate instruments, auction rate products and commercial paper. In addition, this requirement does not apply to new issues that do not meet the eligibility criteria for CUSIP number assignments or that consist of municipal fund securities (such as interests in 529 college savings plans) under the general exemption provided in Rule G–34(d).

[9] ''Time of First Execution'' is defined in Rule G–34(a)(ii)(C)(1)(b) as: ''the time the underwriter plans to execute its first transaction [sic] in the new issue. The underwriter shall designate a Time of First Execution that is no less than two hours after all information required by paragraph (a)(ii)(C) has been transmitted to the new issue information dissemination system.''

[10] ''Real-time trade reporting'' refers to the reporting of certain information about each

and sending of when-issued customer confirmations.

Planned Integration of EMMA and NIIDS New Issue Submission Requirements. The MSRB launched EMMA as a pilot on March 31, 2008.[11] On September 30, 2008, amendments to Rule G–34 became effective that instituted the requirement for underwriters to provide new issue information to NIIDS.[12] During the early stages of planning for EMMA, the MSRB had planned on integrating into EMMA's Primary Market Disclosure Service the NIIDS data submitted by underwriters under Rule G–34 for the purpose of also fulfilling the data submission requirements under Rule G–32 and making such information available to the public through the EMMA Web site. Due to divergent development schedules and limited opportunities to ensure effective interoperability between the two systems, the Primary Market Disclosure Service was launched on June 1, 2009 requiring a separate submission of new issue data to EMMA through Form G–32, although at that time the MSRB continued to plan for future integration of the submission processes under Rules G–32 and G–34.[13]

The MSRB believes there would be significant benefits in integrating the NIIDS data into the EMMA submission process. While the information required to be submitted under Rule G–32 is less extensive than the information required for a NIIDS submission pursuant to Rule G–34, re-keying information under both Rules G–32 and G–34 is time consuming and this duplication of effort may increase the possibility of error. In addition to reducing the submission burden on underwriters, elimination of this duplicative data entry would result in improved data quality on EMMA and throughout the marketplace. It would allow both underwriters and enforcement agencies to concentrate their compliance activities on ensuring exacting data submissions through this single pipeline through which data would flow uniformly to EMMA as well as to other market data vendors receiving the NIIDS subscription feed.

The integration of the NIIDS data into the EMMA submission process also would accelerate the availability of Form G–32 data on EMMA by displaying such information in real time upon receipt from NIIDS by no later than two hours after the Time of Formal Award as provided under Rule G–34, rather than by the close of business on the date of first execution as currently provided under Rule G–32. In particular, use of the NIIDS data to populate EMMA will allow for more rapid intra-day, rather than end of day, dissemination of the maturity schedule, interest rates and initial offering prices[14] for new issues within two hours after the Time of Formal Award. Furthermore, additional NIIDS data elements not currently available through EMMA, such as the Time of Formal Award and Time of First Execution as announced by the underwriter, would be displayed on EMMA. To enhance transparency for a broader scope of new issues of municipal securities, the MSRB is also proposing to eliminate exceptions under Rule G–34 for submitting data for certain new issues to NIIDS.

Summary of Proposed Rule Change

The proposed rule change revises Rule G–32 to provide that an underwriter's obligations to submit data about a new issue under that rule would be fulfilled through submission of such data through NIIDS as required pursuant to Rule G–34. Data for certain types of offerings not required to use NIIDS (as described below) would continue to be subject to existing Rule G–32 data submission requirements. In addition, certain data elements that are not included in NIIDS, such as underwriting spread (if not included in the official statement), the existence of a continuing disclosure undertaking and the timing for issuer submission of annual financial information, would be required to be submitted to EMMA pursuant to existing timeframes set forth in Rule G–32 and the EMMA Dataport Manual.

Rule G–34 currently requires that information about most new issues of municipal securities be submitted to NIIDS by no later than two hours following the Time of Formal Award of a new issue. Rule G–34 currently exempts certain types of short-term instruments (including variable rate instruments, auction rate products, and commercial paper), as well as municipal fund securities (such as interests in 529 college savings plans) and issues ineligible for CUSIP number assignment. The proposed rule change revises Rule G–34 to remove the exception for underwriters to submit to NIIDS information about short-term instruments such as variable rate instruments, auction rate products and notes maturing in less than nine months, but would retain this exception for commercial paper issues, municipal fund securities and issues ineligible for CUSIP number assignment. The proposed rule change adds a narrow exception from the requirement to provide a minimum of two hours advance notice of the planned Time of First Execution for offerings of variable rate instruments with a planned settlement cycle of one day or less.

The proposed rule change revises the EMMA facility by adding to the EMMA display and to the EMMA primary market subscription the Time of First Execution and Time of Formal Award.

In addition, the proposed rule change includes amendments to Rule G–8 to conform recordkeeping requirements to amended Rules G–32 and G–34, and amendments to the Rule G–14 RTRS Procedures and Rules G–32 and G–34 to make certain non-substantive technical changes. The technical amendments to Rule G–32 correct a cross-reference to Exchange Act Rule 15c2–12, correct a mis-numbered paragraph defining the term ''obligated person'' and eliminate section (e), which operated as a transitional provision in June 2009 from the former pre-EMMA official statement submission process under former Rule G–36 to the EMMA-based submission process under current Rule G–32. The technical amendments to Rule G–34 improve the organization of certain provisions of the rule.

Finally, the technical amendments to section (a)(ii)(B) of the Rule G–14 RTRS Procedures under Rule G–14 revise language in such RTRS Procedures that is parallel to the language regarding short-term instruments that is being removed from Rule G–34 by the amendments described above. Such amendments would more clearly describe the types of securities to which the end-of-day RTRS reporting exception for short-term instruments applies and also eliminate language describing auction rate securities as having a short ''effective maturity.'' The MSRB believes that auction rate securities should not be characterized as having an effective short-term maturity

purchase and sale transaction effected in municipal securities to the MSRB's Real-Time Transaction Reporting System (''RTRS''), as prescribed by Rule G–14, Rule G–14 RTRS Procedures and the RTRS Users Manual.

[11] *See* Release No. 34–57577 (March 28, 2008), 73 FR 18022 (April 2, 2008) (File No. SR–MSRB–2007–06) (November 15, 2007).

[12] *See* Release No. 34–57750 (May 7 [sic], 2008), 73 FR 25815 (May 7, 2008) (File No. SR–MSRB–2007–08) (November 27, 2007).

[13] *See* MSRB Notice 2009–07 (March 23, 2009), in which the MSRB noted that it would advise market participants of any future development of a functionality providing for the use of NIIDS data to fulfill Rule G–32 information submission requirements.

[14] Initial offering prices or yields currently must be, and would continue to be, disclosed for all maturities, including those otherwise designated as ''not reoffered,'' through both EMMA and NIIDS. *See* Release No. 34–67908 (September 21, 2012), 77 FR 59427 (September 27, 2012) (File No. SR–MSRB–2012–06) (June 28, 2012).

and has previously noted that, unlike other short-term municipal securities with long-term maturity dates and short-term interest rate reset periods (such as variable rate demand obligations), auction rate securities generally do not have ''put'' features or liquidity facilities that allow holders to tender their securities back to an issuer-appointed representative on a periodic basis.[15] Thus, the MSRB is eliminating the use of the term ''effective maturity'' in the context of auction rate securities in order to avoid any potential implication that holders of auction rate securities have assurances of liquidity on a short-term basis.

Effective Date of Proposed Rule Change

The MSRB requested an effective date for the proposed amendments no later than May 6, 2013, or such earlier date to be announced by the MSRB in a notice published on the MSRB Web site with at least a thirty day advance notification prior to the effective date.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Exchange Act, which provides that the MSRB's rules shall:

> Be 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 municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The proposed rule change is consistent with Section 15B(b)(2)(C) of the Exchange Act. There will be significant benefits in integrating the NIIDS data into the EMMA submission process that will assist in removing impediments to and perfecting the mechanism of a free and open market, and that will also improve protections to all market participants. The current requirement to re-key significant amounts of information under both Rules G–32 and G–34 is time consuming and this duplication of effort may increase the possibility of error. In addition to reducing the submission burden on underwriters, elimination of this duplicative data entry will result in improved data quality on EMMA and throughout the marketplace. It will allow both underwriters and enforcement agencies to concentrate their compliance activities on ensuring exacting data submissions through this single pipeline through which data would flow uniformly to EMMA as well as to other market data vendors receiving the NIIDS subscription feed.

The integration of the NIIDS data into the EMMA submission process will also accelerate the availability of Form G–32 data on EMMA by displaying such information in real time upon receipt from NIIDS, which will occur by no later than two hours after the Time of Formal Award as provided under Rule G–34, rather than by the close of business on the date of first execution as currently provided under Rule G–32. Furthermore, additional NIIDS data elements not currently available through EMMA, such as the Time of Formal Award and Time of First Execution as announced by the underwriter, will be displayed on EMMA.

Finally, the proposed rule change eliminates exceptions under Rule G–34 for submitting data for certain new issues to NIIDS. Thus, enhanced real-time access to primary market data would become available to the marketplace, both through NIIDS data disseminated by DTCC to information vendors and EMMA data disseminated by the MSRB to market participants and the general public, for a broader scope of new issues of municipal securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act, since it would apply equally to all dealers that serve as underwriters of new issues of municipal securities. The enhanced and more timely information flow resulting from the proposed rule change would make such information available to all persons on an equal and non-discriminatory basis.

The marketplace and the general public would realize the substantial benefits of more prompt, more complete and more accurate information about new issue municipal securities, resulting in greater marketplace efficiency that enhances liquidity and the quality of pricing. In addition, the proposed rule change would reduce the burden on dealers that serve as underwriters for new issues of municipal securities. Such dealers would benefit from the reduced burden of significantly diminished levels of duplicative data entry into two separate information systems—including the burden of entering such data and of undertaking appropriate quality control—with only a minimal, one-time burden of reviewing and, if necessary, making minor modifications to their internal policies and procedures with respect to data submissions under MSRB rules. In addition to the reduced burden to dealers resulting from the more efficient use of dealer resources to ensure the accuracy of data submissions through this single pipeline, the resultant improvement in data quality upon initial submission would reduce the burden of making corrections at a later time when errors are detected by market participants and would reduce the incidence of potential problems with secondary market activity that can arise from inaccuracies in the indicative data used by market participants to price and process transactions.

Some underwriters of new issues bearing short-term interest rates previously exempted from the NIIDS submission requirements under Rule G–34 would be required to modify their new issue information dissemination processes to use NIIDS for such dissemination, rather than the currently permissible use of other means of announcing relevant new issue information promptly in a manner reasonably designed to reach market participants that may trade the new issue. Such underwriters, however, have not previously been exempted from the EMMA submission requirements under Rule G–32, and the proposed rule change would provide for much of the data currently required to be provided through EMMA under Rule G–32 to instead be provided through NIIDS under Rule G–34. Thus, such underwriters would realize a reduced burden of compliance with Rule G–32

[15] *See* MSRB Notice 2008–09 (February 19, 2008), in which the MSRB published an alert regarding investor protection concerns arising in the market for auction rate securities after widespread auction failures began to occur at the beginning of 2008. The MSRB also published educational information regarding this key difference in the EMMA Education Center upon launch of the EMMA pilot on March 31, 2008, which states: ''An important distinction between auction rate securities and variable rate demand obligations is that investors in auction rate securities do not have a 'put' right. Thus, there is no assurance that the investor will be able to sell its holdings during an auction. Instead, investors are dependent on the success of the auction process. Among many other factors, the pool of purchase bids that may be entered can vary widely from auction to auction, and bids entered by broker-dealers, banks and other market professionals that have the effect of supporting market liquidity, if permitted, generally are not required under the legal documents and therefore investors cannot be assured that such bids will be entered in any particular auction. *See http://emma.msrb.org/EducationCenter/WhatAreBonds.aspx.* The MSRB thereafter launched its Short-term Obligation Rate Transparency (''SHORT'') system on January 30, 2009 pursuant to which certain key information regarding periodic auctions for auction rate securities is made available to the public through EMMA.

while facing a potential incremental change in the burden under Rule G–34. Whether such incremental change in burden under Rule G–34 is an increase or decrease would depend on whether, and to what extent, using NIIDS to disseminate new issue information is more or less burdensome than the alternative means currently used by such underwriters to comply with Rule G–34 and the procedures and processes they currently maintained for using two or more separate data submission processes for new issues rather than a single process through NIIDS. If and to the extent that such balance results in a net burden rather than a net benefit, the bulk of such net burden likely would occur as up-front costs of modifying procedures and likely would be minimal on an ongoing basis.

On balance, the MSRB believes that the benefits of the proposed rule change greatly exceed any potential increased burden resulting therefrom.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

On April 10, 2012, the MSRB requested comment on a proposal to streamline new issue information submission requirements under Rules G–32 and G–34 by allowing underwriters to satisfy certain of their submission requirements under Rule G–32 by their submission of data to NIIDS pursuant to Rule G–34.[16] Specifically, the MSRB sought comment on whether: (i) The timeframe under Rule G–32 for submission of data for issues not subject to the NIIDS requirement or of data elements not included in NIIDS should be accelerated to coincide with the Time of First Execution, which typically would be within two-to-four hours after the Time of Formal Award; [17] (ii) removing the exception in NIIDS for certain short-term instruments would present compliance challenges; (iii) additional items of information available through NIIDS that are not currently available through EMMA should be added to the EMMA display; (iv) to extend the business day for purposes of determining timeframes for compliance with Rule G–34 deadlines; [18] or (v) to shorten the time after the formal award occurs for first executions of transactions and other related timeframes under Rule G–34. The MSRB received comment letters from the Securities Industry and Financial Markets Association (''SIFMA'') and TD Securities (USA) LLC (''TD'').

Discussion of Comments

SIFMA stated that it ''believe[s] this move towards straight-through processing will be beneficial for market participants by reducing transaction costs and increasing data integrity.'' TD stated that it ''welcome[d] the effort to have one centralized system and one pass in establishing the information necessary to satisfy the regulations.'' The MSRB discusses additional comments from these commenters below.

Accelerating the deadline for completing submission of Form G–32 data not eligible to be submitted to NIIDS. While no written comments were received on this question, the MSRB understands from conversations with various industry participants that accelerating the submission requirements for Form G–32 data not eligible to be submitted to NIIDS may present compliance challenges for some industry participants, particularly those that make manual submissions of information to NIIDS and Form G–32. Thus, the MSRB determined not to accelerate such timeframes but instead retain the existing timeframe for submission of those Form G–32 data elements not able to be populated using NIIDS data. Similarly, for those securities that are not eligible for submission to NIIDS and therefore would continue to be submitted through Form G–32, the MSRB is retaining all existing timeframes for submission.

Removing the exception for certain short term instruments from the data submission requirements under Rule G–34. SIFMA noted that while eliminating the exception under Rule G–34 for short term notes with maturities of nine months or less would not be a challenge, eliminating the exception for variable rate demand obligations (''VRDOs'') would present operational challenges. SIFMA noted that daily and weekly VRDOs are usually priced, allocated, ticketed and settled on the same or next day. Removing the exception for VRDOs under Rule G–34 would subject VRDOs to deadlines for both data submission and Time of First Execution under Rule G–34. As SIFMA noted, issuers and underwriters already typically agree in advance to a Time of Formal Award to avoid DTCC disincentive fees for short settlements, which means that underwriters generally are able to comply with the data submission requirements for trade eligibility under Rule G–34. Based on additional feedback from SIFMA, the larger concern results from the fact that purchasers of VRDOs require same day cash settlement within a short period of time following time of pricing and formal award and, as a result, the mandatory minimum two hour time period between Time of Formal Award and Time of First Execution required by Rule G–34 would present operational challenges to ensure same day cash settlement.

The purpose of the required two hour advanced notification timeframe between disseminating NIIDS data and the announced Time of First Execution is to ensure that dealers with pending trades in new issues are able to receive and enter into trade processing systems NIIDS data before the first transactions in the new issue are executed. For VRDOs, there typically are not multiple dealers with pending transactions in new issues, so the two hour advanced notification timeframe is not as important as for other types of new issues with a broad distribution. However, the MSRB believes that it is important that as many types of securities as possible benefit from the centralized data collection and dissemination of information provided by NIIDS. Accordingly, the proposed rule change removes the exception for short-term instruments (including VRDOs and auction rate securities but not including commercial paper) from Rule G–34 with respect to the requirement to submit information to NIIDS and announce the Time of Formal Award and Time of First Execution, which can be done within the existing timeframes of typical VRDO offerings. However, the proposed rule change also adds a narrow exception from the requirement to provide a minimum two hours of advance notice of the planned Time of First Execution for offerings of variable rate instruments with a planned settlement cycle of one day or less.

Dissemination of Additional NIIDS information on EMMA. SIFMA supported the dissemination of the Time of First Execution and Time of Formal Award on EMMA but suggested that the addition of more NIIDS data to EMMA be carefully considered to avoid obscuring important data. SIFMA suggested that those that require additional NIIDS data consider a subscription feed for such data. The MSRB agrees that careful selection of NIIDs data is necessary and will consider this issue as it reviews the full range of NIIDS data for potential

[16] *See* MSRB Notice 2012–19 (April 10, 2012).

[17] Rule G–34 generally requires that underwriters submit required data to NIIDS within two hours of the Time of Formal Award, and that such NIIDS data be disseminated to the marketplace for at least two hours prior to the Time of First Execution.

[18] Rule G–34 currently provides that only the hours between 9:00 a.m. and 5:00 p.m. Eastern Time on a Business Day for the MSRB's Real-time Transaction Reporting System (RTRS) are used for purposes of the timeframes set out in the rule.

inclusion on EMMA at a future date. The MSRB determined that the only new data elements from NIIDS to be added to the EMMA display and to the EMMA primary market subscription product at this time are Time of First Execution and Time of Formal Award.

Extending Rule G–34 Business Day hours. SIFMA said that, while expanding the 9:00 a.m. to 5:00 p.m. Eastern timeframe for the deadlines in Rule G–34 may not be problematic for dealers operating in the Eastern Time zone, expanding these hours could cause significant staffing challenges to those dealers operating in other time zones. SIFMA suggested the MSRB not alter the existing 9:00 a.m. to 5:00 p.m. Eastern timeframe in Rule G–34. The MSRB decided against changing the Rule G–34 Business Day hours.

Shortening advanced notification timeframe between the submission of all data to NIIDS and the Time of First Execution. TD said that the two hour window between the time of disseminating NIIDS data and first executions was ''tough enough'' especially for smaller shops that were limited in staff, and that shortening the time period would create undue pressure and add little to transparency. SIFMA stated that, because most dealers receive the NIIDS data from one or more information providers, the two hour dissemination period is frequently needed to integrate the data into their own systems, irrespective of the type of underwriting. However, SIFMA suggested that, where a dealer has submitted data to NIIDS to make an issue ''trade eligible'' between 3:00 p.m. and 5:00 p.m. on a trading day, Rule G–34's current carry-forward of the two hour dissemination period through to the first hours of the following day may not be necessary because the dealer has been able to disseminate and integrate the data through information providers overnight. SIFMA therefore suggested that underwriters of any issue that is made ''trade eligible'' between 3:00 p.m. and 5:00 p.m. Eastern Time should be permitted to elect to waive the two business hour dissemination period and set the Time of First Execution to be 9:00 a.m. Eastern Time the following morning.[19] SIFMA noted that this option would enable dealers to reduce the risk of carrying these securities.

Recognizing these operational challenges, the MSRB decided against shortening the required two hour minimum period between the time an underwriter disseminates NIIDS information and the Time of First Execution that can be set by an underwriter. However, the MSRB decided that underwriters setting a Time of First Execution for the business day following the day NIIDS data is disseminated should be able to set a Time of First Execution for the following day as early as 9:00 a.m. Eastern Time without having to wait until the full two-hour period has elapsed. Acknowledging that dealers would have sixteen hours between 5:00 p.m. Eastern Time and the earliest possible Time of First Execution at 9:00 a.m. Eastern Time to integrate disseminated NIIDS data and prepare for the underwriter's announced Time of First Execution, the MSRB believes that it would be appropriate that underwriters wanting to set a Time of First Execution as early as 9:00 a.m. Eastern Time should be able to do so.

[19] Currently, an underwriter disseminating NIIDS data at, for example, 4:00 p.m. Eastern Time would not be able to set a Time of First Execution for earlier than 10:00 a.m. Eastern Time the following business day since the two hour advanced notification timeframe must occur between the hours of 9:00 a.m. to 5:00 p.m. Eastern Time.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange 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–MSRB–2012–08 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–MSRB–2012–08. 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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the MSRB. 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–MSRB–2012–08, and should be submitted on or before November 29, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–27266 Filed 11–7–12; 8:45 am]

BILLING CODE 8011–01–P

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68143; File No. SR–NYSE–2012–44]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval of Proposed Rule Change Amending Section 907.00 of the Listed Company Manual, Which Describes Certain Complimentary Products and Services That Are Offered to Certain Issuers

November 2, 2012.

I. Introduction

On August 30, 2012, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') 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 amend Section 907.00 of the Listed Company Manual (''Manual''), which describes certain complimentary products and services that are offered to certain issuers. The proposed rule change was published in the **Federal Register** on September 18, 2012.[3] The Commission did not receive any comments on the proposal. This order grants approval of the proposed rule change.

II. Description of the Proposal

Section 907.00 of the Manual sets forth certain complimentary products and services that are offered to certain currently and newly listed issuers. According to the Exchange, these products and services are developed or delivered by NYSE or by a third party for use by NYSE-listed companies. All listed issuers receive some complimentary products and services through the NYSE Market Access Center. Certain tiers of currently listed issuers and newly listed issuers receive additional products and services.

Under Section 907.00, a newly listed issuer is defined as a U.S. issuer conducting an initial public offering (''IPO'') or an issuer emerging from a bankruptcy, spinoff (where a company lists new shares in the absence of a public offering), or carve-out (where a company carves out a business line or division, which then conducts a separate IPO), but does not include an issuer that transfers its listing from another U.S. exchange.[4]

The Exchange proposes to broaden the definition of newly listed issuer to mean any U.S. company listing common stock on the Exchange for the first time, and any non-U.S. company [5] listing an equity security [6] on the Exchange under Section 102.01 or 103.00 of the Manual for the first time, regardless of whether such U.S. or non-U.S. company conducts an offering; the definition would continue to exclude any issuer that transfers its listing from another U.S. securities exchange.[7] Under the proposed rule change, the definition of ''newly listed issuer'' also would mean any U.S. or non-U.S. company emerging from a bankruptcy, spinoff (where a company lists new shares in the absence of a public offering), and carve-out (where a company carves out a business line or division, which then conducts a separate initial public offering).

Under the existing rules, the Exchange uses global market value based on the public offering price for determining the types of services a newly listed issuer would qualify for. Because the rules will no longer require an offering to qualify as a newly listed issuer, the Exchange proposes to amend the text that refers to global market value based on public offering price. The Exchange proposes to add text to Section 907.00 that would provide that if a newly listed issuer does not conduct a public offering, then its global market value will be determined by the Exchange at the time of listing for purposes of determining whether the issuer qualifies for Tier A or B.

The Exchange also proposes to make changes to rules relating to the products and services available to currently listed issuers. Under existing rules, the Exchange has two tiers of products and services that are available to currently listed issuers. Under Tier One, the Exchange offers market surveillance and Web-hosting products and services to U.S. issuers that have 270 million or more total shares of common stock issued and outstanding in all share classes, including and in addition to Treasury shares, and Foreign Private Issuers that have 270 million or more in ADRs issued and outstanding, each calculated annually as of December 31 of the preceding year. Under Tier Two, at each such issuer's election, the Exchange offers either market analytics or Web-hosting products and services to U.S. issuers that have 160 million to 269,999,999 total shares of common stock issued and outstanding in all share classes, including and in addition to Treasury shares. Tier Two products and services also are offered to Foreign Private Issuers that have 160 million to 269,999,999 in ADRs issued and outstanding, each calculated annually as of December 31 of the preceding year.

In its filing, the Exchange noted that using December 31 as the date of qualification is not optimal because it provides issuers with too little notice of their qualification for Tier One or Tier Two products and services. It is therefore proposing to amend the rule to make the date to determine issuers' qualifications as of September 30 of the preceding year. Under the proposal, shortly after September 30, 2012, the Exchange would run the calculations for each issuer and determine which are eligible for Tier One or Tier Two for calendar year 2013, and so notify the qualifying issuers. According to the Exchange, this is beneficial because qualifying issuers then would have nearly three months to select from the available services in their tier for the following calendar year, and non-qualifying issuers would have additional time to budget and plan for obtaining the services elsewhere should they so wish.

As described above, the Exchange proposes to update references to ADRs throughout the text of Rule 907.00 to reflect the broader term ''equity security.'' [8] Thus, the Exchange would use shares of an equity security issued and outstanding in the U.S. in lieu of ADRs for non-U.S. companies in determining whether the Tier One and Tier Two thresholds have been satisfied.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 67846 (September 12, 2012), 77 FR 57625 (''Notice).

[4] *See* Securities Exchange Act Release No. 65127 (Aug. 12, 2011), 76 FR 51449, 51450 n. 13 (Aug. 18, 2011) (SR–NYSE–2011–20) (''Approval Order'').

[5] The Exchange also proposes to amend the text of Section 907.00 to refer to ''non-U.S. companies'' rather than ''Foreign Private Issuers.'' According to the Exchange, this change is non-substantive. *See* Notice, *supra* note 3.

[6] The Exchange proposes to define the term ''equity security'' to mean common stock or common share equivalents such as ordinary shares, New York shares (a type of share used by Canadian companies), global shares, American Depository Receipts (''ADRs''), or Global Depository Receipts, and to amend the text of Section 907.00 throughout to change specific references to ADRs to the broader term ''equity security.'' In its filing, the Exchange noted that each of these types of securities in the definition of equity security has been used by non-U.S. companies when listing on the Exchange.

[7] The current text of Section 907.00 states that the definition of ''newly listed issuer'' excludes an issuer that transfers its listing from another exchange. In a prior filing, the Exchange stated that the exclusion applied to transfers from a national securities exchange, *i.e.,* another U.S. securities exchange. *See supra* note 4. According to the Exchange, for purposes of greater clarity, the text of the Section 907.00 would be amended to provide specifically that a transfer from a U.S. securities exchange would be excluded from the definition of newly listed issuers.

[8] *See supra* note 6.

Furthermore, with respect to Tier One offerings, the Exchange proposes to permit a Tier One issuer to choose market analytics products and services as an alternative to market surveillance products and services. Web-hosting products and services would continue to be offered to Tier One issuers.

The Exchange also proposes changes to the products and services available to newly listed issuers. Tiers A and B describe the products and services available to newly listed issuers. Under existing rules, Tier A includes issuers with a global market value of $400 million or more based on the public offering price and Tier B includes issuers with a global market value of less than $400 million based on the public offering price.

With one exception, the specified products and services for newly listed issuers are offered for 24 months after listing, at which time the issuers may be eligible for the Tier One or Tier Two products and services offered to existing issuers. The exception is market surveillance products and services, which currently are offered to Tier A issuers for the initial 12 months after listing. Under the current Manual, those issuers would not be eligible to receive the market surveillance products and services for the next 12 months, until they qualified for Tier One status at the end of the 24-month period following listing. The Exchange proposes to eliminate that 12-month gap by amending Section 907.00 to provide that if, at the end of the 12-month period following a new listing, an issuer that has selected market surveillance products and services meets the qualifications of a Tier One issuer, then such issuer may continue to receive such services for an additional 12 months.

III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act.[9] Specifically, the Commission believes it is consistent with the provisions of Sections 6(b)(4) and (5) of the Act,[10] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members, issuers, and other persons using the Exchange's facilities, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Moreover, the Commission believes that the proposed rule change is consistent with Section 6(b)(8) of the Act[11] in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

According to the Exchange, a non-U.S. company that is listing an equity security for the first time on the Exchange, or is emerging from a bankruptcy, spinoff, or carve-out, is similarly situated to a U.S. issuer conducting an IPO or emerging from a bankruptcy, spinoff, or carve-out, and should be eligible to receive the same products and services from the NYSE Market Access Center as those U.S. issuers do. Moreover, the Exchange has further represented that (i) referring to listing on the Exchange for the first time, rather than the specific offerings that may occur in conjunction with the listing, and (ii) using the term ''equity security'' rather than ADRs for a non-U.S. company, should make the coverage of the Section sufficiently broad to account for different types of offerings and securities that may occur with a new listing.[12] Further, under Section 907, the term ''equity security'' for purposes of currently listed non-U.S. companies eligible for products and services would be defined only to include common stock or common share equivalents, such as ordinary shares, New York shares, global shares, ADRs, or Global Depository Receipts, which is consistent with the type of security, common stock, used for currently listed U.S. companies receiving products and services under Section 907.[13] Accordingly, the Commission believes that it is consistent with the Act to treat U.S. and non-U.S. issuers similarly and that the products and services are equitably allocated among issuers consistent with Section 6(b)(4) and do not unfairly discriminate between issuers consistent with Section 6(b)(5) of the Act.

The Commission also believes that it is consistent with the Act for the Exchange to give issuers under Tier One the option of receiving market analytics products and services in addition to market surveillance services, as well as allow qualifying issuers under Tier A to continue to receive surveillance products and services for an additional twelve months. The Exchange has represented that it faces competition in the market for listing services, and it competes in part by improving the quality of the services that it offers to listed companies. According to the Exchange, by offering products and services on a complimentary basis and ensuring that it is offering the services most valued by its listed issuers, it improves the quality of the services that listed companies receive.[14] Accordingly, the Commission believes that NYSE's proposal reflects the current competitive environment for exchange listings among national securities exchanges and is appropriate and consistent with Section 6(b)(8). Moreover, with respect to the change to Tier A, the Commission notes that by offering market surveillance products and services throughout the 24-month period following listing, rather than just the initial 12 months, the Exchange should eliminate the interruption in service that would otherwise occur for issuers that would qualify for Tier One status as existing issuers at the end of the 24-month period. Further, as to the additional choice of market analytics products and services for issuers qualifying under Tier One, the Commission notes that such services are already permitted for newly listed issuers under Tier A and currently listed issuers under Tier Two. Therefore, it appears reasonable to allow such issuers to receive those services if they qualify as a Tier One issuer. Further, all issuers, both U.S. and non-U.S., that qualify for services under Tier A and Tier One will be able to avail themselves of the changes to the products and services being offered under these tiers.[15]

[9] 15 U.S.C. 78f. 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).

[10] 15 U.S.C. 78f(b)(4) and (5).

[11] 15 U.S.C. 78f(b)(8).

[12] The Commission notes that the Exchange is also proposing to amend its reference to global market value based on public offering price to reflect that some listed companies may not conduct a public offering in connection with a listing. Section 907 would be amended so that if there is no public offering in connection with a listing on the Exchange, the Exchange will determine the issuer's global market value. The Commission believes this change is consistent with the other changes proposed by the Exchange and approved by the Commission in this order, consistent with the Act.

[13] *See also supra* note 6.

[14] The NYSE has also represented that it does not have exclusive agreements or arrangements with the vendors providing the products and services, and NYSE may use multiple vendors for the same type of product or service. Moreover, currently listed and newly listed companies would not be required to accept the offered products and services from NYSE, and an issuer's receipt of an NYSE listing is not conditioned on the issuer's acceptance of such products and services. Further, the Exchange has represented that, from time to time, issuers elect to purchase products and services from other vendors at their own expense instead of accepting the products and services described above offered by the Exchange.

[15] *See* Approval Order, *supra* note 4, finding that the existing tiers are consistent with the Act. In particular, the Approval Order states that while not all issuers receive the same level of services, NYSE has stated that trading volume and market activity

The Commission also believes that it is consistent with the Act for the Exchange to use September 30, instead of December 31, for determining whether an issuer qualifies for complimentary products and services under Tier One and Tier Two. The Commission believes that this change should provide issuers with additional time to either select the services and products, if any, it qualifies for, as well as provide sufficient time to select another vendor if the issuer so chooses. The Commission also notes that certain other proposed changes are merely technical in nature, such as specifically excluding transfers from other U.S. exchanges from the definition of a newly listed issuer and replacing the term ''Foreign Private Issuer'' with ''non-U.S. companies.'' With respect to excluding transfers from other U.S. exchanges, the Commission notes that the Exchange, in a prior filing, had specifically excluded transfers from another national securities exchange from its definition of ''newly listed issuers,[16] but did not codify the exclusion in Section 907. The Commission believes that codifying this exclusion should make the NYSE's rule more transparent.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–NYSE–2012–44) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–27289 Filed 11–7–12; 8:45 am]

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are related to the level of services that the listed companies would use in the absence of complimentary arrangements. The Commission found, among other things, that ''* * * the products and services and their commercial value are equitably allocated among issuers consistent with Section 6(b)(4) of the Act, and the rule does not unfairly discriminate between issuers consistent with Section 6(b)(5) of the Act.''

[16] *See supra* note 4.

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 8081]

Application for a Presidential Permit To Operate and Maintain Pipeline Facilities (Line 39) on the Border of the United States and Canada

AGENCY: Department of State.

ACTION: Notice of Receipt of Application for a Presidential Permit To Operate and Maintain Pipeline Facilities (Line 39) on the Border of the United States and Canada.

SUMMARY: Notice is hereby given that the Department of State (DOS) has received from NOVA Chemicals Inc. (''NOVA Inc.'') notice that by way of corporate succession, NOVA Inc. now owns, operates, and maintains pipeline facilities (Line 39) used to transport brine from a block valve site in St. Clair County, Michigan, near the city of Marysville to the international border between the United States and Canada. Line 39 was previously owned by Polysar Hydrocarbons Inc. (''Polysar'') and permitted under a 1986 Presidential Permit issued to NOVA Petrochemicals, Inc. NOVA Inc. requests a new Presidential Permit be issued under its name with respect to Line 39.

NOVA Inc. is incorporated in the State of Delaware and is a wholly-owned subsidiary of NOVA Chemicals Corporation (''NOVA Corporation''). NOVA Corporation is a company continued under the laws of the Province of New Brunswick, Canada. All of the issued and outstanding shares of NOVA Corporation are owned by a wholly owned subsidiary of the International Petroleum Investment Corporation (''IPIC'') which is wholly owned by the government of the Emirate of Abu Dhabi, United Arab Emirates.

Line 39 was initially constructed and owned by Polysar Hydrocarbons Inc. (''Polysar'') in 1990–91. The initial application for the permit requested that the permit be issued to Polysar. The 1991 permit was actually issued instead to NOVA Petrochemicals Inc. an affiliate of Polysar that was mentioned in the application, as owning the brine that would be transported on line 39. In February 1991, through a series of internal transactions, Polysar's direct parent was merged into NOVA Inc. and Polysar changed its name to Novacor Hydrocarbons Inc. (''Novacor''). Novacor then changed its name to NOVA Hydrocarbons and then NOVA Chemicals Hydrocarbon, and shortly thereafter was merged into NOVA Inc. Through several more corporate transactions involving changes in ownership of NOVA Inc.'s corporate parent, none has affected NOVA Inc.'s or its parent NOVA Chemicals Corporation's (''NOVA Corporation'') ownership of the border crossing facility subject to the 1991 Presidential Permit. NOVA Inc. anticipates no change in the operations of Line 39 relative to those that were authorized by the 1991 permit.

Under E.O. 13337 the Secretary of State is designated and empowered to receive all applications for Presidential Permits for the construction, connection, operation, or maintenance at the borders of the United States, of facilities for the exportation or importation of liquid petroleum, petroleum products, or other non-gaseous fuels to or from a foreign country. The Department of State is circulating this application to concerned federal agencies for comment. The Department of State has the responsibility to determine whether issuance of a new Presidential Permit reflecting the change in ownership or control of Line 39 would be in the U.S. national interest.

DATES: Interested parties are invited to submit comments within 30 days of the publication of this notice by email to *Novachemicalpermit@state.gov* with regard to whether issuing a new Presidential Permit reflecting the corporate succession and authorizing NOVA, Inc. to operate and maintain Line 39 would be in the national interest. The application is available at *http://www.state.gov/e/enr/c52945.htm.*

FOR FURTHER INFORMATION CONTACT: Office of Energy Diplomacy, Energy Resources Bureau (ENR/EDP/EWA), Department of State, 2201 C St. NW., Ste 4843, Washington, DC 20520, Attn: Michael Brennan, Tel: 202–647–7553. Email: *brennanmf@state.gov.*

Dated: October 26, 2012.

Douglas R. Kramer,

Acting Director, Office of Europe, Western Hemisphere and Africa, Bureau of Energy Resources, U.S. Department of State.

[FR Doc. 2012–27328 Filed 11–7–12; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 8083]

Application for a Presidential Permit To Operate and Maintain Pipeline Facilities on the Border of the United States and Canada

AGENCY: Department of State.

ACTION: Notice of Receipt of Application for a Presidential Permit to Operate and Maintain Pipeline Facilities on the Border of the United States and Canada.

SUMMARY: Notice is hereby given that the Department of State (DOS) has received from NOVA Chemicals Inc. (''NOVA Inc.'') notice that by way of corporate succession, NOVA Inc. now owns, operates, and maintains three pipeline facilities (Lines 16, 18 and 19) previously owned by Polysar

Hydrocarbons Inc. (''Polysar'') and permitted under a 1986 Presidential Permit issued to Polysar. NOVA Inc. requests a new Presidential Permit be issued under its name with respect to Lines 16, 18 and 19.

NOVA Inc. is incorporated in the State of Delaware and is a wholly-owned subsidiary of NOVA Chemicals Corporation (''NOVA Corporation''). NOVA Corporation is a company continued under the laws of the Province of New Brunswick, Canada. All of the issued and outstanding shares of NOVA Corporation are owned by a wholly owned subsidiary of the International Petroleum Investment Corporation (''IPIC'') which is wholly owned by the government of the Emirate of Abu Dhabi, United Arab Emirates.

Polysar received a Presidential Permit in 1986 to construct Lines 16, 18 and 19. and transport natural gas liquids (NGLs), propylene, and ethylene between the United States and Canada. Lines 16, 18 and 19 each consist of approximately 1,350 feet of pipeline extending from a block valve site in St. Clair County, Michigan near the City of Marysville to the international border with Canada. NOVA Inc. anticipates no change in the operations of Lines 16, 18 and 19 relative to those that were authorized by the 1986 Presidential Permit.

Under E.O. 13337 the Secretary of State is designated and empowered to receive all applications for Presidential Permits for the construction, connection, operation, or maintenance at the borders of the United States, of facilities for the exportation or importation of liquid petroleum, petroleum products, or other non-gaseous fuels to or from a foreign country. The Department of State is circulating this application to concerned federal agencies for comment. The Department of State has the responsibility to determine whether issuance of a new Presidential Permit reflecting the change in ownership or control of Lines 16, 18, and 19 would be in the U.S. national interest.

DATES: Interested parties are invited to submit comments within 30 days of the publication date of this notice by email to *Novachemicalpermit@state.gov* with regard to whether issuing a new Presidential Permit reflecting the corporate succession and authorizing NOVA, Inc. to operate and maintain Lines 16, 18, and 19 would be in the national interest. The application is available at *http://www.state.gov/e/enr/c52945.htm*.

FOR FURTHER INFORMATION CONTACT: Office of Energy Diplomacy, Energy Resources Bureau (ENR/EDP/EWA), Department of State, 2201 C St. NW., Ste 4843, Washington, DC 20520, Attn: Michael Brennan, Tel: 202–647–7553.

Douglas R. Kramer,

Acting Director, Office of Europe, Western Hemisphere and Africa, Bureau of Energy Resources, U.S. Department of State.

[FR Doc. 2012–27331 Filed 11–7–12; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 8082]

Application for a Presidential Permit To Operate and Maintain Pipeline Facilities on the Border of the United States and Canada

AGENCY: Department of State.

ACTION: Notice of Receipt of Application for a Presidential Permit to Operate and Maintain Pipeline Facilities on the Border of the United States and Canada.

SUMMARY: Notice is hereby given that the Department of State (DOS) has received from NOVA Chemicals Inc. (''NOVA Inc.'') an application for re-instatement of a Presidential Permit authorizing the operation and maintenance of pipeline facilities to transport natural gas liquids (''NGLs'') extending from a block valve site in St. Clair County, Michigan, near the city of Marysville to the international border between the United States and Canada.

NOVA Inc. is incorporated in the State of Delaware and is a wholly-owned subsidiary of NOVA Corporation. NOVA Corporation is a company continued under the laws of the Province of New Brunswick, Canada. All of the issued and outstanding shares of NOVA Corporation are owned by a wholly owned subsidiary of the International Petroleum Investment Corporation (''IPIC'') which is wholly owned by the government of the Emirate of Abu Dhabi, United Arab Emirates.

NOVA Inc. requests the permit to operate and maintain a pipeline (''Line 20'') consisting of approximately 1350 feet of 12-inch diameter pipeline as well as certain appurtenant facilities that can accommodate the transportation of up to 65,000 barrels per day (''bpd'') of NGLs. NOVA Inc. intends to make use of the existing Line 20 pipeline facilities as one of the final links in a pipeline system that will transport NGLs (in particular, ethane) derived from gas produced in the Marcellus Shale play in Pennsylvania, Ohio, West Virginia, and neighboring states to the international boundary under the St. Clair River and onward in the Province of Ontario, Canada, to a petrochemical complex located in Corunna, Ontario. Line 20 was constructed in 1986 and owned by Polysar Hydrocarbons Inc. (''Polysar'') and its upstream owner, Polysar Energy and Chemical Corporation.

Since 1995, the Line 20 facilities have been used pursuant to lease arrangements for the transportation of natural gas under Presidential Permits which the Federal Energy Regulatory Commission (''FERC'') issued to Bluewater Gas Storage, L.L.C. (''Bluewater Gas Storage'') and a predecessor. The lease under which Bluewater Gas Storage has been operating the Line 20 facilities includes a provision permitting its termination on not less than two years' notice. NOVA Inc. provided Bluewater Gas Storage notice that the Line 20 facilities lease will terminate effective no later than January 27, 2013. Upon termination of the lease, possession and operation of the Line 20 facilities will revert to NOVA Inc., which proposes to convert the Line 20 facilities back to NGLs transportation service.

The Department of State has concluded that the 1986 Presidential Permit expired as to the Line 20 facilities when these were converted to a natural gas transportation service and operated pursuant to a Presidential Permit issued to Bluewater Gas Storage LLC., by FERC. Because NOVA intends to place Line 20 facilities back into natural gas liquids transportation service in 2013, NOVA is seeking reinstatement of the 1986 Presidential permit on Line 20 facilities with changes reflecting its ownership of the Line 20 facilities.

Under E.O. 13337 the Secretary of State is designated and empowered to receive all applications for Presidential Permits for the construction, connection, operation, or maintenance at the borders of the United States, of facilities for the exportation or importation of liquid petroleum, petroleum products, or other non-gaseous fuels to or from a foreign country. The Department of State is circulating this application to concerned federal agencies for comment. The Department of State has the responsibility to determine whether issuance of a Presidential Permit reflecting the change in ownership or control of Line 20 and the reversion to transporting natural gas liquids would be in the U.S. national interest.

DATES: Interested parties are invited to submit comments within 30 days of the publication of this notice by email to *Novachemicalpermit@state.gov* with

regard to whether issuing a new Presidential Permit reflecting the corporate succession and authorizing NOVA, Inc. to operate and maintain Line 20 would be in the national interest. The application is available at *http://www.state.gov/e/enr/c52945.htm.*

FOR FURTHER INFORMATION CONTACT: Michael Brennan, Bureau of Energy Resources, Office of Energy Diplomacy—Europe, Western Hemisphere and Africa (ENR/EDP/EWA), Department of State, Washington, DC 20520, Tel: 202–647–9158, EMAIL: *BrennanMF@state.gov.*

Dated: October 26, 2012.

Douglas R. Kramer,

Acting Director, Office of Europe, Western Hemisphere and Africa, Bureau of Energy Resources, U.S. Department of State.

[FR Doc. 2012–27330 Filed 11–7–12; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2012–0098]

Notice of Availability of a Finding of No Significant Impact for the Port of Guam Modernization Program

AGENCY: U.S. Department of Transportation, Maritime Administration.

ACTION: Notice of Availability of the Finding of No Significant Impact for the Port of Guam Modernization Program.

SUMMARY: The purpose of this Notice is to make available to the public the Finding of No Significant Impact (FONSI) derived from the Environmental Assessment (EA) regarding the Port of Guam Modernization Program (Program).

The objective of this Program is to improve or replace existing port facilities, reconfigure operations, expand storage capacity, and upgrade existing infrastructure. Specifically, the proposed action would construct a new break-bulk terminal area in the western portion of the terminal yard. A non-port operations area would be developed east of the proposed new break-bulk terminal to improve efficiency and security. New entrance and exit gates would be constructed to increase processing efficiency and reduce truck queuing times. Some existing buildings would be demolished, expanded, and/or refurbished and new buildings would be constructed. Deteriorating or failing utilities would be upgraded or replaced. Oil/water separators would be installed in storm water outfalls into the harbor. New safety and security improvements would be constructed.

FOR FURTHER INFORMATION CONTACT: Daniel Yuska, 1200 New Jersey Ave. SE., Washington, DC 20590; phone: (202) 366–0714; or email: *Daniel.yuska@dot.gov.* 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 individuals during business hours. The FIRS is available twenty-four hours a day, seven days a week, to leave a message or question with the above individuals. You will receive a reply during normal business hours.

By Order of the Maritime Administrator.

Dated: November 2, 2012.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2012–27258 Filed 11–7–12; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 55 (Sub-No. 722X)]

CSX Transportation, Inc.—Discontinuance of Service Exemption—in Anderson County, TN

CSX Transportation, Inc. (CSXT) filed a verified notice of exemption under 49 CFR pt. 1152 subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue service over approximately a 4.85-mile rail line on CSXT's Southern Region, Huntington Division, KD Subdivision, extending between milepost 0AE 251.15 at the connection with CSXT's main line and milepost 0AE 256.0 at the end of the track in Oak Ridge, Anderson County, Tenn. The line traverses United States Postal Service Zip Code 37830.

CSXT has certified that: (1) No local traffic has moved over the line for at least two years; (2) any overhead traffic can be and has been rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the two-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance of service shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 8, 2012, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA for continued rail service under 49 CFR 1152.27(c)(2) [1] must be filed by November 19, 2012.[2] Petitions to reopen must be filed by November 28, 2012, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to CSXT's representative: Louis E. Gitomer, Law Offices of Louis E. Gitomer, LLC, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Board decisions and notices are available on our Web site at ''*www.stb.dot.gov.*''

Decided: November 2, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2012–27262 Filed 11–7–12; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Joint Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury; Board of

[1] Each OFA must be accompanied by the filing fee, which is currently set at $1,600. *See* 49 CFR 1002.2(f)(25).

[2] Because CSXT is seeking to discontinue service, not to abandon the line, trail use/rail banking and public use conditions are not appropriate. Likewise, no environmental or historic documentation is required here under 49 CFR 1105.6(c) and 49 CFR 1105.8(b), respectively.

Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC, the Board, and the FDIC (collectively, the ''agencies'') may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. On July 30, 2012, the agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), published a notice in the **Federal Register** (77 FR 44714) and requested public comment for 60 days on a proposal to extend, with revision, the Foreign Branch Report of Condition (FFIEC 030 and FFIEC 030S), which is a currently approved information collection for each agency. The comment period for this notice expired on September 28, 2012. The agencies are now submitting requests to OMB for approval of the extension, with revision, of the FFIEC 030 and FFIEC 030S.

DATES: Comments must be submitted on or before December 10, 2012.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies on the proposed extension, with revision, of the Foreign Branch Report of Condition for which the agencies are requesting approval from OMB. All comments, which should refer to the OMB control number, will be shared among the agencies.

OCC: You should direct all written comments to: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 2–3, Attention: 1557–0099, 250 E Street SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy the comments at the OCC, 250 E Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Board: You may submit comments, identified by FFIEC 030 or FFIEC 030S, by any of the following methods:

- *Agency Web Site: www.federalreserve.gov.* Follow the instructions for submitting comments on the *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include the OMB control number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets NW.) between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC: You may submit comments, which should refer to ''Foreign Branch Report of Condition, 3064–0011,'' by any of the following methods:

- *Agency Web Site: www.FDIC.gov/regulations/laws/federal/notices.html.*
- *Email: comments@FDIC.gov.* Include ''Foreign Branch Report of Condition, 3064–0011'' in the subject line of the message.
- *Mail:* Gary A. Kuiper, Counsel, Attn: Comments, Room NYA–5046, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

Public Inspection: All comments received will be posted without change to *www.fdic.gov/regulations/laws/federal/notices/html* including any personal information provided. Comments may be inspected at the FDIC Public Information Center, Room E–1002, 3502 North Fairfax Drive, Arlington, VA 22226, between 9:00 a.m. and 5:00 p.m. on business days.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503 or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: For further information about the revisions discussed in this notice, please contact any of the agency clearance officers whose names appear below. In addition, copies of the report forms can be obtained at the FFIEC's Web site (*http://www.ffiec.gov/ffiec_report_forms.htm*).

OCC: Mary H. Gottlieb and Johnny Vilela, OCC Clearance Officers, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

Board: Cynthia Ayouch, Federal Reserve Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Gary A. Kuiper, (202) 898–3877, Counsel, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: Proposal to request approval from OMB of the extension for three years, with revision, of the following currently approved collection of information:

Report Title: Foreign Branch Report of Condition.

Form Numbers: FFIEC 030 and FFIEC 030S.

Frequency of Response: Annually, and quarterly for significant branches.

Affected Public: Business or other for profit.

OCC

OMB Number: 1557–0099.

Estimated Number of Respondents: 123 annual branch respondents (FFIEC 030), 310 quarterly branch respondents (FFIEC 030), 34 annual branch respondents (FFIEC 030S).

Estimated Average Time per Response: 3.4 burden hours (FFIEC 030), 0.5 burden hours (FFIEC 030S).

Estimated Total Annual Burden: 4,651 burden hours.

Board

OMB Number: 7100–0071.

Estimated Number of Respondents: 22 annual branch respondents (FFIEC 030), 24 quarterly branch respondents (FFIEC 030), 14 annual branch respondents (FFIEC 030S).

Estimated Average Time per Response: 3.4 burden hours (FFIEC 030), 0.5 burden hours (FFIEC 030S).

Estimated Total Annual Burden: 408 burden hours.

FDIC

OMB Number: 3064–0011.

Estimated Number of Respondents: 12 annual respondents (FFIEC 030), 3 quarterly respondents (FFIEC 030), 11 annual respondents (FFIEC 030S).

Estimated Average Time per Response: 3.4 burden hours (FFIEC 030), 0.5 burden hours (FFIEC 030S).

Estimated Total Annual Burden: 87 burden hours.

General Description of Reports

This information collection is mandatory: 12 U.S.C. 321, 324, and 602 (Board); 12 U.S.C. 161 and 602 (OCC); and 12 U.S.C. 1828 (FDIC). This information collection is given confidential treatment (5 U.S.C. 552(b)(8)).

Abstract

The FFIEC 030 contains asset and liability information for foreign branches of insured U.S. banks and is required for regulatory and supervisory purposes. The information is used by the agencies to analyze the foreign operations of U.S. banks. All foreign branches of U.S. banks with total assets of $50 million or more regardless of charter type file this report with the appropriate Federal Reserve District Bank. The Federal Reserve collects this information on behalf of the U.S. bank's primary federal bank regulatory agency. The FFIEC 030S contains five data items that branches with total assets between $50 million and $250 million file on an annual basis in lieu of the FFIEC 030 reporting form.

Current Actions

On July 21, 2011, supervisory responsibility for federal and state-chartered savings associations was transferred from the former Office of Thrift Supervision to the OCC and the FDIC, respectively, pursuant to Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203. Accordingly, the Foreign Branch Report of Condition would be applicable to foreign branches, if any, of insured U.S. savings associations beginning as of the December 31, 2012, report date. No other changes are proposed to the FFIEC 030 or FFIEC 030S reporting forms or instructions in connection with the agencies' request for approval to extend for three years, with revision, this collection of information. The agencies collectively received one comment on their July 30, 2012, **Federal Register** initial notice that supported the collection of the Foreign Branch Report of Condition.

Request for Comment

Public comment is requested on all aspects of this joint notice. Comments are invited on:

a. Whether the information collection is necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy of the agencies' estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

Comments submitted in response to this notice will be shared among the agencies. All comments will become a matter of public record.

Dated: November 1, 2012.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, November 2, 2012.

Robert deV. Frierson,

Secretary of the Board.

Dated at Washington, DC, this 1st day of November 2012.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2012–27279 Filed 11–7–12; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Joint Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. chapter 35), the OCC, the Board, and the FDIC (the ''agencies'') may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. On November 21, 2011, the agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), requested public comment for 60 days on a proposal to extend, with revision, the Consolidated Reports of Condition and Income (Call Report), which are currently approved collections of information. After considering the comments received on the proposal, the FFIEC and the agencies announced their final decisions regarding certain proposed revisions on February 17, 2012. The agencies also announced they were continuing to evaluate two new proposed Call Report schedules (Schedule RI–C, Disaggregated Data on the Allowance for Loan and Lease Losses, and Schedule RC–U, Loan Origination Activity (in Domestic Offices)) in light of the comments received. The FFIEC and the agencies have completed their evaluation of Schedule RI–C and will proceed with a modified version of the schedule, which will be completed by institutions with $1 billion or more in total assets beginning March 31, 2013. However, the FFIEC and the agencies are continuing their evaluation of proposed Schedule RC–U. The FFIEC's and the agencies' decision regarding proposed Schedule RC–U will be addressed in a future **Federal Register** notice, and any resulting new reporting requirements for loan origination data will not take effect before the June 30, 2013, report date.

DATES: Comments must be submitted on or before December 10, 2012.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies on the revisions to the Call Report for which the agencies are requesting approval from OMB. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

OCC: You should direct all written comments to: Communications

Division, Office of the Comptroller of the Currency, Mailstop 2–3, Attention: 1557–0081, 250 E Street SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 250 E Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Board: You may submit comments, which should refer to ''Consolidated Reports of Condition and Income (FFIEC 031 and 041),'' by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at: *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include reporting form number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets NW.) between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC: You may submit comments, which should refer to ''Consolidated Reports of Condition and Income, 3064–0052,'' by any of the following methods:

- *Agency Web Site: http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow the instructions for submitting comments on the FDIC Web site.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: comments@FDIC.gov.* Include ''Consolidated Reports of Condition and Income, 3064–0052'' in the subject line of the message.
- *Mail:* Gary A. Kuiper, Counsel, Attn: Comments, Room NYA–5046, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html* including any personal information provided. Comments may be inspected at the FDIC Public Information Center, Room E–1002, 3501 Fairfax Drive, Arlington, VA 22226, between 9 a.m. and 5 p.m. on business days.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: For further information about the revisions discussed in this notice, please contact any of the agency clearance officers whose names appear below. In addition, copies of the Call Report forms and instructions can be obtained at the FFIEC's Web site (*http://www.ffiec.gov/ffiec_report_forms.htm*).

OCC: Mary Gottlieb, OCC Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

Board: Cynthia Ayouch, Federal Reserve Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Gary A. Kuiper, Counsel, (202) 898–3877, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The agencies are proposing to revise and extend for three years the Call Report, which is currently an approved collection of information for each agency. The burden estimates presented below are for the Call Report as it is proposed to be revised effective March 31, 2013.

Report Title: Consolidated Reports of Condition and Income (Call Report).

Form Number: Call Report: FFIEC 031 (for banks and savings associations with domestic and foreign offices) and FFIEC 041 (for banks and savings associations with domestic offices only).

Frequency of Response: Quarterly.

Affected Public: Insured banks and savings associations.

OCC

OMB Number: 1557–0081.

Estimated Number of Respondents: 1,909 national banks and federal savings associations.

Estimated Time per Response: 53.76 burden hours per quarter to file.

Estimated Total Annual Burden: 410,511 burden hours to file.

Board

OMB Number: 7100–0036.

Estimated Number of Respondents: 835 state member banks.

Estimated Time per Response: 55.66 burden hours per quarter to file.

Estimated Total Annual Burden: 185,904 burden hours to file.

FDIC

OMB Number: 3064–0052.

Estimated Number of Respondents: 4,531 insured state nonmember banks and state savings associations.

Estimated Time per Response: 40.56 burden hours per quarter to file.

Estimated Total Annual Burden: 735,109 burden hours to file.

The estimated time per response for the quarterly filings of the Call Report is an average that varies by agency because of differences in the composition of the institutions under each agency's supervision (*e.g.,* size distribution of institutions, types of activities in which they are engaged, and existence of foreign offices). The average reporting burden for the filing of the Call Report is estimated to range from 17 to 710 hours per quarter, depending on an individual institution's circumstances.

Type of Review: Revision and extension of currently approved collections.

General Description of Reports

These information collections are mandatory: 12 U.S.C. 161 (for national banks), 12 U.S.C. 324 (for state member banks), 12 U.S.C. 1817 (for insured state nonmember commercial and savings banks), and 12 U.S.C. 1464 (for federal and state savings associations). At present, except for selected data items, these information collections are not given confidential treatment.

Abstract

Institutions submit Call Report data to the agencies each quarter for the agencies' use in monitoring the condition, performance, and risk profile of individual institutions and the industry as a whole. Call Report data provide the most current statistical data available for evaluating institutions' corporate applications, identifying areas of focus for on-site and off-site examinations, and monetary and other public policy purposes. The agencies use Call Report data in evaluating interstate merger and acquisition applications to determine, as required by law, whether the resulting institution would control more than ten percent of the total amount of deposits of insured depository institutions in the United States. Call Report data also are used to calculate institutions' deposit insurance and Financing Corporation assessments and national banks' and federal savings associations' semiannual assessment fees.

Current Actions

On November 21, 2011, the agencies, under the auspices of the FFIEC, requested comment on a limited number of proposed revisions to the Call Report (76 FR 72035) for implementation in 2012 that were focused primarily on institutions with $1 billion or more in total assets. After considering the comments received, on February 17, 2012, the agencies announced in the **Federal Register** (77 FR 9727) the implementation of reporting changes and instructional revisions that had been proposed to take effect March 31, 2012. The agencies also announced the implementation of revisions to two existing schedules proposed for implementation as of June 30, 2012. The FFIEC and the agencies further stated they were deferring the implementation of new Schedule RC–U, Loan Origination Activity (in Domestic Offices), and new Schedule RI–C, Disaggregated Data on the Allowance for Loan and Lease Losses (ALLL), both of which were originally proposed to be added to the Call Report effective June 30, 2012. The FFIEC and the agencies announced they were continuing to evaluate these proposed new schedules in light of the comments received.

The agencies collectively received comments from eight entities on their November 21, 2011, **Federal Register** notice initially proposing these revisions: four banking organizations, two bankers' associations, a commercial lending software company, and a news organization. Three banking organizations and the two bankers' associations addressed proposed Schedule RI–C, and all eight commenters addressed proposed Schedule RC–U.

Proposed Schedule RI–C—Commenters expressed the general concern that the proposed disaggregated ALLL data in Schedule RI–C are not aligned with the manner in which institutions estimate and maintain their ALLL. Although Financial Accounting Standards Board (FASB) Accounting Standards Update No. 2010–20, Disclosures about the Credit Quality of Financing Receivables and the Allowance for Credit Losses (ASU 2010–20), requires entities to disclose the ALLL at the portfolio segment level, institutions define segments differently than proposed for Schedule RI–C. According to the commenters, modifying systems to report ALLL information categorized as proposed would be costly and necessitate significant lead time, up to nine months, to implement. One commenter also recommended increasing the asset size threshold for institutions to report this schedule, proposed to be collected from institutions with $1 billion or more in total assets, to $5 billion or $10 billion in total assets.

Two commenters recommended a more streamlined approach requiring disclosure of fewer loan categories, thereby allowing the Agencies to achieve their stated objective and permit institutions to report data consistently with the business models and methodologies used to estimate their ALLL. One of these commenters recommended collapsing the proposed nine loan categories and collecting ALLL and the related recorded investment amounts by impairment measurement method for only three segments: consumer credit cards, all other consumer loans, and commercial loans. The second commenter recommended reporting ALLL and the related recorded investment amounts by impairment measurement method for five loan categories: commercial real estate, residential real estate, commercial, credit cards, and other consumer. The second commenter also favored retaining the reporting of any unallocated portion of the ALLL as had been proposed.[1] Implicit in both of these commenters' recommendations is the concept that the definitions for the loan categories in Schedule RI–C should be those the reporting institution uses in its ALLL methodology rather than those specified in Call Report Schedule RC–C, part I, Loans and Leases.

After consideration of the comments received on the proposed disaggregation of ALLL information, the FFIEC and the agencies have decided to modify proposed Schedule RI–C to collect ALLL and the related recorded investment amounts by impairment measurement method for the loan categories (and any unallocated portion of the ALLL) based on the second approach described in the preceding paragraph, but with the addition of a loan category for real estate construction loans. The agencies consider it appropriate to segregate construction loans from other commercial real estate loans because the risk characteristics of the former differ significantly from those of the latter. The agencies believe this more streamlined approach to proposed Schedule RI–C, including its use of general loan categories rather than specifically defined categories, would be more consistent with the methodologies institutions currently employ in determining the appropriate level for their overall ALLL and meeting the disclosure requirements of ASU 2010–20. At the same time, the data that would be reported in Schedule RI–C, as modified, should be sufficient to enable the agencies to more finely focus their analyses related to the composition of an institution's ALLL and the changes therein over time. In this regard, to aid in evaluating the appropriateness of the reported level of an institution's ALLL (for example, in periods between examinations and when planning for examinations), the disaggregated ALLL data by loan category could be reviewed in conjunction with the past due and nonaccrual loan data used in general assessments of the credit quality of an institution's loan portfolio. These credit quality data are currently reported for broadly similar, but not identical, loan categories in Call Report Schedule RC–N, Past Due and Nonaccrual Loans, Leases, and Other Assets.

The FFIEC and the agencies have decided to retain the proposed $1 billion total asset threshold for Schedule RI–C, which exempts 91 percent of all institutions from this reporting requirement. Given that institutions with $1 billion or more in total assets hold nearly 91 percent of the ALLL balances held by all institutions as of June 30, 2012, retaining this reporting threshold as proposed will enable the agencies to perform a more comprehensive and decision-useful analysis of the depository institution system, particularly in providing a better understanding of how institutions' ALLL practices and

[1] Another commenter stated that it fully supported this commenter's recommendations.

allocations differ for particular loan categories as economic conditions change. Furthermore, all institutions with $1 billion or more in total assets are subject to regulations requiring them to prepare annual financial statements in accordance with U.S. generally accepted accounting principles.[2] Accordingly, such institutions should have processes in place to develop the disaggregated ALLL data required to be disclosed by ASU 2010–20, which are comparable to the data specified by Schedule RI–C as modified in response to comments.

To allow institutions sufficient lead time to make any necessary adjustments to their data systems to report this modified disaggregation of their ALLL and the related recorded investment amounts by loan category and impairment measurement method, the agencies will delay implementation of new Schedule RI–C until the March 31, 2013, report date.

Consistent with longstanding practice, for the March 31, 2013, report date, institutions may provide reasonable estimates for any Call Report Schedule RI–C item for which the requested information is not readily available.

Proposed Schedule RC–U—The FFIEC and the agencies have not yet completed their evaluation of this proposed new schedule in light of the comments received. When the FFIEC and the agencies have decided whether and how to proceed with Schedule RC–U, their decision will be addressed in a future **Federal Register** notice and, if applicable, submissions by the agencies will be made to OMB. To allow sufficient lead time for affected institutions to prepare for any resulting new reporting requirements for loan origination data, the collection of such data would not take effect before the June 30, 2013, report date.

Request for Comment

Public comment is requested on all aspects of this joint notice. Comments are invited on:

(a) Whether the proposed revisions to the collections of information that are the subject of this notice are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this joint notice will be shared among the agencies. All comments will become a matter of public record.

Dated: October 31, 2012.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, November 2, 2012.

Robert deV. Frierson,

Secretary of the Board.

Dated at Washington, DC, this 31st day of October 2012.

Robert E. Feldman,

Executive Secretary. Federal Deposit Insurance Corporation.

[FR Doc. 2012–27283 Filed 11–7–12; 8:45 am]

BILLING CODE 4810–33–P 6210–01–P 6714–01–P

[2] 12 CFR part 363, Annual Independent Audits and Reporting Requirements.

DEPARTMENT OF THE TREASURY

Fiscal Service

Fee Schedule for the Transfer of U.S. Treasury Book-Entry Securities Held on the National Book-Entry System

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury (Treasury) is announcing a new fee schedule applicable to transfers of U.S. Treasury book-entry securities maintained on the National Book-Entry System (NBES) that occur on or after January 2, 2013.

DATES: Effective January 2, 2013.

FOR FURTHER INFORMATION CONTACT: Kristina Yeh, Bureau of the Public Debt, 202–504–3550.

SUPPLEMENTARY INFORMATION: Treasury has established a fee structure for the transfer of Treasury book-entry securities maintained on NBES. Treasury reassesses this fee structure periodically, based on our review of the latest book-entry costs and volumes.

For each Treasury securities transfer or reversal sent or received on or after January 2, 2013, the basic fee will increase from $0.48 to $0.56. The Federal Reserve will maintain its fee for Federal Reserve funds movement at $0.09. This will result in a combined fee of $0.65 for each transfer of Treasury book-entry securities. The surcharge for an off-line Treasury book-entry securities transfer will remain at $40.00. Off-line refers to the sending and receiving of transfer messages to or from a Reserve Bank by means other than on-line access, such as by written, facsimile, or telephone voice instruction. The basic transfer fee assessed to both sends and receives is reflective of costs associated with the processing of securities transfers. The off-line surcharge reflects the additional processing costs associated with the manual processing of off-line securities transfers.

Treasury does not charge a fee for account maintenance, the stripping and reconstitution of Treasury securities, the wires associated with original issues, or interest and redemption payments. Treasury currently absorbs these costs.

The fees described in this notice apply only to the transfer of Treasury book-entry securities held on NBES. Information concerning fees for book-entry transfers of Government Agency securities, which are priced by the Federal Reserve System, is set out in a separate **Federal Register** notice published by the Board of Governors of the Federal Reserve System.

The following is the Treasury fee schedule that will take effect on January 2, 2013, for book-entry transfers on NBES:

TREASURY—NBES FEE SCHEDULE [1]

[Effective January 2, 2013 (in dollars)]

Transfer type	Basic fee	Off-line surcharge	Funds [2] movement fee	Total fee
On-line transfer originated	0.56	N/A	0.09	0.65
On-line transfer received	0.56	N/A	0.09	0.65
On-line reversal transfer originated	0.56	N/A	0.09	0.65
On-line reversal transfer received	0.56	N/A	0.09	0.65
Off-line transfer originated	0.56	40.00	0.09	40.65
Off-line transfer received	0.56	40.00	0.09	40.65
Off-line account switch received	0.56	0.00	0.09	0.65
Off-line reversal transfer originated	0.56	40.00	0.09	40.65
Off-line reversal transfer received	0.56	40.00	0.09	40.65

[1] Treasury does not charge a fee for account maintenance, the stripping and reconstituting of Treasury securities, the wires associated with original issues, or interest and redemption payments. Treasury currently absorbs these costs.

[2] The funds movement fee is not a Treasury fee, but is charged by the Federal Reserve for the cost of moving funds associated with the transfer of a Treasury book-entry security.

Authority: 31 CFR 357.45.

Dated: October 16, 2012.

Richard L. Gregg,

Fiscal Assistant Secretary.

[FR Doc. 2012–26869 Filed 11–7–12; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF VETERANS AFFAIRS

VA Directive 0005 on Scientific Integrity

AGENCY: Office of Policy and Planning, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: This **Federal Register** notice announces the adoption of the Department of Veterans Affairs (VA) Directive 0005 on Scientific Integrity and responds to public comments about the draft version of this Directive, which was originally announced in the **Federal Register** on April 9, 2012 (77 FR 21158).

FOR FURTHER INFORMATION CONTACT: Billy E. Jones, M.D., Senior Advisor to the Assistant Secretary for Policy and Planning (008), Department of Veterans Affairs, at 202–461–5762. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

The Presidential Memorandum on Scientific Integrity and the Office of Science and Technology Policy's 2010 guidance memorandum on scientific integrity call for ensuring the highest level of integrity in all aspects of the Executive Branch's involvement with scientific and technological processes.

VA Policy on Scientific Integrity

VA Directive 0005 on Scientific Integrity, adopted on July 10, 2012, is available on the VA Publications Web site at *http://www1.va.gov/vapubs/.* Directive 0005 establishes VA policies that:

- Foster a culture of transparency, integrity, and ethical behavior in the development and application of scientific and technological findings in VA;
- Protect the development, application, and dissemination of scientific and technological information from political or commercial influence;
- Prohibit suppression or alteration of scientific and technological findings for political purposes;
- Afford whistleblower protections to employees who have scientific integrity concerns;
- Uphold professional and Governmental standards for the conduct for research;
- Promote free flow and exchange of scientific and technological information;
- Ensure that clinical care, health care operations, and public health decisions are informed by scientific data and analysis;
- Uphold the independence, transparency, and diversity of Scientific Advisory Committees; and
- Encourage full participation of employees in scientific and professional activities.

Public Comments on VA Draft Policy on Scientific Integrity

VA adopted Directive 0005 on Scientific Integrity after carefully reviewing and considering public comments that were received on the draft version of this Directive, which was announced in the **Federal Register** on April 9, 2012 (77 FR 21158). All of the public comments have been grouped together by the paragraph of the Directive that they address, and VA has organized our discussion of the comments accordingly. All comments are available for public inspection between the hours of 8 a.m. and 4:30 p.m. in the Office of Regulation Policy and Management, Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1063B, Washington, DC 20420. Call (202) 461–4902 for an appointment.

Comments

A. Purpose, Responsibilities, and Definitions (VA Directive 0005, ¶¶ 1–3)

Comment Summary: The Directive should apply to all VA employees, including VA scientists, managers, supervisors, visiting scientists, political appointees. The Directive should also apply to VA contractors.

VA Response: VA has amended the note in Directive 0005, ¶ 1, so that it clarifies that the Directive applies to all VA employees, thereby including all VA scientists, managers, supervisors, visiting scientists, and political appointees. All VA contracts are managed by VA employees. VA may share this Directive with the agency's contractors and may incorporate the policies in this Directive in applicable future contracts or when renewing existing contracts.

Comment Summary: The Directive should clearly define what constitutes a conflict of interest to strengthen disclosure of and reduce conflict of interest among, employees, and reviewers. Conflict of interest policies should apply to research staff as well as research investigators.

VA Response: As stated under Directive 0005, ¶ 5.a.(3), VA is currently developing conflict of interest requirements specifically applicable to research. These requirements will define what constitutes a research conflict of interest and who is required to follow VA's conflict of interest

requirements. Consequently, no changes were made to the Directive.

Comment Summary: VA should improve transparency by publicly reporting information on individuals who meet with top agency officials.

VA Response: This comment addresses an issue that is beyond the scope of VA Directive 0005. Consequently, no changes were made to the Directive.

B. Core Principles (VA Directive 0005, ¶ 4)

Comment Summary: It is not clear what constitutes ''inappropriate influence.'' The definition of ''inappropriate influence'' should be more explicit.

VA Response: VA has amended Directive 0005, ¶ 4.b.(3), so that it explicitly state's that scientific data and analyses will be protected from political and commercial influence. The term ''inappropriate influence'' has been removed.

C. Foundations of Scientific Integrity (VA Directive 0005, ¶ 5)

Comment Summary: The Directive should provide clear and specific guidelines relating to the enforcement, reporting, and investigation of allegations related to scientific integrity violations. Uncensored details of cases should be provided to the VA's Office of Inspector General (OIG), the Office of Government Ethics, and Congress. VA should create an online portal where all documents related to scientific integrity may be found. VA should have a Department-wide procedure for reporting and investigating allegations related to scientific integrity violations.

VA Response: VA has amended Directive 0005, ¶ 5.a.(8), so that it discusses the Veterans Health Administration's (VHA) Office of Research Oversight's statutory authority, under 38 U.S.C. 7307, to investigate and enforce compliance with VA requirements for the conduct of research, including research misconduct and other forms of research impropriety. VHA's Office of Research Oversight (ORO) operates independently of all VA entities that fund research and may suspend VA research where warranted. All VHA Directives and Handbooks related to scientific integrity, including the procedures for reporting allegations to ORO and the standards for ORO's investigation and enforcement activities and may be found on the ORO Web site at *http://www.va.gov/oro/.* The ORO Web site provides guidance on filing a complaint and includes a telephone hotline for persons who wish to remain anonymous. In accordance with statutory requirements, ORO reports all of its activities, investigations, and findings to the Committees on Veterans' Affairs of the United States Senate and House of Representatives. ORO regularly exchanges information with OIG, including summaries of all compliance cases and copies of all compliance reports.

Comment Summary: Whistleblower protections should be strengthened to prohibit individuals from recommending or taking a personnel action as a means of censoring or discriminating against an employee or grant applicant because the employee or grant applicant discloses, or is about to disclose, information that he or she believes is evidence of illegality.

VA Response: As stated under Directive 0005, ¶ 5.a.(10), VA will afford whistleblower protections to employees who have a reasonable belief of scientific integrity concerns, including but not limited to, the protections described in 5 U.S.C. 2302, which specifically prohibit threatening, taking, or not taking personnel actions against an employee (or applicant for employment) who discloses information reasonably believed to be a violation of law, rule, or regulation or to represent gross mismanagement, waste of public funds, abuse of authority, or substantial and specific danger to public health or safety. These employee protections are sufficient for VA because VA does not award research grants to individuals who are not VA employees. Consequently, no changes were made to the Directive.

Comment Summary: VA employees should have the right to review, approve, and comment on the final version of any proposed publication that significantly relies on their research, identifies them as an author or contributor, or purports to represent their scientific opinion. Procedures should be established for handling differing scientific opinions and ensuring that these opinions are included in the final versions of scientific documents.

VA Response: VA has amended Directive 0005, ¶ 5.e.(1), to clarify that VA employees who conduct research independently determine the content of publications that report on their research findings. The primary author of such publications is responsible for interpreting the findings and ensuring the accuracy of the findings reported. Disputes may be referred to the study sponsor, the VHA Office of Research and Development, or ORO, depending upon the nature of the dispute. Publications of findings from VA research are submitted to peer reviewed journals, and the peer review process ensures that differing opinions on the interpretation of findings are considered. Consequently, no changes were made to the Directive.

Comment Summary: The Directive should not state that ''every aspect of VA research * * * is governed by specific regulations, policies and guidelines'' since not every aspect of VA research can be governed by regulations, policies, or guidelines.

VA Response: VA has amended Directive 0005, ¶ 5.b., to state that ''VA policy provides an ethical and accountable framework in the form of specific regulations, policies, and guidelines that establish VA's research priorities, funding mechanisms, administration, conduct, and oversight.''

Comment Summary: Protections related to research safety should also extend to research staff.

VA Response: VA has amended Directive 0005, ¶ 5.b.(4), so that it explicitly includes research safety protections for research staff.

Comment Summary: The Directive should clarify whether VA's policy is to ensure the privacy and confidentiality of research data and research-related information.

VA Response: VA has amended Directive 0005, ¶ 5.b.(5), so that it specifically includes ensuring the privacy and confidentiality of research data as well as research-related information.

Comment Summary: VA needs to demonstrate how it will make VA research findings and the products of VA research available to the public.

VA Response: As stated under Directive 0005, ¶¶ 5.e.(1) and 5.e.(2), VA will convey research findings to the public in a timely, accurate, and comprehensive manner. VA is currently developing formal policies to promote the sharing of VA research findings to the public. Consequently, no changes were made to the Directive.

Comment Summary: VA should replace the Association for the Accreditation of Human Research Protection Programs (AAHRPP) with Alion Science and Technology Corporation and clarify requirements relative to the accreditation of VA facility human research protection programs.

VA Response: VA is currently reviewing its accreditation requirements and in the interim has removed AAHRPP's name from the Directive.

D. Public Communications (Directive 0005, ¶ 6)

Comment Summary: The phrase requiring ''appropriate coordination'' by

research investigators in speaking to the media is too ambiguous.

VA Response: VA has deleted the word ''appropriate'' from Directive 0005 ¶ 6.a. to eliminate the ambiguity and ensure consistency with ¶ 6.a.(7).

Comment Summary: The policy should explicitly state that scientists have the right to express their own views so long as the appropriate disclaimers are made. Public affairs officials should not interfere with this right.

VA Response: VA has amended the note in Directive 0005, ¶ 6.a.(5), to state that VA scientists and other VA employees may express their personal views to the media provided that they specify that they are speaking in their private capacity and not speaking on behalf of VA.

E. Use of Federal Advisory Committees (Directive 0005, ¶ 7)

Comment Summary: The Directive should reduce conflicts of interest among, employees, reviewers, and members of Federal advisory committees.

VA Response: VA is currently developing conflict of interest requirements specifically applicable to research. Consequently, no changes were made to the Directive.

F. Professional Development (Directive 0005, ¶ 8)

Comment Summary: VA scientists should be required to disclose conflicts of interest if they participate in scientific societies or sit on their boards.

VA Response: VA has amended the note in Directive 0005, ¶ 8.a.(4), to clarify that participation in professional societies is encouraged, to the extent permitted by law and in accordance with the Standards of Professional Conduct for Employees of the Executive Branch.

Comment Summary: VA should have regular training in scientific integrity for all of its employees.

VA Response: As stated under Directive 0005, ¶ 8.c., VA researchers are required to complete training at 2-year intervals in multiple areas, including data integrity, ethics, privacy, and human research protections, as well as training in specific content areas relevant to their research. Consequently, no changes were made to the Directive.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on November 5, 2012, for publication.

Dated: November 5, 2012.

Robert C. McFetridge,

Director, Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2012–27326 Filed 11–7–12; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 409, 424, 484, et al.

Medicare Program; Home Health Prospective Payment System Rate Update for Calendar Year 2013, Hospice Quality Reporting Requirements, and Survey and Enforcement Requirements for Home Health Agencies; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 409, 424, 484, 488, 489, and 498

[CMS–1358–F]

RIN 0938–AR18

Medicare Program; Home Health Prospective Payment System Rate Update for Calendar Year 2013, Hospice Quality Reporting Requirements, and Survey and Enforcement Requirements for Home Health Agencies

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule updates the Home Health Prospective Payment System (HH PPS) rates, including the national standardized 60-day episode rates, the national per-visit rates, the low-utilization payment amount (LUPA), the non-routine medical supplies (NRS) conversion factor, and outlier payments under the Medicare prospective payment system for home health agencies effective January 1, 2013. This rule also establishes requirements for the Home Health and Hospice quality reporting programs. This final rule will also establish requirements for unannounced, standard and extended surveys of home health agencies (HHAs) and sets forth alternative sanctions that could be imposed instead of, or in addition to, termination of the HHA's participation in the Medicare program, which could remain in effect up to a maximum of 6 months, until an HHA achieves compliance with the HHA Conditions of Participation (CoPs) or until the HHA's provider agreement is terminated.

DATES: This rule is effective on January 1, 2013, except for:

a. The amendments to 42 CFR 488.2, 488.3, 488.26, and 488.28, and the additions of 42 CFR part 488, subparts I and J, which are effective July 1, 2013 (except that § 488.745, § 488.840 and § 488.845 are effective July 1, 2014).

b. The amendments to 42 CFR 489.53 and 498.3, which are effective July 1, 2013.

FOR FURTHER INFORMATION CONTACT:

Hillary Loeffler, (410) 786–0456, for information about the HH PPS.

Kristine Chu, (410) 786–8953, for information about the HH payment reform study and report.

Robin Dowell, (410) 786–0060, for information about HH and Hospice quality improvement and reporting.

Mollie Knight, (410) 786–7948, for information about the HH market basket.

Joan Proctor, (410) 786–0949, for information about the HH PPS Grouper and ICD–10 Conversion.

Lori Teichman, (410) 786–6684, for information about HHCAHPS.

Patricia Sevast, (410) 786–8135 and Peggye Wilkerson, (410) 786–4857, for survey and enforcement requirements for HHAs.

SUPPLEMENTARY INFORMATION:

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Acronyms

In addition, because of the many terms to which we refer by abbreviation in this final rule, we are listing these abbreviations and their corresponding terms in alphabetical order below:

ACH LOS Acute Care Hospital Length of Stay
ADL Activities of Daily Living
APU Annual Payment Update
BBA Balanced Budget Act of 1997, Pub. L. 105–33
BBRA Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999, Pub. L. 106–113
CAD Coronary Artery Disease
CAH Critical Access Hospital
CBSA Core-Based Statistical Area
CASPER Certification And Survey Provider Enhanced Reports
CHF Congestive Heart Failure
CMI Case-Mix Index
CMS Centers for Medicare and Medicaid Services
CoPs Conditions of Participation
COPD Chronic Obstructive Pulmonary Disease
CVD Cardiovascular Disease
CY Calendar Year
DM Diabetes Mellitus
DRA Deficit Reduction Act of 2005, Pub. L. 109–171, enacted February 8, 2006
FDL Fixed Dollar Loss
FI Fiscal Intermediaries
FR Federal Register
FY Fiscal Year
HAVEN Home Assessment Validation and Entry System
HCC Hierarchical Condition Categories
HCIS Health Care Information System
HH Home Health
HHABN Home Health Advance Beneficiary Notice
HHCAHPS Home Health Care Consumer Assessment of Healthcare Providers and Systems Survey
HH PPS Home Health Prospective Payment System
HHAs Home Health Agencies
HHRG Home Health Resource Group
HIPPS Health Insurance Prospective Payment System
IH Inpatient Hospitalization
IRF Inpatient Rehabilitation Facility
LTCH Long-Term Care Hospital
LUPA Low Utilization Payment Amount
MEPS Medical Expenditures Panel Survey
MMA Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. 108–173, enacted December 8, 2003
MSA Metropolitan Statistical Areas
MSS Medical Social Services
NRS Non-Routine Supplies
OBRA Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–2–3, enacted December 22, 1987
OCESAA Omnibus Consolidated and Emergency Supplemental Appropriations Act, Pub. L. 105–277, enacted October 21, 1998
OES Occupational Employment Statistics
OIG Office of Inspector General
OT Occupational Therapy
OMB Office of Management and Budget
PAC–PRD Post-Acute Care Payment Reform Demonstration
PEP Partial Episode Payment Adjustment
PT Physical Therapy
QAP Quality Assurance Plan
PRRB Provider Reimbursement Review Board
RAP Request for Anticipated Payment
RF Renal Failure

RFA Regulatory Flexibility Act, Pub. L. 96–354
RHHIs Regional Home Health Intermediaries
RIA Regulatory Impact Analysis
SLP Speech Language Pathology Therapy
SNF Skilled Nursing Facility
UMRA Unfunded Mandates Reform Act of 1995

I. Executive Summary

A. Purpose

This rule updates the payment rates for home health agencies (HHAs) for Calendar Year (CY) 2013 as required under section 1895(b) of the Social Security Act (the Act). The update to the prospective payment system addresses the market basket update, case-mix adjustments due to variation in costs among different units of services, adjustments for geographic differences in wage levels, outlier payments, the submission of quality data, and additional payments for services provided in rural areas.

B. Summary of the Major Provisions

In this final rule, we use the methods described in the CY 2012 HH PPS final rule (76 FR 68526) to update the prospective payment rates for CY 2013 using a rebased and revised market basket described in section III.C.1 of this rule. This rule discusses the nominal case-mix growth adjustment, policy changes regarding therapy reassessments and face-to-face encounter requirements, grouper enhancements, and requirements concerning the home health and hospice quality reporting programs. We also provide an update on the transition plan for ICD–10 and the home health study concerning home health care access. Lastly, this rule establishes alternative sanctions, in lieu of termination, for HHAs found not to be in compliance with Medicare Conditions of Participation.

C. Summary of Costs and Benefits

TABLE 1—COST AND BENEFITS

Provision description	Total costs	Total benefits	Transfers
CY 2013 HH PPS payment rate update.	N/A	The benefits of this final rule include paying more accurately for the delivery of Medicare home health services, providing additional regulatory flexibility for HHAs to comply with therapy requirements and face-to-face encounter documentation requirements.	The overall economic impact of this final rule is an estimated $10 million in decreased payments to HHAs.
HHA Survey Requirements and Alternative (or Intermediate) Sanctions That May be Imposed when HHAs are Out of Compliance with federal Requirements.	The components of the rule, which address survey requirements, codify current Survey and Certification policies and do not represent new costs. We estimate that the costs associated with Informal Dispute Resolution (IDR) will not be significantly greater than current actions related to termination actions. We estimate a onetime $2 million expense for system modifications to monitor Civil Money Penalties and annual operating expenses of $410,972 to maintain the system and provide surveyor training.	The benefits of this rule include establishing alternative (or intermediate) sanctions that may be imposed when HHAs are out of compliance with federal requirements, increasing provider participation related to survey findings via the IDR, and incentives for HHAs to maintain or regain compliance with the HHA Conditions of Participation through measures other than termination.	N/A.

II. Background

A. Statutory Background

The Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33, enacted August 5, 1997), significantly changed the way Medicare pays for Medicare HH services. Section 4603 of the BBA mandated the development of the HH PPS. Until the implementation of a HH PPS on October 1, 2000, HHAs received payment under a retrospective reimbursement system.

Section 4603(a) of the BBA mandated the development of a HH PPS for all Medicare-covered HH services provided under a plan of care (POC) that were paid on a reasonable cost basis by adding section 1895 of the Social Security Act (the Act), entitled ''Prospective Payment For Home Health Services.'' Section 1895(b)(1) of the Act requires the Secretary to establish a HH PPS for all costs of HH services paid under Medicare.

Section 1895(b)(3)(A) of the Act requires the following: (1) The computation of a standard prospective payment amount include all costs for HH services covered and paid for on a reasonable cost basis and that such amounts be initially based on the most recent audited cost report data available to the Secretary; and (2) the standardized prospective payment amount be adjusted to account for the effects of case-mix and wage levels among HHAs.

Section 1895(b)(3)(B) of the Act addresses the annual update to the standard prospective payment amounts by the HH applicable percentage increase. Section 1895(b)(4) of the Act governs the payment computation. Sections 1895(b)(4)(A)(i) and (b)(4)(A)(ii) of the Act require the standard prospective payment amount to be adjusted for case-mix and geographic differences in wage levels. Section 1895(b)(4)(B) of the Act requires the establishment of an appropriate case-mix change adjustment factor for significant variation in costs among different units of services.

Similarly, section 1895(b)(4)(C) of the Act requires the establishment of wage adjustment factors that reflect the relative level of wages, and wage-related costs applicable to HH services furnished in a geographic area

compared to the applicable national average level. Under section 1895(b)(4)(C) of the Act, the wage-adjustment factors used by the Secretary may be the factors used under section 1886(d)(3)(E) of the Act.

Section 1895(b)(5) of the Act gives the Secretary the option to make additions or adjustments to the payment amount otherwise paid in the case of outliers due to unusual variations in the type or amount of medically necessary care. Section 3131(b)(2) of the Patient Protection and Affordable Care Act of 2010 (the Affordable Care Act) (Pub. L. 111–148, enacted March 23, 2010) revised section 1895(b)(5) of the Act so that total outlier payments in a given year would not exceed 2.5 percent of total payments projected or estimated. The provision also made permanent a 10 percent agency-level outlier payment cap.

In accordance with the statute, as amended by the BBA, we published a final rule in the July 3, 2000 **Federal Register** (65 FR 41128) to implement the HH PPS legislation. The July 2000 final rule established requirements for the new HH PPS for HH services as required by section 4603 of the BBA, as subsequently amended by section 5101 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act (OCESAA) for Fiscal Year 1999, (Pub. L. 105–277, enacted October 21, 1998); and by sections 302, 305, and 306 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act (BBRA) of 1999, (Pub. L. 106–113, enacted November 29, 1999). The requirements include the implementation of a HH PPS for HH services, consolidated billing requirements, and a number of other related changes. The HH PPS described in that rule replaced the retrospective reasonable cost-based system that was used by Medicare for the payment of HH services under Part A and Part B. For a complete and full description of the HH PPS as required by the BBA, see the July 2000 HH PPS final rule (65 FR 41128 through 41214).

Section 5201(c) of the Deficit Reduction Act of 2005 (DRA) (Pub. L. 109–171, enacted February 8, 2006) added new section 1895(b)(3)(B)(v) to the Act, requiring HHAs to submit data for purposes of measuring health care quality, and links the quality data submission to the annual applicable percentage increase. This data submission requirement is applicable for CY 2007 and each subsequent year. If an HHA does not submit quality data, the HH market basket percentage increase is reduced 2 percentage points. In the November 9, 2006 **Federal Register** (71 FR 65884, 65935), we published a final rule to implement the pay-for-reporting requirement of the DRA, which was codified at § 484.225(h) and (i) in accordance with the statute. The pay-for-reporting requirement was implemented on January 1, 2007.

The Affordable Care Act made additional changes to the HH PPS. One of the changes in section 3131 of the Affordable Care Act is the amendment to section 421(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173, enacted on December 8, 2003) as amended by section 5201(b) of the DRA. The amended section 421(a) of the MMA now requires, for HH services furnished in a rural area (as defined in section 1886(d)(2)(D) of the Act) with respect to episodes and visits ending on or after April 1, 2010, and before January 1, 2016, that the Secretary increase, by 3 percent, the payment amount otherwise made under section 1895 of the Act.

B. System for Payment of Home Health Services

Generally, Medicare makes payment under the HH PPS on the basis of a national standardized 60-day episode payment rate that is adjusted for the applicable case-mix and wage index. The national standardized 60-day episode rate includes the six HH disciplines (skilled nursing, HH aide, physical therapy, speech-language pathology, occupational therapy, and medical social services). Payment for NRS is no longer part of the national standardized 60-day episode rate and is computed by multiplying the relative weight for a particular NRS severity level by the NRS conversion factor (See section II.D.4.e). Payment for durable medical equipment covered under the HH benefit is made outside the HH PPS payment system. To adjust for case-mix, the HH PPS uses a 153-category case-mix classification system to assign patients to a home health resource group (HHRG). The clinical severity level, functional severity level, and service utilization are computed from responses to selected data elements in the OASIS assessment instrument and are used to place the patient in a particular HHRG. Each HHRG has an associated case-mix weight which is used in calculating the payment for an episode.

For episodes with four or fewer visits, Medicare pays national per-visit rates based on the discipline(s) providing the services. An episode consisting of four or fewer visits within a 60-day period receives what is referred to as a low utilization payment adjustment (LUPA). Medicare also adjusts the national standardized 60-day episode payment rate for certain intervening events that are subject to a partial episode payment adjustment (PEP adjustment). For certain cases that exceed a specific cost threshold, an outlier adjustment may also be available.

C. Updates to the HH PPS

As required by section 1895(b)(3)(B) of the Act, we have historically updated the HH PPS rates annually in the **Federal Register**. The August 29, 2007 final rule with comment period set forth an update to the 60-day national episode rates and the national per-visit rates under the Medicare prospective payment system for HHAs for CY 2008. The CY 2008 rule included an analysis performed on CY 2005 HH claims data, which indicated a 12.78 percent increase in the observed case-mix since 2000. Case-mix represents the variations in conditions of the patient population served by the HHAs. Subsequently, a more detailed analysis was performed on the 2005 case-mix data to evaluate if any portion of the 12.78 percent increase was associated with a change in the actual clinical condition of HH patients. We examined data on demographics, family severity, and non-HH Part A Medicare expenditures to predict the average case-mix weight for 2005. We identified 8.03 percent of the total case-mix change as real, and therefore, decreased the 12.78 percent of total case-mix change by 8.03 percent to get a final nominal case-mix increase measure of 11.75 percent ($0.1278 * (1 - 0.0803) = 0.1175$).

To account for the changes in case-mix that were not related to an underlying change in patient health status, we implemented a reduction over 4 years in the national standardized 60-day episode payment rates. That reduction was to be 2.75 percent per year for 3 years beginning in CY 2008 and 2.71 percent for the fourth year in CY 2011. In the CY 2011 HH PPS final rule (76 FR 68532) we updated our analyses of case-mix change and finalized a reduction of 3.79 percent, instead of 2.71 percent, for CY 2011 and deferred finalizing a payment reduction for CY 2012 until further study of the case-mix change data and methodology was completed.

For CY 2012, we published the November 4, 2011 final rule (76 FR 68526) (hereinafter referred to as the CY 2012 HH PPS final rule) that set forth the update to the 60-day national episode rates and the national per-visit rates under the Medicare prospective payment system for HH services. In

addition, as discussed in the CY 2012 final rule (76 FR 68528), our analysis indicated that there was a 22.59 percent increase in overall case-mix from 2000 to 2009 and that only 15.76 percent of that overall observed case-mix percentage increase was due to real case-mix change. As a result of our analysis, we identified a 19.03 percent nominal increase in case-mix. To fully account for the 19.03 percent nominal case-mix growth which was identified from 2000 to 2009, we finalized a 3.79 percent payment reduction in CY 2012 and 1.32 percent payment reduction for CY 2013.

Following up on our commitment to further study case-mix change over time and the methodology used to determine real versus nominal case-mix change, we procured an independent review of our methodology by a team at Harvard University, lead by Dr. David Grabowski. That review led to a slight enhancement of the case-mix model, but otherwise confirmed the model's accuracy (please see the report located at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HomeHealthPPS/Downloads/HHPPS_HHAcasemixgrowthFinalReport.pdf*).

III. Summary of Proposed Provisions and Analysis of and Responses to Public Comments

A. Case-Mix Measurement

As described in the CY 2013 HH PPS proposed rule issued in the July 13, 2012 **Federal Register** (77 FR 41548) and in section II.B of this rule, we have implemented payment reductions to the national standardized 60-day episode payment rates over the past 5 years to account for nominal case-mix growth, that is, case-mix growth unrelated to changes in patient acuity.

When including the latest data available, data from 2000 to 2010, we determined that there was a 20.08 percent nominal case-mix change during that time period. To fully account for the remainder of the 20.08 percent increase in nominal case-mix beyond that which has been accounted for in previous payment reductions, we estimated that the percentage reduction to the national standardized 60-day episode rates for nominal case-mix change would be 2.18 percent. We considered proposing a 2.18 percent reduction to account for the remaining increase in measured nominal case-mix, and solicited comments on that proposal. However for CY 2013, we proposed to move forward with the 1.32 percent payment reduction to the national standardized 60-day episode rates as promulgated in the CY 2012 HH PPS final rule. We note that analysis, to date, would seem to indicate a high likelihood of continued growth in nominal case-mix going forward. As such, we will continue to monitor real and nominal case-mix change and make updates as appropriate. We will consider any and all analyses as it continues to address the issue of the increase in nominal case-mix in future rulemaking.

The following is a summary of the comments we received regarding the case-mix measurement proposal.

Comment: One commenter stated that the payment reductions for nominal case-mix growth are based on the unsubstantiated assertion that HHAs have intentionally ''gamed the system'' by coding their patients at a higher clinical severity level in order to receive higher payments.

Response: As we have stated in previous regulations, we believe nominal coding change results mostly from changed coding practices, including improved understanding of the ICD–9 coding system, more comprehensive coding, changes in the interpretation of various items on the OASIS and in formal OASIS definitions, and other evolving measurement issues. Our view of the causes of nominal coding change does not emphasize the idea that HHAs or clinicians in general ''gamed the system.'' However, since our goal is to pay increased costs associated with real changes in patient severity, and nominal coding change does not demonstrate that underlying changes in patient severity occurred, we believe it is necessary to exclude nominal case-mix effects that are unrelated to changes in patient severity.

Comment: Several commenters stated that CMS should not implement across-the-board reductions in payments, but rather apply the reductions only to HHAs that are abusing the system, or upcoding. Commenters stated that the payment reductions penalize agencies where case-mix increases have been less than average. A commenter stated that those agencies with a low average case-mix should be protected from further cuts since the cuts are based on a high case-mix weight. Other commenters stated that across the board cuts do not directly address problems with upcoding. One commenter stated that instead of implementing an across the board cut, CMS should redirect its focus to approaches that target specific practices that have caused the case-mix increase and that these methods should be implemented in conjunction with rebasing.

Response: For a variety of reasons, as we have noted in previous regulations, we have not proposed targeted reductions for nominal case-mix change. Many agencies have small patient populations, which would make it practically impossible to reliably measure nominal case-mix change at the agency level. Further, we believe changes and improvements in coding practices have been widespread, making it difficult to clearly categorize agencies into high and low coding-change groups. As discussed in the CY 2012 final rule, when performing an independent review of our case-mix measurement methodology, Dr. David Grabowski and his team at Harvard University agreed with our reasons for not proposing targeted reductions, stating their concerns about the small sample size of many agencies and their findings of significant nominal case-mix increases across different classes of agencies (please see the report located at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HomeHealthPPS/Downloads/HHPPS_HHAcasemixgrowthFinalReport.pdf*).

