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WHEN: Tuesday, September 11, 2012
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Title 3—

The President

Proclamation 8843 of July 26, 2012

Anniversary of the Americans with Disabilities Act, 2012

By the President of the United States of America

A Proclamation

Since our earliest days, America has measured its progress not only by the growth of our borders and the breadth of our economy, but also by how far we reach toward fully realizing the fundamental rights, protections, and freedoms afforded to each of us by our Nation's founding documents. For generations, many Americans with disabilities lived as second-class citizens who were denied those most basic opportunities. Not content to accept the world as it was, they marched and organized and testified, coupling quiet acts of persistence and perseverance with vocal acts of advocacy. And step by step, progress was won. Protections were put into law. And a wave of change swept across our country, tearing down the barriers that kept persons with disabilities from securing their fullest measure of happiness.

Today, we mark the 22nd anniversary of the Americans with Disabilities Act (ADA)—a historic piece of civil rights legislation that affirmed Americans with disabilities are Americans first. When many wrongfully doubted that people with disabilities could participate in our society, contribute to our economy, or support their families, the ADA asserted that they could. Under this landmark law, America became the first Nation to comprehensively declare equality for its citizens with disabilities—an accomplishment that continues to guide our country toward fulfilling its most essential promises not just for some, but for all.

Yet, despite the gains we have made, independence and freedom from discrimination remain out of reach for too many individuals with disabilities. That is why my Administration continues to build on the legacy set forth by the ADA. Thanks to the Affordable Care Act, insurance companies can no longer deny coverage to children with disabilities because of pre-existing conditions, medical history, or genetic information—a provision that will be extended to all Americans in 2014. We have fought to protect and strengthen Medicare and Medicaid by improving benefits and opposing proposals that would shift costs to seniors and persons with disabilities. And earlier this year, we established the Administration for Community Living at the Department of Health and Human Services to help ensure people with disabilities have the support they need to live with respect and dignity in their communities, and to be fully included in our national life.

Because every American deserves access to a world-class education, we have worked to make learning environments safer and more inclusive. Last September, the Department of Education implemented new standards for the Individuals with Disabilities Education Act that will help measure and improve outcomes for infants and toddlers with disabilities. Moving forward, we will continue to take action to help all children learn, develop, and participate in instructional programs that equip them with the tools for success in school and beyond.

As we mark this milestone and reflect on the barriers that remain, we also pay tribute to the courageous individuals and communities who have made progress possible. Because so many advocates understood injustice from the depths of their own experience, they also knew that by allowing

injustice to stand, we were depriving our Nation and our economy of the full talents and contributions of tens of millions of Americans with disabilities. Today, those Americans are leaders not only in every field and throughout every part of our national life, but also in the journey to bring the American dream within reach for our next generation. On this anniversary of the ADA, we celebrate the contributions Americans with disabilities have made to our Nation, and we rededicate ourselves to empowering every individual with those most American principles of equal access and equal opportunity.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim July 26, 2012, the Anniversary of the Americans with Disabilities Act. I encourage Americans across our Nation to celebrate the 22nd anniversary of this civil rights law and the many contributions of individuals with disabilities.

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

[FR Doc. 2012–18812
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Rules and Regulations

Federal Register
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Tuesday, July 31, 2012

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0635; Airspace Docket No. 12–ASO–30]

Amendment of Class D and E Airspace; Fort Rucker, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, technical amendment.

SUMMARY: This action amends Class D and E Airspace at Fort Rucker, AL, by updating the geographic coordinates of Cairns Army Air Field to aid in the navigation of our National Airspace System. This action is necessary for the continued safety and management of instrument flight rules (IFR) operations within the Fort Rucker, AL airspace area.

DATES: Effective date 0901 UTC, September 20, 2012. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class D and E airspace Cairns Army Air Field, Fort Rucker, AL, at the request of FAAs Aeronautical Products, by updating the geographic coordinates of the airport to be in concert with the FAAs aeronautical database. Accordingly, since this is an administrative change, and does not affect the boundaries, altitudes, or operating requirements of the airspace, notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

The Class D and E airspace designations are published in Paragraph 5000, 6002, and 6004 respectively of FAA Order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them, operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A. Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace for the Fort Rucker, AL, Class E airspace area.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

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

■ 1. The authority citation for Part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, effective September 15, 2011, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

ASO AL D Fort Rucker, AL [Amended]

Cairns Army Air Field, AL
(Lat. 31°16′33″ N., long. 85°42′48″ W.)

That airspace extending upward from the surface to and including 2,800 feet MSL within a 5-mile radius of lat. 31°18′30″ N., long. 85°42′20″ W. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

ASO AL E2 Fort Rucker, AL [Amended]

Cairns Army Air Field, AL
(Lat. 31°16′33″ N., long. 85°42′48″ W.)

Within a 5-mile radius of lat. 31°18′30″ N., long. 85°42′20″ W. This Class E surface area airspace is effective during the specific dates

and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6004 Class E airspace designated as an extension to a Class D surface area.

* * * * *

ASO AL E4 Fort Rucker, AL [Amended]

Cairns Army Air Field, AL
(Lat. 31°16′33″ N., long. 85°42′48″ W.)
Cairns VOR
(Lat. 31°16′09″ N., long. 85°43′35″ W.)

That airspace extending upward from the surface within 3.5 miles each side of Cairns VOR 231° radial, extending from the 5-mile radius of lat. 31°18′30″ N, long. 85°42′20″ W to 7 miles southwest of the VOR, and within 2 miles each side of Cairns Army Air Field Runway 36 extended centerline, extending from the 5-mile radius to 5 miles south of the runway end.

Issued in College Park, Georgia, on July 20, 2012.

Barry A. Knight,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2012–18518 Filed 7–30–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0411; Airspace Docket No. 12–ASO–26]

Amendment of Class E Airspace; Montgomery, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, technical amendment.

SUMMARY: This action amends Class E Airspace in the Montgomery, AL area, by recognizing the name change of Prattville-Grouby Field Airport, formerly called Autauga Airport, and adjusts the geographic coordinates. This action does not change the boundaries or operating requirements of the airspace.

DATES: Effective date 0901 UTC, September 20, 2012. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class E airspace for the Montgomery, AL, area at the request of FAAs Aeronautical Products, by changing the airport formerly known as Autauga County Airport to Prattville-Grouby Field Airport. Also, the geographic coordinates of the airport are adjusted to coincide with the FAAs aeronautical database. Accordingly, since this is an administrative change, and does not affect the boundaries, altitudes, or operating requirements of the airspace, notice and public procedures under 5 U.S.C. 553 (b) are unnecessary.

The Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them, operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A. Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it recognizes airport name changes for the Montgomery, AL, Class E airspace area.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

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

■ 1. The authority citation for Part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, effective September 15, 2011, is amended as follows:

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

* * * * *

ASO AL E5 Montgomery, AL [Amended]

Montgomery Regional Airport—Dannelly Field, AL
(Lat. 32°18′02″N., long. 86°23′38″W.)
Montgomery VORTAC
(Lat. 32°13′20″N., long. 86°19′11″W.)
Maxwell AFB
(Lat. 32°22′45″N., long. 86°21′45″W.)
Prattville-Grouby Field Airport
(Lat. 32°26′19″N., long. 86°30′46″W.)
Wetumpka Municipal Airport
(Lat. 32°31′46″N., long. 86°19′42″W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Montgomery Regional Airport—Dannelly Field, and within 4 miles east and 8 miles west of the Montgomery VORTAC 138° radial extending from the 7-mile radius to 16 miles southeast of the Montgomery VORTAC, and within a 7-mile radius of Maxwell AFB, and within a 7-mile radius of Prattville-Grouby

Field Airport, and within a 6.3-mile radius of Wetumpka Municipal Airport.

Issued in College Park, Georgia, on July 20, 2012.

Barry A. Knight,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2012–18522 Filed 7–30–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–1366; Airspace Docket No. 11–ANE–13]

Amendment of Class E Airspace; Bar Harbor, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace area at Bar Harbor, ME, as the Surry Non-Directional Radio Beacon (NDB) has been decommissioned and new Standard Instrument Approach Procedures have been developed at Hancock County-Bar Harbor Airport. This action enhances the safety and airspace management of Instrument Flight Rules (IFR) operations within the National Airspace System. This action also makes a minor adjustment to the geographic coordinates of the airport.

DATES: Effective 0901 UTC, September 20, 2012. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

History

On May 11, 2012, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace at Bar Harbor, ME (77 FR 27666) Docket No. FAA–2011–1366. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends the Class E airspace area at Bar Harbor, ME, to support new Standard Instrument Approach Procedures at Hancock County-Bar Harbor Airport. The geographic coordinates for the airport are adjusted to be in concert with the FAAs aeronautical database. This action enhances the safety and management of IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Hancock County-Bar Harbor Airport, Bar Harbor, ME.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

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

■ 1. The authority citation for Part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, effective September 15, 2011, is amended as follows:

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

* * * * *

ANE ME E5 Bar Harbor, ME [Amended]

Hancock County-Bar Harbor Airport, ME
(Lat. 44°26′59″ N., long. 68°21′42″ W.)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of Hancock County-Bar Harbor Airport.

Issued in College Park, Georgia, on July 20, 2012.

Barry A. Knight,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2012–18539 Filed 7–30–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0365; Airspace Docket No. 12–ASO–22]

Establishment of Class E Airspace; Arcadia, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E Airspace at Arcadia, FL, to accommodate the new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures at Arcadia Municipal Airport. This action enhances the safety and airspace management of Instrument Flight Rules (IFR) operations within the National Airspace System.

DATES: Effective 0901 UTC, November 15, 2012. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

History

On June 7, 2012, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish Class E airspace at Oneonta, AL (77 FR 33685) Docket No. FAA–2012–0365. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace extending upward from 700 feet above the surface at Arcadia, FL, to provide the controlled airspace required to accommodate the new RNAV GPS Standard Instrument Approach Procedures developed for Arcadia Municipal Airport. This action is necessary for the safety and management of IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Arcadia Municipal Airport, Arcadia, FL.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

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

■ 1. The authority citation for Part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, effective September 15, 2011, is amended as follows:

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

* * * * *

ASO FL E5 Arcadia, FL [New]

Arcadia Municipal Airport, FL
(Lat. 27°11′31″ N., long. 81°50′14″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Arcadia Municipal Airport.

Issued in College Park, Georgia, on July 20, 2012.

Barry A. Knight,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2012–18528 Filed 7–30–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0386; Airspace Docket No. 12–AEA–6]

Establishment of Class E Airspace; Quakertown, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E Airspace at Quakertown, PA, to accommodate the new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures at Quakertown Airport. This action enhances the safety and airspace management of Instrument Flight Rules (IFR) operations within the National Airspace System.

DATES: Effective 0901 UTC, September 20, 2012. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

History

On May 23, 2012, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish Class E airspace at Quakertown, PA (77 FR 30438) Docket No. FAA–2012–0386. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace extending upward from 700 feet above the surface at Quakertown, PA, to provide the controlled airspace required to accommodate the new RNAV GPS Standard Instrument Approach Procedures developed for Quakertown Airport. This action is necessary for the safety and management of IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Quakertown Airport, Quakertown, PA.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

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

■ 1. The authority citation for Part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, effective September 15, 2011, is amended as follows:

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

* * * * *

AEA PA E5 Quakertown, PA [New]

Quakertown Airport, PA
(Lat. 40°26′07″ N., long. 75°22′55″ W.)

That airspace extending upward from 700 feet above the surface within an 8.3-mile radius of Quakertown Airport, and within 5.4 miles each side of the 099° bearing from the airport, extending from the 8.3-mile radius to 11.1-miles east of the airport.

Issued in College Park, Georgia, on July 20, 2012.

Barry A. Knight,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2012–18542 Filed 7–30–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0249; Airspace Docket No. 12–ASO–16]

Establishment of Class E Airspace; Apopka, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E Airspace at Apopka, FL, to accommodate the new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures at Orlando Apopka Airport. This action enhances the safety and airspace management of Instrument Flight Rules (IFR) operations within the National Airspace System.

DATES: Effective 0901 UTC, September 20, 2012. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P. O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

History

On May 23, 2012, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish Class E airspace at Apopka, FL

(77 FR 30439) Docket No. FAA–2012–0249. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One comment was received in support of this action. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace extending upward from 700 feet above the surface at Apopka, FL, to provide the controlled airspace required to accommodate the new RNAV GPS Standard Instrument Approach Procedures developed for Orlando Apopka Airport. This action is necessary for the safety and management of IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Orlando Apopka Airport, Apopka, FL.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, effective September 15, 2011, is amended as follows:

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

* * * * *

ASO FL E5 Apopka, FL [New]

Orlando Apopka Airport, FL
(Lat. 28°42′27″ N., long. 81°34′55″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Orlando Apopka Airport.

Issued in College Park, Georgia, on July 20, 2012.

Barry A. Knight,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2012–18540 Filed 7–30–12; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1215 and 1219

Revisions to Safety Standards for Durable Infant or Toddler Products: Infant Bath Seats and Full-Size Cribs

AGENCY: Consumer Product Safety Commission.

ACTION: Direct final rule.

SUMMARY: In accordance with section 104(b) of the Consumer Product Safety Improvement Act of 2008 (CPSIA), also known as the Danny Keysar Child Product Safety Notification Act, the U.S. Consumer Product Safety Commission (Commission, CPSC, or we) has published consumer product safety standards for numerous durable infant or toddler products, including infant bath seats and full-size cribs. These standards incorporated by reference the ASTM voluntary standards associated with those products, with some modifications. In August 2011, Congress enacted Public Law 112–28, which sets forth a process for updating standards that the Commission has issued under the authority of section 104(b) of the CPSIA. In accordance with that process, we are publishing this direct final rule, revising the CPSC's standards for infant bath seats and full-size cribs to incorporate by reference more recent versions of the applicable ASTM standards. Because the changes to the ASTM standards make them essentially identical to the standards that the CPSC has issued previously, no changes to the products are required. We also received notification from ASTM of an updated ASTM standard for toddler beds. However, the Commission is not accepting the revised ASTM standard for toddler beds, and therefore, the CPSC standard for toddler beds will remain as it currently is stated at 16 CFR part 1217.

DATES: The rule is effective on November 12, 2012, unless we receive significant adverse comment by August 30, 2012. If we receive timely significant adverse comments, we will publish notification in the **Federal Register**, withdrawing this direct final rule before its effective date. The incorporation by reference of the publications listed in this rule is approved by the Director of the Federal Register as of November 12, 2012. The compliance dates for the full-size crib standard remain as stated in 16 CFR 1219.1(b).

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2012–0039, by any of the following methods:

Submit electronic comments in the following way:

Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments. To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (email), except through *www.regulations.gov*.

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to *http://www.regulations.gov*. Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

FOR FURTHER INFORMATION CONTACT: For information related to the full-size crib standard, contact Troy Whitfield, Office of Compliance and Field Operations, Consumer Product Safety Commission, Bethesda, MD 20814–4408; telephone (301) 504–7548; *twhitfield@cpsc.gov*. For information related to the infant bath seat standard, contact Carolyn Manley, Office of Compliance and Field Operations, Consumer Product Safety Commission, Bethesda, MD 20814–4408; telephone (301) 504–7607; *cmanley@cpsc.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

The Danny Keysar Child Product Safety Notification Act. The Consumer Product Safety Improvement Act of 2008 (CPSIA, Pub. L. 110–314) was enacted on August 14, 2008. Section 104(b) of the CPSIA, also known as the Danny Keysar Child Product Safety Notification Act, requires the Commission to promulgate consumer product safety standards for durable infant or toddler products. The law requires that these standards are to be ''substantially the same as'' applicable voluntary standards or more stringent than the voluntary standards if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product. Under the statute, the term ''durable infant or toddler product'' explicitly includes infant bath seats, full-size cribs, and toddler beds. In accordance with section 104(b), the Commission has published safety standards for these products that incorporate by reference the relevant ASTM standards with certain modifications that make the voluntary standard more stringent.

Public Law 112–28. On August 12, 2011, Congress enacted Public Law 112–28, amending and revising several provisions of the CPSIA, including the Danny Keysar Child Product Safety Notification Act. The revised provision sets forth a process for updating CPSC's durable and infant or toddler standards when the voluntary standard upon which the CPSC standard was based is changed. This provision states that if an organization revises a standard that has been adopted, in whole or in part, as a consumer product safety standard under this subsection, it shall notify the Commission. The revised voluntary standard shall be considered to be a consumer product safety standard issued by the Commission under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058), effective 180 days after the date on which the organization notifies the Commission (or such later date specified by the Commission in the **Federal Register**) unless, within 90 days after receiving that notice, the Commission notifies the organization that it has determined that the proposed revision does not improve the safety of the consumer product covered by the standard and that the Commission is retaining the existing consumer product safety standard. See Public Law 112–28, section 3.

Notification and Review of Revisions. On May 16, 2012, ASTM notified us of ASTM's approval and publication of revisions to ASTM F1169, Standard Consumer Safety Specification for Full-Size Baby Cribs; ASTM F1967, Standard Consumer Safety Specification for Infant Bath Seats; and ASTM F1821, Standard Consumer Safety Specification for Toddler Beds. In its notification, ASTM stated that revisions to these standards have occurred since the enactment of Public Law 112–28.

The Commission has reviewed the revisions. ASTM's revision to its toddler bed standard, ASTM F1821–11b, does not include several of the modifications that the Commission made in its mandatory standard at 16 CFR part 1217. Therefore, we have determined that ASTM F1821–11b does not improve the safety of toddler beds, and we are notifying ASTM that the Commission will retain the CPSC toddler bed standard at 16 CFR part 1217 as it is.

As explained below, ASTM's revisions to its standards for infant bath seats and full-size cribs make these revised ASTM standards essentially identical to the CPSC mandated standards for these products. In accordance with Public Law 112–28, unless the Commission determines that these revisions do not improve the safety of these consumer products, the revised ASTM standards for infant bath seats and full-size cribs will become the new CPSC mandatory standard for those products. We are publishing this direct final rule revising the incorporation by reference that is stated in each of these rules so that they will accurately reflect the revised version of the relevant ASTM standards.

B. Revisions to the Particular ASTM Standards

1. Infant Bath Seats

On June 4, 2010, the Commission published a final rule issuing a safety standard for infant bath seats that incorporated by reference ASTM F1967–08a, Standard Consumer Specification for Infant Bath Seats, with certain modifications to make the standard more stringent. 75 FR 31691.

ASTM notified us that the current version of the ASTM standard for infant bath seats is ASTM F1967–11a, which was approved and published in September 2011. Two previous revisions, ASTM F1967–10 and ASTM F1967–11, made minor changes to the ASTM standard. ASTM F1967–11a includes all the modifications that CPSC made when it issued its mandatory standard. Thus, the revised ASTM standard, ASTM F1967–11a, is essentially identical to CPSC's mandatory standard for infant bath seats at 16 CFR part 1215. Because the revised ASTM standard is essentially identical to the current mandatory standard, the Commission will not make the determination that ''the proposed revision does not improve the safety'' of infant bath seats, under Public Law 112–28. Therefore, in accordance with Public Law 112–28, the revised ASTM standard for infant bath seats becomes the new CPSC standard 180 days from the date we received notification of the revision from ASTM. This rule revises the incorporation by reference at 16 CFR part 1215, to reference the revised ASTM standard.

2. Full-Size Cribs

On December 28, 2010, the Commission published a final rule issuing a standard for full-size cribs that incorporated by reference ASTM F1969–10, with two modifications to

make the standard more stringent. 75 FR 81766.

ASTM notified us that the current version of the ASTM standard for full-size cribs is ASTM F1169–11, which was approved and published in September 2011. A previous revision, ASTM F1169–10a, made one change that clarified testing of cribs with folding or moveable sides. This change was identical to one of the modifications that the Commission made in its mandatory standard. ASTM F1169–11 has two additional revisions. One is editorial and corrects a typographical error. The other change tracks a modification that the Commission made in its mandatory standard: it removes a provision that required retightening of hardware between tests. With these changes, ASTM F 1169–11 is now essentially identical to the full-size crib standard that the Commission mandated at 16 CFR part 1219. Because the revised ASTM standard is essentially identical to the current mandatory standard, the Commission will not make the determination that ''the proposed revision does not improve the safety'' of full-size cribs. Therefore, in accordance with Public Law 112–28, the revised ASTM standard for full-size cribs becomes the new CPSC standard 180 days from the date we received notification of the revision from ASTM. This rule revises the incorporation by reference at 16 CFR part 1219 to reference the revised ASTM standard.

The 2010 crib rule fulfilled the direction in the Danny Keysar Child Product Safety Notification Act to issue standards for durable infant or toddler products, and it also implemented direction specific to cribs in section 104(c) of the CPSIA. In accordance with section 104(c) of the CPSIA, the CPSC's crib standards (covering both full-size and non-full-size cribs) apply to persons and entities not required to comply with other CPSC standards, such as child care facilities, family child care homes, and places of public accommodation. 75 FR 81786–87. The crib rule became effective on June 28, 2011. It provided for two compliance dates. The first date, June 28, 2011, applies to all entities subject to the crib rule, except for child care facilities, family child care homes, and places of public accommodation. The second date, December 28, 2012, applies to child care facilities, family child care homes, and places of public accommodation. 75 FR at 81781. In June 2011, the Commission gave additional time to companies that provide short-term crib rentals; accordingly, they have until December 28, 2012, to meet the crib standards.

Public Law 112–28 contains a provision limiting the application of revisions when ASTM revises its crib standards. That language states that such revisions shall apply only to a person that manufactures or imports cribs, unless the Commission determines that application to any person described in paragraph (2) [of section 104(c) of the CPSIA] is necessary to protect against an unreasonable risk to health or safety. If the Commission determines that application to a person described in paragraph (2) [of section 104(c) of the CPSIA] is necessary, it shall provide not less than 12 months for such person to come into compliance. See Public Law 112–28, section 3(b). According to this provision, changes to CPSC's crib standards would apply only to crib manufacturers and importers, not to the other entities mentioned in section 104(c)(2) who are not usually subject to CPSC's standards, such as child care facilities, family child care homes, and places of public accommodation.

ASTM's revision to its full-size crib standard included the modifications that the Commission made when it issued the CPSC's mandatory standard for full-size cribs. Thus, there is no substantive difference between ASTM's revised standard, ASTM F1169–11, and the currently mandated standard that the Commission published in December 2010. Therefore, the CPSC's action in this direct final rule, which revises the incorporation by reference in 16 CFR part 1219, does not require any change by the persons and entities subject to the CPSC's full-size crib standard. Those who manufacture, import, or sell full-size cribs continue to be required to meet the same full-size crib requirements as they have been required to meet since June 28, 2011. Child care facilities, family child care homes, places of public accommodation, and businesses that rent cribs for short terms will be required to meet the same requirements for full-size cribs beginning on December 28, 2012. Because the revision contemplated by this direct final rule does not require any change by the persons subject to the mandatory standard published in 2010, the provision set forth in Public Law 112–28 limiting the application of revisions is without effect in this instance.

C. Direct Final Rule Process

The Commission is issuing this rule as a direct final rule. Although the Administrative Procedure Act (APA) generally requires notice and comment rulemaking, section 553 of the APA provides an exception when the agency, for good cause, finds that notice and public procedure are ''impracticable, unnecessary, or contrary to the public interest.'' We believe that in the circumstances of these revisions to ASTM standards upon which CPSC's durable infant or toddler product standards are based, notice and comment is not necessary. Public Law 112–128 provides for nearly automatic updating of durable infant or toddler product standards that the Commission issues under the Danny Keysar Child Product Safety Notification Act, if ASTM revises the underlying voluntary standard and the Commission does not determine that the revision ''does not improve the safety of the consumer product covered by the standard.'' Nevertheless, without Commission action to update the incorporation by reference in its mandated standards, the standard published in the Code of Federal Regulations will not reflect the revised ASTM standard. Thus, the Commission believes that it is appropriate to issue a rule revising the incorporation by reference in these circumstances. However, little would be gained by allowing for public comment because Public Law 112–28 requires that the CPSC's mandatory standard must change to the revised voluntary standard (unless the Commission has made the requisite finding concerning safety). The revisions to the infant bath seat standard and full-size crib standard merely reflect the modifications that the Commission made previously when it mandated these standards. It is possible, that in the future, revisions to other voluntary standards that were the basis for Commission standards under section 104(b) of the CPSIA could include substantive changes that do more than reflect the Commission's changes. Therefore, we believe that it is appropriate to set in place a procedure that allows the Commission to receive significant adverse comments but at the same time accommodates the nearly automatic update procedure set forth in the statute.

In its Recommendation 95–4, the Administrative Conference of the United States (ACUS) endorsed direct final rulemaking as an appropriate procedure to expedite promulgation of rules that are noncontroversial and that are not expected to generate significant adverse comment. *See* 60 FR 43108 (August 18, 1995). ACUS recommends using direct final rulemaking when an agency employs the ''unnecessary'' prong of the good cause exemption to notice and comment rulemaking.

Thus, the Commission is publishing this rule as a direct final rule because we do not expect any significant adverse

comments. Unless we receive a significant adverse comment within 30 days, the rule will become effective November 12, 2012. In accordance with ACUS's recommendation, we consider a significant adverse comment to be one where the commenter explains why the rule would be inappropriate, including an assertion challenging the rule's underlying premise or approach, or a claim that the rule would be ineffective or unacceptable without change. Should the Commission receive a significant adverse comment, it would withdraw this rule. The Commission may then incorporate the adverse comment into a subsequent direct final rule or publish a notice of proposed rulemaking providing an opportunity for public comment.