We note that although we have stated in past regulations that a targeted system would be administratively burdensome, the reasons we have just presented go beyond administrative complexity. Certain comments seem to assume that we can use case-mix levels to precisely identify those agencies with inappropriate coding practices. We do not agree that agency-specific case-mix levels can precisely differentiate agencies with inappropriate coding practices from other agencies that are coding appropriately. System wide, case-mix levels have risen over time while data on patient characteristics indicate little change in patient severity over time. That is, the main problem is not the level of case-mix reached over a period of time, but the amount of change in the billed case-mix weights not attributable to underlying changes in actual patient severity. We continue to explore potential changes to the HH PPS which could deter future nominal case-mix growth, such as the recalibration implemented in the CY 2012 final rule, and possible changes in conjunction with rebasing. However, we believe we still need to implement payment reductions to account for nominal case-mix change from the inception of the HH PPS through 2009.

Comment: A commenter stated that across the board cuts appear to be based on high profit margins of agencies that are not committed to serving all patients.

Response: We note that the payment reductions are based on our assessment of real and nominal case-mix growth. High profit margins do not play a role

in our calculations of the payment reductions.

Comment: Commenters recommended that CMS target specific HHAs by reducing case-mix adjustments for HHAs with Medicare margins that are significantly above average for similarly situated HHAs. A commenter cited MedPAC's report of the variation in margins for home health providers and stated that the vast disparity in Medicare margins among HHAs makes across the board payment cuts not only unwarranted and unfair, but also potentially devastating for those whose costs exceed Medicare reimbursement.

Response: Case-mix adjustments are based on changes in real and nominal case-mix over time. Our analyses of coding change among many classifications of agencies, as described in the CY 2012 proposed and final rules, found relatively little difference across provider types in the amount of coding change. An examination of coding change by profitability may have similar results, as profitability may reflect efficiency rather than upcoding. We further note that a classification by profitability would be complicated by the fact that profitability can vary from year to year.

Comment: A commenter stated that applying the 1.32 percent payment reduction would be premature and that CMS should wait to apply the reduction until there are more data to review for 2011 and in particular 2012, where there has been a significant shift in the case-mix away from therapy episodes. The commenter stated that the 2012 recalibration will likely change agency behavior and, in turn, have an effect on the average case-mix weight. The commenter urged CMS to wait to make further payment reductions until it can analyze complete data sets from 2011 and 2012.

Response: As we have stated in previous rulemaking since the start of the HH PPS, we continue to use data samples that represent a 2-year lag in service dates relative to the year in which we conduct the analysis. We note that while we analyzed 2010 data, which showed that we would need to implement a 2.18 percent reduction to account for nominal case-mix growth through 2010, we only proposed to implement a 1.32 percent reduction which would account for nominal case-mix growth from 2000 to 2009. We agree with the commenter that the recalibration in CY 2012 may have an effect on the average case-mix weight and we note that this has been taken into account when considering the 1.32 percent reduction versus than the 2.18 percent reduction. We would like to point out that the 1.32 percent payment reduction was finalized in the CY 2012 rule and we believe that with the steady increases in nominal case-mix growth over the years, there is a need to implement a payment reduction to account for this growth. We plan to continue to analyze data as it becomes available and propose payment adjustments accordingly.

Comment: A commenter stated that CMS should use the most current metrics in analyzing case-mix growth and that they were willing to help with this effort.

Response: Currently, we use claims data matched to OASIS assessments and Part A information, as well as HCC data, in the analysis of real and nominal case-mix growth. The commenter did not specify what they consider to be the most current metrics. However, we will continue to solicit concrete suggestions for other metrics that can be incorporated in our analysis.

Comment: A commenter stated that CMS proposed a 1.32 percent decrease in payments to account for nominal case-mix growth from 2000 to 2010.

Response: We would like to clarify that the 1.32 percent decrease in payments was finalized in the CY 2012 final rule in order to account for nominal case-mix growth from 2000 to 2009. Our updated analysis shows that in order to account for nominal case-mix growth from 2000 to 2010, we would need to implement a 2.18 percent reduction to payments for CY 2013. Therefore, for this rule, we are finalizing the 1.32 percent case-mix adjustment.

Comment: A commenter stated that the proposed national standardized 60-day episode payment rate has only increased by a total of 1 percent in 12 years.

Response: While the national standardized 60-day episode payment rate has not increased substantially in recent years, overall Medicare HH expenditures increased from $10.1 billion in 2003 to $18.6 billion in 2011, an increase of 84 percent, and the number of HH users increased 30 percent during the same time period. However, payment for an episode does not solely rely on the national standardized 60-day episode base payment rate. One must take into account the average case-mix weight when looking at HH PPS payments. The average case-mix weight has continually increased over the years while our analysis shows relatively lower real case-mix growth. The average case-mix weight in 2000 was 1.0959 while the average case-mix weight in 2009 was 1.3435, a total case-mix change from 2000 to 2009 of 22.59 percent ((1.3435 − 1.0959)/1.0959). When taking into account the 15.76 percent of total case-mix change estimated as real from 2000 to 2009, the nominal case-mix change measure is 19.03 percent (0.2259 * (1 − 0.1576) = 0.1903) from 2000 to 2009. Therefore, we believe a payment reduction is necessary to align payments with the real case-mix growth we have observed.

Comment: A commenter stated that a further payment reduction is unwarranted especially with rebasing next year.

Response: We are finalizing a 1.32 percent payment reduction to the CY 2013 national standardized 60-day episode base payment rate intended to account for increases in billed case-mix weights, resulting in overpayments, that have occurred between 2000 and 2009, above and beyond the real change in case-mix. Since our analysis indicates that margins will remain adequate, and our analysis for purposes of rebasing is still in process, we see no reason to defer the nominal case-mix adjustment in this rule.

Comment: A commenter recommended that CMS find alternative ways to account for nominal case-mix growth that do not impose payment reductions to the HH PPS.

Response: Section 1895(b)(3)(B)(iv) of the Act gives CMS the authority to implement payment reductions for nominal case-mix growth by applying reductions to the base payment. We continue to explore ways to prevent future nominal case-mix growth and we welcome any suggestions.

Comment: Some commenters stated that CMS should increase its program integrity efforts to combat fraud, waste, and abuse. Other commenters stated that CMS should eliminate the proposed payment reduction and instead ''conduct targeted claims review and deny payment for claims where the case-mix weight is not supported by the plan of care.'' In addition, some commenters recommended that CMS use existing medical review to identify and target specific agencies with abusive coding practices rather than imposing an across the board payment reduction, and one commenter stated that review by Medicare Administrative Contractors and edits can be used to determine if agencies are upcoding; the commenter believes that such a method would encourage accurate coding.

Response: We have taken various measures to reduce payment vulnerabilities and the federal government has launched actions to directly identify fraudulent and abusive activities. Commenters should be aware of tip lines available that can help

support investigative efforts of the federal government. The Office of the Inspector General, HHS Web site at *http://oig.hhs.gov/fraud/report-fraud/index.asp,* provides information about how to report fraud. Another Web site, *http://www.stopmedicarefraud.gov/index.html,* is oriented to Medicare patients and their families and provides information about recognizing fraud.

In addition, while we appreciate the commenters' suggestion about the claims review, we note that because our resources are not sufficient to conduct claims review on a scale that would be required to counteract the broad-based uptrend in case-mix weights, we cannot perform the review as suggested.

Furthermore, we note that our statistical methods using available administrative data are feasible and sufficiently reliable to utilize for the purpose of case-mix reductions.

Comment: A commenter requested that CMS adopt the approach outlined in the Home Health Care Access Protection Act of 2012 (H.R. 6059, 112th Cong.), which is sponsored by Rep. James McGovern and Rep. Walter Jones, and involves working with the home health industry to develop criteria and evaluating a medical records sample to determine reductions, rather than relying on hypothetical extrapolations.

Response: We already have commissioned a review of the case-mix change methodology, as we described in the CY 2012 proposed and final rule. A research team of highly qualified personnel evaluated our case-mix change methodology and found that, overall, our models to assess real and nominal case-mix growth are robust. We have not commissioned work analyzing case-mix change based on information from a medical records sample. We note that a medical records sample could be used to determine payment reductions; however, there are many difficulties and limitations to this analysis. First, to produce reliable results, we would need to collect a large sample, which would require significant financial resources that may not be available. We would need a sizable sample of records from both the IPS period and from a follow-up year (for example, 2009). In addition, based on our past experience in retrieving old records, it is difficult to find enough records to constitute a valid broad-based sample. Further, it is possible that using information from a medical records sample might not return the findings that the proponents suggest, because nominal case-mix increases partly result from reporting practices that have changed throughout time from a state of underreporting to a state of more complete reporting. Therefore, one would expect that the source records would likely reflect underreporting in the early years, just as the OASIS reflected underreporting in the early years.

Comment: A commenter stated that the CMS case-mix change methodology does not recognize the industry's increasing ability to care for more serious medical conditions in the home (caused by technology improvements, etc.) and ignores changes in patient severity. We received a number of comments stating that home health patients are now more complex with more co-morbidities and chronic conditions than in previous years and that patients that would have previously been referred to health care facilities, such as skilled nursing facilities, are now being cared for at home. Moreover, the commenters stated that other healthcare settings have developed stricter admission requirements, thereby increasing the number of home health patients with high severity levels. A commenter stated that Transitional Care Units (TCUs) and Skilled Nursing Facilities (SNFs) are refusing to accept complex patients from the hospital and implied that those patients were being diverted to home health care.

Response: To assess whether patients are more complex with more co-morbidities and chronic conditions than previous years, we examined the change in HCC variables over time, examining the average values for 2005 and 2010, the most recent complete data available. We note that our analysis did not find evidence that home health patients have gotten sicker over time as measured by the number of HCC indicators present. The mean number of HCC conditions present was the same in 2005 as in 2010. In addition, our analyses showed that while the prevalence of some HCCs has increased since 2005, the prevalence of others has decreased. Based on the relationship of individual HCC variables to case-mix level, the changes in the HCC indicators that have occurred since 2005 actually lead to a prediction of slightly lower expected case-mix. Furthermore, data we presented in the CY 2011 HH PPS final rule (75 FR 70379) indicate that hospital lengths of stay have been declining slightly and lengths of stay in residential post-acute settings before home health admission have increased between 2001 and 2008. We note that the proportion of initial non-LUPA home health episodes preceded by acute care within the previous 60 days has declined between 2001 and 2008, from 70.0 percent to 62.7 percent. This indicates more patients are being admitted to HHAs from non-institutional settings, such as from the community. Also, we note that acute care stays, which normally precede stays in institutional post-acute care settings, are decreasing in the stay histories of home health patients. Therefore, we question whether there is any evidence showing an increase in home health patient severity as a result of more patients coming to home health as a result of diversion from other post-acute care settings.

Comment: Commenters stated that CMS should suspend or eliminate case-mix payment reductions because the data used to determine the reductions do not recognize real increases in severity due to earlier and sicker hospital discharges.

Response: Although we recognize that average lengths of stay in acute care settings are in decline, our analysis shows that agencies are, in fact, caring for proportionately fewer, not more, post-acute patients. Since 2001, the average length of stay (LOS) in acute care preceding home health has declined by about one day, from 7 days to 6 days. Between 2008 and 2009, the average length of stay in acute care leading directly to home health admission declined from 6.07 days to 5.85 days. However, agencies are caring for fewer highly acute patients in their caseloads. The proportion of non-LUPA episodes in which the patient went from acute care directly to home health within 14 days of acute hospital discharge declined substantially between 2001 and 2008, from 32 percent to 23 percent. Also, the median acute hospital LOS for these non-LUPA episodes with a 14-day look back period remained unchanged at 5 days between 2002 and 2008 (see 75 FR 70379). In 2009, the median LOS declined to an estimated four days (see Table 2). The distribution of lengths of stay has been fairly stable, with declines since 2006 limited to the upper half of lengths of stay.

We believe the declining proportion of home health cases with a recent acute discharge is due in part to more patients incurring re-certifications after admission to home health care, and also due to more patients entering care from the community. The shortening lengths of stay at the right tail (high percentiles) of the distribution may reflect changing utilization of long-term-care hospitals during recent years. The conclusion we draw from these data is that while patients on average have shorter hospital stays, agencies are also facing a smaller proportion of home health episodes in which the patient has been acutely ill in the very recent past. Also, the detailed data on the distribution of stay lengths suggest that for the most

part lengths of stay for such patients remained fairly stable through 2009.

TABLE 2: Percentiles of Acute Hospital Length of Stay (Days) (2006-2009)

Year	5th	10th	20th	30th	40th	50th	60th	70th	80th	90th	99th
2006	1	2	3	3	4	5	6	7	9	12	28
2007	1	2	3	3	4	5	6	7	9	12	28
2008	1	2	3	3	4	5	5	7	8	12	27
2009	1	2	3	3	4	4	5	6	8	11	26

Note: Based on a 10 percent random beneficiary sample of FFS home health users; excludes LUPA episodes and includes only episodes where acute hospital discharge occurred within 14 days of the from-date of the 60-day episode claim and the patient's first destination post-discharge under Part A was home health care. Updates to the sample file are the likely reason for a few differences in percentile values from previously published data.

Furthermore, we think that acuity of patients has been increasingly mitigated by lengthening post-acute stays for the substantial number of home health patients who use residential post-acute care prior to an episode. Our data show that patients who enter residential post-acute care before home health admission have experienced increasing lengths of stay in post-acute care since 2001. Using a 10 percent random beneficiary sample, we computed the total days of stay (including both acute and post-acute care days) for home health episodes with common patterns of pre-admission utilization during the 60 days preceding the beginning of the episode. We included patients whose last stay was an acute care stay, or whose next-to-last stay was an acute care stay with a follow-on residential post-acute care stay, or whose third from last stay was an acute care stay followed by two post-acute care stays. These common patterns accounted for 55 percent of the initial episodes in 2001 and 42 percent in 2008. We found that total days of stay during the 60 days leading up to the episode averaged 12.6 days in 2001, and rose to 12.8 days in 2008. This small change in total days of stay during a period when acute care LOS was declining was due to increasing lengths of stay in residential post-acute care for these patients. For example, within the 30 days before admission, an average LOS in the post-acute care setting for episodes preceded by an acute care stay that was the next-to-last stay, and where the post-acute care stay was the very last stay before the claim from-date, increased from 12.7 to 14.3 days. Our interpretation of these statistics is that patient acuity has been increasingly mitigated by longer post-acute stays for the substantial number of home health patients that use residential post-acute care prior to the start of a home health episode. Patient acuity was also mitigated by growing numbers of home health re-certifications.

Comment: A commenter stated that the model used to assess real case-mix growth ignores the fact that more individuals are becoming eligible for Medicare services and there is an increasing number of Medicare beneficiaries who are over 85 years of age and need additional services.

Response: We note that increasing eligibility does not in itself imply more severity. Rather, our statistical analysis shows that there are more patients with about the same severity of illness level. With regards to the comment about the proportion of older patients, we note that we take into account the proportion of home health patients over the age of 85 in our model to estimate real case-mix growth. The results of the model show that while the proportion of patients over age 85 has increased somewhat, this change is only associated with small changes in real case-mix.

Comment: A commenter stated that relevant data shows that home health care patients have increased functional limitations and more complex clinical conditions than in past years.

Response: As stated in the CY 2012 proposed rule, a detailed analysis of Medicare Expenditure Panel Survey (MEPS) data (which is independent of our real case-mix model) was performed to examine the severity of the Medicare home health population. The trends in health status from 2000 to 2008 were analyzed.

The analysis showed a slight increase in the overall health status of the Medicare home health population, and in particular, the percent of home health Medicare beneficiaries experiencing ''extreme'' or ''quite a bit'' of work-limiting pain decreased substantially, from 56.6 percent in 2000 to 45.4 percent in 2008 (p=0.039). While we recognize that there are some limitations to this analysis, we concluded that the results of this analysis provide no evidence of an increase in patient severity from 2000 to 2008.

In addition, we would like to note that during the CY 2012 rulemaking cycle, we incorporated HCC data, which is used by CMS to risk-adjust payments to managed care organizations in the Medicare program, in our model to assess real case-mix growth. Our findings of real and nominal case-mix growth, even when incorporating HCC data, were consistent with past results. Most of the case-mix change was identified as nominal case-mix change.

We will continue to solicit suggestions for other data that can be

incorporated into our analysis of real and nominal case-mix growth.

Comment: A commenter stated the models used to determine real case-mix change do not consider increased therapy needs in the home health population.

Response: The models were intended to analyze real changes in case-mix over time and do not distinguish whether these changes are due to increases in therapy use or other factors. We do not believe that it would be appropriate to include utilization-related variables, such as the number of therapy visits, as predictors in the model, as such variables are provider-determined. In addition, the goal of these analyses was not to develop refinements to the payment system but rather to examine changes in measures of patient acuity that are not affected by any changes in provider coding practices. For example, the models do incorporate information about change in the types of patients more likely to use therapy, such as post-acute joint replacement patients. CMS has access to the claims histories and other administrative data for patients in our samples, and we welcome suggestions about how to better use these resources in finding alternative variables more indicative of the need for therapy, particularly if the suggestions involve the use of data and variables that are not HHA-determined.

Comment: Some commenters suggested that CMS recognize changes in patient severity, improved patient assessment, and coding and reimbursement changes in its case-mix methodology and work with NAHC to uncover the reasons for case-mix weight changes and to develop a valid methodology for payment reform. A commenter urged CMS to continue to evaluate and refine the case-mix methodology so that it targets drivers of case-mix change and more effectively captures real case-mix change. Another commenter stated that CMS should consult with stakeholders to agree upon factors that should be considered when calculating real and nominal case-mix growth.

Response: Through the public comment process, we have obtained industry views as to the reasons for coding changes. As we have pointed out in the past, reasons offered, such as improved coding, are not a sufficient basis for raising payment rates, particularly if data does not indicate a significant increase in the severity of home health patients. To the extent case-mix change is due to better methods of assessing patients in the home health setting, this does not justify making reimbursements as though the patients really were different in their case-mix levels of severity. Over the last several years, we have continued to evaluate our data and methods, and in the CY 2012 proposed and final rule, we described that we procured an independent review of our methodology to assess real and nominal case-mix growth performed by a team at Harvard University led by Dr. David Grabowski. The Harvard team was asked to review the appropriateness and strength of evidence from the case-mix change methodology we used. After their examination, they concluded that the methodology was robust and valid. We plan to continue to evaluate the case-mix methodology and potentially refine the methodology as needed. We will continue to solicit suggestions on possible ways to improve our models.

Comment: Commenters stated that providers have had to absorb several rounds of payment reductions due to upcoding, which have contributed to lower growth in home care spending. They stated that the growth rate in Medicare home care spending has dramatically declined to just 1.0 percent from 2010 to 2011.

Response: We note that the purpose of the payment reduction is to adjust payments to better reflect real changes in patient severity. In addition, slower Medicare home care spending growth may be due to a number of factors. We note that we have conducted analyses looking at the number of paid claims, both nationally and by state, for 2009 through 2011. Our analyses show that the volume of paid claims is consistent with previous years. Although paid claims generally go up very slightly every year and they did not in 2010, this could be attributed to many factors, including CMS's fraud and abuse efforts, or simply a more general trend in Medicare claims volume.

Comment: One commenter estimated that over 40 percent of existing HHAs currently operate with negative financial margins on Medicare revenues and that when all patient costs and revenues are considered, overall margins for all freestanding HHAs are estimated to be 3 percent in 2012. Another commenter stated that in the states where they operate, more than half or nearly half of all home health providers are reimbursed less than cost by Medicare. Specifically, the commenter stated that 59 percent of HHAs in Missouri, 45.9 percent of HHAs in Illinois, 59.0 percent of HHAs in Oklahoma, and 67.1 percent of HHAs in Wisconsin are operating with margins less than zero. The commenter urged CMS to eliminate the proposed 1.32 percent reduction so that payments more closely reflect the ''economic realities'' of HHAs.

Response: Regarding the commenters' concerns about the effects of the proposed reductions on providers' viability and the resultant access risks, we note that in their March 2012 Report to the Congress, MedPAC projected Medicare margins for home health agencies in 2012 to average 13.7 percent. While it is unclear whether the projection of average Medicare margins of 13.7 percent in 2012 factors in potential changes in the therapy level distribution due to the CY 2012 recalibration, and therefore actual margins could be slightly different, we note that our analysis of payments and costs also projects average margins to be adequate. Furthermore, when examining the impact of the 1.32 percent payment reduction, providers need to take into account all of the other policies in the CY 2013 rule, such as changes to the fixed dollar loss (FDL) ratio as well as the wage index and payment update. When examining all of the CY 2013 policies finalized in this final rule, our data indicates that the impact is minimal, with an average effect on payments of −0.01 percent. In addition, when taking into account all of the CY 2013 policies, Illinois, Wisconsin, and Missouri are expected to have a net increase in payments in CY 2013 (see section IV. Regulatory Impact Analysis). Furthermore, based on the results of our analysis on estimated margins by state, there is no indication that the four states mentioned by the commenter will be more adversely affected by the CY 2013 policies compared to other states.

Comment: A commenter stated that while the number of HHAs may continue to grow, the growth is limited to certain geographic areas and that the across the board payment reductions are ''taking their toll'' on HHAs with below average margins. Another commenter stated ''Any efficiency available to control the cost of an episode of care has been implemented, and rate cuts are now having a direct, linear impact of providers.''

Response: We note that our analysis of margins and MedPAC's reported margins for 2010 indicate that payments should be adequate. In addition, we reiterate that the purpose of the payment reduction is to align payment with real, observed changes in patient severity. Moreover, while we considered a 2.18 percent reduction to the national standardized 60-day episode rates based on our analysis using 2010 data, we are finalizing a 1.32 percent payment reduction for this year.

Comment: A commenter stated that the case-mix model used to determine

real case-mix growth does not account for real case-mix changes in patient severity experienced by hospital-based home health agencies and that the proposed payment reduction would adversely impact hospital-based home health agencies. Commenters stated that the data used to calculate the case-mix reduction is skewed to free-standing facilities and that free-standing HHAs are selective while hospital-based HHAs take on all types of patients discharged from the hospital. The commenters did not think the reduction was appropriate for hospital-based home health care. Another commenter stated that hospital-based HHAs average Medicare margin was -6.29 percent in 2010 and that it can be assumed that overall margins of this HHA sector is well below zero percent given lower-than-cost Medicaid and Medicare Advantage payment rates.

Response: In the CY 2012 proposed and final rule, we described the results of the independent review of our models to assess case-mix growth performed by a team at Harvard University led by Dr. David Grabowski. We described that the review included an examination of the predictive regression models and data used in CY 2011 rulemaking, and further analysis consisting of extensions of the model to allow a closer look at nominal case-mix growth by categorizing the growth according to provider types and subgroups of patients. Two of the extensions that we examined focused on free standing and facility-based HHAs. The extensions showed a large and not dissimilar rate of nominal case-mix growth from 2000 to 2008 for the two groups, 17.86 percent nominal case-mix increase for free-standing HHAs and 14.17 percent nominal case-mix increase for facility-based increase. Given the results of our analysis, which showed significant nominal case-mix growth for freestanding versus hospital based HHAs, we believe that the model is not skewed to a particular provider type and that an across the board reduction is appropriate given the widespread nominal case-mix growth. We note that our analysis on Medicare Cost Report data for hospital-based HHAs does indicate that Medicare margins are lower than those of freestanding HHAs.

Comment: Commenters criticized the model's reliance on hospital data, stating that over half of all Medicare home health patients are admitted to care from a setting other than a hospital and many of the patients receive home health care far extended past an initial episode. Commenters implied that the All Patient Refined Diagnosis Related Groups (APR–DRG) variables are less relevant for multiple episode patients.

Response: We disagree that the use of the hospital information in the case-mix change analysis is so limited. Also, with the addition of HCC data, we have enhanced the robustness of the variable set used for the analysis to include physician diagnoses and diagnoses of other clinicians, as well as Medicaid eligibility. Regardless of whether the patient came directly from a non-hospital-setting (for example, home or an institutional post-acute stay), information from a hospital stay preceding home health is typically relevant to the type of patient being seen by the HHA.

Comment: A commenter stated that case-mix reductions do not take into account the cost of new regulatory burdens, such as documentation for face-to-face encounters and HHCAHPS.

Response: We note that the 1.32 percent payment reduction is to account for nominal case-mix increases (increases in case-mix that are not related to real changes in patient acuity). Case-mix reductions are not intended take into account the costs of regulatory burdens. The models used to assess real case-mix growth take into account factors that would affect patient severity.

Comment: A commenter stated that nominal case-mix growth cannot be assumed using CMS's methodology because of the change from ICD–9 to ICD–10.

Response: Our analysis of case-mix used data from 2000 to 2010 to determine the amount of real and nominal case-mix growth and did not take into account a change from ICD–9 to ICD–10. The change is currently not relevant to our analysis of case-mix growth. After we transition from ICD–9 to ICD–10, we may examine the effects of the change on case-mix growth as data become available and propose payment adjustments accordingly.

Comment: One commenter said that the payment reductions to account for nominal case-mix growth are arbitrary and appear to reduce payments without data to show that they are necessary.

Response: We disagree. The prediction model for real case-mix is an empirical model, the findings of which are based entirely on empirical evidence. The real case-mix prediction model and its application account for changes in the HH patient population by quantifying the relationships between patient demographics, clinical characteristics, and case-mix. The relationships in conjunction with updated measures of patient characteristics are used to quantify real case-mix change. The characteristics in the model include proxy measures for severity, including a variety of measures, namely, demographic variables, hospital expenditures, expenditures on other Part A services, Part A utilization measures, living situation, type of hospital stay, severity of illness during the stay, and risk of mortality during the stay. Last year, additional diagnosis data, based on physician and hospital diagnoses in the patient's claims history, were added in the form of HCC indicators. Measurable changes in patient severity and patient need, factors mentioned by commenters, are an appropriate basis for changes in payment. Our model of real case-mix change has attempted to capture such increases.

We recognize that models are potentially limited in their ability to pick up more subtle changes in a patient population such as those alluded to by various commenters. Yet in previous regulations we presented additional types of data suggestive of only minor changes in the population admitted to home health, and very large changes in case-mix over a short period. We included among these pieces of evidence information about the declining proportion of home health episodes associated with a recent acute stay for hip fracture, congestive heart failure, stroke, and hip replacement, which are four situations often associated with high severity and high resource intensity (72 FR 49762, 49833 (August 2007)). We presented information showing that resource use did not increase along with case-mix increases (72 FR 49833). We also analyzed changes in OASIS item guidance that clarified definitions and could have led to progress in coding practice (72 FR 25356, 25359 (May 2007)). We found some small and scattered changes indicative of worsening severity but these changes did not commensurate with the increase in case-mix weights (72 FR 25359). In our discussion, we cited specific instances where agencies' changing understanding of coding could have contributed to the adverse changes. However, as previously stated, Medicare payments should be based on patient level of severity, and not on coding practices.

In the CY 2011 HH PPS proposed rule, we identified a very large, sudden 1-year change (+0.0533) in the average case-mix weight between 2007 and 2008. This increase is partly attributable to the reporting of secondary diagnosis codes (see 75 FR 43242 (July 23, 2010)). The use of secondary diagnosis codes in the case-mix algorithm was introduced

in 2008 as part of the new case-mix system.

In summary, we believe the payment reductions to account for nominal case-mix growth are not arbitrary and data used in our model as well as other data indicate only small changes in patient severity while we have observed large changes in the average case-mix weight over time. Therefore, in order to better align payment with real changes in patient severity, we are finalizing a 1.32 percent payment reduction for CY 2013.

Comment: One commenter stated that the actual program spending on home health is generally less than the Congressional Budget Office estimates between 1996 to 2009. Therefore they questioned CMS's authority to implement payment reductions for nominal case-mix growth. They stated that in home health, Medicare expenditures have been equal to or lower than projections and estimates by CBO since the beginning of the HH PPS and therefore, there is no increase in aggregate expenditures that warrants application of the statutory authority under section 1895(b)(3)(B)(iv) of the Act.

Response: Section 1895(b)(3)(B)(iv) of the Act gives CMS the authority to implement payment reductions if there are changes in aggregate payments that are a result of nominal case-mix growth. Our data show changes in actual aggregate payments due to nominal case-mix growth, and therefore in the CY 2013 HH PPS proposed rule, we proposed to move forward with a 1.32 percent reduction to the HH PPS rates.

Comment: A commenter stated that across the board reduction can cause or exacerbate access issues for high-cost patients. Another commenter stated that they are seeing access problems for higher-cost patients. The commenter suggested that CMS evaluate the payment model to determine whether changes are needed to address the unintended impact of the across the board rates on providers and evaluate the payment model based on its ability to maintain access to care for all eligible Medicare beneficiaries. Commenters urged CMS to make modifications to the payment system so that there are not financial disincentives to accepting a disproportionate number of high cost patients.

Response: We appreciate the commenter's concerns. To address concerns that some beneficiaries are at risk of not having access to Medicare home health services and that the current HH PPS may encourage providers to adopt selective admission patterns, section 3131(d) of the Affordable Care Act requires the Secretary to conduct a study on home health agency costs involved with providing access to care to low-income Medicare beneficiaries or beneficiaries in medically underserved areas, and in treating beneficiaries with varying levels of severity of illness (specifically, beneficiaries with ''high levels of severity of illness''). Pending results of the study, CMS may make recommendations for revisions to the HH PPS and recommendations for legislation and/or administrative action which may address any access issues identified in the study. In addition, we will continue to monitor for unintended consequences of the payment reductions and we will seek information from other government agencies on access. Finally, we will use Open Door Forums and other venues to solicit information from agencies on any actual access issues they witness.

Comment: A commenter stated that CMS should use information from the home health study under section 3131(d) of the Affordable Care Act to determine a fair payment rate rather than imposing across the board payment reductions.

Response: The home health study under section 3131(d) of the Affordable Care Act allows CMS to not only look at access for vulnerable populations, but also look at other issues with the payment system and payment vulnerabilities. In this study, we plan to examine ways to better align payment with patient needs. The Report to Congress describing the findings of our study is projected to be available in 2014. In the meantime, while examining ways to better improve the case-mix system, we believe that it is appropriate to adjust payment rates to reflect real, observed changes in patient severity.

Comment: One commenter stated that they were concerned with the 1.32 percent payment reduction since it is combined with the Affordable Care Act mandated 1 percent reduction to the market basket update. The commenter urged CMS to recognize home health as a critical part of the health care continuum and that it requires adequate reimbursement to succeed in a reformed health care delivery system. The commenter stated that home health agencies should be reimbursed adequately for their services and that home health services are less expensive than acute care alternatives. Another commenter stated that overall Medicare spending has increased much more than Medicare payments to home health agencies and that the payment reductions to home health care spending ''represents negative health policy at a time when we should be encouraging the provision of health care outside of facilities.'' The commenter continued to say that hospital inpatient and long-term acute care hospitals will see increases in their payments for CY 2013. The commenter stated that CMS should not be cutting the most cost effective portions of the health care system to provide greater reimbursement to the most expensive ones. The commenters asked CMS to reconsider the 1.32 percent coding adjustment and other payment reduction changes in the 2013 HH PPS rule.

Response: We thank the commenters for their comments. However, we note that the 1 percent reduction to the market basket update is a mandated payment reduction, not intended to be offset by other policies, such as the 1.32 percent payment reduction. In addition, the Regulatory Impact section of our rule (see section VII.) shows that when combined with the market basket update and the wage index update, this rule will have a minimal impact on payment in comparison with previous years. In addition, while we updated our analysis to include 2010 data, which would have resulted in a 2.18 percent payment reduction, we are finalizing a 1.32 percent reduction for this final rule. We would also like to remind commenters that the goal of the payment reduction is to better align payment with real changes in patient severity. That is, the payment reduction is to ensure appropriate payment given the real changes in the Medicare home health population we observe. We would also like to point out that the 1.32 percent payment reduction is not related to the increase in payments for hospital inpatient and long term acute care hospitals; that is, the payment reduction does not free up money to pay for other settings. The goal of the payment reduction is to pay appropriately for the home health services provided to Medicare home health beneficiaries.

Comment: Several commenters stated that they support and appreciate CMS's proposal to withhold any further increase in the payment reduction to account for nominal case-mix growth. Commenters stated that the 1.32 percent payment reduction, rather than the full 2.18 percent reduction is a welcome action from CMS as providers have experienced significantly increased costs with the face-to-face encounter and therapy assessment requirements. Another commenter stated that the restraint in the payment reduction to account for nominal case-mix growth is warranted because the 2010 data does not yet fully reflect changes in CMS

policy that were intended to reduce some of the nominal increases in case-mix weights. Commenters stated that they would like CMS to limit the 2013 adjustment for nominal case-mix growth to 1.32 percent as proposed in the CY 2013 proposed rule.

Response: We appreciate the commenters' support of our proposal. We would like to clarify that the reason the 1.32 percent payment reduction, rather than the full 2.18 percent reduction, was proposed was not because of any potential additional costs associated with the face-to-face encounter and therapy assessment rules. We believe the 2.18 percent payment reduction would allow CMS to fully account for the nominal case-mix growth from 2000 to 2010 and we may consider accounting for more nominal case-mix growth in future rulemaking. However, given certain factors, such as the recent recalibration in CY 2012 and potential effect on the average case-mix, for this final rule, we are finalizing a 1.32 percent reduction to account for nominal case-mix growth, as described in the CY 2012 final rule.

Comment: One commenter stated that unwarranted overpayments attributable to changes in coding practices should be recovered and that payment increases unrelated to patient severity also occur in other payment systems. The commenter stated that the proposed adjustment would not account for all of the coding increase CMS has identified and that the proposed adjustment would result in overpayments to home health agencies, increasing home health expenditures for the federal government and beneficiaries. The commenter stated that aggregate Medicare margins in 2012 are projected to exceed 13 percent and that with the full reduction of 2.18 percent, most HHAs would be paid well in excess of costs. The commenter stated that implementing a small reduction in 2013 will require that a larger reduction occur in future years and therefore, CMS should reduce payments by 2.18 percent in 2013.

Response: We thank the commenter for the comments. We agree that the 2.18 percent reduction would allow CMS to fully account for the nominal case-mix growth through 2010. However, due to certain factors such as the recalibration in CY 2012, the average case-mix weights may have lowered and therefore, for this final rule, we are finalizing a more conservative payment reduction of 1.32 percent. It is unclear whether the projection of average Medicare margins of 13 percent in 2012 factors in potential changes in the therapy level distribution due to the CY 2012 recalibration. We will continue to assess nominal case-mix growth and propose reductions in future rulemaking as necessary.

Comment: One commenter stated that the yearly recalculation of revision of the payment reduction to account for nominal case-mix undermines the stability of the payment system and CMS's proposals have made it hard for HHAs to predict the payment amounts.

Response: We disagree there has been instability. Since 2008, agencies have been informed that payments would be reduced over time to offset unwarranted reimbursement growth due to nominal case-mix growth and every year since 2008, we have applied a payment reduction to account for nominal case-mix growth. Also, every year since CY 2011 rulemaking, we have updated our analysis of real and nominal case-mix growth as data have become available and in CY 2011 and CY 2012 rulemaking, our updated analysis resulted in further payment reductions to the national standardized 60-day episode rates. We note that for CY 2013, we are finalizing a 1.32 percent reduction, as described in the CY 2012 final rule. In addition, we reiterate that the purpose of the payment reduction is to adjust payments to better reflect real changes in patient severity and our goal is to pay appropriately for the home health services provided to Medicare home health beneficiaries.

Comment: Commenters were concerned with the impact of the 1.32 percent payment reduction on quality of care.

Response: Commenters did not provide specific information about why they believe payment reductions might impact quality of care. Our simulation of margins under the payment policies in this rule suggests that margins will remain adequate, and thereby not have an adverse effect on quality of care. We also believe that policymaking in the quality improvement area should help to ensure quality advances. OASIS–C outcome reports and HHCAHPS data are two important recent developments that we anticipate will support high-quality services. Over time, value-based purchasing policies will be developed, further enhancing quality-related incentives. We encourage agencies to work to their full professional potential to deliver a high standard of care to their patients.

Comment: A commenter stated that payment reductions will decrease the agencies' ability to educate, focus on quality care, implement electronic systems of documentation, and focus on savings to the Medicare program such as decreasing hospitalizations. They stated that payment reductions would mean fewer resources to develop quality and compliance programs.

Response: A reduction in margins as a result of our payment changes may have an effect on the availability of resources for various types of investments. However, our analysis indicates that payments to HHAs will still be more than adequate under our payment changes and would still allow for investments. We do not have sufficient data to evaluate the effect on technology-specific investments from the unusually large margins that have been in existence under the HH PPS, but we welcome information about whether the numerous agencies that operated with high margins under the HH PPS made investments during those years, and the nature of those investments. Other areas, such as education, quality improvement, and decreasing hospitalizations, are the focus of investment in human capital that agencies should be currently undertaking in view of program initiatives underway or being tested (HHCAHPS, HH P4P demo). We reiterate that our analysis of payments indicates that payments are adequate enough to allow for different types of quality-strengthening investments, whose costliness would depend on the agency's individual situation, including how efficiently the agency operates in general. We would also like to note that the pay for performance (P4P) demonstration did not find strong evidence that changes participating agencies made along the lines of better care coordination to improve quality and reduce hospitalizations were necessarily expensive (*http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/Reports/Downloads/HHP4P_Demo_Eval_2008_Vol3.pdf*).

In the CY 2012 final rule, we finalized a 3.79 percent payment reduction to the CY 2012 national standard 60-day episode rates and a 1.32 percent payment reduction to the CY 2013 national standardized 60-day episode rates to account for nominal case-mix growth we identified from 2000 to 2009. In the CY 2013 proposed rule, we updated our analysis using data from 2000 to 2010, estimating that the percentage reduction to account for nominal case-mix change would be 2.18 percent. However, we proposed a 1.32 percent payment reduction as described in the CY 2012 rule. For this final rule, we are finalizing a 1.32 percent payment reduction for CY 2013 to the national standardized 60-day episode rates. This reduction enables us to account for nominal case-mix growth which we have identified through CY 2009 and to

collect additional data on case-mix change, such as data on the effects of the CY 2012 recalibration of the HH PPS case-mix weights.

B. Outlier Policy

1. Background

Section 1895(b)(5) of the Act allows for the provision of an addition or adjustment to the national standardized 60-day case-mix and wage-adjusted episode payment amounts in the case of episodes that incur unusually high costs due to patient home health (HH) care needs. Prior to the enactment of the Affordable Care Act, this section of the Act stipulated that projected total outlier payments could not exceed 5 percent of total projected or estimated HH payments in a given year. In the July 2000 final rule (65 FR 41188 through 41190), we described the method for determining outlier payments. Under this system, outlier payments are made for episodes whose estimated costs exceed a threshold amount for each Home Health Resource Group (HHRG). The episode's estimated cost is the sum of the national wage-adjusted per-visit payment amounts for all visits delivered during the episode. The outlier threshold for each case-mix group or partial episode payment (PEP) adjustment is defined as the 60-day episode payment or PEP adjustment for that group plus a fixed dollar loss (FDL) amount. The outlier payment is defined to be a proportion of the wage-adjusted estimated cost beyond the wage-adjusted threshold. The threshold amount is the sum of the wage and case-mix adjusted PPS episode amount and wage-adjusted fixed dollar loss amount. The proportion of additional costs paid as outlier payments is referred to as the loss-sharing ratio.

2. Regulatory Update

In the CY 2010 HH PPS final rule (74 FR 58080 through 58087), we discussed excessive growth in outlier payments, primarily the result of unusually high outlier payments in a few areas of the country. Despite program integrity efforts associated with excessive outlier payments in targeted areas of the country, we discovered that outlier expenditures still exceeded the 5 percent target and, in the absence of corrective measures, would have continued do to so. Consequently, we assessed the appropriateness of taking action to curb outlier abuse. To mitigate possible billing vulnerabilities associated with excessive outlier payments and adhere to our statutory limit on outlier payments, we adopted an outlier policy that included a 10 percent agency level cap on outlier payments. This cap was implemented in concert with a reduced FDL ratio of 0.67. These policies resulted in a projected target outlier pool of approximately 2.5 percent. (The previous outlier pool was 5 percent of total HH expenditures.)

For CY 2010, we first returned 5 percent of these dollars back into the national standardized 60-day episode rates, the national per-visit rates, the low utilization payment adjustment (LUPA) add-on payment amount, and the non-routine supplies (NRS) conversion factor. Then, we reduced the CY 2010 rates by 2.5 percent to account for the new outlier pool of 2.5 percent. This outlier policy was adopted for CY 2010 only.

3. Statutory Update

As we noted in the CY 2011 HH PPS final rule (75 FR 70397 through 70399), section 3131(b)(1) of the Affordable Care Act amended section 1895(b)(3)(C) of the Act. As revised, ''Adjustment for outliers,'' states that ''The Secretary shall reduce the standard prospective payment amount (or amounts) under this paragraph applicable to home health services furnished during a period by such proportion as will result in an aggregate reduction in payments for the period equal to 5 percent of the total payments estimated to be made based on the prospective payment system under this subsection for the period.'' In addition, section 3131(b)(2) of the Affordable Care Act amended section 1895(b)(5) of the Act by re-designating the existing language as section 1895(b)(5)(A) of the Act, and revising it to state that the Secretary, ''subject to [a 10 percent program-specific outlier cap], may provide for an addition or adjustment to the payment amount otherwise made in the case of outliers because of unusual variations in the type or amount of medically necessary care. The total amount of the additional payments or payment adjustments made under this paragraph with respect to a fiscal year or year may not exceed 2.5 percent of the total payments projected or estimated to be made based on the prospective payment system under this subsection in that year.''

As such, beginning in CY 2011, our HH PPS outlier policy is that we reduce payment rates by 5 percent and target up to 2.5 percent of total estimated HH PPS payments to be paid as outliers. To do so, we first returned the 2.5 percent held for the target CY 2010 outlier pool to the national standardized 60-day episode rates, the national per visit rates, the LUPA add-on payment amount, and the NRS conversion factor for CY 2010. We then reduced the rates by 5 percent as required by section 1895(b)(3)(C) of the Act, as amended by section 3131(b)(1) of the Affordable Care Act. For CY 2011 and subsequent calendar years we target up to 2.5 percent of estimated total payments to be paid as outlier payments, and apply a 10 percent agency-level outlier cap.

4. Loss-Sharing Ratio and Fixed Dollar Loss (FDL) Ratio

For a given level of outlier payments, there is a trade-off between the values selected for the FDL ratio and the loss-sharing ratio. A high FDL ratio reduces the number of episodes that can receive outlier payments, but makes it possible to select a higher loss-sharing ratio and, therefore, increase outlier payments for outlier episodes. Alternatively, a lower FDL ratio means that more episodes can qualify for outlier payments, but outlier payments per episode must then be lower.

The FDL ratio and the loss-sharing ratio must be selected so that the estimated total outlier payments do not exceed the 2.5 percent aggregate level (as required by section 1895(b)(5)(A) of the Act). In the past, we have used a value of 0.80 for the loss-sharing ratio, which is relatively high, but preserves incentives for agencies to attempt to provide care efficiently for outlier cases. With a loss-sharing ratio of 0.80, Medicare pays 80 percent of the additional estimated costs above the outlier threshold amount. In the CY 2011 HH PPS final rule (75 FR 70398), in targeting total outlier payments as 2.5 percent of total HH PPS payments, we implemented an FDL ratio of 0.67, and we maintained that ratio in CY 2012. The national standardized 60-day episode payment amount is multiplied by the FDL ratio. That amount is wage-adjusted to derive the wage-adjusted FDL, which is added to the case-mix and wage-adjusted 60-day episode payment amount to determine the outlier threshold amount that costs have to exceed before Medicare will pay 80 percent of the additional estimated costs. We did not propose a change to the loss-sharing ratio in the CY 2013 HH PPS proposed rule issued in the July 13, 2012 **Federal Register** (77 FR 41548).

For the proposed rule, based on simulations using CY 2010 claims data, we estimated that outlier payments in 2012 will comprise approximately 2.12 percent of total HH PPS payments. However, we did not propose a change to the FDL ratio in the CY 2013 HH PPS proposed rule. This was, in part, because we were not able to verify these projections in our paid claims files since

implementing the 10 percent agency-level cap on outlier payments on January 1, 2010. Two claims processing errors were identified in our implementation of the 10 percent agency-level cap on outlier payments. These errors resulted in inaccuracies in outlier payment amounts in our paid claims files for CY 2010 and 2011. One error allows for certain HHAs to be paid beyond the cap, resulting in overpayments. The other applies the cap to HHAs who have not reached it yet, resulting in underpayments. System changes were currently underway, and thus the CY 2010 data file used in our analysis for the CY 2013 HH PPS proposed rule reflected outlier payments with these claims processing errors. In the CY 2013 HHS PPS proposed rule we stated that we would update our estimate of the FDL ratio for the final rule using the best analysis the most current and complete year of HH PPS data.

5. Outlier Relationship to the HH Payment Study

As we discussed in the CY 2013 HH PPS proposed rule, section 3131(d) of the Affordable Care Act requires us to conduct a study and report on developing HH payment revisions that will ensure access to care and payment for HH patients with high severity of illness. Our Report to Congress containing this study's recommendations is projected to be available in 2014. Section 3131(d)(1)(A)(iii) of the Affordable Care Act, in particular, states that this study may include analysis of potential revisions to outlier payments to better reflect costs of treating Medicare beneficiaries with high levels of severity of illness.

The following is a summary of the comments we received regarding the outlier policy in the CY 2013 HH PPS proposed rule.

Comment: A commenter stated that CMS's policy of reducing the outlier pool from 5 percent to 2.5 percent and capping, per provider, outlier revenues at 10 percent has negatively impacted HH providers. The commenter stated that in certain areas, HHAs provide services to predominantly high-cost beneficiaries with chronic conditions like HIV/AIDS or with mental health needs and developmental disabilities. HHAs that provide services to a high-cost population have reported being negatively impacted by the 10 percent outlier cap. The commenter requested that CMS exempt special-needs HHAs that serve high-cost patients with multiple clinical issues from the 10 percent outlier cap. The commenter also believes that CMS should raise the outlier cap so that all HHAs that serve high-cost beneficiaries can continue to do so without losing outlier funding.

Response: We do not have the statutory authority to change the 2.5 percent outlier pool, the 5 percent reduction to the HH PPS payment rates to fund the outlier pool, or the 10 percent outlier cap. Section 3131(b)(2) of the Affordable Care Act amended section 1895(b)(5)(A) of the Act to require that the total amount of the additional payments or payment adjustments made with respect to outliers in a fiscal year or year may not exceed 2.5 percent of the total payments projected or estimated to be made based on the prospective payment system in that year. Section 3131(b)(2)(C) of the Affordable Care Act added section 1895(b)(5)(B) of the Act so that CMS is required to apply a 10 percent agency-level outlier cap in each year. The statute does not provide for exemptions to the 10 percent cap based on resource use or otherwise.

Comment: A commenter requested that CMS develop a remedy to the limitations in the current outlier policy in actually addressing high cost cases.

Response: We reiterate that we intend to analyze alternatives to our current outlier policy as part of the home health study mandated by section 3131 of the Affordable Care Act. The study calls for us to investigate improvements to the HH PPS to account for patients with varying severity of illness.

Comment: Several commenters supported CMS's proposal to maintain the current FDL ratio in determining outlier payments, while several others were disappointed that the CY 2013 HH PPS proposed rule did not include any adjustments to the FDL ratio, especially given the analysis that projects that total outlier payments in 2011 and 2012 have been significantly below the 2.5 percent target. Commenters stated that CMS should recalculate outlier payment levels for 2011 and 2012 now that the claims processing errors for outliers have been corrected, and consider revising the CY 2013 FDL ratio in the event that total outlier spending is less than 2.5 percent. One commenter believed that recent outlier claims processing flaws, when resolved, are likely to affect the total outlier spending in 2011 such that outlier payments will comprise more than the estimated 2.12 percent of total HH PPS payments in outlier payments.

Response: Since the publication of the CY 2013 HH PPS proposed rule, we were able to correct the two claims processing errors that resulted in inaccuracies in outlier payment amounts in our paid claims files for CY 2010 and 2011. Analysis of corrected claims data and updated simulations using CY 2010 claims data show that outlier payments in 2013 are estimated to comprise approximately 2.18 percent of total HH PPS payments. As a result, in order to pay up to, but no more than 2.5 percent of total HH PPS payments as outlier payments, the FDL ratio would need to be revised to 0.45 for CY 2013.

Analysis of corrected claims data and updated simulations using CY 2010 claims data show that outlier payments in 2013 are estimated to comprise approximately 2.18 percent of total HH PPS payments. As a result, we are finalizing an FDL ratio of 0.45 percent in order to pay up to, but no more than 2.5 percent of total HH PPS payments as outlier payments. We believe that our new outlier policy for CY 2013 of using an FDL ratio of 0.45 and a loss-sharing ratio of 0.80 strikes an effective balance of compensating for high cost episodes while allowing more episodes to qualify for outlier payments.

C. CY 2013 Rate Update

1. Rebasing and Revising of the Home Health Market Basket

a. Background

Section 1895(b)(3)(B) of the Act requires that the standard prospective payment amounts for CY 2013 be increased by a factor equal to the applicable home health market basket update for those HHAs that submit quality data as required by the Secretary.

Effective for cost reporting periods beginning on or after July 1, 1980, we developed and adopted an HHA input price index (that is, the home health ''market basket''). Although ''market basket'' technically describes the mix of goods and services used to produce home health care, this term is also commonly used to denote the input price index derived from that market basket. Accordingly, the term ''home health market basket'' used in this document refers to the HHA input price index.

The percentage change in the home health market basket reflects the average change in the price of goods and services purchased by HHAs in providing an efficient level of home health care services. We first used the home health market basket to adjust HHA cost limits by an amount that reflected the average increase in the prices of the goods and services used to furnish reasonable cost home health care. This approach linked the increase in the cost limits to the efficient utilization of resources. For a greater

discussion on the home health market basket, see the notice with comment period published in the February 15, 1980 **Federal Register** (45 FR 10450, 10451), the notice with comment period published in the February 14, 1995 **Federal Register** (60 FR 8389, 8392), and the notice with comment period published in the July 1, 1996 **Federal Register** (61 FR 34344, 34347). Beginning with the FY 2002 HH PPS payments, we used the home health market basket to update payments under the HH PPS. We last rebased the home health market basket effective with the CY 2008 update. For more information on the HH PPS home health market basket, see our proposed rule published in the May 4, 2007 **Federal Register** (72 FR 25435 through 25442).

The home health market basket is a fixed-weight Laspeyres-type price index; its weights reflect the cost distribution for the base year while current period price changes are measured. The home health market basket is constructed in three major steps. First, a base period is selected and total base period expenditures are estimated for mutually exclusive and exhaustive spending categories based upon the type of expenditure. Then the proportion of total costs that each spending category represents is determined. These proportions are called cost or expenditure weights.

The second step essential for developing an input price index is to match each expenditure category to an appropriate price/wage variable, called a price proxy. These proxy variables are mainly drawn from publicly available statistical series published on a consistent schedule, preferably at least quarterly.

In the third and final step, the price level for each spending category is multiplied by the expenditure weight for that category. The sum of these products for all cost categories yields the composite index level in the market basket in a given year. Repeating the third step for other years will produce a time series of market basket index levels. Dividing one index level by an earlier index level will produce rates of growth in the input price index.

We described the market basket as a fixed-weight index because it answers the question of how much more or less it would cost, at a later time, to purchase the same mix of goods and services that was purchased in the base period. As such, it measures ''pure'' price changes only. The effects on total expenditures resulting from changes in the quantity or mix of goods and services purchased subsequent to the base period are, by design, not considered.

b. Rebasing and Revising the Home Health Market Basket

We believe that it is desirable to rebase the home health market basket periodically so that the cost category weights reflect changes in the mix of goods and services that HHAs purchase in furnishing home health care. We based the cost category weights in the current home health market basket on CY 2003 data. In the CY 2013 HH PPS proposed rule (77 FR 41548), we proposed to rebase and revise the home health market basket to reflect CY 2010 Medicare cost report (MCR) data, the latest available and most complete data on the actual structure of HHA costs.

The terms ''rebasing'' and ''revising,'' while often used interchangeably, actually denote different activities. The term ''rebasing'' means moving the base year for the structure of costs of an input price index (that is, in this exercise, we proposed to move the base year cost structure from CY 2003 to CY 2010) without making any other major changes to the methodology. The term ''revising'' means changing data sources, cost categories, and/or price proxies used in the input price index.

For the rebasing and revising, we modified the wages and salaries and benefits cost categories to reflect revised occupational groupings of BLS Occupational Employment Statistics (OES) data of HHAs. As a result of the revised groupings, we also proposed changes to the wage and benefit price proxies used in the HH market basket. We also proposed to break out the Administration and General (A&G), Operations and Maintenance, and All Other (residual) cost category weight into more detailed cost categories, based on the 2002 Benchmark U.S. Department of Commerce, Bureau of Economic Analysis (BEA) Input-Output (I–O) Table for HHAs. We proposed to revise the price proxies for the Insurance and Transportation cost categories. Finally, we proposed the use of four new price proxies for the four additional cost categories.

The major cost weights for the revised and rebased home health market basket are derived from the Medicare Cost Reports (MCR) data for freestanding HHAs, whose cost reporting period began on or after January 1, 2010 and before January 1, 2011. Using this methodology allowed our sample to include HHA facilities with varying cost report years including, but not limited to, the federal fiscal or calendar year. We referred to the market basket as a calendar year market basket because the base period for all price proxies and weights are set to CY 2010.

We proposed to maintain our policy of using data from freestanding HHAs because we have determined that they better reflect HHAs' actual cost structure. Expense data for hospital-based HHAs can be affected by the allocation of overhead costs over the entire institution. Due to the method of allocation, total expenses will be correct, but the individual components' expenses may be skewed; therefore, if data from hospital-based HHAs were included, the resulting cost structure could be unrepresentative of the average HHA costs.

Data on HHA expenditures for nine major expense categories (Wages and Salaries, Employee Benefits, Transportation, Operation and Maintenance, A&G, Professional Liability Insurance (PLI), Fixed Capital, Movable Capital, and a residual ''All Other'') were tabulated from the CY 2010 Medicare HHA cost reports. As prescription drugs and DME are not payable under the HH PPS, we excluded those items from the home health market basket and from the expenditures. Expenditures for contract services were also tabulated from these CY 2010 Medicare HHA cost reports and allocated to Wages and Salaries, Employee Benefits, A&G, and Other Expenses. After totals for these cost categories were edited to remove reports where the data were deemed unreasonable (for example, when total reported costs were less than zero), we then determined the proportion of total costs that each category represented. The proportions represent the major rebased home health market basket weights.

Next, we disaggregated the costs for the A&G, Operations and Maintenance and ''All Other'' cost weights using the latest available (2002 Benchmark) U.S. Department of Commerce, Bureau of Economic Analysis (BEA) Input-Output (I–O) Table, from which we extracted data for HHAs. The BEA I–O data, which are updated at 5-year intervals, were most recently described in the Survey of Current Business article, ''Benchmark Input-Output Accounts of the U.S., 2002'' (December 2002). These data were aged from 2002 to 2010 using relevant price changes. The methodology we used to age the data applied the annual price changes from the price proxies to the appropriate cost categories. We repeated this practice for each year. This methodology reflects a slight revision from the methodology used to derive the 2003-based HHA market basket index. For the 2003-based index, we only disaggregated the A&G

and ''All Other'' cost categories using BEA I–O data. For the 2010-based index, we proposed to also disaggregate the Operations and Maintenance cost categories using the BEA I–O data. Our proposal is based on our examination of the MCR data which indicated that some providers may be including some operations and maintenance costs in the A&G category and/or other cost categories. The Operations and Maintenance cost category (which we previously proxied with the CPI for Fuel and Other Utilities) from the MCR showed a decrease in the cost weight obtained directly from the MCR data from 2003 to 2010, despite rapid increases in utility costs over this time period. The revised method would rely on the 2002 I–O data, aged by the relevant price proxy, to determine the Utilities cost weight. The resulting methodology shows an increase in the Utilities cost weight over the same time period, which we believe to be a more reasonable result. We believe this change in the methodology for estimating utility costs for HHAs better reflects the 2010 cost structures of HHAs.

This process resulted in the identification of 16 separate cost categories, which is four more cost categories than presented in the 2003-based home health market basket. The additional cost categories (Administrative and Support Services, Financial Services, Medical Supplies, and Rubber and Plastics) stem from further disaggregating the Other Products and Other Services cost categories presented in the 2003-based index into more detail. The Administrative and Support Services cost weight would include expenses for a range of day-to-day office administrative services including but not limited to billing, recordkeeping, mail routing, and reception services. The Financial Services cost weight would reflect expenses for services including but not limited to banking services and security and commodity brokering. The Medical Supplies cost weight would reflect expenses for medical and surgical instruments as, well as laboratory analysis equipment. The Rubber and Plastics cost weight would reflect expenses for products such as plastic trash cans, and carpeting. We proposed these additional cost categories in order to proxy price inflation in a more granular fashion. We provide our proposed price proxies in more detail below.

The differences between the major categories for the 2010-based index and those used for the current 2003-based index are summarized in Table 3. We have allocated the Contract Services weight to the Wages and Salaries Employee Benefits, A&G, and Other Expenses cost categories in the 2010-based index as we did in the 2003-based index.

TABLE 3: Comparison of 2003-Based and the 2010-Based Home Health Market Baskets Major Cost Categories and Weights

Cost Categories	2003-Based Home Health Market Basket	Final 2010-Based Home Health Market Basket
Wages and Salaries, including allocated contract services' labor	64.484	66.325
Employee Benefits, including allocated contract services' labor	12.598	12.210
All Other Expenses including allocated contract services' labor	22.918	21.465
Total	**100.000**	**100.000**

The complete 2010-based cost categories and weights are listed in Table 4.

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TABLE 4: Cost Categories, Weights, and Price Proxies in the 2010-Based Home Health Market Basket

Cost Categories	Weight	Price Proxy
Compensation, including allocated contract services' labor	78.535	
Wages and Salaries, including allocated contract services' labor	66.325	Home Health Occupational Wage Index (2010)
Employee Benefits, including allocated contract services' labor	12.210	Home Health Occupational Benefits Index (2010)
Operations & Maintenance	1.002	CPI-U Fuel & Other Utilities
Professional Liability Insurance	0.375	CMS Physician Professional Liability Insurance Index
Administrative & General & Other Expenses including allocated contract services' labor	15.381	
Administrative Support	0.699	ECI for Compensation for Office and Administrative Services (Private)
Financial Services	1.398	ECI for Compensation for Financial Services (Private)
Medical Supplies	1.278	PPI for Medical Surgical & Personal Aid Devices
Rubber & Plastics	1.226	PPI for Rubber & Plastic Products
Telephone	0.881	CPI-U Telephone Services
Postage	0.279	CPI-U Postage
Professional Fees	5.811	ECI for Compensation for Professional and Related Workers (Private)
Other Products	1.439	PPI Finished Goods less Food and Energy
Other Services	2.370	ECI for Compensation for Service Occupations (Private)
Transportation	2.545	CPI-U Transportation
Capital-Related	2.162	
Fixed Capital	1.532	CPI-U Owner's Equivalent Rent
Movable Capital	0.630	PPI Machinery & Equipment
Total	**100.000**	**

**Figures may not sum to total due to rounding.

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After we computed the CY 2010 cost category weights for the rebased home health market basket, we selected the most appropriate wage and price

indexes to proxy the rate of change for each expenditure category. With the exception of the price index for professional liability insurance costs, the price proxies are based on Bureau of Labor Statistics (BLS) data and are grouped into one of the following BLS categories:

• *Employment Cost Indexes*—Employment Cost Indexes (ECIs) measure the rate of change in employee wage rates and employer costs for employee benefits per hour worked. These indexes are fixed-weight indexes and strictly measure the change in wage rates and employee benefits per hour. They are not affected by shifts in skill mix. ECIs are superior to average hourly earnings as price proxies for input price indexes for two reasons: (a) They measure pure price change; and (b) they are available by occupational groups, not just by industry.

• *Consumer Price Indexes*—Consumer Price Indexes (CPIs) measure change in the prices of final goods and services bought by the typical consumer. Consumer price indexes are used when the expenditure is more similar to that of a purchase at the retail level rather than at the wholesale level, or if no appropriate Producer Price Indexes (PPIs) were available.

• *Producer Price Indexes*—PPIs measures average changes in prices received by domestic producers for their goods and services. PPIs are used to measure price changes for goods sold in other than retail markets. For example, a PPI for movable equipment is used rather than a CPI for equipment. PPIs in some cases are preferable price proxies for goods that HHAs purchase at wholesale levels. These fixed-weight indexes are a measure of price change at the producer or at the intermediate stage of production.

We evaluated the price proxies using the criteria of reliability, timeliness, availability, and relevance. Reliability indicates that the index is based on valid statistical methods and has low sampling variability. Widely accepted statistical methods ensure that the data were collected and aggregated in way that can be replicated. Low sampling variability is desirable because it indicates that sample reflects the typical members of the population. (Sampling variability is variation that occurs by chance because a sample was surveyed rather than the entire population.) Timeliness implies that the proxy is published regularly, preferably at least once a quarter. The market baskets are updated quarterly and therefore it is important the underlying price proxies be up-to-date, reflecting the most recent data available. We believe that using proxies that are published regularly helps ensure that we are using the most recent data available to update the market basket. We strive to use publications that are disseminated frequently because we believe that this is an optimal way to stay abreast of the most current data available. Availability means that the proxy is publicly available. We prefer that our proxies are publicly available because this will help ensure that our market basket updates are as transparent to the public as possible. In addition, this enables the public to be able to obtain the price proxy data on a regular basis. Finally, relevance means that the proxy is applicable and representative of the cost category weight to which it is applied. The CPIs, PPIs, and ECIs selected by us in this regulation meet these criteria. Therefore, we believe that they continue to be the best measure of price changes for the cost categories to which they would be applied.

As part of the revising and rebasing of the home health market basket, we proposed to revise and rebase the home health blended Wage and Salary index and the home health blended Benefits index. We proposed to use these blended indexes as price proxies for the Wages and Salaries and the Employee Benefits portions of the 2010-based home health market basket, as we did in the 2003-based home health market basket. A more detailed discussion is provided below.

c. Price Proxies Used To Measure Cost Category Growth

• *Wages and Salaries* For measuring price growth in the 2010-based home health market basket, we proposed to apply six price proxies to six occupational subcategories within the Wages and Salaries component, that reflect the HHA occupational mix.

The 2003-based blended wage index was comprised of four occupational subcategories proxied by five wage proxies. For the 2010 blended wage index, we proposed to further disaggregate the service workers occupations into health and social assistance service and other service occupational groups. We also proposed to explicitly disaggregate professional and technical (P&T) workers into health-related P&T and non health-related P&T workers. We proposed to continue to use the National Industry-Specific Occupational Employment and Wage estimates for North American Industrial Classification System (NAICS) 621600, Home Health Care Services, published by the BLS Office of Occupational Employment Statistics (OES) as the data source for the cost shares of the home health specific blended wage and benefits proxy. Detailed information on the methodology for the national industry-specific occupational employment and wage estimates survey can be found at *http://www.bls.gov/oes/current/oes_tec.htm.*

The needed data on HHA expenditures for the six occupational subcategories (managerial, health-related P&T, non health-related P&T, health and social assistance service, other service occupations, and administrative/clerical) for the wages and salaries component were tabulated from the May 2010 OES data for NAICS 621600, Home Health Care Services. Table 5 compares the 2010 occupational assignments of the six CMS designated subcategories to the 2003 occupational assignments of the four CMS designated subcategories.

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TABLE 5: 2010 Occupational Assignments compared to 2003 Occupational Assignments for CMS HH Wage Composite Index

2010 Occupational Groupings		2003 Occupational Groupings	
Group 1	**Management**	**Group 1**	**Management**
11-0000	Management Occupations	11-0000	Management Occupations
Group 2	**Non-Health Professional & Technical**	**Group 2**	**Professional & Technical**
13-0000	Business and Financial Operations Occupations	13-0000	Business and Financial Operations Occupations
15-0000	Computer and Mathematical Science Occupations	15-0000	Computer and Mathematical Science Occupations
17-0000	Architecture and Engineering Occupations	17-0000	Architecture and Engineering Occupations
19-0000	Life, Physical, and Social Science Occupations	19-0000	Life, Physical, and Social Science Occupations
23-0000	Legal Occupations	21-0000	Community and Social Services Occupations
25-0000	Education, Training, and Library Occupations	23-0000	Legal Occupations
27-0000	Arts, Design, Entertainment, Sports, and Media Occupations	25-0000	Education, Training, and Library Occupations
Group 3	**Health-Related Professional & Technical**	27-0000	Arts, Design, Entertainment, Sports, and Media Occupations
29-1021	Dentists, General	29-0000	Healthcare Practitioners and Technical Occupations
29-1031	Dietitians and Nutritionists	33-0000	Protective Service Occupations
29-1051	Pharmacists	35-0000	Food Preparation and Serving Related Occupations
29-1062	Family and General Practitioners	37-0000	Building and Grounds Cleaning and Maintenance Occupations
29-1063	Internists, General	41-0000	Sales and Related Occupations
29-1069	Physicians and Surgeons, All Other	49-0000	Installation, Maintenance, and Repair Occupations
29-1071	Physician Assistants	51-0000	Production Occupations
29-1111	Registered Nurses	53-0000	Transportation and Material Moving Occupations
29-1122	Occupational Therapists		
29-1123	Physical Therapists		
29-1125	Recreational Therapists		
29-1126	Respiratory Therapists		
29-1127	Speech-Language Pathologists		
29-1129	Therapists, All Other		
29-1199	Health Diagnosing and Treating Practitioners, All Other		
Group 4	**Other Service Workers**	**Group 3**	**Service Workers**
33-0000	Protective Service Occupations	31-0000	Healthcare Support Occupations
35-0000	Food Preparation and Serving	39-0000	Personal Care and Service

2010 Occupational Groupings		2003 Occupational Groupings	
	Related Occupations		Occupations
37-0000	Building and Grounds Cleaning and Maintenance Occupations		
39-0000	Personal Care and Service Occupations		
41-0000	Sales and Related Occupations		
49-0000	Installation, Maintenance, and Repair Occupations		
51-0000	Production Occupations		
53-0000	Transportation and Material Moving Occupations		
Group 5	**Health & Social Service Workers**		
21-0000	Community and Social Services Occupations		
29-2011	Medical and Clinical Laboratory Technologists		
29-2012	Medical and Clinical Laboratory Technicians		
29-2021	Dental Hygienists		
29-2032	Diagnostic Medical Sonographers		
29-2034	Radiologic Technologists and Technicians		
29-2041	Emergency Medical Technicians and Paramedics		
29-2051	Dietetic Technicians		
29-2052	Pharmacy Technicians		
29-2054	Respiratory Therapy Technicians		
29-2061	Licensed Practical and Licensed Vocational Nurses		
29-2071	Medical Records and Health Information Technicians		
29-2099	Health Technologists and Technicians, All Other		
29-9012	Occupational Health and Safety Technicians		
29-9099	Healthcare Practitioner and Technical Workers, All Other		
31-0000	Healthcare Support Occupations		
Group 6	**Administrative**	**Group 4**	**Administrative**
43-0000	Office and Administrative Support Occupations	43-0000	Office and Administrative Support Occupations

Total expenditures by occupation were calculated by taking the OES number of employees multiplied by the OES annual average salary. The wage and salary expenditures were aggregated based on the groupings in Table 6. We determined the proportion of total wage costs that each subcategory represents. These proportions listed in Table 6 represent the major rebased and revised home health blended Wage and Salary index weights.

TABLE 6: Home Health Occupational Wages and Salaries Index (Wages and Salaries Component of the 2010 Based Home Health Market Basket)

Cost Category	2003 Weight	2010 Weight	Price Proxy	BLS Series ID
Health-Related Professional and Technical (P&T)	25.406	33.373	ECI for Wages & Salaries for Civilian Hospital Workers	CIU1026220000000I
Non Health-Related P&T	25.406	2.253	ECI for Wages & Salaries in Private Industry for Professional, Specialty & Technical Workers	CIU2025400000000I
Managerial/ Supervisory	9.007	8.260	ECI for Wages & Salaries in Private Industry for Executive, Administrative & Managerial Workers	CIU2020000110000I
Administrative / Clerical	7.596	7.720	ECI for Wages & Salaries in Private Industry for Administrative Support, Including Clerical Workers	CIU2020000220000I
Health and Social Assistance Services	--	35.772	ECI for Wages & Salaries for Civilian Healthcare and Social Assistance	CIU1026200000000I
Other Service Occupations	32.584	12.622	ECI for Wages & Salaries in Private Industry Service Occupations	CIU2020000300000I
Total	100.000	100.000		

A comparison of the yearly changes from CY 2010 to CY 2013 for the 2003-based HH wage and salary blend and the 2010-based home health wage and salary blend is shown in Table 7. The average annual increase in the two price proxies is similar, and in no year is the difference greater than 0.2 percentage point.

TABLE 7: Annual Growth in the 2010 HH Wage Blend and 2003 HH Wage Blend

	2010	2011	2012	2013
HH Wage Blend 2010	1.6	1.5	1.9	2.5
HH Wage Blend 2003	1.5	1.5	1.7	2.3

Source: IHS Global Insight, Inc, 3rd Quarter 2012 forecast with historical data through 2nd Quarter 2012.

- *Employee benefits:* For measuring employee benefits price growth in the 2010-based home health market basket, we proposed to apply applicable price proxies to the six occupational subcategories that are used for the wage blend listed in Table 8. The percentage change in the blended price of home health employee benefits is applied to this component, which is described in Table 8.

TABLE 8: Home Health Occupational Benefits Index (Employee Benefits Component of the 2010-Based Home Health Market Basket)

Cost Category	2003 Weight	2010 Weight	Price Proxy
Health-Related Professional and Technical (P&T)	25.253	33.506	ECI for Benefits for Civilian Hospital Workers
Non Health-Related P&T	25.253	2.246	ECI for Benefits in Private Industry for Professional, Specialty & Technical Workers
Managerial/Supervisory	8.766	8.029	ECI for Benefits in Private Industry for Executive, Administrative & Managerial Workers
Administrative / Clerical	7.698	7.789	ECI for Benefits in Private Industry for Administrative Support, Including Clerical Workers
Health and Social Assistance		35.887	ECI for Benefits for Civilian Healthcare and Social Assistance Workers
Other Service Occupations	33.024	12.542	ECI for Benefits in Private Industry Service Occupations
Total	100.000	100.000	

There is no available data source that exists for benefit expenditures by occupation for the home health industry. Thus, to construct weights for the home health occupational benefits index we calculated the ratio of benefits to wages and salaries for CY 2010 for the six BLS ECI series we proposed to use in the blended wage and benefit indexes. To derive the relevant benefit weight, we applied the benefit-to-wage ratios to each of the six occupational subcategories from the 2010 OES wage and salary weights, and normalized. For example, the ratio of benefits to wages from the 2010 home health occupational wage and benefit indexes for home health managers is 0.976. We apply this ratio to the 2010 OES weight for wages and salaries for home health managers, 8.260, and then normalize those weights relative to the other five benefit occupational categories to obtain a benefit weight for home health managers of 8.029.

A comparison of the yearly changes from CY 2010 to CY 2013 for the 2003-based HH benefit blend and the 2010-based home health benefit blend is shown in Table 9. The average annual increase in the two price proxies is similar, and in no year is the difference greater than 0.3 percentage point.

TABLE 9: Annual Growth in 2010 HH Benefits Blend and 2003 HH Benefits Blend

	2010	2011	2012	2013
HH Benefits Blend 2010	2.6	2.7	2.7	2.6
HH Benefits Blend 2003	2.4	3.0	2.4	2.7

Source: IHS Global Insight, Inc, 3rd Quarter 2012 forecast with historical data through 2nd Quarter 2012.

- *Administrative and Support:* We proposed to use the ECI for Compensation for Office and Administrative Support Services (private industry) (BLS series code #CIU2010000220000I) to measure price growth of this cost category. The 2003-based index did not reflect this detailed cost category.
- *Financial Services:* We proposed to use the ECI for Compensation for Financial Activities (private industry) (BLS series code #CIU201520A000000I) to measure price growth of this cost category. The 2003-based index did not reflect this detailed cost category.
- *Medical Supplies:* We proposed to use the PPI for Medical Surgical & Personal Aid Devices (BLS series code #WPU156) to measure price growth of this cost category. The 2003-based index did not reflect this detailed cost category.
- *Rubber and Plastics:* We proposed to use the PPI for Rubber and Plastic Products (BLS series code #WPU07) to measure price growth of this cost

category. The 2003-based index did not reflect this detailed cost category.

• *Operations and Maintenance:* We proposed to use CPI for Fuel and Utilities (BLS series code #CUUR0000SAH2) to measure price growth of this cost category. The same proxy was used for the 2003-based market basket.

• *Professional Liability Insurance:* We proposed to use the CMS Physician Professional Liability Insurance price index to measure price growth of this cost category. The 2003-based index used the CPI for Household Insurance as the price proxy for this component. We proposed to revise the price proxy for this category as we believe that it is more technically appropriate to proxy PLI price changes by an index specific to medical liability insurance. We currently do not have a PLI index specific to the HHA industry so we proposed to use the CMS Physician Liability Insurance Index as we believe this would reasonably reflect the price changes associated with medical liability insurance purchased by home health agencies.

To accurately reflect the price changes associated with physician PLI, each year, we solicit PLI premium data for physicians from a sample of commercial carriers. This information is not collected through a survey form, but instead is requested directly from, and provided by (on a voluntary basis), several national commercial carriers. As we require for our other price proxies, the PLI price proxy is intended to reflect the pure price change associated with this particular cost category. Thus, it does not include changes in the mix or level of liability coverage. To accomplish this result, we obtain premium information from a sample of commercial carriers for a fixed level of coverage, currently $1 million per occurrence and a $3 million annual limit. This information is collected for every state by physician specialty and risk class. Finally, the state-level, physician-specialty data are aggregated by effective premium date to compute a national total, using counts of physicians by state and specialty as provided in the AMA publication, *Physician Characteristics and Distribution in the U.S.*

• *Telephone:* We proposed to use CPI for Telephone Services (BLS series code #CUUR0000SEED) to measure price growth of this cost category. The same proxy was used for the 2003-based market basket.

• *Postage:* We proposed to use CPI for Postage (BLS series code #CUUR0000SEEC01) to measure price growth of this cost category. The same proxy was used for the 2003-based market basket.

• *Professional Fees:* We proposed to use the ECI for Compensation for Professional and Related Workers (private industry) (BLS series code # CIS2010000120000I) to measure price growth of this category. The same proxy was used for the 2003-based market basket.

• *Other Products:* We proposed to use the PPI for Finished Goods Less Food and Energy (BLS series code #) to measure price growth of this category. For the 2003-based market basket we used the CPI for All Items Less Food and Energy to proxy this category. We believe that the PPI better reflects business input costs than the CPI index which better reflects cost faced by consumers.

• *Other Services:* We proposed to use the ECI for Compensation for Service Occupations (private) (BLS series code #CIU2010000300000I) to measure price growth of this category. The same proxy was used for the 2003-based market basket.

• *Transportation:* We proposed to use the CPI for Transportation (BLS series code #CUUR00000SAT) to measure price growth of this category. The 2003-based market basket used the CPI for Private Transportation (BLS series code #CUUS0000SAT1). We proposed to revise the price proxy to reflect price inflation of both private and public transportation costs. We proposed this change as further investigation of the MCR instructions request providers to include both private and public transportation costs.

• *Fixed capital:* We proposed to use the CPI for Owner's Equivalent Rent (BLS series code #CUUS0000SEHC) to measure price growth of this cost category. The same proxy was used for the 2003-based market basket.

• *Movable Capital:* We proposed to use the PPI for Machinery and Equipment (BLS series code #WPU11) to measure price growth of this cost category. The same proxy was used for the 2003-based market basket.

As we did in the 2003-based home health market basket, we allocated the Contract Services' share of home health agency expenditures among Wages and Salaries, Employee Benefits, A&G and Other Expenses.

d. Rebasing Results

A comparison of the yearly changes from CY 2010 to CY 2013 for the 2003-based home health market basket and the 2010-based home health market basket is shown in Table 10.

TABLE 10: Comparison of the 2003-Based Home Health Market Basket and the 2010-Based Home Health Market Basket, Percent Change, 2010-2013

	Home Health Market Basket, 2003-Based	Home Health Market Basket, 2010-Based	Difference (2010-Based less 2003-Based)
Historical: CY 2010	1.7	1.8	0.1
Historical CY 2011	2.0	2.0	0.0
CY 2012	1.8	2.0	0.2
CY 2013	2.1	2.3	0.2
Average Change: 2010-2013	1.9	2.0	0.1

Source: IHS Global Insight, Inc, 3rd Quarter 2012 forecast with historical data through 2nd Quarter 2012;

Table 10 shows that the forecasted rate of growth for CY 2013, beginning January 1, 2013, for the rebased and revised home health market basket is 2.3 percent, while the forecasted rate of growth for the current 2003-based home health market basket is 2.1 percent. The higher growth rate for the 2010-based HHA market basket for CY 2013 is primarily attributable to the wage blended price proxies. The revised wage blended index reflects a larger weight associated with health P&T occupations (which is proxied by the ECIs for Hospital Workers) compared to the 2003-based index. The wage ECI for hospital workers is currently projected to grow faster than the other ECIs in the blended indexes.

e. Labor-Related Share

In the 2003-based home health market basket the labor-related share was 77.082 percent while the remaining non-labor-related share was 22.918 percent. In the revised and rebased home health market basket, the labor-related share is 78.535 percent. The labor-related share includes wages and salaries and employee benefits, as well as allocated contract labor costs. The non-labor-related share is 21.465 percent. The increase in the labor-related share using the 2010-based HH market basket is primarily due to the increase in costs associated with contract labor. Table 11 details the components of the labor-related share for the 2003-based and 2010-based home health market baskets.

TABLE 11: Labor-Related Share of Current and 2010-Based Home Health Market Baskets

Cost Category	2003-Based Market Basket Weight	2010-Based Market Basket Weight
Wages and Salaries	64.484	66.325
Employee Benefits	12.598	12.210
Total Labor-Related	77.082	78.535
Total Non Labor-Related	22.918	21.465

f. CY 2013 Market Basket Update for HHAs

For CY 2013, we proposed to use an estimate of the 2010-based HHA market basket to update payments to HHAs based on the best available data. Consistent with historical practice, we estimate the HHA market basket update for the HHA PPS based on IHS Global Insight, Inc.'s (IGI's) forecast using the most recent available data. IGI is a nationally recognized economic and financial forecasting firm that contracts with CMS to forecast the components of the market baskets.

In the proposed rule, based on IGI's second quarter 2012 forecast with history through the first quarter of 2012, the HHA market basket update for CY 2013 was projected to be 2.5 percent. Consistent with historical practice, we also proposed that if more recent data are subsequently available (for example, a more recent estimate of the market basket), we would use such data, if appropriate, to determine the CY 2013 annual update in the final rule. Therefore, we are finalizing a CY 2013 market basket update of 2.3 percent for CY 2013, which is based on IGI's third quarter 2012 forecast with history through the 2nd quarter 2012.

2. CY 2013 Home Health Payment Update Percentage

Section 3401(e) of the Affordable Care Act amended section 1895(b)(3)(B) of the Act by adding a new clause (vi) which states, ''After determining the home health market basket percentage increase * * * the Secretary shall reduce such percentage * * * for each of 2011, 2012, and 2013, by 1 percentage point. The application of this clause may result in the home health market basket percentage increase under clause (iii) being less than 0.0 for a year, and may result in payment rates under the system under this subsection for a year being less than such payment rates for the preceding year.'' Therefore, the final CY 2013 market basket update of 2.3 percent must be reduced by 1 percentage point. Thus, the CY 2013 home health payment update is 1.3 percent.

The following is a summary of the comments we received regarding the CY 2013 Rate Update proposal.

Comment: Several commenters supported the proposed effort to rebase and revise the market basket in order to update the cost shares from a 2003 base year to a 2010 base year. One commenter believed that future rebasings and revisions may be needed every 5 years or less due to the rapidly changing landscape of health care and home health services.

Response: We appreciate the commenters' support for the proposed rebasing and revising of the market basket to reflect 2010 cost data. We also acknowledge the public's concern regarding the changing landscape of costs. We will monitor the market basket's cost categories and their respective weights in order to ensure they remain contemporary and representative of the industry's cost structure.

Comment: One commenter expressed concerns about the quality of the cost report data that are submitted to CMS. The commenter noted that they are hopeful that the recent audits of the cost reports that CMS has initiated will improve the quality of the data. The commenter noted that although they have concerns about the quality of the cost report data they still support the proposed rebasing and revising of the market basket to 2010.

Response: In regards to the commenter's concern on the quality of the cost report data, when we calculate the market basket cost weights, we run various trimming scenarios to be sure the final market basket cost weights are not adversely impacted by outliers. We also run matched samples and compare trends and cost shares over time. Therefore, we believe our resulting market basket cost weights are representative of the national average of freestanding home health agencies.

Comment: One commenter questioned the accuracy with which the market basket accounts for transportation costs, currently, as well as under the proposed methodology. They note that transportation costs have become more unpredictable with the increasing and fluctuating cost of gasoline.

Response: We believe the Transportation cost weight within this market basket accurately captures the relative costs faced by home health providers as we obtain these costs directly from the Medicare cost reports. Additionally, this particular category's cost weight has been notably consistent, ranging from between 2.5 percent and 2.8 percent over the last several years.

For the price proxy used to estimate price changes for this category of costs, although we agree that there is volatility in the price of gasoline, we feel that the CPI–U for Transportation price index, developed and published by the Bureau of Labor Statistics appropriately reflects these costs. Within this particular CPI, motor fuel represents approximately 1/3rd of its cost weight (with new and used motor vehicles and motor vehicle insurance comprising most of the remaining share). This index also appropriately meets CMS's guidelines for price proxies (relevance, reliability, timeliness, and public availability).

Comment: Several commenters expressed concern that CMS only uses data from freestanding home health agencies to determine the market basket cost shares. One commenter also specifically noted the possible difference in the labor portion of the market basket and the impact on the payments based on the geographic differences. They noted that while there is concern about the attribution of costs to hospital-based providers, those shifts would appear in the indirect cost centers. They also noted that wages and salaries and benefits should be comparable across freestanding and hospital-based providers since they are direct costs and therefore the hospital-based data should be incorporated into the calculation of the labor-related share.

Response: Presently, all of CMS's market baskets, or input prices indexes, incorporate data from only freestanding providers. We monitor the costs and cost structures of both freestanding and hospital-based providers in the home health industry, as well as other industries. Despite controlling for the differing characteristics of both provider types, including their respective patient case mix, their geographic locations, and other relevant factors, we were not able to adequately explain the variation in costs between the two provider types. Consequently, we believe that it is appropriate to base the market basket's structure on free-standing providers only. We will continue to monitor and attempt to better understand these differences going forward.

Comment: One commenter believed that the market basket should be based on 2011 cost report data and that 2010 cost reports do not reflect the increases in costs to providers of the face-to-face and therapy reassessment requirements.

Response: The market baskets are always based on the most current and complete set of cost report data. At the time of this rebasing, the most current and complete set of data was for 2010. We will monitor the 2011 cost reports as they become available and, if the cost structure of the industry is materially different than it was in 2010, we would consider proposing a subsequent rebasing.

Comment: Several commenters support the resulting increase to the labor-related share which results from the rebasing of the market basket cost shares.

Response: We believe the cost shares that are determined based on this rebasing represent the current national average cost shares of the industry. Thus, we are finalizing those cost shares in this final rule.

Comment: Several commenters expressed concerns with the proposal to increase the labor-related share from 77.082 percent to 78.535 percent for CY 2013 and asked CMS to provide more clarity on the calculation methodology. One commenter notes that the resulting increase to the labor-related share will have a significant negative impact on providers, particularly those in rural areas.

Response: The home health market basket's labor-related share is based on the sum of the weights for Wages & Salaries and Benefits. The labor-related share is estimated based on actual data submitted on the home health Medicare cost report for both rural and urban freestanding home health facilities and is intended to reflect the national average. The proposed change in the labor-related share is primarily attributable to the update of the base year to reflect 2010 data. The 2010 data, the most recent and comprehensive data available at the time of the rebasing, show that labor-related costs have increased faster than aggregate non-labor-related costs since 2003. Although we will continue to analyze the home

health Medicare cost report data on a regular basis to ensure it accurately reflects the cost structures facing home health providers, we believe the proposed 78.535 percent labor-related share appropriately reflects the current national average.

Comment: One commenter believed the market basket should reflect cost changes in an episode of care rather than annual total costs for the home health agency. The commenter requested that CMS provide an explanation of how the market basket index and the changes in episode costs relate to one another. They noted that the average episode of care in 2010 could include a different mix of disciplines than an average episode of care in 2003.

Response: Section 1895(b)(3)(B) of the Act requires that the standard prospective payment amounts for CY 2013 be increased by a factor equal to the applicable home health market basket. Specifically the statute states: ''The standard prospective payment amount (or amounts) shall be adjusted for fiscal year 2002 and for fiscal year 2003 and for each subsequent year (beginning with 2004) in a prospective manner specified by the Secretary by the home health applicable increase percentage (as defined in clause (ii)) applicable to the fiscal year or year involved.'' Given that the weighted changes in episode costs, including the changing mix of disciplines required to provide home health services, all flow into the Medicare cost report, they are thus reflected in the market basket's respective cost weights.

As a result of the comments, we are finalizing all of the proposed changes to the home health market basket. The base year will reflect the 2010 cost shares as proposed and all of the price proxies that were proposed will be implemented. Therefore, consistent with our historical practice of estimating market basket increases based on the best available data, we are finalizing a CY 2013 market basket update of 2.3 percent for CY 2013, which is based on IGI's third quarter 2012 forecast with history through the 2nd quarter 2012. Additionally, we are finalizing the labor-related share that reflect the 2010 wage and benefit cost shares of the market basket, which is 78.535 percent.

Comment: A commenter expressed concern about the impact of the reduction to the market basket update.

Response: The reduction to the market basket update is legislated by section 1895(b)(3)(B) of the Act, as amended by section 3401(e) of the Affordable Care Act, which states that the Secretary shall reduce the market basket percentage by 1 percentage point for 2011, 2012, and 2013.

Comment: We received several comments regarding CMS's efforts in rebasing the HH payment rates as mandated by the Affordable Care Act. We also received comments pertaining to the automatic, across-the-board cuts, known as sequestration, that are included in the Budget Control Act of 2011.

Response: The comments are outside the scope of this rule. However, we will consider the comments concerning rebasing in our future rebasing efforts.

3. Home Health Quality Reporting Program (QRP)

a. Background and Quality Reporting Requirements

Section 1895(b)(3)(B)(v)(II) of the Act states that ''each home health agency shall submit to the Secretary such data that the Secretary determines are appropriate for the measurement of health care quality. Such data shall be submitted in a form and manner, and at a time, specified by the Secretary for purposes of this clause.''

In addition, section 1895(b)(3)(B)(v)(I) of the Act states that ''for 2007 and each subsequent year, in the case of a HHA that does not submit data to the Secretary in accordance with subclause (II) with respect to such a year, the HH market basket percentage increase applicable under such clause for such year shall be reduced by 2 percentage points.'' This requirement has been codified in regulations at § 484.225(i). HHAs that meet the quality data reporting requirements are eligible for the full home health market basket percentage increase. HHAs that do not meet the reporting requirements are subject to a 2 percentage point reduction to the home health market basket increase.

Section 1895(b)(3)(B)(v)(III) of the Act further states that ''[t]he Secretary shall establish procedures for making data submitted under sub clause (II) available to the public. Such procedures shall ensure that a home health agency has the opportunity to review the data that is to be made public with respect to the agency prior to such data being made public.''

As codified at § 484.250(a), we established that the quality reporting requirements could be met by the submission of OASIS assessments and Home Health CAHPS. In the CY 2012 HH PPS final rule (76 FR 68576), we listed selected measures for the HH QRP and also established procedures for making the information available to the public by placing the information on the Home Health Compare Web site. The selected measures that are made available to the public can be viewed on the Home Health Compare Web site located at *http://www.medicare.gov/HHCompare/Home.asp.*

In the CY 2012 HH PPS final rule (76 FR68575), we finalized that we will also use measures derived from Medicare claims data to measure home health quality.

b. OASIS Data Submission and OASIS Data for Annual Payment Update

The Home Health Conditions of Participation (CoPs) at § 484.55(d) require that the comprehensive assessment must be updated and revised (including the administration of the OASIS) no less frequently than: (1) The last five days of every 60 days beginning with the start-of-care date, unless there is a beneficiary elected transfer, significant change in condition, or discharge and return to the same HHA during the 60-day episode; (2) within 48 hours of the patient's return to the home from a hospital admission of 24 hours or more for any reason other than diagnostic tests; and (3) at discharge.

It is important to note that to calculate quality measures from OASIS data, there must be a complete quality episode, which requires both a Start of Care or Resumption of Care OASIS assessment and a Transfer or Discharge OASIS assessment. Failure to submit sufficient OASIS assessments to allow calculation of quality measures, including transfer and discharge assessments, constitutes failure to comply with the CoPs.

Home Health Agencies do not need to submit OASIS data for those patients who are excluded from the OASIS submission requirements under the Home Health Conditions of Participation (CoPs) § 484.1 through § 484.265. As described in the Medicare and Medicaid Programs: Reporting Outcome and Assessment Information Set Data as Part of the Conditions of Participation for Home Health Agencies Final Rule (70 FR 76202), these are:

- Those patients receiving only nonskilled services;
- Those patients for whom neither Medicare nor Medicaid is paying for home health care (patients receiving care under a Medicare or Medicaid Managed Care Plan are not excluded from the OASIS reporting requirement);
- Those patients receiving pre- or post-partum services; or
- Those patients under the age of 18 years.

As set forth in the Medicare Program; Home Health Prospective Payment

System Refinement and Rate Update for Calendar Year 2008 Final Rule (72 FR 49863), HHAs that become Medicare-certified on or after May 31 of any year are not subject to the OASIS quality reporting requirement nor any payment penalty for quality reporting purposes for the following calendar year. For example, HHAs certified on or after May 31, 2012 are not subject to the 2 percentage point reduction to their market basket update for CY 2013. These exclusions only affect quality reporting requirements and do not affect the HHA's reporting responsibilities under the Conditions of Participation and Conditions of Payment (70 FR 76202).

c. Home Health Care Quality Reporting Program Requirements for CY 2014 Payment and Subsequent Years

(1) Submission of OASIS data

In the CY 2013 HH PPS proposed rule (77 FR 41548), we proposed to consider OASIS assessments submitted by HHAs to CMS in compliance with HHA Conditions of Participation and Conditions for Payment for episodes beginning on or after July 1, 2011 and before July 1, 2012 as fulfilling one portion of the quality reporting requirement for CY 2013. This time period will allow for 12 full months of data collection and would provide us with the time necessary to analyze and make any necessary payment adjustments to the payment rates for CY 2013. We proposed to continue this pattern for each subsequent year beyond CY 2013, considering OASIS assessments submitted for episodes beginning in the time frame between July 1 of the calendar year two years prior to the calendar year of the Annual Payment Update (APU) effective date and June 30 of the calendar year one year prior to the calendar year of the APU effective date, and received timely by CMS (that is, within 30 days of the end of that time period), as fulfilling the OASIS portion of the quality reporting requirement for the subsequent APU.

Comment: We received one comment which supported both of these proposals. We received no comments in opposition.

Response: We appreciate the supportive comments.

As a result of the comments received, we are finalizing these two proposals as proposed.

(2) Acute Care Hospitalization Claims-Based measure

In August 2003, we began to publicly report on Home Health Compare a number of OASIS–C outcome measures, including Acute Care Hospitalization. Since that time, we have determined that claims data are a more robust source of data for accurately measuring acute care hospitalizations. For this reason we proposed that the claims-based Acute Care Hospitalization measure replace the OASIS-based measure on Home Health Compare. The OASIS-based measure will continue to be reported on the agency-specific Certification and Survey Provider Enhanced Reporting system (CASPER) reports.

At the time of the publication of the proposed rule, there were technical issues with Home Health Compare files which resulted in our plan to delay the reporting of the two claims-based measures ''Emergency Department Use Without Hospitalization'' and ''Acute Care Hospitalization'' until such time as the technical issues were resolved. We stated that the OASIS-based Acute Care Hospitalization measure would continue to be made available to the public via Home Health Compare until it is replaced with the claims-based measure.

To summarize, for the CY 2013 payment update and for subsequent annual payment updates, we proposed to continue to use a HHA's submission of OASIS assessments between July 1 and June 30 as fulfilling one portion of the quality reporting requirement for each payment year. Medicare claims data and HHCAHPS data will also be used to measure home health care quality.

Comment: We received nine comments supportive of the proposal and the use of claims-based measures in general. One commenter clearly prefers the OASIS-based Acute Care Hospitalization measure, stating it provides more granularity. Two commenters opposed publicly reporting the claims-based Acute Care Hospitalization measure until measure specifications and measure detail are made available and requested to preview the measure before public reporting. Several commenters question how observation stays will be addressed in the measure. We also received comment regarding the restriction of claims-based measures to Medicare FFS patients, the need to harmonize with other reporting programs, the need to retain OASIS items related to these two measures, and the resolution of technical issues referenced in the proposed rule.

Response: We have resolved the technical challenges that we noted in the proposed rule and in August, the CASPER reports included Acute Care Hospitalization and Emergency Department Use Without Hospitalization measure rates that we calculated using claims data. We will also begin to publicly report the claims-based measure rates for these measures on Home Health Compare.

We wish to clarify that when we referred to the Acute Care Hospitalization and Emergency Department Use Without Hospitalization measures as ''replacing'' the OASIS-based measures, what we meant is that the measures will be calculated using a new source of data. The measure concept has not changed. The revised technical specifications were provided to the National Quality Forum (NQF), and after a public comment period, the NQF endorsed the revised measures in August 2012. The Acute Care Hospitalization measure is NQF #0171 and the ED Use Without Hospitalization measure is NQF #0173. The technical specifications for the claims-based measures been available since September 12 on the CMS Home Health Quality Initiative web page at *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/HomeHealthQualityInits/HHQIQualityMeasures.html.*

HHAs can currently view their performance on both measures (calculated using claims data) on their agency-specific CASPER reports. To further respond to the commenters who requested more detail on the measures, these measures evaluate the utilization of emergency department use without hospitalization and acute care hospitalization during the 60 days after the start of the home health stay. Thus, the measures address outcomes of HHA patients in a fixed interval after the start of their home health care, regardless of the length of their home health stay. Home health agencies are most often paid in a 60-day payment bundle which covers all home health services for 60 days. As a result, the claims-based measures address outcomes of home health patients during the time period in which their home health agency receives payment from Medicare, (that is, for the 60-day period beginning with the start of care date). This is in contrast to the OASIS-based measures which calculate outcomes based on the time period from start of care to discharge, a period which may be greater or less than 60 days.

Similarly, the measurement begins at home health start of care (rather than at hospital discharge) as the home health agency cannot be held responsible for hospitalizations or emergency department visits that occur before home health care begins. Home Health Compare will continue to display these

measures using a rolling twelve months of data updated on a quarterly basis.

As with the OASIS-based measure, planned hospitalizations are excluded from the acute care hospitalization claims-based measure numerator. In addition, though some hospitalizations may be avoidable, it is difficult to determine if a hospitalization was out of the home health agency's control or not. As a result, agency rates on this measure are not expected to reach zero percent. Instead, the measure rates can be used as guidelines for comparing agencies to each other and can be used by agencies to improve their quality of care.

Observation stays that begin in a hospital emergency department but do not result in an inpatient stay within the 60 days after the start of home health care are counted in the ED Use without Hospitalization measure. Observation stays that result in an inpatient stay within the 60 days after the start of home health care are counted in the Acute Care Hospitalization measure. By comparing HHAs on both utilization measures, consumers can gain an accurate picture of how often patients of each HHA receive care in an emergency department or hospital in the 60 days following the start of home health care.

Medicare claims data are reliable because home health agencies are required to submit claims in order to receive payment for Medicare beneficiaries. Claims data are extremely detailed and include patient identifiers, provider identifiers, services rendered, diagnoses, and payment, as well as additional information. Because encounter claims data are only readily available for Medicare FFS beneficiaries, the measure rates generated from claims for both the Acute Care Hospitalization and Emergency Department Use Without Hospitalization measures will only reflect Medicare FFS data.

We are considering whether to begin calculating other OASIS–C outcome measures using claims data and we are also considering the feasibility of proposing to adopt readmission measures, which might include a 30-day measure of rehospitalization that would apply to home health patients who begin home health immediately after an inpatient hospital stay. We note that this measure would be similar to ''Hospital-Wide All-Cause Unplanned Readmission'' measure that we recently adopted for the Hospital Inpatient Quality Reporting Program.

We believe that the OASIS items related to acute care hospitalization and emergency department use should remain in the OASIS dataset. It is important for agencies to be aware of their patient's hospitalizations and emergency department visits in order to adjust care plans in response to changes in the patient's condition, medication regimen, and care needs. Maintaining the items in the OASIS also allows agencies to monitor their hospitalization and ED use rates in real-time rather than waiting for a claims-based measure to be calculated and reported in CASPER. The OASIS item related to emergency department use is still used for the Emergency Department Use With Hospitalization measure reported on CASPER. Agencies can approximately compare their rates on the OASIS-based and claims-based Acute Care Hospitalization measures, as reported on the CASPER reports, to gauge if their patients received treatment in an emergency department or hospital significantly more often than they were aware of. This comparison could be useful in HHAs' performance improvement activities.

As a result of the comments received, we are finalizing that the claims-based Acute Care Hospitalization measure replace the OASIS-based measure on Home Health Compare as proposed.

d. Home Health Care CAHPS Survey (HHCAHPS)

In the HH PPS Rate Update for CY 2012 Final Rule (76 FR 68577), we stated that the expansion of the home health quality measures reporting requirements for Medicare-certified agencies includes the Consumer Assessment of Healthcare Providers and Systems (CAHPS®) Home Health Care (HHCAHPS) Survey for the CY 2012 annual payment update (APU). In CY 2012 we moved forward with the HHCAHPS linkage to the pay-for-reporting (P4R) requirements affecting the HH PPS rate update for CY 2012. We are maintaining the stated HHCAHPS data requirements for CY 2013 that were set out in the CY 2012 HH PPS final rule, for the continuous monthly data collection and quarterly data submission of HHCAHPS data.

(1) Background and Description of HHCAHPS

As part of the United States Department of Health and Human Services' (DHHS) Transparency Initiative, we have implemented a process to measure and publicly report patient experiences with home health care, using a survey developed by the Agency for Healthcare Research and Quality's (AHRQ's) CAHPS® program, and endorsed by the National Quality Forum (NQF) (number 0517). The HHCAHPS survey is part of a family of CAHPS® surveys that asks patients to report on and rate their experiences with health care. The HHCAHPS survey presents home health patients with a set of standardized questions about their home health care providers and about the quality of their home health care.

Prior to this survey, there was no national standard for collecting information about patient experiences that would enable valid comparisons across all home health agencies (HHAs). The history and development process for HHCAHPS has been given in previous rules, but it is also available on our Web site *https://homehealthcahps.org* and also, in the annually updated *HHCAHPS Protocols and Guidelines Manual,* which is downloadable from *https://homehealthcahps.org.*

For public reporting purposes, we present five measures—three composite measures and two global ratings of care—from the questions on the HHCAHPS survey. The publicly reported data are adjusted for differences in patient mix across home health agencies. Each of the three composite measures consists of four or more questions on one of the following related topics:

- Patient care (Q9, Q16, Q19, and Q24);
- Communications between providers and patients (Q2, Q15, Q17, Q18, Q22, and Q23); and
- Specific care issues on medications, home safety, and pain (Q3, Q4, Q5, Q10, Q12, Q13, and Q14).

The two global ratings are the overall rating of care given by the HHA's care providers (Q20), and the patient's willingness to recommend the HHA to family and friends (Q25).

The HHCAHPS survey is not supposed to measure the aspects of home health clinical care that can be captured through a medical record. Rather, the HHCAHPS survey focuses on areas where the home health patient is the best or only source for the information. We believe that the HHCAHPS survey is a valid measure of a patient's perspectives of home health care. The developmental work for the HHCAHPS survey began in mid-2006, and the first HHCAHPS survey was field-tested (to validate the length and content of the survey) in 2008 by the AHRQ and the CAHPS® grantees, and the final HHCAHPS survey was used in a national randomized mode experiment in 2009 through 2010.

The HHCAHPS survey is currently available in several languages. At the time of the CY 2010 HH PPS final rule, HHCAHPS was only available in English and Spanish translations. In the proposed rule for CY 2010, we stated

that we would provide additional translations of the survey over time in response to suggestions for any additional language translations. We now offer HHCAHPS in English, Spanish, Chinese, Russian, and Vietnamese languages. We will continue to consider additional translations of the HHCAHPS in response to the needs of the home health patient population.

All of the requirements about home health patient eligibility for the HHCAHPS survey and conversely, which home health patients are ineligible for the HHCAHPS survey are delineated and detailed in the *HHCAHPS Protocols and Guidelines Manual,* which is downloadable from *https://homehealthcahps.org.* Home health patients are eligible for HHCAHPS if they received at least two skilled home health visits in the past two months, which are paid for by Medicare or Medicaid.

Home health patients are ineligible for inclusion in HHCAHPS surveys if one of these conditions pertains to them:

- Are under the age of 18;
- Are deceased prior to pulling sample;
- Receive hospice care;
- Received routine maternity care only;
- Are not considered survey eligible because the state in which the patient lives restricts release of patient information for a specific condition or illness that the patient has; or
- Requested that their names not be released to anyone.

We stated in previous rules that Medicare-certified agencies are required to contract with an approved HHCAHPS survey vendor. This requirement is also codified. Beginning in summer 2009, interested vendors applied to become approved HHCAHPS survey vendors. HHCAHPS survey vendors are required to attend introductory and all update trainings conducted by CMS and the HHCAHPS Survey Coordination Team, as well as to pass a post-training certification test. We now have approximately 40 approved HHCAHPS survey vendors. The list of approved HHCAHPS survey vendors is available at *https://homehealthcahps.org.*

(2) HHCAHPS Oversight Activities

We stated in prior final rules that vendors would be required to participate in HHCAHPS oversight activities to ensure compliance with HHCAHPS protocols, guidelines, and survey requirements. The purpose of the oversight activities is to ensure that approved survey vendors follow the *HHCAHPS Protocols and Guidelines Manual.* As stated previously in the CY 2010, CY 2011, and CY 2012 final rules, all approved survey vendors must develop a Quality Assurance Plan (QAP) for survey administration in accordance with the *HHCAHPS Protocols and Guidelines Manual.* An HHCAHPS survey vendor's first QAP must be submitted within 6 weeks of the data submission deadline date after the vendor's first quarterly data submission. The QAP must be updated and submitted annually thereafter and at any time that changes occur in staff or vendor capabilities or systems. A model QAP is included in the *HHCAHPS Protocols and Guidelines Manual.* The QAP should include the following:

- Organizational Background and Staff Experience
- Work Plan
- Sampling Plan
- Survey Implementation Plan
- Data Security, Confidentiality and Privacy Plan
- Questionnaire Attachments

As part of the oversight activities, the HHCAHPS Survey Coordination Team conducts on-site visits to the approved HHCAHPS survey vendors. The purpose of the site visits is to allow the HHCAHPS Coordination Team to observe the entire Home Health Care CAHPS Survey implementation process, from the sampling stage through file preparation and submission, as well as to assess how the HHCAHPS data are stored. The HHCAHPS Survey Coordination Team reviews the survey vendor's survey systems, and assesses administration protocols based on the *HHCAHPS Protocols and Guidelines Manual* posted at *https://homehealthcahps.org.* The systems and program review includes, but is not limited to the following:

- Survey management and data systems;
- Printing and mailing materials and facilities;
- Telephone call center facilities;
- Data receipt, entry and storage facilities; and
- Written documentation of survey processes.

After the site visits, HHCAHPS vendors are given a defined time period in which to correct any identified issues and provide follow-up documentation of corrections for review. HHCAHPS survey vendors are subject to follow-up site visits on an as-needed basis.

We proposed to codify the current guideline that all approved HHCAHPS survey vendors fully comply with all HHCAHPS oversight activities at § 484.250(c) of our regulations.

(3) HHCAHPS Requirements for CY 2014

For the CY 2014 APU, we proposed to continue monthly HHCAHPS data collection and reporting for four quarters. The data collection period for CY 2014 would include the second quarter 2012 through the first quarter 2013 (the months of April 2012 through March 2013). HHAs would be required to submit their HHCAHPS data files to the Home Health CAHPS Data Center for CY 2014 for the second quarter 2012 by 11:59 p.m., Eastern Time on October 18, 2012; for the third quarter 2012 by 11:59 p.m., Eastern Time on January 17, 2013; for the fourth quarter 2012 by 11:59 p.m., Eastern Time on April 18, 2013; and for the first quarter 2013 by 11:59 p.m., Eastern Time on July 18, 2013.

We would exempt HHAs receiving Medicare certification on or after April 1, 2012 from the full HHCAHPS reporting requirement for the CY 2014 APU, because these HHAs were not Medicare-certified in the period of April 1, 2011 through March 31, 2012. These HHAs would not need to complete a Participation Exemption Request Form for the CY 2014 Annual Payment Update. We proposed to maintain this stated exemption for new HHAs.

HHAs that had fewer than 60 HHCAHPS-eligible unduplicated or unique patients in the period of April 1, 2011 through March 31, 2012 would be exempt from the HHCAHPS data collection and submission requirements for the CY 2014 APU. Such agencies would be required to submit their patient counts for the period of April 1, 2011 through March 31, 2012 on the Participation Exemption Request form posted at *https://homehealthcahps.org* by 11:59 p.m., Eastern Time on January 17, 2013. This deadline would be firm, as would be all of the quarterly data submission deadlines.

(4) HHCAHPS Requirements for CY 2015

For the CY 2015 APU, we proposed to continue to require the continuous monthly HHCAHPS data collection and reporting for four quarters. The data collection period for CY 2015 would include the second quarter 2013 through the first quarter 2014 (the months of April 2013 through March 2014). HHAs would be required to submit their HHCAHPS data files to the Home Health CAHPS Data Center for CY 2014 for the second quarter 2013 by 11:59 p.m., Eastern Time on October 17, 2013; for the third quarter 2013 by 11:59 p.m., Eastern Time on January 16, 2014; for the fourth quarter 2013 by 11:59 p.m., Eastern Time on April 17, 2014; and for

the first quarter 2014 by 11:59 p.m., Eastern Time on July 17, 2014.

We proposed to continue to exempt HHAs receiving Medicare certification on or after April 13, which is after the period in which HHAs do their patient count (April 1, 2012 through March 31, 2013) on or after April 1, 2013 from the full HHCAHPS reporting requirement for the CY 2015 APU, because these HHAs are not Medicare-certified throughout the period of April 1, 2012 through March 31, 2013. These HHAs do not need to complete a Participation Exemption Request Form for the CY 2015 Annual Payment Update. We proposed to maintain this stated exemption for new HHAs.

Likewise, all HHAs that had fewer than 60 HHCAHPS-eligible unduplicated or unique patients in the period of April 1, 2012 through March 31, 2013 would be exempt from the HHCAHPS data collection and submission requirements for the CY 2015 APU. Agencies with fewer than 60 HHCAHPS-eligible, unduplicated or unique patients in the period of April 1, 2012 through March 31, 2013 would be required to submit their patient counts on the Participation Exemption Request form for CY 2015 posted at *https://homehealthcahps.org* by 11:59 p.m., Eastern Time on January 16, 2014. This deadline would be firm, as would be all of the quarterly data submission deadlines.

(5) HHCAHPS Reconsiderations and Appeals Process

We believe that HHAs should monitor their respective HHCAHPS survey vendors to ensure that vendors submit their HHCAHPS data on time, by accessing their HHCAHPS Data Submission Reports on *https://homehealthcahps.org.* This will help HHAs ensure that their data are submitted in the proper format for data processing to the HHCAHPS Data Center.

We believe that the reconsiderations process for HHCAHPS should not be burdensome to HHAs. We have modeled the HHCAHPS reconsiderations process after the one that is used for Hospital CAHPS, in use for nearly 7 years. We have described the HHCAHPS reconsiderations process requirements in the notification memorandum that the RHHIs/MACs sent to the affected HHAs, on behalf of CMS. HHAs have 30 days to send their reconsiderations to CMS. CMS has and will continue to fully examine all HHA reconsiderations.

(6) Summary of Proposed Changes in CY 2013

We proposed one change in the CY 2013 HH PPS proposed rule issued in the July 13, 2012 **Federal Register** (77 FR 41548). We proposed to codify the current guideline that all approved HHCAHPS survey vendors fully comply with all HHCAHPS oversight activities, and include this at § 484.250(c).

(7) For Further Information on the HHCAHPS Survey

We strongly encourage HHAs to learn about the survey and view the HHCAHPS Survey Web site at the official Web site for the HHCAHPS at *https://homehealthcahps.org.* Home health agencies can also send an email to the HHCAHPS Survey Coordination Team at *HHCAHPS@rti.org,* or telephone toll-free (1–866–354–0985) for more information about HHCAHPS.

The following is a summary of the comments we received regarding the Home Health Care CAHPS Survey (HHCAHPS) proposal.

Comment: We received several comments that expressed confusion over CMS's statement that we would codify the HHCAHPS guideline that home health agencies ensure that survey vendors are fully compliant with all HHCAHPS requirements because vendors are approved by CMS. These commenters noted that an agency should accept CMS's approval as verification that the vendor meets all HHCAHPS requirements and should not be held responsible for any compliance failures of a CMS-approved vendor.

Response: In the proposed rule, we proposed to codify the current guideline that all approved HHCAHPS survey vendors fully comply with all HHCAHPS oversight activities. We proposed to include this survey requirement at § 484.250(c). This was correct. However, we were not clear in the proposed rule about the HHA's role. HHAs do not need to participate in vendor oversight activities. We have corrected this in the final rule. We have clarified this language in the preamble of the final rule based on comments, that the HHCAHPS approved vendors have to comply with HHCAHPS oversight activities. We in error noted in the preamble of the proposed rule that HHAs have to comply with HHCAHPS oversight activities. However, HHAs are responsible for monitoring their vendors to ensure that vendors submit their data on time, using the information that is available to them on the HHCAHPS data submission reports accessible through *https://homehealthcahps.org.* If we become aware of a significant vendor issue that would put HHAs at risk for not meeting the APU requirements, we will immediately alert the affected HHAs. If we find that a vendor does not comply with HHCAHPS protocols and guidelines, or correct in a timely manner any deficiencies that are found during oversight activities, then we will remove that vendor from the approved list of HHCAHPS survey vendors.

Comment: One commenter believed that there needs to be enough flexibility within the reconsideration process to provide relief to HHA providers that have made reasonable efforts to ensure that their survey vendors have complied with the HHCAHPS requirements.

Response: We review each HHA submission for the reconsideration process in a standardized manner so that all HHAs are treated fairly in the review process. If we become aware of a significant vendor issue that would put HHAs at risk for not meeting the APU requirements, we will immediately alert the affected HHAs. If we find that a vendor does not comply with HHCAHPS protocols and guidelines, or correct in a timely manner any deficiencies that are found during oversight activities, then we will remove that vendor from the approved list of HHCAHPS survey vendors.

Comment: One commenter stated that there is continued concern that the HHCAHPS survey places another unfunded administrative burden on HHAs—a mandate that requires significant time to work with CMS's approved vendor selected by the HHA provider.

Response: The collection of the patient's perspectives of care data for similar CAHPS surveys, such as Hospital CAHPS, follow the same model where providers pay the approved survey vendors for the data collection, and CMS pays for the HHCCAHPS survey vendor training, technical support and assistance for HHAs and for HHCAHPS survey vendors, oversight of HHCAHPS survey vendors, and data analysis of the HHCAHPS survey data. HHAs are strongly encouraged to report their respective HHCAHPS costs on their cost reports but should note that the HHCAHPS costs are not reimbursable under the HH PPS. We encourage HHAs to ''shop around'' for the best cost value for them before contracting with an approved HHCAHPS vendor to conduct the survey on their behalf.

Comment: We received a comment requesting that CMS consider reporting the percent of patients that would probably recommend this agency to family and friends, in addition to reporting the percent of patients that

would definitely recommend this agency to family and friends.

Response: Thank you for your feedback. We will take it under consideration.

Comment: We received a comment that is in full support of the HHCAHPS and would suggest that CMS continue to report updates on HHCAHPS in the open door forums. Also, this commenter said that it might be very helpful to include HHCAHPS as a scope of work with the QIOs so that best practices to increase consumer satisfaction could be established and shared.

Response: We appreciate supportive comments about HHCAHPS. The survey provides an opportunity for patients to share their perspectives about the care provided. We appreciate your suggestion to include HHCAHPS in the SOW for the QIOs and will take it under consideration.

We are finalizing the proposed requirements for HHCAHPS as proposed in the CY 2013 HH PPS proposed rule. We are also codifying the current guideline that all approved HHCAHPS survey vendors fully comply with all HHCAHPS oversight activities. We are including this at § 484.250(c). The regulation is identically stated in the proposed rule and in this final rule.

4. Home Health Wage Index

Sections 1895(b)(4)(A)(ii) and (b)(4)(C) of the Act require the Secretary to provide appropriate adjustments to the proportion of the payment amount under the HH PPS that account for area wage differences, using adjustment factors that reflect the relative level of wages and wage-related costs applicable to the furnishing of home health services. In the CY 2013 HH PPS proposed rule (77 FR 41548), as in previous years, we proposed to base the wage index adjustment to the labor portion of the HH PPS rates on the most recent pre-floor and pre-reclassified hospital wage index. We would apply the appropriate wage index value to the labor portion of the HH PPS rates based on the site of service for the beneficiary (defined by section 1861(m) of the Act as the beneficiary's place of residence). Previously, we determined each HHA's labor market area based on definitions of Metropolitan Statistical Areas (MSAs) issued by the Office of Management and Budget (OMB). We have consistently used the pre-floor, pre-reclassified hospital wage index data to adjust the labor portion of the HH PPS rates. We believe the use of the pre-floor, pre-reclassified hospital wage index data results in an appropriate adjustment to the labor portion of the costs, as required by statute.

In the CY 2006 HH PPS final rule (70 FR 68132), we began adopting revised labor market area definitions as discussed in the Office of Management and Budget (OMB) Bulletin No. 03–04 (June 6, 2003). This bulletin announced revised definitions for Metropolitan Statistical Areas (MSAs) and the creation of Micropolitan Statistical Areas and Core-Based Statistical Areas (CBSAs). The bulletin is available online at *www.whitehouse.gov/omb/bulletins/b03–04.html.* In addition, OMB published subsequent bulletins regarding CBSA changes, including changes in CBSA numbers and titles. This rule incorporates the CBSA changes published in the most recent OMB bulletin. The OMB bulletins are available at *http://www.whitehouse.gov/omb/bulletins/index.html.*

Finally, we would continue to use the methodology discussed in the CY 2007 HH PPS final rule (71 FR 65884) to address those geographic areas in which there were no inpatient prospective payment system (IPPS) hospitals and, thus, no hospital wage data on which to base the calculation of the HH PPS wage index. For rural areas that do not have IPPS hospitals, and therefore, lack hospital wage data on which to base a wage index, we would use the average wage index from all contiguous CBSAs as a reasonable proxy. For rural Puerto Rico, we do not apply this methodology due to the distinct economic circumstances that exist there, but instead continue using the most recent wage index previously available for that area (from CY 2005).

For urban areas without IPPS hospitals, we use the average wage index of all urban areas within the state as a reasonable proxy for the wage index for that CBSA. For CY 2012, the only urban area without IPPS hospital wage data is Hinesville-Fort Stewart, Georgia (CBSA 25980).

The wage index values for rural areas and the CBSAs and their associated wage index values are available via the Internet at: *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HomeHealthPPS/Home-Health-Prospective-Payment-System-Regulations-and-Notices.html*

The following is a summary of the comments we received regarding the wage index policy in the CY 2013 HH PPS proposed rule.

Comment: Commenters expressed concern about the inequities between the hospital wage index and the home health wage index. Several commenters believed that the pre-floor, pre-reclassified hospital wage index is inadequate for adjusting home health costs. Commenters cited labor market distortions created by reclassification of hospitals in areas in which HHAs are not reclassified. However, while hospitals have the opportunity to reclassify to neighboring CBSAs or take advantage of the rural floor, HHAs do not have this ability. Commenters stated that this has resulted in inadequate home health cost adjustment that negatively impact HHAs ability to recruit and retain nurses and therapists in a highly competitive health care labor market. CMS's reasoning for refusing to apply reclassification to HHAs is that reclassification applies only to hospitals by statute. However, if hospital relative wages are thought to be a reasonable proxy for relative wages of HHAs, the impact of hospital reclassifications in an area should be applied to the hospital wage index which in turn is applied to the home health reimbursement.

Response: As we have previously stated (see the CY 2009 HH PPS final rule at 74 FR 58105), the regulations that govern the HH PPS do not provide a mechanism for allowing providers to seek geographic reclassification or to utilize the rural floor provisions that exist for IPPS hospitals. The rural floor provision can be found in section 4410 of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33) and is specific to hospitals. The reclassification provision can be found in section 1886(d)(10) of the Act is also specific to hospitals. In its June 2007 report titled, ''Report to Congress: Promoting Greater Efficiency in Medicare'', MedPAC recommended that Congress ''repeal the existing hospital wage index statute, including reclassification and exceptions, and give the Secretary authority to establish new wage index systems.'' We will continue to review and consider MedPAC's recommendations on a refined alternative wage index methodology for the HH PPS in the future.

Comment: A commenter believes that CMS's decision 7 years ago to switch from Metropolitan Statistical Areas to Core-Based Statistical Areas for the wage index calculation has had serious financial ramifications for HHAs in certain areas.

Response: We believe that adjusting payments based on the CBSA areas is the best available method of compensating for differences in labor markets. We adopted the OMB-revised definitions of the labor market areas (CBSAs) in our CY 2006 HH PPS final rule (70 FR 68137). We implemented a one-year transition policy consisting of a 50/50 blend of the MSA-based and the new CBSA-based wage indexes for that year. The HH PPS has been utilizing the

CBSA based wage index in its entirety since calendar year 2007.

Comment: Several commenters stated that the year-to-year swings in the wage index are unpredictable. Commenters also urged CMS to implement a policy to limit the wage index variation between provider types within CBSAs and adjacent markets. Commenters suggested that CMS establish ''change corridors'' to limit the annual change in wage index values in a given year.

Response: Updating the hospital wage index is done in a budget neutral manner. Establishing ''change corridors'' or limits on how much a particular wage index could increase or decrease from year-to-year would not be consistent with budget neutrality.

Comment: A commenter stated that the wage index is often based on inaccurate or incomplete hospital cost report data.

Response: We utilize efficient means to ensure and review the accuracy of the hospital cost report data and resulting wage index. The home health wage index is derived from the pre-floor, pre-reclassified wage index which is calculated based on cost report data from hospitals paid under the IPPS. All IPPS hospitals must complete the wage index survey (Worksheet S–3, Parts II and III) as part of their Medicare cost reports. Cost reports will be rejected if Worksheet S–3 is not completed. In addition, our intermediaries perform desk reviews on all hospitals' Worksheet S–3 wage data, and we run edits on the wage data to further ensure the accuracy and validity of the wage data. Furthermore, HHAs have the opportunity to submit comments on the hospital wage index data during the annual IPPS rulemaking period. Therefore, we believe our review processes result in an accurate reflection of the applicable wages for the areas given.

Comment: Several commenters supported a review of the entire wage index system and urge CMS to expedite that review and implement a system that not only recognizes variations between localities, but also treats all provider types within a local market equitably.

Response: Two studies were undertaken to address concerns that the current wage index system does not effectively reflect the true variation in labor costs. First, section 3137(b) of the Affordable Care Act required the Secretary to submit to the Congress a report that includes a plan to comprehensively reform the Medicare wage index applied under section 1886(d) of the Act. In developing the plan, the Secretary was directed to take into consideration the goals for reforming the wage index that were set forth by the Medicare Payment Advisory Commission (MedPAC) in its June 2007 report entitled ''Report to Congress: Promoting Greater Efficiency in Medicare'' and to ''consult with relevant affected parties.'' Second, the Secretary commissioned the Institute of Medicine (IOM) to ''evaluate hospital and physician geographic payment adjustments, the validity of the adjustment factors, measures and methodologies used in those factors, and sources of data used in those factors.'' Reports on both of these studies recently have been released. We refer readers to the FY 2013 IPPS final rule for summaries of the studies, their findings, and recommendations on reforming the wage index system (77 FR 28116).

Comment: A commenter stated that differences in the occupational personnel pool and costs between hospitals and HHAs make use of the hospital wage index inappropriate in the home health setting. Hospitals benefit from institutional efficiencies and rural hospitals have a reclassification mechanism to avoid exposure to the drastic rural rate in most states. Despite repeated comments from HHAs opposing the use of the hospital wage index each year, CMS has not yet developed a home health specific wage index, citing the expense and administrative burden of data collection. The commenter stated that CMS has the discretion to establish a home health wage index and that the use of the hospital wage index to adjust non-hospital reimbursement rates was originally intended to be an interim measure while CMS examined industry-specific wage data for HHAs, SNFs, IRFs and other post-acute services. The commenter cited the following rules: 65 FR 41127 (July 12, 2000), 65 FR 46770 (July 31, 2000), and 66 FR 41316 (August 7, 2001).

Response: Please note that the July 31, 2000 rule (65 FR 46770) is a SNF rule and the August 7, 2001 rule (66 FR 41316) is an IRF rule so they do not apply to the HH PPS. The HH PPS rule at 65 FR 41127 was published on July 3, 2000 and we did not intend or imply that our adoption of the pre-floor, pre-reclassified hospital wage index to be an interim measure. As we stated in the July 3, 2000 HH PPS final rule (65 FR 41173), ''To be consistent with the wage index adjustment under the current interim payment system, we proposed and will retain applying the appropriate wage index value to the labor portion of the PPS rates based on the geographic area in which the beneficiary received home health services.'' We further noted that ''In establishing the final HHA PPS rates, we used the most recent pre-floor, pre-reclassified hospital wage index without regard to whether these hospitals have been reclassified to a new geographic area by the Medicare Geographic Reclassification Board.'' As stated above, we refer readers to the FY 2013 IPPS Final Rule (77 FR 28116) for summaries of the two studies undertaken to address concerns that the current hospital wage index system does not effectively reflect the true variation in labor costs, their findings, and recommendations on reforming the wage index system.

Comment: A commenter noted that beginning in FY 2004, CMS dropped critical access hospitals (CAHs) from the calculation of the wage index. As CAHs are located in rural areas, the absence of CAH wage data further compromises the accuracy and appropriateness of using hospital wage data to determine labor costs of HHAs located in rural areas.

Response: Although the pre-floor, pre-reclassified hospital wage index data does not include CAHs, we believe it most appropriately reflects the relative level of wages and wage-related costs applicable to the furnishing of home health services and provide appropriate adjustments to the episode payment amounts under the HH PPS to account for area wage differences. Therefore, for this final rule, we are adopting the pre-floor, pre-reclassified hospital wage index.

Comment: A commenter suggested, pending development of an industry specific wage index, that CMS should investigate adding a population density factor to the calculation of the payment formula. This would provide incentive to HHAs to service beneficiaries residing in low density (primarily rural) areas, while at the same time reducing excess reimbursement for services provided in densely populated urban and congregate living facilities. The commenter states that travel time and mileage costs incurred for providing home health services to patients that are grouped in the lowest population density group is more than double that of the highest population density group.

Response: We have received and responded to this comment in prior rules. We appreciate the commenter's comment, but we do not have evidence that a population density adjustment is an appropriate adjustment to a wage index. Section 3131(d) of the Affordable Care Act requires the Secretary to conduct a study on HHA costs involved with providing ongoing access to care to low-income Medicare beneficiaries or beneficiaries in medically underserved

areas, and in treating beneficiaries with varying levels of severity of illness. Because medically underserved areas may be associated with population density, the purview of the above mentioned study may possibly include feasibility of such an adjustment as part of that research. While rural agencies cite the added cost of long distance travel to treat their patients, urban/non-rural agencies also cite added costs such as needed security measures and the volume of traffic that they must absorb. We will consider this suggestion in future research activities.

Comment: A commenter requested that the county in which its HHA is located be reclassified into a different CBSA. The commenter believes that the ability to attract and retain qualified competent health care professionals will be adversely affected if the county is not reclassified into another CBSA.

Response: We adopted the OMB-revised definitions of the labor market areas (CBSAs) in our CY 2006 HH PPS final rule (70 FR 68137). We implemented a one-year transition policy consisting of a 50/50 blend of the MSA-based and the new CBSA-based wage indexes. The HH PPS has been utilizing the CBSA based wage index in its entirety since calendar year 2007. We do not have the authority to redesignate a county into a different CBSA.

We are implementing our proposal to base the wage index adjustment to the labor portion of the HH PPS rates on the most recent pre-floor and pre-reclassified hospital wage index.

5. Final CY 2013 Payment Update

a. National Standardized 60-Day Episode Rate

The Medicare HH PPS has been in effect since October 1, 2000. As set forth in the July 3, 2000 final rule (65 FR 41128), the base unit of payment under the Medicare HH PPS is a national standardized 60-day episode rate. As set forth in § 484.220, we adjust the national standardized 60-day episode rate by a case-mix relative weight and a wage index value based on the site of service for the beneficiary.

In the CY 2008 HH PPS final rule with comment period, we refined the case-mix methodology and also rebased and revised the home health market basket. To provide appropriate adjustments to the proportion of the payment amount under the HH PPS to account for area wage difference, we apply the appropriate wage index value to the labor portion of the HH PPS rates. As discussed in section III.C.1, we are finalizing a labor-related share of the case-mix adjusted 60-day episode rate of 78.535 percent and a non-labor-related share of 21.465 percent. The final CY 2013 HH PPS rates use the same case-mix methodology and application of the wage index adjustment to the labor portion of the HH PPS rates as set forth in the CY 2008 HH PPS final rule with comment period. Following are the steps we take to compute the case-mix and wage adjusted 60-day episode rate:

(1) Multiply the national 60-day episode rate by the patient's applicable case-mix weight.

(2) Divide the case-mix adjusted amount into a labor (78.535 percent) and a non-labor portion (21.465 percent).

(3) Multiply the labor portion by the applicable wage index based on the site of service of the beneficiary.

(4) Add the wage-adjusted portion to the non-labor portion, yielding the case-mix and wage adjusted 60-day episode rate, subject to any additional applicable adjustments.

In accordance with section 1895(b)(3)(B) of the Act, this document constitutes the annual update of the HH PPS rates. The HH PPS regulations at § 484.225 set forth the specific annual percentage update methodology. In accordance with § 484.225(i), for a HHA that does not submit home health quality data, as specified by the Secretary, the unadjusted national prospective 60-day episode rate is equal to the rate for the previous calendar year increased by the applicable home health market basket index amount minus two percentage points. Any reduction of the percentage change will apply only to the calendar year involved and will not be considered in computing the prospective payment amount for a subsequent calendar year.

As discussed in the July 3, 2000 HH PPS final rule, for episodes with four or fewer visits, Medicare pays the national per-visit amount by discipline, referred to as a low utilization payment amount (LUPA). We update the national per-visit rates by discipline annually by the applicable home health market basket percentage. We adjust the national per-visit rate by the appropriate wage index based on the site of service for the beneficiary, as set forth in § 484.230. For CY 2013, we proposed to adjust the labor portion of the updated national per-visit rates used to calculate LUPAs by the most recent pre-floor and pre-reclassified hospital wage index. We will update the LUPA add-on payment amount and the NRS conversion factor by the applicable home health payment update of 1.3 percent for CY 2013.

Medicare pays the 60-day case-mix and wage-adjusted episode payment on a split percentage payment approach. The split percentage payment approach includes an initial percentage payment and a final percentage payment as set forth in § 484.205(b)(1) and (2). We may base the initial percentage payment on the submission of a request for anticipated payment (RAP) and the final percentage payment on the submission of the claim for the episode, as discussed in § 409.43. The claim for the episode that the HHA submits for the final percentage payment determines the total payment amount for the episode and whether we make an applicable adjustment to the 60-day case-mix and wage-adjusted episode payment. The end date of the 60-day episode as reported on the claim determines which calendar year rates Medicare would use to pay the claim.

We may also adjust the 60-day case-mix and wage-adjusted episode payment based on the information submitted on the claim to reflect the following:

- A low utilization payment provided on a per-visit basis as set forth in § 484.205(c) and § 484.230.
- A partial episode payment adjustment as set forth in § 484.205(d) and § 484.235.
- An outlier payment as set forth in § 484.205(e) and § 484.240.

b. Final Updated CY 2013 National Standardized 60-Day Episode Payment Rate

In calculating the annual update for the CY 2013 national standardized 60-day episode payment rates, we first look at the CY 2012 rates as a starting point. The CY 2012 national standardized 60-day episode payment rate is $2,138.52.

Next, we update the payment amount by the final CY 2013 home health payment update of 1.3 percent.

As previously discussed in section III.A. (''Case-Mix Measurement'') of this final rule, we have updated our analysis of the change in case-mix that is not due to an underlying change in patient health status. The analysis revealed an additional increase in nominal change in case-mix, increasing the reduction needed in CY 2013 to fully account for nominal case-mix change from 1.32 percent, using data through 2009, to 2.18 percent, using data through 2010. However, we will reduce rates by 1.32 percent in CY 2013 as promulgated in the CY 2012 HH PPS Final Rule. The national 60-day episode payment amount is adjusted by the case-mix weight of the patient and by the wage index of the geographic area in which the beneficiary is located. The final CY 2013 national standardized 60-day episode payment rate for an HHA that submits the required quality data is

shown in Table 12. The final CY 2013 national standardized 60-day episode payment rate for an HHA that does not submit the required quality data is updated by the final CY 2013 home health payment update (1.3 percent) minus 2 percentage points and is shown in Table 13.

TABLE 12: CY 2013 National 60-Day Episode Payment Amount

CY 2012 National Standardized 60-Day Episode Payment Rate	Multiply by the CY 2013 home health payment update of 1.3 percent	Reduce by 1.32 percent for nominal change in case-mix	CY 2013 National Standardized 60-Day Episode Payment Rate.
$2,138.52	X 1.013	X 0.9868	$2,137.73

TABLE 13: For HHAs that Do Not Submit the Quality Data –CY 2013 National 60-Day Episode Payment Amount

CY 2012 National Standardized 60-Day Episode Payment Rate	Multiply by the CY 2013 home health payment update of 1.3 percent minus 2 percentage points (-0.7 percent)	Reduce by 1.32 percent for nominal change in case-mix	CY 2013 National Standardized 60-Day Episode Payment Rate.
$2,138.52	X 0.993	X 0.9868	$2,095.52

c. National Per-Visit Rates

The national per-visit rates are used to pay LUPAs and are also used to compute imputed costs in outlier calculations. The per-visit rates are paid by type of visit or home health discipline. The six home health disciplines are as follows:

- Home Health Aide (HH aide);
- Medical Social Services (MSS);
- Occupational Therapy (OT);
- Physical Therapy (PT);
- Skilled Nursing (SN); and
- Speech Language Pathology Therapy (SLP).

In order to calculate the CY 2013 national per-visit rates, the CY 2012 national per-visit rates for each discipline are updated by the final CY 2013 home health payment update of 1.3 percent. The national per-visit rates are adjusted by the wage index based on the site of service of the beneficiary. The per-visit rates are not case-mix adjusted nor are they subject to the 1.32 percent reduction related to the nominal increase in case-mix. The per-visit payment amounts for LUPAs are separate from the LUPA Add-On amount which is paid for episodes that occur as the only episode or initial episode in a sequence of adjacent episodes. The CY 2013 national per-visit rates are shown in Table 14.

TABLE 14: CY 2013 National Per-Visit Payment Amounts

		For HHAs that DO submit the required quality data		For HHAs that DO NOT submit the required quality data	
Home Health Discipline Type	CY 2012 Per-Visit Amounts Per 60-Day Episode	Multiply by the CY 2013 payment update of 1.3 percent	CY 2013 per-visit payment	Multiply by the CY 2013 payment update of 1.3 percent minus 2 percentage points (-0.7 percent)	CY 2013 per-visit payment
HH Aide	$51.13	X 1.013	$51.79	X 0.993	$50.77
MSS	$180.96	X 1.013	$183.31	X 0.993	$179.69
OT	$124.26	X 1.013	$125.88	X 0.993	$123.39
PT	$123.43	X 1.013	$125.03	X 0.993	$122.57
SN	$112.88	X 1.013	$114.35	X 0.993	$112.09
SLP	$134.12	X 1.013	$135.86	X 0.993	$133.18

d. LUPA Add-On Payment Amount Update

Beginning in CY 2008, LUPA episodes that occur as the only episode or initial episode in a sequence of adjacent episodes are adjusted by adding an additional amount to the LUPA payment before adjusting for area wage differences. We update the LUPA payment amount by the CY 2013 home health payment update of 1.3 percent. The LUPA add-on payment amount is not subject to the 1.32 percent reduction related to the nominal increase in case-mix. For CY 2013, the add-on to the LUPA payment for HHAs that submit the required quality data will be updated by the CY 2013 home health payment update of 1.3 percent. The CY 2013 LUPA add-on payment amount is shown in Table 15. The add-on to the LUPA payment for HHAs that do not submit the required quality data will be updated by the CY 2013 home health payment update (1.3 percent) minus two percentage points.

TABLE 15: CY 2013 LUPA Add-On Amounts

	For HHAs that DO submit the required quality data		For HHAs that DO NOT submit the required quality data	
CY 2012 LUPA Add-On Amount	Multiply by the CY 2013 payment update of 1.3 percent	CY 2013 LUPA Add-On Amount	Multiply by the CY 2013 payment update of 1.3 percent minus 2 percentage points (-0.7 percent)	CY 2013 LUPA Add-On Amount
$94.62	X 1.013	$95.85	X 0.993	$93.96

e. Nonroutine Medical Supply Conversion Factor Update

Payments for nonroutine medical supplies (NRS) are computed by multiplying the relative weight for a particular severity level by the NRS conversion factor. We first increase CY 2012 NRS conversion factor ($53.28) by the payment update of 1.3 percent. The final updated CY 2013 NRS conversion factor for 2013 appears in Table 16.

TABLE 16: CY 2013 NRS Conversion Factor for HHAs that DO Submit the Required Quality Data

CY 2012 NRS Conversion Factor	Multiply by the CY 2013 payment update of 1.3 percent	CY 2013 NRS Conversion Factor
$53.28	X 1.013	$53.97

Using the NRS conversion factor ($53.97) for CY 2013, the payment amounts for the various severity levels are shown in Table 17.

TABLE 17: CY 2013 NRS Payment Amounts for HHAs that DO Submit the Required Quality Data

Severity Level	Points (Scoring)	Relative Weight	CY 2013 NRS Payment Amount
1	0	0.2698	$14.56
2	1 to 14	0.9742	$52.58
3	15 to 27	2.6712	$144.16
4	28 to 48	3.9686	$214.19
5	49 to 98	6.1198	$330.29
6	99+	10.5254	$568.06

For HHAs that do not submit the required quality data, we again begin with the CY 2012 NRS conversion factor. We increase the CY 2012 NRS conversion factor ($53.28) by the CY 2013 home health payment update of 1.3 percent minus 2 percentage points. The CY 2013 NRS conversion factor for

HHAs that do not submit quality data is shown in Table 18.

TABLE 18: CY 2013 NRS Conversion Factor for HHAs that DO NOT Submit the Required Quality Data

CY 2012 NRS Conversion Factor	Multiply by the CY 2013 payment update of 1.3 percent minus 2 percentage points (-0.7 percent)	CY 2013 NRS Conversion Factor
$53.28	X 0.993	$52.91

The payment amounts for the various severity levels based on the updated conversion factor for HHAs that do not submit quality data are calculated in Table 19.

TABLE 19: CY 2013 NRS Payment Amounts for HHAs that DO NOT Submit the Required Quality Data

Severity Level	Points (Scoring)	Relative Weight	NRS Payment Amount
1	0	0.2698	$14.28
2	1 to 14	0.9742	$51.54
3	15 to 27	2.6712	$141.33
4	28 to 48	3.9686	$209.98
5	49 to 98	6.1198	$323.80
6	99+	10.5254	$556.90

6. Rural Add-On

Section 421(a) of the MMA required, for home health services furnished in a rural areas (as defined in section 1886(d)(2)(D) of the Act), with respect to episodes or visits ending on or after April 1, 2004 and before April 1, 2005, that the Secretary increase the payment amount that otherwise would have been made under section 1895 of the Act for the services by 5 percent.

Section 5201 of the DRA amended section 421(a) of the MMA. The amended section 421(a) of the MMA required, for home health services furnished in a rural area (as defined in section 1886(d)(2)(D) of the Act), on or after January 1, 2006 and before January 1, 2007, that the Secretary increase the payment amount otherwise made under section 1895 of the Act for those services by 5 percent.

Section 3131(c) of the Affordable Care Act amended Section 421(a) of the MMA to provide an increase of 3 percent of the payment amount otherwise made under section 1895 of the Act for home health services furnished in a rural area (as defined in section 1886(d)(2)(D) of the Act), for episodes and visits ending on or after April 1, 2010 and before January 1, 2016.

The statute waives budget neutrality related to this provision, as the statute specifically states that the Secretary shall not reduce the standard prospective payment amount (or amounts) under section 1895 of the Act applicable to home health services furnished during a period to offset the increase in payments resulting in the application of this section of the statute.

The 3 percent rural add-on is applied to the national standardized 60-day episode rate, national per-visit rates, LUPA add-on payment, and NRS conversion factor when home health services are provided in rural (non-CBSA) areas. Refer to Tables 20 through 24 for these payment rates.

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TABLE 20: CY 2013 Payment Amounts for 60-Day Episodes for Services Provided in a Rural Area

For HHAs that DO Submit Quality Data				For HHAs that DO NOT Submit Quality Data		
CY 2013 National Standardized 60-Day Episode Payment Rate	Multiply by the 3 Percent Rural Add-On	Rural CY 2013 National Standardized 60-Day Episode Payment Rate		CY 2013 National Standardized 60-Day Episode Payment Rate	Multiply by the 3 Percent Rural Add-On	Rural CY 2013 National Standardized 60-Day Episode Payment Rate
$2,137.73	X 1.03	$2,201.86		$2,095.52	X 1.03	$2,158.39

TABLE 21: CY 2013 Per-Visit Amounts for Services Provided in a Rural Area

		For HHAs that DO submit quality data				For HHAs that DO NOT submit quality data		
Home Health Discipline Type		CY 2013 per-visit rate	Multiply by the 3 Percent Rural Add-On	Rural CY 2013 per-visit rate		CY 2013 per-visit rate	Multiply by the 3 Percent Rural Add-On	Rural CY 2013 per-visit rate
HH Aide		$51.79	X 1.03	$53.34		$50.77	X 1.03	$52.29
MSS		$183.31	X 1.03	$188.81		$179.69	X 1.03	$185.08
OT		$125.88	X 1.03	$129.66		$123.39	X 1.03	$127.09
PT		$125.03	X 1.03	$128.78		$122.57	X 1.03	$126.25
SN		$114.35	X 1.03	$117.78		$112.09	X 1.03	$115.45
SLP		$135.86	X 1.03	$139.94		$133.18	X 1.03	$137.18

TABLE 22: CY 2013 LUPA Add-On Amounts for Services Provided in Rural Areas

For HHAs that DO submit quality data				For HHAs that DO NOT submit quality data		
CY 2013 LUPA Add-On Amount	Multiply by the 3 Percent Rural Add-On	Rural CY 2013 LUPA Add-On Amount		CY 2013 LUPA Add-On Amount	Multiply by the 3 Percent Rural Add-On	Rural CY 2013 LUPA Add-On Amount
$95.85	X 1.03	$98.73		$93.96	X 1.03	$96.78

TABLE 23: CY 2013 NRS Conversion Factor for Services Provided in Rural Areas

For HHAs that DO submit quality data			For HHAs that DO NOT submit quality data		
CY 2013 Conversion Factor	Multiply by the 3 Percent Rural Add-On	Rural CY 2013 Conversion Factor	CY 2013 Conversion Factor	Multiply by the 3 Percent Rural Add-On	CY Rural 2013 Conversion Factor
$53.97	X 1.03	$55.59	$52.91	X 1.03	$54.50

TABLE 24: CY 2013 NRS Payment Amounts for Services Provided in Rural Areas

		For HHAs that **DO** submit quality data (NRS Conversion Factor=$55.59)		For HHAs that DO **NOT** submit quality data (NRS Conversion Factor=$54.50)	
Severity Level	Points (Scoring)	Relative Weight	Total NRS Payment Amount for Rural Areas	Relative Weight	Total NRS Payment Amount for Rural Areas
1	0	0.2698	$15.00	0.2698	$14.70
2	1 to 14	0.9742	$54.16	0.9742	$53.09
3	15 to 27	2.6712	$148.49	2.6712	$145.58
4	28 to 48	3.9686	$220.61	3.9686	$216.29
5	49 to 98	6.1198	$340.20	6.1198	$333.53
6	99+	10.5254	$585.11	10.5254	$573.63

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The following is a summary of the comments we received regarding the HH PPS payment rates.

Comment: Commenter supports the continuation of the rural add-on and CMS's recognition of the challenges faced by rural providers.

Response: We value the crucial role that rural providers fill in providing care to beneficiaries who reside in rural areas. The current rural add-on is legislated by section 3131(c) of the Affordable Care Act amended section 421(a) of the MMA to provide an increase of 3 percent of the payment amount otherwise made under section 1895 of the Act for home health services furnished in a rural area for episodes and visits ending on or after April 1, 2010 and before January 1, 2016.

Comment: A commenter urges CMS to consider a 5 percent rural add-on.

Response: To bolster payment rates for services provided to beneficiaries who reside in rural areas, section 421(a) of the MMA, as amended by section 3131(c) of the Affordable Care Act, provides for a 3 percent rural add-on for episodes and visits ending on or after April 1, 2010 and before January 1, 2016. The statute waives budget neutrality related to this provision. The amount of the rural add-on is stipulated by section 421(a) of the MMA.

Comment: A commenter believes that HHAs that serve beneficiaries in rural areas are in a particularly precarious financial situation. The commenter stated that rural HHAs operating costs are higher than urban HHAs. In addition, the commenters are concerned about access to care for rural beneficiaries. One commenter goes on to state that rural HHAs often function as the primary caregivers for elderly homebound patients who have high resource needs which also increase the cost of rural home health services.

Response: As we stated above, we value the crucial role that rural providers fill in providing care to beneficiaries who reside in rural areas. We will be looking to improve the accuracy of payment to HHAs in the future, through a number of efforts. In particular, section 3131(d) of the Affordable Care Act requires the Secretary to study and report on the development of HH payment revisions that would ensure access to care and payment for severity of illness. The study is to be on HHA costs involved with providing ongoing access to care to low-income Medicare beneficiaries or beneficiaries in medically underserved areas, and in treating beneficiaries with varying levels of severity of illness. As part of this study, we are required to consult with appropriate stakeholders, such as groups representing HHAs and groups representing Medicare beneficiaries. At the conclusion of this study, we must submit a Report to the Congress by March 1, 2014. Based on the findings of this study, the Secretary may provide for a demonstration project to test whether making payment adjustments for HH services under the Medicare program would substantially improve access to care for patients with high severity levels of illness or for low-

income or underserved Medicare beneficiaries.

We are implementing the payment rates as they appear in sections III.C.5 and III.C.6 above.

D. Home Health Face-to-Face Encounter

1. Additional Flexibility

As a condition for payment, the Affordable Care Act requires that, prior to certifying a patient's eligibility for the home health benefit, the physician must document that the physician himself or herself or an allowed nonphysician practitioner (NPP) has had a face-to-face encounter with the patient. Specifically, sections 1814(a)(2)(C) and 1835 (a)(2)(A) of the Act, as amended by the Affordable Care Act state that a nurse practitioner or clinical nurse specialist, as those terms are defined in section 1861(aa)(5) of the Act, working in collaboration with the physician in accordance with state law, or a certified nurse-midwife (as defined in section 1861(gg) of the Act) as authorized by state law, or a physician assistant (as defined in section 1861(aa)(5) of the Act) under the supervision of the physician may perform the face to face encounter and inform the certifying physician, who documents the encounter as part of the certification of eligibility. In the CY 2012 HH PPS final rule (76 FR 68597), we stated that, in addition to the certifying physician and allowed NPPs, the physician who cared for the patient in an acute or post-acute care facility, and who had privileges in such facility, could also perform the face-to-face encounter and inform the certifying physician, who would document the encounter as part of the certification of eligibility, that the encounter supported the patient's homebound status and need for skilled services.

For patients admitted to home health following care in an acute or post-acute care facility, the home health industry has asked whether it would be acceptable for an allowed NPP, working in the acute or post-acute facility, to perform the face-to-face encounter in collaboration with the acute or post-acute care physician and communicate his or her clinical findings to the acute or post-acute care physician and, then, for the acute or post-acute care physician to communicate the NPP's findings to the certifying physician. In practice, it is our understanding from these stakeholders that acute or post-acute care physicians utilize NPPs to obtain information about the patient's clinical condition. As such, the industry suggested that it would be reasonable and appropriate for an allowed NPP working in an acute or post-acute facility to perform the face-to-face encounter and communicate the clinical findings to the acute or post-acute care physician who would then communicate information regarding the patient's homebound status and need for skilled services to the certifying physician. We do not believe the statute precludes this situation from occurring. Therefore, in the CY 2013 HH PPS proposed rule (77 FR 41548)), for patients admitted to home health from an acute or post-acute facility we proposed to modify the regulations at § 424.22(a)(1)(v) to allow an NPP in an acute or post-acute facility to perform the face-to-face encounter in collaboration with or under the supervision of the physician who has privileges and cared for the patient in the acute or post-acute facility, and allow such physician to inform the certifying physician of the patient's homebound status and need for skilled services.

The following is a summary of the comments we received regarding the additional flexibility proposed.

Comment: Most commenters expressed support of the additional flexibility proposed. One commenter stated that the proposal will be difficult to implement and educate physicians on and that physicians often do not want to certify based on information provided to them from a different physician or allowed NPP.

Response: We thank the commenters for their support and acknowledge since the implementation of the face-to-face encounter requirements in CY 2011 (75 FR 70372) we have heard that many HHAs and practitioners believe that the requirements are confusing and hard for providers to understand. As result, we recently released a revised set of Q&As and a MLN Matters article. We created this guidance with the goal of increasing the understanding of the face-to-face requirements among physicians and to provide additional flexibilities that certifying physicians can utilize in completing the face-to-face encounter documentation. For example, if the certifying physician is hesitant to use information provided to them from another physician or allowed NPP, the certifying physician can use a hospital's discharge summary as the face-to-face documentation as long as it is clearly titled and dated as such, and contains all the documentation requirements and is signed by the certifying physician. The Q&As are available at: *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HomeHealthPPS/Downloads/QandAsFull-revised-062712.pdf* and the MLN Matters article is available at: *http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNMattersArticles/Downloads/SE1219.pdf*.

Comment: One commenter recommended that CMS permit allowed NPPs in the acute or post-acute setting to speak directly with the certifying physician about the patient's clinical and homebound status and need for skilled care. Another commenter recommended that CMS allow the physician to sign off on the NPP's clinical findings and permit the NPP to send his or her clinical findings with the physician signature directly to the certifying physician. The commenter also stated that HHAs should not have to ensure that the acute or post-acute care physician is the supervising physician of the NPP that performed the face-to-face encounter.

Response: In the acute or post-acute care setting, current policy permits allowed NPPs to perform the face-to-face encounter and directly inform the certifying physician of the clinical findings and how such findings support that the patient is homebound and needs skilled services. It would also be permissible for the physician in the acute or post-acute care facility that cared for the patient in that setting to sign off on the NPPs clinical findings, which would be sent to the certifying physician by the NPP who is collaborating directly with the certifying physician. However, it is still the responsibility of the certifying physician to document the date that the face-to-face encounter occurred and that the condition for which the patient was being treated in the face-to-face encounter is related to the primary reason the patient requires home health services and that the clinical findings of the encounter support that the patient is homebound and in need of either intermittent skilled nursing services or therapy services. Likewise, the completion of the face-to-face encounter documentation is required to be completed by the physician that is certifying the patient for home health services, rather than the HHA. As such, the certifying physician should only be documenting an actual face-to-face encounter that was performed by an allowed NPP or the physician that cared for the patient in the acute or post-acute care setting as defined in § 424.22(a)(1)(v) in satisfying the face-to-face encounter requirements.

Comment: One commenter expressed concern that claims could be denied because the communication between the acute or post-acute care physician and the community certifying physician

might not be evident as it could occur via telephone or in person (rather than via email or written correspondence).

Response: It is the responsibility of the certifying physician to document that the face-to-face encounter occurred and to satisfy the content requirements. It would be acceptable for the certifying physician to obtain information verbally either from a physician in the acute or post-acute care facility that cared for the patient in that setting, or an allowed NPP who is either collaborating directly or under the supervision of either the certifying physician or the physician who cared for the patient in the acute or post-acute care setting, and document what was conveyed orally as long as all the content requirements are met.

Comment: Some commenters stated that the face-to-face encounter documentation requirements create substantial burden for HHAs in ensuring documentation compliance. Often times, physicians are confused as to what is required of them, view the paperwork as duplicative, and are uncooperative, which cause significant resources being invested by the HHA into obtaining the required documentation. Further, if the face-to-face encounter documentation is not obtained, the HHA is penalized for physician noncompliance. One commenter stated that electronic medical records and meaningful use standards should result in the information being readily available to support the patient's homebound status and need for skilled services, negating the need for a separate documentation requirements. Other commenters suggested that CMS allow a signed and dated discharge summary or physician's office note to stand as evidence of the face-to-face encounter, and one commenter questioned why it was necessary to document a face-to-face encounter when a patient was admitted from an acute or post-acute care setting, as the patient was obviously under the care of a physician during his or her stay. Moreover, several commenters asked CMS to rescind our face-to-face encounter documentation requirements or allow providers to bill for Medicare eligible services when the physician does not comply with completing the face-to-face documentation. Finally, some commenters suggested that if the face-to-face documentation is not provided by the certifying physician to the HHA within 5 days of referral, the HHA would provide a Home Health Advance Beneficiary Notice (HHABN) Option 2 at that time.

Response: We thank the commenters for their comments, but these comments are outside the scope of this rule. However, we would like to remind commenters that we do not have the authority to rescind the requirement for certifying physicians to document the face-to-face encounter, nor exempt HHAs from responsibility for the face-to-face encounter requirements regardless of the setting from which the patient was admitted or for physician noncompliance, as section 6407 of the Affordable Care Act mandates it is a condition for payment. As we stated above, a recently revised set of Q&As and a MLN Matters article were released, which specify certain flexibilities that certifying physicians can utilize in completing the face-to-face encounter documentation. For example, the certifying physician can use the discharge summary as the face-to-face documentation as long as it is clearly titled and dated as such, and contains all the documentation requirements and is signed by the certifying physician. In response to commenters who suggested that an HHABN Option 2 be delivered to the patient if the face-to-face encounter documentation is not provided by the certifying physician to the HHA within 5 days, HHAs may issue an HHABN Option 2 to the patient after only 5 days; however, the current regulations at § 424.22(a)(1)(v) allow a face-to-face encounter to occur no more than 90 days prior to the home health start of care date or within 30 days of the start of the home health care and HHAs should recognize that they are responsible for providing information to Medicare beneficiaries prior to the start of care about the extent to which Medicare may pay for services and thereafter prior to a change in payment status under the Patient Rights Condition of Participation set out in § 484.10(e). We want to reiterate that the HHABN Option 2 does not transfer liability to the beneficiary when technical requirements for payment, such as the face-to-face encounter documentation, are not met.

Comment: Several commenters requested that, due to difficulties in obtaining face-to-face encounter documentation from physicians, the face-to-face documentation requirements should be limited to the date which the encounter occurred and that the condition for which the patient was being treated in the face-to-face encounter is related to the primary reason the patient requires home health services. Some commenters suggested that CMS allow the preprinted certification statement (from the former CMS 485/plan of treatment) to suffice as documentation of the patient's homebound status. In addition, several commenters suggested that CMS allow a ''non-PCP specialist'' medical director to sign the face-to-face encounter documentation, allow additional types of practitioners to conduct the face-to-face encounter, allow an HHA's Medical Director to complete the face-to-face encounter, including documentation of such encounter, and permit allowed NPPs and other types of practitioners to certify patients for home health services. Other commenters suggested that CMS allow physicians to delegate the documentation requirements to allowed NPPs.

Response: Some of these comments are outside the scope of this rule. However, we would like to respond to the comments that request CMS not to require the face-to-face documentation to contain why the clinical findings of such encounter support that the patient is homebound and in need of intermittent skilled nursing services or therapy services or that we allow a preprinted statement from the former CMS 485/plan of treatment to suffice as documentation of the patient's homebound status. As we stated in the CY 2011 final rule implementing the face-to-face encounter documentation requirements (76 FR 68594), using the words ''document the encounter'' in the statute instead of ''attest to the encounter'' suggests that the Congress intended the face-to-face encounter documentation to include factual information about the patient's condition as seen during the encounter which would support the physician's certification of the patient's eligibility for home health services (that is, homebound status and need for skilled services). Likewise, as the statute requires the certifying physician to document the face-to-face encounter, it would not be permissible to delegate this responsibility to an allowed NPP or to use preprinted statements. In response to the comments suggesting that additional types of practitioners, an HHA Medical Director, or a ''non-PCP specialist'' MD should be able to conduct and/or document the face-to-face encounter, we do not have the authority to further define the types of practitioners allowed to perform the face-to-face encounter and because documentation of a the face-to-face encounter is required for certification, the certifying physician is responsible for documenting the face-to-face encounter. In addition, we do not have the statutory authority to permit allowed NPPs or other types of practitioners to certify patients for home health services, nor is it permissible for

HHA Medical Directors to certify patients for home health services, of which the face-to-face encounter documentation is one component, as longstanding regulations at § 424.22 impose financial restrictions on the relationship between an HHA and the certifying physician. The face-to-face encounter provision in the Affordable Care Act was designed as an anti-fraud provision and CMS is committed to ensuring that Medicare reimbursement is available only to patients actually in need of home health services.

Comment: Some commenters asked that we further define ''exceptional circumstances'' in which the face-to-face encounter can be waived to include circumstances where the patient moves, changes physician, or is re-hospitalized within 30 days of the start of the home health episode. Several commenters also asked that CMS expand the window of time during which a face-to-face encounter can occur to 60 days after admission to home health. Other commenters stated that many beneficiaries that are homebound and/or live in remote areas are not able to travel to their doctor's offices or have limited transportation options to satisfy the face-to-face encounter requirements and some commenters suggested that Medicare reimburse for the expense of a non-urgent stretcher or wheelchair transport to a physician's office to fulfill the face-to-face encounter requirements, while others suggested that CMS allow individuals to meet the face-to-face encounter requirements through telehealth technologies that could be made available in patient's homes.

Response: Some of these comments are outside the scope of this rule. We will consider the commenters suggestions on further defining ''exceptional circumstances'' in which face-to-face encounter requirements could be waived for future rulemaking. However, we will take the opportunity to briefly respond to some of the commenters' other concerns. Regarding the timeframe allowed to conduct the face-to-face encounter, we believe the current timeframe of 90 days prior to the start of care and 30 days after the start of care is appropriate and best meets the needs of program integrity efforts and quality goals associated with the provision. For those patients that are homebound and require non-urgent stretcher or wheelchair transport to reach the physician's office, we do not have the statutory authority to reimburse for these services under the Medicare home health benefit as they are not defined as ''home health services'' according to section 1861(m) of the Act. In response to allowing telehealth in patient's home, we note that section 1834(m) of the Act limits the provision of telehealth services to certain originating sites where the service can be provided.

Comment: Several commenters asked CMS to review its claims data to determine whether the implementation of the face-to-face encounter requirements has impacted access to care.

Response: We have conducted analyses looking at the number of paid claims, both nationally and by state, for 2009 through 2011. Our analyses show that face-to-face requirements have not had an adverse effect on access to Medicare HH services as the volume of paid claims is consistent with previous years.

After carefully considering all of the comments received, we are finalizing the additional flexibility as proposed. We will modify the regulations at § 424.22(a)(1)(v) to allow an NPP in an acute or post-acute facility to perform the face-to-face encounter in collaboration with or under the supervision of the physician who has privileges and cared for the patient in the acute or post-acute facility, and allow such physician to inform the certifying physician of the patient's homebound status and need for skilled services.

2. Regulatory Text Change

Additionally, we proposed to revise our regulatory language at § 424.22(a)(1)(v)(D) as to not be prescriptive as to what entity must date and title the face-to-face documentation. The face-to-face documentation must still be signed by the certifying physician, and the content requirements are not changing.

Comment: Commenters were supportive of the proposed regulatory text change.

Response: We thank the commenters for their support.

We are finalizing regulatory text change as proposed. The regulation text in part 424 will be changed to not be prescriptive as to what entity needs to date and title the face-to-face documentation, but will still require the same content and the certifying physician's signature.

E. Therapy Policy Changes

1. Therapy Coverage and Reassessments

In the CY 2011 HH PPS final rule (75 FR 70389), we clarified policies related to how therapy services are to be provided and documented, and began requiring additional therapy documentation to support medical necessity to address continuing concerns regarding the provision of unnecessary therapy in the home health setting. However, concerns regarding when therapy services are covered if a therapist misses a reassessment visit persist. As a result, in the CY 2013 HH PPS proposed rule issued in the July 13, 2012 **Federal Register** (77 FR 41548), we proposed to revise our regulations at § 409.44(c)(2)(i)(E) to state that if a qualified therapist missed a reassessment visit, therapy coverage would resume with the visit during which the qualified therapist completed the late reassessment, not the visit after the therapist completed the late reassessment. In addition, we proposed to revise our regulations at § 409.44(c)(2)(i)(E) to state that in cases where multiple therapy disciplines are involved, if the required reassessment visit was missed for any one of the therapy disciplines for which therapy services were being provided, therapy coverage would cease only for that particular therapy discipline. Therefore, as long as the required therapy reassessments were completed in a timely manner for the remaining therapy disciplines, therapy services would continue to be covered for those therapy disciplines. We expect minimal changes to claims submissions as a result of these policy changes.

The following is a summary of the comments we received regarding the therapy coverage proposals.

Comment: Commenters were supportive of our proposals to resume coverage of therapy with the visit during which the qualified therapist completed the late reassessment rather than with the visit after the therapist completed late reassessment and in cases where multiple therapy disciplines are involved, if the required reassessment visit was missed for any one of the therapy disciplines for which therapy services were being provided, therapy coverage would cease only for that particular therapy discipline. In particular, one commenter stated that these proposals will ''remove a barrier to providing necessary, appropriate, and timely home health services'' and ''allows patients to get the care they need without risking a decline in status.''

Response: We agree the reassessment visit should be covered, as therapy was also provided during that visit even though it was not timely. In addition, we also agree that if left unchanged, the current policies have the potential to negatively impact beneficiaries' access to therapy services. That is, if an agency anticipates a visit will not be covered because one qualified therapist has not

completed the required reassessment, it might be reluctant for any therapy visits to occur until that missed reassessment visit is completed. This is obviously not in the best interest of the beneficiary.

Comment: Some commenters were confused as to when therapy coverage would resume under the proposals if one or more therapy discipline missed the required reassessment. For example, if a patient receives occupational therapy on visit 11 (with reassessment requirements met) and on visit 14, speech-language pathology services on visit 13 (with reassessment requirements met) and 15, and physical therapy is provided on visit 12 (but did not meet reassessment requirements) and on visit 16 (assessment completed). The commenters questioned whether the CY 2013 HH PPS proposed rule would allow for ongoing coverage of occupational therapy and speech-language pathology and would allow for coverage of physical therapy on visit 16, when the reassessment was completed.

Response: Under the scenario above, the commenters are correct and the proposal would allow for ongoing coverage of occupational therapy and speech-language pathology and would allow for coverage of physical therapy on visit 16, when the reassessment was completed. The physical therapy provided on visit 12 would be non-covered.

We are finalizing the therapy coverage proposals as proposed. The regulation text at § 409.44(c)(2)(i)(E) will be revised to state that if a qualified therapist missed a reassessment visit, therapy coverage would resume with the visit during which the qualified therapist completed the late reassessment, not the visit after the therapist completed the late reassessment. In addition, the regulation text at § 409.44(c)(2)(i)(E) will be revised to state that in cases where multiple therapy disciplines are involved, if the required reassessment visit was missed for any one of the therapy disciplines for which therapy services were being provided, therapy coverage would cease only for that particular therapy discipline.

2. When Therapy Reassessment Visits Are To Be Conducted

Currently our regulations at § 409.44(c)(2)(i)(C)(2) and § 409.44(c)(2)(i)(D)(2) state that in cases where the patient is receiving more than one type of therapy, the qualified therapist from each discipline must provide all of the therapy, and functionally reassess the patient during the visit associated with that discipline that is scheduled to occur close to the 14th Medicare-covered therapy visit, but no later than the 13th Medicare-covered therapy visit and a qualified therapist from each discipline must provide all of the therapy and functionally reassess the patient during the visit associated with that discipline that is scheduled to occur close to the 20th Medicare-covered therapy visit, but no later than the 19th Medicare-covered therapy visit. However, because we received numerous inquiries from the home health industry on what CMS considered ''close to,'' we believed that more precise guidance was needed. As a result, we proposed to revise the regulations at § 409.44(c)(2)(i)(C)(1) and § 409.44(c)(2)(i)(D)(1) to clarify that in cases where the patient is receiving more than one type of therapy, qualified therapists must complete their reassessment visits during the 11th, 12th, or 13th visit for the required 13th visit reassessment and the 17th, 18th, or 19th visit for the required 19th visit reassessment.

The following is a summary of the comments we received regarding the therapy reassessment proposal.

Comment: Several commenters were supportive of the proposal specifying where the patient is receiving more than one type of therapy, qualified therapists must complete their reassessment visits during the 11th, 12th, or 13th visit for the required 13th visit reassessment and the 17th, 18th, or 19th visit for the required 19th visit reassessment.

Response: We thank the commenters for their support. We received numerous questions from the home health industry about what CMS considered ''close to'' the 13th and 19th visit under current policy. We believe that the range proposed, which mirrors the flexibility already in regulation for therapy provided in rural areas, in most cases provides sufficient flexibility for qualified therapists from each discipline to functionally reassess the patient.

Comment: Several commenters stated that often times different therapy modalities will have different frequencies depending on patient need. As such, the proposal specifying ranges in which the 13th and 19th reassessment visits can be conducted when the patient is receiving more than one type of therapy restricts the flexibility in completing assessments that the ''close to'' language provides. In addition, commenters stated that the proposal may result in HHAs providing an extra unnecessary visit or delaying visits to ensure that the agency is in compliance with completing the required assessments during the specified window of time. Commenters provided several schedule examples illustrating instances where therapies provided at varying frequencies would result in having the HHA either provide extra unnecessary therapy visits or delaying therapy visits in order for each discipline to comply with the proposed timeframe for reassessments in multi-therapy cases.

Response: We find compelling the commenters' concerns regarding the feasibility for patients receiving more than one type of therapy of qualified therapists from each of the therapy discipline reassessing the patient within the proposed timeframes when modalities differ significantly in frequency; in those cases we do not expect an HHA to schedule an extra unnecessary visit or delay a visit in order to reassess the patient within the proposed timeframes. Therefore, in instances where patients are receiving more than one type of therapy, and the frequency of a particular discipline, as ordered by a physician, does not make it feasible for the reassessment to occur during the specified timeframes without providing an extra unnecessary visit or delaying a visit, it would still be acceptable and satisfy the reassessment requirement, for the qualified therapist for that discipline to provide the therapy service and functionally reassess the patient during the visit associated with that discipline that is scheduled to occur close to the 14th Medicare-covered therapy visit, but no later than the 13th Medicare-covered therapy visit and for a qualified therapist from each discipline to provide all of the therapy service and functionally reassess the patient during the visit associated with that discipline that is scheduled to occur close to the 20th Medicare-covered therapy visit, but no later than the 19th Medicare-covered therapy visit.

Comment: Several commenters stated that there is a shortage of qualified therapists, especially in rural areas, making compliance with therapy reassessment requirements difficult. Additionally, several commenters stated that too many evaluations were required in a short time period and that the current therapy regulations have added administrative burden, caused scheduling problems, increased clinical and clerical time, require software changes and as a result, there are numerous non-covered visits being provided by HHAs. Moreover, commenters stated that often failure to comply is outside the control of the HHA or therapist, such as unexpected patient illness, hospitalization, or therapist availability.

Response: We thank the commenters for their comments, but these comments are outside the scope of this rule.

However, regarding the administrative burden of these requirements we would like to remind the commenters that the reasons for the therapy reassessments outlined in the CY 2011 HHS PPS final rule (75 FR 70372) were not only to address payment vulnerabilities that have led to high use and sometimes overuse of therapy services, but also to ensure more qualified therapist involvement for beneficiaries receiving high amounts of therapy, which results in better patient outcomes. Regarding factors that are outside of the HHA's control that may result in failure to comply with the reassessment requirements, as we stated above, the regulation text will be amended to state that if a qualified therapist missed a reassessment visit, therapy coverage would resume with the visit during which the qualified therapist completed the late reassessment, not the visit after the therapist completed late reassessment. In addition, changes to the regulation text at § 409.44(c)(2)(i)(E) will be made to state that in cases where multiple therapy disciplines are involved, if the required reassessment visit was missed for any one of the therapy disciplines for which therapy services were being provided, therapy coverage would cease only for that particular therapy discipline. These two changes should help in reducing the number of non-covered visits that would have otherwise occurred when reassessment visits were missed.

Comment: Several commenters stated that in cases where the patient is not available for therapy services or documented factors preclude a visit, payment would not be denied if the qualified therapist conducts the therapy assessment during the next visit.

Response: As we stated above, the regulation text will be amended to state that if a qualified therapist missed a reassessment visit, therapy coverage would resume with the visit during which the qualified therapist completed the late reassessment, not the visit after the therapist completed late reassessment. In addition, changes to the regulation text at § 409.44(c)(2)(i)(E) will be made to state that in cases where multiple therapy disciplines are involved, if the required reassessment visit was missed for any one of the therapy disciplines for which therapy services were being provided, therapy coverage would cease only for that particular therapy discipline.

Comment: Several commenters suggested other improvements to streamline the therapy reassessment requirements, including requiring a functional reassessment during the 2nd and 4th weeks of treatment in each episode and during the final week of the episode or 5-day OASIS window, and amending the regulation to require a qualified therapist to perform the assessment and treatment or the qualified therapist perform the assessment and observe the assistant providing the treatment. Several commenters also recommended that a new therapy payment system should be established.

Response: These comments are outside the scope of this rule. We will take the commenters suggestions into consideration for future rulemaking. However, we would like to reiterate that we continue to believe that the requirement for a qualified therapist (instead of an assistant) to perform the needed therapy service at key points in the patient's course of treatment, as well as to assess, measure, and document the effectiveness of the therapy provided, promotes more effective and efficient care.

Comment: One commenter asked that CMS clarify that ''progress'' need not be documented or expected when the patient meets the criteria for maintenance therapy as permitted by the regulations. Specifically, CMS should revise the preamble text in the CY 2013 HH PPS proposed rule (77 FR 41571) that currently reads that ''we cease coverage of therapy services if progress towards plan of care goals cannot be measured, unless the documentation supports the expectation that progress can be expected in a reasonable and predictable timeframe.''

Response: To clarify, the regulation text at § 409.44(c)(2)(iv)(B) current states ''clinical records must include documentation using objective measures that the patient continues to progress towards goals. If progress cannot be measured, and continued progress towards goals cannot be expected, therapy services cease to be covered except when (1) Therapy progress regresses or plateaus, and the reasons for lack of progress are documented to include justification that continued therapy treatment will lead to resumption of progress toward goals; or (2) Maintenance therapy as described in § 409.44(c)(2)(iii)(B) or (C) is needed.

We are finalizing our proposal to revise the regulations at § 409.44(c)(2)(i)(C)(*1*) and § 409.44(c)(2)(i)(D)(*1*) to clarify that in cases where the patient is receiving more than one type of therapy, qualified therapists must complete their reassessment visits during the 11th, 12th, or 13th visit for the required 13th visit reassessment and the 17th, 18th, or 19th visit for the required 19th visit reassessment with the following modification. However, we will also modify the regulation text to state that in instances where patients receive more than one type of therapy, if the frequency of a particular discipline, as ordered by a physician, does not make it feasible for the reassessment to occur during the specified timeframes without providing an extra unnecessary visit or delaying a visit, then it will still be acceptable for the qualified therapist from each discipline to provide all of the therapy and functionally reassess the patient during the visit associated with that discipline that is scheduled to occur closest to the 14th Medicare-covered therapy visit, but no later than the 13th Medicare-covered therapy visit. Likewise, a qualified therapist from each discipline must provide all of the therapy and functionally reassess the patient during the visit associated with that discipline that is scheduled to occur closest to the 20th Medicare-covered therapy visit, but no later than the 19th Medicare-covered therapy visit.

3. Technical Correction to G-code Description

As part of our ''Home Health Prospective Payment System Rate Update for Calendar Year 2011,'' (75 FR 70389) we also provided notice of changes to existing G-codes and new G-codes related to skilled nursing and therapy services (75 FR 43248). In Change Request 7182, we finalized these new and revised G-codes. These codes included G0158, which had as its description, ''Services performed by a qualified occupational therapist assistant in the home health or hospice setting, each 15 minutes.'' After the publication of these codes, a national therapy association informed us that the use of the word, ''therapist'' rather than ''therapy'' is technically incorrect for the occupational therapy profession. This association requested that we change the terminology in the G-code. Because this description includes the terminology, ''occupational therapist assistant,'' we proposed to make a technical correction to this terminology in G0158, so that the new description would instead include the terminology, ''occupational therapy assistant,'' making it also consistent with § 484.4.

We received one comment on the proposed technical correction to the G0158 description. The commenter was supportive of the proposed correction and commended CMS on its action to make the code consistent with § 484.4 and national occupational therapy practice standards.

We are finalizing the technical correction to the description for G0158 as proposed.

F. Payment Reform: Home Health Study and Report

Section 3131(d) of the Affordable Care Act requires the Secretary to conduct a study on HHA costs involved with providing access to care to low-income Medicare beneficiaries or beneficiaries in medically underserved areas, and in treating beneficiaries with varying levels of severity of illness (specifically, patients with ''high levels of severity of illness''). In the CY 2013 HH PPS proposed rule, we provided a description of the varied areas for which we have the authority to explore as part of our payment reform activities (77 FR 41572). We continue to conduct analyses, which include evaluating the current HH PPS and developing payment reform options which might minimize vulnerabilities and more accurately align payment with patient resource costs. The Report to Congress regarding the study must be submitted no later than March 1, 2014. We will provide updates regarding our progress in future rulemaking and open door forums.

The following is a summary of the comments we received regarding this study and report.

Comment: Commenters supported the study on access to care for vulnerable populations and stated that they appreciate this undertaking. Commenters also said that they appreciate the specific mention of CMS's demonstration authority of potential revisions to the HH PPS and they saw the study as a solution to many of the problems in the current payment system. One commenter stated that the across the board cuts for nominal case-mix growth as well as the upcoming reductions likely resulting from rebasing will continue to create incentives for providers to avoid vulnerable patients, whose projected cost of care exceeds average-based payments, causing access problems for higher cost patients and threatening the viability of this Medicare program. Another commenter stated that they are seeing access problems for higher cost patients. Commenters stated that they support any effort by CMS to address the needs of vulnerable patient populations and recommended that the study be expedited, if feasible. One commenter stated that they anticipate that the study would include ''an examination of care management models, provider options (including expanded utilization of nurse practitioners), and payment methods that support helping underserved and medically fragile persons remain in their community.'' The commenter stated that they ''look forward to participating in creative solutions that address medical, social and environmental issues that directly impact overall health status and risk for avoidable hospitalization.'' Other commenters urged CMS to consider information from this study when rebasing. Similarly, a commenter stated that CMS should use information from the study, and possible demonstration, to determine a fair payment rate. Commenters also encouraged CMS ''to make fundamental modifications to the payment system to assure that all patients who need home health are served and that the agencies that serve them are not ''financially punished'' for accepting disproportionate numbers of high cost patients.'' Commenters stated that they would like CMS to engage the home health community/industry in developing both regulatory and legislative remedies to other systematic problems in the HH PPS. Another commenter recommended that CMS provide updates to the stakeholder community on the plan and design of the study through different venues, such as a Special Open Door Forum. The commenter believed that physical therapists and home health clinicians should be active participants in the collection and analysis of data for the study.

Response: We will take the commenters' suggestions into consideration when performing the home health study. As described in the CY 2012 proposed rule, we plan to provide updates regarding our progress in future rulemaking and open door forums. We note that we are open to hearing about any instances of access to care issues that vulnerable beneficiaries may face, particularly if they are associated with costs and reimbursement, and potential solutions to access issues.

G. International Classification of Diseases, 10th Edition (ICD–10) Transition Plan and Grouper Enhancements

On September 5, 2012 the Department of Health and Human Services published a final rule ''Administrative Simplification Adoption of a Standard for a Unique Health Plan Identifier; Addition to the National Provider Identifier Requirements; and a Change to the Compliance Date for ICD–10–CM and ICD–10–PCS Medical Data Code Set'' (77 FR 54664) that sets a new compliance date for ICD–10–CM and ICD–10–PCS of October 1, 2014. We continue to work with the HH PPS Grouper maintenance contractor to revise the HH PPS Grouper to accommodate ICD–10–CM codes. Our current plans are to describe the testing approach for the HH PPS Grouper to accommodate and process ICD–10 codes on the ICD–10 section of the CMS Web site in conjunction with the release of the draft grouper in the summer/fall 2013. We plan to update providers of any changes to our current plans through the following forums: The ICD–10 Home Health section of the CMS Web site, the Home Health, Hospice and DME Open Door Forums, and provider outreach sessions for ICD–10.

In December 2008, we updated and released Attachment D: Selection and Assignment of OASIS Diagnoses to promote accurate selection and assignment of the patient's diagnosis (*https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HomeHealthPPS/OASIS_Attachment_D_Guidance.html*). This guidance was designed to ensure that providers limited the number of diagnoses assigned to the payment diagnosis field (M1024 on OASIS–C). In addition, Attachment D reminded HHA clinicians/coders to comply with ICD–9–CM coding guidelines when assigning primary and secondary diagnoses to the OASIS items (M1020 and M1022 on OASIS–C), respectively. Analysis conducted by our HH PPS Grouper maintenance contractor revealed that many HHAs do not comply with these guidelines. Specifically, the analysis demonstrated that HHAs are not limiting the number of diagnoses assigned to the payment diagnosis field and are also reporting resolved conditions in that field. We have reviewed the diagnosis codes identified in the HH PPS Grouper and coding guidelines confirm that the only codes that cannot be reported as a primary or secondary diagnosis code are the fracture codes. As discussed in the CY 2012 HH PPS proposed rule, we proposed two enhancements for the HH PPS Grouper which we believe will encourage compliance with coding guidelines.

First, we proposed to restrict the payment diagnosis field to only permit fracture diagnoses codes, which according to ICD–9–CM coding guidelines, cannot be reported in a home health setting as a primary or secondary diagnosis. To further ensure compliance with proper coding guidelines, we proposed to pair the fracture codes with appropriate diagnosis codes and only when these pairings appear in the primary payment diagnosis field will the grouper award points.

Second, we proposed a revision to the HH PPS Grouper logic to score Diabetes, Skin 1 or Neuro 1 diagnosis codes when

submitted immediately following a v-code in the primary diagnosis field the same as they are currently scored when a v-code is reported in the primary diagnosis field and the supporting diagnosis code is reported in the payment diagnosis field. As we stated in the proposed rule, these grouper enhancements will enforce appropriate use of our payment diagnosis field based upon our long standing policy and as described in our Attachment D. We believe that in doing so, we will be in a much more favorable position to eventually retire the payment diagnosis field when we move to ICD–10 and there is no longer a need for the payment diagnosis field for the reporting of fracture codes. Finally, we believe these actions will help ensure ICD–9 and ICD–10 coding guidelines are followed; and will assist in the eventual transition of grouping the diagnoses on the claim, versus OASIS, in determining the appropriate HIPPS code for payment.

The following is a summary of the comments we received regarding the ICD–10 Transition Plan and Grouper Enhancements.

Comment: Several commenters supported our plans for the ICD–10–CM transition and look forward to further updates through the final rule and provider outreach sessions. Although some commenters supported our plans to retire the payment diagnosis field, other commenters noted that the OASIS payment field was introduced as a payment vehicle for diagnoses that could no longer be reported in the primary or secondary positions because of HIPAA requirements. Many commenters also stated that Attachment D was designed to permit the submission of resolved conditions in the payment diagnosis field and that a majority of the conditions reported in the payment diagnosis field represent resolved conditions. Many commenters expressed concern that the proposed policy to restrict the payment diagnosis field needed additional clarification and specificity regarding the reporting of the v-code and the limited use of the payment diagnosis field since Attachment D is not sufficient. Several commenters also urged us to update Attachment D to reflect changes in the OASIS and ICD–9–CM coding guidance.

Response: We appreciate that some commenters recognize the need for compliance with ICD–9–CM coding guidelines and recognize that there is a need to update Attachment D and the HH PPS Grouper specifications to reflect the restrictions for the payment diagnosis field. We conducted a review of Attachment D to determine whether further clarification or updates are necessary and conclude that the guidance issued did not fully communicate that the reporting of resolved conditions in the payment diagnosis field should be limited. However, we disagree that the payment diagnosis field was designed to permit ''any'' resolved condition to be reported. In CY 2009, 85 percent of OASIS records did not contain any diagnosis codes in the payment diagnosis field or contained only diagnoses codes that had not been found to be associated with additional resources use and as such as are not included in our grouper nor impacted by this policy. We analyzed the 15 percent of OASIS records that included grouper diagnosis codes in the payment diagnosis field and found that 25 percent of those OASIS records represent fracture conditions which can continue to be reported and scored. Thirty-six percent represent persistent conditions, such as diabetic cataract, in which the underlying condition (diabetes) could be reported as a primary or secondary diagnosis and thus are not impacted by this policy. Thirty-nine percent represent conditions that can be reported in the primary or secondary diagnosis fields if the diagnosis is active rather than resolved and is appropriate for care in the home health setting.

Based on our review and the commenters' recommendations, we agree that Attachment D should be updated to reflect the most current version of OASIS and any changes and clarifications in coding guidance.

Our analysis found that if HHAs were to ensure compliance with coding guidelines, there would not be a need to report a resolved condition with the exception of fractures. Several commenters provided a few examples where they believe the proposed policy would result in a decrease in case mix points. One such example is of a low therapy patient admitted to home health for post-operative care following surgical resolution of an intestinal obstruction would also have a surgical wound that receives a lower score. Although this example and others could result in a lower score, the diagnosis codes being reported in the payment diagnosis field suggests that these are extremely rare types of episodes and the impact is negligible. We found that more than 99.6 percent of assessments would continue to receive the same case-mix weight when the payment diagnosis field is restricted to fracture codes only, resulting in a 0.04 percent decrease in payments to HHAs.

Oftentimes, the HHA selected and reported a condition within the same diagnosis group as the condition reported in the payment diagnosis field or should have selected another diagnosis within the codes included in the grouper diagnosis group to report as a resolving condition in primary or secondary diagnosis fields. In either case, restricting the awarding of points to fracture conditions will ensure that HHAs avoid selection of diagnosis codes that are not in compliance with coding guidelines.

Comment: Several commenters noted concerns that CMS is proposing changes for the payment diagnosis field when there is not a problem. One commenter presented data reported in the Medicare and Medicaid Statistical Supplement to demonstrate that there has been a decrease in v-code reporting from 2000 through 2009.

Response: Although, there has been a decrease in the number of OASIS records submitted that utilize the payment diagnosis field over the last 4 years the volume is still at odds with guidance to code sparingly. We must ensure that the HHAs report diagnosis codes that comply with ICD–9–CM coding guidelines. Thus, the restriction proposed for the payment diagnosis field reporting ensures greater compliance with coding guidelines. Furthermore, the restriction supports our future plans to use diagnosis information from the claims, rather than OASIS, to determine the appropriate HIPPS code for payment.

Comment: Many commenters provided several examples where they would be impacted, if this policy is implemented, such as osteoarthritis related to hip replacement, cholelithiasis due to a cholecystectomy, breast neoplasm following a mastectomy, amputation due to a non-pressure ulcer and meningitis. Many commenters stated that when the payment diagnosis field was added to the OASIS, it was an assurance to the industry to accommodate the reporting of v-codes and receive points for resolved conditions such as those resolved by surgery.

Response: The home health payment is based on resources required to care for the patient in their current condition. For example, if the patient has a resolved orthopedic condition (osteoarthritis of the hip resolved following hip replacement) the episode will receive points based on any active comorbid diagnoses plus clinical status (such as surgical wound), functional impairments (such as problems with ambulation or transferring), and therapy needs. Given the fact that some HHAs may have incorrectly interpreted the guidance in Attachment D, and were

reporting resolved conditions, such as those resolved by surgery, which may have resulted in the awarding of points; this final rule clarifies that with the exception of fracture codes, resolved conditions are not appropriate for coding in the home health setting, and will not be awarded points when reported.

Comment: Many commenters expressed concern that we did not provide a cost analysis prior to proposing this policy because they believe that the restricted use of the payment diagnosis field to fracture codes would result in a large reduction in payments to HHAs such as two hundred dollars for certain episodes. We also received comments that express concern that the policy is not budget neutral or assumed that the proposed policy would be budget neutral. One commenter raised concerns that the payment diagnosis field changes may have an impact on agency risk adjustment of quality measures that are publicly reported. The commenters expressed concern that by not permitting the reporting of resolved conditions we would be preventing HHAs from reporting important information that further describes the patient. In addition, a few commenters noted that changing our HH PPS reimbursement when rebasing is being studied is not reasonable.

Response: As we indicated in response to comments received on resolved conditions, if the resolved condition is still impacting the patient, these impacts are captured by the clinical and functional data reported in the OASIS rather than the diagnosis. As stated above, we found that more than 99.6 percent of assessments would continue to receive the same case-mix weight when the payment diagnosis field is restricted to fracture codes only, resulting in a 0.04 percent decrease in payments to HHAs. These payments should not have been made because they do not reflect resources to care for the patient, nor do these coding practices comply with ICD–9 coding guidelines, and thus reflect inappropriate coding practices. Our primary purpose is to ensure compliance with ICD–9–CM coding guidelines. Implementing these changes in a budget neutral manner is not applicable in this instance because HHAs should not receive reimbursement for a resolved condition with the exception of fracture conditions.

Abt Associates analyzed data from a 20 percent sample of all home health episodes from 2009, or 1.2 million episodes. The total number of episodes with an acceptable v-code paired with any ICD–9–CM code in the case mix grouper was approximately 174,000 episodes. These data were drawn from the Home Health Datalink, a file that links the OASIS assessments to the corresponding home health claim. Abt Associates conducted three separate sets of analyses. The first analysis assumes that only fracture codes are recognized as payment diagnoses and did not reflect any accompanying change in agency coding behavior. This analysis showed that 99.3 percent of assessments would continue to receive the same case-mix weight. The second analysis assumes that agencies code for fracture and also assumes that, for many resolved conditions, agencies will be able to code underlying persistent conditions as primary or secondary diagnoses (for example, coding diabetes after a diabetic cataract has been removed). This analysis showed that 99.6 percent of assessments would continue to receive the same case-mix weight. Finally, the third analysis makes the first two analytical assumptions above and also assumes that, for some additional conditions currently reported in the payment diagnosis field, agencies will be able to code alternate codes that scores points for the same diagnosis group. This analysis also showed that 99.6 percent of assessments would continue to receive the same case-mix weight. Although commenters asserted that there would be a significant impact, the three sets of analyses found that HH episodes would essentially continue to be scored the same once this policy is implemented as revised.

The risk adjustment models for the quality measures that are publicly reported use all the diagnoses that appear on the OASIS (in the primary, secondary, payment diagnosis field as well as the inpatient diagnosis). Although we do not necessarily agree that by preventing resolved conditions related to the plan of care to be reported we are losing significant information that describes the patient, we are willing to modify our policy in the short term to allow these conditions to be reported in the payment diagnosis field but will restrict the awarding of points only to fracture conditions. We believe that modifying our policy to permit this type of reporting in the payment diagnosis field will address the concern expressed by commenters that wanted to be able to report additional clinical information and public health information about the patient while still allowing the agency to move forward with our plans to group the claim, versus OASIS, to determine the appropriate HIPPS code for payment.

Comment: We received several comments in support of the proposed logic changes specific to the reporting requirements for secondary conditions found in Neuro, Skin 1, or Ortho 1. Several commenters noted that once ICD–10–CM is implemented, the payment diagnosis field will no longer be needed for the reporting of fracture diagnosis codes. However, they advise us that our proposal to restrict the use of the payment diagnosis field to only fracture diagnosis codes if paired with an appropriate v-code in the primary and payment diagnosis fields is not representative of all the sequencing requirements for fracture aftercare. Specifically, some encounters are reported as a secondary diagnosis because they may not be the primary reason for admission. Therefore, we should include v-codes reported as a secondary condition when paired with a fracture code in the payment diagnosis field. A few commenters would have liked to see a draft listing of the v-code pairings in our proposed rule.

Response: We appreciate the supportive comments to eventually eliminate the payment diagnosis field once ICD–10 is fully implemented and the recommendation to review the sequencing requirements. We agree that restricting the payment diagnosis field to only fracture diagnosis codes reported as primary is not representative of the all the sequencing requirements for fracture aftercare. We will revise the HH PPS grouper logic to award points when fracture codes in the payment diagnosis field are paired with v-codes in either the primary or secondary diagnosis fields. As requested by a few commenters, we have provided a list of valid fracture conditions within our grouper paired with appropriate v-codes (See Table 25).

Comment: Several commenters recommend that we rescind or delay the proposed change to restrict the payment diagnosis field to fracture codes only.

Response: We appreciate the feedback. However, we believe that we have sufficiently described and explained our rationale for restricting the awarding of points for fracture codes only. As we stated above, this proposal will allow us to eventually eliminate the payment diagnosis field once ICD–10 is fully implemented and ensure that agencies are in full compliance, where possible, with coding guidelines before ICD–10 is implemented.

Comment: Several commenters noted that logic within Home Assessment Validation and Entry System (HAVEN) has contributed to the confusion

surrounding v-code reporting by suggesting that the software would not group the record (that is, determine the appropriate home health resource group) when a v-code was reported in the primary position. The commenters noted that vendors have adopted similar logic within their own software to require v-code reporting even when the ICD–9–CM v-code does not require a diagnosis code to explain the reason for aftercare.

Response: We appreciate the feedback and will consider whether any changes should be made to edits within HAVEN.

Comment: We also received comments outside the scope of the proposed policy. Specifically, a commenter suggested that we should Return to Provider (RTP) claims when edits do not permit the proper adjudication versus implementing this policy. In addition, other commenters suggested that CMS should acknowledge the use of certified coders in homecare by permitting them to correct inaccurate coding.

Response: These comments are outside the scope of this rule, and therefore, we are not addressing these issues in this rule.

We are implementing the Grouper enhancements as proposed with two modifications. We will be modifying our policy for the payment diagnosis field to reflect that when v-codes are reported as a primary or secondary diagnosis and paired with a fracture code in our pairing listing, the grouper will award points. We will also be modifying our policy for the payment diagnosis field to permit the reporting of resolved conditions related to the plan of care that may be significant in describing the patient but will restrict the awarding of points to fracture conditions.