D. Effective Date

Under the procedure set forth in Public Law 112–28, when a voluntary standard organization revises a standard upon which a consumer product safety standard issued under the Danny Keysar Child Product Safety Notification Act was based, the revision becomes the CPSC standard within 180 days of notification to the Commission, unless the Commission determines that the revision does not improve the safety of the product, or the Commission sets a later date in the **Federal Register**. In accordance with this provision, this rule establishes an effective date that is 180 days after we received notification from ASTM of revisions to these standards. As discussed in the preceding section, this is a direct final rule. Unless we receive a significant adverse comment within 30 days, the rule will become effective November 12, 2012.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that agencies review proposed and final rules for their potential economic impact on small entities, including small businesses, and prepare regulatory flexibility analyses. 5 U.S.C. 603 and 604. The changes to the incorporation by reference in the infant bath seat and full-size crib standards will not result in any substantive changes to the standards. Therefore, this rule will not have any economic impact on small entities.

F. Environmental Considerations

The Commission's regulations provide a categorical exclusion for the Commission's rules from any requirement to prepare an environmental assessment or an environmental impact statement because they ''have little or no potential for affecting the human environment.'' 16 CFR 1021.5(c)(2). This rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

G. Paperwork Reduction Act

Both the infant bath seat standard and the full-size crib standard contain information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). No changes have been made to those sections of the standards. Thus, these revisions will not have any effect on the information collection requirements related to those standards.

H. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides that where a ''consumer product safety standard under [the Consumer Product Safety Act (CPSA)]'' is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury unless the State requirement is identical to the federal standard. (Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the Commission for an exemption from this preemption under certain circumstances.) The Danny Keysar Child Product Safety Notification Act (at section 104(b)(1)(B) of the CPSIA) refers to the rules to be issued under that section as ''consumer product safety standards,'' thus, implying that the preemptive effect of section 26(a) of the CPSA would apply. Therefore, a rule issued under section 104 of the CPSIA will invoke the preemptive effect of section 26(a) of the CPSA when it becomes effective.

I. Certification

Section 14(a) of the CPSA imposes the requirement that products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other act enforced by the Commission, be certified as complying with all applicable CPSC requirements. 15 U.S.C. 2063(a). Such certification must be based on a test of each product, or on a reasonable testing program or, for children's products, on tests on a sufficient number of samples by a third party conformity assessment body accredited by the Commission to test according to the applicable requirements. As noted in the preceding discussion, standards issued under section 104(b)(1)(B) of the CPSIA are ''consumer product safety standards.'' Thus, they are subject to the testing and certification requirements of section 14 of the CPSA.

Because infant bath seats and full-size cribs are children's products, they must be tested by a third party conformity assessment body whose accreditation has been accepted by the Commission. (They also must comply with all other applicable CPSC requirements, such as the lead content requirements of section 101 of the CPSIA, the phthalate content requirements in section 108 of the CPSIA, the tracking label requirement in section 14(a)(5) of the CPSA, and the consumer registration form requirements in the Danny Keysar Child Product Safety Notification Act.)

J. Notice of Requirements

In accordance with section 14(a)(3)(B)(iv) of the CPSIA, the Commission has previously published notices of requirements for accreditation of third party conformity assessment bodies for testing infant bath seats (75 FR 31688 (June 4, 2010)) and full-size cribs (75 FR 81789 (December 28, 2010)). The notices of requirements provided the criteria and process for our acceptance of accreditation of third party conformity assessment bodies for testing infant bath seats to 16 CFR part 1215 (which incorporated ASTM F1967–08a with modifications) and for testing full-size cribs to 16 CFR part 1219 (which incorporated ASTM F1969–10 with modifications). This rule revises the references to the standards that are incorporated by reference in the CPSC's infant bath seat and full-size crib standards. As discussed previously, the revised ASTM standards for these products make them substantively identical to the infant bath seat and full-size crib standards that the Commission mandated. Thus, revising the references will not necessitate any change in the way that third party conformity assessment bodies are testing these products for compliance to CPSC standards. Therefore, the Commission considers the existing accreditations that the Commission has accepted for testing to these standards also to cover testing to the revised standards.

List of Subjects in 16 CFR Parts 1215 and 1219

Consumer protection, Incorporation by reference, Imports, Infants and children, Law enforcement, Safety, Toys.

For the reasons stated above, the Commission amends 16 CFR chapter II as follows:

PART 1215—SAFETY STANDARD FOR INFANT BATH SEATS

■ 1. The authority citation for part 1215 is revised to read as follows:

Authority: Sections 3 and 104 of Pub. L. 110–314, 122 Stat. 3016 (August 14, 2008); section 3 of Pub. L. 112–28, 125 Stat. 273 (August 12, 2011).

■ 2. Revise § 1215.2 to read as follows:

§ 1215.2 Requirements for infant bath seats.

Each infant bath seat shall comply with all applicable provisions of ASTM F1967–11a, Standard Consumer Safety Specification for Infant Bath Seats, approved September 1, 2011. The Director of the Federal Register approves the incorporation by reference listed in this section in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of these ASTM standards from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959 USA, phone: 610–832–9585; *http://www.astm.org/.* You may inspect copies at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal regulations/ibr_locations.html.*

PART 1219—SAFETY STANDARD FOR FULL-SIZE BABY CRIBS

■ 3. The authority citation for part 1219 is revised to read as follows:

Authority: The Consumer Product Safety Improvement Act of 2008, Pub. L. 110–314, Sec. 104, 122 Stat. 3016 (August 14, 2008); section 3 of Pub. L. 112–28, 125 Stat. 273 (August 12, 2011).

■ 4. Revise § 1219.2 to read as follows:

§ 1219.2 Requirements for full-size baby cribs.

Each full-size baby crib shall comply with all applicable provisions of ASTM F1169–11, Standard Consumer Safety Specification for Full-Size Baby Cribs, approved August 15, 2011. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from ASTM International, 100 Barr Harbor Drive, P.O. Box 0700, West Conshohocken, PA 19428; telephone 610–832–9585; *www.astm.org.* You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Dated: July 25, 2012.

Todd A. Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2012–18483 Filed 7–30–12; 8:45 am]

BILLING CODE 6355–01–P

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual; Incorporation by Reference

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service announces the issuance of the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) dated June 24, 2012, and its incorporation by reference in the *Code of Federal Regulations.*

DATES: This final rule is effective on July 31, 2012. The incorporation by reference of the DMM dated June 24, 2012 is approved by the Director of the Federal Register as of July 31, 2012.

FOR FURTHER INFORMATION CONTACT: Lizbeth Dobbins (202) 268–3789.

SUPPLEMENTARY INFORMATION: The most recent issue of the *Domestic Mail Manual* (DMM) is dated June 24, 2012. This issue of the DMM contains all Postal Service domestic mailing standards, and continues to: (1) Increase the user's ability to find information; (2) increase confidence that users have found all the information they need; and (3) reduce the need to consult multiple chapters of the Manual to locate necessary information. The issue dated June 24, 2012, sets forth specific changes, including new standards throughout the DMM to support the standards and mail preparation changes implemented since the version issued on July 5, 2011.

Changes to mailing standards will continue to be published through **Federal Register** notices and the *Postal Bulletin,* and will appear in the next online version available via the Postal Explorer® Web site at: *http://pe.usps.com.*

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Incorporation by reference.

In view of the considerations discussed above, the Postal Service hereby amends 39 CFR Part 111 as follows:

PART 111—GENERAL INFORMATION ON POSTAL SERVICE

■ 1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Amend § 111.3 by adding a new entry to the table at the end of paragraph (f), as follows:

§ 111.3 Amendment to the Mailing Standards of the United States Postal Service, Domestic Mail Manual.

* * * * *

(f) * * *

Transmittal letter for issue	Dated	**Federal Register** publication
* * * * * * *		
DMM	June 24, 2012	[Insert FR citation for this rule].

§ 111.4 [Amended]

■ 3. Amend § 111.4 by removing ''August 9, 2011'' and adding ''July 31, 2012'' in its place.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2012–18590 Filed 7–30–12; 8:45 am]

BILLING CODE 7710–12–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0702]

Drawbridge Operation Regulations; Gallants Channel, Beaufort, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has issued a temporary deviation from the regulations governing the operation of the US 70 (Grayden Paul) Bridge, at mile 0.1, over Gallants Channel, at Beaufort, NC. The deviation restricts the operation of the draw span and is necessary to accommodate the Neuse River Keeper Foundation Sprint Triathlon.

DATES: This deviation is effective 12:30 p.m. until 3 p.m. on Saturday, September 29, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket USCG–2012–0702 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0702 in the ''Keywords'' box, and then clicking ''Search''. This material is also available for inspection or copying the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Bill H. Brazier, Bridge Management Specialist, Fifth Coast Guard District, telephone (757) 398–6422, email *Bill.H.Brazier@uscg.mil.* If you have questions on reviewing the docket, call Renne V. Wright, Program Manager, Docket Operations, (202)366–9826.

SUPPLEMENTARY INFORMATION: The North Carolina Department of Transportation who owns and operates this bascule-type drawbridge, on behalf of the Coastal Society, has requested a temporary deviation from the operating regulations to accommodate the Neuse River Keeper Foundation Sprint Triathlon.

Under the current operating regulations set out in 33 CFR 117.823, the draw of the US 70 (Grayden Paul) Bridge, at mile 0.1, over Gallants Channel, at Beaufort, NC opens as follows: From 6 a.m. to 10 p.m., the draw need only open on the hour and on the half hour; except that Monday through Friday the bridge need not open between the hours of 6:30 a.m. to 8 a.m. and 4:30 p.m. to 6 p.m.; and from 10 p.m. to 6 a.m., the bridge will open on signal.

In the closed position to vessels, the US 70 (Grayden Paul) Bridge has a vertical clearance of 13 feet above mean high water.

Under this temporary deviation, the drawbridge will be closed to vessels requiring an opening from 12:30 p.m. to 3 p.m. on Saturday, September 29, 2012. There are no alternate routes for vessels transiting this section of Gallants Channel and the drawbridge will be able to open in the event of an emergency.

The Coast Guard has carefully coordinated the restrictions with commercial and recreational waterway users. The Coast Guard will inform all users of the waterway through our Local and Broadcast Notice to Mariners of the closure periods for the bridge so that vessels can arrange their transits to minimize any impacts caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the draw must return to its original operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: July 23, 2012.

Waverly W. Gregory, Jr.,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2012–18700 Filed 7–30–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Part 11

[Docket No. PTO–C–2011–0089]

RIN 0651–AC76

Implementation of Statute of Limitations Provisions for Office Disciplinary Proceedings

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Leahy-Smith America Invents Act (AIA) requires that disciplinary proceedings before the United States Patent and Trademark Office (Office or USPTO) be commenced not later than the earlier of either the date that is 10 years after the date on which the misconduct forming the basis of the proceeding occurred, or one year from the date on which the misconduct forming the basis of the proceeding was made known to an officer or employee of the Office, as prescribed in the regulations governing disciplinary proceedings. The Office is adopting procedural rules which: Specify that a disciplinary complaint shall be filed within one year after the date on which the Office of Enrollment and Discipline (OED) Director receives a grievance forming the basis of the complaint, and in no event more than ten years after the date on which the misconduct forming the basis for the proceeding occurred; define grievance as a written submission from any source received by the OED Director that presents possible grounds for discipline of a specified practitioner; and clarify that the one-year time frame for filing a complaint may be tolled by written agreement.

The Office will evaluate these procedures in the future to determine their effectiveness. If the new one-year time frame proves to be administratively unworkable or impedes the effectiveness of the disciplinary process, the Office may issue a new notice of proposed rulemaking.

DATES: *Effective Date:* The changes in this final rule are effective on August 30, 2012.

FOR FURTHER INFORMATION CONTACT: William R. Covey, Deputy General Counsel for Enrollment and Discipline and Director of the Office of Enrollment and Discipline, by telephone at 571–272–4097, or by mail addressed to Mail Stop OED, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450,

marked to the attention of William R. Covey.

SUPPLEMENTARY INFORMATION:

Background

Section 32 of Title 35, United States Code, as amended by the AIA, requires that a disciplinary proceeding be commenced not later than the earlier of either 10 years after the date on which the misconduct forming the basis for the proceeding occurred, or one year after the date on which the misconduct forming the basis for the proceeding is made known to an officer or employee of the Office, as prescribed in the regulations established under 35 U.S.C. 2(b)(2)(D). The Office previously proposed changes and requested comments in a notice of proposed rulemaking to implement this provision of the AIA. *See Implementation of Statute of Limitations Provisions for Office Disciplinary Proceedings,* 77 FR 457 (January 5, 2012).

Prior to the AIA's amendment to 35 U.S.C. 32, disciplinary actions for violations of the USPTO Code of Professional Responsibility were generally understood to be subject to a five-year statute of limitations pursuant to 28 U.S.C. 2462. *See, e.g., Sheinbein* v. *Dudas,* 465 F.3d 493, 496 (Fed. Cir. 2006). With the AIA's new 10-year limitation period, Congress provided the Office with five additional years to bring an action, thus ensuring that the Office had additional flexibility to initiate ''a [disciplinary] proceeding for the vast bulk of misconduct that is discovered, while also staying within the limits of what attorneys can reasonably be expected to remember,'' *Congressional Record* S1372–1373 (daily ed. March 8, 2011) (statement of Sen. Kyl). Therefore, the new 10-year limitation period indicates congressional intent to extend the time permitted to file a disciplinary action against a practitioner who violates the USPTO Code of Professional Responsibility, rather than to allow such actions to become time-barred. *See id.* at S1372 (''[a] strict five-year statute of limitations that runs from when the misconduct occurs, rather than from when it reasonably could have been discovered, would appear to preclude a section 32 proceeding for a significant number of cases of serious misconduct''). The one-year period in the AIA reflects that disciplinary actions should be filed in a timely manner from the date when misconduct forming the basis of a disciplinary complaint against a practitioner is made known to ''that section of PTO charged with conducting section 32 proceedings,'' *Congressional Record* S1372 (daily ed. March 8, 2011) (statement of Sen. Kyl).

Under 35 U.S.C. 32, the Office may take disciplinary action against any person, agent, or attorney who fails to comply with the regulations established under 35 U.S.C. 2(b)(2)(D). Procedural regulations governing the investigation of possible grounds for discipline and the conduct of disciplinary proceedings are set forth at 37 CFR 11.19 *et seq.* The Office initiates disciplinary proceedings via three types of disciplinary complaints: Complaints predicated on the receipt of a probable cause determination from the Committee on Discipline; complaints seeking reciprocal discipline; and complaints seeking interim suspension based on a serious crime conviction.

OED Investigatory Process

As explained in the previous notice of proposed rulemaking, there are four steps taken by the OED Director prior to the filing of a § 11.32 disciplinary complaint against a practitioner: (1) Preliminary screening of the allegations made against the practitioner, *see* § 11.22(d); (2) requesting information from the practitioner about his or her alleged conduct, *see* § 11.22(f)(1)(ii); (3) conducting a thorough investigation after providing the practitioner an opportunity to respond to the allegations, *see* § 11.22(a); and (4) submitting the investigated case to the Committee on Discipline for a determination of whether there is probable cause to bring charges against the practitioner, *see* § 11.32.

Discussion of Specific Rule

Section 11.1 is revised to add a definition of *grievance.* Specifically, a *grievance* means a written submission from any source received by the OED Director that presents possible grounds for discipline of a specified practitioner. The written submission need not be submitted by an aggrieved client or any other specific person. Regardless of the source, written information or evidence received by the OED Director which presents specific information indicating possible grounds for discipline of an identified practitioner will be deemed a grievance. The definition of *grievance* set forth in § 11.1 applies to OED disciplinary matters only. It does not affect the meaning of ''grievance'' in other contexts, such as procedures the USPTO administers by which employees may request personal relief in a matter of concern or dissatisfaction regarding their employment.

OED makes staff attorneys available for telephone inquiries from practitioners and the public. Staff attorneys are not permitted to provide advisory opinions, but they will identify disciplinary rules that could impact a particular situation. A practitioner then may review the matter, perhaps with private counsel, to ensure the practitioner's conduct complies with ethical obligations. Many inquiries from the public result from poor communication between the practitioner and the client or unclear expectations, and a caller may decide not to submit a grievance after further consideration. To avoid discouraging practitioners from contacting OED for guidance, and to prevent opening investigations prematurely, a telephone inquiry or report to OED is not a grievance. This is consistent with Office rules that require all business with the Office be conducted in writing. *See* 37 CFR 1.2.

The rule requires that a grievance be written but does not specify a format for the submission. Although typed submissions are preferred, a handwritten note accompanied by relevant documents is permitted. Regardless of the format, in order to satisfy the definition of grievance, the submission must identify the practitioner alleged to have engaged in misconduct and present information or evidence sufficient to enable the OED Director to determine whether possible grounds for discipline exist. Allegations in submissions unsupported by information or evidence may be insufficient to present possible grounds for discipline.

This definition specifies the OED Director as the officer or employee of the Office to whom misconduct forming the basis of a disciplinary proceeding must be made known, which is consistent with the legislative history of the AIA's amendment to 35 U.S.C. 32. *See* Congressional Record S1372 (daily ed. March 8, 2011) (statement from Sen. Kyl: ''A section 32 proceeding must be initiated * * * within 1 year of when the misconduct is reported *to that section of the PTO charged with conducting section 32 proceedings* * * *'') (emphasis added). OED is charged with conducting section 32 proceedings.

Practitioners are required to notify the OED Director within 30 days of being disciplined by another jurisdiction, 37 CFR 11.24(a), or being convicted of a crime, 37 CFR 11.25. Notification pursuant to those rules will be treated as a grievance under 37 CFR 11.1 and 11.34(d).

Section 11.22 is revised to delete and reserve subsection (c), which previously specified that information or evidence coming from any source which presents

or alleges facts suggesting possible grounds for discipline would be deemed a grievance. This language is redundant in view of the definition of *grievance* now set forth in § 11.1.

Section 11.34 is revised to add subsection (d), which specifies the time in which the OED Director may file a disciplinary complaint against an individual subject to the disciplinary authority of the Office. Specifically, a complaint shall be filed within one year after the date on which the OED Director receives a grievance forming the basis of the complaint, and no complaint shall be filed more than ten years after the date on which the misconduct forming the basis for the proceeding occurred. The Office recognizes that this limited one-year period may require the filing of a complaint in circumstances where the matter might be resolved with additional time to conduct further investigation or for the Office and practitioner to discuss an appropriate resolution of the matter. In appropriate cases such as these, the practitioner should be permitted to voluntarily enter into a tolling agreement in order to avoid the quick filing of a complaint and subsequent litigation. Accordingly, subsection (e) is added to clarify that the one-year period for filing a complaint may be tolled by a written agreement between the involved practitioner and the OED Director. The Office agrees that tolling agreements may provide both the Office and the practitioner with additional time to resolve matters without a complaint.

The OED Director may receive multiple grievances concerning an individual practitioner. Where these grievances are received close in time, the OED Director may file a single complaint reflecting the multiple grievances. As a result, a complaint may be based on more than one grievance, and the complaint may reflect multiple one-year dates under 35 U.S.C. 32. Failure to meet the one-year date as to one grievance does not prevent a proceeding from going forward based on other grievances.

Changes From the Proposed Rule

The Office previously published a notice of proposed rulemaking titled ''Implementation of Statute of Limitations Provisions for Office Disciplinary Proceedings.'' 77 FR 457 (January 5, 2012). Under the proposed regulation, the one-year period set forth in 35 U.S.C. 32 would have commenced for § 11.32 actions when the OED Director received a practitioner's complete, written response to a § 11.22(f)(1)(ii) request for information and evidence issued by OED in response to a grievance.

The proposed regulation is not being adopted. Although the Office believes that the proposed rule was reasonable and within its authority under 35 U.S.C. 32, in view of the comments expressing a preference that a disciplinary proceeding be commenced one year from the date the OED Director receives a grievance, the Office has decided to implement a one-year time frame from the date of the OED Director's receipt of a grievance. The Office believes that this specified date is likely to promote effective and efficient disciplinary processing and aid grievants and practitioners in understanding OED's time frame for completing disciplinary investigations. In addition, tolling agreements may provide both the Office and the practitioner with sufficient time to resolve matters in appropriate cases. Accordingly, the Office adopts three rules to administer the new procedure. The new rules specify: (1) A disciplinary complaint shall be filed within one year after the date on which the OED Director receives a grievance forming the basis of the complaint, and in no event more than ten years after the date on which the misconduct forming the basis for the proceeding occurred, (2) a grievance is defined as a written submission from any source received by the OED Director that presents possible grounds for discipline of a specified practitioner, and (3) the one-year period for filing a complaint may be tolled by written agreement.

Comments and Responses to the Proposed Rule

Five entities submitted written comments to the January 5, 2012 notice of proposed rulemaking.

Comment 1: One entity indicated the proposed rule is consistent with the statute and the intent of Congress, and agreed that the proposed rule best recognizes the competing concerns of practitioners, the Office, and the public.

Response to Comment 1: The Office appreciates this comment with respect to the proposed rule. However, as a result of public comments and for administrative purposes, the Office has decided to issue a final rule that requires a complaint under § 11.34, regardless of whether the complaint originated through the provisions of § 11.24, § 11.25, or § 11.32, shall be filed within one year after the date on which the OED Director receives a grievance forming the basis of the complaint, and in no event more than ten years after the date on which the misconduct forming the basis for the proceeding occurred.

Comment 2: One comment stated that the proposed addition of § 11.22(f)(3) was redundant in view of § 11.22(f)(1)(ii), which authorized the OED Director to request information and evidence from a practitioner. The comment agreed with proposed § 11.34(d)(1) and (d)(2) regarding actions under § 11.24 (reciprocal discipline) and § 11.25 (interim suspension and discipline for serious crimes), respectively. With respect to proposed § 11.34(d)(3) regarding actions brought under § 11.32, the comment agreed that ''[b]efore any decision can be made to determine whether possible grounds for discipline exist and that an investigation is warranted, it is necessary * * * to get the practitioner's side of the story first.'' The comment recommended a procedure whereby OED would first request comments from the practitioner concerning a grievance before opening an investigation. If no response is received, the OED Director could initiate a disciplinary action for the practitioner's failure to cooperate. After a response is received from the practitioner, OED would determine whether an investigation is warranted. If so, OED would send a notice of investigation pursuant to current § 11.22(e). The one-year period would start with the mailing date of the § 11.22(e) notice.

Response to Comment 2: The proposed addition of § 11.22(f)(3) would have required the OED Director to issue a request for information and evidence prior to convening the Committee on Discipline. This proposal has not been adopted in view of the changes to this final rule. The Office elected not to adopt the proposal to initiate the one-year period with the mailing of the notice of investigation in favor of the final rule.

Comment 3: One comment maintained that the proposed rule was not consistent with the plain language of the statute, and suggested that ''once a responsible officer or employee of the PTO under [35 U.S.C. 3] (i.e., PTO Director, Commissioner, attorney or patent examiner) becomes aware of the potentially offending conduct, the Office has one year *from that date* to commence a disciplinary proceeding.'' (emphasis in original). The comment also indicated that the basic notion of fairness to the practitioner, which was a primary purpose of the proposed regulation, could be served by tolling agreements between the practitioner and OED to allow practitioners additional time to respond to requests for information.

Response to Comment 3: The legislative history does not support the

proposition that notice to *any* officer or employee of the Office should trigger the one-year statute of limitations. *See,* Congressional Record S1372 (daily ed. March 8, 2011) (statement from Sen. Kyl: ''A section 32 proceeding must be initiated * * * within 1 year of when the misconduct is reported *to that section of the PTO charged with conducting section 32 proceedings* * * * '') (emphasis added). OED is charged with conducting section 32 proceedings. Information received by an employee outside of OED, whether that employee is mail room staff, a data entry clerk, or a patent examiner, is not sufficient to trigger the one-year period for commencing a disciplinary action.

With regard to the comment that the proposed rule was not consistent with the plain language of the statute, 35 U.S.C. 32, as amended by the AIA, requires that a disciplinary proceeding be ''commenced not later than the earlier of either the date that is 10 years after the date on which the misconduct forming the basis for the proceeding occurred, or one year after the date on which the misconduct forming the basis for the proceeding is made known to an officer or employee of the Office *as prescribed in the regulations established under 35 U.S.C. 2(b)(2)(D).''* (emphasis added). The Office believes the proposed rule is reasonable and fully consistent with the AIA. However, in response to comments requesting that the one-year period begin on the date the OED Director receives a grievance, the Office has decided to adopt rules setting forth a one-year time frame for completion of disciplinary investigations from the date the OED Director receives a grievance.

The Office agrees that tolling agreements should address the concerns of a practitioner who needs additional time to respond to a request for information before a complaint is brought. OED intends to utilize such tolling agreements in appropriate circumstances. Under § 11.34(e), the one-year period for filing a complaint under § 11.34(d) shall be tolled if the practitioner and the OED Director agree in writing to such tolling.

Comment 4: With regard to actions brought under § 11.32, one comment questioned whether it was necessary to require that a grievance be received by the OED Director, and contended that, ''[a]t a bare minimum, when a complaint against a practitioner has been made to the OED, the misconduct forming the basis of the proceeding has been made known to an officer or employee of the USPTO as required by the statute.'' The comment also suggested that tolling agreements could be utilized in situations where a practitioner needs additional time to respond to a request for information. The comment further indicated that the provisions in the proposed rule concerning reciprocal discipline under § 11.24 and interim suspensions for serious crimes under § 11.25 required too much formality.

Response to Comment 4: As to § 11.32 actions, the Office incorporates the response to comment 3. With regard to § 11.24 and § 11.25 actions, the proposed rule is not being adopted. Instead, the new rules will also apply to § 11.24 and § 11.25 actions.

Comment 5: One comment asserted that the statute requires the Office to complete the initial process ''within one year from the time an investigation is commenced.'' The comment also stated that ''[u]nder the statute, once [misconduct upon which a complaint is ultimately based] is brought to the attention of the Office, it has one year to investigate and file a complaint.''

Response to Comment 5: The Office incorporates the response to comment 3.