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Table 25: HH PPS Grouper, Fracture Conditions and Appropriate V-Codes, CY 2013

V-Code	Description	ICD Pair	Description
V54.10	Aftrcre traum fx arm NOS	818.0	Fx arm mult/NOS-closed
		818.1	Fx arm mult/NOS-open
V54.11	Aftrcare traum fx up arm	812.00	Fx up end humerus NOS-cl
		812.01	Fx surg nck humerus-clos
		812.02	Fx anatom nck humerus-cl
		812.03	Fx gr tuberos humerus-cl
		812.09	Fx upper humerus NEC-cl
		812.10	Fx upper humerus NOS-opn
		812.11	Fx surg neck humerus-opn
		812.12	Fx anat neck humerus-opn
		812.13	Fx gr tuberos humer-open
		812.19	Fx upper humerus NEC-opn
		812.20	Fx humerus NOS-closed
		812.21	Fx humerus shaft-closed
		812.30	Fx humerus NOS-open
		812.31	Fx humerus shaft-open
		812.40	Fx lower humerus NOS-cl
		812.41	Suprcondyl fx humerus-cl
		812.42	Fx humer, lat condyl-cl
		812.43	Fx humer, med condyl-cl
		812.44	Fx humer, condyl NOS-cl
		812.49	Fx lower humerus NEC-cl
		812.50	Fx lower humer NOS-open
		812.51	Supracondyl fx humer-opn
		812.52	Fx humer, lat condyl-opn
		812.53	Fx humer, med condyl-opn
		812.54	Fx humer, condyl NOS-opn
		812.59	Fx lower humer NEC-open
V54.12	Aftrcre traum fx low arm	813.00	Fx upper forearm NOS-cl
		813.01	Fx olecran proc ulna-cl
		813.02	Fx coronoid proc ulna-cl
		813.03	Monteggia's fx-closed
		813.04	Fx upper ulna NEC/NOS-cl
		813.05	Fx radius head-closed
		813.06	Fx radius neck-closed
		813.07	Fx up radius NEC/NOS-cl
		813.08	Fx up radius w ulna-clos
		813.10	Fx upper forearm NOS-opn

V-Code	Description	ICD Pair	Description
		813.11	Fx olecran proc ulna-opn
		813.12	Fx coronoid pro ulna-opn
		813.13	Monteggia's fx-open
		813.14	Fx up ulna NEC/NOS-open
		813.15	Fx radius head-open
		813.16	Fx radius neck-open
		813.17	Fx up radius NEC/NOS-opn
		813.18	Fx up radius w ulna-open
		813.20	Fx shaft forearm NOS-cl
		813.21	Fx radius shaft-closed
		813.22	Fx ulna shaft-closed
		813.23	Fx shaft rad w ulna-clos
		813.30	Fx shaft forearm NOS-opn
		813.31	Fx radius shaft-open
		813.32	Fx ulna shaft-open
		813.33	Fx shaft rad w ulna-open
		813.40	Fx lower forearm NOS-cl
		813.41	Colles' fracture-closed
		813.42	Fx distal radius NEC-cl
		813.43	Fx distal ulna-closed
		813.44	Fx low radius w ulna-cl
		813.45	Torus fx radius-closed
		813.46	Torus fracture of ulna (alone)
		813.47	Torus fracture of radius and ulna
		813.50	Fx lower forearm NOS-opn
		813.51	Colles' fracture-open
		813.52	Fx distal radius NEC-opn
		813.53	Fx distal ulna-open
		813.54	Fx low radius w ulna-opn
		813.80	Fx forearm NOS-closed
		813.81	Fx radius NOS-closed
		813.82	Fracture ulna NOS-closed
		813.83	Fx radius w ulna NOS-cl
		813.90	Fx forearm NOS-open
		813.91	Fracture radius NOS-open
		813.92	Fracture ulna NOS-open
		813.93	Fx radius w ulna NOS-opn
V54.13	Aftrcre traumatic fx hip	820.00	Fx femur intrcaps NOS-cl
		820.01	Fx up femur epiphy-clos
		820.02	Fx femur, midcervic-clos

V-Code	Description	ICD Pair	Description
		820.03	Fx base femoral nck-clos
		820.09	Fx femur intrcaps NEC-cl
		820.10	Fx femur intrcap NOS-opn
		820.11	Fx up femur epiphy-open
		820.12	Fx femur, midcervic-open
		820.13	Fx base femoral nck-open
		820.19	Fx femur intrcap NEC-opn
		820.20	Trochanteric fx NOS-clos
		820.21	Intertrochanteric fx-cl
		820.22	Subtrochanteric fx-close
		820.30	Trochanteric fx NOS-open
		820.31	Intertrochanteric fx-opn
		820.32	Subtrochanteric fx-open
		820.8	Fx neck of femur NOS-cl
		820.9	Fx neck of femur NOS-opn
V54.14	Aftrcre traum fx leg NOS	827.0	Fx lower limb NEC-closed
		827.1	Fx lower limb NEC-open
V54.15	Aftrcare traum fx up leg	821.00	Fx femur NOS-closed
		821.01	Fx femur shaft-closed
		821.10	Fx femur NOS-open
		821.11	Fx femur shaft-open
		821.20	Fx low end femur NOS-cl
		821.21	Fx femoral condyle-close
		821.22	Fx low femur epiphy-clos
		821.23	Supracondyl fx femur-cl
		821.29	Fx low end femur NEC-cl
		821.30	Fx low end femur NOS-opn
		821.31	Fx femoral condyle-open
		821.32	Fx low femur epiphy-open
		821.33	Supracondyl fx femur-opn
		821.39	Fx low end femur NEC-opn
V54.16	Aftrcre traum fx low leg	822.0	Fracture patella-closed
		822.1	Fracture patella-open
		823.00	Fx upper end tibia-close
		823.01	Fx upper end fibula-clos
		823.02	Fx up tibia w fibula-cl
		823.10	Fx upper end tibia-open
		823.11	Fx upper end fibula-open
		823.12	Fx up tibia w fibula-opn
		823.20	Fx shaft tibia-closed

V-Code	Description	ICD Pair	Description
		823.21	Fx shaft fibula-closed
		823.22	Fx shaft fib w tib-clos
		823.30	Fx tibia shaft-open
		823.31	Fx fibula shaft-open
		823.32	Fx shaft tibia w fib-opn
		823.40	Torus fracture of tibia
		823.41	Torus fracture of fibula
		823.42	Torus fx tibia/fibula
		823.80	Fx tibia NOS-closed
		823.81	Fx fibula NOS-closed
		823.82	Fx tibia w fibula NOS-cl
		823.90	Fx tibia NOS-open
		823.91	Fx fibula NOS-open
		823.92	Fx tibia w fib NOS-open
V54.17	Aftrcre traum fx vertebr	805.00	Fx cervical vert NOS-cl
		805.01	Fx c1 vertebra-closed
		805.02	Fx c2 vertebra-closed
		805.03	Fx c3 vertebra-closed
		805.04	Fx c4 vertebra-closed
		805.05	Fx c5 vertebra-closed
		805.06	Fx c6 vertebra-closed
		805.07	Fx c7 vertebra-closed
		805.08	Fx mult cervical vert-cl
		805.10	Fx cervical vert NOS-opn
		805.11	Fx c1 vertebra-open
		805.12	Fx c2 vertebra-open
		805.13	Fx c3 vertebra-open
		805.14	Fx c4 vertebra-open
		805.15	Fx c5 vertebra-open
		805.16	Fx c6 vertebra-open
		805.17	Fx c7 vertebra-open
		805.18	Fx mlt cervical vert-opn
		805.2	Fx dorsal vertebra-close
		805.3	Fx dorsal vertebra-open
		805.4	Fx lumbar vertebra-close
		805.5	Fx lumbar vertebra-open
		805.6	Fx sacrum/coccyx-closed
		805.7	Fx sacrum/coccyx-open
		805.8	Vertebral fx NOS-closed
		805.9	Vertebral fx NOS-open

V-Code	Description	ICD Pair	Description
		806.00	C1-c4 fx-cl/cord inj NOS
		806.01	C1-c4 fx-cl/com cord les
		806.02	C1-c4 fx-cl/ant cord syn
		806.03	C1-c4 fx-cl/cen cord syn
		806.04	C1-c4 fx-cl/cord inj NEC
		806.05	C5-c7 fx-cl/cord inj NOS
		806.06	C5-c7 fx-cl/com cord les
		806.07	C5-c7 fx-cl/ant cord syn
		806.08	C5-c7 fx-cl/cen cord syn
		806.09	C5-c7 fx-cl/cord inj NEC
		806.10	C1-c4 fx-op/cord inj NOS
		806.11	C1-c4 fx-op/com cord les
		806.12	C1-c4 fx-op/ant cord syn
		806.13	C1-c4 fx-op/cen cord syn
		806.14	C1-c4 fx-op/cord inj NEC
		806.15	C5-c7 fx-op/cord inj NOS
		806.16	C5-c7 fx-op/com cord les
		806.17	C5-c7 fx-op/ant cord syn
		806.18	C5-c7 fx-op/cen cord syn
		806.19	C5-c7 fx-op/cord inj NEC
		806.20	T1-t6 fx-cl/cord inj NOS
		806.21	T1-t6 fx-cl/com cord les
		806.22	T1-t6 fx-cl/ant cord syn
		806.23	T1-t6 fx-cl/cen cord syn
		806.24	T1-t6 fx-cl/cord inj NEC
		806.25	T7-t12 fx-cl/crd inj NOS
		806.26	T7-t12 fx-cl/com crd les
		806.27	T7-t12 fx-cl/ant crd syn
		806.28	T7-t12 fx-cl/cen crd syn
		806.29	T7-t12 fx-cl/crd inj NEC
		806.30	T1-t6 fx-op/cord inj NOS
		806.31	T1-t6 fx-op/com cord les
		806.32	T1-t6 fx-op/ant cord syn
		806.33	T1-t6 fx-op/cen cord syn
		806.34	T1-t6 fx-op/cord inj NEC
		806.35	T7-t12 fx-op/crd inj NOS
		806.36	T7-t12 fx-op/com crd les
		806.37	T7-t12 fx-op/ant crd syn
		806.38	T7-t12 fx-op/cen crd syn
		806.39	T7-t12 fx-op/crd inj NEC

V-Code	Description	ICD Pair	Description
		806.4	Cl lumbar fx w cord inj
		806.5	Opn lumbar fx w cord inj
		806.60	Fx sacrum-cl/crd inj NOS
		806.61	Fx sacr-cl/cauda equ les
		806.62	Fx sacr-cl/cauda inj NEC
		806.69	Fx sacrum-cl/crd inj NEC
		806.70	Fx sacrum-op/crd inj NOS
		806.71	Fx sacr-op/cauda equ les
		806.72	Fx sacr-op/cauda inj NEC
		806.79	Fx sacrum-op/crd inj NEC
		806.8	Vert fx NOS-cl w crd inj
		806.9	Vert fx NOS-op w crd inj
V54.19	Aftrce traum fx bone NEC	800.00	Closed skull vault fx
		800.01	Cl skull vlt fx w/o coma
		800.02	Cl skull vlt fx-brf coma
		800.03	Cl skull vlt fx-mod coma
		800.04	Cl skl vlt fx-proln coma
		800.05	Cl skul vlt fx-deep coma
		800.06	Cl skull vlt fx-coma NOS
		800.09	Cl skl vlt fx-concus NOS
		800.10	Cl skl vlt fx/cerebr lac
		800.11	Cl skull vlt fx w/o coma
		800.12	Cl skull vlt fx-brf coma
		800.13	Cl skull vlt fx-mod coma
		800.14	Cl skl vlt fx-proln coma
		800.15	Cl skul vlt fx-deep coma
		800.16	Cl skull vlt fx-coma NOS
		800.19	Cl skl vlt fx-concus NOS
		800.20	Cl skl vlt fx/mening hem
		800.21	Cl skull vlt fx w/o coma
		800.22	Cl skull vlt fx-brf coma
		800.23	Cl skull vlt fx-mod coma
		800.24	Cl skl vlt fx-proln coma
		800.25	Cl skul vlt fx-deep coma
		800.26	Cl skull vlt fx-coma NOS
		800.29	Cl skl vlt fx-concus NOS
		800.30	Cl skull vlt fx/hem NEC
		800.31	Cl skull vlt fx w/o coma
		800.32	Cl skull vlt fx-brf coma
		800.33	Cl skull vlt fx-mod coma

V-Code	Description	ICD Pair	Description
		800.34	Cl skl vlt fx-proln coma
		800.35	Cl skul vlt fx-deep coma
		800.36	Cl skull vlt fx-coma NOS
		800.39	Cl skl vlt fx-concus NOS
		800.40	Cl skl vlt fx/br inj NEC
		800.41	Cl skull vlt fx w/o coma
		800.42	Cl skull vlt fx-brf coma
		800.43	Cl skull vlt fx-mod coma
		800.44	Cl skl vlt fx-proln coma
		800.45	Cl skul vlt fx-deep coma
		800.46	Cl skull vlt fx-coma NOS
		800.49	Cl skl vlt fx-concus NOS
		800.50	Opn skull vault fracture
		800.51	Opn skul vlt fx w/o coma
		800.52	Opn skul vlt fx-brf coma
		800.53	Opn skul vlt fx-mod coma
		800.54	Opn skl vlt fx-proln com
		800.55	Opn skl vlt fx-deep coma
		800.56	Opn skul vlt fx-coma NOS
		800.59	Op skl vlt fx-concus NOS
		800.60	Opn skl vlt fx/cereb lac
		800.61	Opn skul vlt fx w/o coma
		800.62	Opn skul vlt fx-brf coma
		800.63	Opn skul vlt fx-mod coma
		800.64	Opn skl vlt fx-proln com
		800.65	Opn skl vlt fx-deep coma
		800.66	Opn skul vlt fx-coma NOS
		800.69	Op skl vlt fx-concus NOS
		800.70	Opn skl vlt fx/menin hem
		800.71	Opn skul vlt fx w/o coma
		800.72	Opn skul vlt fx-brf coma
		800.73	Opn skul vlt fx-mod coma
		800.74	Opn skl vlt fx-proln com
		800.75	Opn skl vlt fx-deep coma
		800.76	Opn skul vlt fx-coma NOS
		800.79	Op skl vlt fx-concus NOS
		800.80	Opn skull vlt fx/hem NEC
		800.81	Opn skul vlt fx w/o coma
		800.82	Opn skul vlt fx-brf coma
		800.83	Opn skul vlt fx-mod coma

V-Code	Description	ICD Pair	Description
		800.84	Opn skl vlt fx-proln com
		800.85	Opn skl vlt fx-deep coma
		800.86	Opn skul vlt fx-coma NOS
		800.89	Op skl vlt fx-concus NOS
		800.90	Op skl vlt fx/br inj NEC
		800.91	Opn skul vlt fx w/o coma
		800.92	Opn skul vlt fx-brf coma
		800.93	Opn skul vlt fx-mod coma
		800.94	Opn skl vlt fx-proln com
		800.95	Op skul vlt fx-deep coma
		800.96	Opn skul vlt fx-coma NOS
		800.99	Op skl vlt fx-concus NOS
		801.00	Clos skull base fracture
		801.01	Cl skul base fx w/o coma
		801.02	Cl skul base fx-brf coma
		801.03	Cl skul base fx-mod coma
		801.04	Cl skl base fx-prol coma
		801.05	Cl skl base fx-deep coma
		801.06	Cl skul base fx-coma NOS
		801.09	Cl skull base fx-concuss
		801.10	Cl skl base fx/cereb lac
		801.11	Cl skul base fx w/o coma
		801.12	Cl skul base fx-brf coma
		801.13	Cl skul base fx-mod coma
		801.14	Cl skl base fx-prol coma
		801.15	Cl skl base fx-deep coma
		801.16	Cl skul base fx-coma NOS
		801.19	Cl skull base fx-concuss
		801.20	Cl skl base fx/menin hem
		801.21	Cl skul base fx w/o coma
		801.22	Cl skul base fx/brf coma
		801.23	Cl skul base fx-mod coma
		801.24	Cl skl base fx-prol coma
		801.25	Cl skl base fx-deep coma
		801.26	Cl skul base fx-coma NOS
		801.29	Cl skull base fx-concuss
		801.30	Cl skull base fx/hem NEC
		801.31	Cl skul base fx w/o coma
		801.32	Cl skul base fx-brf coma
		801.33	Cl skul base fx-mod coma

V-Code	Description	ICD Pair	Description
		801.34	Cl skl base fx-prol coma
		801.35	Cl skl base fx-deep coma
		801.36	Cl skul base fx-coma NOS
		801.39	Cl skull base fx-concuss
		801.40	Cl sk base fx/br inj NEC
		801.41	Cl skul base fx w/o coma
		801.42	Cl skul base fx-brf coma
		801.43	Cl skul base fx-mod coma
		801.44	Cl skl base fx-prol coma
		801.45	Cl skl base fx-deep coma
		801.46	Cl skul base fx-coma NOS
		801.49	Cl skull base fx-concuss
		801.50	Open skull base fracture
		801.51	Opn skl base fx w/o coma
		801.52	Opn skl base fx-brf coma
		801.53	Opn skl base fx-mod coma
		801.54	Op skl base fx-prol coma
		801.55	Op skl base fx-deep coma
		801.56	Opn skl base fx-coma NOS
		801.59	Opn skul base fx-concuss
		801.60	Op skl base fx/cereb lac
		801.61	Opn skl base fx w/o coma
		801.62	Opn skl base fx-brf coma
		801.63	Opn skl base fx-mod coma
		801.64	Op skl base fx-prol coma
		801.65	Op skl base fx-deep coma
		801.66	Opn skl base fx-coma NOS
		801.69	Opn skul base fx-concuss
		801.70	Op skl base fx/menin hem
		801.71	Opn skl base fx w/o coma
		801.72	Opn skl base fx-brf coma
		801.73	Opn skl base fx-mod coma
		801.74	Op skl base fx-prol coma
		801.75	Op skl base fx-deep coma
		801.76	Opn skl base fx-coma NOS
		801.79	Opn skul base fx-concuss
		801.80	Opn skul base fx/hem NEC
		801.81	Opn skl base fx w/o coma
		801.82	Opn skl base fx-brf coma
		801.83	Opn skl base fx-mod coma

V-Code	Description	ICD Pair	Description
		801.84	Op skl base fx-prol coma
		801.85	Op skl base fx-deep coma
		801.86	Opn skl base fx-coma NOS
		801.89	Opn skul base fx-concuss
		801.90	Op sk base fx/br inj NEC
		801.91	Op skul base fx w/o coma
		801.92	Opn skl base fx-brf coma
		801.93	Opn skl base fx-mod coma
		801.94	Op skl base fx-prol coma
		801.95	Op skl base fx-deep coma
		801.96	Opn skl base fx-coma NOS
		801.99	Opn skul base fx-concuss
		802.0	Nasal bone fx-closed
		802.1	Nasal bone fx-open
		802.20	Mandible fx NOS-closed
		802.21	Fx condyl proc mandib-cl
		802.22	Subcondylar fx mandib-cl
		802.23	Fx coron proc mandib-cl
		802.24	Fx ramus NOS-closed
		802.25	Fx angle of jaw-closed
		802.26	Fx symphy mandib body-cl
		802.27	Fx alveolar bord mand-cl
		802.28	Fx mandible body NEC-cl
		802.29	Mult fx mandible-closed
		802.30	Mandible fx NOS-open
		802.31	Fx condyl proc mand-open
		802.32	Subcondyl fx mandib-open
		802.33	Fx coron proc mandib-opn
		802.34	Fx ramus NOS-open
		802.35	Fx angle of jaw-open
		802.36	Fx symphy mandib bdy-opn
		802.37	Fx alv bord mand bdy-opn
		802.38	Fx mandible body NEC-opn
		802.39	Mult fx mandible-open
		802.4	Fx malar/maxillary-close
		802.5	Fx malar/maxillary-open
		802.6	Fx orbital floor-closed
		802.7	Fx orbital floor-open
		802.8	Fx facial bone NEC-close
		802.9	Fx facial bone NEC-open

V-Code	Description	ICD Pair	Description
		803.00	Close skull fracture NEC
		803.01	Cl skull fx NEC w/o coma
		803.02	Cl skull fx NEC-brf coma
		803.03	Cl skull fx NEC-mod coma
		803.04	Cl skl fx NEC-proln coma
		803.05	Cl skul fx NEC-deep coma
		803.06	Cl skull fx NEC-coma NOS
		803.09	Cl skull fx NEC-concuss
		803.10	Cl skl fx NEC/cerebr lac
		803.11	Cl skull fx NEC w/o coma
		803.12	Cl skull fx NEC-brf coma
		803.13	Cl skull fx NEC-mod coma
		803.14	Cl skl fx NEC-proln coma
		803.15	Cl skul fx NEC-deep coma
		803.16	Cl skull fx NEC-coma NOS
		803.19	Cl skull fx NEC-concuss
		803.20	Cl skl fx NEC/mening hem
		803.21	Cl skull fx NEC w/o coma
		803.22	Cl skull fx NEC-brf coma
		803.23	Cl skull fx NEC-mod coma
		803.24	Cl skl fx NEC-proln coma
		803.25	Cl skul fx NEC-deep coma
		803.26	Cl skull fx NEC-coma NOS
		803.29	Cl skull fx NEC-concuss
		803.30	Cl skull fx NEC/hem NEC
		803.31	Cl skull fx NEC w/o coma
		803.32	Cl skull fx NEC-brf coma
		803.33	Cl skull fx NEC-mod coma
		803.34	Cl skl fx NEC-proln coma
		803.35	Cl skul fx NEC-deep coma
		803.36	Cl skull fx NEC-coma NOS
		803.39	Cl skull fx NEC-concuss
		803.40	Cl skl fx NEC/br inj NEC
		803.41	Cl skull fx NEC w/o coma
		803.42	Cl skull fx NEC-brf coma
		803.43	Cl skull fx NEC-mod coma
		803.44	Cl skl fx NEC-proln coma
		803.45	Cl skul fx NEC-deep coma
		803.46	Cl skull fx NEC-coma NOS
		803.49	Cl skull fx NEC-concuss

V-Code	Description	ICD Pair	Description
		803.50	Open skull fracture NEC
		803.51	Opn skul fx NEC w/o coma
		803.52	Opn skul fx NEC-brf coma
		803.53	Opn skul fx NEC-mod coma
		803.54	Opn skl fx NEC-prol coma
		803.55	Opn skl fx NEC-deep coma
		803.56	Opn skul fx NEC-coma NOS
		803.59	Opn skull fx NEC-concuss
		803.60	Opn skl fx NEC/cereb lac
		803.61	Opn skul fx NEC w/o coma
		803.62	Opn skul fx NEC-brf coma
		803.63	Opn skul fx NEC-mod coma
		803.64	Opn skl fx NEC-proln com
		803.65	Opn skl fx NEC-deep coma
		803.66	Opn skul fx NEC-coma NOS
		803.69	Opn skull fx NEC-concuss
		803.70	Opn skl fx NEC/menin hem
		803.71	Opn skul fx NEC w/o coma
		803.72	Opn skul fx NEC-brf coma
		803.73	Opn skul fx NEC-mod coma
		803.74	Opn skl fx NEC-prol coma
		803.75	Opn skl fx NEC-deep coma
		803.76	Opn skul fx NEC-coma NOS
		803.79	Opn skull fx NEC-concuss
		803.80	Opn skull fx NEC/hem NEC
		803.81	Opn skul fx NEC w/o coma
		803.82	Opn skul fx NEC-brf coma
		803.83	Opn skul fx NEC-mod coma
		803.84	Opn skl fx NEC-prol coma
		803.85	Opn skl fx NEC-deep coma
		803.86	Opn skul fx NEC-coma NOS
		803.89	Opn skull fx NEC-concuss
		803.90	Op skl fx NEC/br inj NEC
		803.91	Opn skul fx NEC w/o coma
		803.92	Opn skul fx NEC-brf coma
		803.93	Opn skul fx NEC-mod coma
		803.94	Opn skl fx NEC-prol coma
		803.95	Opn skl fx NEC-deep coma
		803.96	Opn skul fx NEC-coma NOS
		803.99	Opn skull fx NEC-concuss

V-Code	Description	ICD Pair	Description
		804.00	Cl skul fx w oth bone fx
		804.01	Cl skl w oth fx w/o coma
		804.02	Cl skl w oth fx-brf coma
		804.03	Cl skl w oth fx-mod coma
		804.04	Cl skl/oth fx-proln coma
		804.05	Cl skul/oth fx-deep coma
		804.06	Cl skl w oth fx-coma NOS
		804.09	Cl skul w oth fx-concuss
		804.10	Cl sk w oth fx/cereb lac
		804.11	Cl skl w oth fx w/o coma
		804.12	Cl skl w oth fx-brf coma
		804.13	Cl skl w oth fx-mod coma
		804.14	Cl skl/oth fx-proln coma
		804.15	Cl skul/oth fx-deep coma
		804.16	Cl skl w oth fx-coma NOS
		804.19	Cl skul w oth fx-concuss
		804.20	Cl skl/oth fx/mening hem
		804.21	Cl skl w oth fx w/o coma
		804.22	Cl skl w oth fx-brf coma
		804.23	Cl skl w oth fx-mod coma
		804.24	Cl skl/oth fx-proln coma
		804.25	Cl skul/oth fx-deep coma
		804.26	Cl skl w oth fx-coma NOS
		804.29	Cl skul w oth fx-concuss
		804.30	Cl skul w oth fx/hem NEC
		804.31	Cl skl w oth fx w/o coma
		804.32	Cl skl w oth fx-brf coma
		804.33	Cl skl w oth fx-mod coma
		804.34	Cl skl/oth fx-proln coma
		804.35	Cl skul/oth fx-deep coma
		804.36	Cl skl w oth fx-coma NOS
		804.39	Cl skul w oth fx-concuss
		804.40	Cl skl/oth fx/br inj NEC
		804.41	Cl skl w oth fx w/o coma
		804.42	Cl skl w oth fx-brf coma
		804.43	Cl skl w oth fx-mod coma
		804.44	Cl skl/oth fx-proln coma
		804.45	Cl skul/oth fx-deep coma
		804.46	Cl skl w oth fx-coma NOS
		804.49	Cl skul w oth fx-concuss

V-Code	Description	ICD Pair	Description
		804.50	Opn skull fx/oth bone fx
		804.51	Opn skul/oth fx w/o coma
		804.52	Opn skul/oth fx-brf coma
		804.53	Opn skul/oth fx-mod coma
		804.54	Opn skl/oth fx-prol coma
		804.55	Opn skl/oth fx-deep coma
		804.56	Opn skul/oth fx-coma NOS
		804.59	Opn skull/oth fx-concuss
		804.60	Opn skl/oth fx/cereb lac
		804.61	Opn skul/oth fx w/o coma
		804.62	Opn skul/oth fx-brf coma
		804.63	Opn skul/oth fx-mod coma
		804.64	Opn skl/oth fx-prol coma
		804.65	Opn skl/oth fx-deep coma
		804.66	Opn skul/oth fx-coma NOS
		804.69	Opn skull/oth fx-concuss
		804.70	Opn skl/oth fx/menin hem
		804.71	Opn skul/oth fx w/o coma
		804.72	Opn skul/oth fx-brf coma
		804.73	Opn skul/oth fx-mod coma
		804.74	Opn skl/oth fx-prol coma
		804.75	Opn skl/oth fx-deep coma
		804.76	Opn skul/oth fx-coma NOS
		804.79	Opn skull/oth fx-concuss
		804.80	Opn skl w oth fx/hem NEC
		804.81	Opn skul/oth fx w/o coma
		804.82	Opn skul/oth fx-brf coma
		804.83	Opn skul/oth fx-mod coma
		804.84	Opn skl/oth fx-prol coma
		804.85	Opn skl/oth fx-deep coma
		804.86	Opn skul/oth fx-coma NOS
		804.89	Opn skull/oth fx-concuss
		804.90	Op skl/oth fx/br inj NEC
		804.91	Opn skul/oth fx w/o coma
		804.92	Opn skul/oth fx-brf coma
		804.93	Opn skul/oth fx-mod coma
		804.94	Opn skl/oth fx-prol coma
		804.95	Opn skl/oth fx-deep coma
		804.96	Opn skul/oth fx-coma NOS
		804.99	Opn skull/oth fx-concuss

V-Code	Description	ICD Pair	Description
		807.00	Fracture rib NOS-closed
		807.01	Fracture one rib-closed
		807.02	Fracture two ribs-closed
		807.03	Fracture three ribs-clos
		807.04	Fracture four ribs-close
		807.05	Fracture five ribs-close
		807.06	Fracture six ribs-closed
		807.07	Fracture seven ribs-clos
		807.08	Fx eight/more rib-closed
		807.09	Fx mult ribs NOS-closed
		807.10	Fracture rib NOS-open
		807.11	Fracture one rib-open
		807.12	Fracture two ribs-open
		807.13	Fracture three ribs-open
		807.14	Fracture four ribs-open
		807.15	Fracture five ribs-open
		807.16	Fracture six ribs-open
		807.17	Fracture seven ribs-open
		807.18	Fx eight/more ribs-open
		807.19	Fx mult ribs NOS-open
		807.2	Fracture of sternum-clos
		807.3	Fracture of sternum-open
		807.4	Flail chest
		807.5	Fx larynx/trachea-closed
		807.6	Fx larynx/trachea-open
		808.0	Fracture acetabulum-clos
		808.1	Fracture acetabulum-open
		808.2	Fracture of pubis-closed
		808.3	Fracture of pubis-open
		808.41	Fracture of ilium-closed
		808.42	Fracture ischium-closed
		808.43	Pelv fx-clos/pelv disrup
		808.44	Multiple closed pelvic fractures without disruption of pelvic circle
		808.49	Pelvic fracture NEC-clos
		808.51	Fracture of ilium-open
		808.52	Fracture of ischium-open
		808.53	Pelv fx-open/pelv disrup
		808.54	Multiple open pelvic fractures without disruption of pelvic circle
		808.59	Pelvic fracture NEC-open

V-Code	Description	ICD Pair	Description
		808.8	Pelvic fracture NOS-clos
		808.9	Pelvic fracture NOS-open
		809.0	Fracture trunk bone-clos
		809.1	Fracture trunk bone-open
		814.00	Fx carpal bone NOS-close
		814.01	Fx navicular, wrist-clos
		814.02	Fx lunate, wrist-closed
		814.03	Fx triquetral, wrist-cl
		814.04	Fx pisiform-closed
		814.05	Fx trapezium bone-closed
		814.06	Fx trapezoid bone-closed
		814.07	Fx capitate bone-closed
		814.08	Fx hamate bone-closed
		814.09	Fx carpal bone NEC-close
		814.10	Fx carpal bone NOS-open
		814.11	Fx navicular, wrist-open
		814.12	Fx lunate, wrist-open
		814.13	Fx triquetral, wrist-opn
		814.14	Fx pisiform-open
		814.15	Fx trapezium bone-open
		814.16	Fx trapezoid bone-open
		814.17	Fx capitate bone-open
		814.18	Fx hamate bone-open
		814.19	Fx carpal bone NEC-open
		815.00	Fx metacarpal NOS-closed
		815.01	Fx 1st metacarp base-cl
		815.02	Fx metacarp base NEC-cl
		815.03	Fx metacarpal shaft-clos
		815.04	Fx metacarpal neck-close
		815.09	Mult fx metacarpus-close
		815.10	Fx metacarpal NOS-open
		815.11	Fx 1st metacarp base-opn
		815.12	Fx metacarp base NEC-opn
		815.13	Fx metacarpal shaft-open
		815.14	Fx metacarpal neck-open
		815.19	Mult fx metacarpus-open
		816.00	Fx phalanx, hand NOS-cl
		816.01	Fx mid/prx phal, hand-cl
		816.02	Fx dist phalanx, hand-cl
		816.03	Fx mult phalan, hand-cl

V-Code	Description	ICD Pair	Description
		816.10	Fx phalanx, hand NOS-opn
		816.11	Fx mid/prx phal, hand-op
		816.12	Fx distal phal, hand-opn
		816.13	Fx mult phalan, hand-opn
		817.0	Multiple fx hand-closed
		817.1	Multiple fx hand-open
		824.0	Fx medial malleolus-clos
		824.1	Fx medial malleolus-open
		824.2	Fx lateral malleolus-cl
		824.3	Fx lateral malleolus-opn
		824.4	Fx bimalleolar-closed
		824.5	Fx bimalleolar-open
		824.6	Fx trimalleolar-closed
		824.7	Fx trimalleolar-open
		824.8	Fx ankle NOS-closed
		824.9	Fx ankle NOS-open
		825.0	Fracture calcaneus-close
		825.1	Fracture calcaneus-open
		825.20	Fx foot bone NOS-closed
		825.21	Fx astragalus-closed
		825.22	Fx navicular, foot-clos
		825.23	Fx cuboid-closed
		825.24	Fx cuneiform, foot-clos
		825.25	Fx metatarsal-closed
		825.29	Fx foot bone NEC-closed
		825.30	Fx foot bone NOS-open
		825.31	Fx astragalus-open
		825.32	Fx navicular, foot-open
		825.33	Fx cuboid-open
		825.34	Fx cuneiform, foot-open
		825.35	Fx metatarsal-open
		825.39	Fx foot bone NEC-open
		819.0	Fx arms w rib/sternum-cl
		819.1	Fx arms w rib/stern-open
		828.0	Fx legs w arm/rib-closed
		828.1	Fx legs w arm/rib-open
		810.00	Fx clavicle NOS-closed
		810.01	Fx clavicl, stern end-cl
		810.02	Fx clavicle shaft-closed
		810.03	Fx clavicl, acrom end-cl

V-Code	Description	ICD Pair	Description
		810.10	Fx clavicle NOS-open
		810.11	Fx clavic, stern end-opn
		810.12	Fx clavicle shaft-open
		810.13	Fx clavic, acrom end-opn
		811.00	Fx scapula NOS-closed
		811.01	Fx scapul, acrom proc-cl
		811.02	Fx scapul, corac proc-cl
		811.03	Fx scap, glen cav/nck-cl
		811.09	Fx scapula NEC-closed
		811.10	Fx scapula NOS-open
		811.11	Fx scapul, acrom proc-op
		811.12	Fx scapul, corac proc-op
		811.13	Fx scap, glen cav/nck-op
		811.19	Fx scapula NEC-open
V54.20	Aftrcare path fx arm NOS	733.19	Path fx oth specif site
V54.21	Aftercare path fx up arm	733.11	Path fx humerus
V54.22	Aftrcare path fx low arm	733.12	Path fx dstl radius ulna
V54.23	Aftercare path fx hip	733.14	Path fx neck of femur
V54.24	Aftrcare path fx leg NOS	733.19	Path fx oth specif site
V54.25	Aftrcare path fx up leg	733.15	Path fx oth spcf prt fmr
V54.26	Aftrcare path fx low leg	733.16	Path fx tibia fibula
V54.27	Aftrcare path fx vertebr	733.13	Path fx vertebrae
V54.29	Aftrcre path fx bone NEC	733.10	Path fx unspecified site
		733.19	Path fx oth specif site

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IV. Quality Reporting for Hospices

A. Background and Statutory Authority

Section 3004 of the Affordable Care Act amended the Act to authorize a quality reporting program for hospices. As added by section 3004(c), new section 1814(i)(5)(A)(i) of the Act requires that beginning with FY 2014 and each subsequent FY, the Secretary shall reduce the market basket update by 2 percentage points for any hospice that does not comply with the quality data submission requirements with respect to that fiscal year. Depending on the amount of the annual update for a particular year, a reduction of 2 percentage points could result in the annual market basket update being less than 0.0 percent for a FY and may result in payment rates that are less than payment rates for the preceding FY. Any reduction based on failure to comply with the reporting requirements, as required by section 1814(i)(5)(B) of the Act, would apply only for the particular FY involved. Any such reduction will not be cumulative and will not be taken into account in computing the payment amount for subsequent FYs.

Section 1814(i)(5)(C) of the Act requires that each hospice submit data to the Secretary on quality measures specified by the Secretary. Such data must be submitted in a form and manner, and at a time specified by the Secretary. Any measures selected by the Secretary must have been endorsed by the consensus-based entity which holds a contract regarding performance measurement with the Secretary under section 1890(a) of the Act. This contract

is currently held by the National Quality Forum (NQF). However, section 1814(i)(5)(D)(ii) of the Act provides that 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 consensus-based entity, the Secretary may specify a measure(s) that is(are) not so endorsed as long as due consideration is given to measures that have been endorsed or adopted by a consensus-based organization identified by the Secretary. Under section 1814(i)(5)(D)(iii) of the Act, the Secretary must publish selected measures that will be applicable with respect to FY 2014 no later than October 1, 2012.

B. Public Availability of Data Submitted

Under section 1814(i)(5)(E) of the Act, the Secretary is required to establish procedures for making any quality data submitted by hospices available to the public. Such procedures will ensure that a hospice will have the opportunity to review the data regarding the hospice's respective program before it is made public. In addition, under section 1814(i)(5)(E) of the Act, the Secretary is authorized to report quality measures that relate to services furnished by a hospice on the CMS Web site. We recognize that public reporting of quality data is a vital component of a robust quality reporting program and are fully committed to developing the necessary systems for public reporting of hospice quality data. We also recognize it is essential that the data we make available to the public be meaningful data and that comparing performance between hospices requires that measures be constructed from data collected in a standardized and uniform manner. The development and implementation of a standardized data set for hospices must precede public reporting of hospice quality measures. We will announce the timeline for public reporting of data in future rulemaking.

C. Quality Measures for Hospice Quality Reporting Program and Data Submission Requirements for the 2014 Payment Year.

1. Quality Measures Required for Payment Year 2014

In the Hospice Wage Index for Fiscal Year 2012 Final Rule (76 FR 47302, 47320 (August 4, 2011)), to meet the quality reporting requirements for hospices for the FY 2014 payment determination as set forth in section 1814(i)(5) of the Act, we finalized the requirement that hospices report two measures:

- An NQF-endorsed measure that is related to pain management, NQF #0209: The percentage of patients who report being uncomfortable because of pain on the initial assessment (after admission to hospice services) who report pain was brought to a comfortable level within 48 hours. The data collection period for this measure is October 1, 2012 through December 31, 2012, and the data submission deadline is April 1, 2013. The data for this measure are collected at the patient level, but are reported in the aggregate for all patients cared for within the reporting period, regardless of payor.
- A structural measure that is not endorsed by NQF: Participation in a Quality Assessment and Performance Improvement (QAPI) program that includes at least three quality indicators related to patient care. Specifically, hospice programs are required to report whether or not they have a QAPI program that addresses at least three indicators related to patient care. In addition hospices are required to check off, from a list of topics, all patient care topics for which they have at least one QAPI indicator. The data collection period for this measure is October 1, 2012 through December 31, 2012, and the data submission deadline is January 31, 2013. Hospices are not asked to report their level of performance on these patient care related indicators. The information being gathered will be used by CMS to ascertain the breadth and content of existing hospice QAPI programs. This stakeholder input will help inform future measure development.

Hospice programs will be evaluated for purposes of the quality reporting program based on whether or not they respond, not on how they respond or on performance level. No additional measures are required for the 2014 payment year.

2. Data Submission Requirements for Payment Year 2014

We will provide a Hospice Data Submission Form to be completed using a web-based data entry site. Training for use of this web based data submission form will be provided to hospices through webinars and other downloadable materials before the data submission date. Though similar to the data entry site utilized during the hospice voluntary reporting period, the site will be changed to accommodate the addition of the NQF #0209 measure, as well as to simplify the data entry requirements for the structural measure. Hospices will be asked to provide identifying information, and then complete the web based data entry for the required measures. For hospices that cannot complete the web based data entry, a downloadable data entry form will be available upon request.

The data submission form as well as details regarding education and resources related to the data collection and data submission for both the NQF #0209 measure and the structural measure will be provided on the CMS Web site at *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/.*

D. Quality Measures for Hospice Quality Reporting Program for Payment Year FY 2015 and Beyond

1. Quality Measures Required for Payment Year FY 2015 and Subsequent Years

To meet the quality reporting requirements for hospices for the FY 2015 payment determination and each subsequent year, as set forth in section 1814(i)(5) of the Act, in the CY 2013 HH PPS proposed rule (77 FR 41548), we proposed that hospices report the following:

- The NQF-endorsed measure that is related to pain management, NQF #0209: The percentage of patients who report being uncomfortable because of pain on the initial assessment (after admission to hospice services) who report pain was brought to a comfortable level within 48 hours.
- The structural measure: Participation in a Quality Assessment and Performance Improvement (QAPI) Program that Includes at Least Three Quality Indicators Related to Patient Care. Specifically, hospice programs would report whether or not they have a QAPI program that addresses at least three indicators related to patient care.

We are not extending the requirement that hospices provide a list of their patient care indicators. We solicited comment on the proposed selection of measures.

Comment: We received six comments in support of and one comment opposed to continuing the requirement for the structural measure. We received eight comments in support of and one comment opposed to continuing the requirement for the NQF 0209 measure. The majority of commenters agreed with our proposal that no additional measures be required for Payment Year 2015 reporting. Commenters were also supportive of CMS's decision not to extend the requirement that hospices provide a list of their patient care indicators for Payment Year 2015

structural measure reporting. Some commenters raised concerns about each of the measures individually. For the structural measure, one commenter did not support the inclusion of this measure for Payment Year 2015 reporting. This commenter felt that while the measure was not burdensome to hospices, the potential of this measure to affect quality of care provided to hospice patients was questionable. We also received ten comments that did not specifically oppose the continuation of the NQF 0209 measure but did request that various aspects of the specifications of the measure be changed.

Response: While we recognize that the structural measure has limitations, it also provides CMS a nationally representative first look into the content of hospice providers' QAPI programs and provides CMS the opportunity to take that information into consideration for the future development of the quality reporting program. We appreciate the feedback on selection of the NQF #0209 Pain Measure and acknowledge potential issues with measure specifications that were detailed by commenters. Measure development and endorsement processes include the creation of measure specifications.

As a result of the comments received, we are finalizing this proposal as proposed.

2. Data Submission Requirements for Payment year FY 2015.

As previously noted, in the Hospice Wage Index for Fiscal Year 2012 Final Rule, we finalized the following:

- All hospice quality reporting periods subsequent to that for Payment Year FY 2014 be based on a calendar year rather than a calendar quarter. For example, January 1, 2013 through December 31, 2013 will be the data collection period used for determination of the hospice market basket update for each hospice in FY 2015, etc.; and
- Hospices submit data in the fiscal year prior to the payment determination. For FY 2015 and beyond, the data submission deadline will be April 1 of each year. For example, April 1, 2014 will be the data submission deadline used for determination of the hospice market basket update for each hospice in FY 2015, etc.

E. Additional Measures Under Consideration and Standardization of Data Collection

While initially we will build a foundation for quality reporting by requiring hospices to report one NQF-endorsed measure and one structural measure, we seek to achieve a comprehensive set of quality measures to be available for widespread use for quality improvement and informed decision making. The provision of quality care to hospice patients and families is of utmost importance to CMS. For annual payment determinations beyond FY 2015, we are considering an expansion of the required measures to include some additional measures endorsed by NQF. The measures of particular interest are NQF numbers 1634, 1637, 1638, 1639, and 0208 and can be found by searching the NQF site at *www.qualityforum.org.* We welcomed comments on whether all, some, any, or none of these measures should be considered for future rulemaking. A potential timeline and titles of future measures under consideration are included below.

To support the standardized collection and calculation of quality measures specifically focused on hospice services, we believe the required data elements would potentially require a standardized assessment instrument. We are committed to developing a quality reporting program for hospices that utilizes standardized methods to collect data needed to calculate endorsed quality measures. To achieve this goal, we have been working on the initial development and testing of a hospice patient-level data item set. This patient level data item set could be used by all hospices at some point in the future to collect and submit standardized data items about each patient admitted to hospice. These data could be used for calculating quality measures. Many of the items currently in testing are already standardized and included in assessments used by a variety of other providers. Other items have been developed specifically for hospice care settings, and obtain information needed to calculate the hospice-appropriate quality measures that were endorsed by NQF in February 2012. We are considering a target date for implementation of a standardized hospice data item set as early as CY 2014, dependent on development and infrastructure logistics. We welcomed comments on the potential implementation of a hospice patient-level data item set in CY 2014.

Comment: In response to our invitation to comment, we received 19 comments in support of using a standardized patient level data set, noting efforts to standardize data collection would aid in ensuring the validity of quality reporting. These comments offered suggestions on design and implementation, stressing that we should make every effort to streamline the item set so that it contains only data elements appropriate for hospice patients and required to calculate quality measures for reporting, thereby minimizing burden. Finally, most commenters were not supportive of implementing the data item set in CY 2014 due to the time needed to adequately prepare providers and other stakeholders for implementation. Commenters suggested implementing a standardized item set that would collect the data elements needed to calculate the NQF endorsed measures at least a full year prior to implementing the additional measures, or reducing the number of measures expected to be implemented at one time. We received two comments expressing opposition to the use of a standardized data set.

Response: We appreciate the comments we received about the standardized item set. We are committed to developing a Hospice Quality Reporting Program that utilizes standardized items as the basis for collecting and reporting quality measures. We have recently concluded a pilot test of a draft item set with nine hospices around the country providing services in various care settings. The main purposes of the pilot were to get a clear understanding of the process of implementation of the item set by the hospices and of the burden experienced by the hospices as they implemented the item set and collected data on patients. The quantitative and qualitative results of the pilot test will be used to inform the continued development of the item set.

Our intent is to develop an item set that would collect data elements that are already part of hospice practice and could be used to calculate the NQF endorsed QMs for hospice. We are in agreement that the item set should not add burden for patients and families and should be based on information hospices already collect as part of their patient assessment and care provision practices to the extent possible.

We will consider the suggestions offered in comment to the proposed rule as we proceed with the development and steps required to implement a standardized patient level data item set.

In developing the standardized data item set, we have included data items that will support the following endorsed measures:

- 1617 Patients Treated With an Opioid who are Given a Bowel Regimen
- 1634 Pain Screening
- 1637 Pain Assessment
- 1638 Dyspnea Treatment
- 1639 Dyspnea Screening

Starting with data collection in 2015, we envision these measures as possible measures that we would implement subject to future rulemaking. We welcomed comments on the potential future implementation of these measures and the associated projected timeframe for implementation.

Comment: In response to our invitation to comment, we received 30 comments related to the list of potential future measures. Commenters were generally supportive of these measures stating that they are important areas to measure for hospices and are already being measured by many providers. Commenters also pointed out that the measures being considered are limited primarily to organizational processes related to physical symptoms. They urged the future adoption of more outcomes oriented measures. A majority of the comments advised that the list of measures focuses only on the physical realm and is missing critical elements of hospice care. They noted that the measures being considered do not accurately reflect the holistic care provided to patients and families receiving hospice services and urged CMS to consider additional measures endorsed by NQF that address the psychosocial, spiritual and patient preference aspects of hospice; fourteen commenters specifically named NQF #1641 (patient preferences) and #1647 (spiritual issues addressed). Commenters also urged CMS to consider the development of additional measures to address the shortage of endorsed measures that reflect important aspects of care such as care coordination and meeting patient preferences as pointed out by the Measures Application Partnership (MAP) report from June 2012. Most commenters supported a phased-in approach, indicating that the proposed timeline is too aggressive to allow for adequate preparation by hospice providers, vendors and other stakeholders.

Response: We appreciate the comments received about the measures being considered for inclusion in the future expansion of the Hospice Quality Reporting Program. As more measures are submitted to NQF and endorsed for use as part of quality reporting programs, we will consider these measures for future years as well. In addition, we appreciate the comments received about the need for the quality measures to reflect outcomes of care and care beyond physical symptom management. We recognize the shortage of endorsed measures that reflect the essence of high quality hospice care, and will continue to look for opportunities to work with measure developers to address this challenge.

We appreciate the comments about the timeline for implementation, and the many valid concerns hospices have about being adequately prepared, supported and trained to implement the item set and the measures. In addition, we appreciate the comments about the timeframe required for industry preparation including the work needed by vendors to help prepare for patient level data collection. We will take these comments into consideration as we further refine the implementation steps and timeline.

We are also considering future implementation of measures based on an experience of care survey such as the Family Evaluation of Hospice Care Survey (FEHC). The NQF endorsed measure #0208 Family Evaluation of Hospice Care is such a measure. Implementation of an experience of care measure and the associated use of a specified survey could precede or follow the implementation of a standardized data set. We do not envision implementation of both a data set and an experience of care survey in the same year and would project implementation in succession in order to avoid excessive burden to hospices. We solicited comment on the succession of implementation of these two potential requirements.

Comment: In response to our invitation to comment, we received 19 comments related to use of a patient/family experience of care survey and measure. The #0208 measure, which is derived from the specific Family Evaluation of Hospice Care (FEHC) survey, was generally supported but most commenters indicated that they would only support the use of the FEHC if it were administered by a third party. Others felt third party administration is burdensome. Six commenters expressed problems with the FEHC survey, primarily that it is too long and therefore burdensome. Several commenters suggested that the survey should be electronic. One commenter opposed the use of any standardized survey.

Response: We appreciate comments received on the use of a patient/family experience of care survey and associated measure. We will utilize the suggestions offered as we proceed with the development and steps required to implement a hospice-specific patient/family experience of care survey and resulting measures.

Comment: Some commenters offered suggestions related to the succession of implementation of the two potential requirements: A standardized patient level data set and a standardized patient/family experience of care survey. Several commenters requested delay in the introduction of a data set beyond 2014. Other commenters preferred the implementation of the standardized data item set before the experience of care survey, indicating that the standardized data item set poses a greater challenge for implementation for hospices since many hospices already use the FEHC or similar survey. Some commenters preferred implementing an experience of care measure first. Two commenters suggested both be implemented in CY2014.

Response: We appreciate the comments received on the succession of implementation of these two potential requirements. We recognize the challenges associated with implementing a standardized data item set and an experience of care survey. We will carefully consider the suggestions offered as we finalize a timeline for introduction of a data set and a patient/family experience of care survey.

Summary Tables:

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TABLE 26: Finalized in the CY 2013 HH PPS Final Rule

Data Collection	Data Submission	APU Impact	MEASURES
1/1/2013 – 12/31/2013	4/1/2014	FY 2015 (10/1/2014)	Structural measure without QAPI list NQF 0209
1/1/2014 – 12/31/2014	4/1/2015	FY 2016 (10/1/2015)	Structural measure without QAPI list NQF 0209

TABLE 27: Target Dates

TARGET DATE FOR POTENTIAL FUTURE IMPLEMENTATION OF STANDARDIZED DATA SET: Considering Hospice Standardized Data Item Set for implementation in CY 2014			
TARGET DATES FOR POTENTIAL IMPLEMENTATION OF FUTURE MEASURES UNDER CONSIDERATION			
Data Collection	Data Submission	APU Impact	MEASURES
1/1/2015-12/31/2015	4/1/2016	FY 2017 (10/1/2016)	Structural measure without QAPI list NQF 0209, Considering NQF Endorsed Measures supported by a standardized data set: • 1617 Patients Treated with an Opioid who are Given a Bowel Regimen • 1634 Pain Screening • 1637 Pain Assessment • 1638 Dyspnea Treatment • 1639 Dyspnea Screening Considering NQF endorsed measure derived from the FEHC survey: • 0208 Family Evaluation of Hospice Care

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V. Survey and Enforcement Requirements for Home Health Agencies (HHAs)

A. Background and Statutory Authority

To participate in the Medicare program as an HHA provider, an agency or organization must meet the definition of an HHA in section 1891(o) of the Act. Additionally, section 1891(a) of the Act sets out specific participation requirements for HHAs, referred to as conditions of participation (CoPs), which are implemented in 42 CFR part 484. The CoPs apply to an HHA as an entity, as well as to the services furnished to each individual under the care of the HHA, unless the CoP is specifically limited to Medicare/Medicaid beneficiaries, such as the Outcome and Assessment Information Set (OASIS) requirements at § 484.11, § 484.20 and § 484.55. Under section 1891(b) of the Act, the Secretary is responsible for assuring that the CoPs and their enforcement are adequate to protect the health and safety of individuals under the care of an HHA and to promote the effective and efficient use of public monies.

The Secretary is authorized to enter into an agreement with a State Survey Agency (SA) under section 1864(a) of the Act or a national accreditation organization (AO) under section 1865(a) of the Act, with oversight by CMS Regional Offices, to determine whether HHAs meet the federal participation requirements for Medicare. Section 1902(a)(33)(B) of the Act provides for SAs to perform the same survey tasks for facilities participating or seeking to participate in the Medicaid program. The results of Medicare and Medicaid-related surveys are used by CMS and the Medicaid State Agency, respectively, as

the basis for a decision to enter into, deny, or terminate a provider agreement with the agency. To assess compliance with federal participation requirements, surveyors conduct onsite inspections (surveys) of agencies. In the survey process, surveyors directly observe the actual provision of care and services to patients and the effect or possible effects of that care to assess whether the care provided meets the assessed needs of individual patients. An SA periodically surveys HHAs and certifies its findings to CMS and to the State Medicaid Agency if the HHA is seeking to acquire or maintain Medicare or Medicaid certification, respectively. The general requirements regarding the survey and certification process are codified at 42 CFR part 488 and specific survey instructions are detailed in our State Operations Manual (SOM) (IOM Pub. 100–07) and in policy transmittals. Certain providers and suppliers, including HHAs, are also deemed by us to meet the federal requirements for participation if they are accredited by an AO whose program is approved by us to meet or exceed federal requirements under section 1865(a). However, these deemed providers and suppliers are subject to validation surveys under § 488.7.

B. Summary of Proposed Provisions and Analysis of and Responses to Public Comments

In the following sections, we provide a brief summary of the proposed provisions, followed by our responses to public comments received on each issue. For a detailed discussion of the proposed rule, *see* the July 13, 2012 proposed rule (77 FR 41575).

1. General Provisions and Comments

Sections 4022 and 4023 of OBRA '87 amended the Act by adding sections 1891(c) through (f) to establish requirements for surveying and certifying HHAs as well as to establish the authority of the Secretary to utilize varying enforcement mechanisms to terminate participation and to impose alternative sanctions if HHAs were found out of compliance with the CoPs. In the July 13, 2012 proposed rule, we proposed to add new subparts I and J to 42 CFR part 488 to implement sections 1891(c) through (f) of the Act. New subpart I would provide survey and certification guidance while new subpart J would outline the basis for enforcement of compliance standards for HHAs that are not in substantial compliance with the CoPs. Also, we proposed to amend certain sections of 42 CFR part 488, subpart A to include references to HHAs, where appropriate, since the current regulations only reference the survey, certification and enforcement procedures for long term care facilities. Specifically, we proposed to amend § 488.2 to include the statutory reference to home health services (section 1861(m) of the Act), HHAs (section 1861(o) of the Act), and the Conditions of Participation (CoPs) for HHAs and home health quality (section 1891 of the Act). We also proposed to revise § 488.3(a)(1) to include the statutory citations concerning HHAs mentioned above. In addition, we proposed to amend § 488.26 by revising paragraphs (c)(2) and (e) to include references to ''patient'' and ''patients'' which is how individuals receiving services from an HHA are referenced. Finally, we proposed to revise the heading for § 488.28 to include reference to HHAs with deficiencies. We did not receive any comments on these sections and are therefore finalizing the proposed provisions.

We received the following general comments on the proposed rule.

Comments: Several commenters stated that CMS should delay the implementation of the proposed rule until a joint CMS/Industry task force could be formed to rework the regulation and develop procedures and guidance to Regional Offices and SAs. A few commenters submitted comments in the form of procedural questions regarding SA and CMS operations to implement the regulation.

Response: We will engage industry, patient advocacy organizations, and other stakeholders in the implementation process and we will do this through the interpretive guidance process. We do not agree that an overall delay of the regulation is warranted, as this could be a lengthy delay which would only further impede implementation of an enforcement policy that is highly advisable to protect beneficiaries, aligns home health enforcement with other programs, is mandated by the Social Security Act, and is long overdue. However, we will stage the effective date of the civil money penalty (§ 488.845), the Informal Dispute Resolution (IDR) provisions (§ 488.745), and the suspension of payment for new admissions (§ 488.840) to permit more time for both dialogue and design of information system changes for effective administration of these provisions. We will also develop associated interpretive guidance that will address many of the concerns raised by commenters regarding the actual procedures that will be followed to implement the alternative sanctions. We will share proposed guidance with the HHA industry and patient advocacy organizations for comment. The effective date of the civil money penalty (§ 488.845), suspension of payment for new admissions (§ 488.840), and Informal Dispute Resolution (IDR) provisions (§ 488.745) will be July 1, 2014. The effective date of all other survey and enforcement provisions in parts 488, 489, and 498 will be July 1, 2013.

2. Subpart I—Survey and Certification of HHAs

a. Basis and Scope (§ 488.700)

We proposed in § 488.700 to specify the statutory authority for and general scope of standards proposed in 42 CFR part 488 that establishes the requirements for surveying HHAs to determine whether they meet the Medicare conditions of participation. We are finalizing this rule as proposed. In general, this final rule is based on the rulemaking authority in section 1891 of the Act as well as specific statutory provisions identified in the preamble where appropriate.

Comments: Several commenters complimented CMS on the implementation of unannounced inspections and more specific survey protocols. Other commenters stated that the CoPs should be revised.

Response: We appreciate the comments regarding the sections of the regulation which addressed unannounced surveys and more specific survey protocols.

Regarding the comments requesting revisions to the CoPs, we appreciate the commenters concerns, but find that those comments are beyond the scope of this final rule. Any changes to the CoPs would be made through subsequent notice and comment rulemaking, to give stakeholders an opportunity to provide comments on any proposed changes.

b. Definitions (§ 488.705)

We proposed to add § 488.705 which defines certain terms. Sections 1891(c)(1) and (2) of the Act specify the requirements for types and frequency of surveys to be performed in HHAs, utilizing the terms ''standard'', ''abbreviated standard'', ''extended'', ''partial extended'' and ''complaint'' surveys, as well as specifying the minimum components of the standard and extended surveys. Therefore, we proposed to add definitions for these surveys at § 488.705.

In addition to those terms, we proposed definitions for ''condition-level deficiency,'' ''deficiency,'' ''noncompliance,'' ''standard-level

deficiency,'' ''substandard care,'' and ''substantial compliance.'' The definitions of the different surveys, as well as the additional proposed definitions, have been a part of longstanding CMS policy. Except for the few modifications noted in our responses below, we are finalizing § 488.705 as proposed.

Comments: A few commenters could not tell from the definition of ''standard-level deficiency'' whether an alternative sanction could be imposed for standard-level deficiencies alone.

Response: Proposed § 488.810(b) specifically provides that alternative sanctions are applied on the basis of noncompliance with the conditions of participation. Where a condition-level deficiency is determined, an alternative sanction may be imposed. However, there may be occasions where serious noncompliance with a single standard could be cited as a condition-level deficiency, and such a finding could lead to the imposition of a sanction. For example, if a noncompliance with a standard is determined to constitute a significant or a serious finding that adversely affects, or has the potential to adversely affect, patient outcomes, then it may be considered a condition-level deficiency. While alternative sanctions are generally not based on standard-level deficiencies alone, noncompliance with a standard that is determined to be so serious as to constitute a condition-level deficiency could result in termination from Medicare or an alternative sanction, or both.

Comment: Several commenters were unclear as to the meaning of an ''abbreviated standard survey,'' ''substandard care'' and ''extended survey.''

Response: The abbreviated standard survey focuses on particular tasks that relate, for example, to complaints received, or a change of ownership, or management. It does not cover all the aspects reviewed in the standard survey, but rather concentrates on a particular area or areas of concern. The surveyor may investigate any area of concern and make a compliance decision regarding any regulatory requirement, whether or not it is related to the original purpose of the survey or complaint. The abbreviated standard survey can be expanded and changed to a standard, partial extended or extended survey when necessary. We have revised the definition to reflect that an abbreviated standard survey may address fewer standards or conditions than a standard survey. Regarding the commenters' concerns with ''substandard care,'' we agree that the definition is not entirely clear and should be refined. In this final rule, we are clarifying the definition to explain that a finding of substandard care is a condition-level finding that is identified on a standard survey that includes one or more deficiencies which result in actual or potential harm to patients. Condition level deficiencies may also be cited based on findings of a complaint, abbreviated, extended or partial extended survey, but section1891(c)(2)(D) of the Act provides that substandard care found as a result of a standard survey will always trigger an extended survey. We appreciate that substandard care could be defined in terms of just a few CoPs rather than any CoP, and that a narrower definition would reduce the number of extended surveys. However, we consider all CoPs to be important. We regard the statutory directive for an extended survey pursuant to a finding of substandard care to mean that CMS should make a deeper inquiry (via an extension of the survey) when findings are serious, and that we ought to calibrate the extent of the inquiry to the degree of risk to patients. Therefore, we made two changes in this final rule. First, we retained the broad scope of the definition of substandard care (so as to refer to any CoP for which noncompliance was identified), but refined the definition to focus on actual harm or potential for harm to the patient. Second, we revised the definition of extended survey to state that an extended survey reviews ''additional'' rather than ''all'' CoPs that were not examined during the standard survey. Whether the extended survey then examines all, or a focused number, of the additional CoPs not examined during the standard survey can then be determined on the basis of the nature and extent of serious risk to patients that is identified in the standard survey.

c. Standard Surveys (§ 488.710)

We proposed in § 488.710, that a standard survey will be conducted not later than 36 months after the date of the previous standard survey, as specified at section 1891(c)(2)(A) of the Act. Section 1891(c)(2)(C) of the Act requires for standard surveys, to the extent practicable, to review a case-mix stratified sample of individuals to whom the HHA furnishes services, which is proposed in § 488.710(a)(1). The statute specifies that we actually visit the homes of sampled patients, and that we conduct a survey of the quality of services being provided (as measured by indicators of medical, nursing, and rehabilitative care). In proposed § 488.710(a), we specified minimum requirements and provided that visits to homes of patients will be done only with the consent of the patient, their guardian or legal representative. The purpose of the home visit is to evaluate the extent to which the quality and scope of services furnished by the HHA has attained and maintained the highest practicable functional capacity of each patient, as reflected in the patient's written plan of care and clinical records. Other forms of communication with patients, such as through telephone calls, could be used to complete surveys, if determined necessary by the SA or CMS Regional Office. We had also proposed in § 488.710(b) that the survey agency's failure to follow its own survey procedures will not invalidate otherwise legitimate determinations that deficiencies existed in an HHA. For example, if the Statement of Deficiencies was not forwarded to the provider within 10 days of the end of the exit conference, this will not invalidate the underlying determinations.

Comments: Two commenters stated that CMS should conduct HHA surveys more frequently than at a minimum of every 36 months as proposed.

Response: While we agree that frequent HHA surveys are desirable, we also recognize that some HHAs have much a better history of compliance with the CoPs than others. Rather than performing more frequent surveys in every HHA, we will seek to conduct more frequent surveys of those particular HHAs for which available information indicates that they may have higher risks of quality of care problems than other HHAs. Such a more focused approach will enable us to focus our efforts and resources on those HHAs which require greater oversight and assistance.

d. Partial Extended Survey (§ 488.715)

We proposed in § 488.715 that the partial extended survey will be conducted to determine if deficiencies and/or deficient practice(s) exist that were not fully examined during the standard survey. It will be conducted when a standard-level noncompliance was identified; or, if the surveyor believed that a deficient practice existed at a standard or condition-level that was not examined during the standard survey. During the partial extended survey, the surveyor will review, at a minimum, additional standard(s) under the same CoP in which the deficient practice was identified during the standard survey. The surveyors could also review any additional standards under the same or related condition which will assist in making a compliance decision. Under § 488.24, which applies to most other providers

and suppliers and upon which this provision is modeled, the SA certifies that a provider is not in compliance with the CoPs where the deficiencies are of such character as to substantially limit the provider's capacity to furnish adequate care or which adversely affect the health and safety of patients. A CoP may be considered to be out of compliance (and thus at a condition-level) for one or more standard-level deficiencies, if, in a surveyor's judgment, the standard-level deficiency constitutes a significant or a serious finding that adversely affects, or has the potential to adversely affect, patient outcomes. Surveyors are to use their professional judgment, in concert with the federal forms, policies and interpretive guidelines, in their assessment of a provider's compliance with the CoPs. The same procedures will be used for HHAs. We are finalizing this section as proposed.

Comments: One commenter stated that there was no timeframe stated for the completion of a partially extended survey. The commenter recommended that CMS add a timeframe to the final regulation.

Response: A partial extended survey is conducted when (1) standard-level deficiencies are found during a standard survey and the surveyor determines that a more comprehensive review of the CoPs examined under the standard survey would result in condition-level deficiencies, or (2) it is necessary to determine if standard or condition-level deficiencies are present in the CoPs not examined in the standard survey. The standard survey can be expanded to become a partial extended survey and thus is conducted on the same interval as the standard survey. Therefore it is not necessary to add any timeframe for the completion of a partially extended survey. This is also true if a complaint or abbreviated survey identifies issues beyond the original scope of the survey. These surveys would then be considered partial extended surveys.

e. Extended Surveys (§ 488.720)

We proposed in § 488.720, that the extended survey will review compliance with conditions and standards applicable to the HHA. It could be conducted at any time, at the discretion of CMS or the SA, but will be conducted when any condition-level deficiency was found during a standard survey. The extended survey will review and identify the HHA's policies, procedures, and practices that produced the substandard care, which we define in § 488.705 as noncompliance with one or more conditions of participation at the condition-level. We regard the statutory directive for an extended survey pursuant to a finding of substandard care to mean that CMS should make a deeper inquiry (via an extension of the survey) when findings are serious, and that we ought to calibrate the extent of the inquiry to the degree of risk to patients. Whether the extended survey then examines all, or a focused number, of the additional CoPs not examined during the standard survey can then be determined on the basis of the nature and extent of serious risk to patients that is identified in the standard survey. The extended survey will be conducted no later than 14 calendar days after the completion of a standard survey which found the HHA had furnished substandard care. Additionally, the survey will review any associated activities that might have contributed to the deficient practice.

Comments: Several comments were received regarding the definition of substandard care and the association of that definition with an extended survey. In addition, as noted above in reference to § 488.710, some commenters stated that more frequent surveys should be conducted.

Response: As we noted above, in reference to the discussion of § 488.705, we have refined the definition of substandard care in § 488.705 in order to provide additional clarity. We are also clarifying the regulatory language at § 488.720, associated with the extended survey, to state that the extended survey reviews ''additional'' conditions that were not evaluated during the standard survey. The extended survey may review all conditions of participation, or may review a targeted number of conditions, that were not examined in the standard survey. We are making this refinement in response both to the request for greater clarity and to the exhortation from some commenters, previously discussed above in reference to § 488.710, that more frequent surveys be conducted. If every extended survey reviewed every condition of participation, we would consume scarce survey resources examining some conditions that are low risk in a particular HHA. The result is that we would conduct fewer standard and extended surveys than we will be able to conduct when the extended survey may focus on those additional conditions (not examined during the standard survey) that we judge to present higher risk of noncompliance compared to other conditions in the specific HHA that is being surveyed. By such judicious targeting of survey attention, we believe we will increase the surveyors' ability to identify problems that are serious and also allow us to increase frequency of surveys through targeting additional surveys where they are most needed. We have also changed § 488.720(b) to instruct that the extended survey must be conducted no later than 14 calendar days after completion of a standard survey which found the HHA was out of compliance with a condition of participation.

f. Unannounced Surveys (§ 488.725)

Section 1891(c)(1) of the Act requires that standard surveys be unannounced. Moreover, CMS policy (State Operations Manual (SOM) section 2700A) requires that all HHA surveys be unannounced; this policy is set out at proposed § 488.725, which also provides that surveys be conducted with procedures and scheduling that renders the onsite surveys as unpredictable in their timing as possible. In addition, section 1891(c)(1) of the Act requires CMS to review state scheduling and survey procedures to ensure that the agency has taken all reasonable steps to avoid giving advance notice to HHAs of impending surveys through these procedures. Generally, as with respect to other provider-types, State Survey Agencies make every effort to lessen the predictability of a survey occurring at a specific time, day, or month. Moreover, section 1891(c)(1) of the Act states that any individual who notifies (or causes to be notified) an HHA of the time or date of the standard survey is subject to a civil money penalty (CMP) not to exceed $2,000. Accordingly, the proposed regulations at § 488.725 reflect these survey requirements. We did not receive any comments in response to our proposals in § 488.725. Therefore, we are finalizing these provisions as proposed.

g. Survey Frequency and Content (§ 488.730)

In § 488.730, we proposed to establish the requirements for survey frequency and the substantive content of the survey, as discussed in § 488.710, § 488.715, and § 488.720. Section 1891(c)(2) of the Act requires HHAs to be subject to a standard survey at least every 36 months and the frequency of a standard survey to be commensurate with the need to assure the delivery of quality home health services. This 36 month interval is based upon the last day of the last standard survey. This section of the Act also gives CMS the authority to conduct a survey as often as necessary to assure the delivery of quality home health services by determining whether an HHA complies with the CoP or to confirm the correction of previous deficiencies. A

standard survey or abbreviated standard survey may be conducted within two months of a change in ownership, administration or management of an HHA, as specified in 1891(c)(2)(B)(ii) of the Act, and must be conducted within two months of a significant number of complaints reported against the HHA (as determined by CMS), and will also be conducted as otherwise directed by CMS to determine compliance with the CoP, such as the investigation of a complaint. Extended surveys and partial extended surveys may also be conducted at any time at the discretion of CMS or the SA in order to determine compliance with the CoPs. However, under section 1891(c)(2)(D) of the Act, extended surveys and partial extended surveys must be conducted when an HHA is found to have furnished substandard care.

Comments: Several commenters stated that CMS should require more frequent surveys specific to complaints and substandard care issues (i.e., greater than the statutorily mandated 36 months). Commenters also suggested some complaints be investigated within 48 hours.

Response: As was stated earlier, we agree that frequent HHA surveys are desirable. However, instead of performing more frequent surveys in every HHA, we will seek to conduct more frequent surveys of those HHAs that available information indicates have a higher risk of quality of care issues. With regard to the investigation of complaints, we currently maintain a complaint tracking and prioritization system which prioritizes complaints according to the level of risk for the patients at the HHA. Complaints that indicate the possibility of an immediate jeopardy situation are given the highest priority and are investigated as soon as possible. With regard to the commenter's suggestion that complaints which indicate potential immediate jeopardy be investigated within 48 hours, we agree that prompt attention to these complaints is very important. We consider the SOM to be the most appropriate venue for specifying the timeframes by which all types of complaints should be investigated. We will take the commenter's suggestion into consideration as we develop such interpretive guidance.

h. Surveyor Qualifications (§ 488.735)

Section 1891(c)(2)(C)(iii) of the Act requires ''an individual who meets the minimum qualifications established by the Secretary'' to conduct a survey of an HHA. We interpret this statutory language to mean that each individual on a survey team must meet certain minimum CMS qualifications. We set forth our criteria for surveyor minimum qualifications in proposed § 488.735. We are adding that the surveyor must successfully complete the relevant CMS-sponsored Basic HHA Surveyor Training Course and any associated course prerequisites prior to conducting an HHA survey. These prerequisites will be further explained in guidance.

In proposed § 488.735, we also set out the circumstances that will disqualify a surveyor from surveying a particular HHA as required by section 1891(c)(2)(C)(iii) of the Act. A surveyor will be prohibited from surveying an HHA if the surveyor currently serves, or within the previous two years has served, on the staff of or as a consultant to, the HHA undergoing the survey. Specifically, the surveyor could not have been a direct employee, employment agency staff at the HHA, or an officer, consultant or agent for the surveyed HHA regarding compliance with CoPs. A surveyor will be prohibited from surveying an HHA if he or she has a financial interest or an ownership interest in that HHA. The surveyor will also be disqualified if he or she has a family member who has a financial interest or ownership interest with the HHA to be surveyed or has a family member who is a patient of the HHA to be surveyed.

Comments: Several commenters stated that although surveyors are adequately trained and are competent, there is still inconsistency among surveyors nationally. Several commenters stated that CMS should develop formal competencies for surveyors and publish these competencies. A few commenters suggested that surveyors be tested on the competencies and skills for the program they will survey. A few commenters recommended that surveyors be required to have continuing education hours annually. A few commenters suggested that there should be additional CMS commitment of time and resources to train surveyors on the CoPs in collaboration with provider associations.

Response: We appreciate these comments regarding surveyor competencies. However, we believe that the SOM rather than the regulation should contain this level of specificity concerning surveyor competencies, and we will consider additional specification for training as we further develop the interpretive guidance. We currently require successful completion of a national HHA Basic training course (with pre-requisites) before a surveyor is allowed to survey a program independently. This is a comprehensive course and there are pre and post tests to ensure surveyor understanding. Additionally, all SAs conduct reviews of HHA surveyor work before it is released as a final set of findings. This process serves as the quality assurance for the SA. Requirements for HHA surveyor educational and experience backgrounds are determined by the SAs that employ them. Therefore, we are not accepting these recommendations.

Comments: A few commenters stated that surveyors should be disqualified if he/she worked at a competitor of the HHA being surveyed within the last two years. One commenter stated that the surveyor should be disqualified if he/she worked at any HHA within the last two years. One commenter requested clarification as to what constitutes a family member.

Response: While we appreciate the comments regarding surveyor disqualifications, we do not agree that additional criteria for surveyor disqualification beyond those specified in the statute are necessary or indicated at this time. The Act specifies at section 1891(c)(2)(C)(iii)(II), that the survey be conducted by an individual, ''who is not serving (or has not served within the previous 2 years) as a member of the staff of, or as a consultant to, the home health agency surveyed respecting compliance with the conditions of participation specified to section 1861(o) or subsection (a) of this section, and (III) who has no personal or familiar interest in the home health agency surveyed.'' Therefore, we are not accepting the recommendation for these additional requirements. In regards to the definition of ''family member,'' in the above statement, we will utilize the definition of family member located at § 411.351 in the development of interpretive guidance for this regulation. This definition includes husband or wife; birth or adoptive parent, child, or sibling; stepparent, stepchild, stepbrother, or stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law; grandparent or grandchild; and spouse of a grandparent or grandchild.

Comment: A few commenters recommended that CMS allocate funds annually for national training of the HHA industry on the CoPs and alternative sanction policies.

Response: We appreciate the interest of the HHA industry for CMS training. We look forward to partnering with the national associations to promote knowledge and education regarding the CoPs and the provisions of this rule. We do issue periodic communications to providers and host regular open door forums to communicate important

information and engage in dialogue with the HHA industry, patient advocacy organizations, and the public. We also use webinars to train survey staff and these webinars are posted on our Web site and are available to the HHA industry. Since the recommendation to allocate funds for the HHA industry falls outside the scope of the proposed regulation, we are not accepting that aspect of the recommendation.

Comments: One commenter suggested that CMS require the use of the 2011 Survey protocols when conducting surveys to ensure consistency.

Response: Use of the survey protocols is currently our policy.

i. Certification of Compliance or Noncompliance (§ 488.740)

We proposed in § 488.740 to cross reference the rules for certification, documentation of findings, periodic review of compliance and approval, certification of noncompliance, and determining compliance for HHAs as set forth, respectively at § 488.12, § 488.18, § 488.24 and § 488.26 of this part. These general rules must be followed when a State Agency certifies compliance or noncompliance of the HHA with the Act and CoPs.

Comment: One commenter stated that the language does not explain when or on what basis condition-level deficiencies will be identified.

Response: Guidance on how surveyors determine condition-level and standard-level deficiencies is provided in the State Operations Manual (SOM), Appendix B. These new rules do not change that practice. With the establishment of alternative sanctions, we will continue to address this issue in the development of interpretive guidance. In addition, we will consult with stakeholders prior to publication of any guidance on this issue.

Based on these comments, we are finalizing this section as proposed.

j. Informal Dispute Resolution (IDR) (§ 488.745)

We proposed in § 488.745 to make available to HHAs an IDR process to address disputes related to condition-level survey findings following an HHA's receipt of the official statement of deficiencies. We have proposed adding an IDR process that will provide HHAs an informal opportunity to resolve disputes in the survey findings for those HHAs that are seeking recertification from the SA for continued participation in Medicare and for those HHAs that are currently under SA monitoring (either through a complaint or validation survey). Whenever possible, we want to provide every opportunity to settle disagreements at the earliest stage, prior to a formal hearing, conserving time and money potentially spent by the HHA, the State agency, and CMS. The goal of IDR is to offer an HHA the opportunity to refute one or more condition-level deficiencies cited on the official Statement of Deficiencies. An IDR between an HHA and the SA or RO, as appropriate, will allow the HHA an opportunity to provide an explanation of any material submitted to the SA and respond to the reviewer's questions.

In § 488.745, we proposed to provide HHAs with the option to dispute condition-level survey findings upon their receipt of the official Statement of Deficiencies. When survey findings indicate a condition-level deficiency (or deficiencies), CMS or the State, as appropriate, will notify the HHA in writing of its opportunity to request an IDR of those deficiencies. This notice will be provided to the HHA at the time the Statement of Deficiencies is issued to the HHA. The HHA's request for IDR must be submitted in writing, should include the specific deficiencies that are disputed, and should be submitted within the same 10 calendar day period that the HHA has for submitting an acceptable plan of correction.

An HHA's initiation of the IDR process will not postpone or otherwise delay the effective date of any enforcement action. The failure to complete an IDR will not delay the effective date of any enforcement action. Further, if any findings are revised or removed based on IDR, the official Statement of Deficiencies is revised accordingly and any enforcement actions imposed solely as a result of those revised or removed deficiencies are adjusted accordingly. We believe that the IDR procedures will maintain the balance between an HHA's due process concerns and the public's interest in the timely correction of HHA deficiencies.

Comments: Several commenters applauded our introduction of an Informal Dispute Process (IDR) but added that CMS should delay the imposition of a sanction until the completion of the IDR process.

Response: We do not agree with the commenters regarding a delay of the imposition of a sanction until after IDR is completed. Section 1891(f)(3) directs us to ensure that our procedures for imposing sanctions be designed so as to minimize the time between identification of deficiencies and imposition of the sanctions. We are providing for IDR beginning with the provider's receipt of the official Statement of Deficiencies, in order to give facilities an opportunity to rebut survey findings early in the process. While IDR is not required under the statute, by adding this feature to the enforcement process we are balancing the needs of agencies to avoid unnecessary disputes and protracted litigation, on one hand, with the interests of HHA patients, which we believe to be paramount, in assuring the most rapid correction of deficiencies. The IDR is meant to be an informal process whereby the provider has an informal opportunity to address the surveyor's findings, either by disputing them or providing additional information. This process is offered immediately after the survey and a request for IDR must be made within the same 10 calendar day period that the HHA has for submitting a plan of correction, as we provide in § 488.745(d). In those occasions where an IDR may occur after a remedy is imposed, the IDR will still be conducted in time for the IDR results to be taken into account in the remedial action. In the case of civil money penalties that may be imposed with an accrual effective date beginning on the last day of the survey, we explicitly provide at § 488.845(f) that the due date for the collection of a CMP is 15 days after a final administrative decision. This provides time for an IDR or administrative hearing to take place before the due date for collection. We also specify at § 488.745(c) that if any findings are revised or removed by CMS or the state (for surveys conducted by the SA) based on IDR, the CMS–2567 is revised accordingly. Furthermore, if CMS accepts the SA's revised CMS–2567 and any enforcement actions imposed solely as a result of those cited deficiencies, CMS will adjust such enforcement actions accordingly.

Comments: Several commenters referenced the IDR process as an independent dispute resolution and submitted comments regarding the use of third parties not associated with the SA. One commenter stated that the HHA could share the cost of the independent dispute resolution.

Response: We wish to provide clarification for these commenters. The proposed rule discussed ''informal dispute resolution'' and not independent informal dispute resolution. The proposed process will be conducted internally by the SA or CMS as indicated. Each SA is responsible for setting up its own IDR process. We do not preclude SAs from involving independent contractors.

Comments: Several commenters stated that the IDR process should be

available for standard-level deficiencies as well as condition-level deficiencies.

Response: We thank the commenters for this recommendation. However, we do not agree that the IDR process should be expanded to standard-level deficiencies. The purpose of the IDR is for the HHA to dispute condition-level findings that may be the impetus for an alternative sanction. Standard-level findings alone do not trigger an alternative sanction. Some findings of noncompliance with specific standards (that is, standard level findings), however, may be cited at the condition-level if they are repeat deficiencies or are evaluated as being extremely serious. If noncompliance is cited at the condition-level, such condition-level classification will be clearly communicated to the HHA and will be accompanied by rights to request an IDR as well as appeal. Additional guidance will be provided in survey protocols.

Comment: Several commenters requested further clarification of how the IDR process will be implemented.

Response: We understand the interest of the commenters in specific procedures for the implementation of the IDR process. CMS will develop them as a part of the interpretive guidance associated with the final regulation.

Comments: Several commenters requested specific timeframes for the IDR process due to the delays that may occur at the SA level in getting the Statement of Deficiencies to the HHA.

Response: We agree that these timeframes are essential to the effective implementation of the IDR process. We will develop these instructions through interpretive guidance, internal policy directives and SA performance standards.

Comments: A few commenters requested that CMS expedite the IDR process.

Response: We agree that timeframes for the expeditious accomplishment of the IDR process are essential. We will develop instructions through interpretive guidance, internal policy directives and SA performance standards.

Comments: One commenter recommended that the patient, their representative and the State ombudsman should be notified of the IDR so that they might provide valuable input into the IDR process.

Response: We understand the interest voiced by the commenter. The IDR process is provided primarily as an opportunity for the provider to provide additional information and to dispute condition-level deficiencies. This is not an adversarial setting and it will not be necessary for the SA or CMS to seek additional input from other parties. However, we will consider the inclusion of such members in interpretive guidance as appropriate.

Comments: One commenter felt the 10 day response time required for the provider to request IDR and submit evidence was too brief.

Response: We appreciate the concern of the commenter regarding the response time provided. However, because of the need to address disputed findings timely and enable the provider to begin corrections to regain compliance as soon as possible, we do not feel that a shorter time period will be prudent.

Based on the comments above, we are finalizing this section as proposed.

3. Subpart J—Alternative Sanctions for Home Health Agencies With Deficiencies

a. Statutory Basis (§ 488.800)

We proposed to add rules for enforcement actions for HHAs with deficiencies, including alternative sanctions, at new subpart J. Under sections 1866(b)(2)(B) and 1891(e) of the Act and § 489.53(a)(3), we may terminate an HHA's provider agreement if that HHA is not in substantial compliance with the Medicare requirements (that is, the failure to meet one or more conditions of participation is considered a lack of substantial compliance). We may also terminate an HHA that fails to correct its deficiencies within a reasonable time (ordinarily no more than 60 days), even if those deficiencies are at the standard- (rather than condition-) level at § 488.28. Prior to OBRA '87, the only action available to CMS to address HHAs out of compliance with federal requirements was termination of their Medicare provider agreement. Section 4023 of OBRA '87 added subsections 1891(e) and (f) to the Act, which expanded the Secretary's options to enforce federal requirements for HHAs. Under section 1891(e)(1) of the Act, if the Secretary determines on the basis of a standard, extended, or partial extended survey or otherwise, that a home health agency that is certified for participation under this title is no longer in compliance with the requirements specified in or pursuant to section 1861(o) or section 1891(a) of the Act and determines that the deficiencies involved immediately jeopardize the health and safety of the individuals to whom the agency furnishes items and services, the Secretary shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in section 1891(f)(2)(A)(iii) or terminate the certification of the agency, and may provide, in addition, for one or more of the other sanctions described in section 1891(f)(2)(A). We proposed to set out the statutory basis for the new subsection at § 488.800, which is sections 1891(e) and (f) of the Act. Section 1891(e) provides for termination of home health agencies that fail to comply with conditions of participation. This section also provides for ensuring that the procedures with respect to the conditions under which each of the alternative sanctions developed by the Secretary shall be designed to minimize the time between identification of deficiencies and imposition of these sanctions, including imposition of incrementally more severe fines for repeated or uncorrected deficiencies. Furthermore, we proposed that this section specifies that these sanctions are in addition to any others available under state or federal law, and, except for civil money penalties, are imposed prior to the conduct of a hearing.

Comments: Two commenters stated that CMS had exceeded the authorization of the statute with the extensive sanctions, the excessive amounts of civil money penalties and dependence on the subjective determinations of state surveyors. Another commenter stated that CMS improperly, and without statutory authority, limits enforcement to condition-level deficiencies.

Response: We do not agree that the alternative sanctions in this final rule exceed the authority of the statute. Section 1891(f)(1)(A) directs the Secretary to develop a range of sanctions to impose on a HHA that is not in compliance with the federal requirements, which must include civil money penalties, suspension of payments for new admissions and temporary management. We do not believe that this is an exhaustive list. Therefore we are adding through rulemaking two additional sanctions to be included within that range of sanctions. Under the HHA enforcement context, we have added the additional remedies of directed plan of correction and directed in-service training, which have both been successfully used in our enforcement of the nursing home requirements. In our experience with skilled nursing facilities, we realize that some compliance problems are a result of imperfect knowledge on the part of health services staff relative to state-of-the-art practices and resident outcome expectations. This is also the case with services provided to HHA patients. We believe that the HHA provider would benefit from a directed in-service training program conducted by sources

with an in-depth knowledge of the area(s) which require specific training so that positive change is achieved and maintained. Similarly, under a directed plan of correction, an HHA would be guided by individuals with knowledge of necessary corrective actions (for example, us, the SA, or a temporary manager (with CMS approval)) to ensure that the underlying cause of cited deficiency or deficiencies does not recur. This remedy sets forth the expected correction actions which an HHA must take to achieve compliance and the dates by which the actions must be taken.

We disagree with the comment that the proposed rule limits the enforcement to condition-level deficiencies without statutory authority. Section 1891 does not specify the level of noncompliance that would trigger the imposition of an enforcement remedy; rather, it provides that remedies are to be imposed when an HHA is not in compliance with the requirements of section 1861(o) and 1891(a), which includes implementing regulations at Part 484. We consider an HHA to be in substantial compliance with the CoPs when all deficiencies cited are at a standard-level. Thus it will not be consistent for CMS to impose alternative sanctions based upon standard-level deficiencies alone when the HHA is considered to be in compliance with the CoPs.

Comment: Several commenters stated that, because of the risk that sanctions could cause HHAs to close, CMS should either not implement the sanctions at all or should progressively implement the sanctions that are non-monetary sanctions first and then later implement monetary sanctions (civil money penalties and suspension of payment). Another commenter stated that CMS should only impose alternative sanctions in situations where an HHA has shown reckless disregard of its responsibilities or intentionally ignored its compliance obligations. One commenter stated that the statute allowed CMS the discretion to impose sanctions incrementally. One commenter stated that no sanction should be imposed when the natural and foreseeable outcome of the sanction(s) is closure of the agency. One commenter stated that sanctions are meant to be an alternative to the ''death-knell penalty'' of termination.

Response: We appreciate the concerns of the commenters that alternative sanctions may cause HHAs to close, although we believe that risk to be lower than the risk of closure if the alternative were not available and CMS terminated Medicare participation altogether. Alternative sanctions allow providers who have been cited for noncompliance to make the necessary corrections to achieve compliance and avoid termination from the Medicare program. There is a range of sanctions available which we may impose based upon the nature and severity of the noncompliance. Because it is not our intent that alternative sanctions force HHA closure, we have made revisions to the CMP amounts by expanding the ranges within the regulatory text so as to permit CMS greater flexibility in correlating amount of the CMP with the extent and seriousness of noncompliance. Additional information will be provided in interpretive guidance. We must terminate any HHA provider who is not in compliance with the CoPs at the end of 6 months following the imposition of an alternative sanction. With regard to the suggestion of incremental sanctions, the statute at section 1891(f)(1) allows a range of possible sanction options. Our policy is generally one of progressive action. We will be developing guidance for this process in the SOM. Development of guidance also provides an appropriate opportunity to engage stakeholders in the process and we will do so. Section 1891(f)(1) of the Act requires that we develop and implement a range of sanctions to include at minimum civil money penalties, suspension of payments for new admission and temporary management. Incremental imposition of sanctions and choice of specific sanctions will be discussed in the interpretive guidance.

Comment: Several commenters stated that CMS should only impose alternative sanctions after one or more survey revisits validate that compliance has not been re-gained by the agency.

Response: We do not agree that the imposition of sanctions should always be delayed until after revisits are conducted. Many of the alternative sanctions, such as civil money penalties and suspension of payments that are imposed upon a finding of noncompliance will end only upon an HHA's correction. This process was intended to prompt immediate correction. An important goal of the alternative sanctions is to encourage more expeditious correction of any noncompliance with the conditions of participation.

Comment: One commenter stated that the contentious nature of the alternative sanctions may damage the relationship between CMS and the HHA industry.

Response: We work to maintain an open and positive relationship with the HHA industry. These sanctions, which are statutorily required, are established with the purpose of increasing compliance by the HHAs with the CoPs, which is a goal which we share with the HHA industry. We plan to continue dialogue with all stakeholders as we prepare for implementation.

Comment: Several commenters were concerned that CMS is implementing alternative sanctions for HHAs using 26 years of, ''flawed experience with nursing home enforcement.''

Response: We have found that the nursing home enforcement sanctions have been instrumental in addressing and changing compliance in the nursing home industry. By using our experience with the nursing home sanction program in the development of the HHA sanctions, we were able to identify those concerns and issues which will require specific interpretive guidance and more consistent application of the sanctions.

Comments: Several commenters stated that the alternative sanctions will drive surveyors to cite deficiencies at a higher level in order to increase revenue for the SA. One commenter stated that the sanctions would change the role of the surveyor from one of educator/partner to a bounty hunter.

Response: Determinations on whether to impose alternative sanctions and the specific sanction to be imposed will not be left to the sole discretion of an HHA surveyor. First, condition-level-findings by the surveyor are reviewed by the SA Office before the SA sends their noncompliance certification and enforcement recommendation to the CMS RO. Second, all final decisions regarding whether or not to impose a sanction and what type of sanction to be imposed, will be made by the applicable CMS RO. Any funds collected as a result of civil money penalties imposed upon an HHA are distributed to the state Medicaid Agency and to the US Treasury under section 1128A(f) and § 488.845(g). In order to avoid any appearance that the imposition of sanctions would become a revenue source, it is our policy under this rule in § 488.845(g)(2) that no penalty funds may be utilized for survey and certification operations or as the state's Medicaid non-federal medical assistance or administrative match. We believe these are effective protocols to safeguard the integrity of the HHA enforcement process.

Comment: Several commenters stated that CMS should do joint and recurring training courses on alternative sanctions with the HHA industry, Accrediting Organizations and surveyors.

Response: We appreciate this recommendation. We will provide this training through a web based

application and provide for additional dialog with stakeholders.

Based on the comments above, we are finalizing this section as proposed.

b. Definitions (§ 488.805)

We proposed in § 488.805 to define the frequently used terms, including ''directed plan of correction,'' ''immediate jeopardy,'' ''new admission,'' ''per instance,'' ''plan of correction,'' ''repeat deficiency'' and ''temporary management.''

Although section 1891 of the Act uses the term ''intermediate sanctions,'' for consistency with other enforcement rules, this final rule uses ''alternative sanctions,'' which we consider to have the same meaning.

Based on the comments below, we are revising the definitions for ''repeat deficiency,'' and ''temporary management'' and are finalizing the remaining definitions as proposed.

Comments: Several commenters requested that CMS clarify the meaning of ''repeat deficiency'' and ''immediate jeopardy'' as well as ''temporary management.''

Response: We agree that the proposed definition of ''repeat deficiency'' was somewhat confusing and have revised the regulatory text to further clarify that ''repeat deficiency'' means a condition-level deficiency cited on the survey that is substantially the same as or similar to, a finding of standard-level or condition-level deficiency citation issued on the most recent previous standard survey or on any intervening survey since the most recent standard survey. Additionally, we will publish further guidance in the SOM to surveyors for identifying and citing repeat deficiencies. Current CMS policy on the determination of immediate jeopardy has been in effect for a significant period of time and clearly defines the criteria for such a determination. Generally, immediate jeopardy situations are infrequent in HHAs. For example, there were only 11 immediate jeopardy determinations cited in 2011, during the course of over 5,500 surveys of HHAs. Based upon our experience, the existing guidance in the SOM, and the infrequency of this determination, we believe the definition of immediate jeopardy is sufficiently clear. Regarding the definition of temporary management, we have revised the definition to provide clarity that the governing body must ensure that the temporary manager has authority to hire, terminate or reassign staff, obligate funds, alter procedures, and manage the HHA to correct deficiencies identified in the HHA's operations.

c. General Provisions (§ 488.810)

We proposed in § 488.810 the general rules for enforcement actions against an HHA with condition-level deficiencies. Sections 1891(e)(1) and (2) of the Act provide that if CMS finds that an HHA is not in compliance with the Medicare home health CoPs and the deficiencies involved either do or do not immediately jeopardize the health and safety of the individuals to whom the agency furnishes items and services, then we may terminate the provider agreement, impose an alternative sanction(s), or both. Therefore, our decision to impose one or more sanctions, including termination, will be based on condition-level deficiencies, found in an HHA during a survey. We will be able to impose one or more sanctions for each deficiency constituting noncompliance or for all deficiencies constituting noncompliance.

It is also important to note that HHAs acquire certification for participation in Medicare via a SA survey or via accreditation by a CMS-approved AO. Accreditation by a CMS-approved AO is voluntary and not necessary to participate in the Medicare program. The AO communicates any condition-level findings to the applicable CMS Regional Office. When an accredited HHA is to lose its accreditation status from the AO due to condition-level findings found by the SA during a complaint or validation survey and that remain uncorrected, oversight of that HHA is transferred to CMS, through the SA. In such a case where deemed status is removed, we will follow the usual procedures for such oversight, as indicated in sections 3257 and 5100 of the SOM, and under the processes in this final rule, as appropriate. Once a sanction is imposed on an accredited HHA and deemed status is removed, oversight and enforcement of that HHA will be performed by the SA and not the accrediting organization, until the HHA achieves compliance and the alternative sanction(s) is removed or until the HHA is terminated from the Medicare program.

It is our policy that any deficiencies found at a branch of the HHA will be counted against the HHA provider as a business entity. Therefore, regardless of whether the deficient practice is identified at the branch or the parent location, all sanctions imposed will apply to the parent HHA. However, these sanctions will not apply to any non-branch subunit that was associated with an HHA if such subunit is independently required to meet the CoPs for HHAs. In such case, the subunit could have sanctions imposed on it independently based on deficient practices found at that subunit. For HHAs that operate branch offices in multiple states, we will base enforcement decisions on surveys conducted by the state in which the parent office is located.

Comments: We received one comment requesting clarification of the regulation text at § 488.810(d) pertaining to the application of sanctions to subunits, particularly the second sentence.

Response: We agree that the second sentence of the regulation text of this section of the proposed rule was confusing and unnecessary, so we have removed the second sentence for clarification.

We proposed in § 488.810(e) that an HHA that is not compliant with the CoPs will be required to submit an acceptable plan of correction (POC) to CMS. We defined plan of correction in § 488.805 as a plan developed by the HHA and approved by CMS that is the HHA's written response to survey findings detailing corrective actions to cited deficiencies and that specifies the date by which those deficiencies will be corrected. A POC is required for any deficiency, whether it is at the condition-level or standard-level. More specifically, a POC will detail how an HHA has or will correct each deficiency, how the HHA will act to protect patients in similar situations, how the HHA will ensure that each deficiency does not recur, how the HHA will monitor performance to sustain solutions, and in what timeframe corrective actions will be taken by the HHA. We will determine if the POC was acceptable based on the information presented in the POC.

We proposed in § 488.810(f) that we will provide written notification to the HHA of our intent to impose a sanction. This notice will specify the specific sanction, the statutory basis for the sanction, and appeal rights. The notice periods specified in § 488.825(b) and § 488.830(b) begin the day after the HHA receives the notice.

An HHA may appeal the determination of noncompliance leading to the imposition of a sanction under the provisions of 42 CFR part 498. A pending hearing does not delay the effective date of a sanction against an HHA, and sanctions continue to be in effect regardless of any pending appeals proceedings. Civil money penalties continue to accrue during the pendency of an appeal, but will not be collected until a final agency determination, as we note in § 488.845(f).

Comments: Several commenters requested additional clarification regarding our statement that the SA

would follow ''usual procedures'' when an accredited HHA loses its deemed status due to uncorrected condition-level deficiencies.

Response: For HHAs who are accredited by an AO with a CMS-approved program, the SA and CMS may still conduct complaint surveys or validation surveys of these agencies. Condition-level deficiencies may be cited by a SA or CMS Regional Office during a complaint investigation or validation survey of a deemed agency. In these cases, the SA or Regional Office removes deemed status of the agency and the SA or Regional Office resumes oversight activity of this provider. We may impose alternative sanctions or begin termination proceedings of the accredited HHA just as we do with a non-deemed agency.

Based on the comments below, we are finalizing this section as proposed.

Comment: Several commenters stated that deemed HHAs receive an unfair advantage as they are allowed a sanction free opportunity to correct before termination and alternative sanctions are not applied.

Response: While CMS-approved AOs may have a different approach in enforcement actions, agencies will still face enforcement actions, including termination, by us for noncompliance. Under § 488.8(a), CMS reviews and evaluates an AO for, among other things, the equivalency of the AO's accreditation requirements to that of CMS's requirements and the comparability of the AO survey procedures to those of the SA. Additionally, the AO must agree to provide CMS with a copy of the most current accreditation survey report together with any other information related to the survey as we may require (including corrective action plans). Furthermore, AOs notify us in writing within 10 days of a deficiency cited during an AO survey where the deficiency poses an immediate jeopardy to the patients or a hazard to the general public. In addition, we perform validation and complaint surveys of accredited providers. If a condition-level finding is cited during a complaint or validation survey, the HHA loses deemed status and oversight is resumed by the SA or Regional Office and the HHA will then be subject to imposition of alternative sanctions.

Comments: A few commenters stated that any condition-level finding that leads to the imposition of a sanction at a sub-unit (that is not a branch office) should have that sanction be applied against the parent as a business entity as well.

Response: We disagree with the commenters. Sub-units are considered independent entities for the purpose of Medicare Provider Enrollment and have separate certification numbers and separate provider agreements from the parent HHA. Sub-units are independently required to meet the CoPs and thus any sanctions imposed for deficient practices would apply only to that sub-unit.

d. Factors To Be Considered in Selecting Sanctions (§ 488.815)

Section 1891(e)(2) of the Act provides that if we find that an HHA is not in compliance with the Medicare home health CoPs and the deficiencies involved do not immediately jeopardize the health and safety of the individuals to whom the agency furnishes items and services, we may terminate the provider agreement, impose an alternative sanction(s), or both, at CMS's discretion, for a period not to exceed 6 months. The choice of any alternative sanction or termination will reflect the impact on patient care and the seriousness of the HHA's patterns of noncompliance and will be based on the factors proposed in § 488.815. We could impose termination of the provider agreement (that is, begin termination proceedings that would become effective at a future date, but not later than 6 months from the determination of noncompliance) and apply one or more sanctions for HHAs with the most egregious deficiencies, for an HHA that was unwilling or unable to achieve compliance within a maximum timeframe of 6 months, whether or not the violations constituted an ''immediate jeopardy'' situation. We proposed in § 488.815, consistent with section 1891(f)(3) of the Act, procedures for selecting the appropriate alternative sanction, including the amount of any CMP and the severity of each sanction, which have been designed to minimize the time between the identification of deficiencies and the final imposition of sanctions. To determine which sanction or sanctions to apply, we will consider the following:

- Whether the deficiencies pose immediate jeopardy to patient health and safety;
- The nature, incidence, degree, manner, and duration of the deficiencies or noncompliance;
- The presence of repeat deficiencies, the HHA's compliance history in general, and specifically with reference to the cited deficiencies, and any history of repeat deficiencies at either the parent or branch location;
- Whether the deficiencies are directly related to a failure to provide quality patient care;
- Whether the HHA is part of a larger organization with documented performance problems;
- Whether the deficiencies indicate a system wide failure of providing quality care.

Based on the comments below, we are finalizing this section as proposed.

Comment: Several commenters stated that CMS should include requirements that decision makers be subject to rigorous training on established standards. Other commenters wanted more specific clarity on how decisions will be made in order to promote consistency.

Response: We appreciate the commenter's requests for more detailed instruction on the selection of sanctions. We will provide greater details in interpretive guidance that will be developed for the regulations. We will also provide extensive training for our SAs and Regional Offices on the factors for the selection of sanctions.

Comment: Several commenters stated that the factors related to quality of care issues are vague.

Response: Because each determination that an HHA agency has failed to provide quality patient care is unique, based on individual patient and agency observations and occurrences, we are not able to include an all inclusive listing of such failures within the regulation. Therefore we will not accept this recommendation.

Comment: Several commenters did not agree that the fact that the HHA is part of a larger organization should be included as a factor to be considered in the selection of sanctions.

Response: We included this factor to address those situations where the policies of the umbrella organization may be incompatible with the unique operation of the HHA to the extent of causing noncompliance.

Comments: Several commenters questioned why a system wide-failure was included as a factor in the selection of alternative sanctions.

Response: We included the system-wide failure as a relevant factor because such a failure may indicate that the current HHA administration is not able to make the needed corrections. Furthermore, temporary management directed in-service and directed plan of correction may be crucial in order for the HHA to make necessary corrections to regain compliance.

Comments: One commenter stated that CMS should consider access to care as a factor in the selection of sanctions.

Response: While we are always mindful of access to care concerns, it is unlikely that access to additional HHAs would not be available should a

sanction make an agency temporarily or permanently unavailable for new admissions. An important goal of alternative sanctions is to encourage more expeditious compliance with the CoPs regardless of access issues. We do not believe that patients in remote areas should be accorded any less quality of care than patients in other areas.