Rulemaking Considerations

Administrative Procedure Act: This final rule changes the Office's procedural rules governing disciplinary proceedings. These changes involve rules of agency practice and procedure and/or interpretive rules. *See Bachow Communication, Inc.* v. *FCC,* 237 F.3d 683, 690 (D.C. Cir. 2001) (rules governing an application process are procedural under the Administrative Procedure Act); *Inova Alexandria Hosp.* v. *Shalala,* 244 F.3d 342, 350 (4th Cir. 2001) (rules for handling appeals were procedural where they did not change the substantive standard for reviewing claims); *Nat'l Org. of Veterans' Advocates* v. *Sec'y of Veterans Affairs,* 260 F.3d 1365, 1375 (Fed. Cir. 2001) (rule that clarifies interpretation of a statute is interpretive).

Accordingly, prior notice and opportunity for public comment are not required pursuant to 5 U.S.C. 553(b) or (c) (or any other law), and thirty-day advance publication is not required pursuant to 5 U.S.C. 553(d) (or any other law). *See Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), do not require notice and comment rulemaking for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice'') (quoting 5 U.S.C. 553(b)(A)). The Office, however, published proposed changes for comment as it sought the benefit of the public's views on the Office's proposed implementation of this provision of the Leahy-Smith America Invents Act.

Regulatory Flexibility Act: As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 or any other law, neither a regulatory flexibility analysis nor a certification under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is required. *See* 5 U.S.C. 603. Nevertheless, the Deputy General Counsel for General Law of the United States Patent and Trademark Office has certified to the Chief Counsel for Advocacy, Small Business Administration, that the changes in this final rule will not have a significant economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). Such a certification was made at the proposed rule stage and no comments were received on that certification.

The primary purpose of the final rule is to establish regulations pursuant to 35 U.S.C. 2(b)(2)(D) that govern time limits for the Office to commence a disciplinary action. This final rule does not increase or change the burdens of practitioners involved in disciplinary proceedings or the investigation process. There are more than 41,000 individuals registered to practice before the Office in patent matters and many unregistered attorneys who practice before the Office in trademark matters. In a typical year, the Office considers approximately 150 to 200 matters concerning possible misconduct by individuals who practice before the Office in patent and/or trademark matters, and fewer than 100 matters per year lead to a formal disciplinary proceeding or settlement. Thus, only a relatively small number of individuals are involved in the disciplinary process. Additionally, based on the Office's experience in investigations that precede the disciplinary process, the Office does not anticipate this final rule will result in a significant increase, if any, in the number of individuals who are impacted by a disciplinary proceeding or investigation. Accordingly, the changes in this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132 (Federalism): This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (August 4, 1999).

Executive Order 12866 (Regulatory Planning and Review): This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (September 30, 1993).

Executive Order 13563 (Improving Regulation and Regulatory Review): The Office has complied with Executive Order 13563. Specifically, the Office has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector and the public as a whole, and provided on-line access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

Executive Order 13175 (Tribal Consultation): This rulemaking will not: (1) Have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

Executive Order 13211 (Energy Effects): This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

Executive Order 12988 (Civil Justice Reform): This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

Executive Order 13045 (Protection of Children): This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

Executive Order 12630 (Taking of Private Property): This rulemaking will not effect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

Unfunded Mandates Reform Act of 1995: The changes in this final rule do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501 *et seq.*

National Environmental Policy Act: This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. *See* 42 U.S.C. 4321 *et seq.*

National Technology Transfer and Advancement Act: The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions which involve the use of technical standards.

Paperwork Reduction Act: This rulemaking does not create any information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB control number.

Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule, the USPTO will submit a report containing the final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. However, this action is not a major rule as defined by 5 U.S.C. 804(2).

List of Subjects in 37 CFR Part 11

Administrative practice and procedure, Inventions and patents, Lawyers, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the United States Patent and Trademark Office amends 37 CFR part 11 as follows:

PART 11—REPRESENTATION OF OTHERS BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE

■ 1. The authority citation for 37 CFR part 11 continues to read as follows:

Authority: 5 U.S.C. 500, 15 U.S.C. 1123, 35 U.S.C. 2(b)(2), 32, 41.

■ 2. Section 11.1 is amended by adding a definition of *grievance* in alphabetical order to read as follows:

§ 11.1 Definitions.

* * * * *

Grievance means a written submission from any source received by the OED Director that presents possible grounds for discipline of a specified practitioner.

* * * * *

§ 11.22 [Amended]

■ 3. Section 11.22 is amended by removing and reserving paragraph (c).

■ 4. Section 11.34 is amended by adding paragraphs (d) and (e) to read as follows:

§ 11.34 Complaint.

* * * * *

(d) *Time for filing a complaint.* A complaint shall be filed within one year after the date on which the OED Director receives a grievance forming the basis of the complaint. No complaint shall be filed more than ten years after the date on which the misconduct forming the basis for the proceeding occurred.

(e) *Tolling agreements.* The one-year period for filing a complaint under paragraph (d) of this section shall be tolled if the involved practitioner and the OED Director agree in writing to such tolling.

Dated: July 24, 2012.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2012–18554 Filed 7–30–12; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2009–0730; FRL–9702–9]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Wisconsin; Redesignation of the Milwaukee-Racine Area to Attainment for 1997 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a request from the Wisconsin Department of Natural Resources (WDNR) to redesignate the Milwaukee-Racine area to attainment for the 1997 8-hour National Ambient Air Quality Standard (NAAQS or standard). The Milwaukee-Racine area includes Milwaukee, Ozaukee, Racine, Washington, Waukesha, and Kenosha Counties. WDNR submitted this request on September 11, 2009, and supplemented the submittal on November 16, 2011. These submittals also requested the redesignation of the Sheboygan area (Sheboygan County) to attainment for the 1997 8-hour ozone NAAQS. EPA proposed to approve the redesignation of both areas on February 9, 2012, and provided a 30-day review and comment period. EPA received comments submitted on behalf of Sierra Club and Midwest Environmental Defense Center and from the Wisconsin Manufacturers and Commerce. EPA is not taking final action on the Sheboygan redesignation request at this time because preliminary 2012 ozone monitoring data indicate that the area has violated the 1997 standard. In addition to approving the redesignation of the Milwaukee-Racine area, EPA is taking several other related actions. EPA is approving, as a revision to the Wisconsin State Implementation Plan (SIP), the State's plan for maintaining the 1997 8-hour ozone standard through 2022 in the Milwaukee-Racine area. EPA is approving the 2005 emissions inventories for the Milwaukee-Racine and Sheboygan areas as meeting the comprehensive emissions inventory requirement of the Clean Air Act (CAA or Act). Finally, EPA finds adequate and is approving the State's 2015 and 2022 Motor Vehicle Emission Budgets (MVEBs) for the Milwaukee-Racine area.

DATES: *Effective Date:* This rule is effective on July 31, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2009–0730. 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 (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Kathleen D'Agostino, Environmental Engineer, at (312) 886–1767 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767, *dagostino.kathleen@epa.gov.*

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

I. What is the background for this rule?
II. What comments did we receive on the proposed rule?
III. What actions is EPA taking?
IV. Statutory and Executive Order Reviews

I. What is the background for this rule?

On July 18, 1997 (62 FR 38856), EPA promulgated an 8-hour ozone standard of 0.08 parts per million (ppm). EPA published a final rule designating and classifying areas under the 1997 8-hour ozone NAAQS on April 30, 2004 (69 FR 23857). In that rulemaking, the Milwaukee-Racine area was designated as nonattainment for the 1997 8-hour ozone standard and classified as a moderate nonattainment area under subpart 2 of part D of the CAA (69 FR 23857, 23947).

On September 11, 2009, WDNR requested redesignation of the Milwaukee-Racine and Sheboygan areas to attainment of the 1997 8-hour ozone standard based on ozone data for the period of 2006–2008. On November 16, 2011, WDNR supplemented the original ozone redesignation requests, revising the mobile source emission estimates using EPA's on-road mobile source emissions model, MOVES, and extending the demonstration of maintenance of the ozone standard through 2022, with new MVEBs, but without relying on emission reductions resulting from implementation of EPA's Clean Air Interstate Rule (CAIR) or Cross-State Air Pollution Rule (CSAPR).

On March 1, 2011 (76 FR 11080), EPA issued a final rulemaking determining that the Milwaukee-Racine and Sheboygan areas had attained the 1997 8-hour ozone NAAQS based on three years of complete, quality-assured ozone data for the 2006–2008, 2007–2009, and 2008–2010 time periods.[1]

On February 9, 2012 (77 FR 6727), EPA issued a rulemaking action proposing to approve Wisconsin's requests to redesignate the Milwaukee-Racine and Sheboygan areas to attainment of the 1997 8-hour ozone standard, as well as proposing to approve Wisconsin's maintenance plans for the areas, volatile organic compound (VOC) and nitrogen oxides (NO_X) MVEBs, and VOC and NO_X emissions inventories. This proposed rulemaking sets forth the basis for determining that Wisconsin's redesignation request meets the CAA requirements for redesignation of the Milwaukee-Racine area to attainment for the 1997 8-hour ozone NAAQS. Air quality monitoring data in the Milwaukee-Racine and Sheboygan areas for 2007–2009, 2008–2010, and 2009–2011 show attainment of the 1997 8-hour ozone NAAQS. Preliminary data available for the Milwaukee area for 2012 are consistent with continued attainment. Preliminary 2012 data for the Sheboygan area, however, indicate that the area is currently violating the 1997 8-hour ozone standard. For this reason, EPA is not finalizing action on the State's request to redesignate the Sheboygan area at this time. The primary background for today's action is contained in EPA's February 9, 2012, proposal to approve Wisconsin's redesignation requests, and in EPA's March 1, 2011, final rulemaking determining that the areas have attained the 1997 8-hour ozone NAAQS, based on complete, quality-assured monitoring

[1] Certified ozone data for 2011 demonstrates that the areas continued to attain the 1997 8-hour ozone standard in 2011. EPA recognizes that the ozone data for 2007–2009 as well as the data for 2010 and 2011 are impacted by emission reductions associated with the CAIR, which was promulgated in 2005, but remanded to EPA in 2008. The fact that the data reflect some reductions associated with the remanded and therefore not permanent CAIR, however, is not an impediment to redesignation in the circumstances presented here where WDNR's demonstration and EPA's own modeling demonstrates that the areas do not need reductions associated with the CAIR to attain the 1997 ozone NAAQS.

data for 2006–2008, 2007–2009, and 2008–2010 time periods. In these rulemakings, we noted that under EPA regulations at 40 CFR 50.10 and 40 CFR part 50 appendix I, the 1997 8-hour ozone standard is attained when the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentrations is less than or equal to 0.08 ppm at all ozone monitoring sites in the area. *See* 69 FR 23857 (April 30, 2004) for further information. To support the redesignation of an area to attainment of the NAAQS, the ozone data must be complete for the three attainment years. The data completeness requirement is met when the 3-year average of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness, as determined in accordance with appendix I of 40 CFR part 50. Under the CAA, EPA may redesignate a nonattainment area to attainment if sufficient, complete, quality-assured data are available demonstrating that the area has attained the standard and if the state meets the other CAA redesignation requirements specified in section 107(d)(3)(E) and section 175A.

The February 9, 2012, proposed redesignation rulemaking provides a detailed discussion of how Wisconsin's ozone redesignation request for the Milwaukee-Racine area meets the CAA requirements for redesignation to attainment. With the final approval of its VOC and NO_X emissions inventories, and its VOC Reasonably Available Control Technology (RACT) regulations, Wisconsin has met all applicable CAA requirements for redesignation to attainment of the area for the 1997 8-hour ozone NAAQS. Complete, quality-assured, and certified air quality monitoring data in the Milwaukee-Racine area for 2009–2011, and preliminary data for 2012, show that this area continues to attain the 1997 8-hour ozone NAAQS. In the maintenance plan it submitted for this area, Wisconsin has demonstrated that attainment of the 1997 8-hour ozone NAAQS will be maintained in the Milwaukee-Racine area through 2022, with or without the implementation of CAIR or CSAPR. In addition, modeling conducted by EPA during the CSAPR rulemaking demonstrates that in both 2012 and 2014, even without taking into account reductions associated solely with CAIR or CSAPR, the counties in the Milwaukee-Racine nonattainment area will have air quality that attains the 1997 ozone NAAQS. Finally, Wisconsin has adopted 2015 and 2022 MVEBs that are supported by Wisconsin's ozone maintenance demonstrations and Wisconsin has adopted an ozone maintenance plan.

II. What comments did we receive on the proposed rule?

EPA provided a 30-day comment period for the February 9, 2012, proposed rule. During the comment period, Wisconsin Manufacturers and Commerce submitted comments in support of the actions and we received one set of comments objecting to the redesignation of the Milwaukee-Racine area submitted on behalf of the Sierra Club and the Midwest Environmental Defense Center. The adverse comments are summarized and addressed below.

Comment 1: The commenter asserts that the redesignation of the Milwaukee-Racine area to attainment of the 1997 8-hour ozone standard would violate the CAA because the State of Wisconsin and EPA have not ensured that nonattainment area New Source Review (NSR) would apply after redesignation. The commenter contends that such a situation conflicts with the language of section 107(d)(3)(E)(v) of the CAA, which requires the State to have met all requirements of part D of the CAA, since part D includes requirements for NSR. The commenter argues that the requirements of section 107(d)(3)(E)(v) make no sense if the State's NSR program is not required to apply in the area after redesignation. The commenter further argues that, at a minimum, a requirement for NSR should be included in the State's ozone maintenance plan as a contingency measure to be implemented if the area subsequently violates the 1997 8-hour ozone standard. The commenter contends that EPA cannot rely on certain policy memoranda to support its approval of the State's ozone redesignation request and ozone maintenance plan without the requirement for the implementation of the NSR program in the Milwaukee-Racine area after redesignation.

Response 1: As clearly stated in EPA's October 14, 1994, policy memorandum from Mary D. Nichols entitled ''Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' ''EPA believes it is reasonable to interpret 'measure,' as used in section 175A(d), not to include part D NSR.'' Congress used the undefined term ''measure'' differently in different provisions of the Act, which indicates that the term is susceptible to more than one interpretation and that EPA has the discretion to interpret it in a reasonable manner in the context of section 175A. *See Greenbaum* v. *EPA,* 370 F.3d 527, 535–38 (6th Cir. 2004). (Court ''find[s] persuasive the EPA's argument that the very nature of the NSR permit program supports its interpretation that it is not intended to be a contingency measure pursuant to section 175A(d).'') It is reasonable to interpret ''measure'' to exclude part D NSR in this context because Prevention of Significant Deterioration (PSD), a program that is the corollary of part D NSR for attainment areas, goes into effect in lieu of part D NSR upon redesignation. PSD requires that new sources demonstrate that emissions from their construction and operation will not cause or contribute to a violation of any NAAQS or PSD increment. The State has demonstrated that the areas will be able to maintain the standard without Part D NSR in effect, and the State's PSD program will become effective in the areas upon redesignation to attainment. *See* the rationale set forth at length in the Nichols Memorandum. *See* also the discussions of why full approval and retention of NSR is not required in redesignation actions in the following redesignation rulemakings: 60 FR 12459, 12467–12468 (March 7, 1995) (Detroit, MI); 61 FR 20458, 20469–20470 (May 7, 1996) (Cleveland-Akron-Lorrain, OH); 66 FR 53665, 53669 (October 23, 2001) (Louisville, KY); 61 FR 31831, 31836–31837 (June 21, 1996) (Grand Rapids, MI); 73 FR 29436, 29440–29441 (May 21, 2008) (Kewaunee County, WI); 77 FR 34819, 34826–34827 (June 12, 2012) (Illinois portion of St. Louis, MO–IL).

Comment 2: The commenter contends that the State of Wisconsin does not have a complete PSD program. Therefore, the commenter argues that EPA cannot rely on Wisconsin's PSD program being effective and immediately applicable upon redesignation of the Milwaukee-Racine area. For this reason, and the argument set forth in comment 1 above, the commenter contends that Wisconsin's ozone redesignation request and ozone maintenance plan do not meet the requirements of section 107(d)(3)(E) of the CAA.

The commenter gives the following reasons (*see* Comments 2(a)–2(c)) for its assertion that Wisconsin's PSD and NSR programs are inadequate for purposes of redesignation to attainment.

Comment 2(a): The commenter contends that Wisconsin's PSD program does not comply with the requirement in EPA's 1997 8-hour ozone implementation phase 2 rule that NO_X be considered as an ozone precursor under PSD. The commenter argues that the definition in Wisconsin's NSR and PSD regulations specifies only VOC to

be regulated as an ozone precursor. The commenter claims that this allows new or modified sources to add or increase NO_X emissions without analyzing their impacts on ozone levels. The commenter contends that EPA has recently found similar SIPs to be deficient on this basis, and cites EPA's rulemaking at 75 FR 79300 (December 20, 2010, Mississippi PSD rules).

Response 2(a): EPA believes that the commenter is mistaken in its view, and that in fact Wisconsin interprets and implements its NSR and PSD regulations to include NO_X as a precursor for ozone. Wisconsin has an approved PSD program that includes ozone as a regulated NSR pollutant. *See* NR 405.02(25i), Wisconsin Administrative Code. While the commenter is correct in stating that Wisconsin's rule does not specifically list NO_X as a precursor for ozone, the rule does define ''regulated NSR air contaminant'' to include ''any air contaminant for which a national ambient air quality standard has been promulgated and any constituents or precursors for the air contaminants identified by the administrator * * *.'' *See* NR 405.02(25i)(a). EPA has identified both VOCs and NO_X as precursors to ozone in the definition of ''Regulated NSR Pollutant.'' *See* 40 CFR 51.166(b)(49)(i)(a), 52.21(b)(50)(i)(a).

Wisconsin also sets a table of significant emissions rates for individual pollutants in the definition of significant at NR 405.02(27)(a). This table sets the significant emissions rate for ozone at 40 tons per year (tpy) of VOCs and separately sets the significant emissions rate for NOx at 40 tpy. Wisconsin interprets its 40 tpy significant emissions rate for nitrogen oxides contained in NR 405.02(27)(a) to apply to require both NO_2 and ozone air quality analyses when emissions meet or exceed that emissions rate. Therefore, an increase in NO_X emissions of 40 tpy or more will trigger the requirements to: (1) Obtain a PSD permit for ozone; (2) to perform an air quality analysis that demonstrates that the proposed source or modification will not cause or contribute to a violation of the ozone NAAQS; and (3) to apply best available control technology (BACT) for NO_X. Wisconsin has confirmed this interpretation in a May 18, 2012, letter (hereafter, ''Sponseller letter'') and a June 6, 2012, email from Bart Sponseller, Director of the Bureau of Air Management, WDNR to Douglas Aburano, Chief of the Attainment Planning and Maintenance Section, Air Programs Branch, EPA Region 5. Although EPA is requiring Wisconsin to make revisions to its PSD regulations to specifically address NO_X as a precursor to ozone for infrastructure SIP purposes, this interpretation means that Wisconsin is, in practice, requiring air quality analyses for ozone under its state PSD regulations consistent with Federal PSD regulations.

Accordingly, the fact that Wisconsin's approved PSD SIP does not yet explicitly identify NO_X as a precursor to ozone as required by EPA's Phase 2 ozone implementation rule does not prevent the program from addressing and helping to assure maintenance of the ozone standard in accordance with CAA section 175A.

EPA notes that Wisconsin is currently in the process of adopting permanent rules for submission to EPA to add NO_X as an explicit precursor to ozone consistent with the Federal regulations. Irrespective of the State's ongoing regulatory actions, EPA concludes that the features of Wisconsin's currently approved PSD program cited by the commenter do not detract from the program's adequacy for purposes of maintenance of the standard and redesignation of the area. In light of the assurances provided to EPA in the Sponseller letter and email, Wisconsin's currently approved PSD program is adequate for purposes of assuring maintenance of the 1997 8-hour ozone standard as required by section 175A.

Comment 2(b): The commenter asserts that the State of Wisconsin does not conduct ambient air quality analyses for ozone standard compliance when issuing PSD permits, and that WDNR does not model ozone impacts, nor does it conduct other analyses of ozone impacts when issuing permits. The commenter therefore argues that Wisconsin's PSD program does not ensure that new and modified sources will not cause additional ozone standard violations.

Response 2(b): As discussed in response 2(a), Wisconsin has communicated to EPA that the State is implementing its existing regulations consistent with the requirements of the Federal PSD regulations that require an air quality analysis for ozone if a significant emissions rate of 40 tpy for VOC and/or NO_X is reached or exceeded.

Furthermore, Federal PSD regulations at 40 CFR 51.166(k), (l) and (m) and 40 CFR 52.21(k), (l) and (m) contain requirements for ambient impact analyses for proposed major stationary sources and major modifications to obtain a PSD permit. These requirements apply for ozone when such sources or modifications trigger PSD review for ozone, but do not necessarily require quantitative modeling for ozone in all cases.[2] *See* Letter from Gina McCarthy, EPA Assistant Administrator, Office of Air and Radiation, to Robert Ukeiley (Jan. 4, 2012) at 2; In Re CF&I Steel, L.P. dba EVRAZ Rocky Mountain Steel, Petition Number VIII–2011–01 (Order on Petition) (May 31, 2012) at 21–22. The regulations at 40 CFR 51.166(l) state that for air quality models the SIP shall provide for procedures which specify that all applications of air quality modeling involved in this subpart shall be based on the applicable models, data bases, and other requirements specified in appendix W of part 51 (Guideline on Air Quality Models). Where an air quality model specified in appendix W of part 51 (Guideline on Air Quality Models) is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis for a specific State program. Written approval of the Administrator must be obtained for any modification or substitution. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures set forth in § 51.102. *See* also 40 CFR 52.21(l).

The above-referenced parts of 40 CFR part 51 and 52 contain the umbrella components for ambient air quality and source impact analyses for PSD permitting. PSD requirements for SIPs are found in 40 CFR 51.166. As discussed above, sections 51.166(l) and 52.21(l), and Wisconsin rule NR 405.10, refer to 40 CFR part 51, appendix W for the appropriate method to utilize for the ambient impact assessment. 40 CFR part 51, appendix W is the Guideline on Air Quality Models and Section 1.0.a. states that the *Guideline* recommends air quality modeling techniques that should be applied to State Implementation Plan (SIP) revisions for existing sources and to new source review (NSR), including prevention of significant deterioration (PSD). {footnotes not included} Applicable only to criteria air pollutants, it is intended for use by EPA Regional Offices in judging the adequacy of modeling analyses performed by EPA, State and local agencies, and by industry. The *Guideline* is not intended to be a compendium of modeling techniques. Rather, it should serve as a common measure of acceptable technical analysis when support by sound scientific judgment.

[2] Wisconsin's rules at NR 405.09, NR 405.10 and NR 405.11 meet the requirements of 40 CFR 51.166(k), (l), and (m), respectively.

Appendix W, section 5.2.1 includes the Guideline recommendations for models to be utilized in assessing ambient air quality impacts for ozone. Specifically, Section 5.2.1.c states that choice of methods used to assess the impact of an individual source depends on the nature of the source and its emissions. Thus, model users should consult with the Regional Office to determine the most suitable approach on a case-by-case basis (subsection 3.2.2).

Appendix W, section 5.2.1.c provides that the state and local permitting authorities and permitting applicants should work with the appropriate EPA Regional Office on a case-by-case basis to determine an adequate method for performing an air quality analysis for assessing ozone impacts. Due to the complexity of modeling ozone and the dependency on the regional characteristics of atmospheric conditions, EPA believes this is an appropriate approach, rather than specifying a method for assessing single source ozone impacts, which may not be appropriate in all circumstances.[3] Instead, the choice of method ''depends on the nature of the source and its emissions. Thus, model users should consult with the Regional Office to determine the most suitable approach on a case-by-case basis'' appendix W, section 5.2.1.c. Thus, appendix W allows flexibility through the consultation process to determine either modeling based or other analysis techniques may be acceptable. Based on an evaluation of the source, its emissions and background ozone concentrations, an ozone impact analysis other than modeling may be required. Therefore, permitting authorities should consult and work with EPA Regional Offices as described in appendix W, including section 3.0.b and c, 3.2.2, and 3.3, to determine the appropriate approach to assess ozone impacts for each PSD required evaluation. Although EPA has not selected one particular preferred model in appendix A of appendix W (Summaries of Preferred Air Quality Models) for conducting ozone impact analyses for individual sources, permitting authorities in Wisconsin must comply with the appropriate PSD SIP requirements with respect to ozone.

EPA has previously approved the State's PSD program.[4] EPA expects Wisconsin to consult with staff in the Region 5 Office on a case-by-case basis for permitting purposes to determine appropriate methods for assessing the impacts from specific sources on ozone concentrations. An example of such consultation is the permitting action for Aarrowcast, Inc. in Shawano, Wisconsin.

Comment 2(c): The commenter contends that the Wisconsin SIP is deficient because it contains an unacceptable definition of ''major modification'' for purposes of NSR and PSD for sources involving fuel change. The commenter cites a June 17, 2009, letter from EPA to WDNR noting this definition problem in the Wisconsin SIP. The commenter asserts that because of this problem, emissions can increase as a result of non-exempt fuel changes without going through a PSD analysis, meaning that PSD provides no protection for the ozone NAAQS in some situations.

Response 2(c): ''Major modification'' as it relates to PSD is generally defined in NR 405.02(21) of Wisconsin's SIP. The exemptions to ''physical change'' or ''change in the method of operation'' are contained at NR 405.02(21)(b). One exemption is the ability of a source capable of accommodating different types of fuels before 1975 to switch the type of fuel burned, unless prohibited by a restriction in a permit established after 1975.

EPA regulations contained at 40 CFR 51.166(b)(2)(iii)(e)(1) and (2) specifically prescribe when use of an alternative fuel is not considered a physical change for purposes of defining a ''major modification.'' These regulations require that a physical change or change in the method shall not include use of an alternative fuel or raw material by a stationary source which the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any Federally enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51, subpart I, or 40 CFR 51.166; or the source is approved to use the fuel under any permit issued under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166.

The Wisconsin regulations set out the conditions for the fuel change exemption as follows:

> The source was capable of accommodating the alternative fuel or raw material before January 6, 1975, unless the change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to this chapter or ch. NR 406 or 408 or under an operation permit issued pursuant to ch. NR 407.
>
> [Or, t]he source is approved to use the alternative fuel or raw material under any permit issued under this chapter or ch. NR 406, 407, or 408. *See* NR 405.02(21)(b)(5).

The Wisconsin rule is similar to the Federal rule, but differs by substituting references to Wisconsin Administrative Code sections, and omitting reference to permits issued under the Federal program at 40 CFR 52.21.

The commenter raised concerns that failure to cite Federal regulations results in the loss of prohibitions on fuel use exemptions that may have been contained in Federally-issued PSD permits, issued prior to EPA's approval of Wisconsin's PSD SIP, resulting in more exemptions to the definition of ''major modification'' than allowed by the Federal rules.

WDNR states that under its title V operating permit program, all applicable requirements to a source are included in its operation permit. As a result, WDNR states that it clearly recognizes that requirements contained in a Federally-issued PSD permit would be applicable requirements to the source and that they would be included in the source's title V operating permit, therefore making the requirements fully enforceable under State and Federal law. WDNR has taken the position that this is a very narrow issue and has asserted that ''to its knowledge it is not aware of a single situation where an omission has occurred in practice.'' *See* Sponseller letter. While the commenter contends that emissions can ''increase from non-exempt fuel changes without going through a PSD analysis,'' the commenter has not provided information to support this assertion nor has he identified any instance where any such emissions increase has actually occurred.

Although EPA is requiring Wisconsin to revise its PSD regulations to specifically address this issue for

[3] EPA has explained that given the complexities of ozone formation, its judgment has been that it was not technically sound to designate with particularity specific models that must be used to assess the impacts of a single source on ozone concentrations, but rather has provided a consultation process in appendix W for determining particular models or other analytical techniques that should be used on a case-by-case basis. *See* Letter from Gina McCarthy, EPA Assistant Administrator, Office of Air and Radiation to Robert Ukeiley (Jan. 4, 2012) at 2. However, EPA granted a petition for rulemaking on January 4, 2012, stating that it would engage in a rulemaking process to consider whether updates to EPA's *Guideline on Air Quality Models* as published in appendix W are warranted, and, as appropriate, to incorporate new analytical techniques or models for ozone. *Id* at 1.

[4] *See,* ''Approval and Promulgation of Implementation Plans; Wisconsin,'' 64 FR 28745 (May 27, 1999). While the Phase 2 Rule obligates states to make explicit regulatory changes in order to clarify and remove any ambiguity concerning the requirement that NO_X be treated as a precursor to ozone in permitting contexts, the State has authority in its PSD SIP to treat NO_X as a precursor to ozone in permitting decisions, and the State is correctly interpreting its PSD and NSR regulations with regard to inclusion of NO_X as a precursor to ozone as discussed in Response 2(a).

infrastructure SIP purposes, EPA agrees with WDNR that this issue is a very narrow one, and that an omission in practice is perhaps nonexistent. EPA recognizes that in practice, WDNR has the authority and means to ensure adherence to the prohibitions on fuel use exemptions in certain instances, consistent with our own definition of ''major modification.'' Therefore, EPA concludes that the features of Wisconsin's current PSD program cited by the commenter do not detract from the program's adequacy for purposes of maintenance of the standard and redesignation of the area.

Comment 3: The commenter asserts that, besides PSD and NSR deficiencies, the Wisconsin SIP contains several other deficiencies that are contrary to the requirements of section 110 of the CAA.

The commenter claims that the Wisconsin SIP contains a source startup and shutdown excess emissions exemption that EPA has found to be not approvable and in conflict with section 110 of the CAA. The commenter also asserts that the Wisconsin SIP contains ''illegal'' Director's Discretion provisions and that EPA has interpreted section 110 as prohibiting such SIP provisions. The commenter claims that the Wisconsin Administrative Code contains such provisions at NR 436.03(2), NR 436.04, and NR 436.06. The commenter asserts that, historically, EPA has determined that it cannot approve SIPs as being adequate when they contain such Director's Discretion provisions that have the potential to change the stringency of the SIP.

Response 3: The issue before EPA in the current rulemaking action is a redesignation for the Milwaukee-Racine area for the 1997 8-hour ozone standard, including the maintenance plan, and comprehensive emissions inventories. The SIP provisions identified by the commenter are not currently being proposed for revision as part of the redesignation submittals. Because the rules cited by the commenter are not pending before EPA and/or are not the subject of this rulemaking action, EPA did not undertake a full SIP review of the individual provisions. It has long been established that EPA may rely on prior SIP approvals in approving a redesignation request plus any additional measures it may approve in conjunction with a redesignation action. *See e.g.,* page 3 of the September 4, 1992, memorandum from John Calcagni entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment'' (Calcagni Memorandum); *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001); *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984 (6th Cir. 1998); 68 FR 25413, 25426 (May 12, 2003) (St. Louis redesignation). The CAA does not require EPA in the context of a redesignation to attainment to revisit and address existing SIP provisions, and envisions that EPA may address such issues separately and outside the context of action on a redesignation request.

The CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These statutory tools allow EPA to take appropriate tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a ''SIP call'' whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or otherwise to comply with the CAA.[5] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[6]

Comment 4: The commenter argues that EPA has not demonstrated that the reduction in ozone pollution in the Milwaukee-Racine area is due to permanent and enforceable emission reductions. The bases for the commenter's assertion are set forth in comments 4(a) through (f).

Comment 4a: The commenter asserts that comparing 2005 and 2008 emissions in the Milwaukee-Racine ozone nonattainment area is not an adequate method to demonstrate that the ozone air quality improvement in this area is due to the implementation of permanent and enforceable emission control measures, in keeping with section 107(d)(3)(E)(iii) of the CAA. The commenter contends that the calculated change in VOC and NO_X emissions between 2005 and 2008 does not show that the emission changes were due to permanent and enforceable emission reductions, as opposed to temporary emission reductions and/or emission reductions due to factory output slowdowns (under utilization of factory capacity) or recession-related output and transportation declines.

To support the commenter's assertion, the commenter compares 2008 permitted (allowable) NO_X emissions for electric power plants in the Milwaukee-Racine area with the total point source NO_X emissions documented by EPA for this area in EPA's Milwaukee-Racine area ozone redesignation proposed rule. The commenter shows that the permitted NO_X emissions from only the electric power plants in the Milwaukee-Racine area exceed the actual 2008 NO_X emissions for all point sources in the Milwaukee-Racine area reported by EPA in the proposed rule for the redesignation of the Milwaukee-Racine area to attainment of the 1997 8-hour ozone standard, 77 FR 6738. The commenter contends that the comparison of permitted NO_X emissions (electric generating plants) and actual, reported NO_X emissions (all point sources) shows that facilities can lawfully emit at much higher rates. Therefore, the commenter asserts that EPA has not properly considered permanent and enforceable emission reductions.

Response 4a: EPA's longstanding practice and policy[7] provide for states to demonstrate permanent and enforceable emissions reductions by comparing nonattainment area emissions occurring during the nonattainment period with emissions in the area during the attainment period. Therefore, selecting 2008 as a representative attainment year, and comparing emissions for this year to those of a representative year during the nonattainment period, 2005, is an appropriate and long-established approach to demonstrate that emission reductions occurred in the area between the years of nonattainment and attainment. These reductions, therefore, can be seen to account for the observed air quality improvement.

As discussed in the proposed rule at 77 FR 6727, 6737–6738 (February 9, 2012), Wisconsin and upwind areas have implemented a number of permanent and enforceable regulatory control measures which have reduced emissions and resulted in a corresponding improvement in air quality. These controls include regulations to control NO_X emissions at electric utilities and large industrial combustion sources and establish NO_X emissions standards for new sources;

[5] For example, EPA has recently issued a SIP call in Utah to rectify a specific SIP deficiency related to a startup, shutdown and malfunction issue. *See,* ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision,'' 74 FR 21639 (April 18, 2011).

[6] EPA has recently utilized this authority to correct errors in past actions on SIP submissions related to PSD programs. *See,* ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,'' 75 FR 82,536 (December 30, 2010). EPA has previously used its authority under CAA 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. *See, e.g.,* 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[7] *See* Calcagni memorandum, pp. 4 and 8–9.

Tier 2 emission standards for vehicles; and the nonroad diesel rule. In addition a broad range of emission sectors were required to reduce ozone precursors as a result of being subject to Federal new source performance standards, national emissions standards for hazardous air pollutants, and maximum achievable control technology standards with compliance requirements that take effect over the relevant time period. Further, Federal control measures as well as the NO_X SIP Call have resulted in reduced ozone precursors being transported into the area. While the commenter expressed concerns that the emissions reductions may be temporary and/or due to factory output slowdowns (underutilization of factory capacity) or recession-related output and transportation declines, the commenter has made no demonstration that this is the case.

With regard to consideration of actual versus allowable/permitted emission levels, longstanding practice and EPA policy support the use of actual emissions when demonstrating permanent and enforceable emission reductions.[8] Changes in actual emissions are more reflective of emission reductions that in reality contribute to improvements in monitored ozone concentrations. Sources seldom, if ever, emit at maximum allowable emission levels, and assuming that all sources simultaneously operate at maximum capacity would result in a gross overestimation of emission levels. For this reason, EPA believes actual emissions are the appropriate emission levels to consider when comparing nonattainment year emissions with attainment year emissions.

Comment 4b: The commenter contends that neither EPA nor the State of Wisconsin made any calculation of the amounts of emission reduction that actually resulted from the implementation of permanent and enforceable emission controls. The commenter asserts that there was no connection between the reported change in actual emissions and the enforceable emission reduction requirements implemented in the Milwaukee-Racine area.

The commenter objects to EPA's listing of implemented emission control requirements as a demonstration that such emission control requirements have resulted in the observed ozone air quality improvement in the Milwaukee-Racine area. The commenter states that EPA has not estimated the emission impacts of each of the implemented emission control requirements and contends that EPA has not tied such emissions impacts to the reported change in actual emissions between 2005 and 2008.

Response 4b: EPA's conclusion here is fully supported by the facts and applicable legal criteria. EPA's longstanding practice and policy[9] provides for states to demonstrate permanent and enforceable emissions reductions by comparing nonattainment area emissions occurring during the nonattainment period with emissions in the area during the attainment period. *See* response 4a.

Therefore, selecting 2008 as a representative attainment year, and comparing emissions for this year to those for a representative year during the nonattainment period, 2005, is an appropriate and long-established approach to establish that emission reductions occurred in the area between the years of nonattainment and attainment. These emission reductions, therefore, can be seen to account for the observed air quality improvement.

In developing the attainment year emissions inventory, the State took into account permanent and enforceable emissions control programs being implemented when estimating emissions. The change in emissions from 2005 to 2008 is shown in Table 4 in the proposed rule (77 FR 6727, 6738).

For point sources, the State's emissions estimates factored in process information, operation information and control factors. Wisconsin adopted NO_X RACT regulations to control NO_X emissions at electric utilities and large industrial combustion sources and established NO_X emissions standards for new sources. The regulation of existing sources was estimated to achieve a 30 ton per day (tpd) reduction in NO_X by 2003 and a 55 tpd reduction by 2007, *i.e.,* approximately a 25 tpd reduction between 2003, a nonattainment year and 2007, an attainment year.

For area sources, emissions are strongly associated with population levels. Therefore, although controls were considered in area source calculations, emissions grew slightly between 2005 and 2008 as a result of population growth.

Reductions in VOC and NO_X emissions have occurred as a result of Federal mobile source emission control measures, with additional emission reductions expected to occur over the maintenance period. These measures include Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards, the Heavy-Duty Diesel Engine Rule, and the Nonroad Diesel Rule. Emissions reductions from these permanent and enforceable programs were quantified by the State in its calculation of the nonroad and onroad mobile sector emissions inventories.

For nonroad mobile sources, it is standard and accepted practice for states to estimate emissions using an EPA-approved emissions model. Wisconsin ran EPA's approved emissions model, National Mobile Inventory Model (NMIM), which estimates emissions while taking into account the effect of Federal nonroad mobile control programs and fleet turnover. The NMIM model showed that between 2005 and 2008, total nonroad VOC and NO_X emissions in the Milwaukee-Racine area were reduced by approximately 17 percent and 10 percent, respectively. The emissions estimates generated by NMIM quantify permanent and enforceable emissions reductions from nonroad mobile control programs; it is not necessary for the state to identify the portion of these reductions attributable to each individual control measure.

For onroad mobile sources, it is standard and accepted practice for states to estimate emissions using an EPA-approved emissions model and daily vehicle miles traveled data. Wisconsin ran EPA's approved onroad mobile emissions model, MOVES2010a, which takes into account the effect of Federal motor vehicle control programs and fleet turnover when calculating emissions estimates. Between 2005 and 2008, onroad VOC and NO_X emissions in the Milwaukee-Racine area were reduced by approximately 22 percent and 21 percent, respectively. The emissions estimates generated by the MOVES model quantify permanent and enforceable emissions reductions from all Federal motor vehicle control programs; it is not necessary for the state to identify the portion of these reductions attributable to each individual control measure.

Permanent and enforceable emissions reductions in upwind areas also contributed to attainment of the 1997 8-hour ozone standard in the Milwaukee-Racine area. While Wisconsin did not quantify these upwind emissions reductions by state, overall emissions reductions estimates, by program, are available. Under the NO_X SIP Call, ozone season NO_X emissions were reduced by approximately 68,000[10] tons between 2005 and 2008. In addition, permanent and enforceable reductions in VOC and NO_X emissions have

[8] *See* Calcagni Memorandum, pp. 4 and 8–9.

[9] *See* Calcagni memorandum, pp. 4 and 8–9.

[10] *See* 2008 NOx Budget Trading Program Progress Report, *http://www.epa.gov/airmarkets/progress/NBP_4.html.*

occurred in upwind areas from Federal motor vehicle control programs. Overall emissions reductions from the implementation of these programs have been estimated as follows: Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards, 69–95 percent reduction in NO_X and 12–18 percent reduction in VOCs, depending on vehicle class; the Heavy-Duty Diesel Engine Rule, 95 percent reduction in NO_X; and the Nonroad Diesel Rule, 90 percent reduction in NO_X. Some of these emission reductions occurred by the attainment period and additional emission reductions will occur during the maintenance period as the fleet turns over.

It is not necessary for every change in emissions between the nonattainment year and the attainment year to be permanent and enforceable. Rather, the improvement in air quality necessary for the area to attain the relevant NAAQS must be reasonably attributable to permanent and enforceable reductions in emissions. In summary, the State has identified a number of permanent and enforceable regulatory control measures which have been implemented in Wisconsin as well as in upwind areas and has documented significant emissions reductions resulting from these programs. These documented permanent and enforceable emissions reductions in combination with four three-year periods of monitoring data showing that the Milwaukee-Racine area is attaining the 1997 8-hour ozone NAAQS (2006–2008, 2007–2009, 2008–2010, and 2009–2011) represents an adequate demonstration that the improvement in air quality can reasonably be attributed to the significant reduction in emissions resulting from permanent and enforceable emissions control programs.

Comment 4c: The commenter objects to EPA's statement that emission reductions resulted from Wisconsin's implementation of the Rate-Of-Progress (ROP) plan under the previous 1-hour ozone standard. The commenter claims that the ROP plan was implemented well before 2005, the base year of EPA's emission comparison, and that implementation preceded the years the area violated the 1997 8-hour ozone standard.

Response 4c: The commenter's objection is unfounded. EPA mentioned Wisconsin's ROP plan under the 1-hour ozone standard in the context of its discussion of Wisconsin's stationary source NO_X emission control rules. *See* 77 FR 6737. Wisconsin estimated that the State's stationary NO_X emission control rules, which include emission controls applied at electric utilities and large industrial combustion sources, would produce NO_X emission reductions between 2005 and 2007. Wisconsin estimated that these emission controls would achieve a 30 tpd reduction in NO_X emissions by 2003 and a 55 tpd reduction by 2007, *i.e.,* approximately a 25 tpd additional reduction between 2003 and 2007.

The fact that the State adopted the NO_X control rules in the State's ROP plan under the 1-hour ozone standard and that it began implementing the ROP plan prior to 2005 does not preclude NO_X emission reductions from these NO_X control rules from occurring after 2005. The implementation of these rules was phased in over time, resulting in additional emission reductions for a number of years after the State's adoption of the NO_X emissions control regulations.

Comment 4d: The commenter objects to EPA's citing of EPA's 2004 non-road diesel engine rule and 2000 and 2007 heavy duty diesel rules without acknowledging that the emissions reduction estimates for these rules are national calculations of the possible emission impacts once the rules are fully implemented. The commenter argues that, since these rules rely on fleet turnover, they did not result in major emission reductions between 2005 and 2008. The commenter believes that EPA erred in not making an emission reduction estimate for the local impacts of these rules during the period of 2005–2008.

Response 4d: There is no basis for EPA to conclude that the Federal diesel emission controls cited by the commenter have had a smaller impact, on a percentage emission reduction basis, in the Milwaukee-Racine area than in other parts of the United States. EPA has cited national emission reduction estimates on a percentage basis for these controls, with the implication that similar emission reduction percentages have occurred in the Milwaukee-Racine area. The commenter has provided no independent emission reduction estimates localized to the Milwaukee-Racine area to refute EPA's assumption that such emission reductions have occurred in the Milwaukee-Racine area. Lacking such estimates, EPA continues to believe that the Federal diesel emission control requirements have resulted in reduced NO_X and VOC emissions in the Milwaukee-Racine area, resulting in lower peak ozone concentrations in this area.

Furthermore, for nonroad mobile sources, it is a standard and accepted practice for states to estimate emissions using an EPA-approved emissions model. Wisconsin ran EPA's approved emissions model, NMIM, which takes into account the affect of Federal nonroad mobile control programs and fleet turnover when calculating emissions estimates. Between 2005 and 2008, total nonroad VOC and NO_X emissions in the Milwaukee-Racine area were reduced by approximately 17 percent and 10 percent, respectively.

For onroad mobile sources, it is standard and accepted practice for states to estimate emissions using an EPA-approved emissions model and daily vehicle miles traveled data. Wisconsin ran EPA's approved onroad mobile emissions model, MOVES2010a, which takes into account the affect of Federal motor vehicle control programs and fleet turnover when calculating emissions estimates. Between 2005 and 2008, onroad VOC and NO_X emissions in the Milwaukee-Racine area were reduced by approximately 22 percent and 21 percent, respectively.

Comment 4e: The commenter objects to EPA's reference to the NO_X SIP Call since EPA failed to mention that Wisconsin sources were not included in this regulation. The commenter asserts that the NO_X emission reductions resulting for sources upwind of the Milwaukee-Racine area are not permanent and enforceable because the NO_X SIP Call has been replaced and its replacement has been stayed by the United States Court of Appeals for the District of Columbia Circuit (D.C. Appeals Court). Finally, the commenter argues that the NO_X SIP Call cannot be relied on to produce permanent and enforceable NO_X emission reductions because the NO_X SIP Call provides for the use of a cap-and-trade emission control program, which the D.C. Appeals Court has held cannot satisfy area-specific statutory emission control requirements. *NRDC* v. *EPA,* 571 F.3d 1245, 1257 (D.C. Cir. 2009).

Response 4e: The commenter's assertion that EPA failed to mention that Wisconsin sources were not covered by the NO_X SIP Call is incorrect. The proposal included a footnote explicitly noting that the State of Wisconsin was not included in the NO_X SIP Call (77 FR 6732 n.3). EPA also did not propose to rely on and is not relying on any reductions associated with the NO_X SIP Call in the State of Wisconsin or in the Milwaukee-Racine ozone nonattainment area. With regard to NO_X emission reductions in the Milwaukee-Racine ozone nonattainment area, we note here that Wisconsin has adopted and implemented NO_X RACT rules for major NO_X sources in the Milwaukee-Racine ozone nonattainment area. These NO_X RACT rules were approved into the

Wisconsin SIP by the EPA on October 19, 2010, 75 FR 64155. Wisconsin's NO_X RACT rules became effective on August 1, 2007, and required source compliance with the rules by May 1, 2009. Although sources had until May 1, 2009, to fully comply with the NO_X RACT rules, EPA believes that some sources began implementation of the required NO_X emission controls well ahead of this implementation deadline, resulting in NO_X emission reductions in the Milwaukee-Racine ozone nonattainment area by 2008. These NO_X emission controls are permanent and enforceable.

While the NO_X SIP Call did not cover the State of Wisconsin, it did require the District of Columbia and 22 states to reduce emissions of NO_X and, as EPA noted in the proposal, these reductions resulted in lower concentrations of transported ozone entering the Milwaukee-Racine area. 77 FR 6737. Because the area is impacted by the transport of ozone and its precursors, upwind reductions in NO_X resulting from the NO_X SIP Call are relevant to these redesignation actions. EPA disagrees with the commenter's position that NO_X emission reductions in areas upwind of the Milwaukee-Racine area and associated with the NO_X SIP Call cannot be considered to be permanent and enforceable. The commenter's first argument—that the NO_X emission reductions are not permanent and enforceable because the NO_X SIP Call has been replaced—is based on a misunderstanding of the relationship between CAIR and the NO_X SIP Call. While the CAIR ozone-season trading program replaced the ozone-season NO_X trading program developed in the NO_X SIP Call (70 FR 25290), nothing in the CAIR relieved states of their NO_X SIP Call obligations. In fact, in the preamble to CAIR, EPA emphasized that the states and certain units covered by the NO_X SIP Call but not CAIR must still satisfy the requirements of the NO_X SIP Call. EPA provided guidance regarding how such states could meet these obligations.[11] EPA did not suggest that states could disregard their NO_X SIP Call obligations. (70 FR 25290). For states covered by the NO_X SIP Call, the CAIR NO_X ozone season program provides a way to continue to meet the NO_X SIP Call obligations for electric generating units (EGUs) and large non-electric generating units (nonEGUs). In addition, the anti-backsliding provisions of 40 CFR 51.905(f) specifically provide that the provisions of the NO_X SIP Call, including the statewide NO_X emission budgets, continue to apply.

In sum, the requirements of the NO_X SIP Call remain in force. They are permanent and enforceable as are state regulations developed to implement the requirements of the NO_X SIP Call. Further, the fact that the CSAPR which was to replace CAIR was stayed by the D.C. Appeals Court is not relevant since neither CAIR nor the CSAPR replace the requirements of the NO_X SIP Call, and EPA has determined that the area does not need any additional reductions from CAIR or the CSAPR to remain in attainment.

EPA also disagrees with the commenter's argument that the emission reductions in upwind areas associated with the NO_X SIP Call cannot be considered permanent and enforceable because the NO_X SIP Call provides for a trading program. There is no support for the commenter's argument that EPA must ignore all emission reductions in upwind areas that were achieved by the NO_X SIP Call simply because the mechanism used to achieve the emission reductions is an emissions trading program. As a general matter, trading programs establish mandatory caps on emissions and permanently reduce the total emissions allowed by sources subject to the programs. The emission caps and associated controls are enforced through the associated SIP rules or Federal Implementation Plans (FIPs). Any purchase of allowances and increase in emissions by a utility necessitates a corresponding sale of allowances and results in an emission reduction by another utility. Given the regional nature of ozone formation and transport, the emission reductions will have an air quality benefit that will compensate, at least in part, for the impact of any emission increase.

In addition, the case cited by the commenter, *NRDC* v. *EPA,* 571 F.3d 1245 (DC Cir. 2009), does not support the commenter's position. The case addressed EPA's determination that the CAA nonattainment area RACT requirement was satisfied by the NO_X SIP Call trading program. The court held that, because EPA had not demonstrated that the trading program would result in sufficient emission reductions within a nonattainment area, its determination that the program satisfied RACT was not supported. *Id.* 1256–58. The court explicitly noted that EPA might be able to reinstate the provision providing that compliance with the NO_X SIP Call satisfies NO_X RACT for EGUs for particular nonattainment areas if, upon conducting a technical analysis, it could demonstrate that the NO_X SIP Call results in greater emissions reductions in a nonattainment area than would be achieved if RACT-level controls were installed in that area. *Id.* at 1258. In this case, EPA did not assume that the NO_X SIP Call led to any reductions within the nonattainment area. As such, the *NRDC* v. *EPA* decision is not relevant here.

Comment 4f: The commenter asserts that neither EPA nor the State of Wisconsin have attempted to demonstrate the connection between the reported emission reductions and the observed ozone air quality improvement in the Milwaukee-Racine area. No modeling or other acceptable analyses, including temporal analyses of emission changes and ozone changes, have been done to demonstrate that the emission reductions are responsible for the observed air quality improvement. No correlation between emission changes and ozone changes has been established. Therefore, EPA has failed to prove that permanent and enforceable emission reductions have caused the observed ozone air quality improvement in the Milwaukee-Racine area.

Response 4f: EPA's conclusion that the ozone improvement in the Milwaukee-Racine area is due to the implementation of emission controls is fully supported by the facts and applicable legal criteria. As discussed in greater detail in response 4(b), EPA's longstanding practice and policy provides for states to demonstrate permanent and enforceable emissions reductions by comparing nonattainment area emissions occurring during the nonattainment period with the emissions in the area during the attainment period. Therefore, selecting 2008 as a representative attainment year, and comparing emissions for this year to those for a representative year during the nonattainment period, 2005, is an appropriate and long-established approach that demonstrates the occurrence of emission reductions in the area between the years of nonattainment and attainment. These emission reductions, therefore, can be seen to account for the observed air quality improvement.