Section 1891(f)(3) of the Act provides for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies. We define ''repeat deficiency'' in § 488.805 as a standard or condition-level deficiency that was cited on a survey that was substantially the same as, or similar to, a finding of noncompliance issued on the most recent previous standard survey or any intervening survey since the most recent standard survey. Any standard-level findings will be evaluated for condition-level noncompliance based on the HHA's failure to correct and sustain compliance. As noted in 488.815(c), we will consider the presence of repeat deficiencies as a factor in selecting sanctions and civil money penalties.

Based on the comments below, we are finalizing this section as proposed.

Comments: Several commenters stated that the definition of ''repeat deficiency'' was not clear. The commenters wanted to know if the same tag had to be cited, what time frame was referenced and if standard-level deficiencies would cause the imposition of sanctions.

Response: We appreciate this comment and have revised the definition of ''repeat deficiency'' to clarify that a repeat deficiency is a condition-level citation that is the same as, or similar to, a previous standard or condition-level deficiency cited on the most recent previous standard survey or any intervening survey since the most recent standard survey. Further information will be provided in guidance as it is developed. This guidance will be shared with stakeholders for comment.

e. Available Sanctions (§ 488.820)

Section 1891(f)(1)(A) of the Act provides that CMS shall ''develop a range of intermediate [or alternative] sanctions'' that may be imposed in addition to, or instead of, termination when CMS finds that an HHA is no longer in compliance with the CoPs. Section 1891(f)(2) of the Act explicitly provides for the following sanctions to be included in the range of sanctions: Civil money penalties, suspension of payment for new admissions, and temporary management. We proposed in § 488.820 those specific alternate sanctions and we are finalizing them in this final rule. In addition to those specified in the statute, we are adding the following additional alternative sanctions: A directed plan of correction and directed in-service training. The list of alternative sanctions that could be imposed for a noncompliant HHA is in § 488.820.

Based on the comment below, we are finalizing this section as proposed.

Comments: One commenter requested that CMS develop a tracking system for alternative sanctions.

Response: CMS has developed a tracking system for alternative sanctions in long term care within our automated survey system (ASPEN) and plan to expand this system to include alternative sanctions for home health.

f. Actions When Deficiencies Pose Immediate Jeopardy (§ 488.825) and Termination (§ 489.53)

Under section 1891(e)(1) of the Act, if CMS determines that an HHA's deficiencies immediately jeopardize the health or safety of its patients, then CMS must take immediate action to remove the immediate jeopardy situation and prompt correction of the deficiencies by imposing a sanction or terminating the HHA's certification, or both. We proposed in § 488.825(a) to implement the statutory requirement by specifying that if the immediate jeopardy situation is not addressed and resolved within 23 days from the last day of the survey because the HHA is unable or unwilling to correct the deficiencies, CMS will terminate the HHA's provider agreement. In addition, CMS could impose one or more other alternative sanctions including a civil money penalty (CMP), temporary management and/or suspension of all Medicare payments before the effective date of termination. We proposed these provisions in § 488.825.

We also proposed in § 488.825(b) a two day notice requirement for sanctions, except for civil money penalties, that are imposed when there is an immediate jeopardy situation. For terminations, we will give notice of the termination within 2 days before the effective date of the termination, as we proposed in § 489.53(d)(2)(iii), which is consistent with the requirement for skilled nursing facilities in § 489.53(d)(2)(ii). Under our existing survey process, providers are advised of any immediate jeopardy findings upon discovery of the immediate jeopardy situation during the survey or as part of the exit conference at the end of the survey. This will give an HHA time to remove the immediate jeopardy and correct the deficiencies that gave rise to the immediate jeopardy finding. If the HHA fails to remove the immediate jeopardy situation, we will terminate the provider agreement no later than 23 days from the last day of the survey. We proposed to amend § 489.53 by adding a new basis for termination at paragraph (a)(17), establishing that we will terminate an HHA's provider agreement if the HHA failed to correct a deficiency or deficiencies within the required time frame.

The notice of our intent to impose a sanction at § 488.825(b) will include the nature of the noncompliance, the sanctions to be imposed, the effective date of the sanction, and the right to appeal the determination leading to the sanction. In order to assure an HHA achieved prompt compliance, we expect that we will give HHAs written notice of impending enforcement actions against them as quickly as possible following the completion of a survey of any kind.

Finally, in § 488.825(c), we will require an HHA whose provider agreement is terminated to appropriately and safely transfer its patients to another local HHA within 30 days of termination. The HHA will be responsible for providing information, assistance and any arrangements necessary for the safe and orderly transfer of its patients. The state will be required to assist the HHA with this process. This is consistent with existing regulations at § 488.55(a)(2) providing for payments to be made up to 30 days for HHA services furnished under a plan established before the effective date of termination.

Based on the comments below, we are finalizing these sections as proposed.

Comments: Several commenters stated that HHAs do not have control over the patient's home environment and accordingly immediate jeopardy situations identified in the patient's home cannot be considered to be under the control of the HHA.

Response: We disagree with the commenters and note that generally most immediate jeopardy findings made against a certified HHA are based upon actions that either the HHA took or failed to take to meet the CoPs, such as failure to take patient care actions which were indicated by either the care plan for the patient or current standards of practice. Other situations that may cause immediate jeopardy may include, but are not limited to, situations listed in current CMS guidance, located in the SOM, Appendix Q.

Comments: Several commenters stated there is confusion as to the definition of immediate jeopardy and the difference between immediate

jeopardy and condition-level findings. Several commenters also expressed a concern that the determination of immediate jeopardy is surveyor dependent.

Response: Our policy on the determination of immediate jeopardy has been in effect a considerable length of time and is clear that patient (even one patient) health and safety must be at risk of injury or harm to support the determination. (See SOM Appendix Q). Surveyor findings which indicate a possible finding of immediate jeopardy are vetted by the state and CMS Regional Office before the final determination is made. Thus, a finding of immediate jeopardy is not made by the surveyor in isolation. As a general matter, immediate jeopardy determinations occur infrequently in home health agencies. For example, there were only 11 immediate jeopardy determinations in HHAs made in 2011.

Comment: A few commenters asked that CMS reconsider the 2 day notice of termination with an immediate jeopardy finding.

Response: The 2 day termination notice for immediate jeopardy findings is a long standing CMS policy that has been successful with other providers and has been used with immediate jeopardy determinations of HHAs for many years. We find that the 2 day notice is prudent considering the short 23 day time frame to attain compliance and also given the serious risk to patient health and safety. The purpose of the 2 day notice is to inform the HHA of the immediate jeopardy situation, its egregious nature and that the HHA will be terminated in 23 days unless the immediate jeopardy is corrected.

g. Actions When Deficiencies Are at the Condition-Level, but Do Not Pose Immediate Jeopardy (§ 488.830)

While section 1891(e)(2) of the Act provides for termination of the HHA's provider agreement as an enforcement option in non-immediate jeopardy situations, we are interested in providing incentives for HHAs to achieve and maintain full compliance with the requirements specified under sections 1861(o) and 1891(a) of the Act before termination becomes necessary. Accordingly, the provisions we proposed at § 488.830 reflect this enforcement policy and address the definition of ''noncompliance,'' the requirement of 15 day notice of sanctions, the criteria for continuation of payment, and the termination time frame when there is no immediate jeopardy.

Section 1891 of the Act does not require CMS to discontinue alternative sanctions when it also proposes to terminate an HHA's participation in Medicare; thus, these sanctions, as finalized, will continue while we initiate termination proceedings. Therefore, alternative sanctions could be imposed before the termination became effective, but could not continue for a period that exceeded six months. Also, to protect the health and safety of individuals receiving services from the HHA, alternative sanctions will apply until the HHA achieves compliance or has its Medicare participation terminated, whichever occurs earlier. For example, the suspension of payment sanction will end when the HHA corrected all condition-level deficiencies or was terminated from the program.

We proposed in § 488.830(b) that for a deficiency or deficiencies that do not pose immediate jeopardy, we will give the HHA at least 15 days advance notice of any proposed sanctions, except civil money penalties (which is discussed below under § 488.845), which will remain effective until the effective date of an impending termination (at 6 months) or until the HHA achieved compliance with CoPs, whichever was earlier. This is consistent with the general rule for providers and suppliers in § 489.53(d).

Section 1891(f)(3) of the Act provides that the Secretary shall develop and implement specific procedures for determining the conditions under which alternative sanctions are to be applied, including the amount of any penalties and the severity of each sanction. Sections 488.830 to 488.865, describe each possible sanction and procedures for imposing them.

Finally, in § 488.830(e), we will require an HHA whose provider agreement is terminated to appropriately and safely transfer its patients to another local HHA within 30 days of termination. The HHA will be responsible for providing information, assistance and any arrangements necessary for the safe and orderly transfer of its patients. The state will be required to assist the HHA with this process.

Based on the comments below, we are finalizing § 488.830 with minor technical modifications for grammar.

Comments: Several commenters recommended that CMS not impose any sanction until the HHA had received revisits from the survey agency and the determination was made that the HHA had not corrected the noncompliance even after an opportunity to correct.

Response: We do not agree that the imposition of alternative sanctions should be delayed until after the conclusion of revisits. The primary goal of alternative sanctions is to encourage more expeditious correction of noncompliance. Such a delay as the commenter recommends will not be consistent with the intent of the statute.

h. Temporary Management § 488.835

We proposed in § 488.835 when and how we apply temporary management, the duration and effect of this sanction, and the payment procedures for temporary managers' salaries and other additional costs. As we provide in § 488.805, temporary management means the temporary appointment by CMS or a CMS authorized agent of an authorized substitute manager or administrator (based on qualifications described in § 484.4 and § 484.14(c)) who will be under the direction of the HHA's governing body and who will have authority to hire, terminate or reassign staff, obligate HHA funds, alter HHA procedures, and manage the HHA to correct deficiencies identified in the HHA's operation.

We will impose temporary management when we determine that an HHA has condition-level deficiencies and that the deficiencies or the management limitations of the HHA are likely to impair the HHA's ability to correct the deficiencies and return the HHA to full compliance with the CoPs within the required timeframe. We will impose temporary management to bring an HHA into compliance with program requirements in non-IJ cases within 6 months, as we indicate in § 488.835(c). We will also choose to impose temporary management as a sanction for deficiencies that pose immediate jeopardy to patient health and safety, as permitted under § 488.825(a)(3).

The individual appointed as a temporary manager will be required to have work experience and education that will qualify such individual to oversee the correction of deficiencies so that the HHA could achieve substantial compliance with the Medicare requirements. Each SA will maintain a list of recommended individuals who will be eligible to serve as temporary managers, and annually submit the list to CMS.

If the HHA refuses to relinquish authority and control to the temporary manager, we will terminate the HHA's provider agreement. If a temporary manager was appointed, but the HHA failed to correct the condition-level deficiencies within 6 months from the last day of the survey, the HHA's Medicare participation will be terminated. Additionally, if the HHA resumes management control without CMS's approval, it will be deemed to be

a failure to relinquish authority and control to the temporary manager and we will impose termination and could impose any additional sanctions. The appointment of a temporary manager will not relieve the HHA of its responsibility to achieve compliance. We proposed in § 488.835(c) that temporary management will end when:

- We determined that the HHA was in substantial compliance with all CoPs and had the management capability to remain in full compliance;
- The HHA provider agreement is terminated; or
- The HHA resumed management control without CMS approval.

We believe that § 488.805 and § 488.835 will provide the temporary manager with the authority necessary to manage the HHA and cause positive changes. The temporary manager will have the authority to hire, terminate, or reassign staff; obligate HHA funds; alter HHA policies and procedures; and otherwise manage an HHA to correct deficiencies identified in the HHA's operations. Furthermore, temporary management will be provided at the HHA's expense. Before the temporary manager is installed, the HHA will have to agree to pay his/her salary directly for the duration of the appointment. We believe that the responsibility for the HHA to pay the expenses of the temporary manager is an inherent management responsibility of the agency for which the HHA is regularly reimbursed by Medicare and though such temporary outside management might be necessary in some cases to bring the HHA back into compliance with the conditions of participation. We have indicated that the salary for the temporary manager will not be less than the amount equivalent to the prevailing salary paid by providers in the geographic area for positions of this type, based on the based on the Geographic Guide by the Department of Labor (BLS Wage Data by Area and Occupation). In addition, the HHA will have to pay for any additional costs that will have reasonably been incurred if such person had been in an employment relationship, and any other costs incurred by such a person in furnishing services under such an arrangement or as otherwise set by the state. An HHA's failure to pay the salary of the temporary manager will be considered by CMS to be a failure to relinquish authority and control to temporary management.

Comments: There were numerous comments expressing opposition to the use of temporary management as an alternative sanction. Some commenters stated that this takes control away from the HHA Governing Body. Some commenters stated that temporary manager should be allowed control only over the CoPs.

Response: Section 1891(f)(2)(A) of the Act requires the Secretary to include temporary management as an available alternative sanction for non-compliant HHAs. This particular sanction will be used in situations where the current administration of the HHA has demonstrated an inability to achieve or maintain compliance with the CoPs. The HHA accepts the alternative sanction in lieu of immediate termination from Medicare and agrees to relinquish the operation of the agency to a qualified temporary manager. The temporary manager works under the direction of the HHA Governing Body to take whatever actions are indicated to regain compliance with the CoPs.

Based on the comments below, we are finalizing this section as discussed below. We note that we are replacing the term ''deficiency'' used in the proposed rule at § 488.835(a)(1) with ''noncompliance'' in this final rule as a technical modification.

Comments: Several commenters expressed concern about the liability of the HHA when a temporary manager is appointed and assumes control.

Response: The temporary manager works under the direction of the HHA's existing Governing Body, which has ultimate liability responsibility. Therefore, we do not agree that this sanction creates new liability for the HHA.

Comment: Several commenters expressed concern regarding the availability and costs of the temporary manager.

Response: CMS policy places the responsibility upon each SA to ensure the availability of qualified temporary managers by maintaining of list of possible candidates. We maintain that it is critical that temporary managers be reimbursed at prevailing rates in order to ensure qualified candidates. The cost of the temporary manager must be borne by the HHA as a component of their inherent management responsibilities.

Comments: One commenter recommended that CMS use temporary management in only extraordinary circumstances, that any temporary manager be bonded and that the HHA be given the choice of three possible temporary managers.

Response: We will develop interpretive guidance for this provision that will provide specific direction to the SAs and Regional Offices. This guidance will emphasize that temporary management is used to address situations where the current management of the agency has shown an inability to achieve or maintain compliance with the CoPs. We do not agree that it is necessary to add a requirement to this regulation that the temporary manager be bonded.

Comments: One commenter recommended that CMS impose no additional sanctions in conjunction with temporary management. They also recommended that CMS not terminate the HHA if the temporary manager is at fault for not bringing the HHA back into compliance.

Response: Section 1891 of the Act does not prohibit the concurrent imposition of more than one sanction. For example, it may be appropriate for the appointment of a temporary manager to be imposed in combination with a directed plan of correction. We do not agree that the HHA should not be terminated if the temporary manager fails to bring the agency back into compliance. The failure may be due to the HHA's policies, processes, or procedures or issues outside the control of the temporary manager. The agency can accept this alternative sanction in lieu of termination as a method to promptly regain compliance with the requirements. Section 1891(e) of the Act requires that no alternative sanction may be in effect for a period of more than 6 months and thus must be terminated if compliance is not achieved within this 6 month window of the sanction.

Comment: Several commenters objected to the regulation at § 488.835(d)(3) where we indicated that we would not allow the costs of the temporary manager as an allowable cost on the cost report.

Response: We agree and are removing § 488.835(d)(3). Removal of this prohibition is also responsive to concerns from several commenters about the potential for sanctions to cause closure of a HHA, and is consistent with CMS treatment of temporary managers in nursing homes.

i. Suspension of Payment for all New Admissions and New Payment Episodes (§ 488.840)

We proposed in § 488.840 provisions describing when and how we would apply a suspension of payment for new Medicare admissions and new PPS episodes of care. If an HHA has a condition-level deficiency or deficiencies (regardless of whether or not immediate jeopardy exists), we may suspend payments for new Medicare patient admissions to the HHA that were made on or after the effective date of the sanction. The suspension of payment will be for a period not to

exceed 6 months and will end when the HHA either achieved substantial compliance or was terminated. We will provide the HHA with written notice of our intent to impose this sanction at least 2 calendar days before the effective date of the sanction in immediate jeopardy situations (§ 488.825(b)) or at least 15 calendar days before the effective date of the sanction in non-immediate jeopardy situations (§ 488.830(b)). Our notice of suspension of payment for new admissions and new payment episodes will generally include the following: the nature of the noncompliance; the effective date of the sanction; and the right to appeal the determination leading to the sanction.

We added the definition of a ''new admission'' in § 488.805 to mean an individual who becomes a patient (is admitted) or readmitted to the HHA under Medicare on or after the effective date of a suspension of payment sanction. We proposed to expand the definition of ''new admission'' to include new payment episodes because we believed that each new payment episode (the 60 day payment episode of HHA care) marks the beginning of a new assessment and a new care plan for the patient.

Furthermore, patients who are admitted before the effective date of the suspension and who have temporarily interrupted their treatment but are not discharged will be considered neither a new admission nor will the resumption of their services be subject to the suspension of payment.

Further, section 1891(f)(2)(C) of the Act provides that a suspension of payment sanction shall terminate when CMS finds that the HHA is in substantial compliance with all of the requirements specified in, or developed in accordance with, sections 1861(o) and 1891(a) of the Act. That is, the suspension of payment sanction will end when the HHA was determined to have corrected all condition-level deficiencies, or upon termination, whichever is earlier.

Before the suspension becomes effective, we will notify the HHA of the imposition of this sanction under § 488.840(b)(1). Once such a sanction is imposed, the HHA will be required to notify any new patient admission and patients with new payment episodes that Medicare payment will not be available to this HHA because of the imposed suspension before care could be initiated. Moreover, the HHA is precluded from charging the Medicare patient for those services unless it could show that, before initiating or continuing care, it had notified the patient or his/her representative both orally and in writing in a language that the patient or representative could understand, that Medicare payment may not be available. The suspension of payment will end when we terminate the provider agreement or CMS finds the HHA to be in compliance with all CoPs.

In § 488.840(b)(3), if we terminate the provider agreement, or if the HHA achieves substantial compliance with the CoPs (as determined by CMS) thereby ending the suspension period, the HHA will not be eligible for any payments for services provided to new Medicare patients admitted during the time the suspension was in effect, or for existing Medicare patients beginning a new payment episode during their care. This policy is consistent with the legislative history of OBRA '87, which states that ''suspended payments [are] not [to] be repaid to any agency once it has come back into compliance and the suspension has been lifted. It is the Committee's belief that if such repayment were permitted, there would be little incentive for deficient agencies to come back into compliance as quickly as possible.'' *See* H.R. Rep. No. 100–391(I) at 423 (1987). In accordance with the Committee's intent, we have interpreted the term ''suspend'' to mean to temporarily stop Medicare payments, without the possibility of recovering the suspended payments. Once compliance with the CoPs is achieved after the suspension takes effect, we will resume payment to the HHA prospectively from the date that CMS determines correction.

We proposed in § 488.840(c) that the suspension of payment will end either when we terminate the provider agreement or when we find the HHA to be in substantial compliance with all of the CoPs. Based on the comments below, we have modified this section as noted below and have also modified the proposed definition of ''new admission'' in § 488.805 to reflect the modifications under this section.

Comments: Two commenters agreed that the imposition of suspension of payment for new admissions to the agency as well as suspension for new payment episodes for patients already being seen by the agency would be effective as alternative sanctions. However, the vast majority of commenters responded that the use of payment suspension for new payment episodes would be detrimental to the agency in their efforts to make corrections necessary to confirm compliance and would be disruptive to patients.

Response: We appreciate these comments and agree that the use of suspension of payment for new patient admissions would be an effective sanction while suspension of new payment episodes may be disruptive to patients as they would have to transfer to different HHAs with different staff. It would also be difficult for the HHA to maintain a caseload of patients to ensure compliance with requirements. Therefore, we will keep the suspension of payment for new patients as an option, but remove references to new payment episodes from the suspension of payment sanction as well as the definition of ''new admission'' in § 488.805.

j. Civil Money Penalties (CMPs) § 488.845

We proposed in § 488.845 provisions for imposition of CMPs. Under sections 1891(e) and 1891(f)(2)(A)(i) of the Act, CMS may impose a CMP against an HHA that is determined to be out of compliance with one or more CoPs, regardless of whether the HHA's deficiencies pose immediate jeopardy to patient health and safety.

Comment: Many comments were received stating the belief that decisions about imposition of and amounts of CMPs imposed will be at the discretion of individual surveyors and that this would lead to adversarial and contentious relationships.

Response: We appreciate the comments and repeat that decisions regarding whether to impose alternative sanctions and the specific sanction to be imposed will not be left to the HHA surveyor alone. First, condition-level-findings are vetted at both the state and Regional level. Second, all decisions regarding whether to impose a sanction and the type of sanction to be imposed, will be made by the applicable CMS Regional Office.

Comments: Additional comments were received requesting clarification of when CMPs would be imposed.

Response: We have set forth the framework for the imposition of CMPs. Further instructions will be published in interpretive guidance.

Comments: Many comments were received reflecting that the proposed amounts of CMPs were excessive; would put HHAs out of business; would take away funds from indigent care; would affect access to care in rural areas and should not be imposed prior to the end of the appeal process.

Response: It is not our intent to put agencies out of business through the use of alternative sanctions. CMPs are an effective sanction because HHA's are subject to its financial impact. The CMPs are an incentive for the HHA to promptly correct the noncompliance.

Per day CMPs carry a built-in incentive to correct noncompliance promptly since the faster the correction the sooner the CMP can stop accruing. It is also our intent when imposing alternative sanctions to provide agencies with time to correct any condition-level noncompliance and thus avoid the interruption of services to patients that might occur if the HHA were to be terminated from Medicare. It is the responsibility of the HHA to make any necessary corrections in an expeditious manner and regain compliance with the CoPs.

However, in response to the commenters' concerns, we have revised the proposed regulation in order to expand the lower range of CMP amounts in the middle category. Such added additional flexibility may permit CMS to better correlate the level of seriousness of the noncompliance with the amount of the CMP. We may also impose a civil money penalty for the number of days of immediate jeopardy. The CMP amount cannot exceed $10,000 for each day of noncompliance. A deficiency found during a survey at a parent HHA or any of its branches results in a noncompliance issue for the entire HHA, which can be subject to the imposition of a CMP.

In this section, we have proposed both a per day and a per instance CMP at § 488.845(a). The per day CMP will be imposed for each day of noncompliance with the CoPs. Additionally, should a survey identify a particular instance or instances of noncompliance during a survey, we will impose a CMP for that instance or those individual instances of noncompliance. We have defined per instance in § 488.805 as a single event of noncompliance identified and corrected during a survey, for which the statute authorizes CMS to impose a sanction. While there may be a single event which leads to noncompliance, there can also be more than one instance of noncompliance identified and more than one CMP imposed during a survey. For penalties imposed per instance of noncompliance, we are adding penalties from $1,000 to $10,000 per instance. Such penalties would be assessed for one or more singular events of condition-level noncompliance that were identified at the survey and where the noncompliance was corrected during the onsite survey. The total CMP amount cannot exceed $10,000 for each day of noncompliance per instance.

Comments: Commenters were opposed to per day penalties as the penalties would lead to a rapid drain on HHA capital. Other commenters were opposed to per instance CMPs. Several commenters included examples of per episode payment rates and how these payments would be insufficient to meet the financial obligations of any CMP imposed against the HHA. One commenter seemed to confuse per instance with self-reported situations of noncompliance.

Responses: Civil money penalties were designed to present an incentive to correct a deficiency in a short amount of time. As indicated previously, we have expanded the lower range of permitted per day CMP amounts to enable CMS to better correlate the seriousness of noncompliance with the amount of the CMP. The expanded lower end of the range may be particularly important if CMS imposes a CMP that begins at the lower or middle range and then increases in amount over time the longer the noncompliance remains uncorrected. In such a case, prompt remedial action by the HHA can limit the total amount of per day CMP that accrues. Per instance penalties permit us to focus on individual instances of noncompliance without having to track the duration of time the HHA remains out of compliance. As we found with SNFs and NFs, prior to establishing per instance CMPs it has largely been the case that, except where immediate jeopardy has been involved or the provider has been found to be a poor performing facility, CMPs had not been imposed where facilities have been able to correct deficiencies before a predetermined date for the completion of corrections. As a result, we believed many facilities had avoided the imposition of CMPs, that were otherwise warranted, and subsequent to achieving compliance these same facilities failed to maintain substantial compliance (otherwise known as ''yo-yo'' compliance). Thus, when the per instance CMP is selected for nursing homes, we do not envision a period to correct prior to imposition. We believe this will also be the case with HHA enforcement. What we mean by an ''instance'' in this regulation is a single deficiency identified by the tag number used as a reference on the statement of deficiencies. While we consider an instance as a singular event of noncompliance, there can be more than one instance of noncompliance identified during a survey. For example, during the course of a survey, CMS or a state may identify several instances of noncompliance, each in distinct regulatory areas. As a general matter, we anticipate imposing per instance penalties most frequently in the situation where a surveyor identifies a condition-level deficiency during the survey and the HHA took sufficient action to correct the deficiency during the time of the survey.

Since the range of possible deficiencies is great and depends upon the specific circumstances at a particular time, it will be impossible to assign a specific monetary amount for each type of noncompliance that could be found. Thus, we believe that each deficiency will fit into a range of CMP amounts, which we discuss below.

We will consider the following factors when determining a CMP amount, in addition to those factors that we will consider when choosing a type of sanction in § 488.815:

- The size of the agency and its resources.
- The availability of other HHAs within a region, including service availability in a given region.
- Accurate and credible resources such as PECOS and Medicare cost reports and claims information, that provide information on the operations and the resources of the HHA.
- Evidence that the HHA has a built-in, self-regulating quality assessment and performance improvement system to provide proper care, prevent poor outcomes, control patient injury, enhance quality, promote safety, and avoid risks to patients on a sustainable basis that indicates the ability to meet the conditions of participation and to ensure patient health and safety. When several instances of noncompliance would be identified at a survey, more than one per-day or per instance CMP could be imposed as long as the total CMP did not exceed $10,000 per day. Also, a per-day and a per-instance CMP would not be imposed simultaneously for the same deficiency.

Based on the comments below, we are finalizing this section with the modifications noted below.

Comment: One commenter did not feel that size was an appropriate factor to use in determining the type of sanction. The commenter felt it discriminated against larger HHAs.

Response: The size of the HHA can significantly increase the scope of the noncompliance and impact a greater number of patients. In addition, we believe that the motivating force of the sanction may vary with the scope and resources of the HHA. Therefore we have retained size as a consideration.

Comment: One commenter felt that the availability of other agencies within a region would be used to discriminate against HHAs when there were many agencies in the area as opposed to not using the sanction when there was a shortage of HHAs.

Response: We appreciate the comment and we have removed this

factor from the list of factors to be considered.

Comment: One commenter did not think that accurate resources and data was a valid factor.

Response: We appreciate the comment. However, this information may give CMS valuable information as it relates to operations, for example, cost allocations. Therefore, we are not accepting this recommendation.

Comments: One commenter was opposed to use of the factor of the internal Quality Assessment/Performance Improvement program (QAPI).

Response: We wish to ensure that problems in HHAs are addressed promptly and that program improvements are sustained over time. Our experience with other types of providers has shown that an effectively-functioning QAPI system assists providers to restore compliance more quickly and to sustain compliance longer. Many organ transplant hospitals, for example, have a recent and exemplary history of implementing QAPI in a manner that is demonstrably saving lives. While this is not currently a specific requirement within the conditions of participation for HHAs, we believe that HHAs that have an effective QAPI program are more likely to improve the quality of their care and outcomes and to sustain those improvements over time. We wish to retain CMS discretion to accord an HHA that has implemented an effectively-functioning QAPI program with some recognition of the value in having done so on its own volition. Our experience with QAPI in other programs points to the positive association between QAPI, quality of care, and outcomes. For organ transplant programs, for example, we examined the relationship between findings of noncompliance for outcomes and findings of noncompliance in QAPI for the first 334 transplant programs surveyed under the new regulation that became effective on June 26, 2007. Of the transplant programs that were cited for having 1 year patient deaths or graft failures that exceeded the expected number, 19 percent were also cited for noncompliance with QAPI requirements, compared to only 8 percent for programs that were not cited for outcomes. In other words, organ transplant programs that did not have an effectively-functioning QAPI program were 2.4 times more likely to have patient outcomes that exceed the tolerance limits of the regulation.

By explicit inclusion of this factor in our consideration of CMPs, we recognize that QAPI promotes the same goals as alternative sanctions. Therefore, we have retained QAPI as a factor in our considerations.

Comment: Several commenters did not feel that more than one penalty should be imposed at one time.

Response: The statute does not prohibit the imposition of more than one alternative sanction and there may be instances where a combination of sanctions may be appropriate, such as the appointment of a temporary manager and a directed plan of correction.

At § 488.845(b)(2), we have provided CMS the discretion to increase or reduce the amount of the CMP during the period of noncompliance depending on whether the level of noncompliance had changed at the time of a revisit survey. We could increase a CMP in increments based upon an HHA's inability or failure to correct deficiencies, the presence of a system wide failure in the provision of quality care or a determination of immediate jeopardy with potential for harm. We may also decrease a CMP in increments to the extent that SAs find, pursuant to a revisit, that substantial and sustainable improvements have been implemented even though the HHA is not yet in full compliance if sufficient efforts have been made to address the causes of deficiencies and sustain improvement. If an HHA resolved the immediate jeopardy situation, but not the condition-level deficiencies, we may reduce those penalties from the upper range to a lower range imposed in non-immediate jeopardy situations.

Comments: Several comments were received related to the timing of a revisit survey, which is required to determine correction of condition-level deficiencies and how it would affect the length of time a per day CMP accrues.

Response: We appreciate the comments and will develop guidance in the SOM to direct the SAs to schedule these revisits in a timely manner.

Section 1891(f)(2)(A)(i) of the Act specifies that the sanctions shall include a CMP in an amount not to exceed $10,000 for each day of noncompliance. Therefore, we added at § 488.845(b)(2)(iii) that no CMP assessment exceed $10,000 per day of noncompliance. Because the Act directs us to establish the amounts of fines and the levels of severity, we are establishing a three-tier system with subcategories which will establish the amount of a CMP. In § 488.845 (b)(3), (b)(4), and (b)(5), we have added the following ranges of civil money penalty amounts based on three levels of seriousness—upper, middle and lower:

- Upper range—For a deficiency that poses immediate jeopardy to patient health and safety, we would assess a penalty within the range of $8,500 to $10,000 per day of condition-level noncompliance.

Specifically, based on the comments and our responses below, we will impose a CMP at $10,000 per day for a deficiency or deficiencies that posed an immediate jeopardy to patients and that resulted in actual harm. For a deficiency or deficiencies that pose an immediate jeopardy situation and result in a potential for harm (but no actual harm), we will impose a CMP of $9,000 per day. For an isolated employee incident of noncompliance in violation of established HHA policy, we will impose a CMP of $8,500 per day.

- Middle range—For repeat and/or a condition-level deficiency that did not pose immediate jeopardy, but is directly related to poor quality patient care outcomes, we would assess a penalty within the range of $1,500 to $8,500 per day of noncompliance with the CoPs.
- Lower range—For repeated and/or condition-level deficiencies that did not constitute immediate jeopardy and were deficiencies in structures or processes that did not directly relate to poor quality patient care, we would assess a penalty within the range of $500 to $4,000 per day of noncompliance.

Comments: As indicated previously, several commenters felt that the CMP amounts are excessive and they did not agree with the manner in which CMS structured the amount categories. Several commenters disagreed with the way CMS categorized each of the COPs within the CMP list of possible CMPs. One commenter stated that therapy service (§ 484.32) was omitted from the grid.

Response: The specified grouping of CoPs noted in the proposed rule is consistent with the groups of high risk CoPs currently used in the HHA Survey protocols. We regret the inadvertent omission of therapy services and will add this CoP to the guidance text with the grouping that includes nursing and other clinical services. Regarding the proposed ranges of CMPs, we have removed the specific sub-categories within the middle and lower ranges at § 488.845(b)(4)(i) and (ii) and § 488.845(b)(5)(i) and (ii), as we felt that this level of specificity would be more appropriate in subsequent interpretive guidance. We added instead specific amounts within the upper range to provide more guidance for imposing the CMP amount within that range. We provide that a $10,000 per day CMP will be imposed for noncompliance that is immediate jeopardy and that results in actual harm. For noncompliance that is immediate jeopardy but is not actual

harm, but is a potential for harm, we will impose $9,000 per day in CMPs. Finally, for noncompliance that is immediate jeopardy and is an isolated incident that is in violation of established HHA policies, we will impose a CMP of $8,500 per day. We will develop interpretive guidance which will provide flexibility within the ranges for the specific penalty to be imposed to better correlate the consequences with the seriousness of the noncompliance.

When we impose a CMP, we will send the HHA written notification of the intent to impose it, including the amount of the CMP being imposed and the proposed effective date of the sanction. After a final agency determination is made, a final notice will be sent with the final amount due and the rate of interest to be charged on unpaid balances (as published in the **Federal Register**). The notice will include reference to the nature of the noncompliance; the statutory basis for the penalty; the amount of the penalty per day/instance of noncompliance; the criteria we considered when determining the amount per-day or per-instance; the date on which the penalty will begin to accrue; when the penalty would stop accruing; when the penalty would be collected; and instructions for responding to the notice, including a statement of the HHA's appeal rights, including an opportunity to participate in the IDR process and, as discussed below, the right to a hearing, and the implications of waiving a hearing. In accordance with our existing regulations at § 498.22(b)(3) and § 498.40 and at § 488.845(c)(2), once a notice of intent to impose the CMP had been sent to the HHA, the HHA will have 60 days from the receipt of the notice to request an administrative hearing under § 498.40 or waive its right to an administrative hearing in writing and receive a 35 percent reduction in the CMP amount. This reduction will be offered to encourage HHAs to address deficiencies more expeditiously and to save the cost of hearings and appeals. Upon such reduction, the CMP will be due within 15 days of the receipt of the HHA's written request for waiver. The HHA could waive its right to a hearing in writing within 60 calendar days from the date of the notice initial determination.

The per day CMP would begin to accrue on the day of the survey that identified the HHA noncompliance, and would end on the date of correction of all deficiencies, or the date of termination. We are adding at 488.845(d) that in immediate jeopardy cases, if the immediate jeopardy was not removed, the CMP will continue to accrue until we terminate the provider agreement (within 23 calendar days after the last day of the survey which first identified the immediate jeopardy). Under 488.845(d)(4), if immediate jeopardy did not exist, the CMP will continue to accrue until the HHA achieved substantial compliance or until we terminated the provider agreement. Additionally, we are adding language at § 488.845(d)(2) to specify that the per-day and per-instance CMP will not be imposed simultaneously in conjunction with a survey. In no instance will the period of noncompliance be allowed to extend beyond 6 months from the last day of the original survey that determined noncompliance. If the HHA has not achieved compliance with the CoPs within those 6 months, we would terminate the HHA. The accrual of the CMP stops on the day the HHA provider agreement is terminated or the HHA achieves substantial compliance, whichever is earlier. Total CMP amounts will be computed after a final agency determination; that is, after: (1) Compliance was verified; (2) the HHA provider agreement was involuntarily terminated; or (3) administrative remedies had been exhausted. If the HHA had achieved substantial compliance, we would send a separate notice to the HHA describing the amount of penalty per day, the number of days the penalty accrued, the total amount due, the due date of the penalty, and the interest rate for any unpaid balance. For a per-instance CMP, we would include the amount of the penalty, the total amount due, the due date of the penalty, and the rate of interest for any unpaid balance. In the case of the HHA that was terminated, we would send the HHA any CMP notice of final amount or a due and payable notice information in the termination notice, as described in § 489.53(d).

In § 488.845(f), we have added that a CMP will become due and payable 15 days from the notice of final administrative decision, which is after:

- The time to appeal had expired without the HHA appealing its initial determination;
- CMS received a request from the HHA waiving its right to appeal the initial determination;
- A final decision of an Administrative Law Judge and/or DAB Appellate Board upheld CMS's determinations;
- After an HHA achieves substantial compliance; or
- The HHA was terminated from the program and no appeal request was received.

A request for hearing will not delay the imposition of the CMP, but will only affect the collection schedule of any final amounts due to CMP. If an HHA timely waived its right to a hearing under § 488.845(c)(2)(ii), we will reduce the final CMP amount by 35 percent. This reduction would be reflected once the CMP stops accruing: when the HHA achieved compliance, or the effective date of the termination.

The final CMP receivable amount will be determined when the per-day CMP accrual period ends (either when the HHA achieved compliance or was terminated).

Within 10 days of receipt of the notice of the imposition of a penalty, the HHA could request an IDR. Within 60 days of receipt of the notice of imposition of a penalty, the HHA could either submit a written request to waive its appeal and receive a 35 percent reduction on the final CMP amount or it could file a request directly to the Departmental Appeals Board in the Office of the Secretary, Department of Health and Human Services with a copy to the state and CMS. In accordance with § 498.40(b), the HHA's appeal request will identify the specific issues of contention, the findings of fact and conclusions of the law with which the agency disagreed, and the specific bases for contending that the survey findings and determinations were invalid. A hearing will be completed before any penalty was collected. However, sanctions will continue regardless of the timing of any appeals proceedings if the HHA had not met the CoPs. Requesting an appeal will not delay or end the imposition of a sanction. A CMP will begin to accrue on the date of the survey which identified the noncompliance. These include penalties imposed on a per day basis, as well as penalties imposed per instance of noncompliance.

Comment: Several commenters requested clarification on what day the penalty would begin to accrue.

Response: We appreciate the requests for clarification. A CMP will begin to accrue on the last day of the survey and would end on the day compliance was attained or the HHA was terminated.

(1) Offsets

To maintain consistency in recovering a CMP among other types of providers who are subject to a CMP, we are adding that the amount of any penalty, when determined, could be deducted (offset) from any sum CMS or the State Medicaid Agency owed to the HHA. Interest would be assessed on the

unpaid balance of the penalty beginning on the due date. The rate of interest assessed on any unpaid balance will be based on the Medicare interest rate published in the **Federal Register**, as specified in § 405.378(d). We will recover a CMP as set forth in section 1128A (f) of the Act. Those CMP receipts not recovered due to HHA failure to pay or inadequate funds for offset will be collected through the Debt Collection Improvement Act of 1996 which requires all debt owed to any federal agency that is more than 180 days delinquent to be transferred to the Department of the Treasury for debt collection services.

If payment was not received by the established due date, we will initiate action to collect the CMP through offset of monies owed or owing to the HHA. To initiate such an offset, we will instruct the appropriate Medicare Administrative Contractors/Fiscal Intermediaries and, when applicable, the State Medicaid Agencies to deduct unpaid CMP balances from any money owed to the agency.

We received no comments on this section of the proposed regulation and are finalizing as written.

(2) Disbursement of Recovered CMP Funds

Under 488.845(g)(1), we proposed to divide the CMP amounts recovered and any corresponding interest between the Medicare and Medicaid programs, based on a proportion that is commensurate with the comparative federal expenditures under Titles XVIII and XIX of the Act, using an average of years 2007 to 2009 based on Medicaid Statistical Information System (MSIS) and HHA Prospective Payment System (PPS) claims. Based on the proportions of HHA claims payments attributed to Medicare and Medicaid, respectively, for the FY 2007–2009 period, we proposed that approximately 63 percent of the CMP amounts recovered would be deposited as miscellaneous receipts to the U.S. Department of the Treasury and approximately 37 percent would be returned to the State Medicaid Agency to improve the quality of care for those who need home-based care. We also proposed that, beginning 1 year after these rules are finalized and become effective, these proportions would be updated annually based on the most recent 3 year period for which we determine that the Medicare and Medicaid expenditure data were essentially complete.

Comments: Several comments we received indicated that they were opposed to the states sharing in the revenues from CMPs. Specifically the commenters indicated it would provide an incentive to surveyors and state agencies to impose fines so that the state agency would retain the funds for survey and certification activities.

Response: Under section 1128A(f) of the Act, collected CMP amounts are returned both to the State Medicaid Agency and to the US Treasury, as appropriate. Also, under § 1817(k)(3)(C)(ii) a portion of collected CMP funds may be used by CMS in anti-fraud functions. The amounts are disbursed in accordance with § 488.845(g). We disagree with the commenters that states would have an incentive to recommend CMP remedies in order to gain revenue. We would make the enforcement determination to impose a CMP remedy based on the survey findings. Additionally, we specifically prohibit in this rule the use of collected CMP amounts for Survey and Certification operations or the State Medicaid match.

(3) Costs of Home Health Surveys

We proposed to amend § 431.610(g)—Relations with standard-setting and survey agencies—to require that Medicaid State Plans explicitly include Medicaid's appropriate contribution to the cost of home health surveys. We proposed to add a reference to HHAs, along with NFs and ICFs/IIDs at § 431.610(g). We estimated that the appropriate national Medicaid share of total Medicare and Medicaid HHA survey costs is approximately 37 percent of the combined Medicare/Medicaid cost of surveys for dually-certified programs, based on the same cost allocation methodology we proposed to use for the disbursement to states of CMP collections, as described above. While this is a national estimate, the Medicaid share of the combined Medicare and Medicaid expense for each individual state could instead be based on the state-specific dollar amount paid by Medicaid for home health services provided by HHAs in the state compared to the combined Medicare/Medicaid total for the most recent 3-year fiscal period, prior to the year in question, for which CMS determines that the relevant data are essentially complete.

Comments: Two commenters stated that they did not think the states should share in the costs of performing surveys. One stated that these costs to the states would encourage surveyors to cite more condition-level deficiencies and not all states have voluntarily chosen to require Medicare HHA participation. One commenter stated that in many cases the states are already paying the survey costs for those agencies that are licensed but not Medicare certified.

Response: Surveys are required for determining a provider's or supplier's compliance with program participation requirements and the HHA surveys benefit both Medicare and Medicaid programs where the HHAs seek such dual certification. Thus, in accordance with OMB Circular A–87, the costs for surveys of HHAs that are certified for both Medicare and Medicaid should be shared between Medicare and Medicaid. However, to provide more time for dialogue with states and for any necessary adjustments to State Medicaid Plans, we are currently removing the proposed rule provision at § 431.610(g) in this final rule.

With regard to the concern that surveyors might be incentivized to cite more condition-level deficiencies and levy CMPs, as we have indicated previously, individual surveyors will not make the final decision as to whether a sanction may be imposed. The final decisions as to sanctions under Medicare are made by us. Finally, with regard to the comment that states are already paying the survey costs for those HHAs that are licensed, but not Medicare-certified, we appreciate that such payments are being made. We expect that states will continue to pay for the survey costs of unique state licensure requirements. Such expectations were not intended to be changed by the proposed rule.

k. Directed Plan of Correction § 488.850

We proposed in § 488.850 to include a directed plan of correction as an available sanction. This sanction is a part of the current nursing home alternative sanction procedures and has been an effective tool to encourage correction of deficient practices. Specifically, we may impose a directed plan of correction on an HHA which is out of compliance with the conditions of participation. A directed plan of correction sanction will require the HHA to take specific actions in order to bring the HHA back into compliance and correct the deficient practice(s) if the HHA failed to submit an acceptable plan of correction. As indicated in § 488.850(b)(2) an HHA's directed plan of correction will have to be developed by us or by the temporary manager, with our approval. The directed plan of correction will set forth the outcomes to be achieved, the corrective action necessary to achieve these outcomes, and the specific date the HHA will be expected to achieve such outcomes. For example, a directed plan of correction for a deficiency finding involving poor drug regimen review will likely indicate

that the HHA would be required to: (1) Develop policies and procedures for assessing each patient and before accepting any new admissions; (2) assess every patient's drug regimen according to the regulations at § 484.55(c); and (3) train staff in correct policies and procedures and implement them. The HHA will be responsible for achieving compliance. If the HHA failed to achieve compliance within the timeframes specified in the directed plan of correction, we will impose one or more additional alternative sanctions until the HHA achieved compliance or was terminated from the Medicare program. Before imposing this sanction, we will provide appropriate notice to the HHA of this sanction under § 488.810(f).

Comments: One commenter felt that the development of the plan of correction should be solely the responsibility of the HHAs Board of Directors. Another commenter felt this sanction was not needed since the plan of correction was already required to be approved by the state agency.

Response: We appreciate the comments received. Imposition of this sanction will occur when, based upon the facts of the finding, a specific corrective action will be required by the SA or CMS in order for the agency to regain compliance. The SA or CMS may also impose this sanction when the HHA fails to submit an acceptable plan of correction.

l. Directed In-Service Training § 488.855

We proposed in § 488.855 the requirements for conducting directed in-service training for HHAs with deficiencies. We have found that compliance problems are frequently a result of a lack of knowledge on the part of the health care provider relative to advances in health care technology and best practices for favorable patient outcomes, such as advances in infection control and reducing pressure ulcers. In § 488.855(a) directed in-service training would be imposed where staff performance resulted in noncompliance and it is determined that a directed in-service training program would correct this deficient practice through retraining the staff in the use of clinically and professionally sound methods to produce quality outcomes. Directed in-service training could be imposed alone or in addition to other alternative sanctions.

At § 488.855(a)(3), HHAs will be required to use in-service programs conducted by instructors with an in-depth knowledge of the area(s) that would require specific training, so that positive changes would be achieved and maintained. HHAs will be required to participate in programs developed by well-established centers of health services education and training. These centers include, but are not limited to, schools of medicine or nursing, area health education centers, and centers for aging. We will only recommend possible training locations to an HHA and not require that the HHA utilize a specific school/center/provider. The HHA itself will pay for the directed in-service training for its staff. The ultimate evaluation of the usefulness of the training program would be in the demonstrated competencies of the HHA's staff in achieving the desired patient care outcomes after completion of the training program. In § 488.855(b), if the HHA did not achieve compliance after such training, we could impose one or more additional sanctions.

Comments: One commenter objected to this sanction on the grounds that it felt the RNs at their agency were already educated at the BS level and that the expense of the sanction to require consultation from the university level would be prohibitive.

Response: We appreciate the comment and feel the commenter may have misunderstood the context of the proposed language. Directed in-service will need to be at a high level of expertise, not necessarily at the university level. We included this requirement to require additional professional support/training for current HHA staff. Since the usefulness of the training will be demonstrated by the improved competency of the HHA staff, we encourage the HHA to find and evaluate the directed-in service programs that will best suit the HHA's needs.

Comment: One commenter feels that CMS should have a greater level of commitment to provide training on CoPs with the industry.

Response: We make every effort to include the HHA industry in their educational efforts. When webinars are utilized for surveyor training, these webinars are available to the industry for their use. Nonetheless, we appreciate the comment and will consider additional means to reach out to HHAs.

m. Continuation of Payments to HHAs With Deficiencies § 488.860

We proposed in § 488.860 provisions concerning the continuation of Medicare payments to HHAs with condition-level deficiencies. Section 1891(e)(4) of the Act provides that the Secretary may continue Medicare payments to HHAs not in compliance with the conditions of participation for up to six months if:

- The survey agency finds it more appropriate to impose alternative sanctions to assure compliance with program requirements than to terminate the HHA from the Medicare program, and
- The HHA submits a plan of correction to the Secretary, and to the office the Secretary has delegated the authority to approve the plan of correction and the plan has been approved; and
- The HHA agrees to repay the federal government the payments under this arrangement should the HHA fail to take the corrective action as set forth in its approved plan of correction by the time of the revisit.

We proposed these three criteria in § 488.860(a). If any of these three requirements set forth in the Act and in our final rule are not met, an HHA with condition-level deficiencies will not receive any federal payments from the time that deficiencies were initially identified. We will also terminate the agreement before the end of the 6-month correction period, which begins on the last day of the survey, in accordance with § 488.865 if the requirements at § 488.860(a)(1) are not met. If any sanctions are also imposed, they will stop accruing or end when the HHA achieves compliance with all requirements, or when the HHA's provider agreement is terminated, whichever is earlier.

Finally, if an HHA provides an acceptable plan of correction but cannot achieve compliance with the CoPs within 6 months of the last day of the survey, we have proposed in § 488.830(d) that we will terminate the provider agreement.

Comments: One commenter wanted greater clarification of this section. They indicated that this sanction seemed to make the imposition of alternative sanctions mandatory, unless the HHA meets the criteria set forth in this section.

Response: Alternative sanctions are not mandatory, but may be imposed if we believe it is a more appropriate action to prompt and to bring the HHA into compliance. The significant benefit of most alternative sanctions is that payment may continue to the HHA while the sanction is in place. Without the choice of alternative sanctions, the HHA is subject only to termination, either within 90 days or immediately in the case of immediate jeopardy. Section 1891(e)(4)(c) of the Act provides that if alternative sanctions are imposed, and the HHA submits an acceptable plan of correction, then the HHA agrees to repay the payments received if the HHA ultimately fails to take corrective action

in accordance with the approved plan of correction and its established timetables.

n. Termination of Provider Agreement (§ 488.865)

We proposed in § 488.865(a), to address the termination of an HHA's Medicare provider agreement, as well as the effect of such termination. Termination of the provider agreement would end all payments to the HHA, including any payments that were continued under § 488.860. Termination will also end any alternative sanctions imposed against the HHA, regardless of any proposed timeframes for the sanction(s) originally specified. In § 488.865(b) we will terminate the provider agreement if (1) the HHA failed to correct condition-level deficiencies (that are not immediate jeopardy) within 6 months if the HHA is not in compliance with the conditions of participation; (2) the HHA failed to submit an acceptable plan of correction for approval by us under § 488.810; (3) the HHA failed to relinquish control to the temporary manager, if that sanction is imposed or (4) the HHA failed to meet the eligibility criteria for continuation of payments under § 488.860. If CMS or the SA determined deficiencies existed which posed immediate jeopardy to patient health and safety, we will terminate the provider agreement in accordance with § 488.825. The provider could also voluntarily terminate its agreement. CMS and the SA will, if necessary, work with all Medicare-approved HHAs that were terminated to ensure the safe discharge and orderly transfer of all patients to another Medicare-approved HHA.

The procedures for terminating a provider agreement are set forth in § 489.53 and we are continuing to use those procedures for an enforcement action terminating an HHA at § 488.865(d). These procedures form the basis for termination by CMS and specify a provider's notice and appeal rights. Under § 488.865(e), we added that the HHA could appeal the termination of its provider agreement in accordance with 42 CFR part 498.

Comments: Several commenters alleged that CMS would not be affording due process to the HHA with the implementation of sanctions, including CMPs, before the HHA has been allowed full access to appeal and the appeal is resolved. One commenter stated that the HHA should be made ''whole'' in the event that the HHA prevails in the appeal.

Response: We disagree that the HHA is denied due process because the sanctions are applied prior to the completion of the appeals process, primarily because we believe the intent of the Act is to impose remedies as soon as possible in order to protect the patients. We believe that post-sanction hearings are entirely compatible with due process. Courts that have addressed this issue have concluded that, because the provider has numerous opportunities to prevent mistakes from occurring and to present its side of the story both during the survey process, at the exit interview, and by submitting written statements and a plan of correction, due process is satisfied by the availability of post-sanction hearings. See, for example, *Caton Ridge Nursing Home* v. *Califano,* 596 F.2d 608 (4th Cir. 1979), *Green* v. *Cashman,* 605 F.2d 945 (6th Cir. 1979), *Northlake Community Hospital* v. *United States,* 654 F.2d 1234 (7th Cir. 1981), Geriatrics, Inc. v. Harris, 640 F.2d 262 (10th Cir. 1981), cert. denied454 U.S. 832, 102 S.Ct. 1295, *Americana Healthcare Corp.* v. *Schweiker,* 688 F.2d 1072, 1082–83 (7th Cir. 1982), *cert. denied,* 459 U.S. 1201 (1983), *Cathedral Rock of North College Hill, Inc.* v. *Shalala,* 223 F.3d 354, 364–65 (6th Cir. 2000). Although the Supreme Court has not directly decided the issue of due process requirements when a provider is terminated, the Court has decided in *O'Bannon* v. *Town Court,* 447 U.S. 773, 100 S.Ct. 2467 (1980), that nursing home residents are not entitled to a pre-termination hearing. The Court reached this result notwithstanding the fact that residents were the intended beneficiaries of the provider agreement through their entitlement to high quality care. Moreover, consistent with the balancing of interests formula first enunciated by the Supreme Court in *Mathews* v. *Eldridge,* 434 U.S. 319 (1976), we have concluded, first and foremost, that the private interest that HHAs have in their continued participation in the Medicare and Medicaid programs must give way to the Government's interest in protecting the health and safety of the patient population. Additionally, in light of the opportunities available to providers to question the accuracy of survey findings at various points during the survey process (including during the survey, exit conference, and through informal meetings with state or federal officials), we believe that the chances for an erroneous deprivation are quite small when compared to the enormous delay in the correction of noncompliance that could occur were hearings to be routinely held prior to the institution of remedies. The use of an informal dispute resolution process, as we discussed earlier in this preamble, should serve to reduce even further the chances of an erroneous deprivation.

The statutory provisions clearly reflect the desire expressed in the enactment's legislative history that remedies be applied swiftly once deficiencies are identified. Specifically, section 1891(f)(3) of the Act requires that the Secretary develop criteria detailing the manner in which remedies are to be imposed and that they be designed so as to minimize the time between the identification of violations and final imposition of the remedies. We believe it would be incompatible with these pronouncements were we to devise an appeal scheme that would provide for hearings before the imposition of remedies. Moreover, we conclude that this is the case regardless of whether the HHA's deficiencies pose immediate jeopardy to resident health or safety since the Act makes no distinction on this basis and because the delay in imposing remedies once noncompliance has been identified could be considerable.

Although not required by law, we also added a provision for Informal Dispute Resolution so as to offer an additional safeguard that enables the HHA to provide information to dispute any condition-level finding that prompts a sanction. We are also adding an exception to the general notice provision and amending § 489.53(a) by adding a new paragraph (17) establishing that when an HHA failed to correct any deficiency (either standard-level or condition-level), we could terminate its provider agreement.

The notification requirements in § 489.53(d)(1) requires that we give notice to any provider and the public at least 15 days before the effective date of a termination of a provider agreement. We added a new clause in § 489.53(d)(2)(iii) which will provide for a timing exception to this general notice rule. Specifically, we added that for HHA terminations based on deficiencies that posed immediate jeopardy to patient health and safety, we will give notice to the HHA of such termination at least 2 days before the effective date of the termination. As currently provided in § 489.53(d)(4), we will give concurrent notice to the public when such termination occurred.

Comment: One commenter wanted assurance of a smooth transition of patients if an HHA is terminated.

Response: It is current CMS policy for the SA and CMS Regional Office, if applicable, to assist with the safe and timely transfer of HHA patients in the event of HHA termination. Current policy requires SA and the CMS

Regional Offices to assist with the safe transition of patients to new HHAs, if needed.

C. Provider Agreements and Supplier Approval

We are amending § 498.3, Scope and applicability, by revising paragraphs (b)(13), (b)(14) introductory text, (b)(14)(i), and (d)(10) to include specific reference to HHAs and to cross-refer to our regulation at § 488.740 concerning appeals.

We did not receive any comments in response to our proposals in this section. Therefore, we are finalizing these provisions as proposed.

D. Solicitation of Comments

Presently, we are required only to give notice of an HHA termination to the public 15 days before the effective date of an involuntary termination. We have solicited comments related to additional public notices. We considered that when a suspension of payments for new admissions and new payment episodes or a civil money penalty is imposed, we could, at our discretion, issue a public notice. The issuance of additional publicly-reported notices when certain sanctions are imposed would offer information to patients who were choosing a provider of home health services, as well as to current recipients of home health care. A home health patient does not necessarily know when a survey has been conducted at an HHA and if deficiencies had been determined or any sanctions imposed unless a surveyor visited the patient during a survey or the patient requested a copy of a Statement of Deficiencies from the SA or HHA. We also solicited comments on the definition of a ''per instance'' of noncompliance when imposing a CMP sanction.

Comments: We received many comments opposed to any public notice other than for termination. Several commenters thought that public notice would be posted on Home Care Compare. Several comments indicated that a public notice would damage an agency's reputation.

Response: We appreciate the comments received and want to clarify that by public notice we meant a notice published in the local newspaper, similar to the notices published for termination. We agree with these comments and we will not include in the regulation a requirement for public notice when alternative sanctions are imposed.

VI. Collection of Information Requirements

While this final rule contains information collection requirements, this rule does not revise any of the information collection requirements or burden estimates with regard to: § 424.22(a) (OCN 0938–1083), § 488.710 (OCN 0938–0355; CMS–1515 and CMS–1572), and § 488.810(e) (OCN 0938–0391; CMS–2567). Nor does this final rule revise any of the information collection requirements or burden estimates pertaining to OASIS as discussed in preamble section III.C.3. and approved under OCN 0938–0760 or Home Health Care CAHPS as discussed in the same preamble section but approved under OCN 0938–1066. All of the requirements and burden estimates associated with these collections are currently approved by OMB and are not subject to additional OMB review under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

In § 488.710, for each HHA the SA must (existing requirement) conduct standard surveys according to their agreements with CMS under sections 1864 and 1891(c)(1) of the Act. CMS believes that the additional survey agency administrative activity required to impose alternative sanctions created by this rule will not generate a significant amount of additional paperwork burden at the state survey agency or at the HHA level. Imposing sanctions may require that states engage in some additional communication and carry out follow-up surveys, and CMS Regional Offices may need additional time for determining, imposing and tracking sanctions. In estimating appeal volume and costs, we note that in 2010 only 260 providers out of 11,821 had condition level-deficiencies, and only seven of these involved immediate jeopardy situations.

SAs survey HHAs to determine compliance with the CoPs under part 484 and follow the guidance contained in the State Operations Manual, S&C Memoranda, and Interpretive Guidelines. This rule codifies some existing CMS policies and establishes new requirements that are consistent with OBRA '87 mandates as discussed in the Background and Statutory Authority sections of this preamble. State Surveyor recordkeeping requirements already exist in Forms CMS–1515 and CMS–1572 (OCN 0938–0355) and in CMS–2567 (OCN 0938–0391). CMS anticipates enhancing survey protocols and Interpretive Guidelines and providing additional S&C Memoranda and Surveyor Training in response to the issuance of new regulations, when necessary.

In § 488.735, state and federal surveyors would be required to complete the CMS-sponsored Basic HHA Surveyor Training Course before they can serve on a HHA survey team. The CMS Central Office currently provides national training to all state surveyors for all of the provider types that are surveyed for Medicare and Medicaid. Those training courses are funded entirely by the Central Office and there is no burden to states since our annual budgets to the states (for the performance of survey activities) includes the cost of the salaries and the travel for participating in all national training courses, with minimal state expense. These training courses are designed to teach the surveyors how to conduct the survey process in accordance with the applicable regulations and associated Interpretive Guidance. During the course of the survey, all of the data collection tools that may be used (see the reference to CMS–1515, –1572, and –2567 above) have been approved by OMB through the PRA process.

Section 488.810(e) requires each HHA that has deficiencies constituting noncompliance to submit a plan of correction for approval by CMS. This is a current requirement for both standard and condition level deficiencies, so the burden associated with this requirement that is above and beyond the existing effort put forth by the HHA is to prepare and submit a plan of correction would be to notify their governing body, potentially prepare for IDR or to issue a check for a CMP. While there is paperwork burden associated with this plan of correction requirement, it is already required and currently approved under OCN 0938–0391 (CMS–2567).

Information Collection Requests Exempt From the Paperwork Reduction Act

In accordance with 5 CFR 1320.4(a)(2) and (c), the following information collection activities are exempt from the requirements of the Paperwork Reduction Act since they are associated with administrative actions: (1) Section 488.745(a) regarding HHA request to dispute condition-level survey findings; (2) § 488.810(g) regarding appeals; (3) § 488.845(c)(2)(i) regarding the submission of a written request for a hearing or waiver of a hearing; (4) § 488.840(b)(1)(ii) regarding HHA disclosure requirements; (5) § 488.845(c) regarding hearings; and (6) § 488.855 regarding HHA deficiencies and directed in-service training.

The information collection requirement in § 488.825(c) regarding

the transfer of care is exempt from the requirements of the Paperwork Reduction Act since it is associated with an administrative action (5 CFR 1320.4(a)(2) and (c)) and we estimate fewer than ten provider agreements will be terminated annually (5 CFR 1320.3(c)).

Information Collection Requests Regarding the Quality Reporting for Hospices

In section IV of the preamble, we note that section 3004 of the Affordable Care Act amends the Act to authorize a quality reporting program for hospices. Section 1814(i)(5)(C) of the Act requires that each hospice submit data to the Secretary on quality measures specified by the Secretary. Such data must be submitted in a form and manner, and at a time specified by the Secretary. As added by section 3004(c), new section 1814(i)(5)(A)(i) of the Act requires that beginning with FY 2014 and each subsequent FY, the Secretary shall reduce the market basket update by two percentage points for any hospice that does not comply with the quality data submission requirements with respect to that fiscal year.

In implementing the Hospice quality reporting program, CMS seeks to collect measure-related information with as little burden to the providers as possible and which reflects the full spectrum of quality performance. Our purpose in collecting this data is to help achieve better health care and improve health through the widespread dissemination and use of performance information.

The Hospice Data Submission form intended for data submission by January 31, 2013 (for the structural measure related to patient care-focused QAPI indicators) and for data submission by April 1, 2013 (for the NQF #0209 measure related to pain) was approved by OMB on September 28, 2012, under OCN 0938–1153. Technically, the form is not associated with this rule but is discussed within the preamble to provide background information.

VII. Regulatory Impact Analysis

A. Introduction

We have examined the impact of this final rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This final rule does not reach the economic threshold and thus is not considered a major rule. We are not required to prepare an analysis for the RFA. However, as a courtesy we are providing the public with the impact analysis. In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

B. Statement of Need

This final rule adheres to the following statutory requirements. Section 4603(a) of the BBA mandated the development of a HH PPS for all Medicare-covered HH services provided under a plan of care (POC) that were paid on a reasonable cost basis by adding section 1895 of the Act, entitled ''Prospective Payment For Home Health Services''. Section 1895(b)(1) of the Act requires the Secretary to establish a HH PPS for all costs of HH services paid under Medicare. In addition, section 1895(b)(3)(A) of the Act requires (1) the computation of a standard prospective payment amount include all costs for HH services covered and paid for on a reasonable cost basis and that such amounts be initially based on the most recent audited cost report data available to the Secretary, and (2) the standardized prospective payment amount be adjusted to account for the effects of case-mix and wage levels among HHAs. Section 1895(b)(3)(B) of the Act addresses the annual update to the standard prospective payment amounts by the HH applicable percentage increase. Section 1895(b)(4) of the Act governs the payment computation. Sections 1895(b)(4)(A)(i) and (b)(4)(A)(ii) of the Act require the standard prospective payment amount to be adjusted for case-mix and geographic differences in wage levels. Section 1895(b)(4)(B) of the Act requires the establishment of appropriate case-mix adjustment factors for significant variation in costs among different units of services. Lastly, section 1895(b)(4)(C) of the Act requires the establishment of wage adjustment factors that reflect the relative level of wages, and wage-related costs applicable to HH services furnished in a geographic area compared to the applicable national average level.

Section 1895(b)(5) of the Act, as amended by section 3131 of the Affordable Care Act, gives the Secretary the option to make changes to the payment amount otherwise paid in the case of outliers because of unusual variations in the type or amount of medically necessary care. Section 1895(b)(3)(B)(v) of the Act requires HHAs to submit data for purposes of measuring health care quality, and links the quality data submission to the annual applicable percentage increase. Also, section 3131 of the Affordable Care Act requires that HH services furnished in a rural area (as defined in section 1886(d)(2)(D) of the Act) with respect to episodes and visits ending on or after April 1, 2010, and before January 1, 2016, receive an increase of 3 percent of the payment amount otherwise made under section 1895 of the Act.

C. Overall Impact

The update set forth in this final rule applies to Medicare payments under HH PPS in CY 2013. Accordingly, the following analysis describes the impact in CY 2013 only. We estimate that the net impact of the provisions in this rule is approximately $10 million in CY 2013 savings. The -$10 million impact reflects the distributional effects of an updated wage index ($70 million decrease), the 1.3 percent HH payment update ($260 million increase), the revised FDL ratio ($50 million increase), and the 1.32 percent case-mix adjustment applicable to the national standardized 60-day episode rates ($250 million decrease). The $10 million in savings is reflected in the first row of column 3 of Table 28 as a 0.01 percent decrease in expenditures when comparing the current CY 2012 HH PPS to the CY 2013 HH PPS. The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of less than $7.0 million to $34.5 million in any 1 year.

For the purposes of the RFA, our updated data show that approximately 98 percent of HHAs are considered to be small businesses according to the Small Business Administration's size standards with total revenues of $13.5 million or less in any 1 year. Individuals and states are not included in the definition of a small entity. The Secretary has determined that this rule will not have a significant economic impact on a substantial number of small entities. We define small HHAs as either non-proprietary or proprietary with total revenues of $13.5 million or less in any 1 year. We estimate that approximately 25 percent of HHAs are classified as non-proprietary. Analysis of Medicare claims data reveals a 0.05 percent decrease in estimated payments to small HHAs in CY 2013.

A discussion on the alternatives considered is presented in section VII.E. below. The following analysis, with the rest of the preamble, constitutes our RFA analysis.

In this final rule, we stated that our analysis shows that nominal case-mix continues to grow under the HH PPS. Specifically, nominal case-mix has grown from the 19.03 percent growth identified in our analysis for CY 2012 rulemaking to 20.08 percent for this year's rulemaking (see further discussion in section III.A.). As such, we believe it is appropriate to reduce the HH PPS rates using the 1.32 percent payment reduction promulgated in the CY 2012 HH PPS Final Rule (76 FR 68532) in moving towards more accurate payment for the delivery of home health services. Our analysis shows that smaller HHAs are impacted more than larger HHAs by the provisions of this rule.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. This final rule applies to HHAs. Therefore, the Secretary has determined that this final rule will not have a significant economic impact on the operations of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2012, that threshold is approximately $139 million. This final rule is not anticipated to have an effect on state, local, or tribal governments in the aggregate, or by the private sector, of $139 million or more.

D. Detailed Economic Analysis

This final rule sets forth updates to the HH PPS rates contained in the CY 2012 HH PPS final rule. The impact analysis of this final rule presents the estimated expenditure effects of policy changes finalized in this rule. We use the latest data and best analysis available, but we do not make adjustments for future changes in such variables as number of visits or case-mix.

This analysis incorporates the latest estimates of growth in service use and payments under the Medicare home health benefit, based on Medicare claims from 2010. We note that certain events may combine to limit the scope or accuracy of our impact analysis, because such an analysis is future-oriented and, thus, susceptible to errors resulting from other changes in the impact time period assessed. Some examples of such possible events are newly-legislated general Medicare program funding changes made by the Congress, or changes specifically related to HHAs.

Table 28 represents how HHA revenues are likely to be affected by the policy changes finalized in this rule. For this analysis, we used linked home health claims and OASIS assessments; the claims represented a 100-percent sample of 60-day episodes occurring in CY 2010. The first column of Table 28 classifies HHAs according to a number of characteristics including provider type, geographic region, and urban and rural locations. The second column shows the payment effects of the wage index only. The third column shows the payment effects of all the policies outlined earlier in this rule. For CY 2013, the average impact for all HHAs due to the effects of the wage index is a 0.37 percent decrease in payments. The overall impact for all HHAs, in estimated total payments from CY 2012 to CY 2013, is a decrease of approximately 0.01 percent.

As shown in Table 28, the combined effects of all of the changes vary by specific types of providers and by location. In general, facility-based, proprietary agencies in rural areas will be impacted positively as a result of the provisions in this rule. In addition, free-standing, other volunteer/non-profit agencies and facility-based volunteer/non-profit agencies in urban areas will be impacted positively.

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TABLE 28: Home Health Agency Policy Impacts for CY 2013, by Facility Type and Area of the Country

Group	Comparisons	Impact of all CY 2013 Policies[1]
	Percent change due to the effects of the updated wage index	
All Agencies	-0.37%	-0.01%
Type of Facility		
Free-Standing/Other Vol/NP	0.02%	0.61%
Free-Standing/Other Proprietary	-0.50%	-0.21%
Free-Standing/Other Government	-0.43%	0.07%
Facility-Based Vol/NP	-0.04%	0.43%
Facility-Based Proprietary	-0.47%	-0.08%
Facility-Based Government	-0.40%	0.01%
Subtotal: Freestanding	-0.40%	-0.05%
Subtotal: Facility-based	-0.11%	0.35%
Subtotal: Vol/NP	0.00%	0.55%
Subtotal: Proprietary	-0.50%	-0.21%
Subtotal: Government	-0.42%	0.04%
Type of Facility (Rural * Only)		
Free-Standing/Other Vol/NP	-0.70%	-0.28%
Free-Standing/Other Proprietary	-0.90%	-0.63%
Free-Standing/Other Government	-0.53%	0.07%
Facility-Based Vol/NP	-0.53%	-0.07%
Facility-Based Proprietary	0.08%	0.49%
Facility-Based Government	-0.55%	-0.08%
Type of Facility (Urban * Only)		
Free-Standing/Other Vol/NP	0.14%	0.76%
Free-Standing/Other Proprietary	-0.44%	-0.15%
Free-Standing/Other Government	-0.30%	0.07%
Facility-Based Vol/NP	0.10%	0.58%
Facility-Based Proprietary	-0.72%	-0.34%
Facility-Based Government	-0.21%	0.14%
Type of Facility (Urban* or Rural*)		
Rural	-0.78%	-0.43%
Urban	-0.29%	0.07%
Facility Location: Region*		
North	0.13%	0.86%
South	-0.78%	-0.48%
Midwest	-0.25%	0.01%
West	0.56%	0.92%
Outlying	-0.50%	-0.13%
Facility Location: Area of the Country		
New England	0.55%	1.24%
Mid Atlantic	-0.12%	0.64%
South Atlantic	-0.41%	-0.09%

Group	Comparisons	Impact of all CY 2013 Policies[1]
	Percent change due to the effects of the updated wage index	
East South Central	-1.25%	-1.10%
West South Central	-0.93%	-0.59%
East North Central	-0.30%	-0.06%
West North Central	-0.02%	0.34%
Mountain	-0.69%	-0.24%
Pacific	1.12%	1.43%
Outlying	-0.50%	-0.13%
Facility Size: (Number of First Episodes)		
< 100	-0.57%	-0.25%
100 to 249	-0.58%	-0.26%
250 to 499	-0.49%	-0.15%
500 to 999	-0.39%	-0.07%
1,000 or More	-0.11%	0.32%
Facility Size: (estimated total revenue)		
Small (estimated total revenue <= $13.5 million)	-0.38%	-0.05%
Large (estimated total revenue > $13.5 million)	-0.19%	0.64%

Note: Based on a 100 percent sample of CY 2010 claims linked to OASIS assessments.
*Urban / rural status, for the purposes of these simulations, is based on the wage index on which episode payment is based. The wage index is based on the site of service of the beneficiary.

REGION KEY:
New England=Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont; **Middle Atlantic=**Pennsylvania, New Jersey, New York; **South Atlantic=**Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia, West Virginia; **East North Central=**Illinois, Indiana, Michigan, Ohio, Wisconsin; **East South Central=**Alabama, Kentucky, Mississippi, Tennessee; **West North Central=**Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota; **West South Central**=Arkansas, Louisiana, Oklahoma, Texas; **Mountain=**Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, Wyoming; **Pacific=**Alaska, California, Hawaii, Oregon, Washington; **Outlying=**Guam, Puerto Rico, Virgin Islands

[1] Percent change due to the effects of the updated wage index, revised FDL ratio, the 1.3 percent payment update and the 1.32 percent case-mix adjustment.

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E. Alternatives Considered

In implementing the case-mix adjustment for CY 2013, along with the home health payment update and the updated wage index, the aggregate impact will be a net decrease of $10 million in payments to HHAs, resulting from a $70 million decrease due to the updated wage index, a $260 million increase due to the home health payment update, a $50 million increase due to the revised FDL ratio, and a $250 million decrease from the 1.32 percent case-mix adjustment. In the proposed rule, we considered not implementing the 1.32 percent case-mix adjustment. However, if we were to not implement the 1.32 case-mix adjustment, Medicare would pay an estimated $250 million more to HHAs in CY 2013. In the proposed rule, we stated that we believed that not implementing a case-mix adjustment, and paying out an additional $250 million to HHAs when those additional payments are not reflective of HHAs treating sicker patients, would not be in line with the HH PPS, which is to pay accurately and

appropriately for the delivery of home health services to Medicare beneficiaries.

Section 1895(b)(3)(B)(iv) of the Act gives CMS the authority to implement payment reductions for nominal case-mix growth, changes in case-mix that are unrelated to actual changes in patient health status. We are committed to monitoring the accuracy of payments to HHAs, which includes the measurement of the increase in nominal case-mix, which is an increase in case-mix that is not due to patient acuity. As discussed in section III.A. of this rule, we have determined that there is a 20.08 percent nominal case-mix change from 2000 to 2010. For CY 2013, we are finalizing a 1.32 percent payment reduction to the national standardized 60-day episode rates as promulgated in the CY 2012 HH PPS final rule (76 FR 68532).

We believe that the alternative of not implementing a case-mix adjustment to the payment system in CY 2013 to account for the increase in case-mix that is not real would be detrimental to the integrity of the PPS. As discussed in section III.A. of this rule, because nominal case-mix continues to grow as we update our analysis with more current data and thus to date we have not accounted for all the increase in nominal case-mix growth, we believe it is appropriate to reduce HH PPS rates now, thereby paying more accurately for the delivery of home health services under the Medicare home health benefit. The other reduction to HH PPS payments, a 1.0 percentage point reduction to the CY 2013 home health market basket update, is discussed in this rule and is not discretionary as it is a requirement in section 1895(b)(3)(B)(vi) of the Act (as amended by the Affordable Care Act).

F. Survey and Enforcement Requirements for Home Health Agencies

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $7.0 million to $34.5 million in any 1 year. Individuals and states are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined, and the Secretary certifies, that this regulation will not have a significant economic impact on a substantial number of small entities. In 2010, out of a total of 11,814 HHAs enrolled in the Medicare program, only 260 HHA providers had the potential to be sanctioned based on noncompliance with one or more CoPs. This was approximately 2.2 percent of the HHAs (small entities affected) which is less than 5 percent of total HHAs surveyed.

We believe the benefit will be in assuring public health and safety. We believe this final rule will have a minor impact on HHAs and SAs. This minor rule determination was made by examining the following survey data for calendar year (CY) 2010 in the CMS Providing Data Quickly (PDQ) System: Survey Activity Report, the Citation Frequency Report, the Condition-Level Deficiencies Report and the Active Provider Count Report(s).

Our data below reflects the probability of low impact for monetary sanctions. In any given year approximately 11,814 surveyed agencies have the possibility of having a mandatory unannounced survey, but only 260 are likely to be cited for condition level noncompliance.

TABLE 29: CMS Survey Data CY 2010

CMS Survey Data CY 2010	Total
Active HHAs	11,814
Standard Surveys Completed	3,960
Complaint Surveys Completed	1,446
Standard + Complaint Surveys Completed	5,406
HHAs with ≥ 1 CoP Citation	**260**

Also, by comparison, in our review of the nursing home data reports, we have found less than 0.3 percent of nursing homes have been subject to the Temporary Management Sanction in 2008, therefore we do not anticipate any major impact on home health provider costs with this sanction in the final regulation.

Because implementation of the complex and far-reaching provisions of this final rule for CMS will require an infrastructure overhaul with changes to current tracking mechanisms and a nationwide training effort to train surveyors, their supervisors and related CMS personnel, we provide for staggered effective dates of July 1, 2013 for the provisions of part 488, subparts I and J and parts 489 and 498 of the rule and July 1, 2014 for § 488.745, § 488.840 and § 488.845.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must also conform to the provisions of section 604 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 for Medicare payment regulations and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined, and the Secretary certifies, that this final regulation will

not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2012, that threshold level is approximately $139 million. This rule will have no consequential effect on state, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a final rule that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has Federalism implications. We will incur certain administrative expenses in the course of designing and managing a CMP process. One-time costs are estimated at $2 million for redesigning certain parts of the survey information system (ASPEN) and ongoing expenses for maintenance and associated modifications of the system are estimated at $75,000 per year. In addition, we will incur expenses for training federal and state surveyors, developing and publishing the necessary training and instruction documents and procedures, and tracking and reporting of CMP data. We estimate one 6 hour webinar training and trouble-shooting session per year involving approximately 302 surveyor and ancillary state and federal personnel (1812 person-hours) and 190 hours for training development and design. We also estimate 104 hours per year in trouble-shooting and responding to questions. The total combined person hours of 2106 will cost $299,052 annually. We also estimate ongoing CMS costs for managing the collection and disbursement of CMPs to require about 260 person hours per year or approximately $36,920. The grand total amounts to $2 million in onetime expenses and approximately $410,972 in annual operating costs. The provisions in this final rule related to survey protocols have already been incorporated into long standing CMS survey policy, implemented in the years after 1987 and most recently revised in 2011.

G. Accounting Statement and Table

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars_a004_a-4*), in Table 30, we have prepared an accounting statement showing the classification of the transfers associated with the provisions of this final rule. This table provides our best estimate of the decrease in Medicare payments under the HH PPS as a result of the changes presented in this final rule.

TABLE 30: Accounting Statement

Classification of Estimated Transfers, from the CY 2012 HH PPS to the CY 2013 HH PPS	
Category	**Transfers**
Annualized Monetized Transfers	-$10 million
From Whom to Whom?	Federal Government to HH providers.

H. Conclusion

In conclusion, we estimate that the net impact of the proposals finalized in this rule is approximately $10 million in CY 2013 savings. The $10 million impact to the CY 2013 HH PPS reflects the distributional effects of an updated wage index ($70 million decrease), the 1.3 percent home health payment update ($260 million increase), a new FDL ratio of 0.45 ($50 million increase), and a 1.32 percent case-mix adjustment applicable to the national standardized 60-day episode rates ($250 million decrease). This analysis, together with the remainder of this preamble, provides a Regulatory Impact Analysis.

VIII. Federalism Analysis

Executive Order 13132 on Federalism (August 4, 1999) establishes certain requirements that an agency must meet when it promulgates a 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 final 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.

List of Subjects

42 CFR Part 409

Health facilities, Medicare.

42 CFR Part 424

Emergency medical services, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 484

Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements

42 CFR Part 488

Administrative practice and procedure, Health facilities, Medicare, Record and reporting requirements.

42 CFR Part 489

Health facilities, Medicare, Reporting and recordkeeping requirements

42 CFR Part 498

Administrative practice and procedure, Health facilities, Health professions, Medicare reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 409—HOSPITAL INSURANCE BENEFITS

■ 1. The authority citation for part 409 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395(hh)).

■ 2. Section 409.44 is amended by revising paragraphs (c)(2)(i)(C)(*2*), (c)(2)(i)(D)(*2*), (c)(2)(i)(E) introductory text, and (c)(2)(i)(E)(*1*) to read as follows:

§ 409.44 Skilled services requirements.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(C) * * *

(*2*) Where more than one discipline of therapy is being provided, the qualified therapist from each discipline must provide all of the therapy services and functionally reassess the patient in

accordance with paragraph (c)(2)(i)(A) of this section during the visit associated with that discipline which is scheduled to occur after the 10th therapy visit but no later than the 13th therapy visit per the plan of care. In instances where the frequency of a particular discipline, as ordered by a physician, does not make it feasible for the reassessment to occur during the specified timeframes without providing an extra unnecessary visit or delaying a visit, then it is acceptable for the qualified therapist from that discipline to provide all of the therapy and functionally reassess the patient during the visit associated with that discipline that is scheduled to occur closest to the 14th Medicare-covered therapy visit, but no later than the 13th Medicare-covered therapy visit.

(D) * * *

(*2*) Where more than one discipline of therapy is being provided, the qualified therapist from each discipline must provide all of the therapy services and functionally reassess the patient in accordance with paragraph (c)(2)(i)(A) of this section during the visit associated with that discipline which is schedule to occur after the 16th therapy visit but no later than the 19th therapy visit per the plan of care. In instances where the frequency of a particular discipline, as ordered by a physician, does not make it feasible for the reassessment to occur during the specified timeframes without providing an extra, unnecessary visit or delaying a visit, then it is acceptable for the qualified therapist from that discipline to provide all of the therapy and functionally reassess the patient during the visit associated with that discipline that is scheduled to occur closest to the 20th Medicare-covered therapy visit, but no later than the 19th Medicare-covered therapy visit.

(E) As specified in paragraphs (c)(2)(i)(A), (B), (C), and (D) of this section, therapy visits for the therapy discipline(s) not in compliance with these policies will not be covered until the following conditions are met:

(*1*) The qualified therapist has completed the reassessment and objective measurement of the effectiveness of the therapy as it relates to the therapy goals. As long as paragraphs (c)(2)(i) (E)(*2*) and (c)(2)(i) (E)(*3*) of this section are met, therapy coverage resumes with the completed reassessment therapy visit.

* * * * *

PART 424—CONDITIONS FOR MEDICARE PAYMENT

■ 3. The authority citation for part 424 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395(hh)).

■ 4. Section 424.22 is amended by—
■ A. Revising paragraph (a)(1)(v) introductory text.
■ B. Redesignating paragraphs (a)(1)(v)(A), (B), (C), and (D) as paragraphs (a)(1)(v)(C), (D), (E), and (F), respectively.
■ C. Adding new paragraphs (a)(1)(v)(A) and (B).
■ D. Revising newly redesignated paragraphs (a)(1)(v)(C) and (F).

The revisions and additions read as follows:

§ 424.22 Requirements for home health services.

* * * * *

(a) * * *

(1) * * *

(v) The physician responsible for performing the initial certification must document that the face-to-face patient encounter, which is related to the primary reason the patient requires home health services, has occurred no more than 90 days prior to the home health start of care date or within 30 days of the start of the home health care by including the date of the encounter, and including an explanation of why the clinical findings of such encounter support that the patient is homebound and in need of either intermittent skilled nursing services or therapy services as defined in § 409.42(a) and (c) of this chapter, respectively.

(A) The face-to-face encounter must be performed by one of the following:

(*1*) The certifying physician himself or herself.

(*2*) A physician, with privileges, who cared for the patient in an acute or post-acute care facility from which the patient was directly admitted to home health.

(*3*) A nurse practitioner or a clinical nurse specialist (as those terms are defined in section 1861(aa)(5) of the Act) who is working in accordance with State law and in collaboration with the certifying physician or in collaboration with an acute or post-acute care physician with privileges who cared for the patient in the acute or post-acute care facility from which the patient was directly admitted to home health.

(*4*) A certified nurse midwife (as defined in section 1861(gg)of the Act) as authorized by State law, under the supervision of the certifying physician or under the supervision of an acute or post-acute care physician with privileges who cared for the patient in the acute or post-acute care facility from which the patient was directly admitted to home health.

(*5*) A physician assistant (as defined in section 1861(aa)(5) of the Act) under the supervision of the certifying physician or under the supervision of an acute or post-acute care physician with privileges who cared for the patient in the acute or post-acute care facility from which the patient was directly admitted to home health.

(B) The documentation of the face-to-face patient encounter must be a separate and distinct section of, or an addendum to, the certification, and must be clearly titled and dated and the certification must be signed by the certifying physician.

(C) In cases where the face-to-face encounter is performed by a physician who cared for the patient in an acute or post-acute care facility or by a nonphysician practitioner in collaboration with or under the supervision of such an acute or post-acute care physician and that nonphysician practitioner is not directly communicating to the certifying physician the clinical findings (that is, the patient's homebound status and need for intermittent skilled nursing services or therapy services as defined in § 409.42(a) and (c) of this chapter), the acute or post-acute care physician must communicate the clinical findings of that face-to-face encounter to the certifying physician. In all other cases where a nonphysician practitioner performs the face-to-face encounter, the nonphysician practitioner must communicate the clinical findings of that face-to-face patient encounter to the certifying physician.

* * * * *

(F) The physician responsible for certifying the patient for home care must document the face-to-face encounter on the certification itself, or as an addendum to the certification (as described in paragraph (a)(1)(v) of this section), that the condition for which the patient was being treated in the face-to-face patient encounter is related to the primary reason the patient requires home health services, and why the clinical findings of such encounter support that the patient is homebound and in need of either intermittent skilled nursing services or therapy services as defined in § 409.42(a) and (c) respectively. The documentation must be clearly titled and dated and the

documentation must be signed by the certifying physician.

* * * * *

PART 484—HOME HEALTH SERVICES

■ 5. The authority citation for part 484 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395(hh)).

■ 6. Section 484.250 is amended by adding paragraph (c)(3) to read as follows:

§ 484.250 Patient assessment data.

* * * * *

(c) * * *

(3) Approved HHCAHPS survey vendors must fully comply with all HHCAHPS oversight activities, including allowing CMS and its HHCAHPS program team to perform site visits at the vendors' company locations.

PART 488—SURVEY, CERTIFICATION, AND ENFORCEMENT PROCEDURES

■ 7. The authority citation for part 488 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Act (42 U.S.C. 1302 and 1395(hh)).

■ 8. Section 488.2 is amended by adding the following statutory basis in numerical order as follows:

§ 488.2 Statutory basis.

* * * * *

1861(m)—Requirements for Home Health Services

1861(o)—Requirements for Home Health Agencies

* * * * *

1891—Conditions of participation for home health agencies; home health quality.

* * * * *

■ 9. Section 488.3 is amended by revising paragraph (a)(1) to read as follows:

§ 488.3 Conditions of participation; conditions for coverage; and long-term care requirements.

(a) * * *

(1) Meet the applicable statutory definition in sections 1138(b), 1819, 1832(a)(2)(F), 1861, 1881, 1891, or 1919 of the Act.

* * * * *

■ 10. Section 488.26 is amended by revising paragraphs (c)(2) and (e) to read as follows:

§ 488.26 Determining compliance.

* * * * *

(c) * * *

(2) The survey process uses resident and patient outcomes as the primary means to establish the compliance process of facilities and agencies. Specifically, surveyors will directly observe the actual provision of care and services to residents and/or patients, and the effects of that care, to assess whether the care provided meets the needs of individual residents and/or patients.

* * * * *

(e) The State survey agency must ensure that a facility's or agency's actual provision of care and services to residents and patients and the effects of that care on such residents and patients are assessed in a systematic manner.

■ 11. The section heading for § 488.28 is revised to read as follows:

§ 488.28 Providers or suppliers, other than SNFs, NFs, and HHAs with deficiencies.

* * * * *

■ 12. Subpart I is added to read as follows:

Subpart I—Survey and Certification of Home Health Agencies

Sec.

488.700 Basis and scope.
488.705 Definitions.
488.710 Standard surveys.
488.715 Partial extended surveys.
488.720 Extended surveys.
488.725 Unannounced surveys.
488.730 Survey frequency and content.
488.735 Surveyor qualifications.
488.740 Certification of compliance or noncompliance.
488.745 Informal Dispute Resolution (IDR).

Subpart I—Survey and Certification of Home Health Agencies

§ 488.700 Basis and scope.

Section 1891 of the Act establishes requirements for surveying HHAs to determine whether they meet the Medicare conditions of participation.

§ 488.705 Definitions.

As used in this subpart—

Abbreviated standard survey means a focused survey other than a standard survey that gathers information on an HHA's compliance with fewer specific standards or conditions of participation. An abbreviated standard survey may be based on complaints received, a change of ownership or management, or other indicators of specific concern such as reapplication for Medicare billing privileges following a deactivation.

Complaint survey means a survey that is conducted to investigate specific allegations of noncompliance.

Condition-level deficiency means noncompliance as described in § 488.24 of this part.

Deficiency is a violation of the Act and regulations contained in part 484, subparts A through C of this chapter, is determined as part of a survey, and can be either standard or condition-level.

Extended survey means a survey that reviews additional conditions of participation not examined during a standard survey. It may be conducted at any time but must be conducted when substandard care is identified.

Noncompliance means any deficiency found at the condition-level or standard-level.

Partial extended survey means a survey conducted to determine if deficiencies and/or deficient practice(s) exist that were not fully examined during the standard survey. The surveyors may review any additional requirements which would assist in making a compliance finding.

Standard-level deficiency means noncompliance with one or more of the standards that make up each condition of participation for HHAs.

Standard survey means a survey conducted in which the surveyor reviews the HHA's compliance with a select number of standards and/or conditions of participation in order to determine the quality of care and services furnished by an HHA as measured by indicators related to medical, nursing, and rehabilitative care.

Substandard care means noncompliance with one or more conditions of participation identified on a standard survey, including deficiencies which could result in actual or potential harm to patients of an HHA.

Substantial compliance means compliance with all condition-level requirements, as determined by CMS or the State.

§ 488.710 Standard surveys.

(a) For each HHA, the survey agency must conduct a standard survey not later than 36 months after the date of the previous standard survey that includes, but is not limited to, all of the following (to the extent practicable):

(1) A case-mix stratified sample of individuals furnished items or services by the HHA.

(2) Visits to the homes of patients, (the purpose of the home visit is to evaluate the extent to which the quality and scope of services furnished by the HHA attained and maintained the highest practicable functional capacity of each patient as reflected in the patient's written plan of care and clinical records), but only with their consent, and, if determined necessary by CMS or the survey team, other forms

of communication with patients including telephone calls.

(3) Review of indicators that include the outcomes of quality care and services furnished by the agency as indicated by medical, nursing, and rehabilitative care.

(4) Review of compliance with a select number of regulations most related to high-quality patient care.

(b) The survey agency's failure to follow the procedures set forth in this section will not invalidate otherwise legitimate determinations that deficiencies exist at an HHA.

§ 488.715 Partial extended surveys.

A partial extended survey is conducted to determine if standard or condition-level deficiencies are present in the conditions of participation not fully examined during the standard survey and there are indications that a more comprehensive review of conditions of participation would determine if a deficient practice exists.

§ 488.720 Extended surveys.

(a) *Purpose of survey.* The purpose of an extended survey is:

(1) To review and identify the policies and procedures that caused an HHA to furnish substandard care.

(2) To determine whether the HHA is in compliance with one or more or all additional conditions of participation not examined during the standard survey.

(b) *Timing and basis for survey.* An extended survey must be conducted not later than 14 calendar days after completion of a standard survey which found that a HHA was out of compliance with a condition of participation.

§ 488.725 Unannounced surveys.

(a) *Basic rule.* All HHA surveys must be unannounced and conducted with procedures and scheduling that renders the onsite surveys as unpredictable in their timing as possible.

(b) *State survey agency's scheduling and surveying procedures.* CMS reviews each survey agency's scheduling and surveying procedures and practices to assure that the survey agency has taken all reasonable steps to avoid giving notice of a survey through the scheduling procedures and conduct of the surveys.

(c) *Civil money penalties.* Any individual who notifies an HHA, or causes an HHA to be notified, of the time or date on which a standard survey is scheduled to be conducted is subject to a Federal civil money penalty not to exceed $2,000.

§ 488.730 Survey frequency and content.

(a) *Basic period.* Each HHA must be surveyed not later than 36 months after the last day of the previous standard survey. Additionally, a survey may be conducted as frequently as necessary to—

(1) Assure the delivery of quality home health services by determining whether an HHA complies with the Act and conditions of participation; and

(2) Confirm that the HHA has corrected deficiencies that were previously cited.

(b) *Change in HHA information.* A standard survey or an abbreviated standard survey may be conducted within 2 months of a change, or knowledge of a change, in any of the following:

(1) Ownership;

(2) Administration; or,

(3) Management of the HHA.

(c) *Complaints.* A standard survey, or abbreviated standard survey—

(1) Must be conducted of an HHA within 2 months of when a significant number of complaints against the HHA are reported to CMS, the State, the State or local agency responsible for maintaining a toll-free hotline and investigative unit, or any other appropriate Federal, State, or local agency; or

(2) As otherwise required to determine compliance with the conditions of participation such as the investigation of a complaint.

§ 488.735 Surveyor qualifications.

(a) *Minimum qualifications.* Surveys must be conducted by individuals who meet minimum qualifications prescribed by CMS. In addition, before any State or Federal surveyor may serve on an HHA survey team (except as a trainee), he/she must have successfully completed the relevant CMS-sponsored Basic HHA Surveyor Training Course and any associated course prerequisites. All surveyors must follow the principles set forth in § 488.24 through § 488.28 according to CMS policies and procedures for determining compliance with the conditions of participation.

(b) *Disqualifications.* Any of the following circumstances disqualifies a surveyor from surveying a particular agency:

(1) The surveyor currently works for, or, within the past two years, has worked with the HHA to be surveyed as:

(i) A direct employee;

(ii) An employment agency staff at the agency; or

(iii) An officer, consultant, or agent for the agency to be surveyed concerning compliance with conditions of participation specified in or pursuant to sections 1861(o) or 1891(a) of the Act.

(2) The surveyor has a financial interest or an ownership interest in the HHA to be surveyed.

(3) The surveyor has a family member who has a relationship with the HHA to be surveyed.

(4) The surveyor has an immediate family member who is a patient of the HHA to be surveyed.

§ 488.740 Certification of compliance or noncompliance.

Rules to be followed for certification, documentation of findings, periodic review of compliance and approval, certification of noncompliance, and determining compliance of HHAs are set forth, respectively, in §§ 488.12, 488.18, 488.20, 488.24, and 488.26 of this part.

§ 488.745 Informal Dispute Resolution (IDR).

(a) *Opportunity to refute survey findings.* Upon the provider's receipt of an official statement of deficiencies, HHAs are afforded the option to request an informal opportunity to dispute condition-level survey findings.

(b) *Failure to conduct IDR timely.* Failure of CMS or the State, as appropriate, to complete IDR shall not delay the effective date of any enforcement action.

(c) *Revised statement of deficiencies as a result of IDR.* If any findings are revised or removed by CMS or the State based on IDR, the official statement of deficiencies is revised accordingly and any enforcement actions imposed solely as a result of those cited deficiencies are adjusted accordingly.

(d) *Notification.* When the survey findings indicate a condition-level deficiency, CMS or the State, as appropriate, must provide the agency with written notification of the opportunity for participating in an IDR process at the time the official statement of deficiencies is issued. The request for IDR must be submitted in writing to the State or CMS, must include the specific deficiencies that are disputed, and must be made within the same 10 calendar day period that the HHA has for submitting an acceptable plan of correction.

■ 13. Subpart J is added to read as follows:

Subpart J—Alternative Sanctions for Home Health Agencies With Deficiencies

Sec.

488.800 Statutory basis.
488.805 Definitions.
488.810 General provisions.
488.815 Factors to be considered in selecting sanctions.
488.820 Available sanctions.
488.825 Action when deficiencies pose immediate jeopardy.

488.830 Action when deficiencies are at the condition-level but do not pose immediate jeopardy.
488.835 Temporary management.
488.840 Suspension of payment for all new patient admissions.
488.845 Civil money penalties.
488.850 Directed plan of correction.
488.855 Directed in-service training.
488.860 Continuation of payments to an HHA with deficiencies.
488.865 Termination of provider agreement.

Subpart J—Alternative Sanctions for Home Health Agencies With Deficiencies

§ 488.800 Statutory basis.

Section 1891(e) through (f) of the Act authorizes the Secretary to take actions to remove and correct deficiencies in an HHA through an alternative sanction or termination or both. Furthermore, this section specifies that these sanctions are in addition to any others available under State or Federal law, and, except for the final determination of civil money penalties, are imposed prior to the conduct of a hearing.

§ 488.805 Definitions.

As used in this subpart—

Directed plan of correction means CMS or the temporary manager (with CMS/SA approval) may direct the HHA to take specific corrective action to achieve specific outcomes within specific timeframes.

Immediate jeopardy means a situation in which the provider's noncompliance with one or more requirements of participation has caused, or is likely to cause serious injury, harm, impairment, or death to a patient(s).

New admission means an individual who becomes a patient or is readmitted to the HHA on or after the effective date of a suspension of payment sanction.

Per instance means a single event of noncompliance identified and corrected through a survey, for which the statute authorizes CMS to impose a sanction.

Plan of correction means a plan developed by the HHA and approved by CMS that is the HHA's written response to survey findings detailing corrective actions to cited deficiencies and specifies the date by which those deficiencies will be corrected.

Repeat deficiency means a condition-level citation that is cited on the current survey and is substantially the same as or similar to, a finding of a standard-level or condition-level deficiency citation cited on the most recent previous standard survey or on any intervening survey since the most recent standard survey.