With respect to the commenter's assertion that EPA has not conducted analyses to prove that emission reductions between 2005 and 2008 led to reduced ozone concentrations, as noted above, comparing emissions for a representative nonattainment year to emissions for a representative attainment year is such a demonstration. The CAA does not specifically require the use of modeling in making any such demonstration and it has not been the general practice to do so. The State has

[11] EPA guidance regarding the NO_X SIP Call transition to CAIR can be found at *http://www.epa.gov/airmarkets/progsregs/cair/faq-10.html.* EPA guidance regarding the NO_X SIP Call transition for the CSAPR can be found at *http://www.epa.gov/crossstaterule/faqs.html.*

identified a number of permanent and enforceable regulatory control measures that have been implemented in Wisconsin as well as in upwind areas, and has documented significant emissions reductions resulting from these programs. These documented permanent and enforceable emissions reductions in combination with four three-year periods of monitoring data showing that the Milwaukee-Racine area is attaining the 1997 8-hour ozone NAAQS (2006–2008, 2007–2009, 2008–2010, and 2009–2011) represents an adequate demonstration that the improvement in air quality can reasonably be attributed to the significant reduction in emissions resulting from permanent and enforceable emissions control programs.

Comment 5: The commenter contends that EPA has not conducted an adequate analysis of the effect the ozone redesignation will have on other NAAQS. The commenter claims that EPA has failed to comply with the requirements of section 110(l), which requires EPA to conduct such an analysis whenever it approves a revision in a state air quality plan.

Response 5: Section 110(l) provides in part: ''the Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress * * *, or any other applicable requirement of this chapter.'' As a general matter, EPA must and does consider section 110(l) requirements for every SIP revision, including whether the revision would ''interfere with'' any applicable requirement. *See, e.g.,* 70 FR 53, 57 (January 3, 2005); 70 FR 17029, 17033 (April 4, 2005); 70 FR 28429, 28431 (May 18, 2005); and 70 FR 58119, 58134 (October 5, 2005). The Wisconsin maintenance plan and redesignation for the 1997 8-hour ozone standard do not revise or remove any existing emissions limit for any NAAQS, nor do they alter any existing control requirements. On that basis, EPA concludes that the redesignation will not interfere with attainment or maintenance of any air quality standards. The commenter does not provide any information to demonstrate that approval of this redesignation would have any impact on the area's ability to comply with the any NAAQS. In fact, the maintenance plan provided with the State's submission demonstrates a decline in ozone precursor emissions over the timeframe of the initial maintenance period. As a result, the redesignation will not relax any existing rules or limits, nor will the redesignation alter the status quo air quality. The commenter has not provided any reason that the redesignation might interfere with attainment of any standard or with satisfaction of any other requirement of the CAA, and EPA finds no basis under section 110(l) for EPA to disapprove the SIP revision.

III. What actions is EPA taking?

EPA is approving a request from the State of Wisconsin to redesignate the Milwaukee-Racine area to attainment of the 1997 8-hour ozone standard. EPA is also taking several other related actions. EPA is approving, as a revision to the Wisconsin SIP, the State's plan for maintaining the 1997 8-hour ozone standard through 2022 in the area. EPA is approving the 2005 emissions inventories as meeting the comprehensive emissions inventory requirement of the CAA for the Milwaukee-Racine and Sheboygan areas. Finally, EPA finds adequate and is approving the State's 2015 and 2022 MVEBs for the Milwaukee-Racine area.

In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for these actions to become effective immediately upon publication. This is because a delayed effective date is unnecessary due to the nature of a redesignation to attainment, which relieves the area from certain CAA requirements that would otherwise apply to it. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction,'' and section 553(d)(3), which allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's rule relieves the state of planning requirements for this 8-hour ozone nonattainment area. For these reasons, EPA finds good cause under 5 U.S.C. 553(d)(3) for these actions to become effective on the date of publication of these actions.

IV. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. These actions do not impose additional requirements beyond those imposed by state law and the CAA. For that reason, these actions:

- Are 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);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);
- Do 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);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are 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
- Do 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 redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on tribes, impact any existing sources of air pollution on tribal lands, nor impair the maintenance of ozone national ambient air quality standards in tribal lands. However, because there are tribal lands located in Milwaukee County, we provided the affected tribe with the opportunity to consult with EPA on the redesignation. The affected tribe raised no concerns with the redesignation.

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 October 1, 2012. 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

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

40 CFR Part 81

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

Dated: July 11, 2012.

Susan Hedman,

Regional Administrator, Region 5.

Therefore, 40 CFR parts 52 and 81 are 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.*

■ 2. Section 52.2585 is amended by adding paragraphs (z) and (aa) to read as follows:

§ 52.2585 Control strategy: Ozone.

* * * * *

(z) Approval—Wisconsin submitted 2005 VOC and NO_X emissions inventories for the Milwaukee-Racine and Sheboygan areas on September 11, 2009, and supplemented the submittal on November 16, 2011. Wisconsin's 2005 inventories satisfy the emissions inventory requirements of section 182(a)(1) of the Clean Air Act for the Milwaukee-Racine and Sheboygan areas under the 1997 8-hour ozone standard.

(aa) Approval—On September 11, 2009, Wisconsin submitted a request to redesignate the Milwaukee-Racine area to attainment of the 1997 8-hour ozone standard. The state supplemented this submittal on November 16, 2011. As part of the redesignation request, the State submitted a maintenance plan as required by section 175A of the Clean Air Act. Elements of the section 175 maintenance plan include a contingency plan and an obligation to submit a subsequent maintenance plan revision in 8 years as required by the Clean Air Act. The ozone maintenance plan also establishes 2015 and 2022 Motor Vehicle Emission Budgets (MVEBs) for the area. The 2015 MVEBs for the Milwaukee-Racine area is 21.08 tpd for VOC and 51.22 tpd for NO_X. The 2022 MVEBs for the Milwaukee-Racine area is 15.98 tpd for VOC and 31.91 tpd for NO_X.

PART 81—[AMENDED]

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

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

■ 4. Section 81.350 is amended by revising the entries for Milwaukee-Racine, WI in the table entitled Wisconsin—1997 8-Hour Ozone NAAQS (Primary and Secondary) to read as follows:

§ 81.350 Wisconsin.

* * * * *

WISCONSIN—1997 8-HOUR OZONE NAAQS (PRIMARY AND SECONDARY)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
* *	*	*	*	*
Milwaukee-Racine, WI:				
Kenosha County	7/31/12	Attainment.		
Milwaukee County.				
Ozaukee County.				
Racine County.				
Washington County.				
Waukesha County.				
* *	*	*	*	*

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

* * * * *

[FR Doc. 2012–18091 Filed 7–30–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2012–0003]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

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

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

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

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

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

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

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

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

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

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

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

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

List of Subjects in 44 CFR Part 67

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

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

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

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

§ 67.11 [Amended]

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

State	City/town/county	Source of flooding	Location	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified
Unincorporated Areas of Solano County, California Docket No.: FEMA–B–1200				
California	Unincorporated Areas of Solano County.	Sweany Creek	Approximately 375 feet upstream of the McCune Creek confluence.	+64
			Approximately 930 feet upstream of Timm Road	+149

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

ADDRESSES

Unincorporated Areas of Solano County

Maps are available for inspection at the Solano County Public Works Department, 675 Texas Street, Suite 5500, Fairfield, CA 94533.

State	City/town/county	Source of flooding	Location	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified
City of Colonial Heights, Virginia Docket No.: FEMA–B–1198				
Virginia	City of Colonial Heights ..	Old Town Creek	Approximately 0.63 mile downstream of Conduit Road.	+11
			Approximately 0.48 mile upstream of the railroad	+68

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

ADDRESSES

City of Colonial Heights
Maps are available for inspection at 202 James Avenue, Colonial Heights, VA 23834.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Grundy County, Illinois, and Incorporated Areas Docket No.: FEMA–B–1104			
Claypool Ditch	Approximately at Carbon Hill Road	+546	Village of Carbon Hill.
	Approximately 0.38 mile upstream of Carbon Hill Road	+546	
Des Plaines River	Approximately 1.75 miles upstream of the upstream side of the Dresden Island Lock and Dam.	+510	Unincorporated Areas of Grundy County, Village of Channahon.
	Approximately 0.1 mile upstream of Will Road extended ...	+510	
East Fork Mazon River	Approximately 1,275 feet downstream of Rice Street	+581	Village of East Brooklyn.
	Approximately at Rice Street	+582	
Gooseberry Creek	Approximately 750 feet upstream of Old Mazon Road	+612	Unincorporated Areas of Grundy County, Village of Dwight.
	Approximately 425 feet upstream of U.S. Route 66	+620	
Illinois River	Approximately 0.4 mile downstream of the railroad	+497	City of Morris, Unincorporated Areas of Grundy County, Village of Channahon, Village of Seneca.
	Just downstream of the Dresden Island Lock and Dam	+507	

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

ADDRESSES

City of Morris
Maps are available for inspection at City Hall, 700 North Division Street, Morris, IL 60450.

Unincorporated Areas of Grundy County
Maps are available for inspection at the Grundy County Administration Building, 1320 Union Street, Morris, IL 60450.

Village of Carbon Hill
Maps are available for inspection at the Village Hall, 695 North Holcomb Street, Carbon Hill, IL 60416.

Village of Channahon
Maps are available for inspection at the Village Hall, 24555 South Navajo Drive, Channahon, IL 60410.

Village of Dwight
Maps are available for inspection at the Dwight Public Services Complex, 209 South Prairie Avenue, Dwight, IL 60420.

Village of East Brooklyn
Maps are available for inspection at the Village Hall, 170 Monroe Street, East Brooklyn, IL 60474.

Village of Seneca

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Maps are available for inspection at the Village Hall, 340 North Cash, Seneca, IL 61360.			
Warrick County, Indiana, and Incorporated Areas Docket No.: FEMA–B–7753			
Kelly Ditch	Approximately 900 feet upstream of the confluence with Cypress Creek.	+388	City of Boonville, Unincorporated Areas of Warrick County.
	Approximately 1,650 feet upstream of Baker Road	+398	
Summer Pecka Ditch	Approximately 2,500 feet downstream of Anderson Road	+383	Unincorporated Areas of Warrick County.
	Approximately 3,900 feet upstream of Martin Drive	+395	

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

ADDRESSES

City of Boonville
Maps are available for inspection at 135 South Second Street, Boonville, IN 47601.

Unincorporated Areas of Warrick County
Maps are available for inspection at the Warrick County Historic Courthouse, 107 West Locust Street, Room 201, Boonville, IN 47601.

Lawrence County, Missouri, and Incorporated Areas Docket No.: FEMA–B–1105			
Chapel Drain	Approximately 50 feet upstream of Farm Road 1090	+1335	Unincorporated Areas of Lawrence County.
	Approximately 0.71 mile upstream of Farm Road 1090	+1379	
Clear Creek	Approximately 250 feet downstream of Farm Road 1050	+1233	Unincorporated Areas of Lawrence County.
	Just upstream of the Barry County boundary	+1243	
Kelly Creek Tributary	Approximately 0.45 mile downstream of Farm Road 2230	+1365	Unincorporated Areas of Lawrence County.
	Approximately 100 feet upstream of Farm Road 2230	+1401	
Tributary No. 1	Approximately 50 feet upstream of the Unnamed Tributary confluence.	+1326	Unincorporated Areas of Lawrence County.
	Approximately 275 feet upstream of State Highway 37	+1333	
Tributary 2	Just upstream of the Unnamed Tributary confluence	+1357	Unincorporated Areas of Lawrence County.
	Approximately 900 feet upstream of State Route H	+1377	
Unnamed Tributary	Approximately 1,675 feet downstream of the Barry County boundary.	+1277	Unincorporated Areas of Lawrence County.
	Approximately 550 feet upstream of Farm Road 2230	+1383	
Unnamed Tributary Number 1	Approximately 200 feet downstream of Washington Avenue.	+1372	City of Aurora.
	Approximately 525 feet upstream of Union Street	+1406	
Unnamed Tributary Number 2	Approximately 600 feet upstream of South Street	+1359	City of Aurora.
	Approximately 100 feet upstream of Prospect Street	+1402	
Unnamed Tributary Number 3	Approximately 250 feet upstream of the Unnamed Tributary Number 2 confluence.	+1376	City of Aurora.
	At Tyler Drive	+1390	
Unnamed Tributary Number 4	Approximately 215 feet upstream of Saint Louis Street	+1361	City of Aurora.
	Approximately 650 feet upstream of Lincoln Avenue	+1381	

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

ADDRESSES

City of Aurora
Maps are available for inspection at City Hall, 2 West Pleasant Street, Aurora, MO 65605.

Unincorporated Areas of Lawrence County
Maps are available for inspection at the Lawrence County Courthouse, 1 East Courthouse Square, Mt. Vernon, MO 65712.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Madison County, Missouri, and Incorporated Areas Docket No.: FEMA–B–1142 and FEMA–B–1170			
Little Saint Francis River	Approximately 675 feet downstream of U.S. Route 67	+689	City of Fredericktown, Unincorporated Areas of Madison County.
	Approximately 1.3 miles downstream of County Road 220	+743	
Little Saint Francis River Tributary 1.	At the confluence with the Little Saint Francis River	+700	City of Fredericktown, Unincorporated Areas of Madison County.
	Just downstream of County Road 218	+769	
Mill Creek (backwater effects from Little Saint Francis River).	From the confluence with the Little Saint Francis River to approximately 665 feet downstream of County Road 500.	+690	Unincorporated Areas of Madison County.
Saline Creek	At the confluence with the Little Saint Francis River	+703	Unincorporated Areas of Madison County.
	Approximately 550 feet downstream of the confluence with Goose Creek.	+736	
Spiva Creek (backwater effects from Little Saint Francis River).	From the confluence with the Little Saint Francis River to just upstream of County Road 201.	+692	Unincorporated Areas of Madison County.
Tollar Branch	At the confluence with Saline Creek	+713	City of Fredericktown, Unincorporated Areas of Madison County, Village of Cobalt.
	Approximately 1,310 feet upstream of Mine LaMotte Street.	+788	
Village Creek	At the confluence with the Little Saint Francis River	+704	City of Fredericktown, City of Junction City, Unincorporated Areas of Madison County.
	Approximately 550 feet upstream of Catherine Mine Road	+710	

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

ADDRESSES

City of Fredericktown
Maps are available for inspection at City Hall, 124 West Main Street, Fredericktown, MO 63645.

City of Junction City
Maps are available for inspection at the Madison County Courthouse, 1 Courthouse Square, Fredericktown, MO 63645.

Unincorporated Areas of Madison County
Maps are available for inspection at the Madison County Courthouse, 1 Courthouse Square, Fredericktown, MO 63645.

Village of Cobalt
Maps are available for inspection at the Madison County Courthouse, 1 Courthouse Square, Fredericktown, MO 63645.

Dauphin County, Pennsylvania (All Jurisdictions) Docket No.: FEMA–B–1100 and FEMA–B–1193			
Beaver Creek (Upper Reach)	Approximately 1,540 feet below Devonshire Heights Road	+381	Township of Lower Paxton.
	Approximately 160 feet above the confluence with Beaver Creek Tributary A.	+432	
Mahantango Creek	Approximately 1.88 miles upstream of Malta Road	+434	Township of Mifflin.
	Approximately 0.38 mile downstream of Market Street	+470	
Paxton Creek	Approximately 2,285 feet above the confluence with Paxton Tributary.	+321	City of Harrisburg.
	Approximately 4,000 feet above confluence with the centerline of the Susquehanna River.	+325	
Rattling Creek	Approximately 185 feet upstream of Glen Park Road	+762	Township of Jackson.
	Approximately 630 feet upstream of Glen Park Road	+768	
Susquehanna River	At Whitehouse Lane (295 feet northeast of Cherry Avenue).	+304	Borough of Steelton.
	Approximately 840 feet northwest of the intersection of Franklin Street and the railroad.	+313	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Swatara Creek	Approximately 2,100 feet downstream of the confluence with Bow Creek.	+348	Township of East Hanover.
	At the Lebanon County boundary	+359	
Wiconisco Creek (Upper Reach).	Approximately 1.26 miles downstream of the Rattling Creek confluence.	+603	Township of Washington.
	Approximately 1.11 miles downstream of the Rattling Creek confluence.	+606	

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

ADDRESSES

Borough of Steelton
Maps are available for inspection at the Borough Hall, 123 North Front Street, Steelton, PA 17113.

City of Harrisburg
Maps are available for inspection at the City Government Center, 10 North 2nd Street, Harrisburg, PA 17101.

Township of East Hanover
Maps are available for inspection at the East Hanover Township Municipal Building, 8848 Jonestown Road, Grantville, PA 17028.

Township of Jackson
Maps are available for inspection at the Jackson Township Building, 450 Bastion Road, Halifax, PA 17032.

Township of Lower Paxton
Maps are available for inspection at the Lower Paxton Township Municipal Building, 425 Prince Street, Harrisburg, PA 17109.

Township of Mifflin
Maps are available for inspection at the Mifflin Township Building, 3843 Shippen Dam Road, Millersburg, PA 17061.

Township of Washington
Maps are available for inspection at the Washington Township Municipal Building, 185 Manors Road, Elizabethville, PA 17023.

Wyoming County, Pennsylvania (All Jurisdictions)
Docket No.: FEMA–B–1185

Bowman Creek	Approximately 250 feet upstream of Keelersburg Road	+605	Township of Eaton, Township of Monroe.
	Approximately 1.02 miles upstream of the most upstream crossing of State Route 29 (Joseph W. Hunter Highway).	+931	
Buttermilk Creek	Approximately 1.1 miles downstream of State Route 2027	+784	Township of Falls.
	Approximately 460 feet upstream of Oak Drive	+961	
South Branch Tunkhannock Creek.	Approximately 0.4 mile downstream of State Route 2012	+713	Borough of Factoryville, Township of Clinton.
	Approximately 0.6 mile upstream of Church Street	+838	
Susquehanna River	Approximately 1.0 mile upstream of the Falls/Exeter State Route 92 crossing.	+585	Township of North Moreland.
	Approximately 2.5 miles upstream of the Falls/Exeter State Route 92 crossing.	+589	
Swale Brook	At the downstream side of the railroad bridge	+609	Borough of Tunkhannock, Township of Tunkhannock.
	Approximately 0.7 mile upstream of Bridge Street	+655	
Tributary No. 1 to Swale Brook	At the Swale Brook confluence	+617	Borough of Tunkhannock.
	Approximately 75 feet upstream of North Bridge Street	+723	
Tunkhannock Creek	Approximately 425 feet downstream of the second U.S. Route 6 crossing.	+609	Township of Tunkhannock.
	Approximately 1.7 miles upstream of the most upstream U.S. Route 6 crossing.	+643	

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

ADDRESSES

Borough of Factoryville
Maps are available for inspection at the Borough Municipal Building, 161 College Avenue, Factoryville, PA 18419.

Borough of Tunkhannock
Maps are available for inspection at the Tunkhannock Borough Municipal Building, 126 Warren Street, Tunkhannock, PA 18657.

Township of Clinton

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

Maps are available for inspection at the Clinton Township Municipal Building, 256 Creek Road, Factoryville, PA 18419.

Township of Eaton

Maps are available for inspection at the Eaton Township Municipal Building, 1331 State Route 29 South, Tunkhannock, PA 18657.

Township of Falls

Maps are available for inspection at the Township Municipal Building, 220 Buttermilk Road, Falls, PA 18615.

Township of Monroe

Maps are available for inspection at the Monroe Township Municipal Building, 2605 State Route 29 South, Monroe, PA 18657.

Township of North Moreland

Maps are available for inspection at the North Moreland Township Municipal Building, 15 Municipal Lane, Dallas, PA 18612.

Township of Tunkhannock

Maps are available for inspection at the Tunkhannock Township Municipal Building, 113 Tunkhannock Township Drive, Tunkhannock, PA 18657.

Palo Pinto County, Texas, and Incorporated Areas
Docket No.: FEMA–B–1147 and FEMA–B–1216

Brazos River	Approximately 7.89 miles downstream of the confluence with Palo Pinto Creek.	+768	Unincorporated Areas of Palo Pinto County.
	Approximately 5.43 miles downstream of the confluence with Palo Pinto Creek.	+773	
Crystal Creek	Just upstream of 16th Street	+915	City of Mineral Wells.
	Just upstream of 2nd Street	+960	
Pollard Creek	Approximately 387 feet upstream of Ferguson Road	+836	Unincorporated Areas of Palo Pinto County.
	Approximately 118 feet downstream of Pollard Park Road	+921	
Pollard Creek Tributary No. 1	Just upstream of Southwest 22nd Street	+844	Unincorporated Areas of Palo Pinto County.
	Just downstream of Southwest 10th Street	+861	
Pollard Creek Tributary No. 2	Approximately 140 feet downstream of 2nd Street	+879	Unincorporated Areas of Palo Pinto County.
	Approximately 1,250 feet upstream of 2nd Street	+882	
Pollard Creek Tributary No. 5	Approximately 850 feet upstream of Northeast 23rd Street	+1032	Unincorporated Areas of Palo Pinto County.
	Just upstream of Northeast 23rd Street	+1049	
Rock Creek	Just upstream of FM 1195	+846	Unincorporated Areas of Palo Pinto County.
	Approximately 0.82 mile upstream of FM 1195	+857	
Rock Creek Tributary No. 1	Approximately 425 feet upstream of Northeast 23rd Street	+972	Unincorporated Areas of Palo Pinto County.
	Approximately 600 feet upstream of Northeast 23rd Street	+972	
Rock Creek Tributary No. 2	At the upstream side of FM 1195	+846	Unincorporated Areas of Palo Pinto County.
	Approximately 0.64 mile downstream of Garrett Morris Parkway.	+858	

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

ADDRESSES

City of Mineral Wells

Maps are available for inspection at City Hall, 115 Southwest 1st Street, Mineral Wells, TX 76068.

Unincorporated Areas of Palo Pinto County

Maps are available for inspection at the Palo Pinto County Courthouse, 520 Oak Street, Palo Pinto, TX 76484.

Wirt County, West Virginia, and Incorporated Areas
Docket No.: FEMA–B–1188

Daley Run	Approximately 1,400 feet downstream of County Route 14/1.	+610	Unincorporated Areas of Wirt County.
	Approximately 500 feet downstream of County Route 14/1	+610	
Little Kanawha River	Approximately 1.8 miles downstream of the Hughes River confluence.	+610	Unincorporated Areas of Wirt County.
	Approximately 4.2 miles downstream of the Hughes River confluence.	+610	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Little Kanawha River	Approximately 1.4 miles downstream of State Route 5	+623	Unincorporated Areas of Wirt County.
	Approximately 650 feet downstream of State Route 5	+625	
Tucker Creek	At the Little Kanawha River confluence	+623	Unincorporated Areas of Wirt County.
	Approximately 1.1 miles upstream of the Little Kanawha River confluence.	+623	

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

ADDRESSES

Unincorporated Areas of Wirt County

Maps are available for inspection at the Wirt County Courthouse, Corner Court of Washington Street, Elizabeth, WV 26143.

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

Dated: July 19, 2012.

Sandra K. Knight,

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

[FR Doc. 2012–18668 Filed 7–30–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 110202088–2252–02]

RIN 0648–BA34

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Bottlenose Dolphin Take Reduction Plan

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

ACTION: Final rule.

SUMMARY: The National Marine Fisheries Service (NMFS) issues this final rule amending the Bottlenose Dolphin Take Reduction Plan (BDTRP) and its implementing regulations by permanently continuing nighttime fishing restrictions of medium mesh gillnets operating in North Carolina coastal state waters from November 1 through April 30. Members of the Bottlenose Dolphin Take Reduction Team (Team) recommended these regulations be continued permanently, without modification, to ensure that BDTRP goals are met through continued conservation of strategic bottlenose dolphin stocks in North Carolina, which have historically high serious injury and mortality rates associated with medium mesh gillnets. NMFS also amends the BDTRP with updates, including updates recommended by the Team for non-regulatory conservation measures.

DATES: This final rule is effective August 30, 2012.

ADDRESSES: The proposed rule, BDTRP, 2008 BDTRP amendment, Team meeting summaries with consensus recommendations, and other background documents are available at the Take Reduction Team Web site: *http://www.nmfs.noaa.gov/pr/interactions/trt/bdtrp.htm,* or by submitting a request to Stacey Horstman (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Stacey Horstman, NMFS Southeast Region, *Stacey.Horstman@noaa.gov,* 727–824–5312; or Kristy Long, NMFS Office of Protected Resources, *Kristy.Long@noaa.gov,* 301–427–8402.

SUPPLEMENTARY INFORMATION:

Background

In accordance with section 118(f)(7)(F) of the Marine Mammal Protection Act (MMPA), this final rule implements an amendment to the BDTRP (71 FR 24776). The BDTRP was originally published on April 26, 2006, and amended on December 19, 2008 (73 FR 77531). Details regarding the development and justification of this final rule were provided in the preamble of the proposed rule (77 FR 21946; April 12, 2012) and are not repeated here.

Nighttime Medium Mesh Gillnet Fishing Restrictions in North Carolina

This final rule removes the sunset date to permanently continue, without modification, nighttime medium mesh fishing restrictions in North Carolina coastal state waters. Specifically, prohibitions of nighttime medium mesh (greater than 5-inch (12.7 cm) to less than 7-inch (17.8 cm)) gillnets in North Carolina coastal state waters from November 1 through April 30 will continue annually.

Comments on the Proposed Rule and Responses

NMFS received four comment letters on the proposed rule via mail, fax, or *www.regulations.gov.* Comments were received from The Humane Society of the United States and the Whale and Dolphin Conservation Society, the Marine Mammal Commission, the United States Fish and Wildlife Service, and one citizen. The comments are summarized below under regulatory or non-Regulatory changes to the BDTRP. NMFS' response follows each comment.

Comments on Regulatory Changes to the BDTRP

Comment 1: Three commenters expressed support for permanently adopting the nighttime seasonal medium mesh gillnet restrictions in North Carolina coastal state waters and recommended NMFS adopt these measures as proposed.

Response: NMFS appreciates the commenters' support and is finalizing these measures as proposed.

Comment 2: One commenter said nighttime fishing should not be allowed anytime in the entire area.