Temporary management means the temporary appointment by CMS or by a CMS authorized agent, of a substitute manager or administrator based upon qualifications described in §§ 484.4 and 484.14(c) of this chapter. The HHA's governing body must ensure that the temporary manager has authority to hire, terminate or reassign staff, obligate funds, alter procedures, and manage the HHA to correct deficiencies identified in the HHA's operation.

§ 488.810 General provisions.

(a) *Purpose of sanctions.* The purpose of sanctions is to ensure prompt compliance with program requirements in order to protect the health and safety of individuals under the care of an HHA.

(b) *Basis for imposition of sanctions.* When CMS chooses to apply one or more sanctions specified in § 488.820, the sanctions are applied on the basis of noncompliance with one or more conditions of participation found through a survey and may be based on failure to correct previous deficiency findings as evidenced by repeat deficiencies.

(c) *Number of sanctions.* CMS may apply one or more sanctions for each deficiency constituting noncompliance or for all deficiencies constituting noncompliance.

(d) *Extent of sanctions imposed.* When CMS imposes a sanction, the sanction applies to the parent HHA and its respective branch offices.

(e) *Plan of correction requirement.* Regardless of which sanction is applied, a non-compliant HHA must submit a plan of correction for approval by CMS.

(f) *Notification requirements.* (1) *Notice.* CMS provides written notification to the HHA of the intent to impose the sanction.

(2) *Date of enforcement action.* The notice periods specified in § 488.825(b) and § 488.830(b) begin the day after the HHA receives the notice.

(g) *Appeals.* (1) The provisions of part 498 of this chapter apply when the HHA requests a hearing on a determination of noncompliance leading to the imposition of a sanction, including termination of the provider agreement.

(2) A pending hearing does not delay the effective date of a sanction, including termination, against an HHA. Sanctions continue to be in effect regardless of the timing of any appeals proceedings.

§ 488.815 Factors to be considered in selecting sanctions.

CMS bases its choice of sanction or sanctions on consideration of one or more factors that include, but are not limited to, the following:

(a) The extent to which the deficiencies pose immediate jeopardy to patient health and safety.

(b) The nature, incidence, manner, degree, and duration of the deficiencies or noncompliance.

(c) The presence of repeat deficiencies, the HHA's overall compliance history and any history of repeat deficiencies at either the parent or branch location.

(d) The extent to which the deficiencies are directly related to a failure to provide quality patient care.

(e) The extent to which the HHA is part of a larger organization with performance problems.

(f) An indication of any system-wide failure to provide quality care.

§ 488.820 Available sanctions.

In addition to termination of the provider agreement, the following alternative sanctions are available:

(a) Civil money penalties.

(b) Suspension of payment for all new admissions.

(c) Temporary management of the HHA.

(d) Directed plan of correction, as set out at § 488.850.

(e) Directed in-service training, as set out at § 488.855.

§ 488.825 Action when deficiencies pose immediate jeopardy.

(a) *Immediate jeopardy.* If there is immediate jeopardy to the HHA's patient health or safety—

(1) CMS immediately terminates the HHA provider agreement in accordance with § 489.53 of this chapter.

(2) CMS terminates the HHA provider agreement no later than 23 days from the last day of the survey, if the immediate jeopardy has not been removed by the HHA.

(3) In addition to a termination, CMS may impose one or more alternative sanctions, as appropriate.

(b) *2-day notice.* Except for civil money penalties, for all sanctions specified in § 488.820 that are imposed when there is immediate jeopardy, notice must be given at least 2 calendar days before the effective date of the enforcement action.

(c) *Transfer of care.* An HHA, if its provider agreement terminated, is responsible for providing information, assistance, and arrangements necessary for the proper and safe transfer of patients to another local HHA within 30 days of termination. The State must assist the HHA in the safe and orderly transfer of care and services for the patients to another local HHA.

§ 488.830 Action when deficiencies are at the condition-level but do not pose immediate jeopardy.

(a) *Noncompliance.* If the HHA is no longer in compliance with the conditions of participation, either because the deficiency or deficiencies substantially limit the provider's capacity to furnish adequate care but do not pose immediate jeopardy, have a condition-level deficiency or deficiencies that do not pose immediate jeopardy, or because the HHA has repeat noncompliance that results in a condition-level deficiency based on the HHA's failure to correct and sustain compliance, CMS will:

(1) Terminate the HHA's provider agreement; or

(2) Impose one or more alternative sanctions set forth in § 488.820(a) through (f) of this part as an alternative to termination, for a period not to exceed 6 months.

(b) *15-day notice.* Except for civil money penalties, for all sanctions specified in § 488.820 imposed when there is no immediate jeopardy, notice must be given at least 15 calendar days before the effective date of the enforcement action. The requirements of the notice are set forth in § 488.810(f) of this part.

(c) *Not meeting criteria for continuation of payment.* If an HHA does not meet the criteria for continuation of payment under § 488.860(a) of this part, CMS will terminate the HHA's provider agreement in accordance with § 488.865 of this part.

(d) *Termination time frame when there is no immediate jeopardy.* CMS terminates an HHA within 6 months of the last day of the survey, if the HHA is not in compliance with the conditions of participation, and the terms of the plan of correction have not been met.

(e) *Transfer of care.* An HHA, if its provider agreement terminated, is responsible for providing information, assistance, and arrangements necessary for the proper and safe transfer of patients to another local HHA within 30 days of termination. The State must assist the HHA in the safe and orderly transfer of care and services for the patients to another local HHA.

§ 488.835 Temporary management.

(a) *Application.* (1) CMS may impose temporary management of an HHA if it determines that an HHA has a condition-level noncompliance and CMS determines that management limitations or the deficiencies are likely to impair the HHA's ability to correct deficiencies and return the HHA to full compliance with the conditions of participation within the timeframe required.

(2) [Reserved]

(b) *Procedures.* (1) CMS notifies the HHA that a temporary manager is being appointed.

(2) If the HHA fails to relinquish authority and control to the temporary manager, CMS terminates the HHA's provider agreement in accordance with § 488.865.

(c) *Duration and effect of sanction.* Temporary management continues until—

(1) CMS determines that the HHA has achieved substantial compliance and has the management capability to ensure continued compliance with all the conditions of participation;

(2) CMS terminates the provider agreement; or

(3) The HHA reassumes management control without CMS approval. In such case, CMS initiates termination of the provider agreement and may impose additional sanctions.

(4) Temporary management will not exceed a period of 6 months from the date of the survey identifying noncompliance.

(d) *Payment of salary.* (1) The temporary manager's salary—

(i) Is paid directly by the HHA while the temporary manager is assigned to that HHA; and

(ii) Must be at least equivalent to the sum of the following:

(A) The prevailing salary paid by providers for positions of this type in what the State considers to be the HHA's geographic area (prevailing salary based on the Geographic Guide by the Department of Labor (BLS Wage Data by Area and Occupation);

(B) Any additional costs that would have reasonably been incurred by the HHA if such person had been in an employment relationship; and

(C) Any other costs incurred by such a person in furnishing services under such an arrangement or as otherwise set by the State.

(2) An HHA's failure to pay the salary and other costs of the temporary manager described in paragraph (d)(1) of this section is considered a failure to relinquish authority and control to temporary management.

§ 488.840 Suspension of payment for all new patient admissions.

(a) *Application.* (1) CMS may suspend payment for all new admissions if an HHA is found to have condition-level deficiencies, regardless of whether those deficiencies pose immediate jeopardy.

(2) CMS will consider this sanction for any deficiency related to poor patient care outcomes, regardless of whether the deficiency poses immediate jeopardy.

(b) *Procedures.* (1) *Notices.* (i) Before suspending payments for new admissions, CMS provides the HHA notice of the suspension of payment for all new admissions as set forth in § 488.810(f). The CMS notice of suspension will include the nature of the noncompliance; the effective date of the sanction; and the right to appeal the determination leading to the sanction.

(ii) The HHA may not charge a newly admitted HHA patient who is a Medicare beneficiary for services for which Medicare payment is suspended unless the HHA can show that, before initiating care, it gave the patient or his or her representative oral and written notice of the suspension of Medicare payment in a language and manner that the beneficiary or representative can understand.

(2) *Restriction.* (i) Suspension of payment for all new admissions sanction may be imposed anytime an HHA is found to be out of substantial compliance.

(ii) Suspension of payment for patients with new admissions will remain in place until CMS determines that the HHA has achieved substantial compliance or is involuntarily terminated with the conditions of participation, as determined by CMS.

(3) *Resumption of payments.* Payments to the HHA resume prospectively on the date that CMS determines that the HHA has achieved substantial compliance with the conditions of participation.

(c) *Duration and effect of sanction.* This sanction ends when—

(1) CMS determines that the HHA is in substantial compliance with all of the conditions of participation; or

(2) When the HHA is terminated or CMS determines that the HHA is not in compliance with the conditions of participation at a maximum of 6 months from the date noncompliance was determined.

§ 488.845 Civil money penalties.

(a) *Application.* (1) CMS may impose a civil money penalty against an HHA for either the number of days the HHA is not in compliance with one or more conditions of participation or for each instance that an HHA is not in compliance, regardless of whether the HHA's deficiencies pose immediate jeopardy.

(2) CMS may impose a civil money penalty for the number of days of immediate jeopardy.

(3) A per-day and a per-instance CMP may not be imposed simultaneously for the same deficiency.

(b) *Amount of penalty.* (1) *Factors considered.* CMS takes into account the following factors in determining the amount of the penalty:

(i) The factors set out at § 488.815.

(ii) The size of an agency and its resources.

(iii) Accurate and credible resources, such as PECOS, Medicare cost reports and Medicare/Medicaid claims information that provide information on the operation and resources of the HHA.

(iv) Evidence that the HHA has a built-in, self-regulating quality assessment and performance improvement system to provide proper care, prevent poor outcomes, control patient injury, enhance quality, promote safety, and avoid risks to patients on a sustainable basis that indicates the ability to meet the conditions of participation and to ensure patient health and safety.

(2) *Adjustments to penalties.* Based on revisit survey findings, adjustments to penalties may be made after a review of the provider's attempted correction of deficiencies.

(i) CMS may increase a CMP in increments based on a HHA's inability or failure to correct deficiencies, the presence of a system-wide failure in the provision of quality care, or a determination of immediate jeopardy with actual harm versus immediate jeopardy with potential for harm.

(ii) CMS may also decrease a CMP in increments to the extent that it finds, pursuant to a revisit, that substantial and sustainable improvements have been implemented even though the HHA is not yet in full compliance with the conditions of participation.

(iii) No penalty assessment shall exceed $10,000 for each day of noncompliance.

(3) *Upper range of penalty.* Penalties in the upper range of $8,500 to $10,000 per day of noncompliance are imposed for a condition-level deficiency that is immediate jeopardy. The penalty in this range will continue until compliance can be determined based on a revisit survey.

(i) $10,000 per day for a deficiency or deficiencies that are immediate jeopardy and that result in actual harm.

(ii) $9,000 per day for a deficiency or deficiencies that are immediate jeopardy and that result in a potential for harm.

(iii) $8,500 per day for an isolated incident of noncompliance in violation of established HHA policy.

(4) *Middle range of penalty.* Penalties in the range of $1,500–$8,500 per day of noncompliance are imposed for a repeat and/or condition-level deficiency that does not constitute immediate jeopardy, but is directly related to poor quality patient care outcomes.

(5) *Lower range of penalty.* Penalties in this range of $500–$4,000 are imposed for a repeat and/or condition-level deficiency that does not constitute immediate jeopardy and that are related predominately to structure or process-oriented conditions (such as OASIS submission requirements) rather than directly related to patient care outcomes.

(6) *Per instance penalty.* Penalty imposed per instance of noncompliance may be assessed for one or more singular events of condition-level noncompliance that are identified and where the noncompliance was corrected during the onsite survey. When penalties are imposed for per instance of noncompliance, or more than one per instance of noncompliance, the penalties will be in the range of $1,000 to $10,000 per instance, not to exceed $10,000 each day of noncompliance.

(7) *Decreased penalty amounts.* If the immediate jeopardy situation is removed, but condition-level noncompliance continues, CMS will shift the penalty amount imposed per day from the upper range to the middle or lower range. An earnest effort to correct any systemic causes of deficiencies and sustain improvement must be evident.

(8) *Increased penalty amounts.* (i) In accordance with paragraph (b)(2) of this section, CMS will increase the per day penalty amount for any condition-level deficiency or deficiencies which, after imposition of a lower-level penalty amount, become sufficiently serious to pose potential harm or immediate jeopardy.

(ii) CMS increases the per day penalty amount for deficiencies that are not corrected and found again at the time of revisit survey(s) for which a lower-level penalty amount was previously imposed.

(iii) CMS may impose a more severe amount of penalties for repeated noncompliance with the same condition-level deficiency or uncorrected deficiencies from a prior survey.

(c) *Procedures.* (1) *Notice of intent.* CMS provides the HHA with written notice of the intent to impose a civil money penalty. The notice includes the amount of the CMP being imposed, the basis for such imposition and the proposed effective date of the sanction.

(2) *Appeals.* (i) *Appeals procedures.* An HHA may request a hearing on the determination of the noncompliance that is the basis for imposition of the civil money penalty. The request must meet the requirements in § 498.40 of this chapter.

(ii) *Waiver of a hearing.* An HHA may waive the right to a hearing, in writing, within 60 days from the date of the notice imposing the civil money penalty. If an HHA timely waives its right to a hearing, CMS reduces the penalty amount by 35 percent, and the amount is due within 15 days of the HHAs agreeing in writing to waive the hearing. If the HHA does not waive its right to a hearing in accordance to the procedures specified in this subsection, the civil money penalty is not reduced by 35 percent.

(d) *Accrual and duration of penalty.* (1)(i) The per day civil money penalty may start accruing as early as the beginning of the last day of the survey that determines that the HHA was out of compliance, as determined by CMS.

(ii) A civil money penalty for each per instance of noncompliance is imposed in a specific amount for that particular deficiency, with a maximum of $10,000 per day per HHA.

(2) A penalty that is imposed per day and per instance of noncompliance may not be imposed simultaneously.

(3) *Duration of per day penalty when there is immediate jeopardy.* (i) In the case of noncompliance that poses immediate jeopardy, CMS must terminate the provider agreement within 23 calendar days after the last day of the survey if the immediate jeopardy is not removed.

(ii) A penalty imposed per day of noncompliance will stop accruing on the day the provider agreement is terminated or the HHA achieves substantial compliance, whichever occurs first.

(4) *Duration of penalty when there is no immediate jeopardy.* (i) In the case of noncompliance that does not pose immediate jeopardy, the daily accrual of per day civil money penalties is imposed for the days of noncompliance prior to the notice specified in paragraph (c)(1) of this section and an additional period of no longer than 6 months following the last day of the survey.

(ii) If the HHA has not achieved compliance with the conditions of participation, CMS terminates the provider agreement. The accrual of civil money penalty stops on the day the HHA agreement is terminated or the HHA achieves substantial compliance, whichever is earlier.

(e) *Computation and notice of total penalty amount.* (1) When a civil money penalty is imposed on a per day basis and the HHA achieves compliance with the conditions of participation as determined by a revisit survey, CMS

sends a final notice to the HHA containing all of the following information:

(i) The amount of penalty assessed per day.

(ii) The total number of days of noncompliance.

(iii) The total amount due.

(iv) The due date of the penalty.

(v) The rate of interest to be assessed on any unpaid balance beginning on the due date, as provided in paragraph (f)(4) of this section.

(2) When a civil money penalty is imposed for per instance of noncompliance, CMS sends a notice to the HHA containing all of the following information:

(i) The amount of the penalty that was assessed.

(ii) The total amount due.

(iii) The due date of the penalty.

(iv) The rate of interest to be assessed on any unpaid balance beginning on the due date, as provided in paragraph (f)(6) of this section.

(3) In the case of an HHA for which the provider agreement has been involuntarily terminated and for which a civil money penalty was imposed on a per day basis, CMS sends this penalty information after one of the following actions has occurred:

(i) Final administrative decision is made.

(ii) The HHA has waived its right to a hearing in accordance with paragraph (c)(2)(ii) of this section.

(iii) Time for requesting a hearing has expired and CMS has not received a hearing request from the HHA.

(f) *Due date for payment of penalty.* A penalty is due and payable 15 days from notice of the final administrative decision.

(1) Payments are due for all civil money penalties within 15 days:

(i) After a final administrative decision when the HHA achieves substantial compliance before the final decision or the effective date of termination before final decision,

(ii) After the time to appeal has expired and the HHA does not appeal or fails to timely appeal the initial determination,

(iii) After CMS receives a written request from the HHA requesting to waive its right to appeal the determinations that led to the imposition of a sanction,

(iv) After substantial compliance is achieved, or

(v) After the effective date of termination.

(2) A request for hearing does not delay the imposition of any penalty; it only potentially delays the collection of the final penalty amount.

(3) If an HHA waives its right to a hearing according to paragraph (c)(2)(ii) of this section, CMS will apply a 35 percent reduction to the CMP amount when:

(i) The HHA achieved compliance with the conditions of participation before CMS received the written waiver of hearing; or

(ii) The effective date of termination occurs before CMS received the written waiver of hearing.

(4) The period of noncompliance may not extend beyond 6 months from the last day of the survey.

(5) The amount of the penalty, when determined, may be deducted (offset) from any sum then or later owing by CMS or State Medicaid to the HHA.

(6) Interest is assessed and accrues on the unpaid balance of a penalty, beginning on the due date. Interest is computed at the rate specified in § 405.378(d) of this chapter.

(g) *Penalties collected by CMS.* (1) *Disbursement of CMPs.* Civil money penalties and any corresponding interest collected by CMS from Medicare and Medicaid participating HHAs are disbursed in proportion to average dollars spent by Medicare and Medicaid at the national level based on MSIS and HHA PPS data for a three year fiscal period.

(i) Based on expenditures for the FY 2007–2009 period, the initial proportions to be disbursed are 63 percent returned to the U.S. Treasury and 37 percent returned to the State Medicaid agency.

(ii) Beginning one year after the effective date of this section, CMS shall annually update these proportions based on the most recent 3-year fiscal period, prior to the year in which the CMP is imposed, for which CMS determines that the relevant data are essentially complete.

(iii) The portion corresponding to the Medicare payments is returned to the U.S. Department of Treasury as miscellaneous receipts.

(iv) The portion corresponding to the Medicaid payments is returned to the State Medicaid agency.

(2) Penalties may not be used for Survey and Certification operations nor as the State's Medicaid non-Federal medical assistance or administrative match.

§ 488.850 Directed plan of correction.

(a) *Application.* CMS may impose a directed plan of correction when an HHA:

(1) Has one or more deficiencies that warrant directing the HHA to take specific actions; or

(2) Fails to submit an acceptable plan of correction.

(b) *Procedures.* (1) Before imposing this sanction, CMS provides the HHA notice of the impending sanction.

(2) CMS or the temporary manager (with CMS approval) may direct the HHA to take corrective action to achieve specific outcomes within specific timeframes.

(c) *Duration and effect of sanction.* If the HHA fails to achieve compliance with the conditions of participation within the timeframes specified in the directed plan of correction, CMS:

(1) May impose one or more other sanctions set forth in § 488.820; or

(2) Terminates the provider agreement.

§ 488.855 Directed in-service training.

(a) *Application.* CMS may require the staff of an HHA to attend in-service training program(s) if CMS determines that—

(1) The HHA has deficiencies that indicate noncompliance;

(2) Education is likely to correct the deficiencies; and

(3) The programs are conducted by established centers of health education and training or consultants with background in education and training with Medicare Home Health Providers, or as deemed acceptable by CMS and/or the State (by review of a copy of curriculum vitas and/or resumes/references to determine the educator's qualifications).

(b) *Procedures.* (1) *Action following training.* After the HHA staff has received in-service training, if the HHA has not achieved compliance, CMS may impose one or more other sanctions specified in § 488.820.

(2) *Payment.* The HHA pays for the directed in-service training for its staff.

§ 488.860 Continuation of payments to an HHA with deficiencies.

(a) *Continued payments.* CMS may continue payments to an HHA with condition-level deficiencies that do not constitute immediate jeopardy for up to 6 months from the last day of the survey if the criteria in paragraph (a)(1) of this section are met.

(1) *Criteria.* CMS may continue payments to an HHA not in compliance with the conditions of participation for the period specified in paragraph (a) of this section if all of the following criteria are met:

(i) The HHA has been imposed an alternative sanction or sanctions and termination has not been imposed.

(ii) The HHA has submitted a plan of correction approved by CMS.

(iii) The HHA agrees to repay the Federal government payments received under this provision if corrective action

is not taken in accordance with the approved plan and timetable for corrective action.

(2) CMS may terminate the HHA's provider agreement any time if the criteria in paragraph (a)(1) of this section are not met.

(b) *Cessation of payments for new admissions.* If termination is imposed, either on its own or in addition to an alternative sanction or sanctions, or if any of the criteria set forth in paragraph (a)(1) of this section are not met, the HHA will receive no Medicare payments, as applicable, for new admissions following the last day of the survey.

(c) *Failure to achieve compliance with the conditions of participation.* If the HHA does not achieve compliance with the conditions of participation by the end of the period specified in paragraph (a) of this section, CMS will terminate the provider agreement of the HHA in accordance with § 488.865.

§ 488.865 Termination of provider agreement.

(a) *Effect of termination by CMS.* Termination of the provider agreement ends—

(1) Payment to the HHA; and

(2) Any alternative sanction(s).

(b) *Basis for termination.* CMS terminates an HHA's provider agreement under any one of the following conditions—

(1) The HHA is not in compliance with the conditions of participation.

(2) The HHA fails to submit an acceptable plan of correction within the timeframe specified by CMS.

(3) The HHA fails to relinquish control to the temporary manager, if that sanction is imposed by CMS.

(4) The HHA fails to meet the eligibility criteria for continuation of payment as set forth in § 488.860(a)(1).

(c) *Notice.* CMS notifies the HHA and the public of the termination, in accordance with procedures set forth in § 489.53 of this chapter.

(d) *Procedures for termination.* CMS terminates the provider agreement in accordance with procedures set forth in § 489.53 of this chapter.

(e) *Appeal.* An HHA may appeal the termination of its provider agreement by CMS in accordance with part 498 of this chapter.

PART 489—PROVIDER AGREEMENTS AND SUPPLIER APPROVAL

■ 14. The authority citation continues to read as follows:

Authority: Secs. 1102 and 1871 of the Act (42 U.S.C. 1302 and 1395hh).

■ 15. Section 489.53 is amended by adding paragraphs (a)(17) and (d)(2)(iii) to read as follows:

§ 489.53 Termination by CMS.

(a) * * *

(17) In the case of an HHA, it failed to correct any deficiencies within the required time frame.

* * * * *

(d) * * *

(2) * * *

(iii) *Home health agencies (HHAs).* For an HHA with deficiencies that pose immediate jeopardy to the health and safety of patients, CMS gives notice to the HHA at least 2 days before the effective date of termination of the provider agreement.

* * * * *

PART 498–APPEALS PROCEDURES FOR DETERMINATIONS THAT AFFECT PARTICIPATION IN THE MEDICARE PROGRAM AND FOR DETERMINATIONS THAT AFFECT THE PARTICIPATION OF ICFS/MR AND CERTAIN NFs IN THE MEDICAID PROGRAM

■ 16. The authority citation for part 498 continues to read as follows:

Authority: Secs. 1102 and 1871 the Act (42 U.S.C. 1302 and 1395hh).

■ 17. Section 498.3 is amended by revising paragraphs (b)(13), (b)(14) introductory text, (b)(14)(i), and (d)(10) to read as follows:

§ 498.3 Scope and applicability.

* * * * *

(b) * * *

(13) Except as provided at paragraph (d)(12) of this section for SNFs, NFs, and HHAs the finding of noncompliance leading to the imposition of enforcement actions specified in § 488.406 or § 488.740 of this chapter, but not the determination as to which sanction was imposed. The scope of review on the imposition of a civil money penalty is specified in § 488.438(e) of this chapter.

(14) The level of noncompliance found by CMS in a SNF, NF, or HHA but only if a successful challenge on this issue would affect—

(i) The range of civil money penalty amounts that CMS could collect (for SNFs or NFs, the scope of review during a hearing on imposition of a civil money penalty is set forth in § 488.438(e) of this chapter); or

* * * * *

(d) * * *

(10) For a SNF, NF, or HHA—

(i) The finding that the provider's deficiencies pose immediate jeopardy to the health or safety of the residents or patients;

(ii) Except as provided in paragraph (b)(13) of this section, a determination by CMS as to the provider's level of noncompliance; and

(iii) For SNFs and NFs, the imposition of State monitoring.

* * * * *

Authority: (Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 24, 2012.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: October 25, 2012.

Kathleen Sebelius,

Secretary.

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47 CFR Part 25

Comprehensive Review of Licensing and Operating Rules for Satellite Services; Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 12–267; FCC 12–117]

Comprehensive Review of Licensing and Operating Rules for Satellite Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission initiates a comprehensive review of its rules governing licensing and operation of space stations and earth stations. The proposed amendments are designed to reflect evolving technology, eliminate unnecessary technical and information filing requirements for applicants, and reorganize and simplify existing requirements. Collectively, the changes proposed in this document will streamline our regulations, facilitating more rapid deployment of services to the public, greater investment, and new innovations in satellite services.

DATES: Comments are due on or before December 24, 2012 and reply comments are due on or before January 22, 2013

ADDRESSES: You may submit comment, identified by [docket number and/or rulemaking number], by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http:///www.fcc.gov/cgb/ecfs.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone 202–418–0530 or TTY: 202–418–0432.

For detail instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: William Bell (202) 418–0741, Satellite Division, International Bureau, Federal Communications Commission, Washington, DC 20554. For additional information concerning the information collection(s) contained in this document, contact Judith B. Herman at 202–418–0214, or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in IB Docket No. 12–267, adopted September 28, 2012 and released on September 28, 2012. The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or via email *FCC@BCPIWEB.com.*

Initial Paperwork Reduction Act of 1995 Analysis

This document contains proposed revised information collection requirements. As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Commission invites the general public and other Federal agencies to comment on the following information collection(s). Public and agency comments are due January 7, 2013. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

Summary of Notice of Proposed Rulemaking

I. Introduction

1. As part of our ongoing efforts to update and streamline regulatory requirements, the Commission today initiates a comprehensive review of Part 25 of our rules, which governs licensing and operation of space stations and earth stations. The amendments we propose in this NPRM modernize the rules to better reflect evolving technology and reorganize and simplify existing requirements. Furthermore, the changes will remove unnecessary filing requirements for applicants requesting space and earth station licenses, allowing applicants and licensees to save time, effort, and costs in preparing applications. Other changes are designed to remove unnecessary technical restrictions, enabling applicants to submit fewer waiver requests, which will ease administrative burdens in submitting and processing applications and reduce the amount of time spent on applications by applicants, licensees, and the Commission.

II. Discussion

2. Part 25 of the Commission's rules is organized in the following manner: Subpart A contains general rules relating to scope and definitions; Subpart B contains rules relating to application filing requirements and licensing procedures; Subpart C provides technical standards for licensing earth and space stations; Subpart D contains rules governing earth and space station operations. In this NPRM, we propose to make revisions in each of these subparts. In the following discussion, we first address revisions that encompass more than one rule section. We then discuss proposed changes to specific rules in the order in which the rules appear in Part 25.

A. Definitions

3. There are two rule sections in Part 25 captioned ''Definitions:'' Sections 25.103 and 25.201. We propose to consolidate all Part 25 definitions into § 25.103, reserving § 25.201 for other use.

4. We propose amending the definition of Direct Broadcast Satellite (DBS) Service to include the specific frequencies in which this service operates, to recognize that DBS operators may transmit signals intended for reception by subscribers, and to make clear that the term does not apply to space stations operating in this band in Europe and Asia, where the frequency allocations are different.

5. We proposed amending the definition of ''Permitted Space Station List'' (Permitted List) that currently appears in § 25.201 to provide more detail on the scope of authority granted when the Permitted List is authorized as a point of communication in a Fixed-Satellite Service (FSS) earth station license. The Permitted List includes all U.S.-licensed geostationary-orbit space stations providing FSS in the conventional C- and Ku-bands, as well as non-U.S.-licensed geostationary-orbit

space stations approved for U.S. market access to provide FSS in the conventional C- and Ku-bands.

6. We also propose to add a definition of ''Ka-band Space Station Permitted List,'' (Ka-band Permitted List) to provide detail on the scope of authority granted when the Ka-band Permitted List is authorized as a point of communication in an FSS earth station license. The Commission's Ka-band Permitted List includes all U.S.-licensed geostationary-orbit space stations providing FSS in the 20/30 GHz band, as well as those non-U.S.-licensed geostationary-orbit space stations approved for U.S. market access to provide FSS in the 20/30 GHz band.

7. We propose to amend the definition of ''routine processing or licensing'' to reflect that our rules allow for routine processing of earth station applications in bands other than the conventional C- and Ku-bands. The proposed definition also cross-references the rules providing for routine processing of FSS earth stations and omits out-of-date and inaccurate text.

8. If we adopt the definitions proposed above, we seek comment on whether we should discontinue using the term ''ALSAT'' as a point of communication in earth station licenses and as a synonym for routinely licensed FSS earth stations in favor of the defined terms above.

9. We propose to define ''12/14 GHz band'' and ''20/30 GHz band,'' which are not currently defined, by specifying the frequency bands to which they refer. We also propose to replace the term ''L-band,'' which appears in various rules in Part 25, with the term ''1.5/1.6 MHz MSS bands.''

10. We propose to delete the definition of ''frequency assignment'' in § 25.214(a)(2) since the meaning of the term is self-evident. We also propose to specify the frequencies allocated for the Satellite Digital Audio Radio Service (SDARS) in § 25.214(c)(1), which allows us to delete § 25.214(c).

11. We propose to delete the definitions of ''ambulatory'' and ''low-tide elevation,'' in § 25.201. These terms are not used in Part 25, other than in the definition section. We also propose to remove the existing definition of ''baseline'' from § 25.201 and instead define ''baseline'' in § 25.221, which prescribes rules for blanket licensing of C-band earth stations on vessels.

12. We propose to add a definition of ''shapeable antenna beams'' in § 25.103. We propose to use this term in § 25.114, as explained below. Further, we propose to insert a word in the definition of ''geostationary satellite'' to conform to the definition of that term in § 2.1 and to correct typographic errors in the mathematical formula in the definition of ''equivalent power flux-density.'' We also propose to revise the definition of ''coordination distance'' to conform to the definition of that term in § 2.1.

13. Finally, we propose to delete unnecessary words from several definitions, including the definitions of ancillary terrestrial component, ancillary terrestrial component base station, ancillary terrestrial component mobile terminal, earth stations on vessel, equivalent power flux density, NGSO FSS gateway earth station, selected assignment, and vehicle-mounted earth station. Eliminating these words will have no effect on current authorizations.

B. Reporting Requirements

1. Annual Reports

14. We propose to consolidate annual reporting requirements, which are currently dispersed in several sections of Part 25, into a new rule, § 25.170, under a new subheading in Subpart B, ''Reporting Requirements for Space Station Licensees.'' We also propose to make the reporting requirements more consistent among the various satellite services and to establish a uniform due date for filing such reports. The general annual reporting rule that we propose to adopt would apply to the operators of all space stations licensed under Part 25. Further, we propose to clarify in the new rule that operators granted U.S. market access for non-U.S.-licensed space stations are required to file annual reports for those space stations.

15. Proposed § 25.170 would require U.S.-licensed space station operators, or operators granted U.S. market access, to report annually on June 30: (1) The status of space station construction and anticipated launch date, including any major problems or delays encountered; (2) identification of any space station(s) not available for service or otherwise not performing to specifications, any spectrum that the space station is unable to use, the cause(s) of these difficulties, and the date any space station was taken out of service or the malfunction identified; and (3) a current listing of a U.S. point(s) of contact for resolution of interference problems and emergency response. At the same time, we propose to delete service-specific reporting requirements that are either duplicative of, or are at a level of detail inconsistent with, the reporting requirements we propose here. We seek comment on any rule language necessary to ensure that duplicative reports are not filed for the same satellite, and whether there are specialized satellite services, such as remote sensing satellites, for which reporting may not be necessary.

16. Section 4.9(c) of the Commission's rules requires operators of space stations that carry common-carrier voice or paging communications to report outages of 30 minutes or longer to the Commission within deadlines triggered by discovery. We propose to eliminate the requirement that operators also list outages of more than 30 minutes in duration in their annual reports because the requirement is redundant insofar as it applies to outages that must be reported under § 4.9(c) and because we see no need to require temporary outages not subject to § 4.9(c) to be listed in annual reports.

2. Contact Information Reporting Requirements

17. We propose to move the requirements of § 25.272(b) for providing points of contact to a new § 25.171 under the new subheading, ''Reporting Requirements for Space Station Licensees.'' We also propose to condense the text of the requirement and to require operators to update the point of contact information provided under § 25.170(c) within 10 business days of any change.

3. Space Station Control Arrangements

18. Section 25.114(c)(9) requires space station applicants to include information pertaining to TT&C arrangements in Schedule S of FCC Form 312, which includes data fields for specifying a call sign, street address, and phone number for each earth station performing TT&C functions. We propose to modify this requirement for several reasons. We think that it is unnecessary to require space station operators to specify a street address and phone number for each TT&C station. More generally, space station applicants often do not have concrete plans for TT&C sites at the time when they file their applications. Requiring a space station applicant to specify a TT&C location that is later changed requires the filing of a subsequent license modification application that is otherwise unnecessary. We therefore propose to delete the requirement to submit this information in space station applications. Instead, we propose to require such TT&C information to be submitted after the issuance of space station licenses. To this end, we propose to add new § 25.172. This rule would require space station operators, including operators of non-U.S.-licensed space stations granted U.S. market access, to submit the following information before commencing

commercial operations in the United States: (1) The point of contact information required by proposed § 25.170(c); (2) the call signs of TT&C earth station(s) located in the United States; and (3) the city and country of any earth station located outside the United States providing TT&C functions for the satellite(s) in question. We propose to require operators already providing U.S. service to submit the information within 30 days of § 25.172's effective date. The proposed rule would require operators to file this information electronically through IBFS and to file an update within 10 days if any of this information changes, unless the change is temporary.

4. Results of In-Orbit Testing

19. Section 25.210(k) requires space station operators to measure the co-polarized and cross-polarized performance of all space station antennas during preliminary in-orbit testing and submit the measurement data to the Commission within 30 days after completing the testing. We propose to amend this provision to require operators to submit the data only upon request from the Commission. We propose to remove the amended provision from § 25.210(k) and insert it in a new section, § 25.173, under the proposed subheading for reporting requirements. We also propose to add a provision in § 25.173 to require space station licensees to notify the Commission at the conclusion of in-orbit testing whether a space station's measured performance is within authorized limits and whether the space station is capable of using its assigned frequencies.

C. Mobile Terminals Aboard Aircraft

20. Several rules in Part 25 prohibit use of MSS earth station transceivers or Ancillary Terrestrial Component (ATC) mobile terminals aboard civil aircraft because on-board operation of these devices could interfere with aircraft radionavigation. Sections 25.136(a) and 25.143(k) prohibit operation of 1.6/2.4 GHz and 2 GHz MSS earth station transceivers or ATC terminals aboard civil aircraft unless the device ''has a direct physical connection to the aircraft cabin or cockpit communication system.'' Section 25.135(b) prohibits operation of Non-Voice, Non-Geostationary (NVNG) mobile transceivers aboard civil aircraft if they are capable of radiating in the 108–137 MHz frequency band. Associated rule provisions require ''handheld or portable'' NVNG transceivers capable of radiating in the 108–137 MHz band and handheld or portable 1.6/2.4 GHz and 2 GHz MSS or ATC transceivers to be labeled with a warning that these devices must not be operated on board civil aircraft. There is an identical warning label requirement in Section 25.136(h) for handheld or portable 1.5/1.6 GHz transceivers.

21. We propose to replace these various band-specific use restrictions and labeling requirements with a uniform aircraft use restriction and associated warning label requirement that would apply to all portable transceivers licensed under Part 25. We propose to insert the consolidated rule in a new section, § 25.285, in Subpart D (Technical Operation). We also propose a change in the scope of the use restriction. The provision exempting transceivers with ''a direct physical connection to the aircraft cabin or cockpit communication system'' may be too narrow. We propose to revise the exception to cover devices that have been installed in aircraft in a manner approved by the FAA or are used with the consent of the pilot. Further, we propose to make it clear that the warning label requirement does not apply to devices that are too large or too heavy to be brought aboard as carry-on luggage or otherwise cannot feasibly be operated by passengers in aircraft cabins. Finally, we propose to amend the consolidated rule to apply to transmit-only devices (*e.g.,* Globalstar ''SPOT'' terminals) as well as transceivers.

D. Milestone Rules

22. The Commission codified standard milestone implementation requirements in 2003 for space station licensees in all satellite services, except for DBS and SDARS, in § 25.164 . The rule requires space station licensees to submit, on or before the respective milestone deadlines, information demonstrating compliance with the implementation milestones for contracting for satellite construction, completing critical design review (CDR), and commencing physical construction. Section 25.164 does not include, however, a provision requiring a licensee to demonstrate compliance with the ''launch and operate'' milestone for geostationary systems or the ''launch and operate the first satellite'' or ''bring [all satellites] into operation'' milestones for non-geostationary systems. We propose to add a new paragraph in § 25.164 providing that licensees must, on or before an applicable deadline for launch or commencement of operation, either certify compliance with the milestone requirement or advise the Commission that the requirement has not been met.

23. We further propose to add a sentence in § 25.164(a)(4) to clarify that licensees can demonstrate compliance with a launch/operate milestone requirement by certifying that the space station has been launched and placed in its authorized orbital location or non-geostationary orbit and that its in-orbit operation has been tested and found to be consistent with the terms of the authorization.

24. For the CDR and commence physical construction milestones, § 25.164 simply requires space station licensees to submit ''information * * * sufficient to demonstrate'' compliance. We invite comment on whether we should provide greater specificity in the rules concerning the evidence appropriate for demonstrating compliance with the CDR and commence physical construction milestones. We propose to delete obsolete provisions in §§ 25.164(c), (d), and (e) that exempt licensees of satellite systems licensed prior to September 11, 2003 from the milestone requirements for contracting for satellite construction, completing CDR, and commencing physical construction. Similarly, we propose to delete an obsolete provision in § 25.164(g) that exempts systems licensed prior to September 20, 2004 from the milestone requirement for hybrid systems. Finally, we propose to delete service-specific milestone provisions in other sections of Part 25 that are redundant and/or inconsistent with the current or proposed provisions in § 25.164.

E. Form 312EZ and the Autogrant Procedure

25. In public notices released in 1999 and 2000, the Commission announced an ''autogrant'' procedure for ''routine'' license applications for FSS earth stations that would operate in the conventional C-band (*i.e.,* the 3700–4200 MHz downlink band and the 5925–6425 MHz uplink band) or conventional Ku-band (11.7–12.2 GHz downlink and 14.0–14.5 GHz uplink). Applications eligible for the autogrant procedure would be deemed to be granted 35 days after the date they appear on public notice as accepted for filing, provided no objection was filed during the 30-day notice period.

26. In a rulemaking order released in 2003, the Commission adopted a simplified application form, Form 312EZ, to be used for earth station applications eligible for autogrant processing. Rules pertaining to use of Form 312EZ are set forth in § 25.115(a)(2), but these provisions do not fully specify the eligibility criteria or mention the autogrant procedure. In

the interest of improving transparency, we propose to amend § 25.115(a)(2) to codify the autogrant procedure and list all eligibility criteria. We also propose to amend an existing provision in § 25.115(a)(2) that precludes use of Form 312EZ to apply for ESV or VMES licenses to additionally preclude use of that form to apply for licenses for aircraft earth stations. Further, we propose to codify a practice of permitting applicants to apply for only one transmitting antenna on Form 312EZ. Finally, we invite comment on adding a further eligibility criterion pertaining to FAA notification.

27. When it adopted Form 312EZ, the Commission did not make the form available to applicants proposing earth stations that would operate in the 20/30 GHz frequency bands because it was considering certain revisions of the 20/30 GHz FSS service rules. Those issues have been resolved, and 20/30 GHz GSO FSS earth stations are eligible for routine processing under § 25.138(a). We tentatively conclude that § 25.115 should be changed to extend Form 312EZ and autogrant eligibility to routine applications for individual 20/30 GHz earth stations that would communicate via geostationary satellites previously coordinated with Federal government systems pursuant to Footnote US334.

28. Section 25.115(a)(3) provides that if Form 312EZ ''is not available,'' an applicant for a transmitting earth station that would otherwise be required to use that form must use Form 312, Main Form and Schedule B, instead. We believe that if our proposal to fully specify the eligibility criteria for using Form 312EZ is adopted, this provision will no longer be needed, and therefore, we propose to delete it.

F. Rain Fade Compensation

29. The Commission's rules allow earth station operators to increase the power of uplink transmissions above otherwise applicable limits to overcome ''rain fade,'' *i.e.,* attenuation of transmitted signals due to the scattering effect of precipitation in the atmosphere. Most, but not all, of the rain fade compensation provisions are set forth in § 25.204. Some of these provisions are redundant or contradictory. In addition, § 25.138(a)(5) contains a more complex rain fade compensation allowance for earth stations transmitting in the 28.35–28.6 GHz or 29.25–30.0 GHz band.

30. We propose a number of revisions to these provisions. First, we propose to amend the current rain fade compensation rule in § 25.204(e) to apply only to uplink transmissions in the 14.0–14.5 GHz band. This change would be consistent with the Commission's intent when it adopted that provision and would eliminate conflict with other provisions prescribing rain fade allowances for earth stations transmitting in other frequency bands above 10 GHz. Second, we propose to move the rain fade rule for 20/30 GHz earth stations in § 25.138(a)(5) and the rain fade rule for 17/24 GHz BSS feeder-link stations in § 25.204(g) to § 25.204(e). Third, we propose to eliminate the rain fade provision for 20/30 GHz earth stations in § 25.204(g), which is redundant with respect to the rule that we propose to move from § 25.138(a)(5) and is unduly restrictive in making rain fade compensation mandatory. As a result of these proposed changes, the rain fade compensation rules now interspersed throughout Part 25 would be contained in § 25.204(e). In addition to those changes, we propose to include text in the rain fade rule for Ku-band stations in § 25.204(e)(1) to make clear that it applies to earth stations that have been routinely licensed based on conformance with input power limits specified in § § 25.134, 25.211, or 25.212.

31. Moreover, we invite comment on adopting a rule allowing earth stations transmitting in frequencies above 10 GHz, that are not subject to any of the foregoing rain fade rules, to increase uplink power to the extent needed to close communication links, provided that no harmful interference results.

G. Other Proposed Changes to Subpart B—Applications and Licenses

32. Subpart B of Part 25 includes rules relating to filing applications and licensing procedures. As discussed below, we propose to make several substantive changes to the information requirements for space and earth station applications. In addition, we propose other non-substantive changes that remove redundant or unnecessary language, and clarify potentially confusing text.

1. Section 25.111 ''Additional Information''

33. Section 25.111(b) prescribes requirements pertaining to international coordination procedures for U.S.-licensed space stations. The first sentence states that ''applicants, permittees, and licensees of radio stations governed by this part shall provide the Commission with all information it requires for the Advance Publication, Coordination, and Notification of frequency assignments pursuant to the International Radio Regulations.'' We propose to add that the required information includes ''due diligence'' information. We also propose to change the phrase ''international Radio Regulations'' to ''Radio Regulations of the International Telecommunication Union.'' We also propose to correct a grammatical error in the next sentence in § 25.111(b) and to insert the word ''such'' in the third sentence of § 25.111(b), which would then read: ''Any radio station for which such coordination has not been completed may be subject to additional terms and conditions * * *.''

34. Since 2002, the ITU has assessed cost recovery fees for processing information filings for space networks. The International Bureau issued a Public Notice in 2001 announcing that an applicant, licensee, or other party on whose behalf the International Bureau submits filings to the ITU will be responsible for timely payment of these fees. The Public Notice also stated that such parties will be required to certify that they accept this obligation. We propose to add a new rule, § 25.111(d), that would codify this policy. The rule would state that the Commission will submit the information required by §§ 25.111(b) or (c) to the ITU only after the applicant or licensee has filed a signed declaration that it unconditionally accepts all resultant ITU cost-recovery responsibility, referencing the call sign and international name of the satellite(s) in question and including contact information. The rule would also require the party in interest to update the contact information as necessary. Finally, the rule would require the party in interest to remit payment of any cost-recovery fee by the due date specified in the ITU invoice and would state that a license granted in reliance on such a declaration, and disposition of any future or pending Part 25 application from the same party, will be contingent upon discharge of any such payment obligation.

2. Section 25.112 ''Defective Applications''

35. Pursuant to the first-come, first-served licensing framework, the Commission places applications for new satellites at new orbital locations and market access requests for non-U.S.-licensed satellites at new orbital locations in a processing ''queue,'' and considers them in the order in which they are filed. In certain circumstances, we make an orbital location available by announcing that a filing window will open at a specific date and time. In these situations, operators often file multiple, identical applications just

before and after the filing window opens in an attempt to attain first-in-line processing status. The rules do not currently include any provision for dismissing duplicative applications filed after a filing window has opened. We propose to amend § 25.112(a), which specifies grounds for dismissing applications, to provide for dismissal of duplicative applications in a processing queue. Thus, we would maintain on file the first application or market access request filed by a company after the filing window opens and dismiss any duplicative applications and market access requests subsequently filed by the same party.

3. Section 25.113 ''Station Licenses and Launch Authority''

36. Section 25.113(a) states that applicants for earth station licenses must comply with the provisions of § 1.1312 of the Commission's rules regarding environmental impact, prior to beginning construction. We propose to amend this rule to add that earth station applicants must also comply with requirements in Part 17 of the Commission's rules pertaining to construction, marking, and lighting of antenna structures. We also propose to insert similar provisions in § 25.113(b) pertaining to construction of ATC base stations.

37. Sections 25.113(c) and (e) require applications for new earth stations or for earth station modifications involving alteration of the overall height of one or more existing antenna structures to include an FCC Antenna Structure Registration Number for the antenna structure, if assigned. If no such number has been assigned, § 25.113(e) requires the applicant to state whether prior FAA notification is required by Part 17 of the Commission's rules and, if so, whether the applicant or owner of the structure has notified the FAA of the proposed construction or alteration and applied for an Antenna Structure Registration Number. Applicants who maintain that prior FAA notification is not required for construction or alteration of a structure with overall height more than 6.1 meters above ground level must explain in the application why such prior notification is not required. These requirements are also found in § 25.130(e), which applies specifically to license applications for transmitting earth stations. We propose to move these rule provisions from § 25.113 to § 25.115, which contains general requirements for earth station licensing, and delete the duplicative provisions in § 25.130(e). We also propose to revise the text of these provisions to make them more succinct.

38. Section 25.113(d) states that owners of earth station antenna structures must comply with painting, marking, and lighting requirements in Part 17 of the Commission's rules and that if the structure is owned by a party other than the station licensee, the ''licensee or permittee'' will be held responsible for compliance with such requirements in the event of default by the owner. Because these are operating requirements rather than licensing rules, we propose to remove them from Section 25.113, which is in Subpart B (Applications and Licenses) and reinsert them in a new section, Section 25.286, in Part 25, Subpart D (Technical Operations). We also propose to delete the words ''or permittee'' from this provision because the Commission does not issue separate permits for earth station construction.

39. Section 25.113(f) states that construction permits are not required for U.S.-licensed space stations. This statement is overly broad in that it does not recognize that § 319(d) of the Communications Act requires construction permits for broadcasting stations. As defined in the Communications Act, ''broadcasting'' means ''dissemination of radio communications intended to be received by the public, directly or by the intermediary of relay stations.'' Service provided only to paying subscribers is not deemed to be broadcast service for purposes of the Act, however. While no space stations currently licensed by the Commission operate as broadcast stations, an applicant could seek authority to do so. In view of this, we propose to amend the first sentence in § 25.113(f) to state that construction permits are not required for U.S.-licensed space stations, unless they are authorized to disseminate radio communications to the public at large.

40. Section 25.113(h) states that licensees of non-geostationary-orbit (NGSO) satellite systems need not apply separately for authority to operate—*i.e.,* place into active service—technically identical in-orbit spare satellites previously authorized by a blanket space station license. This provision requires the licensee to notify the Commission that it has activated an in-orbit spare within 30 days of the activation. It also requires the licensee to certify that the activated spare did not increase the number of operating satellites in the licensee's system above the maximum number authorized by the license and will be operated within the terms and conditions of the license. Section 25.113(h) requires the licensee to file the notification and certification electronically on FCC Form 312. Sections 25.143(d) and 25.146(n) similarly provide that 1.6/2.4 GHz MSS, 2 GHz MSS, and 12/14 GHz NGSO FSS licensees may activate technically identical in-orbit spares without applying for additional authority, provided that they notify the Commission and certify that the authorized number of operating space stations has not been exceeded. Unlike § 25.113(h), however, §§ 25.143(d) and 25.146(n) require the licensee to file the notification and certification within 10 days and do not require the licensee to submit the filing on Form 312. To resolve these discrepancies, we propose to amend § 25.113(h) to require the notification and certification to be filed within 10 days and to eliminate the requirement to submit such filings on Form 312. We also propose to remove and reserve § 25.143(d) and to delete § 25.146(n) as redundant. We invite comment as to whether we should amend § 25.113(h) to require the licensee to certify that it has tested the activated in-orbit spare and that its operations conform with the license terms.

4. Section 25.114 ''Applications for Space Station Authorizations''

41. Section 25.114 prescribes content requirements for space station applications. We propose to amend various provisions of this section to eliminate obsolete or otherwise unnecessary requirements. We also propose to add several new requirements to § 25.114 addressing radio frequency interference characteristics and orbital parameters of space stations and revise this section's organization.

a. Section 25.114(a)

42. Section 25.114(a) states that a comprehensive proposal shall be submitted for each proposed space station on FCC Form 312, Main Form and Schedule S, together with attached exhibits required by § 25.114(d). We propose to amend § 25.114(a) to clarify that a space station application can be submitted either for a single space station or for a non-geostationary satellite constellation. In connection with this proposed change, we propose to delete § 25.114(e), which states that a single application may be filed for a constellation of technically identical non-geostationary-orbit space stations. The provision that we propose to add in § 25.114(a) would not preclude an applicant from requesting blanket authority for a constellation of non-geostationary space stations that are not technically identical.

b. Section 25.114(c)

43. Section 25.114(c) contains a list of the types of information that space station applicants must provide in the FCC Form 312 (Main Form and Schedule S). Section 25.114(c)(4) requires applicants to specify various technical parameters pertaining to the characteristics of proposed space stations and the properties of the radio frequency emissions they would transmit and receive. The first of these provisions, § 25.114(c)(4)(i), requires the applicant to specify ''[r]adio frequencies and polarization plan (including beacon, telemetry, and telecommand functions), center frequency, and polarization of transponders (both receiving and transmitting frequencies).'' The ITU now assesses interference separately for uplinks and downlinks since current satellite designs are more complex with variable transponder sizes and large numbers of spot beams. We believe that the Commission should follow this approach. We therefore propose to amend this provision to state that applicants must provide the frequency characteristics of each uplink and downlink beam. This will enable us to evaluate the interference potential of space station uplink beams and downlink beams separately, rather than on a transponder-by-transponder basis. In addition, some space stations can vary the bandwidths of receive and transmit channels with on-board processing. Instead of requiring applicants for such space stations to specify channel bandwidths, we propose to require them to specify the maximum range of frequencies over which each beam can operate. We invite comment as to whether we should amend § 25.114(c)(4)(i) to require applicants to specify the center frequencies of TT&C beams within a 5 megahertz range or a range of 2 percent of the assigned bandwidth, whichever is smaller.

44. We propose to revise § 25.114(c)(4)(ii) to add a requirement to specify the maximum equivalent isotropically radiated power (EIRP) density for each transmitting beam of a given space station. This change would allow us to delete requirements in this rule to specify a subset of technical characteristics used to calculate EIRP density, such as emission designators, allocated bandwidths of emissions, final amplifier output power, and net losses between amplifier output and antenna input. We also propose to adopt modified information requirements in § 25.114(c)(4)(ii) pertaining to shapeable antenna beams to reduce paperwork burdens for applicants proposing use of shapeable beam technology.

45. Section 25.114(c)(4)(iii) requires a space station applicant to identify ''which beams are connected or switchable to each transponder and TT&C function.'' We propose to delete this provision because it would be rendered unnecessary by the changes in § 25.114(c)(4)(i) proposed above.

46. Section 25.114(c)(4)(iv) requires applicants to specify receiver noise temperature. We propose to delete this provision because we can easily calculate receiver noise temperature from the gain-to-temperature ratio and peak gain data required by proposed § 25.114(c)(4)(v).

47. Section 25.114(c)(4)(v) requires applicants to specify ''the relationship between satellite receive antenna gain pattern and gain-to-temperature ratio and saturation flux density for each antenna beam * * *.'' We propose to amend this provision to require that applicants specify peak antenna gain and gain-to-temperature ratio at beam peak. This revised requirement is sufficient to allow us to determine the interference susceptibility of such beams. For TT&C beams, we propose to require applicants to specify the minimum required uplink power flux density, which would enable us to assess the interference susceptibility of beams used TT&C. We also propose to add a requirement to specify the minimum and maximum saturation flux density levels of receiving beams fed into transponders, which would similarly be useful in assessing interference susceptibility.

48. Section 25.114(c)(4)(vi) requires applicants to specify the gain of transponder channels. This information is no longer necessary in performing an assessment of interference potential. We also propose removing § 25.114(c)(4)(vii), which requires applicants to specify predicted receiver and transmitter channel filter response characteristics. These parameters are not required to perform interference calculations.

49. Section 25.114(c)(5) requires applicants to specify orbital locations and station-keeping tolerances for geostationary space stations. Section 25.114(c)(5)(i) allows an applicant to propose alternate orbital locations. This reflects a former ''orbital location fungibility'' policy that the Commission eliminated when it reformed space station licensing procedures in 2003. Hence, we propose to delete the phrase ''or locations if alternatives are proposed'' from this provision. Section 25.114(c)(5)(ii) requires an applicant to list ''the factors that support the orbital location assignment or assignments,'' *i.e.,* to state reasons for assigning the proposed orbital location(s) to the applicant. The need for such information was also eliminated by the 2003 reform. We therefore propose to delete this requirement. In addition, we propose minor changes in §§ 25.114(c)(5)(iii) and 25.114(c)(5)(iv) to delete redundant phrases.

50. Section 25.114(c)(6) requires applicants to specify orbital parameters for non-geostationary satellites. One such parameter currently collected in Schedule S but not listed in § 25.114(c)(6), is the initial phase angle of a non-geostationary satellite in its orbital plane at a reference time. This information is needed for properly modeling non-geostationary satellite constellations. We propose to add a provision to § 25.114(c)(6) to require applicants to specify this parameter. We also propose to delete the unnecessary phrase ''applicable information relating to'' from § 25.114(c)(6)(i).

51. Section 25.114(c)(7) requires applicants for geostationary space stations to specify ''the accuracy with which the orbital inclination, the antenna axis attitude, and longitudinal drift will be maintained.'' We propose to move the requirement to specify antenna axis attitude accuracy to § 25.114(c)(5) because that parameter is related to the station-keeping accuracy parameters listed in that Section. We propose to delete the requirements to specify orbital inclination accuracy and longitudinal drift accuracy, which are redundant, as the same information is required by provisions in § 25.114(c)(5). These changes would result in removing all of the current text from § 25.114(c)(7). We propose to replace this text with an amended version of the current provisions in § 25.114(d)(4). We also propose to codify the requirement to include a general specification of the frequency bands on the proposed satellite(s), which is currently collected in Schedule S, in the revised § 25.114(c)(7).

52. Section 25.114(c)(8) requires applicants to specify power flux density levels within each proposed coverage area and energy dispersal necessary to comply with limits in § 25.208. For clarification, we propose to amend this provision by changing ''[c]alculation of'' to ''[c]alculated,'' ''power flux density levels'' to ''maximum power flux density levels,'' and ''energy dispersal'' to ''energy dispersal bandwidths.''

53. Section 25.114(c)(10) requires the applicant to specify spacecraft weight and dimensions, on-ground and in-orbit mass, power budgets at beginning and end of life, estimated space station

operational lifetime, reliability of the space station, and the basis for the reliability estimate. We propose to retain the requirement to specify estimated operational lifetime. We propose to delete the other requirements because they are either collected elsewhere or are unnecessary.

54. Section 25.114(c)(11) requires an applicant to indicate whether the proposed space station will be operated on a common carrier or non-common carrier basis. If the applicant proposes to operate on a non-common carrier basis, the rule requires a general description of the non-common-carrier transactions and specification of ''the number of transponders to be offered on a non-common-carrier basis.'' We propose to delete the requirement to describe transactions and specify the number of transponders to be used for non-common-carrier services, as there is no need for routine review of such information.

55. Section 25.114(c)(12) requires an applicant to estimate the dates when satellite construction will commence, when such construction will be completed, when the satellite(s) will be launched, and when they will be placed in service. The Commission's milestone rules and associated reporting requirements reduce the need for such time estimates in license applications. We therefore propose to delete § 25.114(c)(12).

56. Section 25.114(c)(13) requires applicants to provide ''[t]he polarization information specified in §§ 25.210(a)(1), (a)(3), and (i), to the extent applicable.'' For clarity, we propose to amend § 25.114(c)(13) to require applicants to specify in Schedule S the polarization information necessary for determining compliance with § 25.210.

c. Section 25.114(d)

57. Section 25.114(d) lists the types of information space station applicants must provide in a narrative attachment. We propose changes to many of these rules.

58. Section 25.114(d)(1) requires the applicant to provide a ''[g]eneral description of the overall system facilities, operations, and services.'' We propose to amend this provision to include a simplified requirement that the applicant explain how space station receiving beams would be connected to transmitting beams.

59. Section 25.114(d)(2) requires space station applicants to specify any feeder link and/or inter-satellite service frequencies requested for the satellite, ''together with any demonstration otherwise required by this chapter for use of those frequencies (*e.g.,* §§ 25.203(j) and (k)).'' The requirement to specify feeder link and inter-satellite service frequencies is redundant, as § 25.114(c)(4)(i) requires applicants to enter the same information in Schedule S. The cross-reference to § 25.203(j) is also redundant, since the same information is required by §§ 25.114(c)(4)(i) and 25.114(d)(3). Further, the cross-reference to § 25.203(k) is inappropriate because that provision does not prescribe a content requirement for space station applications. We therefore propose to delete § 25.114(d)(2).

60. Section 25.114(d)(3) requires space station applicants to provide predicted antenna gain contour(s) for each satellite transmit and receive beam and requested orbital location. The rule requires applicants to attach gain contour diagrams for geostationary space stations in .gxt files, which can be opened with the GIMS software program. Consequently, applicants for space stations with many transmit and/or receive beams must attach a large number of .gxt files to their applications. Allowing applicants to attach the contour diagrams in a GIMS container file, instead, would significantly reduce paperwork burdens on applicants and Commission staff, because all of the diagrams could be included in one data file. We therefore propose to amend this provision to require applicants to submit antenna gain pattern contour diagrams for geostationary orbit satellites in a GIMS-readable format. Because applicants submit such gain contour diagrams as attachments to Schedule S, we further propose to move this requirement to § 25.114(c)(4)(vi).

61. In the interest of promoting administrative efficiency and reducing paperwork burdens for applicants, we propose to adopt a provision that would allow applicants for space stations with a large number of identical spot beams, other than DBS space stations, to provide antenna gain contour diagrams for one transmit and one receive antenna beam. Rather than supplying redundant information for the remaining beams the applicant must supply one of the following: (1) A map showing the locations of all of the spot beams, (2) a table giving the geographic locations in latitude and longitude to within 0.1 degree of the antenna beam boresights, or (3) a map of the isolines formed by combining some or all of the spot beams into one composite beam. We propose to insert this provision into § 25.114(d)(3).

62. Section 25.114(d)(4) requires space station applicants to describe the types of services to be provided, the areas to be served, the transmission characteristics and performance objectives for each type of proposed service, details of the link noise budget, typical or baseline earth station parameters, modulation parameters, and overall link performance analysis. We propose to retain the requirement to describe the services to be provided and the areas to be served and delete the other requirements listed above, which are either redundant or require the applicant to submit information not needed for interference assessment. Schedule S collects information about the services to be provided and the service areas, so we propose to move the requirement to provide such information to § 25.114(c)(7).

63. We propose to delete the first sentence of Section 25.114(d)(5). The substance of this sentence is repeated in the next sentence of that provision. We also propose to clarify this provision by changing ''power flux density'' to ''maximum power flux density.''

64. Section 25.114(d)(7) states that certain applicants must include information required by § 25.140(b)(1), which, in turn, refers back to § 25.114. We propose to delete this circuitous cross-reference from § 25.114(d)(7).

65. Section 25.114(d)(10) states that applications for 1.6/2.4 GHz Mobile-Satellite Service space stations must include ''all information specified in § 25.143.'' We propose to amend this provision to specifically cross-reference § 25.143(b), which is the only paragraph in § 25.143 that prescribes application content requirements.

66. We propose to delete redundant text from § 25.114(d)(11), which requires applicants to state whether the space station is to operate on a common carrier or non-common carrier basis. This information is already required by § 25.114(c)(11).

67. Section 25.114(d)(13) contains special information requirements for DBS space station applicants. We propose minor changes in this section to clarify that the cross-references to Appendices 4, 30, and 30A refer to appendices to the ITU Radio Regulations.

68. Section 25.114(d)(14) requires applicants seeking authority to construct, launch, or operate a space station—or seeking access to the U.S. market for a non-U.S.-licensed space station—to disclose plans to mitigate the creation and effects of orbital debris that may result from the proposed activities. We seek comment on amending § 25.114(d)(14) to reflect policies that the Commission has previously adopted regarding orbital debris mitigation disclosure that are not currently

codified in Part 25. As a specific example, we seek comment on amending § 25.114(d)(14)(iv) to add that applicants for space stations to be used only for commercial remote-sensing may, in lieu of submitting detailed post-mission disposal plans to the Commission, certify that they have submitted such plans to the National Oceanic and Atmospheric Administration for review. We also seek comment on whether information currently provided as part of a narrative statement required by § 25.114(d) could instead be provided by applicants as a certification or data entry as part of Schedule S, pursuant to § 25.114(c).

5. Section 25.115 ''Applications for Earth Station Authorizations''

69. Section 25.115(d) states that non-voice non-geostationary (NVNG), 1.6/2.4 GHz, and 2 GHz MSS user transceivers may be blanket-licensed, rather than individually licensed. The Commission issues blanket licenses for MSS transceiver operations in all of the allocated MSS frequency bands. We therefore propose to amend § 25.115(d) to remove the references to specific frequency bands. Section 25.115(d) also includes a statement that an application for a blanket license for MSS user transceivers shall include ''the information described in § 25.136.'' We propose to modify this text to require an applicant for a blanket license for 1.5/1.6 GHz MSS mobile earth stations to explain how it would comply with the priority and preemptive access requirements, currently set forth in §§ 25.136(d) and (e).

70. Section 25.115(e) applies to applications for earth stations operating in the 20/30 GHz band. The first sentence in § 25.115(e) states that license applications for individual earth stations operating in the 20/30 GHz band shall be filed on Form 312, Main Form and Schedule B, and shall include ''the information described in § 25.138.'' The Commission's band plan for these frequencies permits use by FSS satellites in both geostationary orbits (GSO) and non-geostationary orbits (NGSO). The provisions in § 25.138, however, apply, by their terms, only to applications for earth stations that communicate via GSO space stations. We propose to amend § 25.115(e) to indicate that the requirement to provide the information required by § 25.138 applies only to applications for earth stations that would communicate via GSO satellites. We also propose to delete the first sentence of § 25.115(e), which states that applications for 20/30 GHz earth stations shall be filed on Form 312, Main Form, and Schedule B. This provision is redundant with §§ 25.115(a)(1), 25.130(a), and 25.131(a), which, together, require all earth station applications to be filed on those forms.

6. Section 25.118 ''Modifications Not Requiring Prior Authorization''

71. Section 25.118(a)(2) states that an earth station licensee may add or change transmitters or antenna facilities or replace such equipment that is not electrically identical, without prior authority, where the new facilities do not require frequency coordination or exceed existing technical constraints. The rule, as currently drafted, by its terms, is effectively limited to FSS earth stations operations. We seek comment on whether we should modify the rule to include generic text applicable to both FSS and MSS.

72. Section 25.118(e) provides that a licensee may move a geostationary space station to a different orbital location assigned to that licensee without prior authority under certain circumstances, after giving 30-days prior notice to the Commission and potentially affected parties. One of the prerequisites is that the space station licensee must certify that it has coordinated operation at the new location with potentially affected space station operators. We propose to amend this provision to make clear that such coordination must include coordination of orbital station-keeping ranges.

73. Section 25.118(e)(8) provides that before relocating a DBS space station without prior authority, the licensee must certify that it ''will not cause more interference at the new location than … would occur from the current U.S. assignments in the [ITU] Region 2 BSS Plan and its associated Feeder Link Plan.'' We propose to revise this provision to allow DBS operators who will operate within the parameters of a pending Region 2 BSS Plan modification to relocate their space stations pursuant to § 25.118(e).

74. In comments filed in another proceeding, Globalstar Licensee LLC advocated amending § 25.118(e) to allow a licensee of a constellation of NGSO space stations to re-position individual space stations without prior Commission authority, provided that the number of authorized operating space stations is not exceeded and the licensee certifies that the change(s) will not increase interference. We invite public comment on Globalstar's proposal, and on what information should be included in the prior notice.

7. Section 25.121 ''License Term and Renewals''

75. We propose to amend § 25.121(d)(1) to provide that the license term for a geostationary space station will begin on the date when the licensee certifies that the space station's tested performance is consistent with the station authorization and that the space station has been placed in its assigned orbital location and is capable of using the assigned frequencies, pursuant to proposed § 25.173(b). We likewise propose to amend § 25.121(d)(2) to provide that the license term for NGSO space stations will begin on the date when the licensee certifies pursuant to § 25.173(b) that the tested performance of an initial space station is consistent with the authorization and that the space station has been placed in its assigned orbit and is capable of using the assigned frequencies.

76. Section 25.121(d)(2) includes a statement that ''all [non-geostationary] space stations brought into service during the 15-year license term shall operate pursuant to the system authorization and the operating authority for all space stations will terminate upon the expiration of the system license.'' We believe that it is redundant to state that NGSO space stations brought into service during the license term shall operate pursuant to the system authorization, as this is already stated in the system license. We therefore propose to revise this provision to simply state that operating authority for all space stations brought into service under the system license will terminate when the system license expires.

8. Section 25.129 ''Equipment Authorization for Portable Earth-Station Transceivers''

77. Section 25.129(c) prescribes content requirements for applications for certification of portable earth station transceivers pursuant to Part 2, Subpart J. We propose to amend this provision by adding a cross-reference to the labeling requirement in proposed new § 25.285(b).

9. Section 25.130 ''Filing Requirements for Transmitting Earth Stations''

78. The International Bureau has allowed applicants to apply for a single earth station license with multiple antennas in certain circumstances. In frequency bands shared with terrestrial services on a co-primary basis, an applicant may request a single license for multiple antennas if the proposed antennas would be located within one

geographic second of each other. In frequency bands allocated only to satellite services on a primary basis, an applicant may request a single license for multiple antennas if the proposed antennas are all within 10 geographic seconds of each other. We propose to codify this policy in a new provision, § 25.130(g). The new rule would state that an applicant may request a single earth station license to cover multiple antennas at fixed locations transmitting in frequency bands shared on a co-primary basis with terrestrial services if the antennas will all be sited within an area bounded by one second of latitude and longitude. The new rule would also permit applicants to request a single license to cover multiple antennas transmitting in unshared bands if the proposed antennas will all be sited within an area bounded by 10 seconds of latitude and longitude. We invite comment on the type of information applicants should be required to provide to facilitate administration of this policy. In addition, as explained previously, we also propose to amend § 25.130 by deleting redundant provisions from § 25.130(e).

10. Section 25.131 ''Filing Requirements for Receive-Only Earth Stations''

79. Section 25.131(b) states that ''except as provided in paragraph (j) of this section,'' receive-only earth stations in the Fixed-Satellite Service that operate with U.S.-licensed satellites may be registered with the Commission in order to receive protection from interference from terrestrial microwave stations in co-primary frequency bands. We propose to amend § 25.131(b) to clarify that a receive-only FSS earth station that receives signals from a non-U.S.-licensed space station in a band shared co-equally with terrestrial microwave stations (*i.e.,* the C-band) may be registered as well, if the non-U.S.-licensed space station is on the Permitted List.

80. We also propose to amend § 25.131(b) by inserting a cross-reference to § 25.209(e), which provides that earth stations with antennas not conforming to the standards specified in §§ 25.209(a) and (b) are entitled to no more protection from interference than earth stations conforming to those standards.

81. Section 25.131(j)(2) states that receive-only earth stations need not be licensed to receive transmissions from non-U.S.-licensed space stations on the Permitted List, provided that certain requirements are satisfied. One of the requirements is that the earth station's antenna meets the performance standards in §§ 25.209(a) and (b). We propose to delete that requirement. Receive-only stations cannot cause interference, whether or not their antennas meet the standards in §§ 25.209(a) and (b). Furthermore, the operator of any earth station not conforming to those standards can claim no more protection from interference than it could claim if the station's antenna met the standards.

11. Section 25.132 ''Verification of Earth Station Antenna Performance Standards''

82. Section 25.132(a)(1) states that all license applications for transmitting earth stations, except for earth stations operating in the 20/30 GHz band, must include a certificate from the antenna manufacturer(s) that the manufacturer has ascertained through testing that the performance of the antenna(s) conforms to the standards in Section 25.209 of the Commission's rules. We propose to clarify that this provision is limited in scope to applications for FSS earth stations. Further, we propose to amend § 25.132(a)(1) to allow applicants to certify, in the alternative, that the tested antenna performance is consistent with either off-axis EIRP density standards in Part 25, or with coordinated off-axis EIRP density specifications. We also propose to amend this provision to afford greater flexibility by allowing an applicant to certify it has reviewed the radiation pattern testing performed by the manufacturer, instead of submitting a certificate of compliance from the manufacturer.

83. Section 25.132(a)(2) states that applications for transmitting earth stations operating in the 20/30 GHz band must include the measurements in §§ 25.138(d) and (e). The provisions in § 25.138 apply only to 20/30 GHz earth stations that communicate via geostationary space stations. However, NGSO FSS networks may also operate in portions of the 20/30 GHz band. We propose to amend § 25.132(a)(2) to clarify that only applications for 20/30 GHz earth stations communicating via geostationary space stations need to comply with §§ 25.138(d) and (e).

84. Section 25.132(d) prescribes on-site measurement requirements for earth station antennas over three meters in diameter. We propose to amend this provision to clarify that it does not apply to large antennas for 20/30 GHz GSO FSS earth stations, which are subject to somewhat different on-site measurement requirements in § 25.138(d).

85. Section 25.132(b)(3) requires applicants proposing to operate with antennas that do not conform to the standards in §§ 25.209(a) and (b) to submit gain test plots from the antenna manufacturer, if the applicant is requesting a license based on coordination or off-axis EIRP density under §§ 25.220, 25.221, 25.222, 25.223, or 25.226. We propose to amend this provision to clarify that applicants seeking authority to operate non-conforming antennas pursuant to § 25.218 must submit antenna gain plots as well.

12. Section 25.133 ''Period of Construction; Certification of Commencement of Operation''

86. Section 25.133(a)(1) states that each earth station license, except licenses for mobile earth stations, will include a condition specifying a time period within which the station must be constructed and placed into operation. Section 25.133(a)(2) states that each license for mobile earth stations will include a condition specifying a time within which station operation must commence and further states that the network in which the mobile stations will operate must be brought into operation within 12 months of the license grant. We propose to revise the exception in § 25.133(a)(1) to cover all blanket earth station licenses and likewise propose to amend § 25.133(a)(2) to apply to all blanket earth station licenses.

87. We also propose to change ''license'' to ''initial license'' in §§ 25.133(a)(1) and (2) to indicate that such conditions will not be re-imposed when earth station licenses are renewed. Similarly, we propose to change ''each license'' to ''each initial license'' in § 25.133(b)(1). Section 25.133(b)(1) states that each license for an individual transmitting earth station shall require the licensee, upon completing station construction, to certify that construction has been completed and that each antenna has been tested and its performance found to be within 2 dB of ''the pattern specified in § 25.209, § 25.135 * * *, or § 25.213 * * *.'' As there is no antenna pattern specification in § 25.135 or § 25.213, however, we propose to amend this provision to require the licensee to certify that it has found the performance of the antenna(s) in question to be within 2 dB of the applicable pattern in § 25.209 or the pattern authorized by the earth station license.

13. Section 25.134 ''Licensing provisions for Very Small Aperture Terminal (VSAT) and C-Band Small Aperture Terminals (CSAT) Networks''

88. Section 25.134(a)(1) prescribes routine processing standards for

applications for analog VSAT networks and applications for digital VSAT networks granted on or before September 15, 2005. The provision pertaining to pre-2005 applications is obsolete, and the provisions pertaining to analog and digital networks duplicate provisions in § 25.134(g). We therefore propose to delete § 25.134(a)(1).

89. Section 25.134(b) provides that license applicants for ''digital and/or analog'' VSAT networks proposing to operate with higher downlink EIRP density or antenna input power than the values ''specified in Paragraph (a) of this Section'' must comply with certain procedures. The provisions in § 25.134(a) specifying downlink EIRP density and antenna input power levels for VSAT networks would be deleted by the change proposed above and have been superseded by similar provisions in § 25.134(g), which apply by their terms to all VSAT applications filed after March 10, 2005. We therefore propose to amend § 25.134(b) to refer to § 25.134(g) rather than § 25.134(a). We also propose to delete the phrase ''digital and/or analog,'' which is an unnecessary distinction since all VSAT networks are either digital or analog.

90. Section 25.134(e) states that a VSAT network may have more than one hub earth station. We propose to amend this provision to add, for clarification, that the hubs in a multi-hub VSAT network may be sited in different places.

91. We propose to replace ''VSAT operators in the 11.7–12.2 GHz and 14.0–14.5 GHz frequency bands'' in § 25.134(f) with ''12/14 GHz VSAT operators'' and delete unnecessary words from this provision.

92. Section 25.134(g) states that beginning on March 10, 2005, all license applications for 12/14 GHz VSAT networks that meet specified limits on the EIRP spectral density of satellite downlinks and earth station antenna input will be routinely processed. Compliance with the limit on input power density will not, however, ensure that VSAT terminals with an equivalent antenna diameter less than 1.2 meters or gain patterns not in conformance with the standards in §§ 25.209(a) and (b) will suppress off-axis radiation sufficiently to prevent harmful interference. We therefore propose to amend § 25.134(g) to add that in order to qualify for routine processing, a 12/14 GHz VSAT application must specify equivalent antenna diameter of 1.2 meters or more and certify conformance with those antenna performance standards pursuant to § 25.132(a)(1). We also propose to delete the obsolete effective date in the first sentence of § 25.134(g) and delete another obsolete date in § 25.134(g)(4).

93. Section 25.134(h) prohibits VSAT operators from using remote earth stations that are not designed to stop transmission ''when synchronization with the target satellite fails.'' However, the remote earth stations in a VSAT network do not synchronize with a target satellite directly, but rather synchronize with certain signals from, or retransmitted by, the target satellite. In order to more precisely characterize the interaction between remote VSAT earth stations and their target satellite, we therefore propose to amend § 25.134(h) to prohibit VSAT operators from using remote earth stations that are not designed to stop transmission when synchronization to signals from the target satellite fails.

14. Sections 25.135 ''Licensing Provisions for Earth Station Networks in the Non-Voice, Non-Geostationary Mobile-Satellite Service'' and 25.136 ''Licensing Provisions for User transceivers in the 1.6/2.4 GHz, and 2 GHz Mobile Satellite Services''

94. Sections 25.135 and 25.136 contain operational requirements for MSS user transceivers. In the interest of improving the organizational coherence of Part 25, we propose to move the provisions in the second sentence of § 25.135(c), § 25.135(d), and §§ 25.136(b), (c), (d), and (e) to a new rule section, § 25.287, in Subpart C (Technical Standards). We also propose to amend some of those provisions to make them more concise.

95. Section 25.136(f) states that an L-band (*i.e.,* 1.5/1.6 GHz) MSS licensee may construct ATC base stations at any time after commencing construction of its MSS system. Section 25.143(i) contains an identical rule for 1.6/2.4 GHz and 2 GHz MSS licensees. We propose to replace these band-specific rules with a generally applicable rule, which we propose to insert in § 25.113(b).

96. Section 25.136(g) prescribes rules pertaining to ''build-out'' and pre-operational testing of any type of ATC facility. Section 25.143(j) contains identical rules specifically for 1.6/2.4 GHz and 2 GHz ATC facilities. We propose to delete the duplicative rules in § 25.143(j) and move the provisions in § 25.136(g) to a separate subparagraph of § 25.113(b). We also propose to revise the text of these provisions to make them more succinct.

15. Section 25.138 ''Blanket Licensing Provisions of GSO FSS Earth Stations in the 18.3–18.8 GHz Space-to-Earth, 19.7–20.2 GHz (Space-to-Earth), 28.35–28.6 GHz (Earth-to-Space), and 29.25–30.0 GHz (Earth-to-Space) Bands''

97. Section 25.138 contains a routine processing standard and content requirements for license applications for earth stations that communicate with geostationary FSS space stations in the 18.3–18.8 GHz, 19.7–20.2 GHz, 28.35–28.6 GHz, and 29.25–30.0 GHz frequency bands. We propose to amend the caption and first sentence in § 25.138(a) to reflect that the processing standards and content requirements of this section apply to applications for both individual stations and blanket licenses.

98. Section 25.138(b) requires an earth station applicant proposing to operate with off-axis radiated power density or power flux density (PFD) levels in excess of those specified in § 25.138(a) to provide a link budget analysis and explain how the applicant derived each uplink and downlink power density figure and whether operation with the proposed higher levels would cause ''margin shortfalls in any existing baseline service.'' In addition, § 25.138(b) requires the applicant to certify that the operators of potentially affected space stations within 6 degrees of the proposed target satellite do not object to the proposed use of higher off-axis power density. We propose to clarify and simplify these requirements by substituting a requirement that an applicant demonstrate that the higher proposed power is necessary to close the communications link and give the applicant an option between: (i) Providing an interference analysis showing its proposed operations are compatible with satellite networks using space stations in the vicinity of the proposed target satellite or (ii) providing evidence that it has coordinated the proposed higher-power operation with the operators of such potentially affected satellite networks. If an applicant demonstrates through technical analysis that other satellite networks will not suffer harmful interference, there would be no need for coordination with operators of such other systems, and vice versa.

99. The last sentence in § 25.138(b) requires applicants proposing earth stations that are not eligible for routine processing to certify that ''all potentially affected parties (*i.e.,* those GSO FSS satellite networks that are 2, 4, and 6 degrees apart) acknowledge and do not object to the use of the applicant's higher power densities.'' For

clarification, we propose to amend this provision to state that such applicants must certify that operators of co-frequency GSO FSS space stations within 6 degrees of the proposed point of communication have no objection.

100. Section 25.138(d) requires applicants to provide measured radiation patterns for each proposed earth station antenna type. We propose to replace the undefined term ''the 30 GHz band'' in the first sentence of this provision with ''each requested uplink band.'' Further, we recognize that it may not be feasible for applicants to provide such measurement data for large antennas that must be assembled on site. We therefore propose to insert text in § 25.138(d) similar to that in § 25.132(d), stating that the radiation patterns of antennas more than 3 meters in diameter that will be assembled on site may be measured once assembled on site, rather than prior to filing the application. In such cases, the licensee must provide certification of satisfactory performance when providing its completion of construction certification.

101. Section 25.138(e) indicates the extent to which 20/30 GHz GSO FSS earth station licensees are entitled to protection from interference from downlink operation of adjacent satellites. It also requires applicants to provide ''[receive] antenna performance plots for the 20 GHz band, including the format specified in paragraph (d) of this section.'' For clarification, we propose to replace the term ''20 GHz band'' with ''18.3–18.8 GHz and 19.7–20.2 GHz bands'' and to change ''including the format specified in paragraph (d)'' to ''in the format contained in paragraph (d).''

102. The first sentence in § 25.138(f) prohibits 20/30 GHz earth station licensees from transmitting to a GSO FSS satellite without prior permission from the satellite operator or a reseller authorized by the satellite operator. The next sentence requires such transmissions to conform to the operating protocols specified by the satellite operator. We propose to delete these provisions, which are subsumed by the general rule in § 25.273(a) that ''[n]o person shall [t]ransmit to a satellite unless the specific transmission is first authorized by the satellite network control center.''

103. Section 25.138(g) states that an applicant for renewal of an earth station license granted pursuant to § 25.138 must specify the number of constructed stations in FCC Form 405. This form is no longer in use. We propose to amend this provision to refer to Form 312R, which is currently used for requesting renewal of earth station licenses.

16. Section 25.140 ''Requirements for License Applications for Space Stations in the Fixed-Satellite Service and 17/24 GHz Broadcasting-Satellite Service''

104. Section 25.140(b) prescribes content requirements for license applications for FSS and 17/24 GHz BSS space stations. Section 25.140(b) states that an applicant for an FSS space station license must ''demonstrate * * * that it is legally, technically, and otherwise qualified to proceed expeditiously with the construction, launch and/or operation of each proposed space station facility'' and provide additional information specified in subparagraphs of this rule. This could be construed to mean that space station applications must include a further ''qualification'' showing of an unspecified nature in addition to the information specifically required by §§ 25.114 and 25.140. For clarification, we propose to remove the language that suggests such a further qualification showing is required. We also propose to move the provision in § 25.140(b)(1), which states that applications subject to § 25.140(b) must include the information specified in § 25.114, into the first paragraph of § 25.140(b) and reserve § 25.140(b)(1) for other use. We also propose to amend the first sentence of § 25.140(b) to clarify that the subsection applies to both FSS and 17/24 GHz BSS space station applicants.

105. Section 25.140(b)(2) requires FSS space station applicants to provide an interference analysis, cross-referencing appendices to a 1983 Commission order. We propose to cite the order's FCC number and add a reference to more recent public notices that provide relevant guidance. We seek comment as to whether the requirement in § 25.140(b)(2) should be made more specific, either by incorporating text from the public notices or in some other way.

17. Section 25.144 ''Licensing Provisions for the 2.3 GHz Satellite Digital Audio Radio Service''

106. Section 25.144(a)(3)(iii) requires an applicant for a license for a 2.3 GHz SDARS system to specify the compression rates that it will use to transmit audio programming and any ancillary services. Because compression rates for SDARS audio transmissions vary dynamically depending on program content and overall bandwidth allocation needs, we propose to delete this rule.

18. Section 25.145 ''Licensing Provisions for the Fixed-Satellite Service in the 20/30 GHz Bands''

107. Section 25.145 contains licensing rules for FSS space stations operating in the 20/30 GHz frequency bands. Section 25.145(a) states that ''[e]xcept as provided in § 25.210(b), in general all rules contained in this part''—that is, all of the rules in Part 25—apply to FSS in the 20/30 GHz bands. The statement is overbroad, as many rules in Part 25 do not apply to the 20/30 GHz band. We therefore propose to delete § 25.145(a).

19. Section 25.154 ''Opposition to Applications and Other Pleadings''

108. Section 25.154 prescribes procedural requirements for petitions to deny and related pleadings. Section 25.154(a) states that a petition to deny a Part 25 application must be filed within 30 days after the application is placed on public notice. Section 25.154(c) states that oppositions to petitions to deny must be filed within 10 days after the petition to deny is filed. Section 25.154(d) provides that replies to such oppositions must be filed within five days after the opposition is filed. By their terms, however, §§ 25.154(c) and (d) do not apply in cases where a petition to deny has been filed against an earth station application filed pursuant to § 25.220. In such cases, § 25.154(e) requires the applicant to file a statement within 30 days after the petition to deny is filed, stating whether all of the issues raised by the petitioner have been resolved. Section 25.154(e) does not, however, contain any provision for filing an opposition in response to a petition to deny an application filed pursuant to § 25.220. We propose to amend § 25.154(e) to state that an opposition to a petition to deny an application filed pursuant to § 25.220 may be filed within the 30-day period allowed for filing the statement regarding resolution of issues. We also propose to eliminate the exception from § 25.154(d) for applications filed pursuant to § 25.220. This will allow replies to oppositions to petitions to deny to be filed within five days of the opposition in all cases involving Part 25 applications. This would allow a more complete record for considering contested § 25.220 applications.

20. Section 25.161 ''Automatic Termination of Station Authorization''

109. Section 25.161 specifies the circumstances under which station licenses granted under Part 25 automatically terminate. We propose to amend § 25.161(b) to indicate that operational authority for a space station

will not terminate at the end of its license term if a modification application for extension is pending.

H. Other Proposed Changes in Subpart C—''Technical Standards''

110. Subpart C of Part 25 includes rules relating to governing technical standards of earth and space stations. We propose to make several substantive changes to the technical requirements.

1. Section 25.202 ''Frequencies, Frequency Tolerance and Emission Limitations''

111. The first sentence in Section 25.202(c) states that orbital locations assigned to space stations licensed under Part 25 are subject to change by summary order of the Commission on 30 days notice. This rule is based on the premise that orbital locations are fungible. The 2003 Space Station Licensing Reform Order eliminated that assumption. More recently, the Commission has noted that each orbital location has unique characteristics and that determining whether there are feasible alternatives to an orbital location may involve substituting the Commission's judgment for that of a satellite operator. Consequently, if the Commission has reason to change an orbital assignment, we would need to follow the license modification process. We therefore propose to eliminate the first sentence in § 25.202(c).

112. The second sentence in Section 25.202(c) states that an authorization to construct and/or launch a space station becomes null and void if the space station operator does not meet specified milestones. This provision is duplicative of § 25.161(a)(1). Consequently, we propose to eliminate the second sentence of § 25.202(c).

113. The last sentence of Section 25.202(c) states that frequencies and orbital assignments are subject to the policies set forth in Commission Orders adopted in 1983, 1985, and 1996. All of these policies have been incorporated elsewhere into the Part 25 rules or have been superseded. Consequently, we propose to eliminate this sentence. Adopting all of these changes would eliminate all of the text in § 25.202(c), which would be reserved for other use.

114. Section 25.202(g) requires TT&C signals for ''U.S. domestic satellites'' to be transmitted at either or both edges of the ''allocated'' frequency bands. We propose to replace the obsolete term ''U.S. domestic satellites'' with ''U.S.-licensed satellites'' and replace ''allocated'' with ''assigned.'' We also invite comment as to whether we should amend this provision to allow satellite operators to transmit TT&C signals in portions of the assigned bands other than the edges, provided that such transmissions would cause no more interference and require no greater protection than transmission of ordinary communications traffic.

2. Section 25.204 ''Power Limits''

115. Section 25.204 is simply captioned ''Power limits,'' although all of the limits that it contains pertain only to earth station operation. We propose to amend the caption to read ''Power limits for earth stations.''

3. Section 25.205 ''Minimum Angle of Antenna Elevation''

116. Section 25.205(a) states that earth stations will not normally be authorized to transmit at elevation angles less than 5 degrees above the horizontal plane but that the Commission may authorize operation at an elevation angle as low as 3 degrees in a seaward direction or upon a showing of good cause. The purpose of this minimum angle requirement is to prevent earth stations from causing harmful interference. We note, however, that the ITU Radio Regulations contain a 3-degree minimum elevation angle for earth station antennas, except as otherwise agreed in international coordination. We invite comment on revising Section 25.205(a) to similarly provide for routine authorization of earth stations operating at elevation angles down to 3 degrees in frequency bands not shared with terrestrial radio systems.

4. Section 25.206 ''Station Identification''

117. Section 25.206 states that stations licensed under Part 25 need not transmit station identification, except for stations that are required to incorporate an Automatic Transmitter Identification System by provisions in § 25.308. We propose to correct this erroneous cross-reference by cross-referencing the correct section, § 25.281.

5. Section 25.208 ''Power Flux Density Limits''

118. Section 25.208(w) requires space-to-Earth transmissions in the 17.3–17.7 GHz band to meet specified regional PFD limits at the Earth's surface ''for all conditions, including clear sky.'' PFD at the Earth's surface, however, may be locally affected by weather conditions that are not uniform throughout a satellite beam's coverage area. We therefore propose to add a note to § 25.208(w) that states that the prescribed limits pertain to the PFD that would be obtained under assumed free-space propagation conditions. We also propose to delete the phrase ''including clear sky'' as unnecessary.

6. Section 25.209 ''Earth Station Antenna Performance Standards''

119. Section 25.209(d) states that the antenna performance standards in §§ 25.209(a) and (b) apply to earth station antennas initially authorized after February 15, 1985 and ''shall apply'' to all earth station antennas after March 11, 1994. We propose to delete this provision as obsolete. We will also correct the antenna gain envelope in § 25.209(h)(1) to:

$29–25\log_{10}(\theta)$ dBi for $1° \leq \theta \leq 36°$
-10 dBi for $36° < \theta \leq 180°$

7. Section 25.210 ''Technical Requirements for Space Stations''

120. Section 25.210(a) states that FSS space stations operating in the 4/6 GHz bands must: (1) Use orthogonal linear polarization, such that one polarization sense is parallel to the equatorial plane; (2) use opposite polarization senses on uplink and downlink transmissions on the same transponder; and (3) be capable of switching polarization senses upon ground command. The Commission adopted these provisions to minimize interference between adjacent space stations providing analog video services and to be able to reassign space stations to other orbital locations. We seek comment on whether these rules are still necessary.

121. Section 25.210(b) requires FSS space stations operating in the 20/30 GHz bands to use orthogonal circular polarization or orthogonal linear polarization with one polarization plane defined by the equatorial plane, to put opposite polarity on uplink and downlink transmissions on the same transponder, and to be able to switch polarization sense on ground command. These requirements were intended to promote efficient re-use of spectrum by requiring 20/30 GHz FSS transmissions to be on opposite, mutually non-interfering, polarizations. This objective is sufficiently served by the less restrictive full frequency re-use requirement in § 25.210(f), which requires 20/30 GHz space stations to employ ''state-of-the-art full frequency re-use'' through use of orthogonal polarization and/or spatially independent beams. We therefore propose to delete § 25.210(b).

122. Section 25.210(c) states that FSS space stations must be capable of changing transponder saturation flux densities by ground command in 4 dB steps over a range of 12 dB. This capability can be used to equalize the uplink power levels of signals transmitted from earth stations to

adjacent transponders on the same space station, and to facilitate coordination with neighboring space stations. Since we adopted the rule, operators have developed other means of facilitating coordination. Consequently, we do not believe that it continues to be necessary to impose specific design requirements as a means of effectuating coordination. We therefore propose to delete the current text in § 25.210(c).

123. Section 25.210(i) prescribes cross-polarization isolation requirements for FSS space stations and 17/24 GHz BSS space stations. We intend to retain the cross-polarization isolation requirement for 17/24 GHz BSS space stations, which could facilitate coordination with co-located space stations. We invite comment as to whether the cross-polarization isolation requirement for FSS space stations should be relaxed and, if so, to what extent. Alternatively, we invite comment as to whether we should eliminate the minimum isolation requirement for FSS space stations and add a provision to § 25.273(d) stating that operators of FSS space stations with less than 30 dB of receive-beam cross-polarization isolation are entitled to no more interference protection for space station receiving links than if such isolation were 30 dB.

8. Section 25.211 ''Analog Video Transmissions in the Fixed-Satellite Service''

124. Section 25.211 is captioned ''Analog video transmission in the Fixed-Satellite Services.'' Section 25.211(d) states that an earth station may be routinely licensed for ''full transponder'' analog video transmission in the 5925–6425 MHz band if the equivalent diameter of its antenna is 4.5 meters or more and input power to the antenna does not exceed 26.5 dBW. Section 25.211(d) also states that an earth station may be routinely licensed for ''full transponder'' analog video transmission in the 14.0–14.5 GHz band if the equivalent diameter of its antenna is 1.2 meters or more and the input power does not exceed 27 dBW. We see no reason to limit routine processing under § 25.211(d) to full transponder transmissions and propose to delete this term. We also propose to amend § 25.211(d) to add that applicants must certify antenna performance pursuant to § 25.132(a)(1) to be eligible for routine licensing under § 25.211(d).

125. Section 25.211(e) provides that earth stations transmitting analog video signals in the 5925–6425 MHz band with antennas smaller than 4.5 meters in diameter or in the 14.0–14.5 GHz band with antennas smaller than 1.2 meters in diameter ''are subject to the provisions of § 25.220.'' Similarly, § 25.211(f) states that applicants for ''authorization for analog [earth-station] transmissions * * * proposing to use maximum power into the antenna in excess of [the levels] specified in § 25.211(d)'' must comply with the requirements in Section 25.220 for licensing non-conforming earth stations based on coordination. We propose to combine the provisions in §§ 25.211(e) and (f) in a single sub-paragraph (e). We also propose to change ''analog transmission'' in § 25.211(f) to ''analog video transmission,'' in keeping with the section caption and to avoid conflict with provisions in § 25.212 pertaining to analog transmission.

9. Section 25.212 ''Narrowband Analog Transmissions and All Digital Transmissions in the GSO Fixed-Satellite Service''

126. Section 25.212(c) contains routine licensing standards for earth stations transmitting narrowband analog signals or digital signals in the 14.0–14.5 GHz band. The first sentence in § 25.212(c) provides for routine licensing of earth stations transmitting analog signals in bandwidths up to 200 kilohertz. We propose to amend this provision to allow routine licensing of stations transmitting analog signals of up to 1 megahertz in bandwidth. This would reduce the need for additional technical demonstrations in these cases, reducing paperwork burdens for applicants and corresponding administrative burdens for the Commission's staff. We also propose to amend § 25.212(c) to cross-reference the verification requirement in § 25.132(a)(1) and exclude Earth Stations on Vessels (ESV) and Vehicle-Mounted Earth Stations (VMES), which are subject to special licensing rules contained in other sections, and earth stations installed in aircraft, for which special rules are under consideration.

127. Section 25.212(d)(1) prescribes a routine licensing standard for 5925–6425 MHz earth stations ''licensed before March 10, 2005.'' We propose to delete this obsolete provision.

128. Section 25.212(d)(2) prescribes routine licensing standards for earth stations that transmit ''SCPC'' (*i.e.,* single channel per carrier) signals in the 5925–6425 MHz band with antennas with equivalent diameters of 4.5 meters or more. We propose to delete the phrase, ''[f]or earth stations licensed after March 10, 2005,'' from its first sentence. We also propose to insert a cross-reference to the verification requirement in § 25.132(a)(1) and exclude ESVs, for the reason stated above. Further, we propose to modify the rule to cover all digital carriers and all analog carriers with bandwidths up to 1 megahertz.

129. Last, we propose to amend Section 25.212(e) to clarify the procedure for licensing earth stations with C-band antennas smaller than 4.5 meters in diameter or Ku-band antennas smaller than 1.2 meters in diameter. These changes will consolidate certain provisions in §§ 25.212(c) and (d)(3) into § 25.212(e).

10. Section 25.215 ''Technical Requirements for Space Stations in the Direct Broadcast Satellite Service''

130. Section 25.215 contains a 30 dB cross-polarization isolation requirement for DBS space station antennas. The International Bureau has routinely granted partial waivers of this requirement, however, to allow DBS space stations to operate with cross-polarization isolation of 27 dB. This has not resulted in harmful interference. We believe that 27 dB of cross-polarization isolation affords adequate cross-polarization interference protection for DBS service links using current digital modulation and error-correction coding techniques. We therefore propose to relax the cross-polarization isolation requirement for DBS space station antennas (both service-link and feeder-link) to 27 dB and invite comment as to whether some other minimum cross-polarization isolation level should be prescribed instead. We also propose to move the provision from § 25.215 to § 25.210(c). This change would eliminate all content from § 25.215, which we propose to reserve.

11. Section 25.217 ''Default Service Rules''

131. Section 25.217 contains ''default'' technical rules for stations licensed to operate in frequency bands for which the Commission has not yet adopted frequency-specific service rules. Paragraphs (b)(1) and (c)(1) of this section require space stations operating in such bands under licenses granted pursuant to the procedure contained in § 25.157 or § 25.158 to conform to the technical requirements in certain specified rule provisions, including §§ 25.210(c) and (l). As a consequence of changes proposed above, we propose to delete the cross-references to §§ 25.210(c) and 25.210(l).

132. Section 25.217(b)(3) provides that earth station licensees with authority to communicate via NGSO-like space stations operating pursuant to the default rules in § 25.217(b)(1) must comply with the requirements in

§ 25.136. In accordance with changes proposed above, we propose to amend this provision to cross-reference §§ 25.285 and 25.287, instead. We also propose to amend this provision to clarify that it applies specifically to licensees of mobile earth stations.

12. Section 25.218 ''Off-Axis EIRP Envelopes for FSS Earth Station Operations''

133. Section 25.218 provides for routine licensing of earth stations that meet specified limits on radiated power spectral density in directions other than along the transmitting antenna's main-lobe axis. As recently amended, § 25.218(a) applies to ''all applications for FSS earth stations operating in the C-band, Ku-band, or extended Ku-band, except for: (1) ESV and VMES applications, (2) analog video earth station applications, and (3) [a]pplications for feeder-link earth stations in the 17/24 GHz BSS.'' It is unnecessary to explicitly exclude 17/24 GHz BSS feeder-link earth stations, which do not transmit in the C-band, Ku-band, or extended Ku-band. We therefore propose to delete § 25.218(a)(3). We also propose to amend § 25.218(a) to add that it applies only to applications for earth stations that transmit to geostationary space stations, since earth stations communicating with satellites in non-geostationary orbits are not eligible for routine processing.

13. Section 25.223 ''Off-Axis EIRP Spectral Density Limits for Feeder-Link Earth Stations in the 17/24 GHz BSS''

134. Section 25.223 contains rules for licensing earth stations that transmit to 17/24 GHz BSS space stations based either on compliance with limits on off-axis radiated spectral density or coordination with operators of co-frequency geostationary space stations in the vicinity of the proposed satellite points of communication. When adopting this rule, the Commission indicated that it would apply to applications for earth stations that do not conform to the antenna performance standards in § 25.209 and/or specify input power density levels in excess of that specified in § 25.212(f). The first sentence in § 25.223, however, says the opposite. We propose to amend § 25.223(a) to correct this error.

135. Section 25.223 is captioned ''Off-axis EIRP spectral density limits for feeder-link earth stations in the 17/24 GHz BSS.'' This caption is inaccurate, as the specified spectral density levels are not mandatory limits; rather, they comprise an alternative standard for routine licensing for applications that do not qualify for routine licensing under § 25.212(f). Furthermore, § 25.223 does not only prescribe a licensing standard based on off-axis EIRP spectral density levels; it also prescribes alternative rules for licensing based on coordination. We propose to amend the caption to read ''Alternative licensing rules for feeder-link earth stations in the 17/24 GHz BSS,'' which better reflects the scope of the rule.

136. The Commission modeled § 25.223(c) on § 25.138(b). We propose to change § 25.223(c) to be consistent with the proposed revisions to § 25.138(b).

14. Sections 25.259 ''Time Sharing Between NOAA Meteorological Satellite Systems and Non-Voice, Non-Geostationary Satellite Systems in the 137–138 MHz Band'' and 25.260 ''Time Sharing Between DoD Meteorological Satellite Systems and Non-Voice, Non-Geostationary Satellite Systems in the 400.15–401 MHz Band''

137. Sections 25.259 and 25.260 contain time-sharing rules for commercial NVNG satellite systems operating in frequency bands shared with meteorological satellite systems operated by Federal agencies. Each of these rules includes a statement that ''the Commission will not hesitate to impose sanctions * * * including monetary forfeitures and license revocations, when appropriate'' on licensees that violate these rules. We propose to delete these statements. It is not necessary to restate here that the Commission may impose sanctions for rule violations. We do not propose any change in enforcement policy in this regard, however.

III. Other Proposed Changes in Subpart D—Technical Operations

138. Subpart D of Part 25 includes rules governing technical operations of earth and space stations. As discussed below, we propose to make several substantive changes to the technical operations requirements to reflect evolving technology.

1. Section 25.271 ''Control of Transmitting Stations''

139. Commission staff has discovered during emergency and interference events that contact information for earth station licensees is often out of date. We seek comment on whether we should adopt a provision in § 25.271 to require earth station licensees to maintain up-to-date point-of-contact information, beyond the postal point-of-contact information required by § 1.5.

2. Section 25.276 ''Points of Communication''

140. Section 25.276(a) states that unless otherwise indicated in the station authorization, an earth station may transmit to any space station in the same radio service, provided the space station operator has permitted such access. We propose to amend this provision to state explicitly that the space station must be authorized as a point of communication in the earth station license. This proposed change would conform the rule to standard limitations on the face of earth station authorizations and is consistent with § 301 of the Communications Act.

141. We propose to delete § 25.276(b), which states that space stations licensed under Part 25 are authorized to provide service to earth stations located within the specified service area, including certain coastal waters. This rule is a vestige of the Commission's former Domsat/Separate Systems policies and is no longer needed.

3. Sections 25.281 ''Automatic Transmitter Identification System (ATIS)''

142. Section 25.281 requires all satellite uplink transmissions carrying broadband video information to include a subcarrier signal that identifies the call sign of the transmitting earth station and includes contact information. This signal is called the Automatic Transmitter Identification System signal, or ATIS signal. Transmission of ATIS signals is intended to facilitate rapid resolution of interference problems.

143. Some digital broadband video uplink signals are technically incompatible with the subcarrier signal required by § 25.281(d). When the Commission adopted Section 25.281, more than twenty years ago, operators transmitted broadband video signals with analog modulation techniques. Today, broadband video signals are often transmitted as encoded and compressed digital data streams using more spectrum-efficient digital radio frequency signal modulation techniques. The technical characteristics of the ATIS signal currently specified in § 25.281 are not well suited to use with broadband video digital modulation techniques, and could result in inefficient use of spectrum. We therefore propose to revise § 25.281 to prescribe appropriate methods of ATIS message transmission for stations transmitting broadband video with digital techniques.

144. We believe it is important, however, to limit the number of

different techniques that operators can use to transmit ATIS information in digitally modulated uplink signals to avoid unduly burdening satellite network operators that might receive interference from broadband video uplinks with a need to purchase, operate, and maintain a variety of different types of ATIS signal receivers. We therefore seek comment on whether our rules should specify a particular method or methods for transmitting ATIS information on digitally modulated broadband video uplink signals, and if so, which method(s) we should specify. One method used to include ATIS information in digitally modulated uplinks is to insert the ATIS information into the Network Information Table of an MPEG transport stream. Another method is to transmit digital broadband video uplink signals with an accompanying low-data-rate spread-spectrum signal carrying the ATIS information. We tentatively propose to allow use of either of these techniques. We seek comment on whether a grace period after the effective date of the rules would be needed to allow operators time to conform to any new ATIS requirements for digitally modulated uplinks and, if so, the length of time needed.

145. We also invite comment on content requirements for ATIS signals. Is the information currently required by § 25.281(d)(3) adequate, or should we require more (or less) information in ATIS signals included in digitally-modulated uplinks? For example, should we require the geographic location of the earth station to be included in the ATIS data transmitted on digitally-modulated uplinks? Should we require a specific format for the ATIS message, or would it be sufficient to require the ATIS message to be transmitted in an unencrypted text format that can be easily decoded and displayed?

146. We also seek comment as to whether ATIS identification should be required for all types of satellite uplinks, and, if not, which type(s) should be excepted. The method we are proposing for transmitting ATIS data on digitally-modulated uplinks with a spread spectrum signal could be applied to any continuous digitally-modulated uplink transmission with a symbol rate of at least 128,000 symbols per second. We seek comment on whether there are other methods of identification that could be applied to other types of transmissions.

147. Feeder-link signals for DBS and 17/24 GHz BSS systems are usually transmitted using very large earth station antennas, nine meters or more in diameter. These large antennas are almost always installed, pointed, and calibrated by skilled technical personnel performing multiple quality-control checks. Once set up, their operating parameters change infrequently. They are thus unlikely to be a source of interference to other satellite communication systems. We therefore invite comment on revising § 25.281 to exclude DBS and 17/24 GHz BSS feeder-link transmissions from the ATIS requirement.

J. Additional Technical Changes

148. We seek comment on whether there are technical rules or technical practices developed by other countries that might further the Commission's policy objectives and might be incorporated in Part 25. Commenters advocating adopting a rule or practice used by another country should provide specific text for any proposed rule, together with a supporting technical analysis.

IV. Regulatory Impact Conclusion

149. We tentatively conclude that the benefits of the changes proposed in this NPRM would outweigh any resultant costs and that the changes would reduce net costs, on average, for applicants and licensees. We invite comment on these conclusions.

V. Procedural Matters

A. Ex Parte

150. The proceeding this NPRM initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with 47 CFR 1.1206(b). In proceedings governed by 47 CFR 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

B. Initial Regulatory Flexibility Act

151. As required by the Regulatory Flexibility Act of 1980, as amended, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) for this NPRM, of the possible significant economic impact on small entities of the policies and rules addressed in this document. The IRFA is set forth as Appendix B. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided on or before the dates indicated on the first page of this NPRM. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for rulemaking proceedings unless the agency certifies that ''the rule will not have a significant economic impact on a substantial number of small entities.'' The RFA generally defines the term ''small entity'' as referring to any ''small business,'' ''small organization,'' or ''small governmental jurisdiction.'' The term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' ''Small governmental jurisdiction'' generally means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.

C. Initial Paperwork Reduction

152. This document contains proposed new and modified information collection requirements. It also proposes to eliminate a number of existing information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collection requirements contained in this document, as required by PRA. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, we seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

D. Filing of Comments and Reply Comments

153. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. When filing comments or reply comments, please reference IB Docket No. 12–267. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

• *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.

• *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC 20554.

People With Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice) or 202–418–0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.) by email at: *FCC504@fcc.gov;* phone: 202–418–0530 or TTY: 202–418–0432.

VI. Ordering Clauses

154. Accordingly, *it is ordered,* pursuant to sections 4(i), 7(a), 11, 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 161, 303(c), 303(f), 303(g), 303(r), that this NPRM in IB Docket No. 12–267 is *adopted.*

155. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center shall send a copy of this NPRM, including the initial regulatory flexibility act analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* (1981).

List of Subjects in 47 CFR Part 25

Communications common carriers, Communications equipment, Radio, Reporting and recordkeeping requirements, Satellites, Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 25 as follows:

PART 25—SATELLITE COMMUNICATIONS

1. The authority citation for part 25 is revised to read as follows:

Authority: Interprets or applies sections 4, 301, 302, 303, 307, 309, 319, 332, and 705 of the Communications Act, as amended, 47 U.S.C. 154, 301, 302, 303, 307, 309, 319, 332, and 705 unless otherwise noted.

2. Revise § 25.103 to read as follows:

§ 25.103 Definitions.

Terms with definitions including the ''(RR)'' designation are defined in the same way in § 2.1 of this chapter and in the Radio Regulations of the International Telecommunication Union.

1.5/1.6 GHz Mobile-Satellite Service. Mobile-Satellite Service provided in any portions of the 1525–1559 MHz space-to-Earth band and the 1626.5–1660.5 MHz Earth-to-space band, which are referred to in this rule part as the ''1.5/1.6 GHz MSS bands.''

1.6/2.4 GHz Mobile-Satellite Service. A Mobile-Satellite Service that operates in the 1610–1626.5 MHz and 2483.5–2500 MHz bands, or in any portion thereof.

2 GHz Mobile-Satellite Service. A Mobile-Satellite Service that operates in the 2000–2020 MHz and 2180–2200 MHz bands, or in any portion thereof.

12/14 GHz bands. The 11.7–12.2 GHz Fixed-Satellite Service space-to-Earth band and the 14.0–14.5 GHz Fixed-Satellite Service Earth-to-space band.

17/24 GHz Broadcasting-Satellite Service. A radio-communication service using geostationary satellites between one or more feeder-link earth stations and other earth stations, in the 17.3–17.7 GHz (space-to-Earth) (domestic allocation), 17.3–17.8 GHz (international allocation) and 24.75–25.25 GHz bands. This service is also known as ''17/24 GHz BSS.'' For purposes of the application processing provisions of this part, the 17/24 GHz BSS is a GSO-like service. For purposes of the technical requirements of this part, we will treat the 17/24 GHz BSS as if it were FSS. Unless specifically stated otherwise, the 17/24 GHz BSS systems are subject to the rules in this part applicable to FSS.

20/30 GHz Bands. The 18.3–20.2 GHz frequency range, which is allocated for Fixed-Satellite Service (FSS) space-to-Earth transmission, and the 28.35–30.0 GHz frequency range, which is allocated for FSS Earth-to-space transmission.

Ancillary Terrestrial Component (ATC). A terrestrial communications network used in conjunction with a qualifying satellite network system authorized pursuant to these rules and the conditions established in the Orders issued in IB Docket No. 01–185, *Flexibility for Delivery of Communications by Mobile-Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Band.*

Ancillary Terrestrial Component (ATC) base station. A terrestrial fixed facility used to transmit communications to or receive communications from one or more ancillary terrestrial component mobile terminals.

Ancillary Terrestrial Component (ATC) Mobile Terminal. A terrestrial mobile facility used to transmit communications to or receive communications from an ancillary terrestrial component base station or a space station.

C-band. For purposes of this part, the terms ''C-band'' and ''conventional C-band'' refer specifically to the 3700–4200 MHz space-to-Earth and 5925–6425 MHz Earth-to-space bands. These paired bands are allocated to the Fixed-Satellite Service and are also referred to as the 4/6 GHz bands.

Coordination Distance. When determining the need for coordination, the distance on a given azimuth from an earth station sharing the same frequency band with terrestrial stations, or from a transmitting earth station sharing the same bi-directionally allocated frequency band with receiving earth stations, beyond which the level of permissible interference will not be exceeded and coordination is therefore not required. (RR)

Direct Broadcast Satellite Service. A radio-communication service in which signals transmitted or retransmitted by Broadcasting-Satellite Service space stations in the 12.2–12.7 GHz band are intended for direct reception by subscribers or the general public. For the purposes of this definition, the term direct reception includes individual reception and community reception.

Earth station. A station located either on the Earth's surface or within the major portion of the Earth's atmosphere intended for communication:

(1) With one or more space stations; or

(2) With one or more stations of the same kind by means of one or more reflecting satellites or other objects in space. (RR)

Earth Station on Vessel (ESV). An earth station onboard a craft designed for traveling on water receiving from and transmitting to Fixed-Satellite Service space stations.

Emergency Call Center. A facility that subscribers of satellite commercial mobile radio services call when in need of emergency assistance by dialing ''911'' on their mobile earth station terminals.

Equivalent Power Flux-Density (EPFD). The sum of the power flux-densities produced at a geostationary orbit (GSO) receive earth or space station on the Earth's surface or in the geostationary orbit, as appropriate, by all the transmit stations within a non-geostationary orbit Fixed-Satellite Service (NGSO FSS) system, taking into account the off-axis discrimination of a reference receiving antenna assumed to be pointing in its nominal direction. The equivalent power flux density, in dB(W/m²) in the reference bandwidth, is calculated using the following formula:

$$EPFD = 10\log_{10}\left[\sum_{i=1}^{N_a} 10^{\frac{P_i}{10}} \frac{G_t(\theta_i)}{4\pi d_i^2} \frac{G_r(\varphi_i)}{G_{r,\max}}\right]$$

Where:

N_a is the number of transmit stations in the non-geostationary orbit system that are visible from the GSO receive station considered on the Earth's surface or in the geostationary orbit, as appropriate;

i is the index of the transmit station considered in the non-geostationary orbit system;

P_i is the RF power at the input of the antenna of the transmit station, considered in the non-geostationary orbit system in dBW in the reference bandwidth;

θ_i is the off-axis angle between the bore sight of the transmit station considered in the non-geostationary orbit system and the direction of the GSO receive station;

$G_t(\theta_i)$ is the transmit antenna gain (as a ratio) of the station considered in the non-geostationary orbit system in the direction of the GSO receive station;

d_i is the distance in meters between the transmit station considered in the non-geostationary orbit system and the GSO receive station;

ϕ_i is the off-axis angle between the bore sight of the antenna of the GSO receive station and the direction of the ith transmit station considered in the non-geostationary orbit system;

$G_r(\phi_i)$ is the receive antenna gain (as a ratio) of the GSO receive station in the direction of the ith transmit station considered in the non-geostationary orbit system;

$G_{r,\,max}$ is the maximum gain (as a ratio) of the antenna of the GSO receive station.

Feeder Link. A radio link from a fixed earth station at a given location to a space station, or vice versa, conveying information for a space radio-communication service other than the Fixed-Satellite Service. The given location may be at a specified fixed point or at any fixed point within specified areas. (RR)

Fixed Earth Station. An earth station intended to be used at a fixed position. The position may be a specified fixed point or any fixed point within a specified area.

Fixed-Satellite Service. A radio-communication service between earth stations at given positions, when one or more satellites are used; the given position may be a specified fixed point or any fixed point within specified areas; in some cases this service includes satellite-to-satellite links, which may also be operated in the inter-satellite service; the Fixed-Satellite Service may also include feeder links of other space radio-communication services. (RR)

Geostationary Satellite. A geosynchronous satellite whose circular and direct orbit lies in the plane of the Earth's equator and which thus remains fixed relative to the Earth; by extension, a geosynchronous satellite which remains approximately fixed relative to the Earth. (RR)

Inter-Satellite Service. A radio-communication service providing links between artificial earth satellites.

Ka-band Permitted Space Station List. A list of all U.S.-licensed geostationary-orbit space stations providing Fixed-Satellite Service in the 20/30 GHz bands, as well as those non-U.S.-licensed geostationary-orbit space stations approved for U.S. market access to provide Fixed-Satellite Service in the 20/30 GHz-bands. Applicants for Fixed-Satellite Service earth stations that qualify for routine processing in the 20/30 GHz bands may designate the Ka-band Permitted Space Station List as a point of communication. Once such an application is granted, the earth station operator may communicate with any space station on the Ka-band Permitted Space Station List, provided that the communications fall within the technical parameters and conditions established in the earth station license and any limitations placed on the space station authorization or noted in the Ka-band Permitted Space Station List. The earth station operator may not communicate with a space station on the list in the 18.3–18.8 GHz or 19.7–20.2 GHz band until the space station

operator has completed coordination under Footnote US334 to § 2.106.

Ku-band. In this rule part, the terms ''Ku-band'' and ''conventional Ku-band'' refer specifically to the 11700–12200 MHz space-to-Earth and 14000–14500 MHz Earth-to-space bands. These paired bands are allocated to the Fixed-Satellite Service and are also referred to as the 12/14 GHz bands.

Land Earth Station. An earth station in the Fixed-Satellite Service or, in some cases, in the Mobile-Satellite Service, located at a specified fixed point or within a specified area on land to provide a feeder link for the Mobile-Satellite Service. (RR)

Land Mobile Earth Station. A mobile earth station in the land mobile-satellite service capable of surface movement within the geographical limits of a country or continent. (RR)

Mobile Earth Station. An earth station in the Mobile-Satellite Service intended to be used while in motion or during halts at unspecified points. (RR)

Mobile-Satellite Service. A radio-communication service:

(1) Between mobile earth stations and one or more space stations, or between space stations used by this service; or

(2) Between mobile earth stations, by means of one or more space stations.

This service may also include feeder links necessary for its operation. (RR)

NGSO FSS Gateway Earth Station. An earth station complex consisting of multiple interconnecting earth station antennas supporting the communication routing and switching functions of a non-geostationary orbit Fixed-Satellite Service (NGSO FSS) system as a whole. A gateway earth station in the NGSO FSS:

(1) Does not originate or terminate radio-communication traffic, but interconnects multiple non-collocated user earth stations operating in frequency bands other than designated gateway bands, through a satellite with other primary terrestrial networks, such as the public switched telephone network (PSTN) and/or Internet networks.

(2) Is not for the exclusive use of any customer.

(3) May also be used for telemetry, tracking, and command transmissions for the same NGSO FSS system.

(4) May include multiple antennas, each required to meet the antenna performance standard in § 25.209(h), located within an area of one second latitude by one second longitude. Additional antennas located outside such area will be considered as a separate gateway earth station complex for purposes of coordination with terrestrial services.

Non-Voice, Non-Geostationary (NVNG) Mobile-Satellite Service. A Mobile-Satellite Service reserved for use by non-geostationary satellites in the provision of non-voice communications which may include satellite links between land earth stations at fixed locations.

Permitted Space Station List. A list of all U.S.-licensed geostationary-orbit space stations providing Fixed-Satellite Service in the conventional C- and Ku-bands, as well as non-U.S.-licensed geostationary-orbit space stations approved for U.S. market access to provide Fixed-Satellite Service in the conventional C- and Ku-bands. Applicants for Fixed-Satellite Service earth stations that qualify for routine processing in the conventional C- and Ku-bands may designate the Permitted Space Station List as a point of communication. Once such an application is granted, the earth station may communicate with any space station on the Permitted Space Station List, provided that the communications fall within the technical parameters and conditions in the earth station license and any limitations placed on the space station authorization or noted on the Permitted Space Station List.

Power Spectral Density (PSD). The amount of an emission's transmitted carrier power applied at the antenna input falling within the stated bandwidth. The units of power spectral density are watts per hertz and are generally expressed in decibel form as dB(W/Hz) when measured in a 1 Hz bandwidth, dB(W/4kHz) when measured in a 4 kHz bandwidth, or dB(W/1MHz) when measured in a 1 MHz bandwidth.

Protection Areas. The geographic regions on the surface of the Earth where U.S. Department of Defense (DoD) meteorological satellite systems or National Oceanic and Atmospheric Administration (NOAA) meteorological satellite systems, or both such systems, are receiving signals from low earth orbiting satellites. Also, geographic protection areas around Ka-band feeder-link earth stations in the 1.6/2.4 GHz Mobile-Satellite Service are determined in the manner specified in § 25.203(j).

Radiodetermination-Satellite Service. A radio-communication service for the purpose of radio determination involving the use of one of more space stations. This service may also include feeder links necessary for its own operation. (RR)

Routine Processing or Licensing. Expedited processing of unopposed applications for Fixed-Satellite Service earth stations communicating via geostationary satellites that satisfy the criteria in §§ 25.134(a), 25.134 (g), 25.138(a), 25.211(d), 25.212(c), 25.212(d), 25.212(f), 25.218, or 25.223(b), include all required information, are consistent with all Commission rules, and do not raise any policy issues. Some, but not all, routine earth station applications are eligible for an autogrant procedure under § 25.115(a)(4).

Satellite Digital Audio Radio Service (SDARS). A radio-communication service in which audio programming is digitally transmitted by one or more space stations directly to fixed, mobile, and/or portable stations, and which may involve complementary repeating terrestrial transmitters, telemetry, tracking and control facilities.

Satellite system. A space system using one or more artificial earth satellites. (RR)

Selected assignment. A spectrum assignment voluntarily identified by a 2 GHz MSS licensee at the time that the licensee's first 2 GHz Mobile-Satellite Service satellite reaches its intended orbit.

Shapeable Antenna Beam. A satellite transmit or receive antenna beam, the gain and/or gain pattern of which can be modified at any time.

Spacecraft. A man-made vehicle which is intended to go beyond the major portion of the Earth's atmosphere. (RR)

Space Radio-Communication. Any radio-communication involving the use of one or more space stations or the use of one or more reflecting satellites or other objects in space.

Space Station. A station located on an object which is beyond, is intended to go beyond, or has been beyond, the major portion of the Earth's atmosphere. (RR)

Space System. Any group of cooperating earth stations and/or space stations employing space radio-communication for specific purposes. (RR)

Terrestrial Station. A station effecting terrestrial radio-communication.

Vehicle-Mounted Earth Station (VMES). An earth station, operating from a motorized vehicle that travels primarily on land, that receives from and transmits to geostationary orbit Fixed-Satellite Service space stations and operates within the United States pursuant to the requirements set out in § 25.226.

3. In § 25.111, revise the section heading and paragraph (b), and add paragraph (d) to read as follows:

§ 25.111 Additional information and ITU cost recovery.

* * * * *

(b) Applicants and licensees of radio stations governed by this part must provide the Commission with the information required for Advance Publication, Coordination, and Notification of frequency assignment filings pursuant to the ITU Radio Regulations (RR) including due diligence information. No protection from interference caused by radio stations authorized by other Administrations is guaranteed unless coordination procedures are timely completed or, with respect to individual administrations, coordination agreements are successfully completed. A license for which such coordination has not been completed may be subject to additional terms and conditions required for coordination of the frequency assignments with other Administrations.

* * * * *

(d) The Commission will submit the information required by paragraphs (b) or (c) of this section to the ITU only after the party in interest has submitted a signed declaration that it unconditionally accepts all consequent ITU cost-recovery responsibility. The declaration must be electronically filed in the ''Other Filings'' tab of the pertinent application file in the IBFS database, and a paper copy must be mailed to the International Bureau, Satellite Division. The filing must reference the pertinent call sign and international satellite name and include the name(s), address(es), email address(es), and telephone and fax number(s) of a contact person, or persons, responsible for cost recovery inquiries and ITU correspondence and filings. Supplements must be filed as necessary to apprise the Commission of changes in the contact information. The party in interest must remit payment of any resultant cost-recovery fee to the ITU by the due date specified in the pertinent ITU invoice. A license granted in reliance on such a commitment and disposition of any pending or future Part 25 application from the same party will be contingent upon discharge of any such payment obligation.

4. In § 25.112, add paragraph (a)(4) to read as follows:

§ 25.112 Defective applications.

(a) * * *

(4) The application is identical to a pending application that was timely filed pursuant to §§ 25.157 or 25.158 of this chapter.

* * * * *

5. In § 25.113, revise the section heading and paragraphs (a) and (b), remove and reserve paragraphs (c) through (e), and revise paragraphs (f) and (h) to read as follows:

§ 25.113 Provisions pertaining to station construction, launch authority, and operation of spare satellites.

(a) Construction permits are not required for earth stations. Construction of such stations may commence prior to grant of an earth station license at the applicant's own risk, subject to the requirements of § 1.1312 and Part 17 of this chapter concerning environmental processing and construction, marking, and lighting of antenna structures.

(b) Construction permits are not required for Ancillary Terrestrial Component (ATC) stations. A party with licenses issued under this part for launch and operation of 1.5/1.6 GHz, 1.6/2.4 GHz, or 2 GHz Mobile-Satellite Service space stations and operation of associated ATC facilities may commence construction of ATC base stations at its own risk after commencing physical construction of the space stations, subject to the requirements of § 1.1312 and Part 17 of this chapter. Such an MSS/ATC licensee may also conduct equipment tests for the purpose of making adjustments and measurements necessary to ensure compliance with the terms of its ATC license, applicable rules in this Part, and technical design requirements. Prior to commencing such construction and pre-operational testing, an MSS/ATC licensee must notify the Commission of the commencement of physical satellite construction and the licensee's intention to construct and test ATC facilities. This notification must be filed electronically in the appropriate file in the International Bureau Filing System database. The notification must specify the frequencies the licensee proposes to use for pre-operational testing and the name, address, and telephone number of a representative for the reporting and mitigation of any interference resulting from such testing. MSS/ATC licensees engaging in pre-operational testing must comply with §§ 5.83, 5.85(c), 5.111, and 5.117 of this chapter regarding experimental operations. An MSS/ATC licensee may not offer ATC service to the public for compensation during pre-operational testing.

(c)–(e) [Reserved]

(f) Construction permits are not required for U.S.-licensed space stations, except for stations that the applicant proposes to operate to disseminate program content to be received by the public at large, rather than only by subscribers. Construction of a station for which a construction permit is not required may commence, at the applicant's own risk, prior to grant of a license. Before commencing pre-grant construction, however, an applicant must notify the Commission in writing that it plans to begin construction at its own risk.

* * * * *

(h) Licensees of Non-Geostationary Satellite Orbit (NGSO) satellite systems need not file separate applications to operate technically identical in-orbit spares authorized as part of a blanket license pursuant to § 25.114(e) or any other satellite blanket licensing provision in this part. However, the licensee must notify the Commission within 10 days of bringing the in-orbit spare into operation and certify that operation of this space station did not cause the licensee to exceed the total number of operating space stations authorized by the Commission and that the licensee will operate the space station within the applicable terms and conditions of its license.

6. In § 25.114, remove paragraph (e) and revise paragraphs (a), (c)(4) through (c)(13), (d)(1) through (d)(5), (d)(7), (d)(10), (d)(11), and (d)(13) to read as follows:

§ 25.114 Applications for space station authorizations.

(a) A comprehensive proposal must be submitted for each proposed GSO space station or NGSO satellite constellation on FCC Form 312, Main Form and Schedule S, together with attached exhibits as described in paragraph (d) of this section. An application for blanket authority for an NGSO satellite constellation comprised of space stations that are not all technically identical must provide the information required by paragraphs (c) and (d) of this section for each type of space station in the constellation.

* * * * *

(c) * * *

(4)(i) For each space station transmitting and receiving antenna beam (including telemetry and tracking beams but not command beams), specify channel center frequencies and bandwidths and polarization plan. For command beams, specify the center frequencies within a 5 MHz range or a range of 2 percent of the channel bandwidth, whichever is smaller, and the polarization plan. If the space station can vary channel bandwidth in a particular frequency band with on-board processing, specify only the range of frequencies in that band over which the beam can operate and the polarization plan.

(ii) Specify peak antenna gain, maximum EIRP, and maximum EIRP density for each space station transmitting antenna beam. If the

satellite uses shapeable antenna beams, as defined in § 25.103, specify instead peak antenna gain, maximum possible EIRP, and maximum possible EIRP density within each shapeable beam's proposed coverage area. Provide this information for each frequency band in which the transmitting antenna would operate. In all cases, specify EIRP density in dBW/Hz. If the EIRP density varies over time, specify the maximum possible EIRP density.

(iii)–(iv) [Reserved]

(v) For each space station receiving beam other than command beams, specify the peak antenna gain and the gain-to-temperature ratio at beam peak. For receiving beams fed into transponders, also specify the minimum and maximum saturation flux density at beam peak. If the satellite uses shapeable beams, specify the peak antenna gain and minimum and maximum gain-to-temperature ratio within each shapeable beam's proposed coverage area, and for shapeable receiving beams fed into transponders, specify the minimum and maximum saturation power flux density within the 0 dB antenna gain isoline. Provide this information for each frequency band in which the receiving beam can operate. For command beams, indicate frequencies within a 5 MHz range or a range of 2 percent of the allocated bandwidth, whichever is smaller, and specify the required minimum uplink power flux density;

(vi) Specify predicted space station antenna gain contour(s) for each transmit and receive antenna beam and geostationary orbital location or non-geostationary orbit requested, except for beams where the contour at 8 dB below peak falls entirely beyond the edge of the visible Earth. These contour(s) should be plotted on an area map at 2 dB intervals down to 10 dB below the peak gain and at 5 dB intervals between 10 dB and 20 dB below the peak gain. Applications for geostationary orbit satellites must present this information in a GIMS-readable format. For satellites with shapeable antenna beams, provide the contours, as defined above, for the transmitting beam configuration that results in the highest EIRP density for the beams listed in paragraph (c)(4)(ii) of this section and for the receiving beam configuration with the smallest gain-to-temperature ratio and the highest required saturation power flux density for the beams listed in paragraph (c)(4)(v) of this section. If the shapeable beams are also steerable, include the contours that would result from moving the beam peak around the limit of the effective beam peak area and the 0 dB antenna gain isoline. The proposed maximum coverage area must be clearly specified by the applicant;

(5) For space stations in geostationary orbit:

(i) Orbital location requested,

(ii) [Reserved]

(iii) East-west station-keeping range,

(iv) North-south station-keeping range, and

(v) Accuracy to which antenna axis attitude will be maintained;

(6) For space stations in non-geostationary orbits:

(i) The number of space stations and the number of orbital planes,

(ii) The inclination of the orbital plane(s),

(iii) The orbital period,

(iv) The apogee,

(v) The perigee,

(vi) The argument(s) of perigee,

(vii) Active service arc(s),

(viii) Right ascension of the ascending node(s), and

(ix) For each satellite in each orbital plane, the initial phase angle at the reference time;

(7) The frequency bands, types of services, and the coverage areas;

(8) Calculated maximum power flux density levels within each coverage area and energy dispersal bandwidths, if any, needed for compliance with § 25.208, for angles of arrival of 5°, 10°, 15°, 20°, and 25° above the horizontal;

(9) [Reserved]

(10) Estimated operational lifetime;

(11) Whether the space station is to be operated on a common carrier basis;

(12) [Reserved]

(13) The polarization information for determining compliance with § 25.210(a)(1), (a)(3), and (i);

* * * * *

(d) * * *

(1) Overall description of system facilities, operations and services and explanation of how uplink frequency bands can be connected to downlink frequency bands;

(2) [Reserved]

(3) For satellites with large numbers of identical fixed spot beams, other than DBS satellites, applicants may, as an alternative to submitting the information described in paragraph (c)(4)(vi) above with respect to these beams, provide the predicted antenna gain pattern for one transmit and receive antenna beam, along with one of the following:

(i) A map showing all of the spot beams depicted on the surface of the Earth;

(ii) A table identifying the beam boresight locations in latitude and longitude to the nearest 0.1 degree; or

(iii) A map of the isolines formed by combining some or all of the spot beams into one composite beam;

(4) [Reserved]

(5) Calculation of maximum power flux density levels within each coverage area and of the energy dispersal, if any, needed for compliance with § 25.208, for angles of arrival other than 5°, 10°, 15°, 20°, and 25° above the horizontal;

* * * * *

(7) Applicants for authorizations for space stations in the Fixed-Satellite Service must also include the information specified in § 25.140(b)(2) of this part. Applicants for authorizations for space stations in the 17/24 GHz Broadcasting-Satellite Service must also include the information specified in § 25.140(b)(3), (b)(4), (b)(5), or (b)(6) of this part;

* * * * *

(10) Applications for space station authorizations in the 1.6/2.4 GHz Mobile-Satellite Service must also provide all information required by § 25.143(b);

(11) Applications for space stations in the Direct Broadcast Satellite Service must include a clear and detailed statement of whether the space station is to be operated on a broadcast or non-broadcast basis;

* * * * *

(13) For satellite applications in the Direct Broadcast Satellite Service, if the proposed system's technical characteristics differ from those specified in the Appendix 30 BSS Plans, the Appendix 30A feeder link Plans, Annex 5 to Appendix 30 or Annex 3 to Appendix 30A of the ITU Radio Regulations, each applicant must provide:

(i) The information requested in Appendix 4 of the ITU Radio Regulations. Further, applicants must provide sufficient technical showing that the proposed system could operate satisfactorily if all assignments in the BSS and feeder link Plans were implemented.

(ii) Analyses of the proposed system with respect to the limits in Annex 1 to Appendices 30 and 30A of the ITU Radio Regulations;

* * * * *

7. In § 25.115, revise paragraphs (a)(2), (a)(3), (d), and (e) and add paragraph (j) to read as follows:

§ 25.115 Application for earth station authorizations.

(a) * * *

(2) Applicants for licenses for transmitting earth stations in the Fixed-Satellite Service may file on Form 312EZ if all of the following criteria are met:

(i) The application is for a single station with only one transmitting antenna;

(ii) The earth station will transmit in the 5925–6425 MHz band, the 14.0–14.5 GHz band, or the 28.35–28.6 GHz and/or 29.25–30.0 GHz band;

(iii) The earth station will not be installed in ships, aircraft, or other moving vehicles and operated while the vehicles are in motion;

(iv) The equivalent diameter of the proposed antenna is 4.5 meters or greater if the station will transmit in the 5925–6425 MHz band or 1.2 meters or greater if the station will transmit in the 14.0–14.5 GHz band;

(v) If the station will transmit in the 5925–6425 MHz band or the 14.0–14.5 GHz band, the performance of the proposed antenna comports with the standards in § 25.209(a) and (b) and is verified in accordance with applicable provisions of § 25.132;

(vi) If the station will transmit in the 5925–6425 MHz band or the 14.0–14.5 GHz band, input power to the antenna will not exceed applicable limits specified in §§ 25.211 and 25.212; if the station will transmit in the 28.35–28.6 GHz and/or 29.25–30.0 GHz band, off-axis EIRP density will not exceed the levels specified in § 25.138(a);

(vii) Operation of the proposed station has been successfully coordinated with terrestrial systems, if the station would transmit in the 5925–6425 MHz band;

(viii) The applicant has provided an environmental impact statement pursuant to § 1.1311 of the Commission's rules, if required; and

(ix) The applicant does not propose to communicate via non-U.S.-licensed satellites not on the Permitted List.

(3) Unless the Commission orders otherwise, an application filed on Form 312EZ in accordance with paragraph (a)(2) of this section will be deemed granted 35 days after the date of the public notice that the application has been accepted for filing, provided no objection is filed during the 30-day notice period.

* * * * *

(d) Mobile-Satellite Service user transceivers need not be individually licensed. Service vendors may file blanket applications for such transceivers using FCC Form 312, Main Form and Schedule B, specifying the number of units to be covered by the blanket license. A blanket license application for 1.5/1.6 GHz MSS user transceivers must include an explanation of how the applicant will comply with the priority and preemptive access requirements in § 25.287 of this chapter.

(e) *Earth stations operating in the Fixed-Satellite Service in the 20/30 GHz band:* License applications for Fixed-Satellite Service earth stations that would communicate via geostationary satellites in the 18.3–20.2 GHz and 28.35–30.0 GHz bands must include the information required by § 25.138. Such earth stations may be licensed on a blanket basis. An application for a blanket license for such earth stations must specify the number of terminals to be covered by the license.

* * * * *

(j) An application for a new fixed earth station or modification involving alteration of the overall height of one or more existing earth station antenna structures must include the FCC Antenna Structure Registration Number(s) for the antenna structure(s), if assigned. If no such number has been assigned, the application must state whether prior FAA notification is required by Part 17 of this chapter and, if so, whether the applicant or owner of the structure has notified the FAA of the proposed construction or alteration and applied for an Antenna Structure Registration Number in accordance with Part 17. Applicants who maintain that prior FAA notification is not required for construction or alteration of a structure with overall height more than 6.1 meters above ground level must explain in the application why such prior notification is not required.

8. In § 25.118, revise paragraphs (a)(2)(i), (e)(5) and (e)(8) to read as follows:

§ 25.118 Modifications not requiring prior authorization.

(a) * * *

(2) * * *

(i) The added, changed, or replaced facilities conform to any applicable requirements in § 25.209;

* * * * *

(e) * * *

(5) The space station licensee certifies that it has completed any necessary coordination of its space station at the new location with other potentially affected space station operators, including coordination of station-keeping volume.

* * * * *

(8) A DBS space station licensee must certify that there will be no increase in interference due to the operations of the relocated space station that would require the Commission to submit a proposed modification to the ITU Appendix 30 Broadcasting-Satellite Service (''BSS'') Plan and/or the Appendix 30A feeder link Plan to the ITU Radio-communication Bureau.

* * * * *

9. In § 25.121, revise paragraph (d) to read as follows:

§ 25.121 License term and renewals.

* * * * *

(d) *Space stations.* (1) For geostationary-orbit space stations, the license term will begin at 3 a.m. Eastern Time on the date when the licensee certifies pursuant to § 25.173(b) of this chapter that the space station has been successfully placed into orbit at its assigned orbital location and that its operations fully conform to the terms and conditions of the space station authorization.

(2) For non-geostationary orbit space stations, the license period will begin at 3 a.m. Eastern Time on the date when the licensee certifies pursuant to § 25.173(b) that operation of an initial space station in its authorized orbit is fully compliant with the license terms and conditions. Operating authority for all space stations subsequently launched pursuant to the license will terminate upon expiration of the license.

* * * * *

10. In § 25.129, revise paragraph (c) to read as follows:

§ 25.129 Equipment authorization for portable earth-station transceivers.

* * * * *

(c) In addition to the information required by § 1.1307(b) and § 2.1033(c) of this chapter, applicants for certification required by this section must submit any additional equipment test data necessary to demonstrate compliance with pertinent standards for transmitter performance prescribed in §§ 25.138, 25.202(f), 25.204, 25.209, and 25.216, must submit the statements required by § 2.1093(c) of this chapter, and must demonstrate compliance with the labeling requirement in § 25.285(b).

* * * * *

11. In § 25.130, remove and reserve paragraph (e) and add paragraph (g) to read as follows:

§ 25.130 Filing requirements for transmitting earth stations.

* * * * *

(e) [Reserved]

* * * * *

(g) Parties may apply for a single earth station license covering operation of multiple fixed antennas transmitting in frequency bands shared with terrestrial services on a co-primary basis if the proposed antennas will all be sited within an area bounded by one second of latitude and one second of longitude. Parties may apply for a single earth station license covering operation of multiple fixed antennas transmitting in frequency bands not shared with terrestrial services if the proposed antennas will all be sited within an area

bounded by 10 seconds of latitude and 10 seconds of longitude. These restrictions do not apply to network applications filed pursuant to § 25.134, blanket applications for 20/30 GHz earth stations, or blanket applications filed pursuant to §§ 25.221, 25.222, or 25.226 of this chapter.

12. In § 25.131, revise the section heading, paragraph (b), and paragraph (j)(2) to read as follows:

§ 25.131 Filing requirements and registration for receive-only earth stations.

* * * * *

(b) Receive-only earth stations in the Fixed-Satellite Service that operate with U.S.-licensed satellites, or that operate with non-U.S.-licensed satellites on the Permitted Space Station List in accordance with paragraph (j) of this section, may be registered with the Commission in order to protect them from interference from terrestrial microwave stations in bands shared co-equally with the Fixed Service in accordance with the procedures of §§ 25.203 and 25.251, subject to the stricture in § 25.209(e).

* * * * *

(j) * * *

(2) Operators of receive-only earth stations used to receive transmissions from non-U.S.-licensed space stations on the Permitted Space Station List need not file for licenses, provided that the space station operator and earth station operator comply with all applicable rules in this chapter and with the applicable conditions in the Permitted Space Station List.

13. In § 25.132, revise paragraphs (a)(1), (a)(2), (b)(3), and the first sentence of paragraph (d) to read as follows:

§ 25.132 Verification of earth station antenna performance standards.

(a) (1) Except for applications for 20/30 GHz earth stations subject to § 25.138 of this chapter and applications subject to the requirement in paragraph (b)(3) of this section, applications for transmitting earth stations in the Fixed-Satellite Service, including feeder-link stations, must include a certification that the applicant has reviewed the results of a series of radiation pattern tests performed by the antenna manufacturer on representative equipment in representative configurations, and either the test results demonstrate that the equipment meets the performance standards in § 25.209, or the tested antenna performance, taking into account the applicant's proposed antenna input power spectral density levels, is consistent with either applicable off-axis EIRP density standards in Part 25 or with coordinated off-axis EIRP density limits. The licensee must be prepared to submit the antenna radiation pattern measurements to the Commission on request.

(2) Applicants for transmitting earth stations communicating with geostationary-orbit space stations in the 20/30 GHz band must provide the antenna measurements specified in § 25.138(d) and (e).

(b) * * *

(3) Except as provided in paragraph (d) of this section, applicants seeking authority to operate a Fixed-Satellite Service earth station pursuant to the requirements in §§ 25.218, 25.220, 25.221, 25.222, 25.223 or 25.226, must submit a copy of the manufacturer's range test plots of the antenna gain patterns specified in paragraph (b)(1) of this section.

* * * * *

(d) For each new or modified transmitting antenna over 3 meters in diameter, except antennas subject to measurement under § 25.138(d) of this chapter, the following on-site verification measurements must be completed at one frequency on an available transponder in each frequency band of interest and submitted to the Commission. * * *

* * * * *

14. In § 25.133, revise the first sentences of paragraphs (a)(1) and (a)(2), paragraph (b)(1) introductory text, and paragraph (b)(1)(v) to read as follows:

§ 25.133 Period of construction; certification of commencement of operation.

(a)(1) Each initial license for an earth station governed by this part, except for blanket licenses, will specify as a condition therein the period in which construction of facilities must be completed and station operation commenced. * * *

(2) Each initial license for mobile earth stations will specify as a condition therein the period in which station operation must be commenced. * * *

(b)(1) Each initial license for a transmitting earth station subject to this part, except for blanket-licensed earth stations, will also specify as a condition therein that upon completion of station construction, the licensee must file with the Commission a certification containing the following information:

* * * * *

(v) A certification that the facility as authorized has been completed and that each antenna has been tested and found to perform within 2 dB of the pattern specified in § 25.209 or other applicable pattern;

* * * * *

15. In § 25.134, remove and reserve paragraph (a)(1) and revise paragraphs (b) and (e) through (h) to read as follows:

§ 25.134 Licensing provisions for 12/14 GHz Very Small Aperture Terminal (VSAT) and C-band Small Aperture Terminal (CSAT) networks.

(a)(1) [Reserved]

* * * * *

(b) *VSAT networks operating in the 12/14 GHz band.* An applicant for a VSAT network authorization proposing to operate with transmitted power spectral density and/or antenna input power in excess of the values specified in paragraph (g) of this section must comply with the procedures set forth in § 25.220.

* * * * *

(e) VSAT networks operating in the 12/14 GHz bands may use more than one hub earth station, and the hubs may be sited at different locations.

(f) 12/14 GHz VSAT operators may use temporary fixed earth stations as hub earth stations or remote earth stations in their networks, but must specify, in their license applications, the number of temporary fixed earth stations they plan to use.

(g) Applications for VSAT operation in the 12/14 GHz bands that meet the following requirements will be routinely processed:

(1) Equivalent antenna diameter is 1.2 meters or more and the application includes certification of conformance with antenna performance standards pursuant to § 25.132(a)(1) of this chapter.

(2) The maximum transmitter power spectral density of a digital modulated carrier into any GSO FSS earth station antenna must not exceed $-14.0 - 10\log(N)$ dB(W/4 kHz). For a VSAT network using frequency division multiple access (FDMA) or time division multiple access (TDMA) technique, N is equal to one. For a VSAT network using code division multiple access (CDMA) technique, N is the maximum number of co-frequency simultaneously transmitting earth stations in the same satellite receiving beam.

(3) The maximum GSO FSS satellite EIRP spectral density of the digital modulated emission must not exceed 10 dB(W/4kHz) for all methods of modulation and accessing techniques.

(4) The maximum transmitter power spectral density of an analog carrier into any GSO FSS earth station antenna must not exceed -8.0 dB(W/4kHz) and the

maximum GSO FSS satellite EIRP spectral density must not exceed +17.0 dB(W/4kHz).

(5) Any earth station applicant filing an application to operate a VSAT network in the 12/14 GHz bands and planning to use a contention protocol must certify that its contention protocol usage will be reasonable.

(h) VSAT operators licensed pursuant to this section are prohibited from using remote earth stations in their networks that are not designed to stop transmission when synchronization to signals from the target satellite fails.

16. In § 25.135, remove paragraph (d) and revise the section heading, remove and reserve paragraph (b), and revise paragraph (c) to read as follows:

§ 25.135 Licensing provisions for earth station networks in the non-voice, non-geostationary Mobile-Satellite Service.

* * * * *

(b) [Reserved]

(c) Transceiver units in this service are authorized to communicate with and through U.S.-authorized space stations only.

§ 25.136 [Removed and Reserved]

17. Remove and reserve § 25.136.

18. In § 25.138, revise the section heading and paragraph (a) introductory text, remove and reserve paragraph (a)(5), and revise paragraphs (b) and (d) through (g) to read as follows:

§ 25.138 Licensing requirements for GSO FSS Earth Stations in the 18.3–18.8 GHz (space-to-Earth), 19.7–20.2 GHz (space-to-Earth), 28.35–28.6 GHz (Earth-to-space), and 29.25–30.0 GHz (Earth-to-space) bands.

(a) Applications for earth station licenses in the GSO FSS in the 18.3–18.8 GHz, 19.7–20.2 GHz, 28.35–28.6 GHz, and 29.25–30.0 GHz bands that meet the following requirements will be routinely processed:

* * * * *

(5) [Reserved]

* * * * *

(b) An application proposing levels in excess of those specified in paragraph (a) of this section must demonstrate that the higher proposed power is necessary to close the communications link and include one of the following:

(1) An interference analysis, demonstrating that the proposed operation is compatible with operation of other authorized or proposed systems communicating via space stations within 6 degrees of the proposed satellite point(s) of communication, providing details of its proposed radio frequency carriers which it believes should be taken into account in this analysis, and including, for each such radio frequency carrier, the link noise budget, modulation parameters, and overall link performance analysis; or

(2) Certification by the applicant that operators of all co-frequency GSO FSS space stations within 6 degrees of the proposed satellite point(s) of communication have acknowledged awareness of the applicant's proposed operation with the higher power densities and stated that they have no objection to such operation.

* * * * *

(d)(1) The applicant must provide, for each earth station antenna type, a series of radiation patterns measured on a production antenna. The measurements must be performed on a calibrated antenna range and, at a minimum, must be made at the bottom, middle, and top frequencies of each requested uplink band. The radiation patterns are:

(i) Co-polarized patterns for each of two orthogonal senses of polarization in two orthogonal planes of the antenna.

(A) In the azimuth plane, plus and minus 10 degrees and plus and minus 180 degrees.

(B) In the elevation plane, 0 to 30 degrees.

(ii) Cross-polarization patterns in the E- and H-planes, plus and minus 10 degrees.

(iii) Main beam gain.

(2)(i) The tests specified in paragraph (d)(1) of this section are normally performed at the manufacturer's facility; but for antennas more than 3 meters in diameter that will only be assembled on-site, on-site measurements may be used for product qualification data. If on-site data is to be used for qualification, the test frequencies and number of patterns should follow, where possible, the requirements in paragraph (d)(1) of this section for at least one frequency.

(ii) Certification that the testing required by paragraph (d)(2)(i) of this section has been satisfactorily performed must be included with the certification filed pursuant to § 25.133(b).

(e) Protection of downlink reception from adjacent satellite interference is based on either the antenna performance specified in § 25.209 (a) and (b), or the actual receiving earth station antenna performance, if actual performance provides greater isolation from adjacent satellite interference. For purposes of ensuring the correct level of protection, the applicant must provide, for each earth station antenna type, antenna performance plots for the 18.3–18.8 GHz and 19.7–20.2 GHz bands in the format prescribed in paragraph (d) of this section.

(f) The holder of a blanket license pursuant to this section will be responsible for operation of any transceiver to receive GSO FSS service provided by that licensee or provided by another party with the blanket licensee's consent. Operators of GSO FSS space stations operating in the 18.3–18.8 GHz, 19.7–20.2 GHz, 28.35–28.6 GHz, and 29.25–30.0 GHz bands must not transmit communications to or from user transceivers in the United States unless such communications are authorized under a service contract with the holder of a pertinent FCC blanket license or under a service contract with another party with authority for such transceiver operation delegated by such a blanket licensee.

(g) A licensee applying for renewal of a license issued pursuant to this section must specify on FCC Form 312R the number of constructed earth stations.

19. In § 25.140, revise the section heading and paragraph (b) introductory text, remove and reserve paragraph (b)(1), and revise paragraph (b)(2) to read as follows:

§ 25.140 Further requirements for license applications for space stations in the Fixed-Satellite Service and the 17/24 GHz Broadcasting-Satellite Service.

* * * * *

(b) Each applicant for a license for an FSS space station or 17/24 GHz Broadcasting-Satellite Service space station must provide the following information, in addition to that required by § 25.114:

(1) [Reserved]

(2) Except as set forth in paragraphs (b)(3), (b)(4), (b)(5), and (b)(6) of this section, applicants must provide an interference analysis to demonstrate the compatibility of their proposed system with respect to authorized space stations within 2 degrees of any proposed satellite point of communication. An applicant should provide details of its proposed radio frequency carriers which it believes should be taken into account in this analysis. At a minimum, the applicant must include, for each type of radio frequency carrier, the link noise budget, modulation parameters, and overall link performance analysis. (See appendices B and C to Licensing of Space Stations in the Domestic Fixed-Satellite Service, FCC 83–184, and the following public notices, copies of which are available in the Commission's EDOCS database: DA 03–3863 and DA 04–1708.)

* * * * *

20. In § 25.142, remove and reserve paragraph (c).

§ 25.142 Licensing provisions for the non-voice, non-geostationary mobile-satellite service.

* * * * *

(c) [Reserved]

* * * * *

21. In § 25.143, remove paragraphs (i) through (k) and remove and reserve paragraphs (d) and (e).

§ 25.143 Licensing provisions for the 1.6/2.4 GHz Mobile-Satellite Service and 2 GHz Mobile-Satellite Service.

* * * * *

(d)–(e) [Reserved]

* * * * *

22. In § 25.144, remove paragraph (a)(3)(iii) and remove and reserve paragraph (c).

§ 25.144 Licensing provisions for the 2.3 GHz satellite digital audio radio service.

* * * * *

(c) [Reserved]

* * * * *

23. In § 25.145, remove and reserve paragraphs (a) and (f)(1).

§ 25.145 Licensing provisions for the Fixed-Satellite Service in the 20/30 GHz bands.

(a) [Reserved]

* * * * *

(f)(1) [Reserved]

* * * * *

24. In § 25.146, remove paragraph (n) and remove and reserve paragraphs (c), (k), and (l) as follows:

§ 25.146 Licensing and operating rules for the non-geostationary satellite orbit Fixed-Satellite Service (NGSO FSS) in the 10.7 GHz-14.5 GHz bands.

* * * * *

(c) [Reserved]

* * * * *

(k)–(l) [Reserved]

* * * * *

25. In § 25.149, revise paragraphs (a)(1), (a)(2)(ii) and (iii), (b)(1)(ii), and (b)(5)(ii) and (iii) to read as follows:

§ 25.149 Application requirements for ancillary terrestrial components in the Mobile-Satellite Service networks operating in the 1.5./1.6 GHz, 1.6/2.4 GHz and 2 GHz Mobile-Satellite Service.

(a) * * *

(1) ATC must be deployed in the forward-band mode of operation whereby the ATC mobile terminals transmit in the MSS uplink bands and the ATC base stations transmit in the MSS downlink bands in portions of the 2 GHz MSS band, the 1.5/1.6 GHz MSS bands, and the 1.6/2.4 GHz MSS bands.

Note to Paragraph (a)(1): A 1.5/1.6 GHz MSS licensee is permitted to apply for ATC authorization based on a non-forward-band mode of operation provided it is able to demonstrate that the use of a non-forward-band mode of operation would produce no greater potential interference than that produced as a result of implementing the rules of this section.

(2) * * *

(ii) In the 1.5/1.6 GHz MSS bands, ATC operations are limited to the frequency assignments authorized and internationally coordinated for the MSS system of the MSS licensee that seeks ATC authority.

(iii) In the 1.6/2.4 GHz MSS bands, ATC operations are limited to the 1610–1617.775 MHz, 1621.35–1626.5 MHz, and 2483.5–2495 MHz bands and to the specific frequencies authorized for use by the MSS licensee that seeks ATC authority.

* * * * *

(b) * * *

(1) * * *

(ii) For the 1.5/1.6 GHz MSS bands, an applicant must demonstrate that it can provide space-segment service covering all 50 states, Puerto Rico, and the U.S. Virgin Islands 100 percent of the time, unless it is not technically possible for the MSS operator to meet the coverage criteria from its orbital position.

* * * * *

(5) * * *

(ii) In the 1.6/2.4 GHz MSS bands, MSS ATC is limited to no more than 7.775 MHz of spectrum in the 1610–1626.5 MHz band and 11.5 MHz of spectrum in the 2483.5–2500 MHz band. Licensees in these bands may implement ATC only on those channels on which MSS is authorized, consistent with the Big LEO band-sharing arrangement.

(iii) In the 1.5/1.6 GHz MSS bands, MSS ATC is limited to those frequency assignments available for MSS use in accordance with the Mexico City Memorandum of Understanding, its successor agreements or the result of other organized efforts of international coordination.

* * * * *

26. In § 25.154, revise paragraphs (d) and (e) to read as follows:

§ 25.154 Opposition to applications and other pleadings.

* * * * *

(d) Reply comments by a party that filed a petition to deny may be filed in response to pleadings filed pursuant to paragraph (c) or (e) of this section within 5 days after expiration of the time for filing oppositions unless the Commission extends the filing deadline and must be in accordance with other applicable provisions of §§ 1.41 through 1.52 of this chapter, except that such reply comments must be filed electronically through the International Bureau Filing System (IBFS) in accordance with the applicable provisions of part 1, subpart Y of this chapter.

(e) Within 30 days after a petition to deny an application filed pursuant to § 25.220 is filed, the applicant may file an opposition to the petition and must file a statement with the Commission, either in conjunction with, or in lieu of, such opposition, explaining whether the applicant has resolved all outstanding issues raised by the petitioner. This statement and any conjoined opposition must be in accordance with the provisions of §§ 1.41 through 1.52 of this chapter applicable to oppositions to petitions to deny, except that such reply comments must be filed electronically through the International Bureau Filing System (IBFS) in accordance with the applicable provisions of part 1, subpart Y of this chapter.

27. In § 25.161, revise paragraph (b) to read as follows:

§ 25.161 Automatic termination of station authorization.

* * * * *

(b) The expiration of the license term, unless, in the case of an earth station license, an application for renewal of the license has been filed with the Commission pursuant to § 25.121(e) or, in the case of a space station license, an application for extension of the license term has been filed with the Commission; or

* * * * *

28. In § 25.164, revise paragraphs (a)(4), (b)(4), and (c) through (g) and add paragraph (h) to read as follows:

§ 25.164 Milestones.

(a) * * *

(4) *Five years:* Launch the space station, position it in its assigned orbital location, and operate it in accordance with the station authorization.

(b) * * *

(4) *Three years, six months:* Launch the first space station, place it in the authorized orbit, and operate it in accordance with the station authorization.

* * * * *

(c) Licensees of all satellite systems, other than DBS and DARS satellite systems, will be required to submit a copy of their binding non-contingent satellite construction contracts with the Commission on or before the milestone date for entering into such a contract.

(d) Licensees of all satellite systems, other than DBS and DARS satellite systems, will be required to submit information to the Commission

sufficient to demonstrate that the licensee has completed the critical design review of the licensed satellite system on or before the milestone date scheduled for entering into such completion.

(e) Licensees of all satellite systems, other than DBS and DARS satellite systems, will be required to submit information to the Commission sufficient to demonstrate that the licensee has commenced physical construction of its licensed spacecraft on or before the milestone date for such commencement.

(f) Licensees of all space stations, other than DBS and SDARS space stations, must, on or before an applicable deadline for operation or launch and operation specified in paragraph (a) or (b) of this section, demonstrate compliance with that milestone requirement. Compliance with a milestone requirement contained in paragraph (a)(4), (b)(4), or (b)(5) of this section may be demonstrated by certifying that the space station has or the space stations have been launched and placed in the authorized orbital location or non-geostationary orbit(s) and that in-orbit operation of the space station or stations has been tested and found to be consistent with the terms of the authorization.

(g) Licensees of satellite systems that include both non-geostationary orbit satellites and geostationary orbit satellites, other than DBS and DARS satellite systems, will be required to comply with the schedule set forth in paragraph (a) of this section with respect to the geostationary orbit satellites, and with the schedule set forth in paragraph (b) of this section with respect to the non-geostationary orbit satellites.

(h) In cases where the Commission grants a satellite authorization in different stages, such as a license for a satellite system using feeder links or inter-satellite links, the earliest of the milestone schedules will be applied to the entire satellite system.

29. Add an undesignated center heading and §§ 25.170 through 25.173 to Subpart B to read as follows:

Reporting Requirements for Space Station Licensees

Sec.
25.170 Annual reporting requirements.
25.171 Contact information reporting requirements.
25.172 Requirements for reporting space station control arrangements.
25.173 Results of in-orbit testing.

§ 25.170 Annual reporting requirements.

All operators of space stations licensed under Part 25 or granted U.S. market access must, on June 30 of each year, file a report with the International Bureau and the Commission's Columbia Operations Center, 9200 Farm House Lane, Columbia, MD 21046, containing the following information:

(a) Status of space station construction and anticipated launch date, including any major problems or delay encountered;

(b) Identification of any space station(s) not available for service or otherwise not performing to specifications, any spectrum within the scope of the Part 25 license or market access grant that the space station is unable to use, the cause(s) of these difficulties, and the date any space station was taken out of service or the malfunction identified; and

(c) A current listing of the names, titles, addresses, email addresses, and telephone numbers of the points of contact for resolution of interference problems and for disaster response. Contact personnel should include those responsible for resolution of short term, immediate interference problems at the system control center, and those responsible for long term engineering and technical design issues.

Note to § 25.170: Space station operators are also subject to outage reporting requirements in Part 4 of this chapter.

§ 25.171 Contact information reporting requirements.

If contact information filed in an earth station application or pursuant to § 25.170(c) changes, the operator must file corrected information with both the International Bureau and the Columbia Field Office electronically in the Commission's International Bureau Filing System (IBFS), in the ''Other Filings'' tab of the station's current authorization file, and with the Commission's Columbia Operations Center, at the address listed in § 25.170. The operator must file the updated information within 10 days.

§ 25.172 Requirements for reporting space station control arrangements.

(a) The operator of any space station licensed by the Commission or granted U.S. market access must file the following information with the Commission prior to commencing commercial operation with the space station, or, in the case of a non-U.S.-licensed space station, prior to commencing commercial operation with U.S. earth stations.

(1) The information required by § 25.170(c).

(2) The call signs of any telemetry, tracking, and telecommand earth station(s) communicating with the space station from any site in the United States.

(3) The location, by city and country, of any telemetry, tracking, and telecommand earth station that communicates with the space station from any point outside the United States.

(b) The information required by paragraph (a) of this section must be filed with the Commission's Columbia Operations Center, at the address listed in § 25.170. If such information becomes invalid due to a change of circumstances, the operator must file updated information in the same manner within 10 days, except with respect to temporary changes that will be in effect for less than 30 days, in which case no update is necessary.

§ 25.173 Results of in-orbit testing.

(a) Space station operators must measure the co-polarized and cross-polarized performance of space station antennas through in-orbit testing and submit the measurement data to the Commission upon request.

(b)(1) Within 15 days after completing in-orbit testing of a space station licensed under this part, the operator must notify the Commission that such testing has been completed and:

(i) Certify that the space station's measured performance is consistent with the station authorization and that the space station is capable of using its assigned frequencies; or

(ii) Inform the Commission of any discrepancy. The licensee must also indicate in the filing whether the space station has been placed in the assigned geostationary orbital location or non-geostationary orbit.

(2) If the licensee files a certification pursuant to paragraph (b)(1)(i) of this section, before the space station has been placed in its assigned orbit or orbital location, the licensee must separately notify the Commission that the space station has been placed in such orbit or orbital location within 3 days after such placement.

§ 25.201 [Removed and Reserved]

30. Remove and reserve § 25.201.

31. In § 25.202, revise the section heading, remove and reserve paragraph (c), and revise paragraph (g) to read as follows:

§ 25.202 Frequencies, frequency tolerance, emission limits, and orbital location.

* * * * *

(c) [Reserved]

* * * * *

(g) Telemetry, tracking and command functions for U.S.-licensed satellites must be conducted at either or both

edges of the assigned band(s). Frequencies, polarization and coding must be selected to minimize interference into other satellite networks and within the operator's own satellite system.

32. In § 25.204, revise the section heading, paragraphs (e) and (f) and remove and reserve paragraph (g) to read as follows:

§ 25.204 Power limits for earth stations.

* * * * *

(e) To the extent specified in paragraphs (e)(1)–(4) of this section, earth stations in the Fixed-Satellite Service may employ uplink adaptive power control or other methods of fade compensation to facilitate transmission of uplinks at power levels required for desired link performance while minimizing interference between networks.

(1) Transmissions from FSS earth-stations in the 14.0–14.5 GHz band, including stations that have been routinely licensed pursuant to §§ 25.134, 25.211, or 25.212, may exceed the uplink EIRP and EIRP density limits specified in the station authorization under conditions of uplink fading due to precipitation by an amount not to exceed 1 dB above the actual amount of monitored excess attenuation over clear sky propagation conditions. EIRP levels must be returned to normal as soon as the attenuating weather pattern subsides. The maximum power level for power control purposes must be coordinated with adjacent satellite operators.

(2) An FSS earth station transmitting to a geostationary space station in the 13.77–13.78 GHz band must not generate more than 71 dBW EIRP in any 6 MHz band. An FSS earth station transmitting to a non-geostationary space station in the 13.77–13.78 GHz band must not generate more than 51 dBW EIRP in any 6 MHz band. Automatic power control may be used to increase the EIRP density in a 6 MHz uplink band in this frequency range to compensate for rain fade, provided that the power flux-density at the space station does not exceed the value that would result when transmitting with an EIRP of 71 dBW or 51 dBW, as appropriate, in that 6 MHz band in clear-sky conditions.

(3) FSS earth stations transmitting to geostationary satellites in the 28.35–28.6 GHz or 29.25–30.0 GHz band may employ uplink adaptive power control or other methods of fade compensation. For stations employing uplink power control, the values in paragraphs (a)(1), (a)(2), and (a)(4) of § 25.138 may be exceeded by up to 20 dB under conditions of uplink fading due to precipitation. The amount of such increase in excess of the actual amount of monitored excess attenuation over clear sky propagation conditions must not exceed 1.5 dB or 15 percent of the actual amount of monitored excess attenuation in dB, whichever is larger, with a confidence level of 90 percent except over transient periods accounting for no more than 0.5 percent of the time during which the excess is no more than 4.0 dB.

(4) Transmissions in the 24.75–25.25 GHz band from 17/24 GHz BSS feeder-link earth stations employing power control may exceed the values in paragraphs (b)(1), (b)(2), and (b)(4) of § 25.223 by up to 20 dB under conditions of uplink fading due to precipitation. The amount of such increase in excess of the actual amount of monitored excess attenuation over clear sky propagation conditions must not exceed 1.5 dB or 15 percent of the actual amount of monitored excess attenuation in dB, whichever is larger, with a confidence level of 90 percent except over transient periods accounting for no more than 0.5 percent of the time during which the excess is no more than 4.0 dB.

(f) An earth station in the Fixed-Satellite Service transmitting in the 13.75–14 GHz band must have a minimum antenna diameter of 4.5 m, and the EIRP of any emission in that band should be at least 68 dBW and should not exceed 85 dBW.

(g) [Reserved.]

* * * * *

33. Revise § 25.206 to read as follows:

§ 25.206 Station identification.

The requirement to transmit station identification is waived for all radio stations licensed under this part with the exception of earth stations subject to the requirements of § 25.281 of this chapter.

34. In § 25.208, revise paragraph (w) introductory text and add note to paragraph (w) to read as follows:

§ 25.208 Power flux density limits.

* * * * *

(w) The power flux density at the Earth's surface produced by emissions from a 17/24 GHz BSS space station operating in the 17.3–17.7 GHz band for all conditions and all methods of modulation must not exceed the regional power flux density levels prescribed below.

* * * * *

Note to Paragraph (w): These limits pertain to the power flux-density that would be obtained under assumed free-space propagation conditions.

35. In § 25.209, remove and reserve paragraph (d) and revise paragraph (h)(1) to read as follows:

§ 25.209 Antenna performance standards.

* * * * *

(d) [Reserved]

* * * * *

(h)(1) The gain of any transmitting gateway earth station antenna operating in the 10.7–11.7 GHz, 12.75–13.15 GHz, 13.2125–13.25 GHz, 13.8–14.0 GHz, and 14.4–14.5 GHz bands and communicating with NGSO FSS satellites must lie below the envelope defined as follows:

$29–25\log_{10}(\theta)$ dBi for $1° \leq \theta \leq 36°$

-10 dBi for $36° < \theta \leq 180°$

Where: θ is the angle in degrees from the axis of the main lobe, and dBi means dB relative to an isotropic radiator.

* * * * *

36. In § 25.210, remove paragraphs (k) and (l), remove and reserve paragraph (b), and revise paragraph (c) to read as follows:

§ 25.210 Technical requirements for space stations.

* * * * *

(b) [Reserved]

(c) Space station antennas operating in the Direct Broadcast Satellite Service or operating in the Fixed-Satellite Service for reception of feeder links for Direct Broadcast Service must be designed to provide a cross-polarization isolation such that the ratio of the on-axis co-polar gain to the cross-polar gain of the antenna in the assigned frequency band is at least 27 dB within the primary coverage area.

* * * * *

37. In § 25.211, remove paragraph (f) and revise paragraphs (d) and (e) to read as follows:

§ 25.211 Analog video transmissions in the Fixed-Satellite Service.

* * * * *

(d) An earth station may be routinely licensed for transmission of analog video services in the 5925–6425 MHz band or 14.0–14.5 GHz band provided:

(1) The application includes certification, pursuant to § 25.132(a)(1), of conformance with the antenna performance standards in § 25.209(a) and (b);

(2) An antenna with an equivalent diameter of 4.5 meters or greater will be used for such transmission in the 5925–6425 MHz band, and the input power into the antenna will not exceed 26.5 dBW;

(3) An antenna with an equivalent diameter of 1.2 meters or greater will be used for such transmission in the 14.0–

14.5 GHz band, and the input power into the antenna will not exceed 27 dBW.

(e) Applications for authority for analog video uplink transmission in the Fixed-Satellite Service that are not eligible for routine licensing under paragraph (d) of this section are subject to the provisions of § 25.220 of this chapter.

38. In § 25.212, revise paragraphs (c) through (e) to read as follows:

§ 25.212 Narrowband analog transmissions and digital transmissions in the GSO Fixed-Satellite Service.

* * * * *

(c) (1) An earth station that is not subject to licensing under § 25.222 or § 25.226 of this chapter and will not be installed in aircraft may be routinely licensed for analog transmissions in the 14.0–14.5 GHz band with bandwidths up to 1 MHz if the equivalent diameter of the transmitting antenna is 1.2 meters or greater, input power spectral density into the antenna will not exceed −8 dBW/4 kHz, transmitted satellite carrier EIRP density will not exceed 17 dBW/4 kHz, and the application includes certification pursuant to § 25.132(a)(1) of conformance with the antenna performance standards in § 25.209(a) and (b).

(2) An earth station that is not subject to licensing under § 25.222 or § 25.226 of this chapter and will not be installed in aircraft may be routinely licensed for digital transmission, including digital video transmission, in the 14.0–14.5 GHz band if the equivalent diameter of the transmitting antenna is 1.2 meters or greater, input power spectral density into the antenna will not exceed −14 dBW/4 kHz, transmitted satellite carrier EIRP density will not exceed +10.0 dBW/4 kHz, and the application includes certification pursuant to § 25.132(a)(1) of conformance with the antenna performance standards in § 25.209(a) and (b).

(d) An earth station that is not subject to licensing under § 25.221 of this chapter may be routinely licensed for transmission in the 5925–6425 MHz band if the equivalent diameter of the transmit antenna is 4.5 meters or greater, the application includes certification pursuant to § 25.132(a)(1) of conformance with the antenna performance standards in § 25.209(a) and (b), and maximum power densities into the antenna will not exceed +0.5 dBW/4 kHz for analog carriers with bandwidths up to 1 MHz or −2.7 − 10log(N) dBW/4 kHz for digital carriers. For digital transmission with frequency division multiple access (FDMA) or time division multiple access (TDMA), N is equal to one. For digital transmission with code division multiple access (CDMA), N is the maximum number of co-frequency simultaneously transmitting earth stations in the same satellite receiving beam.

(e) An applicant for authority for an earth station in the Fixed-Satellite Service proposing to transmit digital signals or transmit analog signals in bandwidths up to 1 MHz and to operate with transmitted satellite carrier EIRP densities, and/or maximum antenna input power densities in excess of those specified in applicable provisions of paragraph (c) or (d) of this section or operate with a smaller antenna than specified in a relevant provision of those paragraphs must comply with the requirements in § 25.218 or § 25.220 of this chapter, unless the application is subject to licensing pursuant to §§ 25.221, 25.222, or 25.226.

* * * * *

39. In § 25.214, remove and reserve paragraph (a) and revise paragraph (c)(1) to read as follows:

§ 25.214 Technical requirements for space stations in the Satellite Digital Audio Radio Service and associated terrestrial repeaters.

(a) [Reserved]

* * * * *

(c) * * *

(1) Exclusive SDARS licenses are limited to the 2320–2345 MHz segment of the 2310–2360 MHz allocated bandwidth for SDARS;

* * * * *

§ 25.215 [Removed and Reserved]

40. Remove and reserve § 25.215.

41. In § 25.217, revise paragraph (b)(1), the first sentence of paragraph (b)(3), and paragraph (c)(1) to read as follows:

§ 25.217 Default service rules.

* * * * *

(b)(1) For all NGSO-like satellite licenses for which the application was filed pursuant to the procedures set forth in § 25.157 after August 27, 2003, authorizing operations in a frequency band for which the Commission has not adopted frequency band-specific service rules at the time the license is granted, the licensee will be required to comply with the following technical requirements, notwithstanding the frequency bands specified in these rule provisions: §§ 25.142(d), 25.143(b)(2)(ii), 25.143(b)(2)(iii), 25.204(g), 25.210(d), 25.210(f), and 25.210(i).

* * * * *

(3) Mobile earth station licensees authorized to operate with one or more space stations subject to paragraph (b)(1) of this section must comply with the requirements in §§ 25.285 and 25.287, notwithstanding the frequency bands specified in that section. * * *

(c)(1) For all GSO-like satellite licenses for which the application was filed pursuant to the procedures set forth in § 25.158 after August 27, 2003, authorizing operations in a frequency band for which the Commission has not adopted frequency band-specific service rules at the time the license is granted, the licensee will be required to comply with the following technical requirements, notwithstanding the frequency bands specified in these rule provisions: §§ 25.142(d), 25.143(b)(2)(iv), 25.204(g), 25.210(d), 25.210(f), 25.210(i), and 25.210(j).

* * * * *

42. In § 25.218, revise paragraph (a) introductory text and paragraphs (a)(1) and (2) to read as follows:

§ 25.218 Off-axis EIRP envelopes for FSS earth stations transmitting in certain frequency bands.

(a) This section applies to all applications for Fixed-Satellite Service earth stations transmitting to geostationary space stations in the C-band, Ku-band, or extended Ku-band, except for:

(1) ESV and VMES applications, and

(2) Analog video earth station applications.

* * * * *

43. In § 25.221, revise the section heading and the last sentence of paragraph (a)(12) and add two sentences at the end of paragraph (a)(12) to read as follows:

§ 25.221 Blanket Licensing provisions for Earth Stations on Vessels (ESVs) receiving in the 3700–4200 MHz (space-to-Earth) band and transmitting in the 5925–6425 MHz (Earth-to-space) band, operating with GSO Satellites in the Fixed-Satellite Service.

(a) * * *

(12) * * * If, prior to the end of the 30-day comment period of the public NPRM, any objections are received from U.S.-licensed Fixed Service operators that have been excluded from coordination, the ESV licensee must immediately cease operation of that particular station on frequencies used by the affected U.S.-licensed Fixed Service station until the coordination dispute is resolved and the ESV licensee informs the Commission of the resolution. As used in this section, ''baseline'' means the line from which maritime zones are measured. The baseline is a combination of the low-water line and closing lines across the mouths of inland water bodies and is defined by a series of baseline points

that include islands and ''low-water elevations,'' as determined by the U.S. Department of State's Baseline Committee.

* * * * *

44. In § 25.223, revise the section heading and paragraphs (a) and (c) to read as follows:

§ 25.223 Alternative licensing rules for feeder link earth stations in the 17/24 GHz BSS.

(a) This section applies to license applications for earth stations that transmit to 17/24 GHz Broadcasting-Satellite Service space stations, in which the proposed earth station's antenna does not conform to the standards of § 25.209(a) and (b), and/or the proposed input power density level is in excess of that specified in § 25.212(f) of this part.

* * * * *

(c) Each earth station license applicant that proposes levels in excess of those defined in paragraph (b) of this section must:

(1) Submit with its application link budget analyses of the operations proposed along with a detailed written explanation of how each uplink and each transmitted satellite carrier density figure is derived, and one of the following:

(i) An interference analysis demonstrating that the proposed operations are compatible with the operations of other potentially affected parties, providing details of its proposed radio frequency carriers which it believes should be taken into account in this analysis, and including, for each such radio frequency carrier, the link noise budget, modulation parameters, and overall link performance analysis; or

(ii) Certification that all potentially affected parties acknowledge and do not object to the use of the applicant's higher power densities. For proposed power levels less than or equal to 3 dB in excess of the limits defined in paragraph (b) of this section, the potentially affected parties are those co-frequency U.S.-authorized 17/24 GHz BSS satellite networks that are located at angular separations of up to ±6° away; for power levels greater than 3 dB and less than or equal to 6 dB in excess of the limits defined in paragraph (b) of this section, potentially affected parties are all those co-frequency U.S.-authorized operators at up to ±10° away.

(2) No power levels greater than 6 dB in excess of the limits defined in paragraph (b) of this section will be permitted.

* * * * *

45. In § 25.253, revise paragraphs (a)(1), (c)(1), and (h) to read as follows:

§ 25.253 Special requirements for ancillary terrestrial components operating in the 1626.5–1660.5 MHz/1525–1559 MHz bands.

(a) * * *

(1) In any band segment coordinated for the exclusive use of an MSS applicant within the land area of the United States, where there is no other 1.5/1.6 GHz MSS satellite making use of that band segment within the visible portion of the geostationary arc as seen from the ATC coverage area, the ATC system will be limited by the in-band and out-of-band emission limitations contained in this section and the requirement to maintain a substantial MSS service.

* * * * *

(c) * * *

(1) Demonstrate, at the time of application, how its ATC network will comply with the requirements of footnotes US308 and US315 to the table of frequency allocations contained in § 2.106 of this chapter regarding priority and preemptive access to the 1.5/1.6 GHz MSS spectrum by the Aeronautical Mobile-Satellite Route Service (AMS(R)S) and the Global Maritime Distress and Safety System (GMDSS).

* * * * *

(h) When implementing multiple base stations and/or base stations using multiple carriers, where any third-order intermodulation product of these base stations falls on a 1.5/1.6 GHz MSS band segment coordinated for use by another MSS operator with rights to the coordinated band, the MSS ATC licensee must notify the MSS operator. The MSS operator may request coordination to modify the base station carrier frequencies, or to reduce the maximum base station EIRP on the frequencies contributing to the third-order intermodulation products. The threshold for this notification and coordination is when the sum of the calculated signal levels received by an MSS receiver exceeds −70 dBm. The MSS receiver used in these calculations can be assumed to have an antenna with 0 dBi gain. Free-space propagation between the base station antennas and the MSS terminals can be assumed and actual signal polarizations for the ATC signals and the MSS system may be used.

46. In § 25.259, revise paragraph (b) to read as follows:

§ 25.259 Time sharing between NOAA meteorological satellite systems and non-voice, non-geostationary satellite systems in the 137–138 MHz band.

* * * * *

(b) An NVNG licensee time sharing spectrum in the 137–138 MHz band must establish a 24-hour per day contact person and telephone number so that claims of harmful interference into NOAA earth stations and other operational issues can be reported and resolved expeditiously. This contact information must be made available to the NOAA or its designee. If the NTIA notifies the Commission that the NOAA is receiving unacceptable interference from a NVNG licensee, the Commission will require such NVNG licensee to terminate its interfering operations immediately unless it demonstrates to the Commission's reasonable satisfaction, and that of NTIA, that it is not responsible for causing harmful interference into the worldwide NOAA system. An NVNG licensee assumes the risk of any liability or damage that it and its directors, officers, employees, affiliates, agents and subcontractors may incur or suffer in connection with an interruption of its Mobile-Satellite Service, in whole or in part, arising from or relating to its compliance or noncompliance with the requirements of this paragraph.

* * * * *

47. In § 25.260, revise paragraph (b) to read as follows:

§ 25.260 Time sharing between DoD meteorological satellite systems and non-voice, non-geostationary satellite systems in the 400.15–401 MHz band.

* * * * *

(b) An NVNG licensee time sharing spectrum in the 400.15–401 MHz band must establish a 24-hour per day contact person and telephone number so that claims of harmful interference into DoD earth stations and other operational issues can be reported and resolved expeditiously. This contact information must be made available to the DoD or its designee. If the NTIA notifies the Commission that the DoD is receiving unacceptable interference from a NVNG licensee, the Commission will require such NVNG licensee to terminate its interfering operations immediately unless it demonstrates to the Commission's reasonable satisfaction, and that of NTIA, that it is not responsible for causing harmful interference into the worldwide DoD system. A NVNG licensee assumes the risk of any liability or damage that it and its directors, officers, employees, affiliates, agents and subcontractors may incur or suffer in connection with an interruption of its Mobile-Satellite Service, in whole or in part, arising from or relating to its compliance or

noncompliance with the requirements of this paragraph.

* * * * *

48. In § 25.272, remove and reserve paragraph (b).

§ 25.272 General inter-system coordination procedures.

* * * * *

(b) [Reserved]

* * * * *

49. In § 25.276, revise paragraph (a) and remove and reserve paragraph (b) to read as follows:

§ 25.276 Points of communication.

(a) Unless otherwise specified in the station authorization, an earth station may transmit to any space station in the same radio service that is listed as a point of communication in the earth station license, provided that permission has been received from the space station operator to access that space station.

(b) [Reserved]

* * * * *

50. Revise § 25.281 to read as follows:

§ 25.281 Transmitter identification requirements for satellite video transmissions from fixed earth stations.

(a) Fixed earth station transmissions carrying broadband video information with analog frequency modulation must be identified through use of an Automatic Transmitter Identification System (ATIS) meeting the following specifications:

(1) The ATIS signal must be a separate subcarrier that is automatically activated whenever any radio frequency emissions occur.

(2) The ATIS message must continuously repeat.

(3) The ATIS subcarrier signal must be generated at a frequency of 7.1 MHz ±25 kHz and modulate the uplink radio frequency carrier at a level no less than −26 dB (referenced to the unmodulated carrier).

(4) ATIS subcarrier deviation must not exceed 25 kHz.

(5) The ATIS message protocol must be International Morse Code keyed by a 1200 Hz ±800 Hz tone representing a mark and a message rate of 15 to 25 words per minute. The tone must frequency-modulate the subcarrier signal with the ATIS message.

(b) Fixed earth station transmissions carrying broadband video information with digital modulation must be identified through use of an ATIS with the following specifications.

(1) Either the ATIS message must be injected into the Network Information Table of the MPEG data stream, or

(2) The ATIS message must be modulated onto a direct sequence spread spectrum signal that has the same center frequency as the digitally-modulated broadband video signal, is transmitted along with the broadband video signal at a level that can be received by a compatible ATIS message receiver using the same antenna and downlink receiver chain as the broadband video signal, and has the following characteristics:

(i) Binary phase-shift keying modulation;

(ii) Spreading ratio of 4096;

(iii) A chip rate of 112,000 chips per second for symbol rates of the digitally-modulated broadband video signal between 128,000 and 256,000 symbols per second, or 224,000 chips per second for symbol rates of the digitally-modulated broadband video signal above 256,000 symbols per second;

(iv) Forward error correction with a (112,70) BCH code;

(v) Packet size, including forward error correction bits, of 122 bits; and

(vi) Maximum message size of 32 packets.

(c) Each message transmitted by an ATIS required by paragraph (a) or (b) of this section must be transmitted in an unencrypted ASCII text format that can be displayed using readily-available computer terminal emulation software and must include the following:

(1) The FCC-assigned call sign of the transmitting earth station;

(2) A telephone number providing immediate access to personnel capable of resolving ongoing interference or coordination problems with the station; and

(3) A unique serial number of ten or more digits programmed into the ATIS message in a permanent manner such that it cannot be readily changed by the operator on duty.

(4) Additional information may be included in the ATIS data stream provided the total ATIS message length does not exceed 30 seconds.

(d) The ATIS equipment must be integrated into the uplink transmitter chain with a method that cannot easily be defeated.

51. Add §§ 25.285 through 25.287 to Subpart D to read as follows:

§ 25.285 Operation of portable transmitters or transceivers on board aircraft.

(a) Operation of any of the following devices aboard aircraft is prohibited, unless the device is installed in a manner approved by the Federal Aviation Administration or is used by the pilot or with the pilot's consent:

(1) Earth stations capable of transmitting in the 1.5/1.6 GHz, 1.6/2.4 GHz, or 2 GHz Mobile-Satellite Service frequency bands;

(2) ATC terminals capable of transmitting in the 1.5/1.6 GHz, 1.6/2.4 GHz, or 2 GHz MSS bands;

(3) Earth stations used for non-voice, non-geostationary Mobile-Satellite Service communication that can emit radiation in the 108–137 MHz band.

(b) No portable device of any type identified in paragraph (a) of this section (including transmitter or transceiver units installed in other devices that are themselves portable) may be sold or distributed to users unless it conspicuously bears the following warning: ''This device must be turned off at all times while on board aircraft.'' For purposes of this section, a device is portable if it is a ''portable device'' as defined in § 2.1093(b) of this chapter or is designed to be carried by hand.

§ 25.286 Antenna painting and lighting.

The owner of an earth station antenna structure must comply with all applicable painting, marking, and/or lighting requirements in Part 17 of this chapter. In the event of default by the owner, the station licensee will be responsible for ensuring that such requirements are met.

§ 25.287 Requirements pertaining to operation of mobile stations in the NVNG, 1.5/1.6 GHz, 1.6/2.4 GHz, and 2 GHz Mobile-Satellite Service bands.

(a) Any mobile earth station (MES) operating in the 1530–1544 MHz and 1626.5–1645.5 MHz bands must have the following minimum set of capabilities to ensure compliance with Footnote 5.353A in 47 CFR 2.106 and the priority and real-time preemption requirements imposed by Footnote US315.

(1) All MES transmissions must have a priority assigned to them that preserves the priority and preemptive access given to maritime distress and safety communications sharing the band.

(2) Each MES with a requirement to handle maritime distress and safety data communications must be capable of either:

(i) Recognizing message and call priority identification when transmitted from its associated Land Earth Station (LES), or

(ii) Accepting message and call priority identification embedded in the message or call when transmitted from its associated LES and passing the identification to shipboard data message processing equipment.

(3) Each MES must be assigned a unique terminal identification number that will be transmitted upon any attempt to gain access to a system.

(4) After an MES has gained access to a system, the mobile terminal must be under control of an LES and must obtain all channel assignments from it.

(5) All MESs that do not continuously monitor a separate signaling channel or signaling within the communications channel must monitor the signaling channel at the end of each transmission.

(6) Each MES must automatically inhibit its transmissions if it is not correctly receiving separate signaling channel or signaling within the communications channel from its associated LES.

(7) Each MES must automatically inhibit its transmissions on any or all channels upon receiving a channel-shut-off command on a signaling or communications channel it is receiving from its associated LES.

(8) Each MES with a requirement to handle maritime distress and safety communications must have the capability within the station to automatically preempt lower precedence traffic.

(b) Any LES for an MSS system operating in the 1530–1544 MHz and 1626.5–1645.5 MHz bands must have the following minimum set of capabilities to ensure compliance with Footnotes 5.353A and the priority and real-time preemption requirements imposed by Footnote US315. An LES fulfilling these requirements must not have any additional priority with respect to FSS stations operating with other systems.

(1) LES transmissions to MESs must have a priority assigned to them that preserves the priority and preemptive access given to maritime distress and safety communications pursuant to paragraph (a) of this section.

(2) The LES must recognize the priority of calls to and from MESs and make channel assignments taking into account the priority access that is given to maritime distress and safety communications.

(3) The LES must be capable of receiving the MES identification number when transmitted and verifying that it is an authorized user of the system to prohibit unauthorized access.

(4) The LES must be capable of transmitting channel assignment commands to the MESs.

(5) The communications channels used between the LES and the MES shall have provision for signaling within the voice/data channel, for an MES that does not continuously monitor the LES signaling channel during a call.

(6) The LES must transmit periodic control signals to MESs that do not continuously monitor the LES signaling channel.

(7) The LES must automatically inhibit transmissions to an MES to which it is not transmitting in a signaling channel or signaling within the communications channel.

(8) The LES must be capable of transmitting channel-shut-off commands to MESs on signaling or communications channels.

(9) Each LES must be capable of interrupting, and if necessary, preempting ongoing routine traffic from an MES in order to complete a maritime distress, urgency or safety call to that MES.

(10) Each LES must be capable of automatically turning off one or more of its associated channels in order to complete a maritime distress, urgency or safety call.

(c) No person without an FCC license for such operation may transmit to a space station in the NVNG, 1.5/1.6 GHz, 1.6/2.4 GHz, or 2 GHz Mobile-Satellite Service from anywhere in the United States except to receive service from the holder of a pertinent FCC blanket license or from another party with the permission of such a blanket licensee.

(d) The holder of an FCC blanket license for operation of mobile transmitters or transceivers for communication via an NVNG, 1.6/2.4 GHz, 1.5/1.6 GHz, or 2 GHz Mobile Satellite Service system will be responsible for operation of any such device to receive service provided by that licensee or provided by another party with the blanket licensee's consent. Operators of such satellite systems must not transmit communications to or from such devices in the United States unless such communications are authorized under a service contract with the holder of a pertinent FCC blanket earth station license or under a service contract with another party with authority for such operation delegated by such a blanket licensee.

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Part IV

Nuclear Regulatory Commission

Privacy Act of 1974; Republication of Systems of Records Notices; Notice

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0273]

Privacy Act of 1974; Republication of Systems of Records Notices

AGENCY: Nuclear Regulatory Commission.

ACTION: Republication of Systems of Records Notices.

SUMMARY: The Nuclear Regulatory Commission (NRC) has conducted a comprehensive review of all its Privacy Act systems of records notices. The NRC is revising and republishing all its systems of records notices as a result of this review. The revisions are minor corrective and administrative changes that do not meet the threshold criteria established by the Office of Management and Budget (OMB) for either a new or altered system of records.

DATES: *Effective Date:* All revisions included in this republication are complete and accurate as of October 4, 2012.

FOR FURTHER INFORMATION CONTACT: Sally Hardy, Privacy Act Program Analyst, FOIA/Privacy Act Section, Information Services Branch, Information and Records Services Division, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–5607; email: *Sally.Hardy@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Republication of NRC's Revised Systems of Records Notices

These notices were last published in the **Federal Register** on September 20, 2010 (75 FR 57334).

Nuclear Regulatory Commission Privacy Act Systems of Records

NRC Systems of Records

1. Parking Permit Records—NRC.
2. Biographical Information Records—NRC.
3. Enforcement Actions Against Individuals—NRC.
4. Conflict of Interest Records—NRC.
5. Contracts Records—NRC.
6. Department of Labor (DOL) Discrimination Cases—NRC.
7. (Revoked.)
8. Employee Disciplinary Actions, Appeals, Grievances, and Complaints Records—NRC.
9. Office of Small Business and Civil Rights Discrimination Complaint Records—NRC.
10. Freedom of Information Act (FOIA) and Privacy Act (PA) Request Records—NRC.
11. General Personnel Records (Official Personnel Folder and Related Records)—NRC.
12. Child Care Subsidy Program Records—NRC.
13. (Revoked.)
14. Employee Assistance Program Records—NRC.
15. (Revoked.)
16. Facility Operator Licensees Records (10 CFR Part 55)—NRC.
17. Occupational Injury and Illness Records—NRC.
18. Office of the Inspector General (OIG) Investigative Records—NRC.
19. Official Personnel Training Records—NRC.
20. Official Travel Records—NRC.
21. Payroll Accounting Records—NRC.
22. Personnel Performance Appraisals—NRC.
23. Office of Investigations Indices, Files, and Associated Records—NRC.
24. Property and Supply Records—NRC.
25. Oral History Program—NRC.
26. Transit Subsidy Benefits Program Records—NRC.
27. Radiation Exposure Information and Reporting System (REIRS) Records—NRC.
28. Merit Selection Records—NRC.
29. (Revoked.)
30. (Revoked.)
31. (Revoked.)
32. Office of the Chief Financial Officer Financial Transactions and Debt Collection Management Records—NRC.
33. Special Inquiry Records—NRC.
34. (Revoked.)
35. Drug Testing Program Records—NRC.
36. Employee Locator Records—NRC.
37. Information Security Files and Associated Records—NRC.
38. Mailing Lists—NRC.
39. Personnel Security Files and Associated Records—NRC.
40. Facility Security Access Control Records—NRC.
41. Tort Claims and Personal Property Claims Records—NRC.
42. Strategic Workforce Planning Records—NRC.
43. Employee Health Center Records—NRC.
44. Employee Fitness Center Records—NRC.
45. Digital Certificates for Personal Identity Verification Records—NRC.

These systems of records are those systems maintained by the NRC that contain personal information about individuals from which information is retrieved by an individual's name or identifier.

The notice for each system of records states the name and location of the record system, the authority for and manner of its operation, the categories of individuals that it covers, the types of records that it contains, the sources of information in those records, and the routine uses of each system of records. Each notice also includes the business address of the NRC official who will inform interested persons of the procedures whereby they may gain access to and request amendment of records pertaining to them.

The Privacy Act provides certain safeguards for an individual against an invasion of personal privacy by requiring Federal agencies to protect records contained in an agency system of records from unauthorized disclosure, ensure that information is current and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information.

Prefatory Statement of General Routine Uses

The following routine uses apply to each system of records notice set forth below which specifically references this Prefatory Statement of General Routine Uses.

1. A record from this system of records which indicates a violation of civil or criminal law, regulation or order may be referred as a routine use to a Federal, State, local or foreign agency that has authority to investigate, enforce, implement or prosecute such laws. Further, a record from this system of records may be disclosed for civil or criminal law or regulatory enforcement purposes to another agency in response to a written request from that agency's head or an official who has been delegated such authority.

2. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency to obtain information relevant to an NRC decision concerning hiring or retaining an employee, letting a contract or issuing a security clearance, license, grant or other benefit.

3. A record from this system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency requesting a record that is relevant and necessary to its decision on a matter of hiring or retaining an employee, issuing a security clearance, reporting an investigation of an employee, letting a contract, or issuing a license, grant, or other benefit.

4. A record from this system of records may be disclosed as a routine use in the course of discovery; in presenting evidence to a court, magistrate, administrative tribunal, or grand jury or pursuant to a qualifying

order from any of those; in alternative dispute resolution proceedings, such as arbitration or mediation; or in the course of settlement negotiations.

5. A record from this system of records may be disclosed as a routine use to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

6. A record from this system of records may be disclosed as a routine use to NRC-paid experts or consultants, and those under contract with the NRC on a ''need-to-know'' basis for a purpose within the scope of the pertinent NRC task. This access will be granted to an NRC contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager.

7. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when: (1) The NRC suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the NRC has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the NRC or another agency or entity) that rely upon the compromised information; and (3) the disclosure to be made to such agencies, entities, and persons is reasonably necessary to assist in connection with the NRC's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

NRC–1

SYSTEM NAME:

Parking Permit Records—NRC.

SYSTEM LOCATION:

Administrative Services Center, Office of Administration, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, and current contractor facility.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees and contractors who apply for parking permits for NRC-controlled parking spaces.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records consist of the applications and the revenue collected for the Headquarters' parking facilities. The applications include, but are not limited to, the applicant's name, address, telephone number, length of service, vehicle, rideshare, and handicap information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3511; 41 CFR 102–74.265 *et seq.,* Parking Facilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To record amount paid and revenue collected for parking;

b. To contact permit holder;

c. To determine priority for issuance of permits;

d. To provide statistical reports to city, county, State, and Federal Government agencies; and

e. For the routine uses specified in paragraph numbers 1, 4, 5, 6, and 7 in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper in file folders and on electronic media.

RETRIEVABILITY:

Accessed by name, tag number, and/or permit number.

SAFEGUARDS:

Paper records are maintained in locked file cabinets under visual control of the Administrative Services Center staff. Computer files are maintained on a hard drive, access to which is password protected. Access to and use of these records is limited to those persons whose official duties require access.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, the NARA General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with Implementing Schedules under 36 CFR 1226.14.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Administrative Services Center, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Applications submitted by NRC employees and contractors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–2

SYSTEM NAME:

Biographical Information Records—NRC.

SYSTEM LOCATION:

Office of Public Affairs, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Commissioners and senior NRC staff members.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information relating to education and training, employment history, and other general biographical data about the Commissioners and senior NRC staff members, including photographs of Commissioners.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 5841, 5843(a), 5844(a), 5845(a), and 5849.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the

Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To provide information to the press;

b. To provide information to other persons and agencies requesting this information; and

c. For the routine uses specified in paragraph numbers 5, 6, and 7 of the Prefatory Statement of General Routine Uses. Biographies of current Commissioners are available on the NRC's Web site.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on electronic media.

RETRIEVABILITY:

Records are accessed by name.

SAFEGUARDS:

Records are maintained in locked file cabinets. Access to and use of this information is limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, the NARA General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with Implementing Schedules under 36 CFR 1226.14.

SYSTEM MANAGER(S) AND ADDRESS:

Senior Advisor, Office of Public Affairs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Information is provided by each individual and approved for use by the individual involved.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–3

SYSTEM NAME:

Enforcement Actions Against Individuals—NRC.