Response: NMFS believes this is more restrictive than currently necessary for bottlenose dolphin conservation efforts. In North Carolina, there are currently no observed serious injuries or mortalities of bottlenose dolphins in gillnets with long soak durations outside of the currently regulated November 1 through April 30 timeframe.

Comment 3: One commenter said NMFS should ban gillnet fishing in the entire area.

Response: NMFS previously considered this option in the final Environmental Assessment implementing the BDTRP. Although this would provide additional conservation benefits to bottlenose dolphins in North Carolina, it would be at great expense to the fisheries and fishing community. It is also not a consensus recommendation by the Team. NMFS plans to reconvene the Team in 2013 to evaluate the need for possible additional conservation measures for fisheries interacting with strategic stocks of bottlenose dolphins in North Carolina. See also comment 6 and response.

Comments on Non-Regulatory Changes to the BDTRP and Updates

Comment 4: Two commenters expressed support for updating the BDTRP with the non-regulatory consensus recommendations made by the Team and discussed in the proposed rule. Specifically, continuing research to better understand bottlenose dolphin stock structure and determine if/how fishing gear modifications may reduce serious injury and mortality of bottlenose dolphins.

Response: NMFS agrees and is updating the BDTRP as proposed. NMFS will continue stock structure and gear research efforts, as feasible.

Comment 5: One commenter expressed concern that observer coverage is not robust enough to determine patterns of mortality for fisheries known to interact with bottlenose dolphins. NMFS therefore needs to allocate observer coverage effort to ensure more accurate and precise estimates of mortality for bay, sound, and estuary stocks of bottlenose dolphins.

Response: NMFS agrees augmented and expanded observer coverage would help achieve representative coverage and improve precision and accuracy of mortality estimates. The Team has repeatedly provided consensus recommendations to NMFS on the importance of more and broader observer coverage in various fisheries and areas in North Carolina. NMFS has also made multiple recent efforts to increase observer coverage in North Carolina, including: (1) Implementation of a North Carolina Alternative Platform Program from 2006–2009 to observe vessels too small to safely carry onboard observers; (2) a ''pulsed'' observer effort in fall 2008 to augment monitoring of bottlenose dolphin serious injuries and mortalities in times and areas with known fishery interactions; (3) increased federal observer coverage in inshore and nearshore coastal state waters in 2006/2007, 2010/2011, and 2011/2012; (4) coordination between NMFS' Northeast and Southeast Observer Programs to facilitate combined data use; and (5) continued coordination with North Carolina on federal and state observer data collection and transferability.

Comment 6: One commenter suggested NMFS reconvene the Team to evaluate if additional measures are necessary to ensure fishery-related serious injury and mortality is not exceeding Potential Biological Removal (PBR) for affected bottlenose dolphin stocks.

Response: NMFS plans to reconvene the Team in 2013 to evaluate the effectiveness of the BDTRP and determine if additional conservation measures are necessary to meet MMPA mandated goals, including assurance that PBR levels are not exceeded.

Changes From the Proposed Rule

NMFS is making one minor change from the proposed rule to this final rule. In the proposed rule, NMFS corrected the boundary for the North Carolina/South Carolina border as currently described in two BDTRP definitions. NMFS proposed to modify the border latitude from 33°52′ N. to the latitude corresponding with 33°51′07.9″ N. as described by ''Off South Carolina'' in 50 CFR 622.2. Specifically, in the definitions of Southern North Carolina state waters and South Carolina, Georgia, and Florida waters, NMFS changed the latitude to 33°51′07.9″ N. and referred to the ''Off South Carolina'' definition. In this final rule, NMFS maintains the corrected latitude but removes the references to ''Off South Carolina'' in both definitions and replaces it with relevant text. Removing the reference to ''Off South Carolina'' reduces potential confusion over which part of the definition is being referenced and eliminates the need for readers to refer to a separate regulatory section.

Classification

This final rule was determined to be not significant under Executive Order 12866.

NMFS determined this action is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of North Carolina. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act on December 22, 2011. North Carolina concurred with the consistency determination in a letter dated January 23, 2012.

This action contains policies with federalism implications that were sufficient to warrant preparation of a federalism summary impact statement under Executive Order 13132 and a federalism consultation with officials in the state of North Carolina. Accordingly, the Assistant Secretary for Legislative and Intergovernmental Affairs provided notice of the proposed action to the appropriate officials in North Carolina. North Carolina did not respond.

NMFS determined this action is categorically excluded from the requirement to prepare an Environmental Assessment (EA) in accordance with sections 5.05b and 6.03c.3(i) of NOAA Administrative Order (NAO) 216–6 for implementing the National Environmental Policy Act. Specifically, this action permanently continues, without modification, a regulation that would not substantially change the regulation or have a significant impact on the environment. NMFS prepared an EA on the final rule (71 FR 24776, April 19, 2006) to implement the BDTRP, which included an analysis of the action without time constraints. The EA analyzed all regulations in the final BDTRP of which the regulations addressed in this rule were a component. The EA resulted in a finding of no significant impact. In accordance with section 5.05b of NAO 216–6, the regulations finalized here were determined to not likely result in significant impacts as defined in 40 CFR 1508.27. This action does not trigger the exceptions to categorical exclusions listed in NAO 216–6, Section 5.05c. A categorical exclusion memorandum to the file was prepared.

This final rule does not contain collection-of-information requirements subject to the Paperwork Reduction Act.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic

impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here. No comments were received regarding the certification. As a result, a final regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 229

Administrative practice and procedure, Confidential business information, Fisheries, Marine mammals, Reporting and recordkeeping requirements.

Dated: June 23, 2012.

Alan D. Risenhoover,

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

For the reasons set out in the preamble, 50 CFR part 229 is amended as follows:

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

■ 1. The authority citation for part 229 continues to read as follows:

Authority: 16. U.S.C. 1361 *et seq.;* 50 CFR 229.32(f) also issued under 16 U.S.C. 1531 *et seq.*

■ 2. In § 229.35 paragraph (a), the definitions of *South Carolina, Georgia, and Florida waters* and *Southern North Carolina State waters* in paragraph (b), and paragraphs (d)(1)(i), (d)(2)(i), (d)(4)(ii), and (d)(5)(i) are revised to read as follows:

§ 229.35 Bottlenose Dolphin Take Reduction Plan.

(a) *Purpose and scope.* The purpose of this section is to implement the Bottlenose Dolphin Take Reduction Plan (BDTRP) to reduce incidental mortality and serious injury of stocks of bottlenose dolphins within the Western North Atlantic coastal morphotype in specific Category I and II commercial fisheries from New Jersey through Florida. Specific Category I and II commercial fisheries within the scope of the BDTRP are indentified and updated in the annual List of Fisheries. Gear restricted by this section includes small, medium, and large mesh gillnets. The geographic scope of the BDTRP is all tidal and marine waters within 6.5 nautical miles (12 km) of shore from the New York-New Jersey border southward to Cape Hatteras, North Carolina, and within 14.6 nautical miles (27 km) of shore from Cape Hatteras, southward to, and including the east coast of Florida down to the fishery management council demarcation line between the Atlantic Ocean and the Gulf of Mexico (as described in § 600.105 of this title).

(b) * * *

South Carolina, Georgia, and Florida waters means the area consisting of all marine and tidal waters, within 14.6 nautical miles (27 km) of shore, bounded on the north by a line extending in a direction of 135°34′55″ from true north from the North Carolina/South Carolina border at 33°51′07.9″ N. and 78°32′32.6″ W., and on the south by the fishery management council demarcation line between the Atlantic Ocean and the Gulf of Mexico (as described in § 600.105 of this title).

Southern North Carolina State waters means the area consisting of all marine and tidal waters, within 3 nautical miles (5.56 km) of shore, bounded on the north by 34°35.4′ N. (Cape Lookout, North Carolina), and on the south by a line extending in a direction of 135°34′55″ from true north from the North Carolina/South Carolina border at 33°51′07.9″ N. and 78°32′32.6″ W.

* * * * *

(d) * * *

(1) * * *

(i) *Medium and large mesh gillnets.* From June 1 through October 31, in New Jersey, Delaware, and Maryland state waters, no person may fish with any medium or large mesh anchored gillnet gear at night unless such person remains within 0.5 nautical mile (0.93 km) of the closest portion of each gillnet and removes all such gear from the water and stows it on board the vessel before the vessel returns to port.

* * * * *

(2) * * *

(i) *Medium and large mesh gillnets.* From June 1 through October 31, in Southern Virginia State waters and Northern Virginia State waters, no person may fish with any medium or large mesh anchored gillnet gear at night unless such person remains within 0.5 nautical mile (0.93 km) of the closest portion of each gillnet and removes all such gear from the water and stows it on board the vessel before the vessel returns to port.

* * * * *

(4) * * *

(ii) *Medium mesh gillnets.* From November 1 through April 30 of the following year, in Northern North Carolina State waters, no person may fish with any medium mesh gillnet at night.

* * * * *

(5) * * *

(i) *Medium mesh gillnets.* From November 1 through April 30 of the following year, in Southern North Carolina State waters, no person may fish with any medium mesh gillnet at night.

* * * * *

[FR Doc. 2012–18667 Filed 7–30–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 100217095–2258–06]

RIN 0648–AY56

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 32 Supplement

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

ACTION: Final rule.

SUMMARY: NMFS issues this supplement to the regulations that implemented management measures described in Amendment 32 to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico (Amendment 32) prepared by the Gulf of Mexico Fishery Management Council (Council). After the February 10, 2012, publication of the final rule for Amendment 32, NMFS identified inconsistencies in the regulatory text regarding the quotas and annual catch limits (ACLs) for ''other shallow-water grouper'' (Other SWG) that needed correction. This final rule revises the regulatory text regarding the quotas and ACLs for Other SWG. In addition, this final rule implements some minor revisions to the regulatory text to improve the clarity of the regulations.

DATES: This rule is effective August 30, 2012.

ADDRESSES: Electronic copies of Amendment 32, which includes a final environmental impact statement, a regulatory flexibility analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office Web Site at *http://sero.nmfs.noaa.gov/sf/GrouperSnapperandReefFish.htm.*

FOR FURTHER INFORMATION CONTACT: Peter Hood, Southeast Regional Office, NMFS, telephone 727–824–5305; email: *Peter.Hood@noaa.gov.*

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico (Gulf) is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

On, April 6, 2012, NMFS published a proposed rule (77 FR 20775) to supplement the regulations that implemented management measures described in Amendment 32 (77 FR 6988, February 10, 2012). That proposed rule outlined the rationale for the actions contained in this final rule and is not repeated here.

Management measures implemented through this final rule reinstate the commercial Other SWG quotas and the stock complex commercial ACLs for Other SWG, as established in the final rule which implemented the ACLs and Accountability Measures Amendment for Reef Fish, Red Drum, Shrimp, and Coral Fisheries of the Gulf of Mexico (Generic ACL Amendment) (76 FR 82044, December 29, 2011), as well as remove the commercial shallow-water grouper (SWG) quotas and commercial SWG ACL erroneously included in the rule implementing Amendment 32. Specifically, this final rule implements the commercial quotas (commercial ACLs), in gutted weight, for Other SWG combined: for fishing year 2012—509,000 lb (230,879 kg), for fishing year 2013—518,000 lb (234,961 kg), for fishing year 2014—523,000 lb (237,229 kg), and finally, for fishing year 2015 and subsequent fishing years—525,000 lb (238,136 kg) as well as the stock complex ACLs for Other SWG, in gutted weight: 688,000 lb (312,072 kg) for 2012, 700,000 lb (317,515 kg) for 2013, 707,000 lb (320,690 kg) for 2014, and 710,000 lb (322,051 kg) for 2015 and subsequent years.

In addition, this final rule implements some minor non-substantive revisions to improve the clarity of the regulations. First, NMFS revises the term ''other SWG'' to read ''Other SWG'' throughout the 50 CFR part 622 regulations to improve the clarity of the regulations as they apply in the Gulf. This rule also amends the definition of SWG to include the definition for Other SWG. In the Gulf, Other SWG still includes black grouper, scamp, yellowfin grouper, and yellowmouth grouper. Second, in two instances in the regulations, sentences within a paragraph are reordered to improve clarity. Third, a sentence is deleted in the regulations because it is already stated in the preceding paragraph and is therefore redundant.

Discussion of the management measures contained in Amendment 32 is provided in the previous proposed and final rules (see 76 FR 67656, 77 FR 6988, 77 FR 20775) as well as in Amendment 32, and is not repeated here.

Comments and Reponses

No comments were received in relation to the proposed rule published on April 6, 2012 (77 FR 20775).

Changes From the Proposed Rule

NMFS has made minor, non-substantive revisions to the regulatory text contained in the proposed rule. In § 622.20, paragraphs (a)(6) and (a)(7), the term ''once'' is revised to read ''after'' to improve the clarity of the regulations. In § 622.49, paragraph (a)(4)(ii)(B), NMFS amended the term ''target catch (ACT)'' to read ''ACT'' to be consistent with the language used within Amendment 32. This clarification of the regulatory text is not substantive and will alleviate confusion for Gulf reef fish fishermen regarding the regulations.

Classification

The Regional Administrator, Southeast Region, NMFS has determined that the actions contained in this final rule are necessary for the conservation and management of the reef fish fishery in the Gulf and that they are consistent with Amendment 32, the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here. No comments were received regarding the certification provided in the proposed rule (77 FR 20775, April 6, 2012). No changes to the final rule were made in response to public comments. As a result, a final regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: July 26, 2012.

Alan D. Risenhoover,

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

For the reasons set out in the preamble, 50 CFR part 622, is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.2, the definition for ''Shallow-water grouper (SWG)'' is revised to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

Shallow-water grouper (SWG) means, in the Gulf, gag, red grouper, black grouper, scamp, yellowfin grouper, and yellowmouth grouper. Other shallow-water grouper (Other SWG) means, in the Gulf, SWG excluding gag and red grouper (*i.e.,* black grouper, scamp, yellowfin grouper, and yellowmouth grouper). In addition, for the purposes of the IFQ program for Gulf groupers and tilefishes in § 622.20, speckled hind and warsaw grouper are also included as Other SWG as specified in § 622.20(a)(6).

* * * * *

■ 3. In § 622.20, paragraph (a) introductory text, the second sentence of paragraph (a)(4), paragraphs (a)(5)(i) and (a)(5)(ii), the second sentence of paragraphs (a)(6), (a)(7), (b)(3)(i), and the first sentence of paragraph (b)(6)(i) are revised to read as follows:

§ 622.20 Individual fishing quota (IFQ) program for Gulf groupers and tilefishes.

(a) *General.* This section establishes an IFQ program for the commercial sectors of the Gulf reef fish fishery for groupers (including DWG, red grouper, gag, and Other SWG) and tilefishes (including goldface tilefish, blueline tilefish, and tilefish). For the purposes of this IFQ program, DWG includes yellowedge grouper, warsaw grouper, snowy grouper, speckled hind, and scamp, but only as specified in paragraph (a)(7) of this section. For the purposes of this IFQ program, Other SWG includes black grouper, scamp, yellowfin grouper, yellowmouth grouper, warsaw grouper, and speckled hind, but only as specified in paragraph (a)(6) of this section. Under the IFQ program, the RA initially will assign

eligible participants IFQ shares, in five share categories. These IFQ shares are equivalent to a percentage of the annual commercial quotas for DWG, red grouper, gag, Other SWG, and tilefishes, based on their applicable historical landings. Shares determine the amount of IFQ allocation for Gulf groupers and tilefishes, in pounds gutted weight, a shareholder is initially authorized to possess, land, or sell in a given calendar year. Shares and annual IFQ allocation are transferable. See § 622.4(a)(2)(ix) regarding a requirement for a vessel landing groupers or tilefishes subject to this IFQ program to have an IFQ vessel account for Gulf groupers and tilefishes. See § 622.4(a)(4)(ii) regarding a requirement for a Gulf IFQ dealer endorsement. Details regarding eligibility, applicable landings history, account setup and transaction requirements, constraints on transferability, and other provisions of this IFQ system are provided in the following paragraphs of this section.

* * * * *

(4) * * * IFQ allocation for the five respective share categories is derived at the beginning of each year by multiplying a shareholder's IFQ share times the annual commercial quota for gag, red grouper, DWG, Other SWG and tilefishes. * * *

(5) * * *

(i) *Red grouper multi-use allocation.* (A) At the time the commercial quota for red grouper is distributed to IFQ shareholders, a percentage of each shareholder's initial red grouper allocation will be converted to red grouper multi-use allocation. Red grouper multi-use allocation, determined annually, will be based on the following formula:

Red Grouper multi-use allocation (in percent) = 100 * [Gag ACL—Gag commercial quota]/Red grouper commercial quota

(B) Red grouper multi-use allocation may be used to possess, land, or sell either red grouper or gag under certain conditions. Red grouper multi-use allocation may be used to possess, land, or sell red grouper only after an IFQ account holder's (shareholder or allocation holder's) red grouper allocation has been landed and sold, or transferred; and to possess, land, or sell gag, only after both gag and gag multi-use allocation have been landed and sold, or transferred. However, if gag is under a rebuilding plan, the percentage of red grouper multi-use allocation is equal to zero.

(ii) *Gag multi-use allocation.* (A) At the time the commercial quota for gag is distributed to IFQ shareholders, a percentage of each shareholder's initial gag allocation will be converted to gag multi-use allocation. Gag multi-use allocation, determined annually, will be based on the following formula:

Gag multi-use allocation (in percent) = 100 * [Red grouper ACL—Red grouper commercial quota]/Gag commercial quota

(B) Gag multi-use allocation may be used to possess, land, or sell either gag or red grouper under certain conditions. Gag multi-use allocation may be used to possess, land, or sell gag only after an IFQ account holder's (shareholder or allocation holder's) gag allocation has been landed and sold, or transferred; and to possess, land, or sell red grouper, only after both red grouper and red grouper multi-use allocation have been landed and sold, or transferred. Multi-use allocation transfer procedures and restrictions are specified in paragraph (b)(4)(iv) of this section. However, if red grouper is under a rebuilding plan, the percentage of red grouper multi-use allocation is equal to zero.

(6) * * * For the purposes of the IFQ program for Gulf groupers and tilefishes, after all of an IFQ account holder's DWG allocation has been landed and sold, or transferred, or if an IFQ account holder has no DWG allocation, then Other SWG allocation may be used to land and sell warsaw grouper and speckled hind.

(7) * * * For the purposes of the IFQ program for Gulf groupers and tilefishes, after all of an IFQ account holder's Other SWG allocation has been landed and sold, or transferred, or if an IFQ account holder has no SWG allocation, then DWG allocation may be used to land and sell scamp.

* * * * *

(b) * * *

(3) * * *

(i) * * * The owner or operator of a vessel landing IFQ groupers or tilefishes is responsible for ensuring that NMFS is contacted at least 3 hours, but no more than 12 hours, in advance of landing to report the time and location of landing, estimated grouper and tilefish landings in pounds gutted weight for each share category (gag, red grouper, DWG, Other SWG, tilefishes), vessel identification number (Coast Guard registration number or state registration number), and the name and address of the IFQ dealer where the groupers or tilefishes are to be received. * * *

* * * * *

(6) * * *

(i) *IFQ share cap for each share category.* No person, including a corporation or other entity, may individually or collectively hold IFQ shares in any share category (gag, red grouper, DWG, Other SWG, or tilefishes) in excess of the maximum share initially issued for the applicable share category to any person at the beginning of the IFQ program, as of the date appeals are resolved and shares are adjusted accordingly. * * *

* * * * *

■ 4. In § 622.42, paragraph (a)(1)(iii) introductory text and paragraph (a)(1)(iii)(A) are revised to read as follows:

§ 622.42 Quotas.

* * * * *

(a) * * *

(1) * * *

(iii) Shallow-water groupers (SWG) have separate quotas for gag and red grouper and a combined quota for other shallow-water grouper (Other SWG) species (including black grouper, scamp, yellowfin grouper, and yellowmouth grouper), as specified in paragraphs (a)(1)(iii)(A) through (C) of this section. These quotas are specified in gutted weight, that is, eviscerated but otherwise whole.

(A) *Other SWG combined.* (*1*) For fishing year 2012—509,000 lb (230,879 kg).

(*2*) For fishing year 2013—518,000 lb (234,961 kg).

(*3*) For fishing year 2014—523,000 lb (237,229 kg).

(*4*) For fishing year 2015 and subsequent fishing years—525,000 lb (238,136 kg).

* * * * *

■ 5. In § 622.49, paragraphs (a)(3) and (a)(4)(ii)(B) are revised to read as follows:

§ 622.49 Annual catch limits (ACLs) and accountability measures (AMs).

(a) * * *

(3) *Other shallow-water grouper (Other SWG) combined (including black grouper, scamp, yellowfin grouper, and yellowmouth grouper)*—(i) *Commercial sector.* The IFQ program for groupers and tilefishes in the Gulf of Mexico serves as the accountability measure for commercial Other SWG. The commercial ACL for Other SWG is equal to the applicable quota specified in § 622.42(a)(1)(iii)(A).

(ii) *Recreational sector.* If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock complex ACL specified in paragraph (a)(3)(iii) of this section, then during the following fishing year, if the sum of the commercial and recreational landings reaches or is projected to reach the applicable ACL specified in paragraph (a)(3)(iii) of this section, the AA will file a notification with the Office of the Federal Register to close the recreational

sector for the remainder of that fishing year.

(iii) The stock complex ACLs for Other SWG, in gutted weight, are 688,000 lb (312,072 kg) for 2012, 700,000 lb (317,515 kg) for 2013, 707,000 lb (320,690 kg) for 2014, and 710,000 lb (322,051 kg) for 2015 and subsequent years.

(4) * * *

(ii) * * *

(B) If gag are not overfished, and in addition to the measures specified in paragraph (a)(4)(ii)(A) of this section, if gag recreational landings, as estimated by the SRD, exceed the applicable ACLs specified in paragraph (a)(4)(ii)(D) of this section, the AA will file a notification with the Office of the Federal Register to maintain the gag ACT, specified in paragraph (a)(4)(ii)(D) of this section, for that following fishing year at the level of the prior year's ACT, unless the best scientific information available determines that maintaining the prior year's ACT is unnecessary.

* * * * *

[FR Doc. 2012–18665 Filed 7–30–12; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 120606145–2251–01]

RIN 0648–BB75

Atlantic Highly Migratory Species; North and South Atlantic Swordfish Quotas and Management Measures

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

ACTION: Final rule.

SUMMARY: This final rule implements the International Commission for the Conservation of Atlantic Tunas (Commission) Recommendation 11–02, which maintains the U.S. North Atlantic swordfish base quota allocation, reduces the annual underharvest carryover from 50 to 25 percent of the base quota, establishes an quota transfer to Morocco for 2012 and 2013, and includes an alternative swordfish minimum size of 25-inches cleithrum to caudal keel (CK). This final rule also implements Recommendation 09–03 for South Atlantic swordfish. It also allows fishermen to remove the bill of the swordfish while still meeting the ''head-naturally-attached'' requirement for measuring swordfish using the lower jaw fork length minimum size, modifies and clarifies regulations regarding swordfish fishery season closures and the North Atlantic swordfish quota reserve category, and adjusts the North and South Atlantic swordfish quotas for the 2012 fishing year to account for 2011 underharvests and landings. This final rule could affect commercial and recreational fishermen who are fishing for swordfish in the Atlantic Ocean, including the Caribbean Sea and Gulf of Mexico.

DATES: Effective on August 30, 2012.

ADDRESSES: Copies of the supporting documents—including the 2012 Environmental Assessment, Regulatory Impact Review, and Final Regulatory Flexibility Analysis, the 2007 Environmental Assessment, Regulatory Impact Review, Final Regulatory Flexibility Analysis, and the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP)—are available from the HMS Web site at *http://www.nmfs.noaa.gov/sfa/hms/.*

FOR FURTHER INFORMATION CONTACT: Steve Durkee by phone: 202–670–6637, or Delisse Ortiz by phone: 301–427–8503 or by fax: 301–713–1917.

SUPPLEMENTARY INFORMATION: The U.S. North and South Atlantic swordfish fisheries are managed under the 2006 Consolidated HMS FMP, its amendments, and its implementing regulations at 50 CFR part 635, pursuant to the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and the Atlantic Tunas Convention Act (ATCA). Under ATCA, the Secretary shall promulgate such regulations as may be necessary and appropriate to carry out Commission recommendations.

In November 2011, the Commission adopted Recommendation 11–02 for North Atlantic swordfish. This recommendation was adopted by the Commission based on the most recent North Atlantic swordfish stock assessment and maintains the U.S. baseline quota of 2,937.6 metric tons (mt) dressed weight (dw) for 2012 and 2013. Previous Commission recommendations for North Atlantic swordfish included a quota transfer of 18.8 mt dw from the United States to Canada; however, Recommendation 11–02 eliminates this quota transfer and includes a transfer of 112.8 mt dw from the United States to Morocco to support joint scientific research and Morocco's efforts to eliminate the use of driftnets. Recommendation 11–02 also includes a provision for the submission of annual swordfish management plans and a change to the underharvest carryover provisions. The recommendation limits the amount of underharvested quota that can be carried over by CPCs, including the United States, allocated a baseline quota greater than 500 mt from 50 to 25 percent of the baseline quota. All other CPCs are limited to an underharvest carryover limit of 50 percent of their baseline quota. This recommendation also includes an option for countries to use a CK minimum size measurement of 25 inches.

The proposed rule (77 FR 25669, May 1, 2012) and draft environmental assessment contained additional details regarding the impacts of the alternatives considered and a brief summary of the recent management history. Those details are not repeated here.

In this final action, NMFS maintains the U.S. base quota of 2,937.6 mt dw for North Atlantic swordfish, implements the quota transfer of 112.8 mt dw from the United States to Morocco for 2012, and reduces the North Atlantic swordfish underharvest carryover from 50 to 25 percent of the base quota pursuant to Recommendation 11–02. For South Atlantic swordfish, this action implements Recommendation 09–03, which set the 2012 U.S. South Atlantic swordfish quota at 100 mt ww (75.2 mt dw), limits the U.S. carryforward of underharvest to 75 mt dw, and authorizes the transfer of 50 mt ww (37.6 mt dw) to Namibia, 25 mt ww (18.8 mt dw) to Côte d'Ivore, and 25 mt ww (18.8 mt dw) to Belize. In addition, this final action implements a new alternative 25-inch CK minimum size measurement per Recommendation 11–02 and allows the existing 47-inch lower jaw fork length measurement to apply to swordfish without a bill, provided the bill has been removed forward of the anterior tip of the lower jaw and the head is naturally attached. Finally, this final rule will allow NMFS to transfer quota from the directed category to the incidental or reserve quota categories and use the quota in the reserve category to account for fishery research landings. This simplifies the North Atlantic swordfish reserve category description and explicitly states the annual reserve category allocation to be 50 mt dw. Additionally, the regulatory language is modified so that Commission-negotiated quota transfers of North Atlantic swordfish will be moved from the U.S. baseline quota rather than the reserve category.

2012 North and South Atlantic Swordfish Specifications

A. North Atlantic Swordfish Quota

Recommendation 11–02 maintained the North Atlantic swordfish total allowable catch of 13,700 mt ww (10,301 mt dw) through 2013. Of this total allowable catch, the United States baseline quota is 2,937.6 mt dw (3,907.0 mt ww) per year. The recommendation includes a new 112.9 mt dw annual quota transfer to Moroco but does not continue the previous recommendation's quota transfer of 18.8 mt dw to Canada, and limits the underharvest carryover to 25 percent of the U.S. baseline quota. Therefore, the United States may carry over a maximum of 734.4 mt dw of underharvests from the previous year (2011) to be added to the 2012 baseline quota.

This final rule adjusts the U.S baseline quota for the 2012 fishing year to account for the annual quota transfer to Morocco and the 2011 underharvest. The 2012 North Atlantic swordfish baseline quota is 2,937.6 mt dw. The preliminary North Atlantic swordfish underharvest for 2011 was 2,208.3 mt dw, which exceeds the maximum carryover cap of 734.4 mt dw. Therefore, NMFS is carrying forward the maximum amount allowed per Recommendation 11–02. The baseline quota reduced by the 112.8 mt dw annual quota transfer to Morocco and increased by the underharvest carryover maximum of 734.4 mt dw equals 3,559.2 mt dw, which is the final adjusted quota for the 2012 fishing year. From that final adjusted quota, the directed category will be allocated 3,209.2 mt dw and will be split equally into two seasons in 2012 (January through June, and July through December). The U.S. 2012 North Atlantic swordfish baseline quota is 2,937.6 mt dw. The baseline quota reduced by the 112.8 mt dw 2012 quota transfer to Morocco and increased by the allowable underharvest carryover maximum of 734.4 mt dw equals 3,559.2 mt dw, which is the final adjusted quota for the 2012 fishing year. From that final adjusted quota, the directed category will be allocated 3,209.2 mt dw and will be split equally into two seasons in 2012 (January through June, and July through December). The reserve category will be allocated 50 mt dw for inseason adjustments and fishery research, and 300 mt dw will be allocated to the incidental category, which includes recreational landings and catch by incidental swordfish permit holders for the 2012 fishing season, per § 635.27(c)(1)(i)(B) (Table 1).

B. South Atlantic Swordfish Quota

Recommendation 06–03 established the South Atlantic swordfish total allowable catch at 17,000 mt ww for 2007, 2008, and 2009. Of this, the United States received 75.2 mt dw (100 mt ww). As with the North Atlantic swordfish recommendation, Recommendation 06–03 established a cap on the amount of underharvest that can be carried forward. For South Atlantic swordfish, the United States is limited to carrying forward 100 percent (75.2 mt dw). The most recent South Atlantic swordfish measure, Recommendation 09–03, is a 3-year measure that reduced the total allowable catch to 15,000 mt dw but maintains the previous years' U.S. quota share of 75.2 mt dw (100 mt ww) and underharvest carryover limit through 2012.

Recommendation 09–03 also transfers a total of 75.2 mt dw (100 mt ww) of the U.S. South Atlantic swordfish quota to other countries. In 2011, U.S. fishermen did not land any South Atlantic swordfish, therefore, 75.2 mt dw of underharvest is available to carry over to 2012 and can cover the entire 75.2 mt dw of annual international quota transfers outlined above. Therefore, the 2012 adjusted quota for South Atlantic swordfish is 75.2 mt dw (Table 1).

Impacts resulting from the 2012 North Atlantic swordfish specifications are analyzed in the final Environmental Assessment accompanying this rule. The Environmental Assessment that was prepared for the 2007 Swordfish Quota Specifications Final Rule published on October 5, 2007 (72 FR 56929) analyzed the impacts resulting from Recommendation 06–03 for South Atlantic swordfish.

TABLE 1—2012 NORTH AND SOUTH ATLANTIC SWORDFISH QUOTAS

	2012
North Atlantic Swordfish Quota (mt dw)	
Baseline Quota	2,937.6
Quota Transfer to Morocco	(−)112.8
Total Underharvest from Previous Year +	2,208.3
Underharvest Carryover from Previous Year +	734.4
Adjusted Quota	3,559.2
Quota Allocation:	
Directed Category	3,209.2
Incidental Category	300
Reserve Category	50
South Atlantic Swordfish Quota (mt dw)	
Baseline Quota	75.2
International Quota Transfers *	(−)75.2
Total Underharvest from Previous Year +	75.2
Underharvest Carryover from Previous Year +	75.2
Adjusted quota	75.2

+ Underharvest is capped at 25 percent of the baseline quota allocation for the North Atlantic and 75.2 dw for the South Atlantic per Rec. 11–02.

* Under 09–03, 75.2 mt dw of the U.S. underharvest and base quota, as necessary, was transferred to Namibia (37.6 mt dw,), Cote d'Ivore (18.8 mt dw,), and Belize (18.8 mt dw).

Response to Comments

During the proposed rule stage, NMFS received 10 comments from non-governmental organizations, fishermen, dealers, and other interested parties. A summary of the major comments received for each proposed measure (swordfish quota measures, minimum size measures, and miscellaneous

measures) on the proposed rule during the public comment period is shown below with NMFS' responses. All written comments submitted during the comment period can be found at *http://www.regulations.gov/by* searching for RIN 0648–BB75.

Swordfish Quota Measures

Comment 1: NMFS should implement the quota measures in Recommendation 11–02 in order to maintain compliance with the Commission. No underharvest should be carried over from one year to the next. The underharvest carryover limit should not be reduced from 50 percent to 25 percent of the base quota. NMFS should not transfer quota to other countries unless it gets something of value in return.

Response: NMFS agrees that it should implement the quota measures in Recommendation 11–02 in order to be compliant with the Commission's recommendations. NMFS does not agree, however, that it should not carryover allowable underharvest from one year to the next, where such carryover is consistent with Commission recommendations. The Commission's recommendations, including the provision to reduce the underharvest carryover limit from 50 to 25 percent, for this rebuilt stock take into consideration the health and status of the stock. Implementing the Commission-recommended U.S. North Atlantic swordfish baseline quota as well as the underharvest carry over and quota transfer to Morocco are consistent with Recommendation 11–02. Under the Atlantic Tunas Convention Act, the Secretary shall promulgate such regulations as may be necessary and appropriate to carry out the Commission's recommendations. The regulations as finalized appropriately carry out the Commission's recommendations regarding the North Atlantic Swordfish stock, while meeting NMFS's legal obligations and management needs. During complex Commission negotiations, the U.S. delegation works to ensure that resource allocation, including quota transfers, considers domestic interests while ensuring the sustainable harvest of species under the Commission purview.

Minimum Size Measures

Comment 2: The 47 inch lower jaw fork length minimum size, and the equivalent dressed swordfish minimum size of 25 inches cleithrum to caudal keel, refers to a juvenile swordfish that is too small to be harvested.

Response: The Commission established the 47 inch lower jaw fork length minimum size in the 1999 North Atlantic swordfish rebuilding plan (Rec 99–02) based on advice from the Standing Committee on Research and Statistics (SCRS). Based on the SCRS's most recent stock assessment (2009), the 47 inch lower jaw fork length minimum size was deemed appropriate because it protected small swordfish from being harvested, helping to reduce mortality of immature swordfish. This minimum size has contributed to the successful rebuilding of the North Atlantic swordfish stock. The proposed alternative 25 inch cleithrum to caudal keel minimum length is equivalent to the 47 inch lower jaw fork length minimum size, and therefore is as appropriate for a minimum size as the current 47 inch lower jaw fork length measurement.

Comment 3: NMFS should implement the 25 inch cleithrum to caudal keel minimum size because the previous 29 inch cleithrum to caudal keel minimum size was inconsistent with the 47 inch lower jaw fork length measurement. The current 29 inch cleithrum to caudal keel minimum size required fishermen to sometimes leave the head attached which is hazardous, makes the fish difficult to handle, and can lead to inconsistent enforcement once the head is removed. NMFS should implement the 25 inch cleithrum to caudal keel since it will increase the number of retained fish without reducing the minimum size.

Response: NMFS agrees that implementing the 25 inch cleithrum to caudal keel alternative minimum size measurement provides numerous benefits to fishermen without undermining protection of immature swordfish. In addition, NMFS is finalizing a definition of naturally attached, as used to describe the head of a swordfish, that allows for removal of the bill forward of the anterior tip of the lower jaw. A swordfish with its head naturally attached in this manner may be measured using the lower jaw fork length measurement to determine compliance with minimum size requirements. NMFS believes that these two changes should accommodate the operational needs of the U.S. swordfish fishery, including safety on board and storage efficiency, while also having the ancillary benefit of increased landings.

Comment 4: NMFS received two comments regarding the minimum weight standard. The first commenter stated that NMFS should not reintroduce minimum weight because it is too hard for fishermen to obtain an accurate weight at sea. Fishermen can only obtain accurate dressed weight once the fish is processed, precluding the live release of a fish that does not meet the minimum weight. The second commenter stated that NMFS should reintroduce the 33 lb minimum weight standard to give more flexibility to fishermen. Failure to retain all Commission-defined minimum size criterion is inconsistent with Atlantic Tunas Convention Act and the Magnuson-Stevens Act. NMFS is exceeding the Commission's recommendation by removing the minimum weight standard for United States fishermen.

Response: At this time, NMFS believes that the disadvantages of re-implementing the 33 pound minimum weight outweigh the benefits. Obtaining an accurate dressed weight at sea can be difficult and cannot be obtained until the swordfish is fully dressed, thus precluding the ability to release an undersized swordfish alive. The minimum weight measurement was often used by fishermen when they encountered swordfish that were shorter than the 29 inch cleithrum to caudal keel measurement but potentially heavier than 33 pounds. However, NMFS believes that implementation of the 25 inch cleithrum to caudal keel measurement eliminates the need for the weight measurement as fish meeting the 33 pound minimum weight would almost certainly measure greater than 25 inches cleithrum to caudal keel. Furthermore, under the Atlantic Tunas Convention Act, the Secretary shall promulgate such regulations as may be necessary and appropriate to carry out ICCAT recommendations. ICCAT Recommendation 11–02 allows for discretion as to which minimum sizes to implement in each Party's domestic fisheries and does not require implementation of all the different options. Recommendation 11–02 offers the option for ICCAT Parties to implement a 25 kg live weight or in the alternative, a 125 cm lower jaw fork length minimum size with a 15 percent tolerance for incidentally caught smaller fish. Alternatively, ICCAT Parties can implement a15 kg live weight or a 119 cm lower jaw fork length minimum size but may not avail themselves of the 15 percent tolerance for incidentally caught smaller fish. In addition, for swordfish that have been dressed, a cleithrum to caudal keel measurement of 63 cm can also be applied. NMFS believes that the preferred alternatives are fully compliant with Recommendation 11–02.

Comment 5: NMFS also received two comments regarding maintaining the lower jaw fork length minimum size. The first commenter stated that NMFS should maintain the lower jaw fork length minimum size because failure to

retain all ICCAT-defined minimum size criterion is inconsistent with the Atlantic Tunas Convention Act and the Magnuson-Stevens Act. The second commenter stated that NMFS should remove the lower jaw fork length minimum size because it would simplify compliance and enforcement with minimal impact on the number of retained swordfish.

Response: At this time, NMFS prefers to maintain the lower jaw fork length minimum size. As described in the comment above, Recommendation 11–02 provides the flexibility to use different minimum sizes and does not require the use of all the minimum sizes. NMFS also notes that removal of the lower jaw fork length minimum size could simplify compliance and enforcement since only one minimum size measurement would be needed rather than multiple landing-condition-specific minimum sizes. However, it is possible that removal of the lower jaw fork length minimum size could preclude the retention of some fish that meet the lower jaw fork length minimum size but not the cleithrum to caudal keel minimum size, even with the implementation of the alternative 25 inch cleithrum to caudal keel minimum size. In addition, the lower jaw fork length measurement is easier for recreational fishermen to obtain from a swordfish without removing the fish from the water. Recreational fishermen will often bring the swordfish to the side of the vessel and use the easier straight-line lower jaw fork length measurement to visually determine if the fish meets the lower jaw fork length minimum size. If the cleithrum to caudal keel measurement was the only minimum size measurement required, this may be more difficult for recreational fishermen and may increase swordfish handling time. In the future, if commercial and recreational fishermen begin to use only the cleithrum to caudal keel minimum size or it is found that that the lower jaw fork length minimum size is not needed, NMFS may consider the issue in a future rulemaking.

Comment 6: NMFS should estimate the impact of the 25 inches cleithrum to caudal keel minimum size on landings.

Response: In response to requests from commenters on the proposed rulemaking, NMFS analyzed the impact of implementing the 25 inch cleithrum to cadual keel minimum size under Alternative 3 in the Environmental Assessment. According to this analysis, approximately 51.4 mt dw (113,316 lbs dw) of swordfish greater than 47 inch lower jaw fork length could be landed as a result of the change in minimum size. However, this estimate is very rough and relies on a number of caveats that are more fully described in the Environmental Assessment. While there could be an increase in swordfish landings as a result of implementing Alternative 3, the increase in retained fish would come almost exclusively from legal fish that were previously discarded and not as a result of an increase in fishing effort.

Comment 7: NMFS should only implement the 25 inch cleithrum to caudal keel minimum size in the pelagic longline fishery since swordfish in this fishery have high at-vessel mortality. The 25 inch cleithrum to caudal keel minimum size should not be implemented in the recreational, buoy gear, or commercial handgear fisheries since it will result in greater handling time when measuring the fish leading to a decrease in live releases. In non-pelagic longline fisheries, the lower jaw fork length minimum size should be raised to 52 inches, rather than implementing a reduction in the cleithrum to caudal keel minimum size.

Response: This action strives to simplify swordfish minimum size regulations to the extent practicable without disadvantaging fishermen or harming the sustainability of the stock. NMFS believes that limiting the 25 inch cleithrum to caudal keel measurement to the pelagic fishery could unnecessarily complicate minimum size regulations and increase confusion in compliance and enforcement by requiring different minimum size measures across fishing sectors. Also, the swordfish handgear and recreational fisheries can continue to use the 47 inch lower jaw fork length measurement. Furthermore, there is no indication that the current 47 inch lower jaw fork length minimum size, or an equivalent dressed swordfish cleithrum to caudal keel minimum size, is of a concern in the swordfish fishery. This minimum size has contributed to the successful rebuilding of the North Atlantic swordfish stock and there is no evidence that this minimum size is inappropriate as explained in Comment 2.

Comment 8: NMFS should not enforce the minimum size past the first point of landing. The second or third dealer or restaurant owners should not be responsible for minimum size requirements.

Response: Enforcement of minimum size requirements with respect to carcasses that are in the round, measureable form should not have any practical effect on the legal supply chain. Swordfish are monitored for compliance with minimum size requirements from the time they are landed until they are filleted, cut into steaks or processing in any way that physically alters the fish so it is not longer in round, measurable form. Limiting minimum size enforcement to fishermen and first dealers would preclude the ability to investigate violations further along the supply chain and limit NOAA's ability to enforce minimum size requirements.

Miscellaneous

Comment 9: Swordfish are experiencing overfishing and NMFS should prohibit fishing for the species. Fishermen should be strongly encouraged to release any live fish that are close to the minimum size and only retain those fish that cannot be returned to the sea alive.

Response: According to the 2009 swordfish stock assessment, the North Atlantic swordfish stock has been fully rebuilt under the rebuilding plan developed through the Commission. This minimum size has contributed to the successful rebuilding of the North Atlantic swordfish stock and there is no evidence that this minimum size is inappropriate. An assessment for North Atlantic swordfish is scheduled for 2013 and the Commission will take appropriate action based on the results of this stock assessment, consistent with recommendations from the Standing Committee on Research and Statistics. NMFS strongly encourages fishermen to only retain legal-size fish and has developed catch and release guideline material to educate and encourage the catch and release of saltwater pelagic fish, including swordfish, in order to maximize their survival.

Comment 10: NMFS needs to reconsider the pelagic longline closed areas. The 29 inch cleithrum to caudal keel minimum size led to several pelagic longline closed areas, particularly off the coast of Florida. This area was closed to pelagic longline fishing primarily based on regulatory discards of undersized swordfish using the larger 29 inch cleithrum to caudal keel measurement.

Response: The East Florida Coast pelagic longline closed area was implemented in 2001 as part of a group of measures, including other time/area closures and live bait restrictions, that were designed, to the extent practicable, to reduce bycatch, bycatch mortality, and incidental catch of undersized swordfish, billfish, and other overfished and protected species caught in the pelagic longline fishery. The analyses on which the closed area were based examined areas that included a relatively large number of discards of

swordfish, billfish, bluefin tuna, and pelagic and large coastal sharks compared to the landings of target species such as swordfish, tunas, mahi, and pelagic and large coastal sharks. The analyses did not rely on the 29 inch cleithrum to caudal keel minimum size; however, to some extent the closed area analyses considered dead discards of swordfish and many of those discards were likely undersized swordfish. NMFS is not aware, at this time, how many of those swordfish dead discards in the East Florida Coast area could have met the 25 inch cleithrum to caudal keel and how many would need to be discarded dead. As described above, NMFS does expect the minimum size change from 29 to 25 inch cleithrum to caudal keel to result in a small increase in swordfish landings across the entire fishery. However, NMFS does not expect the change in swordfish minimum size to impact discards of other species that were also considered in the analyses that resulted in the East Florida Coast closure. Thus, at this time, NMFS does not feel that the change in the cleithrum to caudal keel measurement for the swordfish minimum size from 29 to 25 inches while maintaining the lower jaw fork length minimum size measurement is justification for reconsidering the East Florida Coast or any other pelagic longline closed areas.

Changes From the Proposed Rule

No changes have been made to the proposed rule in this final rule.

Classification

Pursuant to the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that the final rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

A final regulatory flexibility analysis was prepared. The final analysis incorporates the initial regulatory flexibility analysis, a summary of the significant issues raised by the public comments in response to the initial analysis, NMFS' responses to those comments, and a summary of the analyses completed to support the action. A summary of the final analysis, addressing each of the requirements in 5 U.S.C. 604(a)(1)–(5) is below. A copy of the full final analysis is available from NMFS (see **ADDRESSES**).

Section 604(a)(1) of the Regulatory Flexibility Act requires that the Agency describe the need for, and objectives of, the final rule. The purpose of this rulemaking is, consistent with the 2006 Consolidated HMS FMP objectives, the Magnuson-Stevens Act, and other applicable law, to adjust the 2012 annual North and South Atlantic swordfish quotas and implement the management measures contained in Recommendation 11–02, consistent with the Magnuson-Stevens Act and the Atlantic Tunas Convention Act. Under the Atlantic Tunas Convention Act, the United States shall promulgate regulations as may be necessary and appropriate to implement binding recommendations of the Commission. An objective of this action is to adjust the 2012 Atlantic swordfish quotas and implement the management measures contained in Recommendation 11–02 including underharvest carryover provisions, international quota transfer requirements, and a new minimum size measurement for Atlantic swordfish, consistent with the Atlantic Tunas Convention Act, the 2006 Consolidated HMS FMP and other applicable laws.

Section 604(a)(2) requires a summary of the significant issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis and a statement of any changes made in the proposed rule as a result of such comments. NMFS received numerous comments on the proposed rule during the comment period. A summary of these comments and the Agency's responses are included in the Environmental Assessment and the final rule. Although NMFS did not receive comments specifically on the Initial Regulatory Flexibility Analysis, NMFS received some comments on the economic impacts from the reduction in underharvest carryover limit, international quota transfer, and implementation of the 25 inch cleithrum to caudal keel minimum size.

Most commenters supported implementation of the quota measures, including the reduction in the underharvest carryover limit and quota transfer to Morocco, in order to remain consistent with the Commission's Recommendation. However, a few commenters expressed concern that these quota measures could economically disadvantage U.S. fishermen since they lower the amount of adjusted quota potentially available for U.S. harvest of swordfish. NMFS does not believe that these concerns warrant a change in preferred alternatives because the United States has not harvested the entire allocated quota in a number of years and is unlikely to do so in the short-term. Consequently, a lower adjusted quota is unlikely to impact U.S. fishermen. Furthermore, these measures are necessary to remain compliant with the Commission. Under the Atlantic Tunas Convention Act, the Secretary shall promulgate such regulations as may be necessary and appropriate to carry out the Commission's recommendations.

Comments regarding the change in the cleithrum to caudal keel minimum size were almost universally supportive. The 25 inch cleithrum to caudal keel minimum size has many advantages such as increased safety at sea and simpler enforcement and compliance. Additionally, commenters noted that the new cleithrum to caudal keel minimum size would have positive economic impacts as well. Storage efficiency would increase allowing fishermen to retain more swordfish, and since the 25 inch cleithrum to caudal keel minimum size provides an equivalent dressed measurement to 47 inch lower jaw fork length fish, would reduce discards. Detailed discussion of these benefits is available in Section 4.0 of the Final Environmental Assessment.

Under Section 604(a)(3), Federal agencies must provide an estimate of the number of small entities to which the rule would apply. The Small Business Administration (SBA) standards for a ''small'' versus ''large'' business entity are entities that have average annual receipts less than $4.0 million for fish-harvesting; average annual receipts less than $6.5 million for charter/party boats; 100 or fewer employees for wholesale dealers; or 500 or fewer employees for seafood processors. This action would apply to all participants in the Atlantic HMS commercial and recreational fisheries that retain Atlantic swordfish. NMFS considers all these participants to be small entities. As of October 2011, 245 vessels held a directed or incidental commercial swordfish permit and are reasonably expected to use pelagic longline gear although they could also use handgear. Also, as of October 2011, 78 vessels held a commercial handgear permit, 23,138 held an Atlantic HMS Angling permit, and 4,194 vessels held an Atlantic HMS Charter/Headboat permit. The Incidental HMS Squid Trawl Permit, which allows for limited retention of swordfish caught in the *Illex* squid trawl fishery, became effective toward the end of 2011. NMFS has preliminary estimates on the number of vessels that may have acquired this permit based on the number of existing *Illex* squid trawl moratorium permit holders. As of August 10, 2010, there were a total of 76 *Illex* squid moratorium permit holders that may have or will avail themselves of this permit (76 FR49368).

Under Section 604(a)(4), Federal agencies must provide a description of the projected reporting, recordkeeping, and other compliance requirements of the rule. The action does not contain any new collection of information, reporting, recordkeeping, or other compliance requirements.

Under section 604(a)(5), agencies are required to describe any alternatives to the rule which accomplish the stated objectives and which minimize any significant economic impacts. These impacts are discussed below. Additionally, the RFA (5 U.S.C. 603 (c)(1)–(4)) lists four general categories of ''significant'' alternatives that will assist an agency in the development of significant alternatives. These categories of alternatives are:

1. Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
2. Clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
3. Use of performance rather than design standards; and
4. Exemptions from coverage of the rule for small entities.

In order to meet the objectives of this rule, consistent with Magnuson-Stevens Act and Atlantic Tunas Convention Act, NMFS cannot exempt small entities or change the reporting requirements only for small entities because all the entities affected are considered small entities. Thus, there are no alternatives discussed that fall under the first and fourth categories described above. NMFS does not know of any performance or design standards that would satisfy the aforementioned objectives of this rulemaking while, concurrently, complying with the Magnuson-Stevens Act and Atlantic Tunas Convention Act. Thus, there are no alternatives considered under the third category. As described below, NMFS analyzed several different alternatives in this rulemaking that fall under the second category above and provides rationale for identifying the preferred alternative to achieve the desired objective.

NMFS considered and analyzed the following six alternatives: (1) No Action; (2) Implement Recommendation 11–02, which includes a quota transfer of 112.8 mt dw from the United States to Morocco in 2012 and 2013 and an annual underharvest carryover limit of 25 percent of the base quota (annual carryover limit of 734.4 mt dw); maintain status quo for North Atlantic quotas—Preferred Alternative; (3) Implement the alternative swordfish cleithrum to caudal keel minimum size measurement of 25 inches per Recommendation 11–02—Preferred Alternative; (4) Use the cleithrum to caudal keel measurement as the sole minimum size and discontinue the use of the lower jaw fork length minimum length standard in U.S. domestic fisheries; (5) Allow the lower jaw fork length minimum size to be applied to swordfish without a bill, provided the bill has been removed forward of the anterior tip of the lower jaw—Preferred Alternative; and (6) Reintroduce the 33 pound minimum weight standard.