SYSTEM LOCATION:

Primary system—Office of Enforcement, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems may exist, in whole or in part, at the NRC Regional Offices at the locations listed in Addendum I, Part 2, and in the Office of the General Counsel, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals involved in NRC-licensed activities who have been subject to NRC enforcement actions or who have been the subject of correspondence indicating that they are being, or have been, considered for enforcement action.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system includes, but is not limited to, individual enforcement actions, including Orders, Notices of Violations with and without Civil Penalties, Orders Imposing Civil Penalties, Letters of Reprimand, Demands for Information, and letters to individuals who are being or have been considered for enforcement action. Also included are responses to these actions and letters. In addition, the files may contain other relevant documents directly related to those actions and letters that have been issued. Files are arranged numerically by Individual Action (IA) numbers, which are assigned when individual enforcement actions are considered. In instances where only letters are issued, these letters also receive IA numbers. The system includes a computerized database from which information is retrieved by names of the individuals subject to the action and IA numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2073(e), 2113, 2114, 2167, 2168, 2201(i), 2231, 2282; 10 CFR 30.10, 40.10, 50.5, 50.110, 50.111, 50.120, 60.11, 61.9b, 70.10, 72.12, 110.7b, 110.50, and 110.53; 10 CFR Part 2, subpart B; Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*); 10 CFR 19.16(a), 30.7, 40.7, 50.7, 60.9, 70.7, and 72.10; Energy Reorganization Act of 1974, as amended, Section 211 (42 U.S.C. 5801 *et seq.*); 5 U.S.C. 2302(a)(2)(A).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To respond to general information requests from the Congress;

b. To deter future violations, certain information in this system of records may be routinely disseminated to the public by means such as: publishing in the **Federal Register** certain enforcement actions issued to individuals and making the information available in the Public Library accessible through the NRC Web site, *www.nrc.gov;*

c. When considered appropriate for disciplinary purposes, information in this system of records, such as enforcement actions and hearing proceedings, may be disclosed to a bar association, or other professional organization performing similar functions, including certification of individuals licensed by NRC or Agreement States to perform specified licensing activities;

d. Where appropriate to ensure the public health and safety, information in this system of records, such as enforcement actions and hearing proceedings, may be disclosed to a Federal or State agency with licensing jurisdiction;

e. To respond to the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906; and

f. For all of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper in file folders and on electronic media.

RETRIEVABILITY:

Records are accessed by individual action file number or by the name of the individual.

SAFEGUARDS:

Paper records are maintained in lockable file cabinets and are under visual control during duty hours. Access to computer records requires use of proper password and user identification codes. Access to and use of these records is limited to those NRC employees whose official duties require access.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, the NARA General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *www.nrc.gov/reading-rm/records-mgmt/disposition.html*. Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with Implementing Schedules under 36 CFR 1226.14.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Information in the records is primarily obtained from NRC inspectors and investigators and other NRC employees, individuals to whom a record pertains, authorized representatives for these individuals, and NRC licensees, vendors, other individuals regulated by the NRC, and persons making allegations to the NRC.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–4

SYSTEM NAME:

Conflict of Interest Records—NRC.

SYSTEM LOCATION:

Office of the General Counsel, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC current and former employees, consultants, Special Government employees, and advisory committee members.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information relating to:

a. General biographical data (i.e., name, birth date, home address, position title, home and business telephone numbers, citizenship, educational history, employment history, professional society memberships, honors, fellowships received, publications, licenses, and special qualifications);

b. Financial status (i.e., nature of financial interests and in whose name held, creditors, character of indebtedness, interest in real property, and pension or other retirement interests);

c. Certifications by employees that they and members of their families are in compliance with the Commission's stock ownership regulations;

d. Requests for approval of outside employment by NRC employees and NRC responses thereto;

e. Advice and determinations (i.e., no conflict or apparent conflict of interest, questions requiring resolution, steps taken toward resolution); and

f. Information pertaining to appointment (i.e., proposed period of NRC service, estimated number of days of NRC employment during period of service, proposed pay, clearance status, description of services to be performed and explanation of need for the services, justification for proposed pay, description of expenses to be reimbursed and dollar limitation, and description of Government-owned property to be in possession of appointee).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 CFR 2634–2641, 5801; 5 U.S.C. 7351, 7353; Ethics in Government Act of 1978, as amended (5 U.S.C. App., Section 101 *et seq.*); 18 U.S.C. 201–209; 31 U.S.C. 1353; Executive Order (E.O.) 12674 (as modified by E.O. 12731).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To provide the Department of Justice, Office of Personnel Management, Office of Government Ethics, Office of Special Counsel, and/or Merit Systems Protection Board with information concerning an employee in instances where this office has reason to believe a Federal law may have been violated or where this office desires the advice of the Department, Office, or Board concerning potential violations of Federal law; and

b. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper in file folders and electronic media.

RETRIEVABILITY:

Records are accessed by name.

SAFEGUARDS:

Paper records are maintained in locked file cabinets and computer records are password protected. Access to these records is limited to individuals with a need-to-know. The electronic management information system is operated within the NRC's security LAN/WAN system.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, the NARA General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *www.nrc.gov/reading-rm/records-mgmt/*

disposition.html. Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with Implementing Schedules under 36 CFR 1226.14.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant General Counsel for Legal Counsel, Legislation, and Special Projects, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Information in this system of records either comes from the individual to whom it applies, or is derived from information he or she supplied, or comes from the office to which the individual is to be assigned, other NRC offices, or other persons such as attorneys.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–5

SYSTEM NAME:

Contracts Records—NRC.

SYSTEM LOCATION:

Primary system—Division of Contracts, Office of Administration, NRC, 12300 Twinbrook Parkway, Rockville, Maryland.

Duplicate system—Duplicate systems exist, in part, at the locations listed in Addendum I, Parts 1 and 2, in working files maintained by the assigned office project manager and in the NRC's Agencywide Documents Access and Management System (ADAMS).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are employed as NRC contractors. NRC employees substantially involved with contracting, such as project officers and other acquisition officials.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain personal information (such as technical qualifications, education, rates of pay, employment history) of contractors and their employees, and other contracting records. They also contain evaluations, recommendations, and reports of NRC acquisition officials, assessment of contractor performance, invoice payment records, and related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 631, 644; 31 U.S.C. 3511; 13 CFR 124.501–520; 44 U.S.C. 3301; 48 CFR Subpart 4.8; 48 CFR Part 19.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To provide information to the Federal Procurement Data Center, Department of Health and Human Services, Defense Contract Audit Agency, General Accounting Office, and other Federal agencies for audits and reviews; and

b. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper in file folders and on electronic media.

RETRIEVABILITY:

Paper records are accessed by contract number or purchase order number; and are cross-referenced to the automated system that contains the name of the contractor, vendor, project officer, procurement official, and taxpayer identification number (TIN).

SAFEGUARDS:

File folders are maintained in unlocked conserver files in a key code locked room. Access to and use of these records is limited to those persons whose official duties require such access. Access to automated systems is protected by password and roles and responsibilities.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, the NARA General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with Implementing Schedules under 36 CFR 1226.14.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Contracts, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.'' Some information was received in confidence and will not be disclosed to the extent that disclosure would reveal confidential business (proprietary) information.

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the contractor or potential contractor or NRC employee.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(1) and (k)(5), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

NRC–6

SYSTEM NAME:

Department of Labor (DOL) Discrimination Cases—NRC.

SYSTEM LOCATION:

Primary system—Office of Enforcement, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems may exist, in whole or in part, in

enforcement or allegation coordinators' offices at NRC Regional Offices at the addresses listed on Addendum I, Part 2. The duplicate systems in the Regional Offices would ordinarily be limited to the cases filed in each Region.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed complaints with DOL concerning alleged acts of discrimination in violation of section 211 of the Energy Reorganization Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of documents related to, and provided by, the DOL including copies of complaints, correspondence filed with the Administrative Law Judge assigned to the case, and decisions by the Regional Administrators of DOL's Occupational, Safety, and Health Administration, Administrative Law Judges, and the Administrative Review Board.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2201, as amended; 42 U.S.C. 2282, as amended; 42 U.S.C. 5851, as amended; 10 CFR 30.7, 40.7, 50.7, 60.9, 61.9, 70.7, and 72.10.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

Any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These documents are maintained in a locked filed cabinet. There is no index relating to these documents.

RETRIEVABILITY:

These documents are not kept in alphabetical or date order and are not retrievable by the name of an individual.

SAFEGUARDS:

Paper documents are maintained in locking file cabinets. Access to and use of these documents is limited to those NRC employees whose official duties require access.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, the NARA General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *www.nrc.gov/reading-rm/records-mgmt/disposition.html*. Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with Implementing Schedules under 36 CFR 1226.14.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.'' Information received from the DOL is treated by DOL as public information and subject to disclosure under applicable laws.

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

The sources of the records include the individuals to whom a record pertains, attorneys for these individuals, defendants, attorneys for the defendants, and DOL.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–7 (Revoked.)
NRC–8

SYSTEM NAME:

Employee Disciplinary Actions, Appeals, Grievances, and Complaints Records—NRC.

SYSTEM LOCATION:

Primary system—Office of the Chief Human Capital Officer, NRC, Gateway Building, 7201 Wisconsin Avenue, Bethesda, Maryland.

The Office of the Inspector General (OIG) employee files are located within the OIG, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—A duplicate system may be maintained, in whole or in part, in the Office of the General Counsel, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, and at NRC's Regional Offices at locations listed in Addendum I, Part 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former NRC employees and annuitants who have filed written complaints brought to the Office of the Chief Human Capital Officer's attention or initiated grievances or appeal proceedings as a result of a determination made by the NRC, Office of Personnel Management, and/or Merit Systems Protection Board, or a Board or other entity established to adjudicate such grievances and appeals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Includes all documents related to: disciplinary actions; adverse actions; appeals; complaints; grievances; arbitrations; and negative determinations regarding within-grade salary increases. It contains information relating to determinations affecting individuals made by the NRC, Office of Personnel Management, Merit Systems Protection Board, arbitrators or courts of law. The records may include the initial appeal or complaint, letters or notices to the individual, records of hearings when conducted, materials placed into the record to support the decision or determination, affidavits or statements, testimony of witnesses, investigative reports, instructions to an NRC office or division concerning action to be taken to comply with decisions, and related correspondence, opinions, and recommendations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3132(a); 5 U.S.C. 3521–3525; 5 U.S.C. 4303, as amended; 5 U.S.C. 7503; 29 U.S.C. 633a; 29 U.S.C. 791; 42 U.S.C. 2000e–16; 42 U.S.C. 2201(d), as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which

the record was collected under the following routine uses:

a. To furnish information to the Office of Personnel Management and/or Merit Systems Protection Board under applicable requirements related to grievances and appeals;

b. To provide appropriate data to union representatives and third parties (that may include the Federal Services Impasses Panel and Federal Labor Relations Authority) in connection with grievances, arbitration actions, and appeals; and

c. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper and electronic media.

RETRIEVABILITY:

Records are retrieved by individual's name.

SAFEGUARDS:

Records are maintained in locked file cabinets and in a password-protected automated system. Access to and use of these records is limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, the NARA General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with Implementing Schedules under 36 CFR 1226.14.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Employee & Labor Relations Branch, Office of the Chief Human Capital Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. For OIG employee records: Director, Resource Management and Operations Support, Office of the Inspector General, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.'' Some information was received in confidence and will not be disclosed to the extent that disclosure would reveal a confidential source.

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Individuals to whom the record pertains, NRC, Office of Personnel Management and/or Merit Systems Protection Board officials; affidavits or statements from employees, union representatives, or other persons; testimony of witnesses; official documents relating to the appeal, grievance, or complaint; Official Personnel Folder; and other Federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–9

SYSTEM NAME:

Office of Small Business and Civil Rights Discrimination Complaint Records—NRC.

SYSTEM LOCATION:

Primary system—Office of Small Business and Civil Rights, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—A duplicate system exists, in part, in the Office of the General Counsel, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for NRC employment and current and former NRC employees who have initiated EEO counseling and/or filed a formal complaint of employment discrimination under Title VII of the Civil Rights Act, the Age Discrimination in Employment Act of 1967, the Equal Pay Act, and the Rehabilitation Act. Individuals in the United States in education programs or activities receiving Federal financial assistance from the NRC who initiated an informal complaint and/or filed a formal complaint of sex discrimination under Title IX of the Education Amendments Act. Individuals in the United States in programs or activities receiving Federal financial assistance from the NRC who initiated an informal complaint and/or filed a formal complaint of discrimination under Title VI of the Civil Rights Act, the Age Discrimination Act of 1975, Section 504 of the Rehabilitation Act of 1973, and Title IV of the Energy Reorganization Act of 1974, as amended.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records may contain copies of written reports by counselors; investigative files; administrative files, including documentation of withdrawn and/or dismissed complaints; complainant's name, title, and grade; types and theories of discrimination alleged; description of action and conditions giving rise to complaints, settlement agreements, and compliance documents; description of corrective and/or remedial actions; description of disciplinary actions, if any; request for hearings, procedural information, and hearing transcripts; procedural information and forms regarding Alternative Dispute Resolution (ADR); Equal Employment Opportunity Commission (EEOC), Merit System Protection Board (MSPB), Department of Education (ED), and Department of Justice (DOJ) findings, analyses, decisions and orders; final agency decisions and final actions; and notices of intent to file in Federal district court, notices of cases filed in Federal district court, and Federal court decisions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 2301, 2302; 29 U.S.C. 206(d), as amended; 29 U.S.C. 633a, as amended; 29 U.S.C. 791; 42 U.S.C. 1981; 42 U.S.C. 2000e–16, as amended; 42 U.S.C. 5891; Executive Order (E.O.) 11246; E.O. 11375, as amended by E.O. 11478; E.O. 12086, as amended by E.O. 12608; E.O. 12106; E.O. 13166; 10 CFR parts 4 and 5; 29 CFR Part 1614.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To furnish information related to discrimination complaints to the EEOC,

Office of Personnel Management (OPM), MSPB, DOJ, ED, Health and Human Services, Office of Management and Budget, and Congress, under applicable requirements; and

b. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper and electronic media.

RETRIEVABILITY:

Records are accessed by name and docket number.

SAFEGUARDS:

Paper records are maintained in locked file cabinets. Automated system is password protected. Access to and use of these records is limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, the NARA General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with Implementing Schedules under 36 CFR 1226.14.

SYSTEM MANAGER(S) AND ADDRESS:

Senior Level Assistant for Policy and Programs, Office of Small Business and Civil Rights, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.'' Some information was received in confidence and will not be disclosed to the extent that disclosure would reveal a confidential source.

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains, counselors, mediators, investigators, NRC staff, Office of the Chief Human Capital Officer, the EEOC, OPM, MSPB, DOJ and/or ED officials, affidavits or statements from complainants, testimony of witnesses, and official documents relating to the complaints.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(5), the Commission has exempted portions of this system of records from 5 U.S.C. 552(c)(3), (d), (e)(4)(G), (H), and (I), and (f).

NRC–10

SYSTEM NAME:

Freedom of Information Act (FOIA) and Privacy Act (PA) Request Records—NRC.

SYSTEM LOCATION:

Primary system—FOIA/Privacy Section, Information Services Branch, Information and Records Services Division, Office of Information Services, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems may exist, in part, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have made a FOIA or PA request for NRC records.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains copies of the written requests from individuals or organizations made under the FOIA or PA, the NRC response letters, and related records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552 and 552a; 42 U.S.C. 2201, as amended; 10 CFR part 9.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. If an appeal or court suit is filed with respect to any records denied;

b. For preparation of reports required by 5 U.S.C. 552 and 5 U.S.C. 552a;

c. To another Federal agency when consultation or referral is required to process a request; and

d. For any of the routine uses specified in the Prefatory Statement of General Routine Uses. Some of the FOIA records are made publicly available in the Public Library accessible through the NRC Web site, *http://www.nrc.gov.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper, audio and video tapes, and electronic media.

RETRIEVABILITY:

Records are accessed by unique assigned number for each request and by requester's name.

SAFEGUARDS:

Records are maintained in locked file cabinets that are kept in locked rooms. Electronic records are password protected. Access to and use of these records is limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, the NARA General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with Implementing Schedules under 36 CFR 1226.14.

SYSTEM MANAGER(S) AND ADDRESS:

FOIA/PA Officer, FOIA/Privacy Section, Information Services Branch, Information and Records Services Division, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the FOIA/PA Officer, Office of

Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Requests are made by individuals. The response to the request is based upon information contained in NRC records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–11

SYSTEM NAME:

General Personnel Records (Official Personnel Folder and Related Records)—NRC.

SYSTEM LOCATION:

Primary system—For Headquarters and all Senior Executive Service (SES) personnel, Office of the Chief Human Capital Officer, NRC, White Flint North Complex, 11555 and 11545 Rockville Pike, Rockville, Maryland, and Gateway Building, 7201 Wisconsin Avenue, Bethesda, Maryland. For Regional personnel, at Regional Offices I–IV listed in Addendum I, Part 2. NRC has an interagency agreement with the U.S. Department of the Interior (DOI), National Business Center (NBC), Denver, Colorado, to maintain employee personnel and payroll information.

Duplicate system—Duplicate systems exist, in part, within the organization where an employee actually works for administrative purposes, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former NRC employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains personnel records that document an individual's Federal career and includes notification of personnel action (SF–50) and documents supporting the action taken; life insurance, thrift savings plan, health benefits and related beneficiary forms; letters of disciplinary action; notices of reductions-in-force; and other records retained in accordance with the Office of Personnel Management's Guide to Personnel Recordkeeping. These records include employment information such as personal qualification statements, resumes, and related documents including information about an individual's birth date, social security number, veterans preference status, tenure, minority group designator, physical handicaps, past and present salaries, grades, position titles; employee locator information identifying home and work address, phone numbers and emergency contacts; and certain medical records related to initial appointment and employment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C., Part III; 5 U.S.C. 4103; 42 U.S.C. 290dd; 42 U.S.C. 2201(d); and Executive Order (E.O.) 9397, as amended by E.O. 13478.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In accordance with an interagency agreement the NRC may disclose records to the DOI/NBC in order to affect the maintenance of electronic personnel records on behalf of the NRC related to its employees.

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses; or, where determined to be appropriate and necessary, the NRC may authorize DOI/NBC to make the disclosure:

a. To the Office of Personnel Management (OPM) and/or Merit Systems Protection Board (MSPB) for making a decision when an NRC employee or former NRC employee questions the validity of a specific document in an individual's record;

b. To a prospective employer of a Government employee. Upon transfer of the employee to another Federal agency, the information is transferred to such agency;

c. To store all personnel actions and related documentation, OPM investigations, Office of the Inspector General investigations, security investigations, determination of eligibility for Federal benefits, employment verification, and to update monthly Enterprise Human Resources Integration data repository;

d. To provide statistical reports to Congress, agencies, and the public on characteristics of the Federal work force;

e. To provide information to the OPM and/or MSPB for review, audit, or reporting purposes;

f. To provide members of the public with the names, position titles, grades, salaries, appointments (temporary or permanent), and duty stations of employees;

g. For medical records, to provide information to the Public Health Service in connection with Health Maintenance Examinations and to other Federal agencies responsible for Federal benefit programs administered by the Department of Labor (Office of Workers' Compensation Programs) and the OPM; and

h. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper in file folders and on electronic media. Effective November 2009, the Official Personnel Folders (OPFs) are maintained electronically in OPM's Enterprise Human Resources Interface.

RETRIEVABILITY:

Records are retrieved by name and/or social security number.

SAFEGUARDS:

The OPFs are stored electronically in a secure OPM central repository, with role-based security for access to the records and audit trail for all user activity. Paper documents are maintained in lockable file cabinets. Automated systems are password protected. Access to and use of these records is limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, the NARA General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with Implementing Schedules under 36 CFR 1226.14.

SYSTEM MANAGER(S) AND ADDRESS:

For Headquarters and all NRC SES employees—Associate Director for Human Resources Operations and Policy, Office of the Chief Human

Capital Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For Region I–IV non-SES employees—The appropriate Human Resources Team Leader at the locations listed in Addendum I, Part 2.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the individual to whom it applies; is derived from information supplied by that individual; or is provided by agency officials, other Federal agencies, universities, other academic institutions, or persons, including references, private and Federal physicians, and medical institutions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(5) and (k)(6), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

NRC–12

SYSTEM NAME:

Child Care Subsidy Program Records—NRC.

SYSTEM LOCATION:

Federal Employee Education and Assistance Fund (FEEA), 3333 S. Wadsworth Boulevard, Suite 300, Lakewood, Colorado (or current contractor facility).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees who voluntarily apply for child care subsidy.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include application forms for child care subsidy containing personal information about the employee (parent), their spouse (if applicable), their child/children, and their child care provider, including name, social security number, employer, grade, home and work telephone numbers, home and work addresses, total family income, name of child on whose behalf the parent is applying for subsidy, child's date of birth; information on child care providers used, including name, address, provider license number and State where issued, child care cost, and provider tax identification number; and copies of IRS Form 1040 or 1040A for verification purposes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

40 U.S.C. 590(g); 5 CFR 792.200–206; Executive Order (E.O.) 9397, as amended by E.O. 13478.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To the Office of Personnel Management to provide statistical reports; and

b. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSITION OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper and electronic media at the current contractor site.

RETRIEVABILITY:

Information may be retrieved by employee name or social security number.

SAFEGUARDS:

When not in use by an authorized person, paper records are stored in lockable file cabinets and computer records are protected by the use of passwords.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, the NARA General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with Implementing Schedules under 36 CFR 1226.14.

SYSTEM MANAGER AND ADDRESS:

Associate Director for Human Resources Operations and Policy, Office of the Chief Human Capital Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Information is obtained from NRC employees who apply for child care subsidy and their child care provider.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–13 (Revoked.)
NRC–14

SYSTEM NAME:

Employee Assistance Program Records—NRC.

SYSTEM LOCATION:

Office of the Chief Human Capital Officer, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, and current contractor facility.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees or family members who have been counseled by or referred to the Employee Assistance Program (EAP) for problems relating to alcoholism, drug abuse, job stress, chronic illness, family or relationship concerns, and emotional and other similar issues.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records of NRC employees or their families who have participated in the EAP and the results of any counseling or referrals which

may have taken place. The records may contain information as to the nature of each individual's problem, subsequent treatment, and progress.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7901; 21 U.S.C. 1101–1194; 42 U.S.C. 290cc–1; and 290dd–1 and 290ee–1; 44 U.S.C. 3101; 44 U.S.C. 3301; 5 CFR 792.101–105.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. For statistical reporting purposes; and

b. Any disclosure of information pertaining to an individual will be made in compliance with the Confidentiality of Alcohol and Drug Abuse Patient Records regulations, 42 CFR Part 2, as authorized by 42 U.S.C. 290dd–2, as amended.

c. For the routine use specified in paragraph number 7 of the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper in file folders and on electronic media.

RETRIEVABILITY:

Information accessed by the EAP identification number and name of the individual.

SAFEGUARDS:

Files are maintained in a safe under the immediate control of the Employee Assistance Program Manager and the current EAP contractor. Case files are maintained in accordance with the confidentiality requirements of P.L. 93–282, any NRC-specific confidentiality regulations, and the Privacy Act of 1974.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, the NARA General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with Implementing Schedules under 36 CFR 1226.14.

SYSTEM MANAGER(S) AND ADDRESS:

Employee Assistance Program Manager, Office of the Chief Human Capital Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Information compiled by the Employee Assistance Program Manager, and the Employee Assistance Program contractor during the course of counseling with an NRC employee or members of the employee's family.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–15 (Revoked.)
NRC–16

SYSTEM NAME:

Facility Operator Licensees Records (10 CFR Part 55)—NRC.

SYSTEM LOCATION:

For power reactors, at the appropriate Regional Office at the address listed in Addendum I, Part 2; for non-power (test and research) reactor facilities, at the Operator Licensing Branch, Division of Inspection and Regional Support, Office of Nuclear Reactor Regulation, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The Operator Licensing Tracking System is located at NRC Headquarters and is accessible by the four Regional Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals licensed under 10 CFR part 55, new applicants whose applications are being processed, and individuals whose licenses have expired.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information pertaining to 10 CFR part 55 applicants for a license, licensed operators, and individuals who previously held licenses. This includes applications for a license, license and denial letters, and related correspondence; correspondence relating to actions taken against a licensee; 10 CFR 50.74 notifications; certification of medical examination and related medical information; fitness for duty information; examination results and other docket information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2131–2141; 10 CFR part 55.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To determine if the individual meets the requirements of 10 CFR part 55 to take an examination or to be issued an operator's license;

b. To provide researchers with information for reports and statistical evaluations related to selection, training, and examination of facility operators;

c. To provide examination, testing material, and results to facility management; and

d. For any of the routine uses specified in paragraph numbers 1, 2, 4, 5, 6, and 7 of the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper in file folders and logs, and on electronic media.

RETRIEVABILITY:

Records are accessed by name and docket number.

SAFEGUARDS:

Maintained in locked file cabinets or an area that is locked. Computer files are password protected. Access to and use of these records is limited to those persons whose official duties require such access based on roles and responsibilities.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, the NARA General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with Implementing Schedules under 36 CFR 1226.14.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Operator Licensing and Training Branch, Division of Inspection and Regional Support, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Information in this system comes from the individual applying for a license, the Part 50 licensee, a licensed physician, and NRC and contractor staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–17

SYSTEM NAME:

Occupational Injury and Illness Records—NRC.

SYSTEM LOCATION:

Primary system—For Headquarters personnel: Part 1 (Workers' Compensation Program)—Office of the Chief Human Capital Officer, NRC, Gateway Building, 7201 Wisconsin Avenue, Bethesda, Maryland. Part 2 (Occupational Safety and Health Program)—Office of Administration, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

For Regional personnel, at each of the Regional Offices listed in Addendum I, Part 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former NRC employees with a reported occupational injury or illness.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain completed Occupational Safety and Health Administration and Office of Workers' Compensation forms and information regarding the location and description of the injury or illness, treatment, and disposition.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7902, as amended; 29 U.S.C. 657(c), as amended; Executive Order (E.O.) 12196 as amended; 29 CFR 1960; 29 CFR 1904.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To prepare periodic statistical reports on employees' health and injury status for transmission to and review by the Department of Labor;

b. For transmittal to the Secretary of Labor or an authorized representative under duly promulgated regulations;

c. For transmittal to the Office of Personnel Management, Merit Systems Protection Board, and/or Equal Employment Opportunity Commission as required to support individual claims; and

d. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper and electronic media.

RETRIEVABILITY:

Records retrieved by employee name or assigned claim/case number.

SAFEGUARDS:

Paper records are locked file cabinets under the visual control of the responsible staff. Electronic records are password protected. Access to and use of these records is limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, the NARA General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with Implementing Schedules under 36 CFR 1226.14.

SYSTEM MANAGER(S) AND ADDRESS:

For Headquarters—Part 1—Associate Director for Human Resources Operations and Policy, Office of the Chief Human Capital Officer, and Part 2—Safety and Occupational Health Manager, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. For Region I–IV—The appropriate Human Resources Team Leader at the locations listed in Addendum I, Part 2.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

NRC Health Unit; NRC Headquarters and Regional Office reports; and forms with original information largely supplied by the employees or their representative, supervisors, witnesses, medical personnel, etc.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–18

SYSTEM NAME:

Office of the Inspector General (OIG) Investigative Records—NRC.

SYSTEM LOCATION:

Office of the Inspector General, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and entities referred to in complaints or actual investigative cases, reports, accompanying documents, and correspondence prepared by, compiled by, or referred to the OIG.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system comprises five parts: (1) An automated Investigative Database Program containing reports of investigations, inquiries, and other reports closed since 1989; (2) paper files of all OIG and predecessor Office of Inspector and Auditor (OIA) reports, correspondence, cases, matters, memoranda, materials, legal papers, evidence, exhibits, data, and work papers pertaining to all closed and pending investigations, inquiries, and other reports; (3) paper index card files of OIG and OIA cases closed from 1970 through 1989; (4) an automated Allegations Tracking System that includes allegations referred to the OIG between 1985 and 2005, whether or not the allegation progressed to an investigation, inquiry, or other report, and dates that the investigation, inquiry, or other report, was opened and closed; and (5) an automated Investigative Management System that includes allegations referred to the OIG from 1985 forward, whether or not the allegation progressed to an investigation, inquiry or other report, and dates that an investigation, inquiry or other report was opened and closed and reports, correspondence, cases, matters, memoranda, materials, legal papers, evidence, exhibits, data and work papers pertaining to these cases.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978, as amended, 5 U.S.C. App. 3; 42 U.S.C. 2201(c), and 5841(f).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, OIG may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To any Federal, State, local, tribal, or foreign agency, or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutorial responsibility of the receiving entity when records from this system of records, either by themselves or in combination with any other information, indicate a violation or potential violation of law, whether administrative, civil, criminal, or regulatory in nature.

b. To public or private sources to the extent necessary to obtain information from those sources relevant to an OIG investigation, audit, inspection, or other inquiry.

c. To a court, adjudicative body before which NRC is authorized to appear, Federal agency, individual or entity designated by NRC or otherwise empowered to resolve disputes, counsel or other representative, or witness or potential witness when it is relevant and necessary to the litigation if any of the parties listed below is involved in the litigation or has an interest in the litigation:

1. NRC, or any component of NRC;

2. Any employee of NRC where the NRC or the Department of Justice has agreed to represent the employee; or

3. The United States, where NRC determines that the litigation is likely to affect the NRC or any of its components.

d. To a private firm or other entity with which OIG or NRC contemplates it will contract or has contracted for the purpose of performing any functions or analyses that facilitate or are relevant to an investigation, audit, inspection, inquiry, or other activity related to this system of records, to include to contractors or entities who have a need for such information or records to resolve or support payment to the agency. The contractor, private firm, or entity needing access to the records to perform the activity shall maintain Privacy Act safeguards with respect to information. A contractor, private firm, or entity operating a system of records under 5 U.S.C. 552a(m) shall comply with the Privacy Act.

e. To another agency to the extent necessary for obtaining its advice on any matter relevant to an OIG investigation, audit, inspection, or other inquiry related to the responsibilities of the OIG.

f. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

g. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure Pursuant to 5 U.S.C. 552a(b)(12):

Disclosure of information to a consumer reporting agency is not considered a routine use of records. Disclosures may be made from this system to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) (1970)) or the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701(a)(3) (1996)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is maintained on index cards, in paper files, and on electronic media.

RETRIEVABILITY:

Information is retrieved from the Investigative Database Program by the name of an individual, by case number, or by subject matter. Information in the paper files backing up the Investigative Database Program and older cases closed by 1989 is retrieved by subject matter and/or case number, not by individual identifier. Information is retrieved from index card files for cases closed before 1989 by the name or numerical identifier of the individual or entity under investigation or by subject matter. Information in both the Allegations Tracking System and the Investigative Management System is retrieved by allegation number, case number, or name.

SAFEGUARDS:

Access to the automated Investigative Database Program is password protected. Index card files for older cases (1970–1989) are maintained in secure office facilities. Both the Allegations Tracking System and the Investigative Management System are accessible from terminals that are double-password-protected. Paper files backing up the automated systems and older case reports and work papers are maintained in approved security containers and locked filing cabinets in a locked room; associated indices, records, diskettes, tapes, etc., are stored in locked metal filing cabinets, safes, storage rooms, or similar secure facilities. All records in this system are available only to authorized personnel

who have a need to know and whose duties require access to the information.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, the NARA General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with Implementing Schedules under 36 CFR 1226.14.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Investigations, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.'' Information classified under Executive Order 12958 will not be disclosed. Information received in confidence will be maintained under the Inspector General Act, 5 U.S.C. App. 3, and the Commission's Policy Statement on Confidentiality, Management Directive 8.8, ''Management of Allegations.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

The information is obtained from sources including, but not limited to, the individual record subject; NRC officials and employees; employees of Federal, State, local, and foreign agencies; and other persons.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Under 5 U.S.C. 552a(j)(2), the Commission has exempted this system of records from subsections (c)(3) and (4), (d)(1)–(4), (e)(1)–(3), (5), and (8), and (g) of the Act. This exemption applies to information in the system that relates to criminal law enforcement and meets the criteria of the (j)(2) exemption. Under 5 U.S.C. 552a(k)(1), (k)(2), (k)(5), and (k)(6), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

NRC–19

SYSTEM NAME:

Official Personnel Training Records—NRC.

SYSTEM LOCATION:

Primary system located at the NRC's current contractor facility on behalf of the Office of the Chief Human Capital Officer, NRC, Gateway Building, 7201 Wisconsin Avenue, Bethesda, Maryland.

The Office of the Inspector General (OIG) employee files are located with the OIG at NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems exist, in part, at the Technical Training Center, Regional Offices, and within the organization where the NRC employee works, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who applied or were selected for NRC, other Government, or non-Government training courses or programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information relating to an individual's educational background and training courses including training requests and authorizations, evaluations, supporting documentation, and other related personnel information, including but not limited to, an individual's name, address, social security number, telephone number, position title, organization, and grade.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3396; 5 U.S.C. 4103; Executive Order (E.O.) 9397, as amended by E.O. 13478; E.O. 11348, as amended by E.O. 12107; 5 CFR Parts 410 and 412.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. Extracted from the records and made available to the Office of Personnel Management; other Federal, State, and local government agencies; educational institutions and training facilities for purposes of enrollment and verification of employee attendance and performance; and

b. Disclosed for the routine uses specified in paragraph numbers 5, 6, and 7 of the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper in file folders and on electronic media.

RETRIEVABILITY:

Information is accessed by name, user identification number, course number, or course session number.

SAFEGUARDS:

Electronic records are maintained in a password protected computer system. Paper is maintained in lockable file cabinets and file rooms. Access to and use of these records is limited to those persons whose official duties require such access, with the level of access controlled by roles and responsibilities.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, the NARA General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with Implementing Schedules under 36 CFR 1226.14.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director for Training and Development, Office of the Chief Human Capital Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. For OIG employee records: Director, Resource Management and Operations Support, Office of the Inspector General, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Information is provided by the subject individual, the employee's supervisor, and training groups, agencies, or educational institutions and learning activities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–20

SYSTEM NAME:

Official Travel Records—NRC.

SYSTEM LOCATION:

Primary system—Division of the Controller, Office of the Chief Financial Officer, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland. NRC has an interagency agreement with the Department of the Interior's National Business Center (DOI/NBC) in Denver, Colorado, to cross-service the processing of authorizations and vouchers as of January 2, 2008. The Office of International Programs, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, maintains the passport and visa records.

Duplicate system—Duplicate systems may exist, in part, within the organization where an employee actually works for administrative purposes, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Prospective, current, and former NRC employees; consultants; and invitational travelers.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain requests and authorizations for official travel, travel vouchers, passports, visas, and related documentation; charge card applications, terms and conditions for use of charge cards, charge card training documentation, monthly reports regarding accounts, credit data, and related documentation; all of which may include, but are not limited to, an individual's name, address, social security number, and telephone numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Part III, Subpart D, Chapter 57; 31 U.S.C. 716; 41 U.S.C. Subtitle II, Chapter 61; 41 CFR 102–118; Executive Order (E.O.) 9397, as amended by E.O. 13478.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In accordance with the interagency agreement, NRC may disclose records to DOI/NBC to cross-service travel voucher reimbursements on behalf of the NRC. Specifically, DOI/NBC will examine and pay travel vouchers and maintain the official agency record.

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses; or, where determined to be appropriate and necessary, the NRC may authorize DOI/NBC to make the disclosure:

a. To the U.S. Treasury for payment;

b. To the Department of State or an embassy for passports or visas;

c. To the General Services Administration and the Office of Management and Budget for required periodic reporting;

d. To the charge card issuing bank;

e. To the Department of Interior, National Business Center, for collecting severe travel card delinquencies by employee salary offset;

f. To a consumer reporting agency to obtain credit reports; and

g. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure Pursuant to 5 U.S.C. 552a(b)(12):

Disclosures of information to a consumer reporting agency, other than to obtain credit reports, are not considered a routine use of records. Disclosures may be made from this system to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) (1970)) or the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701(a)(3) (1996)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper in file folders, on electronic media, and on magnetic tape.

RETRIEVABILITY:

Records are accessed by name, social security number, authorization number, and voucher payment schedule number.

SAFEGUARDS:

Maintained in key locked file cabinets and in conserver files in a passcode locked room. Passports and visas are maintained in a locked file cabinet. For electronic records, an identification number, a password, and assigned access to specific programs are required in order to retrieve information.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, the NARA General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with Implementing Schedules under 36 CFR 1226.14.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Financial Operations Branch, Division of the Controller, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. For passport and visa records: Chief, International Operations Branch, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Information is provided by the individual, NRC staff, NRC contractors, charge card issuing bank, the consumer reporting agency, outside transportation agents, Department of State, and embassies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–21

SYSTEM NAME:

Payroll Accounting Records—NRC.

SYSTEM LOCATION:

Primary system—Division of the Controller, Office of the Chief Financial Officer, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland. NRC has an interagency agreement with the Department of the Interior's National Business Center (DOI/NBC), Federal Personnel/Payroll System (FPPS), in Denver, Colorado, to maintain electronic personnel information and perform payroll processing activities for its employees as of November 2, 2003.

Duplicate system—Duplicate systems exist, in part, within the organization where the employee actually works for administrative purposes, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former NRC employees, including special Government employees (i.e. consultants).

CATEGORIES OF RECORDS IN THE SYSTEM:

Pay, leave, benefit enrollment and voluntary allowance deductions, and labor activities, which includes, but is not limited to, an individual's name and social security number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

26 CFR 31.6011(b)(–2), 31.6109–1; 5 U.S.C. 6334; 5 U.S.C. Part III, Subpart D; 31 U.S.C. 716; 31 U.S.C., Subtitle III, Chapters 35 and 37; Executive Order (E.O.) 9397, as amended by E.O. 13478.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In accordance with an interagency agreement the NRC may disclose records to the DOI/NBC/FPPS in order to effect all financial transactions on behalf of the NRC related to employee pay. Specifically, the DOI/NBC's FPPS may affect employee pay or deposit funds on behalf of NRC employees, and/or it may withhold, collect or offset funds from employee salaries as required by law or as necessary to correct overpayment or amounts due.

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses; or, where determined to be appropriate and necessary, the NRC may authorize DOI/NBC to make the disclosure:

a. For transmittal of data to U.S. Treasury to effect issuance of paychecks to employees and consultants and distribution of pay according to employee directions for savings bonds, allotments, financial institutions, and other authorized purposes including the withholding and reporting of Thrift Savings Plan deductions to the Department of Agriculture's National Finance Center;

b. For reporting tax withholding to Internal Revenue Service and appropriate State and local taxing authorities;

c. For FICA and Medicare deductions to the Social Security Administration;

d. For dues deductions to labor unions;

e. For withholding for health insurance to the insurance carriers by the Office of Personnel Management;

f. For charity contribution deductions to agents of charitable institutions;

g. For annual W–2 statements to taxing authorities and the individual;

h. For transmittal to the Office of Management and Budget for financial reporting;

I. For withholding and reporting of retirement, tax levies, bankruptcies, garnishments, court orders, re-employed annuitants, and life insurance information to the Office of Personnel Management;

j. For transmittal of information to State agencies for unemployment purposes;

k. For transmittal to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services Federal Parent Locator System and Federal Tax Offset System for use in locating individuals and identifying their income sources to establish paternity, establish and modify orders of support, and for enforcement action;

l. For transmittal to the Office of Child Support Enforcement for release to the Social Security Administration for verifying social security numbers in connection with the operation of the Federal Parent Locator System by the Office of Child Support Enforcement;

m. For transmittal to the Office of Child Support Enforcement for release to the Department of Treasury for the purpose of administering the Earned Income Tax Credit Program (Section 32, Internal Revenue Code of 1986) and verifying a claim with respect to employment in a tax return;

n. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906;

o. Time and labor data are used by the NRC as a project management tool in various management records and reports (i.e. work performed, work load projections, scheduling, project assignments, budget), and for identifying reimbursable and fee billable work performed by the NRC; and

p. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12):

Disclosures of information to a consumer reporting agency are not considered a routine use of records. Disclosures may be made from this system to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) (1970)) or the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701(a)(3) (1996)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is maintained on electronic media (stored in memory, on disk, and magnetic tape), on microfiche, and in paper copy.

Electronic payroll, time, and labor records prior to November 2, 2003, are maintained in the Human Resources Management System (HRMS), the PAY PERS Historical database reporting system, and on microfiche at NRC. Electronic payroll records from November 2, 2003, forward are maintained in the DOI/NBC's FPPS in Denver, Colorado. Time and labor records are maintained in the HRMS at NRC.

RETRIEVABILITY:

Information is accessed by employee identification number, name and social security number.

SAFEGUARDS:

Records are maintained in buildings where access is controlled by a security guard force. File folders, microfiche, tapes, and disks, including backup data, are maintained in secured locked rooms and file cabinets after working hours. All records are in areas where access is controlled by keycard and is limited to NRC and contractor personnel who need the information to perform their official duties. Access to computerized records requires use of proper passwords and user identification codes.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, the NARA General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at www.nrc.gov/reading-rm/records-mgmt/disposition.html. Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with Implementing Schedules under 36 CFR 1226.14.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Payroll and Payments Branch, Division of the Controller, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from sources, including but not limited to, the individual to whom it pertains, the Office of the Chief Human Capital Officer and other NRC officials, and other agencies and entities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–22

SYSTEM NAME:

Personnel Performance Appraisals—NRC.

SYSTEM LOCATION:

Primary system—Part A: For Headquarters personnel, Office of the Chief Human Capital Officer, NRC, White Flint North Complex, 11545 and 11555 Rockville Pike, Rockville, Maryland. For Regional personnel, at Regional Offices I–IV listed in Addendum I, Part 2.

Part B: Office of the Chief Human Capital Officer, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC has an interagency agreement with the U.S. Department of the Interior (DOI), National Business Center (NBC), in Denver, Colorado, to maintain electronic personnel and payroll information for its employees as of November 2, 2003.

The Office of the Inspector General (OIG) employee files located with the OIG at NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems may exist in part, within the organization where the employee actually works, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees other than the Commissioners, the Inspector General, and temporary personnel employed for less than 1 year.

Part A: Senior Level System employees, GG–1 through GG–15 employees, hourly wage employees, and administratively determined rate employees.

Part B: Senior Executive Service and equivalent employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains performance appraisals, which includes performance plans, summary ratings, and other related records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Chapter 43; 42 U.S.C. 2201(d), 5841; and 5 CFR Part 293.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In accordance with an interagency agreement the NRC may disclose records to DOI/NBC in order to affect the maintenance of electronic personnel records on behalf of the NRC related to its employees.

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. For agency personnel functions; and

b. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper in folders and on electronic media. Summary ratings from November 2, 2003, forward are stored in the DOI/NBC Federal Personnel/Payroll System. Prior to November 2, 2003 they are maintained at the NRC in the Human Resources Management System (HRMS).

RETRIEVABILITY:

Records are accessed by name and/or social security number.

SAFEGUARDS:

Records are maintained in locking cabinets in a locked room and related documents may be maintained in unlocked file cabinets or an electromechanical file organizer. Automated systems are password protected. Access to and use of these records is limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, the NARA General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with Implementing Schedules under 36 CFR 1226.14.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director for Human Resources Operations and Policy, Office of the Chief Human Capital Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. For OIG employees: Director, Resource Management and Operations Support, Office of the Inspector General, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. For Regional personnel: Human Resources Team Leader at the appropriate Regional Office I–IV listed in Addendum I, Part 2.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Part A: Subject employee and employee's supervisors.

Part B: Subject employee, employee's supervisors, and any documents and sources used to develop critical elements and performance standards for that Senior Executive Service position.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(1) and (k)(5), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

NRC–23

SYSTEM NAME:

Office of Investigations Indices, Files, and Associated Records—NRC.

SYSTEM LOCATION:

Primary system—Office of Investigations, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—Records exist within the NRC Regional Office locations, listed in Addendum I, Part 2, during an active investigation.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and entities referred to in potential or actual investigations and matters of concern to the Office of Investigations and correspondence on matters directed or referred to the Office of Investigations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Office of Investigations correspondence, cases, memoranda, materials including, but not limited to, investigative reports, confidential source information, correspondence to and from the Office of Investigations, memoranda, fiscal data, legal papers, evidence, exhibits, technical data, investigative data, work papers, and management information data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2035(c); 42 U.S.C. 2201(c); and 42 U.S.C. 5841; 10 CFR 1.36.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the persons or entities mentioned therein if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To a Federal, State, local, or foreign agency or to an individual or organization if the disclosure is reasonably necessary to elicit information or to obtain the cooperation of a witness or an informant;

b. A record relating to an investigation or matter falling within the purview of the Office of Investigations may be disclosed as a routine use to the referring agency, group, organization, or individual;

c. A record relating to an individual held in custody pending arraignment, trial, or sentence, or after conviction, may be disclosed as a routine use to a Federal, State, local, or foreign prison, probation, parole, or pardon authority, to any agency or individual concerned with the maintenance, transportation, or release of such an individual;

d. A record in the system of records relating to an investigation or matter may be disclosed as a routine use to a foreign country under an international treaty or agreement;

e. To a Federal, State, local, or foreign law enforcement agency to assist in the general crime prevention and detection efforts of the recipient agency or to provide investigative leads to the agency; and

f. A record may be disclosed for any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information maintained on paper, photographs, audio/video tapes, and electronic media.

RETRIEVABILITY:

Information retrieved by document text and/or case number.

SAFEGUARDS:

Hard copy files maintained in approved security containers and locking filing cabinets. All records are under visual control during duty hours and are available only to authorized personnel who have a need to know and whose duties require access to the information. The electronic management information system is operated within the NRC's secure LAN/WAN system. Access rights to the system only available to authorized personnel.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, the NARA General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with Implementing Schedules under 36 CFR 1226.14.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Investigations, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORDS ACCESS PROCEDURES:

Same as ''Notification procedure.'' Information classified under Executive Order 12958 will not be disclosed. Information received in confidence will

be maintained under the Commission's Policy Statement on Confidentiality, Management Directive 8.8, ''Management of Allegations,'' and the procedures covering confidentiality in Chapter 7 of the Office of Investigations Procedures Manual and will not be disclosed to the extent that disclosure would reveal a confidential source.

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Information is obtained from sources including, but not limited to, NRC officials, employees, and licensees; Federal, State, local, and foreign agencies; and other persons.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(6), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

NRC–24

SYSTEM NAME:

Property and Supply Records—NRC.

SYSTEM LOCATION:

Property and Labor Services Branch, Directorate for Space Planning and Consolidation, Office of Administration, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems may exist, in part, with designated property custodians at locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees and contractors who have custody of Government property.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of NRC sensitive and non-sensitive equipment which includes, but is not limited to, acquisition and depreciated costs, date of acquisition, item description, manufacturer, model number, serial number, stock number, tag number, property custodians, name of individual to whom property is assigned, user id, office affiliation, and office location. Also included are furniture and supply records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 40 U.S.C. Subtitle I, Chapter 5.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To maintain an inventory and accountability of Government property;

b. To provide information for clearances of employees who separate from the NRC;

c. To report excess agency property to GSA; and

d. For any of the routine uses specified in paragraph numbers 1, 3, 5, 6, and 7 of the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in automated system. Data entry paper records in file folders.

RETRIEVABILITY:

Records accessed by NRC tag number, name, user id, organization, office location and stock number.

SAFEGUARDS:

Access to and use of these records is limited to those persons whose official duties require such access based on roles and responsibilities. Electronic records are password protected.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, the NARA General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with Implementing Schedules under 36 CFR 1226.14.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Property and Labor Services Branch, Directorate for Space Planning and Consolidation, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Information in this system is provided by property custodians, contract specialists, and purchase card holders and/or other individuals buying equipment or supplies on behalf of the NRC.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–25

SYSTEM NAME:

Oral History Program—NRC.

SYSTEM LOCATION:

Office of the Secretary, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who volunteer to be interviewed for the purpose of providing information for a history of the nuclear regulatory program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of recorded interviews and transcribed scripts of the interviews.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2161(b) and 44 U.S.C. 3301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. For incorporation in publications on the history of the nuclear regulatory program;

b. To provide information to historians and other researchers; and

c. For the routine use specified in paragraph number 7 of the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on electronic media.

RETRIEVABILITY:

Information is accessed by the name of the interviewee.

SAFEGUARDS:

Maintained on an access restricted drive. Access to and use of these records is limited to those authorized by the Historian or a designee.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, the NARA General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with Implementing Schedules under 36 CFR 1226.14.

SYSTEM MANAGER(S) AND ADDRESS:

NRC Historian, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from interviews granted on a voluntary basis to the Historian.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–26

SYSTEM NAME:

Transit Subsidy Benefits Program Records—NRC.

SYSTEM LOCATION:

Administrative Services Center, Office of Administration, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees who apply for subsidized mass transit costs.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records consist of an individual's application to participate in the program which includes, but is not limited to, the applicant's name, home address, office telephone number, social security number, and information regarding the employee's commuting schedule and mass transit system(s) used.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7905; 26 U.S.C. 132, by Public Law 108–311, sec. 207(13); 31 U.S.C. 3511; 41 CFR 102–74.210; 41 CFR Subtitle F; 41 CFR 102–71.20; Executive Order (E.O.) 9397, as amended by E.O. 13478; E.O. 13150.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To provide statistical reports to the city, county, State, and Federal government agencies;

b. To provide the basis for program approval and issue monthly subsides; and

c. For the routine uses specified in paragraph numbers 1, 4, 5, 6, and 7 in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper in file folders and on electronic media.

RETRIEVABILITY:

Accessed by name and scanned NRC badge. Accessed by social security number when an individual's photo identification badge is scanned to record receipt of their transit subsidy.

SAFEGUARDS:

Paper records are maintained in locked file cabinets under visual control of the Administrative Services Center. Computer files are maintained on a hard drive and accessible by user login. Access to and use of these records is limited to those persons whose official duties require access.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, the NARA General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with Implementing Schedules under 36 CFR 1226.14.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Administrative Services Center, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

NRC employees.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–27

SYSTEM NAME:

Radiation Exposure Information and Reporting System (REIRS) Records—NRC.

SYSTEM LOCATION:

Primary system—Oak Ridge Associated Universities (ORAU), Oak

Ridge, Tennessee (or current contractor facility).

Duplicate system—Duplicate systems exist, in part, regarding employee exposure records, with the NRC's Radiation Safety Officers at Regional office locations listed in Addendum 1, Part 2, in the Office of Nuclear Reactor Regulation (NRR), the Office of Nuclear Material Safety and Safeguards (NMSS), and the Office of Federal and State Materials and Environmental Management Programs (FSME) at NRC Headquarters, Rockville, Maryland. The Office of Administration (ADM), NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, maintains the employee dosimeter tracking system.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals monitored for radiation exposure while employed by or visiting or temporarily assigned to certain NRC-licensed facilities; individuals who are exposed to radiation or radioactive materials in incidents required to be reported under 10 CFR 20.2201–20.2204 and 20.2206 by all NRC licensees; individuals who may have been exposed to radiation or radioactive materials offsite from a facility, plant installation, or other place of use of licensed materials, or in unrestricted areas, as a result of an incident involving byproduct, source, or special nuclear material.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information relating to an individual's name, sex, social security number, birth date, place and period date of exposure; name and license number of individual's employer; name and number of licensee reporting the information; radiation doses or estimates of exposure received during this period, type of radiation, part(s) or organ(s) exposed, and radionuclide(s) involved.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7902; 29 U.S.C. 668; 42 U.S.C. 2051, 2073, 2093, 2095, 2111, 2133, 2134, and 2201(o); 10 CFR parts 20 and 34; Executive Order (E.O.) 9397, as amended by E.O. 13478; E.O. 12196, as amended; E.O. 12610.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To provide data to other Federal and State agencies involved in monitoring and/or evaluating radiation exposure received by individuals as enumerated in the paragraph ''Categories of individuals covered by the system'';

b. To return data provided by licensee upon request; and

c. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper and electronic media. The electronic records maintained in Oak Ridge, TN, are in a centralized database management system that is password protected. Backup tapes of the database are generated and maintained at a secure, off site location for disaster recovery purposes. During the processing and data entry, paper records are temporarily stored in designated business offices that are locked when not in use and are accessible only to authorized personnel. Upon completion of data entry and processing, the paper records are stored in an offsite security storage facility accessible only to authorized personnel.

RETRIEVABILITY:

Records are accessed by individual name, social security number, date of birth, and/or by licensee name or number.

SAFEGUARDS:

Information maintained at ORAU is accessible by the Office of Nuclear Regulatory Research (RES) and individuals that have been authorized access by NRC, including all NRC Radiation Safety Officers and ORAU employees that are directly involved in the REIRS project. Reports received and reviewed by the NRC's RES, NRR, NMSS, FSME, and Regional offices are in lockable file cabinets and bookcases in secured buildings. A log is maintained of both telephone and written requests for information.

The data maintained in the REIRS database are protected from unauthorized access by several means. The database server resides in a protected environment with physical security barriers under key-card access control. Accounts authorizing access to the server and databases are maintained by the ORAU REIRS system administrator. In addition, ORAU maintains a computer security ''firewall'' that further restricts access to the ORAU computer network. Authorization for access must be approved by NRC, ORAU project management, and ORAU computer security. Transmittal of data via the Internet is protected by data encryption.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, the NARA General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with Implementing Schedules under 36 CFR 1226.14.

SYSTEM MANAGER(S) AND ADDRESS:

REIRS Project Manager, Radiation Protection Branch, Division of Systems Analysis, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Information in this system of records comes from licensees; the subject individual; the individual's employer; the person in charge of the facility where the individual has been assigned; NRC Form 5, ''Occupational Exposure Record for a Monitoring Period,'' or equivalent; contractor reports; and Radiation Safety Officers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–28

SYSTEM NAME:

Merit Selection Records—NRC.

SYSTEM LOCATION:

Primary system—Electronic records: NRC has an interagency agreement with the U.S. Department of the Interior (DOI), National Business Center (NBC), in Denver, Colorado, to host the NRC's job application system. Paper records: Headquarters personnel*, Office of the Chief Human Capital Officer, NRC, White Flint North Complex, 11555 and 11545 Rockville Pike, Rockville, Maryland. Regional personnel, at each of the Regional Offices listed in Addendum I, Part 2. *The Office of the Inspector General (OIG) maintains the paper files for OIG personnel.

Duplicate system—Duplicate systems exist, in part, within the organization with the position vacancy, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system include those who have submitted resumes to the NRC, registered in the NRC application system, or applied for Federal employment with the NRC.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains application information of persons applying to NRC for Federal employment or merit promotion within the NRC, including application for Federal employment (resumes or similar documents); vacancy announcements; job descriptions; examination results; supervisory evaluation or performance appraisal forms; reference forms; and related correspondence. These records include, but are not limited to, applicant information relating to education, training, employment history, earnings, past performance, awards and commendations, citizenship, veteran's preference, birth date, social security number, and home address and telephone numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3301, 5101, 7201; 42 U.S.C. 2000e; 42 U.S.C. 2201(d); Executive Order (E.O.) 9397, as amended by E.O. 13478; E.O. 11478, as amended by E.O. 11590 and E.O. 12106; E.O. 12106, as amended by E.O. 12379 and E.O. 12450.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To prepare reports for a variety of internal and external sources including the Office of Personnel Management, Merit Systems Protection Board; EEOC and EEO Investigators; Union representatives and EEO Committee representatives; and

b. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in electronic and paper form.

RETRIEVABILITY:

Records are retrieved by vacancy announcement number, applicant name, or social security number.

SAFEGUARDS:

Maintained in a password protected automated system and in lockable file cabinets. Access to and use of these records is limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, the NARA General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with Implementing Schedules under 36 CFR 1226.14.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director for Human Resources Operations and Policy, Office of the Chief Human Capital Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. For Regional personnel: Human Resources Team Leader at the appropriate Regional Office I–IV listed in Addendum I, Part 2. For applicants to the Honor Law Graduate Program: Honor Law Graduate Program Coordinator, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. For OIG personnel: Personnel Officer, Office of the Inspector General, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.'' Some information was received in confidence and will not be disclosed to the extent that disclosure would reveal a confidential source.

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

The source of this information is the subject individual, or is derived from information supplied by that individual; individual's current and previous supervisors within and outside NRC; pre-employment evaluation data furnished by references and educational institutions whose names were supplied by applicant; and information from other Federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(5), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

NRC–29 (Revoked.)
NRC–30 (Revoked.)
NRC–31 (Revoked.)
NRC–32

SYSTEM NAME:

Office of the Chief Financial Officer Financial Transactions and Debt Collection Management Records—NRC.

SYSTEM LOCATION:

Office of the Chief Financial Officer, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland. NRC has an interagency agreement with the Department of the Interior (DOI), National Business Center (NBC), in Denver, Colorado, as the service provider for the NRC core financial system since May 2002.

Other NRC systems of records contain information that may duplicate some of

the records in this system. These other systems include, but are not limited to:

NRC–5, Contracts Records—NRC;

NRC–10, Freedom of Information Act (FOIA) and Privacy Act (PA) Request Records—NRC;

NRC–18, Office of the Inspector General (OIG) Investigative Records—NRC;

NRC–19, Official Personnel Training Records—NRC;

NRC–20, Official Travel Records—NRC;

NRC–21, Payroll Accounting Records—NRC;

NRC–24, Property and Supply Records—NRC; and

NRC–41, Tort Claims and Personal Property Claims Records—NRC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered are those to whom the NRC owes/owed money, those who receive/received a payment from NRC, and those who owe/owed money to the United States. Individuals receiving payments include, but are not limited to, current and former employees, contractors, consultants, vendors, and others who travel or perform certain services for NRC. Individuals owing money include, but are not limited to, those who have received goods or services from NRC for which there is a charge or fee (NRC licensees, applicants for NRC licenses, Freedom of Information Act requesters, etc.) and those who have been overpaid and owe NRC a refund (current and former employees, contractors, consultants, vendors, etc.).

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in the system includes, but is not limited to, names, addresses, telephone numbers, Social Security Numbers (SSN), Employee Identification Number (EIN), Taxpayer Identification Numbers (TIN), Individual Taxpayer Identification Numbers (ITIN), Data Universal Numbering System (DUNS) number, fee categories, application and license numbers, contract numbers, vendor numbers, amounts owed, background and supporting documentation, correspondence concerning claims and debts, credit reports, and billing and payment histories. The overall agency accounting system contains data and information integrating accounting functions such as general ledger, funds control, travel, accounts receivable, accounts payable, property, and appropriation of funds. Although this system of records contains information on corporations and other business entities, only those records that contain information about individuals that is retrieved by the individual's name or other personal identifier are subject to the Privacy Act.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552a; 5 U.S.C. 5514; 15 U.S.C. 1681; 26 U.S.C. 6103; 31 U.S.C. Chapter 37; 31 U.S.C. 6501–6508; 42 U.S.C. 2201; 42 U.S.C. 5841; 31 CFR 900–904; 10 CFR Parts 15, 16, 170, 171; Executive Order (E.O.) 9397, as amended by E.O. 13478; and E.O. 12731.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In accordance with an interagency agreement, the NRC may disclose records to the DOI/NBC as the service provider for the NRC core financial system. In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses or, where determined to be appropriate and necessary, the NRC may authorize DOI/NBC to make the disclosure:

a. To debt collection contractors (31 U.S.C. 3718) or to other Federal agencies such as the Department of the Treasury (Treasury) and DOI for the purpose of collecting and reporting on delinquent debts as authorized by the Debt Collection Act of 1982 or the Debt Collection Improvement Act (DCIA) of 1996;

b. To Treasury; the Defense Manpower Data Center, Department of Defense; the United States Postal Service; government corporations; or any other Federal, State, or local agency to conduct an authorized computer matching program in compliance with the Privacy Act of 1974, as amended, to identify and locate individuals, including Federal employees, who are delinquent in their repayment of certain debts owed to the U.S. Government, including those incurred under certain programs or services administered by the NRC, in order to collect debts under common law or under the provisions of the Debt Collection Act of 1982 or the Debt Collection Improvement Act of 1996 which include by voluntary repayment, administrative or salary offset, and referral to debt collection contractors;

c. To the Department of Justice, United States Attorney, Treasury, DOI, or other Federal agencies for further collection action on any delinquent account when circumstances warrant;

d. To credit reporting agencies/credit bureaus for the purpose of either adding to a credit history file or obtaining a credit history file or comparable credit information for use in the administration of debt collection. As authorized by the DCIA, NRC may report current (not delinquent) as well as delinquent consumer and commercial debt to these entities in order to aid in the collection of debts, typically by providing an incentive to the person to repay the debt timely;

e. To any Federal agency where the debtor is employed or receiving some form of remuneration for the purpose of enabling that agency to collect a debt owed the Federal Government on NRC's behalf by counseling the debtor for voluntary repayment or by initiating administrative or salary offset procedures, or other authorized debt collection methods under the provisions of the Debt Collection Act of 1982 or the DCIA of 1996. Under the DCIA, NRC may garnish non-Federal wages of certain delinquent debtors so long as required due process procedures are followed. In these instances, NRC's notice to the employer will disclose only the information that may be necessary for the employer to comply with the withholding order;

f. To the Internal Revenue Service (IRS) by computer matching to obtain the mailing address of a taxpayer for the purpose of locating such taxpayer to collect or to compromise a Federal claim by NRC against the taxpayer under 26 U.S.C. 6103(m)(2) and under 31 U.S.C. 3711, 3717, and 3718 or common law. Re-disclosure of a mailing address obtained from the IRS may be made only for debt collection purposes, including to a debt collection agent to facilitate the collection or compromise of a Federal claim under the Debt Collection Act of 1982 or the DCIA of 1996, except that re-disclosure of a mailing address to a reporting agency is for the limited purpose of obtaining a credit report on the particular taxpayer. Any mailing address information obtained from the IRS will not be used or shared for any other NRC purpose or disclosed by NRC to another Federal, State, or local agency which seeks to locate the same taxpayer for its own debt collection purposes;

g. To refer legally enforceable debts to the IRS or to Treasury's Debt Management Services to be offset against the debtor's tax refunds under the Federal Tax Refund Offset Program;

h. To prepare W–2, 1099, or other forms or electronic submittals, to forward to the IRS and applicable State

and local governments for tax reporting purposes. Under the provisions of the DCIA, NRC is permitted to provide Treasury with Form 1099–C information on discharged debts so that Treasury may file the form on NRC's behalf with the IRS. W–2 and 1099 Forms contain information on items to be considered as income to an individual, including certain travel related payments to employees, payments made to persons not treated as employees (e.g., fees to consultants and experts), and amounts written-off as legally or administratively uncollectible, in whole or in part;

i. To banks enrolled in the Treasury Credit Card Network to collect a payment or debt when the individual has given his or her credit card number for this purpose;

j. To another Federal agency that has asked the NRC to effect an administrative offset under common law or under 31 U.S.C. 3716 to help collect a debt owed the United States. Disclosure under this routine use is limited to name, address, SSN, EIN, TIN, ITIN, and other information necessary to identify the individual; information about the money payable to or held for the individual; and other information concerning the administrative offset;

k. To Treasury or other Federal agencies with whom NRC has entered into an agreement establishing the terms and conditions for debt collection cross servicing operations on behalf of the NRC to satisfy, in whole or in part, debts owed to the U.S. Government. Cross servicing includes the possible use of all debt collection tools such as administrative offset, tax refund offset, referral to debt collection contractors, salary offset, administrative wage garnishment, and referral to the Department of Justice. The DCIA requires agencies to transfer to Treasury or Treasury-designated Debt Collection Centers for cross servicing certain nontax debt over 180 days delinquent. Treasury has the authority to act in the Federal Government's best interest to service, collect, compromise, suspend, or terminate collection action under existing laws under which the debts arise;

l. Information on past due, legally enforceable nontax debts more than 180 days delinquent will be referred to Treasury for the purpose of locating the debtor and/or effecting administrative offset against monies payable by the Government to the debtor, or held by the Government for the debtor under the DCIA's mandatory, Government-wide Treasury Offset Program (TOP). Under TOP, Treasury maintains a database of all qualified delinquent nontax debts, and works with agencies to match by computer their payments against the delinquent debtor database in order to divert payments to pay the delinquent debt. Treasury has the authority to waive the computer matching requirement for NRC and other agencies upon written certification that administrative due process notice requirements have been complied with;

m. For debt collection purposes, NRC may publish or otherwise publicly disseminate information regarding the identity of delinquent nontax debtors and the existence of the nontax debts under the provisions of the DCIA of 1996;

n. To the Department of Labor (DOL) and the Department of Health and Human Services (HHS) to conduct an authorized computer matching program in compliance with the Privacy Act of 1974, as amended, to match NRC's debtor records with records of DOL and HHS to obtain names, name controls, names of employers, addresses, dates of birth, and TINs. The DCIA requires all Federal agencies to obtain taxpayer identification numbers from each individual or entity doing business with the agency, including applicants and recipients of licenses, grants, or benefit payments; contractors; and entities and individuals owing fines, fees, or penalties to the agency. NRC will use TINs in collecting and reporting any delinquent amounts resulting from the activity and in making payments;

o. If NRC decides or is required to sell a delinquent nontax debt under 31 U.S.C. 3711(I), information in this system of records may be disclosed to purchasers, potential purchasers, and contractors engaged to assist in the sale or to obtain information necessary for potential purchasers to formulate bids and information necessary for purchasers to pursue collection remedies;

p. If NRC has current and delinquent collateralized nontax debts under 31 U.S.C. 3711(i)(4)(A), certain information in this system of records on its portfolio of loans, notes and guarantees, and other collateralized debts will be reported to Congress based on standards developed by the Office of Management and Budget, in consultation with Treasury;

q. To Treasury in order to request a payment to individuals owed money by the NRC;

r. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906; and

s. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosures Pursuant to 5 U.S.C. 552a(b)(12):

Disclosures of information to a consumer reporting agency are not considered a routine use of records. Disclosures may be made from this system to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) (1970)) or the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701(a)(3) (1996)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in this system is stored on paper, microfiche, and electronic media.

RETRIEVABILITY:

Automated information can be retrieved by name, SSN, TIN, DUNS number, license or application number, contract or purchase order number, invoice number, voucher number, and/or vendor code. Paper records are retrieved by invoice number.

SAFEGUARDS:

Records in the primary system are maintained in a building where access is controlled by a security guard force. Records are kept in lockable file rooms or at user's workstations in an area where access is controlled by keycard and is limited to NRC and contractor personnel who need the records to perform their official duties. The records are under visual control during duty hours. Access to automated data requires use of proper password and user identification codes by NRC or contractor personnel.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, the NARA General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in

accordance with Implementing Schedules under 36 CFR 1226.14.

SYSTEM MANAGER:

Controller, Division of the Controller, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORDS ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Record source categories include, but are not limited to, individuals covered by the system, their attorneys, or other representatives; NRC; collection agencies or contractors; employing agencies of debtors; and Federal, State and local agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–33

SYSTEM NAME:

Special Inquiry Records—NRC.

SYSTEM LOCATION:

Primary system—Special Inquiry Group, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals possessing information regarding or having knowledge of matters of potential or actual concern to the Commission in connection with the investigation of an accident or incident at a nuclear power plant or other nuclear facility, or an incident involving nuclear materials or an allegation regarding the public health and safety related to the NRC's mission responsibilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of an alphabetical index file bearing individual names. The index provides access to associated records which are arranged by subject matter, title, or identifying number(s) and/or letter(s). The system incorporates the records of all Commission correspondence, memoranda, audit reports and data, interviews, questionnaires, legal papers, exhibits, investigative reports and data, and other material relating to or developed as a result of the inquiry, study, or investigation of an accident or incident.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2051, 2052, 2201(c), (i) and (o).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To provide information relating to an item which has been referred to the Commission or Special Inquiry Group for investigation by an agency, group, organization, or individual and may be disclosed as a routine use to notify the referring agency, group, organization, or individual of the status of the matter or of any decision or determination that has been made;

b. To disclose a record as a routine use to a foreign country under an international treaty or convention entered into and ratified by the United States;

c. To provide records relating to the integrity and efficiency of the Commission's operations and management and may be disseminated outside the Commission as part of the Commission's responsibility to inform the Congress and the public about Commission operations; and

d. For any of the routine uses specified in paragraph numbers 1, 2, 4, 5, 6, and 7 of the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper in file folders and electronic media. Documents are maintained in secured vault facilities.

RETRIEVABILITY:

Accessed by name (author or recipient), corporate source, title of document, subject matter, or other identifying document or control number.

SAFEGUARDS:

These records are located in locking filing cabinets or safes in a secured facility and are available only to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, the NARA General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with Implementing Schedules under 36 CFR 1226.14.

SYSTEM MANAGER(S) AND ADDRESS:

Records Manager, Special Inquiry Group, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.'' Information classified under Executive Order 12958 will not be disclosed. Information received in confidence will not be disclosed to the extent that disclosure would reveal a confidential source.

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

The information in this system of records is obtained from sources including, but not limited to, NRC officials and employees; Federal, State, local, and foreign agencies; NRC licensees; nuclear reactor vendors and architectural engineering firms; other

organizations or persons knowledgeable about the incident or activity under investigation; and relevant NRC records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

NRC–34 (Revoked.)

NRC–35

SYSTEM NAME:

Drug Testing Program Records—NRC.

SYSTEM LOCATION:

Primary system—Division of Facilities and Security, Office of Administration, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems exist in part at the NRC Regional office locations listed in Addendum I, Part 2 (for a temporary period of time); and at the current contractor testing laboratories, collection/evaluation facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees, applicants, consultants, licensees, and contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information regarding the drug testing program; requests for and results of initial, confirmatory and follow-up testing, if appropriate; additional information supplied by NRC employees, employment applicants, consultants, licensees, or contractors in challenge to positive test results; and written statements or medical evaluations of attending physicians and/or information regarding prescription or nonprescription drugs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C 7301; 5 U.S.C. 7361–7363; 42 U.S.C. 2165; 42 U.S.C. 290dd; Executive Order (E.O.) 12564; 9397, as amended by E.O. 13478; E.O. 12564.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To identify substance abusers within the agency;

b. To initiate counseling and/or rehabilitation programs;

c. To take personnel actions;

d. To take personnel security actions;

e. For statistical reporting purposes. Statistical reporting will not include personally identifiable information; and

f. For the routine uses specified in paragraphs number 6 and 7 of the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper and electronic media. Specimens are maintained in appropriate environments.

RETRIEVABILITY:

Records are indexed and accessed by name, social security number, testing position number, specimen number, drug testing laboratory accession number, or a combination thereof.

SAFEGUARDS:

Records in use are protected to ensure that access is limited to those persons whose official duties require such access. Unattended records are maintained in NRC-controlled space in locked offices, locked desk drawers, or locked file cabinets. Stand-alone and network processing systems are password protected and removable media is stored in locked offices, locked desk drawers, or locked file cabinets when unattended. Network processing systems have roles and responsibilities protection and system security plans. Records at laboratory, collection, and evaluation facilities are stored with appropriate security measures to control and limit access to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, the NARA General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with Implementing Schedules under 36 CFR 1226.14.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Facilities and Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

NRC employees, employment applicants, consultants, licensees, and contractors who have been identified for drug testing who have been tested; physicians making statements regarding medical evaluations and/or authorized prescriptions for drugs; NRC contractors for processing including, but not limited to, specimen collection, laboratories for analysis, and medical evaluations; and NRC staff administering the drug testing program to ensure the achievement of a drug-free workplace.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(5), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

NRC–36

SYSTEM NAME:

Employee Locator Records—NRC.

SYSTEM LOCATION:

Primary system—Part 1: For Headquarters personnel: Office of the Chief Human Capital Officer, NRC, White Flint North Complex, 11545 and 11555 Rockville Pike, Rockville, Maryland. For Regional personnel: Regional Offices I–IV at the locations listed in Addendum 1, Part 2.

Part 2: Infrastructure and Computer Operations Division, Office of Information Services, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

Part 3: Division of Administrative Services, Office of Administration, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems exist, in part, for Incident Response

Operations within the Office of Nuclear Security and Incident Response, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, and at the NRC's Regional Offices, at the locations listed in Addendum I, Part 2.

Duplicate system—Duplicate systems may exist, in part, within the organization where an individual actually works, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees and contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include, but are not limited to, an individual's name, home address, office organization and location (building, room number, mail stop), telephone number (home, business, cell and pager), person to be notified in case of emergency (name, address, telephone number), and other related records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101, 3301; Executive Order (E.O.) 9397, as amended by E.O. 13478; and E.O. 12656.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To contact the subject individual's designated emergency contact in the case of an emergency;

b. To contact the subject individual regarding matters of official business;

c. To maintain the agency telephone directory (accessible from *www.nrc.gov*);

d. For internal agency mail services; and

e. The routine use specified in paragraph number 6 and 7 of the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper and electronic media.

RETRIEVABILITY:

Information is accessed by name.

SAFEGUARDS:

Electronic records are password protected. Paper records are maintained in locked files and/or in controlled access area. Access to and use of these records is limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, the NARA General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with Implementing Schedules under 36 CFR 1226.14.

SYSTEM MANAGER(S) AND ADDRESS:

Part 1: For Headquarters personnel: Associate Director for Human Resources Operations and Policy, Office of the Chief Human Capital Officer, U.S. Nuclear Regulatory Commission (NRC), Washington, DC 20555–0001; and for Regional personnel: Human Resources Team Leaders at the Regional Offices listed in Addendum I, Part 2; Part 2: Sr. Telecommunications Specialist, Computer Operations and Telecommunications Branch, Infrastructure and Computer Operations Division, Office of Information Services, NRC, Washington, DC 20555–0001; Part 3: Mail Services Team Leader, Administrative Services Center, Division of Administrative Services, Office of Administration, NRC, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained; Employee Express; NRC Form 15, ''Employee Locator Notification'' and other related records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–37

SYSTEM NAME:

Information Security Files and Associated Records—NRC.

SYSTEM LOCATION:

Division of Security Operations, Office of Nuclear Security and Incident Response, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals include present and former NRC employees, contractors, consultants, licensees, and other cleared persons.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include information regarding:

a. Personnel who are authorized access to specified levels, categories and types of information, the approving authority, and related documents; and

b. Names of individuals who classify and/or declassify documents (e.g., for the protection of Classified National Security Information and Restricted Data) as well as information identifying the document.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2161–2169 and 2201(i); Executive Order 13526; 10 CFR part 95.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To prepare statistical reports for the Information Security Oversight Office; and

b. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper in file folders and on electronic media.

RETRIEVABILITY:

Accessed by name and/or assigned number.

SAFEGUARDS:

Information maintained in locked buildings, containers, or security areas under guard and/or alarm protection, as appropriate. Records are processed only on systems approved for processing classified information or accessible through password protected systems for unclassified information. The classified systems are stand alone systems located within secure facilities or with removable hard drives that are either stored in locked security containers or in alarmed vaults cleared for open storage of TOP SECRET information.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, the NARA General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with Implementing Schedules under 36 CFR 1226.14.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Security Operations, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.'' Some information is classified under Executive Order 13526, and will not be disclosed. Other information has been received in confidence and will not be disclosed to the extent that disclosure would reveal a confidential source.

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

NRC employees, contractors, consultants, and licensees, as well as information furnished by other Government agencies or their contractors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(1) and (k)(5), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4), (G), (H), and (I), and (f).

NRC–38

SYSTEM NAME:

Mailing Lists—NRC.

SYSTEM LOCATION:

Primary system—Publications Branch, Division of Administrative Services, Office of Administration, NRC, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems exist in whole or in part at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals, including NRC staff, with an interest in receiving information from the NRC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Mailing lists include an individual's name and address; and title, occupation, and institutional affiliation, when applicable.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101, 3301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. For distribution of documents to persons and organizations listed on the mailing list; and

b. For the routine use specified in paragraph number 6 and 7 of the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on electronic media.

RETRIEVABILITY:

Records are accessed by company name, individual name, or file code identification number.

SAFEGUARDS:

Access to and use of these records is limited to those persons whose official duties require such access. Automated records are password protected.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, the NARA General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with Implementing Schedules under 36 CFR 1226.14.

SYSTEM MANAGER(S) AND ADDRESS:

Senior Visual Information Specialist, Publications Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

NRC staff, NRC licensees, and individuals expressing an interest in NRC activities and publications.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–39

SYSTEM NAME:

Personnel Security Files and Associated Records—NRC.

SYSTEM LOCATION:

Division of Facilities and Security, Office of Administration, NRC, 12300 Twinbrook Parkway, Rockville, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons including NRC employees, employment applicants, consultants, contractors, and licensees; other Government agency personnel, other persons who have been considered for an access authorization, special nuclear material access authorization, unescorted access to NRC buildings or nuclear power plants, NRC building access, access to Federal automated information systems or data, or participants in the criminal history program; aliens who visit NRC's facilities; and actual or suspected violators of laws administered by NRC.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information about individuals, which includes, but is not limited to, their name(s), address, date and place of birth, social security number, identifying information, citizenship, residence history, employment history, military history, financial history, foreign travel, foreign contacts, education, spouse/cohabitant and relatives, personal references, organizational membership, medical, fingerprints, criminal record, and security clearance history. These records also contain copies of personnel security investigative reports from other Federal agencies, summaries of investigative reports, results of Federal agency indices and database checks, records necessary for participation in the criminal history program, reports of personnel security interviews, clearance actions information (e.g., grants and terminations), access approval/disapproval actions related to NRC building access or unescorted access to nuclear plants, or access to Federal automated information systems or data, violations of laws, reports of security infraction, and other related personnel security processing documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2011 *et seq.;* 42 U.S.C. 2165, 2201(i), 2201a, and 2284; 42 U.S.C. 5801 *et seq.;* Executive Order (E.O.) 9397, as amended by E.O. 13478; E.O. 10450, as amended; E.O. 10865, as amended; E.O. 12958, amended by E.O. 13256; E.O. 13467; E.O. 13526; 10 CFR Parts 10, 11, 14, 25, 50, 73, 95; OMB Circular No. A–130, Revised; 5 CFR 731, 732, and authorities cited therein.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used by the Division of Facilities and Security and on a need-to-know basis by appropriate NRC officials, Hearing Examiners, Personnel Security Review Panel members, Office of Personnel Management, Central Intelligence Agency, and other Federal agencies:

a. To determine clearance or access authorization eligibility;

b. To determine eligibility for access to NRC buildings or access to Federal automated information systems or data;

c. To certify clearance or access authorization;

d. To maintain the NRC personnel security program;

e. To provide licensees information needed for unescorted access or access to safeguard information determinations; and

f. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained on paper, tapes, and electronic media.

RETRIEVABILITY:

Indexed and accessed by name, social security number, docket number, or a combination thereof.

SAFEGUARDS:

Records in use are protected to ensure that access is limited to those persons whose official duties require such access. Unattended records are maintained in NRC-controlled space in locked offices, locked desk drawers, or locked file cabinets. Mass storage of records is protected when unattended by a combination lock and alarm system. Unattended classified records are protected in appropriate security containers in accordance with Management Directive 12.1.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, the NARA General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with Implementing Schedules under 36 CFR 1226.14.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Facilities and Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.'' Some information is classified under Executive Order 12958 and will not be disclosed. Other information has been received in confidence and will not be disclosed to the extent the disclosure would reveal a confidential source.

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

NRC applicants, employees, contractors, consultants, licensees, visitors and others, as well as information furnished by other Government agencies or their contractors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

NRC–40

SYSTEM NAME:

Facility Security Access Control Records—NRC.

SYSTEM LOCATION:

Primary system—Division of Facilities and Security, Office of Administration, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems exist in part at NRC Regional Offices and the NRC Technical Training Center at the locations listed in Addendum I, Part 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former NRC employees, consultants, contractors, other Government agency personnel, and approved visitors.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system includes information regarding: (1) NRC personal identification badges issued for continued access to NRC-controlled space; and (2) records regarding visitors to NRC. The records include, but are not limited to, an individual's name, social security number, electronic image, badge number, citizenship, employer, purpose of visit, person visited, date and time of visit, and other information contained on Government issued credentials.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2165–2169 and 2201; Executive Order (E.O.) 9397, as amended by E.O. 13478; E.O. 13462, as amended by E.O. 13516.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To control access to NRC classified information and to NRC spaces by human or electronic means;

b. Information (identification badge) may also be used for tracking applications within the NRC for other than security access purposes;

c. The electronic image used for the NRC employee personal identification badge may be used for other than security purposes only with the written consent of the subject individual; and

d. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper and electronic media.

RETRIEVABILITY:

Information is indexed and accessed by individual's name, social security number, identification badge number, employer's name, date of visit, or sponsor's name.

SAFEGUARDS:

All records are maintained in NRC-controlled space that is secured after normal duty hours or a security area under guard presence in a locked security container/vault. There is an approved security plan which identifies the physical protective measures and access controls (i.e., passwords and software design limiting access based on each individual's role and responsibilities relative to the system) specific to each system.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, the NARA General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with Implementing Schedules under 36 CFR 1226.14.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Facilities and Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Sources of information include NRC employees, contractors, consultants, employees of other Government agencies, and visitors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–41

SYSTEM NAME:

Tort Claims and Personal Property Claims Records—NRC.

SYSTEM LOCATION:

Primary system—Office of the General Counsel, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems exist, in whole or in part, in the Office of the Chief Financial Officer, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, and at the locations listed in Addendum I, Parts 1 and 2. Other NRC systems of records, including but not limited to, NRC–18, ''Office of the Inspector General (OIG) Investigative Records—NRC,'' and NRC–32, ''Office of the Chief Financial Officer Financial Transactions and Debt Collection Management Records—NRC,'' may contain some of the information in this system of records.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed claims with NRC under the Federal Tort Claims Act or the Military Personnel and Civilian Employees' Claims Act and individuals who have matters pending before the NRC that may result in a claim being filed.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains information relating to loss or damage to property and/or personal injury or death in which the U.S. Government may be liable. This information includes, but is not limited to, the individual's name, home address and phone number, work address and phone number, claim forms and supporting documentation, police reports, witness statements, medical records, insurance information, investigative reports, repair/replacement receipts and estimates, litigation documents, court decisions, and other information necessary for the evaluation and settlement of claims and pre-claims.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Tort Claims Act, 28 U.S.C. 2671 *et seq.;* Military Personnel and Civilian Employees' Claims Act, 31 U.S.C. 3721; 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, NRC may disclose information contained in a record in this system of records without the consent of the subject individual if the

disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To third parties, including claimants' attorneys, insurance companies, witnesses, potential witnesses, local police authorities where an accident occurs, and others who may have knowledge of the matter to the extent necessary to obtain information that will be used to evaluate, settle, refer, pay, and/or adjudicate claims;

b. To the Department of Justice (DOJ) when the matter comes within their jurisdiction, such as to coordinate litigation or when NRC's authority is limited and DOJ advice or approval is required before NRC can award, adjust, compromise, or settle certain claims;

c. To the appropriate Federal agency or agencies when a claim has been incorrectly filed with NRC or when more than one agency is involved and NRC makes agreements with the other agencies as to which one will investigate the claim;

d. The Department of the Treasury to request payment of an award, compromise, or settlement of a claim;

e. Information contained in litigation records is public to the extent that the documents have been filed in a court or public administrative proceeding, unless the court or other adjudicative body has ordered otherwise. This public information, including information concerning the nature, status, and disposition of the proceeding, may be disclosed to any person, unless it is determined that release of specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

f. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906; and

g. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure Pursuant to 5 U.S.C. 552a(b)(12):

Disclosure of information to a consumer reporting agency is not considered a routine use of records. Disclosures may be made from this system of records to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) (1970)) or the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701(a)(3) (1996)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper and electronic media.

RETRIEVABILITY:

Information is indexed and accessed by the claimant's name and/or claim number.

SAFEGUARDS:

The paper records and log books are stored in locked file cabinets or locked file rooms and access is restricted to those agency personnel whose official duties and responsibilities require access. Automated records are protected by password.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, the NARA General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with Implementing Schedules under 36 CFR 1226.14.

SYSTEM MANAGER:

Assistant General Counsel for Administration, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Information is obtained from a number of sources, including but not limited to, claimants, NRC employees involved in the incident, witnesses or others having knowledge of the matter, police reports, medical reports, investigative reports, insurance companies, and attorneys.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–42

SYSTEM NAME:

Strategic Workforce Planning Records—NRC.

SYSTEM LOCATION:

Primary system— Technical Training Center, NRC, 5746 Marlin Road, Suite 200, Chattanooga, Tennessee.

Duplicate system—Duplicate systems may exist, in part, at the locations listed in Addendum I, Parts 1 and 2.

CATEGORIES OF INDIVIDUALS COVERED:

Current, prospective, and former NRC employees, experts, consultants, and contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Specific information maintained on individuals includes individual skills assessments that identify the knowledge and skills possessed by the individual and the levels of skill possessed, and may include a skills profile containing, but not limited to, their name; service computation date; series and grade; education; work and skills experience; special qualifications; licenses and certificates held; and availability for geographic relocation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3396; 5 U.S.C. 4103; 42 U.S.C. 2201; 44 U.S.C. 3506; Executive Order (E.O.) 9397, as amended by E.O. 13478; E.O. 11348, as amended by E.O. 12107.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records will be to assess the knowledge and skills needed to perform the functions assigned to individuals and their organizations.

Information in the system may be used by the NRC to assess the skills of the staff to develop an organizational training plan/program; to prepare individual training plans; to develop recruitment plans; and to assign personnel. Other offices may maintain similar kinds of records relative to their specific duties, functions, and responsibilities.

In addition to the disclosures permitted under subsection (b) of the Privacy Act, which includes disclosure

to other NRC employees who have a need for the information in the performance of their duties, NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the information was collected under the following routine uses:

a. To employees and contractors of other Federal, State, local, and foreign agencies or to private entities in connection with joint projects, working groups, or other cooperative efforts in which the NRC is participating;

b. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906; and

c. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSITION OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on electronic media.

RETRIEVABILITY:

Information may be retrieved by, but not limited to, the individual's name; office; skill level; various skills; education; or work experience.

SAFEGUARDS:

Records are maintained in areas where access is controlled by keycard and is limited to NRC and contractor personnel. Access to computerized records requires use of password and user identification codes. Level of access is determined by roles and responsibilities.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, the NARA General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with Implementing Schedules under 36 CFR 1226.14.

SYSTEM MANAGER AND ADDRESS:

Chief, Program Management, Human Capital & Analysis Branch, Office of the Chief Human Capital Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Information is obtained from a number of sources, including but not limited to, the individual to whom it pertains, system of records NRC–11, supervisors and other NRC officials, contractors, and other agencies or entities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–43

SYSTEM NAME:

Employee Health Center Records—NRC.

SYSTEM LOCATION:

Primary system—Employee Health Center, NRC, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems exist, in part, at health care facilities operating under a contract or agreement with NRC for health-related services in the vicinity of each of NRC's Regional offices listed in Addendum I, Part 2. NRC's Regional offices may also maintain copies of occupational health records for their employees.

This system may contain some of the information maintained in other systems of records, including NRC–11, ''General Personnel Records (Official Personnel Folder and Related Records)—NRC,'' NRC–17, ''Occupational Injury and Illness Records—NRC,'' and NRC–44, ''Employee Fitness Center Records—NRC.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former NRC employees, consultants, contractors, other Government personnel, and anyone on NRC premises who requires emergency or first-aid treatment.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system is comprised of records developed as a result of voluntary employee use of health services provided by the Health Center, and of emergency health services rendered by Health Center staff to individuals for injuries and illnesses suffered while on NRC premises. Specific information maintained on individuals may include, but is not limited to, their name, date of birth, and social security number; medical history and other biographical data; test reports and medical diagnoses based on employee health maintenance physical examinations or health screening programs (tests for single medical conditions or diseases); history of complaint, diagnosis, and treatment of injuries and illness rendered by the Health Center staff; immunization records; records of administration by Health Center staff of medications prescribed by personal physicians; medical consultation records; statistical records; daily log of patients; and medical documentation such as personal physician correspondence, test results submitted to the Health Center staff by the employee; and occupational health records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7901; Executive Order 9397, as amended by E.O. 13478.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To refer information required by applicable law to be disclosed to a Federal, State, or local public health service agency concerning individuals who have contracted certain communicable diseases or conditions in an effort to prevent further outbreak of the disease or condition;

b. To disclose information to the appropriate Federal, State, or local agency responsible for investigation of an accident, disease, medical condition, or injury as required by pertinent legal authority;

c. To disclose information to the Office of Workers' Compensation Programs in connection with a claim for benefits filed by an employee;

d. To Health Center staff and medical personnel under a contract or agreement with NRC who need the information in order to schedule, conduct, evaluate, or follow up on physical examinations, tests, emergency treatments, or other medical and health care services;

e. To refer information to private physicians designated by the individual when requested in writing;

f. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906; and

g. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, on microfiche, on electronic media, and on file cards, logs, x-rays, and other medical reports and forms.

RETRIEVABILITY:

Records are retrieved by the individual's name, date of birth, and social security number, or any combination of those identifiers.

SAFEGUARDS:

Records in the primary system are maintained in a building where access is controlled by a security guard force and entry to each floor is controlled by keycard. Records in the system are maintained in lockable file cabinets with access limited to agency or contractor personnel whose duties require access. The records are under visual control during duty hours. Access to automated data requires use of proper password and user identification codes by authorized personnel.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, the NARA General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with Implementing Schedules under 36 CFR 1226.14.

SYSTEM MANAGER(S) AND ADDRESSES:

Technical Assistance Project Manager, Office of the Chief Human Capital Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9; and provide their full name, any former name(s), date of birth, and Social Security number.

RECORD ACCESS PROCEDURE:

Same as ANotification procedure@

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure''.

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from a number of sources including, but not limited to, the individual to whom it pertains; laboratory reports and test results; NRC Health Center physicians, nurses, and other medical technicians or personnel who have examined, tested, or treated the individual; the individual's coworkers or supervisors; other systems of records; the individual's personal physician(s); NRC Fitness Center staff; other Federal agencies; and other Federal employee health units.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NRC–44

SYSTEM NAME:

Employee Fitness Center Records—NRC.

SYSTEM LOCATION:

Primary system—Fitness Center, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

Duplicate system—Regional offices, listed in Addendum I, Part 2, only maintain lists of their employees who receive subsidy from NRC for off-site fitness center memberships.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees who apply for membership at the Fitness Center, including current and former members.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system includes applications to participate in NRC's Fitness Center, information on an individual's degree of physical fitness and their fitness activities and goals; and various forms, memoranda, and correspondence related to Fitness Center membership and financial/payment matters. Specific information contained in the application for membership includes the employee applicant's name, gender, age, social security number, height, weight, and medical information, including a history of certain medical conditions; the name of the individual's personal physician and any prescription or over-the-counter drugs taken on a regular basis; and the name and address of a person to be notified in case of emergency.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7901; Executive Order (E.O.) 9397, as amended by E.O. 13478.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To the individual listed as an emergency contact, in the event of an emergency;

b. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 or 2906; and

c. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosures Pursuant to 5 U.S.C. 552a(b)(12):

Disclosures of information to a consumer reporting agency are not considered a routine use of records. Disclosures may be made from this system to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) (1970)) or the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701(a)(3) (1996)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper and electronic media.

RETRIEVABILITY:

Information is indexed and accessed by an individual's name and/or NRC Badge ID number.

SAFEGUARDS:

Records are maintained in a building where access is controlled by a security guard force. Access to the Fitness Center is controlled by keycard and bar code verification. Records in paper form are stored alphabetically by individuals' names in lockable file cabinets maintained in the NRC Fitness Center where access to the records is limited to agency and Fitness Center personnel whose duties require access. The records are under visual control during duty hours. Automated records are protected by screen saver. Access to automated data requires use of proper password and user identification codes. Only authorized personnel have access to areas in which information is stored.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, the NARA General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with Implementing Schedules under 36 CFR 1226.14.

SYSTEM MANAGER(S) AND ADDRESS:

Employee Assistance Program Manager, Office of the Chief Human Capital Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Information in this system of records is principally obtained from the subject individual. Other sources of information include, but are not limited to, the NRC Fitness Center Director, staff physicians retained by the NRC, and the individual's personal physicians.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

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SYSTEM NAME:

Digital Certificates for Personal Identity Verification Records—NRC.

SYSTEM LOCATION:

Primary system—Office of Information Services, NRC, White Flint North Complex, 11555 Rockville Pike, Rockville, Maryland, and current contractor facility.

Duplicate system—Duplicate systems may exist, in whole or in part, at the locations listed in Addendum I, Part 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered are persons who have applied for the issuance of electronic credentials for signature, encryption, and/or authentication purposes; have had their credentials renewed, replaced, suspended, revoked, or denied; have used their credentials to electronically make contact with, retrieve information from, or submit information to an automated information system; or have corresponded with NRC or its contractor concerning digital services.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains information needed to establish and verify the identity of users, to maintain the system, and to establish accountability and audit controls. System records may include: (a) Applications for the issuance, amendment, renewal, replacement, or revocation of electronic credentials, including evidence provided by applicants or proof of identity and authority, and sources used to verify an applicant's identity and authority; (b) credentials issued; (c) credentials denied, suspended, or revoked, including reasons for denial, suspension, or revocation; (d) a list of currently valid credentials; (e) a list of currently invalid credentials; (f) a record of validation transactions attempted with digital certificates; and (g) a record of validation transactions completed with digital certificates.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 42 U.S.C. 2165 and 2201(i); 44 U.S.C. 3501, 3504; Electronic Government Act of 2002, 44 U.S.C. Chapter 36; Homeland Security Presidential Directive 12 (HSPD–12), Policy for a Common Identification Standard for Federal Employees and Contractors, August 27, 2004; Executive Order (E.O.) 9397, as amended by E.O. 13478.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To agency electronic credential program contractors to compile and maintain documentation on applicants for verifying applicants' identity and authority to access information system applications; to establish and maintain documentation on information sources for verifying applicants' identities; to ensure proper management, data accuracy, and evaluation of the system;

b. To Federal authorities to determine the validity of subscriber digital certificates and other identity attributes;

c. To the National Archives and Records Administration (NARA) for records management purposes;

d. To a public data repository (*only name, email address, organization, and public key*) to facilitate secure communications using digital certificates; and

e. Any of the routine uses specified in the Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure of system records to consumer reporting systems is not permitted.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored electronically or on paper.

RETRIEVABILITY:

Records are retrievable by an individual's name, email address, certificate status, certificate number, certificate issuance date, or approval role.

SAFEGUARDS:

Technical, administrative, and personnel security measures are implemented to ensure confidentiality,

integrity, and availability of the system data stored, processed, and transmitted. Hard copy documents are maintained in locking file cabinets. Electronic records are, at a minimum, password protected. Access to and use of these records is limited to those individuals whose official duties require access.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) approved disposition schedules which can be found in the NRC Comprehensive Records Disposition Schedule, NUREG–0910, the NARA General Records Schedules, as well as in recently approved Requests for Records Disposition Authorities. NRC records disposition schedules are accessible through the NRC's Web site at *www.nrc.gov/reading-rm/records-mgmt/disposition.html.* Records that do not have an approved disposition schedule will be retained until disposition authority is obtained from NARA in accordance with Implementing Schedules under 36 CFR 1226.14.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Infrastructure and Computer Operations Division, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should write to the Freedom of Information Act and Privacy Act Officer, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

The sources for information are the individuals who apply for digital certificates, the NRC and contractors using multiple sources to verify identities, and internal system transactions designed to gather and maintain data needed to manage and evaluate the digital certificate program.

EXEMPTIONS CLAIMS FOR THE SYSTEM:

None.

Addendum I—List of U.S. Nuclear Regulatory Commission Locations

Part 1—NRC Headquarters Offices

1. One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

2. Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

3. Executive Boulevard Building, 6003 Executive Boulevard, Rockville, Maryland.

4. Gateway Building, 7201 Wisconsin Avenue, Suite 425, Bethesda, Maryland.

5. Twinbrook Building, 12300 Twinbrook Parkway, Rockville, Maryland.

6. Church Street Building, 21 Church Street, Rockville, Maryland.

Part 2—NRC Regional Offices

1. NRC Region I, 2100 Renaissance Boulevard, Renaissance Park, King of Prussia, Pennsylvania.

2. NRC Region II, Marquis One Tower, 245 Peachtree Center Avenue NE., Suite 1200, Atlanta, Georgia.

3. NRC Region III, 2443 Warrenville Road, Suite 210, Lisle, Illinois.

4. NRC Region IV, 1600 East Lamar Boulevard, Arlington, Texas.

5. NRC Technical Training Center, Osborne Office Center, 5746 Marlin Road, Suite 200, Chattanooga, Tennessee.

Dated at Rockville, Maryland, this 23rd day of October, 2012.

For the Nuclear Regulatory Commission.

Margaret A. Janney,

Acting Director, Information and Records Services Division, Office of Information Services.

[FR Doc. 2012–27311 Filed 11–7–12; 8:45 am]

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