Under Alternative 1, NMFS would not implement any of the measures contained in Recommendation 11–02, including the quota allocation, underharvest carryover limit, international quota transfer, or cleithrum to caudal keel minimum size measurement. Fishermen and dealers would be unlikely to notice any direct economic impacts in the short term if NMFS does not implement the quota portion of Recommendation 11–02, however, they might notice short-term negative impacts if NMFS does not implement the alternative cleithrum to caudal keel minimum size. The U.S. quota specified in Recommendation 11–02 is unchanged from previous years; therefore, the base quota would not be affected. The only effect of non-action would be that the transferred quota would not be deducted from the U.S. base quota. Since the United States has not harvested the entire allocated swordfish quota and is unlikely to do so in the short-term, deducting the transferred quota from the domestic base quota is unlikely to result in changes to annual revenue or revenue to individual vessels. Similarly, if NMFS does not reduce the annual carryover limit from 50 percent to 25 percent, the higher annual adjusted quota is unlikely to be utilized and is unlikely to result in changes in landings or revenue to individual vessels. However, if NMFS does not implement the alternative cleithrum to caudal keel minimum size, there could be minor adverse economic short-term impacts. The 25 inch cleithrum to caudal keel minimum size is equivalent to the existing 47 inch lower jaw fork length minimum size. Currently, fishermen do not have a minimum size measurement that allows for the retention of dressed swordfish that measure at or slightly above 47 inches lower jaw fork length. If a fisherman catches a swordfish that meets the 47 inch lower jaw fork length minimum size but not the current 29 inch cleithrum to caudal keel minimum size, the fisherman must either land the fish with the head naturally attached or discard the fish. Due to storage capacity limitations and uncertainty in minimum size regulations, fishermen sometimes choose to discard fish that legally meet the 47 inch lower jaw fork length measurement but do not meet the 29 inch cleithrum to caudal keel minimum size. Similarly, dealers sometimes will not accept fish that meet the 47 inch lower jaw fork length measurement but not the 29 inch cleithrum to caudal keel minimum size. These fish are landed with the head naturally attached, but once removed, some dealers have expressed concern that a minimum size violation could occur in the absence of proof that the fish was landed with the head and met the 47 inch lower jaw fork length measurement. For these reasons, if NMFS does not implement the alternative cleithrum to caudal keel minimum size, fishermen would continue to discard and not land some fish that meet the lower jaw fork length minimum size but not the current cleithrum to caudal keel minimum size, resulting in direct short-term minor adverse economic impacts. An analysis of the possible impact to swordfish landings resulting from the implementation of the new 25 inch cleithrum to caudaul keel minimum size measurement indicated a possible increase in swordfish landings of 51.4 mt dw (113,316 lbs dw) (Section 4.1). Therefore, if NMFS does not implement the alternative cleithrum to caudal keel minimum size measurement, this would result in forgone revenue totaling $1,547 ($499,724 divided by 178 directed swordfish permit holders, 67 incidental swordfish permit holders and 78 swordfish handgear permit holders) per vessel annually. As such, these permit holders would likely experience minor adverse economic impacts if the cleithrum to caudal keel minimum size was not changed to 25 inches. Because the United States has an obligation to implement the Commission's recommendations under Atlantic Tunas Convention Act, NMFS does not prefer this alternative at this time.

Alternative 2, the preferred alternative, would implement the Commission's Recommendation 11–02 provisions pertaining to quota allocation, the underharvest carryover limit, and the quota transfer to Morocco. Alternative 2 would likely have neutral economic impacts to small entities in the short-term. As noted in the discussion for Alternative 1, the United States is unlikely to achieve 100 percent quota utilization in the short-term. Consequently, minor changes to the base quota through international quota

transfers or to the adjusted quota through reduced underharvest carryover limits are unlikely to impact swordfish fishing effort levels or annual revenues. However, Alternative 2 could have minor adverse economic impacts if the U.S. swordfish fishery nears 100 percent quota utilization. At that time, an adjusted quota that reflects the annual international quota transfer to Morocco and the lower underharvest carryover limit could lead to a lower available quota than the level possible under Alternative 1. This lower level of adjusted quota would result in a decrease in the total possible fishery-wide annual revenue. If NMFS deducts the 112.8 mt dw quota transfer from the U.S. base quota of 2,937.6 mt dw and limits underharvest carryover to 25 percent, the total U.S. adjusted quota could reach 3,559.2 mt dw (7,846,612 lbs dw). Assuming an average ex-vessel price of $4.41 per pound (NMFS 2011) and 100 percent quota utilization, total possible gross revenues across the domestic fishery would be estimated to be $34,603,559 under Alternative 2. Therefore, Alternative 2 could result in annual gross revenues that are $8,236,720 less ($42,840,279–$34,603,559) than the possible annual gross revenues under Alternative 1. This potential decrease in average annual ex-vessel revenue across all swordfish permit types is $25,501 per vessel ($8,236,720/(178 directed swordfish permit holders, 67 incidental swordfish permit holders, and 78 swordfish handgear permit holders)). Since retention limits are higher for directed permit holders than incidental permit holders, actual per vessel revenue loss would likely be higher for directed permit holders and lower for incidental permit holders. Handgear permit holders do not have a retention limit, however, the gear used by these permit holders is less efficient, therefore, actual per vessel revenue loss is somewhere in between directed and incidental permit holders. The United States, however, is required to implement these measures in order to be in compliance with the Commission's recommendation 11–02 under the Atlantic Tunas Convention Act, therefore, we prefer this alternative at this time.

Under Alternative 3, the preferred alternative, NMFS would implement the swordfish minimum size portion of Recommendation 11–02 which allows a 25 inch cleithrum to caudal keel measurement. This alternative would likely have moderate beneficial economic impacts in both the short- and long-term. The 25 inch cleithrum to caudal keel minimum size is equivalent to the existing 47 inch lower jaw fork length minimum size. Currently, fishermen do not have a minimum size measurement that allows for the retention of dressed swordfish that measure at or slightly above 47 inches lower jaw fork length. If a fisherman catches a swordfish that meets the 47 inch lower jaw fork length minimum size but not the current 29 inch cleithrum to caudal keel minimum size, the fisherman must either land the fish with the head naturally attached or discard the fish. Due to storage capacity limitations and uncertainty in minimum size regulations, fishermen sometimes choose to discard fish that legally meet the 47 inch lower jaw fork length measurement but do not meet the 29 inch cleithrum to caudal keel minimum size. Similarly, dealers sometimes will not accept fish that meet the 47 inch lower jaw fork length measurement but not the 29 inch cleithrum to caudal keel minimum size. These fish are landed with the head naturally attached, but once removed, some dealers have expressed concern that a minimum size violation could occur in the absence of proof that the fish was landed with the head and met the 47 inch lower jaw fork length measurement. For these reasons, implementing the Commission's alternative minimum cleithrum to caudal keel size of 25 inches could lead to increased retention of previously discarded legal fish that measure at or slightly above 47 inches lower jaw fork length, since this cleithrum to caudal keel minimum size is equivalent to a greater number of 47 inch lower jaw fork length fish. Fish in this size range are the most frequently encountered fish; note that the figures provide lengths in centimeters, therefore, increased landings of fish in this size range are not trivial. The increase in retained catch could lead to increased annual revenues for both fishermen and dealers, resulting in direct moderate beneficial economic impacts in both the short and long-term. NMFS estimated this additional revenue to be $1,547 per swordfish permit holder annually under this alternative. These permit holders would likely experience minor beneficial economic impacts if the cleithrum to caudal keel minimum size is changed to 25 inches. Because this alternative provides these benefits to fishermen but does not lead to increased mortality of undersized swordfish, NMFS prefers this alternative at this time.

Under Alternative 4, NMFS would use the cleithrum to caudal keel measurement as the sole minimum size and discontinue the use of the lower jaw fork length minimum size in U.S. domestic fisheries. This alternative would be unlikely to have any direct socioeconomics in the short or long-term, provided that the new Commission's alternative cleithrum to caudal keel minimum size of 25 inches is implemented under Alternative 4. The current lower jaw fork length minimum size of 47 inches and the proposed cleithrum to caudal keel minimum size of 25 inches equate to the same size fish in the majority of instances. Therefore, the lower jaw fork length minimum size could be redundant with the cleithrum to caudal keel minimum size. Removal of the lower jaw fork length minimum size and use of only the cleithrum to caudal keel measurement could simplify enforcement and compliance with minimum size requirements. Additionally, since the two minimum sizes refer to the same size fish, removal of the lower jaw fork length minimum size is unlikely to result in increased landings for individual vessels. However, removing one of the minimum size measurements could reduce flexibility for fishermen in how they choose to measure and land swordfish; therefore NMFS does not prefer this alternative at this time.

Under Alternative 5, the preferred alternative, NMFS would allow the lower jaw fork length minimum size to be applied to swordfish without a bill, provided the bill has been removed forward of the anterior tip of the lower jaw. Adoption of Alternative 5 would likely result in short and long-term minor beneficial economic impacts. Swordfish are currently measured using either the lower jaw and fork of the tail (in the case of lower jaw fork length) or the cleithrum and caudal keel (in the case of cleithrum to caudal keel) as endpoints. Neither of these measurement methods require the bill of the swordfish to be attached, therefore, the bill is unnecessary in determining if a swordfish is of legal size. The bill of a swordfish can complicate fishing operations by presenting safety concerns and imposing storage capacity costs. If NMFS allows fishermen to continue to employ the lower jaw fork length measurement in the absence of the bill, commercial vessels could more efficiently pack the swordfish catch, leaving more room for additional product. This additional product could increase revenues for both fishermen and dealers, although quantifying the economic benefits on a per-vessel basis is not possible. NMFS prefers Alternative 5 at this time.

Under Alternative 6, NMFS would reintroduce the 33 pound minimum

weight standard. This alternative would be unlikely to have any net economic impacts in the short or long-term, provided that the new Commission's alternative cleithrum to caudal keel minimum size of 25 inches is implemented under Alternative 4. As discussed in the Environmental Assessment, NMFS employed the 33 pound minimum weight, in combination with two minimum lengths, until 2009. At that time, we removed the 33 pound minimum weight and specified landing condition-specific minimum sizes. The impetus for this change was twofold. First, the use of three minimum sizes (weight, lower jaw fork length, and cleithrum to caudal keel) complicated minimum size enforcement because all three measurements had to be taken to prove that a fish was undersized. This can require heavy time investments, particularly in cases with thousands of pounds of swordfish. Second, neither enforcement agents nor fishermen could definitively determine the accurate weight and subsequent legality of fish while at sea, presenting both compliance and enforcement problems. To address these enforcement and compliance complexities, NMFS simplified the swordfish minimum size requirements by removing the 33 pound minimum weight and specified landing condition-specific minimum lengths. Reintroducing the minimum dressed weight could provide some benefits and some disadvantages. The 33 pound minimum weight and the proposed 25 inch cleithrum to caudal keel minimum size equate to the same size fish in the majority of instances. The primary benefit is that fishermen might be able to retain more swordfish because some fish meet the minimum weight but not the minimum length. Reintroducing the minimum weight could provide the opportunity to retain these fish, as demonstrated in the Environmental Assessment. Disadvantages include those discussed above, including the enforcement and compliance difficulties. Since a definitive weight cannot be taken at sea, fishermen are unlikely to be able to determine the legality of swordfish weighing near 33 pounds. This presents uncertainties and compliance difficulties. The possible benefits and possible disadvantages, when taken together, result in neutral economic impacts across the fishery and to individual vessels. Additionally, since the 33 pound minimum weight and the proposed 25 inch cleithrum to caudal keel minimum size equate to the same size fish in the majority of instances, reintroducing the minimum weight standard could be unnecessary. Since Alternative 7 poses enforcement and compliance concerns, and because the economic impacts may be neutral compared to the beneficial economic impacts under Alternatives 4 and 6, NMFS does not prefer this alternative at this time. However, should the enforcement and compliance issues be resolved in the future, NMFS may reconsider reintroduction of the 33 pound minimum weight standard.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide was prepared. Copies of this final rule and compliance guide are available upon request from NMFS or on the Web page (see **ADDRESSES**).

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: July 25, 2012.

Alan D. Risenhoover,

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

For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.;* 16 U.S.C. 1801 *et seq.*

■ 2. In § 635.2, the ''LJFL'' and ''Naturally attached'' definitions are revised to read as follows:

§ 635.2 Definitions.

* * * * *

LJFL (lower jaw-fork length) means the straight-line measurement of a fish from the anterior tip of the lower jaw to the fork of the caudal fin. The measurement is not made along the curve of the body.

* * * * *

Naturally attached, as it is used to describe shark fins, refers to shark fins that remain attached to the shark carcass via at least some portion of uncut skin. As used to describe the head of a swordfish, naturally attached refers to the whole head remaining fully attached to the carcass except for the bill, which may be removed provided it has been removed forward of the anterior tip of the lower jaw.

* * * * *

■ 3. In § 635.20, paragraph (f)(2) is revised to read as follows:

§ 635.20 Size limits.

* * * * *

(f) * * *

(2) If the head of a swordfish is no longer naturally attached, the CK measurement is the sole criterion for determining the size of a swordfish. No person shall take, retain, possess, or land a dressed North or South Atlantic swordfish taken from its management unit that is not equal to or greater than 25 inches (63 cm) CK length. A swordfish that is damaged by shark bites may be retained only if the length of the remainder of the carcass is equal to or greater than 25 inches (63 cm) CK length.

* * * * *

■ 4. In § 635.27, paragraphs (c)(1)(i)(A), (c)(1)(i)(D), (c)(2)(ii), and (c)(3)(ii) are revised to read as follows:

§ 635.27 Quotas.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(A) A swordfish from the North Atlantic stock caught prior to the directed fishery closure by a vessel for which a directed fishery permit, or a handgear permit for swordfish, has been issued or is required to be issued is counted against the directed fishery quota. The total baseline annual fishery quota, before any adjustments, is 2,937.6 mt dw for each fishing year. Consistent with applicable ICCAT recommendations, a portion of the total baseline annual fishery quota may be used for transfers to another ICCAT contracting party. The annual directed category quota is calculated by adjusting for over- or underharvests, dead discards, any applicable transfers, the incidental category quota, the reserve quota and other adjustments as needed, and is subdivided into two equal semi-annual: one for January 1 through June 30, and the other for July 1 through December 31.

* * * * *

(D) Fifty (50) mt of the annual fishery quota of North Atlantic swordfish may be held in reserve for inseason adjustments to fishing categories, to compensate for projected or actual overharvest in any category, for fishery research, or for other purposes consistent with management objectives.

* * * * *

(2) * * *

(ii) If NMFS determines that the annual incidental catch quota will not be taken before the end of the fishing year, excess quota may be allocated to the directed fishery quota or to the reserve, as necessary. If NMFS determines that the annual directed catch quota will not be taken before the end of the fishing year, some of the excess quota may be allocated to the incidental fishery quota or to the reserve, as necessary.

* * * * *

(3) * * *

(ii) If consistent with applicable ICCAT recommendations, total landings above or below the specific North Atlantic or South Atlantic swordfish annual quota will be subtracted from, or added to, the following year's quota for that area. As necessary to meet management objectives, such carryover adjustments may be apportioned to fishing categories and/or to the reserve. Carryover adjustments for the North Atlantic shall be limited to 25 percent of the baseline quota allocation for that year. Carryover adjustments for the South Atlantic shall be limited to 100 mt ww (75.2 mt dw) for that year. Any adjustments to the 12-month directed fishery quota will be apportioned equally between the two semiannual fishing seasons. NMFS will file with the Office of the Federal Register for publication any adjustment or apportionment made under this paragraph.

* * * * *

[FR Doc. 2012–18672 Filed 7–30–12; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 77, No. 147
Tuesday, July 31, 2012

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

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0179]

NRC Position on the Relationship Between General Design Criteria and Technical Specification Operability

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory issue summary; public meeting and request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is holding a public meeting to discuss a draft regulatory issue summary (RIS) that clarifies the NRC staff's position on the relationship between the general design criteria (GDC) for nuclear power plants and technical specification operability. In addition, the draft RIS clarifies the process for addressing nonconformances with GDC as incorporated into a plant's current licensing basis. The NRC is also seeking public comment on the draft RIS.

DATES: Submit comments by September 14, 2012. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and is publicly available, by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0179. You may submit comments by any of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0179. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

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

FOR FURTHER INFORMATION CONTACT: Thomas Alexion, Senior Project Manager, Generic Communications Branch, Division of Policy and Rulemaking, Office Nuclear Reactor Regulation, Mail Stop: OWFN–12–D–20, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1326, email: *Thomas.Alexion@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0179 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, by any of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0179.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The draft RIS ''NRC Staff Position on the Relationship Between GDC Requirements and Technical Specification Operability,'' is available electronically under ADAMS Accession No. ML12137A346.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2012–0179 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

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

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

II. Discussion

Addressees

All holders of, and applicants for, power reactor operating licenses issued under Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, ''Domestic Licensing of Production and Utilization Facilities,'' except those that have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel.

Intent

The U.S. Nuclear Regulatory Commission (NRC) is issuing this regulatory issue summary (RIS) to clarify the relationship between Appendix A, ''General Design Criteria for Nuclear Power Plants,'' to 10 CFR part 50, and 10 CFR 50.36, ''Technical Specifications.'' In addition, the RIS is clarifying the process for addressing nonconformances with general design criteria (GDC) as incorporated into a plant's current licensing basis (CLB). This RIS does not transmit any new requirements and does not require any

specific action or written response on the part of an addressee.

Background Information

Recently, the NRC has received questions about the relationship between licensing basis design requirements, such as the GDC as incorporated into the plant CLB, and technical specification (TS) operability requirements. The relationship between CLB design requirements and the TS was addressed in a memorandum from Thomas E. Murley, Director, Office of Nuclear Reactor Regulation (NRR) to the NRR staff, dated January 24, 1994 (ADAMS Accession No. ML12115A279). The positions described in this memo were incorporated into the Inspection Manual Part 9900 Technical Guidance, ''Operability Determinations & Functionality Assessments for Resolution of Degraded or Nonconforming Conditions Adverse to Quality or Safety (Operability Determination Process),'' which was issued as the attachment to RIS 2005–20, Revision 1, ''Revision to NRC Inspection Manual Part 9900 Technical Guidance, 'Operability Determinations & Functionality Assessments for Resolution of Degraded or Nonconforming Conditions Adverse to Quality or Safety''' (ADAMS Accession No. ML073531473).

The GDCs or a plant-specific equivalent,[1] as incorporated into the CLB, have an important relationship to the operability requirements of the TS. Comprehending this relationship is critical to understanding how licensees should address nonconformances with CLB design requirements. This RIS discusses these relationships to promote a more comprehensive understanding of how the NRC requirements work in concert with TS to ensure plant safety.

Relationship of the GDC to the Technical Specifications

The GDC and the TS differ in that the GDC specify NRC's requirements for the *design* of nuclear power reactors, whereas the TS are included in the license and specify requirements for the *operation* of nuclear power reactors. Design requirements, such as GDCs or similar requirements, are typically included in the licensing basis for every nuclear power plant. GDCs, according to Appendix A to 10 CFR Part 50, ''establish the necessary design, fabrication, construction, testing, and performance requirements for structures, systems, and components (SSCs) important to safety.'' As such, the GDCs cover a broad category of SSCs that are important to safety, including those SSCs that are covered by TS. Both the design capability of the facility to meet the GDC (or a plant-specific equivalent) and the operational restrictions, which are to be included in the TS, are described in the final safety analysis report (FSAR). The staff safety evaluation documents the acceptability of these analyses, and it is the combination of the FSAR analyses and the staff safety evaluation that forms the bases from which the TS are derived. It is important to note that the GDCs cover a broader scope of SSCs than the TS because the TS establish, among other things, the limiting conditions for operations (LCOs). LCOs are the ''lowest functional capability or performance levels of equipment required for safe operation of the facility.'' Section 182 of the Atomic Energy Act of 1954, as amended and as implemented by 10 CFR 50.36, requires that those design features of the facility that, if altered or modified, would have a significant effect on safety, be included in the TS. Thus, TS are intended to ensure that the most safety-significant design features of a plant, as determined by the safety analysis, maintain their capability to perform their safety functions.

Technical Specification Operability Determinations and the GDC

Recently, the NRC staff learned that some licensees follow their corrective action program for an identified nonconformance with a CLB design requirement, such as a GDC, or a plant-specific equivalent, that is part of the plant's CLB without consideration of the need to apply the Part 9900 operability determination process. To the NRC staff it appears that not every licensee understands the relationship between CLB design requirements and TS requirements for nonconforming conditions or that the Part 9900 operability determination process also applies to nonconforming conditions.

As noted in the January 24, 1994, memo, not all GDCs that are included in the CLB are explicitly identified in TS. However, those that are not explicitly identified may still need to be considered when either determining or to establish the basis for operability of TS SSCs. It is the staff's position that any nonconformance with a GDC, or a plant-specific equivalent included in the CLB should be evaluated to determine if the nonconformance affects or alters the operability status of a TS SSC.

As set forth in Part 9900, a documented determination is needed to establish the basis for concluding that an SSC remains capable of performing its safety function in the presence of the nonconforming condition. Part 9900 states that a ''degraded condition is one in which the qualification of an SSC or its functional capability is reduced.'' Similarly, Part 9900 defines a nonconforming condition as ''a condition of an SSC that involves a failure to meet the CLB or a situation in which quality has been reduced because of factors such as improper design, testing, construction, or modification.'' Examples of nonconforming conditions include: (1) An SSC that fails to conform to one or more applicable codes or standards (e.g., the CFR, operating license, TS, updated final safety analysis report, or licensee commitments), (2) an as-built or as-modified SSC that does not meet the current licensing basis, (3) operating experience or engineering reviews that identify a design inadequacy, or (4) documentation required by NRC requirements such as 10 CFR 50.54, ''Conditions of licenses,'' or 10 CFR 50.59, ''Changes, Tests, and Experiments,'' that is unavailable or deficient.

Section 3.8 of Part 9900 covers the definition of operability. The definition includes the following statement:

> In order to be considered operable, an SSC must be capable of performing the safety functions *specified by its design, within the required range of design physical conditions,* initiation times, and mission times. [Emphasis added]

Section 4.0 of Part 9900 states the following:

> Determinations of operability are appropriate whenever a review, TS surveillance, or other information calls into question the ability of SSCs to perform specified safety functions. The operability determination process is used to assess operability of SSCs and support functions for compliance with TS *when a degraded or nonconforming condition is identified for a specific SSC described in TS, or when a degraded or nonconforming condition is identified for a necessary and related support function.* [Emphasis added]

Section 3.10 of Part 9900 further defines ''specified function/specified safety function'' as follows:

> The specified function(s) of the system, subsystem, train, component, or device (required by the definition of operability) is that specified safety function(s) in the CLB for the facility. In addition to providing the specified safety function required by the TSs definition of operability, a system is expected

[1] For example, plants with construction permits issued prior to May 21, 1971, may have been approved for construction based on the proposed General Design Criteria published by the Atomic Energy Commission (AEC) in the **Federal Register** (32 FR 10213) on July 11, 1967, sometimes referred to as the AEC Draft GDC.

to perform *as designed, tested and maintained.* When system capability is degraded to a point where it cannot perform with reasonable expectation or reliability, the system should be judged inoperable, even if at this instantaneous point in time the system could provide the specified safety function. [Emphasis added]

Thus, an operability determination (or functionality assessment) is performed upon identification of a degraded or nonconforming condition, including any nonconforming condition with a GDC included in either the CLB for an SSC described in TS or for a necessary and related support function required by the definition of operability. If the licensee determination concludes that the TS SSC is nonconforming but operable or the necessary and related support function is nonconforming but functional, it would be appropriate to address the nonconforming condition through the licensee's corrective action program. As stated in Section 6.3 of Part 9900:

The purpose of an operability determination is to provide a basis for making a timely decision on plant operation when a degraded or nonconforming condition is discovered. Corrective actions taken to restore full qualification should be addressed through the corrective action process. The treatment of operability as a separate issue from the restoration of full qualification emphasizes that the operability determination process is focused on safe plant operation and should not be impacted by decisions or actions necessary to plan and implement corrective action (i.e., restore full qualification).

Example: Operability Determination for a Nonconformance with GDC 2 for Natural Phenomenon

The following example discusses a nonconforming condition that involves a failure to meet the current licensing basis because of improper construction:

As indicated in the January 24, 1994, memo, the design bases for protection against natural phenomena (GDC 2), when included in the CLB, are inherently considered in the operability of safety-related SSCs that satisfy the criteria for inclusion in the TS. The Part 9900 operability determination process should be entered when a licensee identifies any nonconformance with GDC 2 or its equivalent, as incorporated into a plant licensing basis (e.g., nonconformance with the CLB for protection against flooding, seismic events, tornadoes, etc.). Criterion 2 of the GDC states:

Design bases for protection against natural phenomena. Structures, systems, and components important to safety shall be designed to withstand the effects of natural phenomena such as earthquakes, tornadoes, hurricanes, floods, tsunami, and seiches without loss of capability to perform their safety functions. The design bases for these structures, systems, and components shall reflect: (1) Appropriate consideration of the most severe of the natural phenomena that have been historically reported for the site and surrounding area, with sufficient margin for the limited accuracy, quantity, and period of time in which the historical data have been accumulated, (2) appropriate combinations of the effects of normal and accident conditions with the effects of the natural phenomena and (3) the importance of the safety functions to be performed.

Licensees can implement GDC 2 in the design by specifying design bases for combinations of normal and accident conditions to protect SSCs from the effects of natural phenomena. Failure to meet GDC 2, as described in the licensing basis should be treated as a nonconforming condition and is an entry point for an operability determination for any impacted TS-required SSC or a necessary and related support function.

For example, if a licensee with GDC 2 in its CLB identified that the exhaust stacks for the emergency diesel generators (EDGs) were not protected from the impact of tornado missiles, then this condition would call into question the operability of the EDGs. EDG operability is called into question because the exhaust stacks are an integral component of the EDGs, which, if crimped by a missile, could prevent the EDGs from performing their specified safety function. Accordingly, the licensee should then enter the operability determination process to evaluate the impact of not meeting the CLB requirement for tornado missile protection. If the licensee's evaluation concludes that the EDGs are inoperable, then the licensee must enter its TS and follow the applicable required actions. As stated in Section 7.3 of Part 9900, the licensee may implement compensatory measures to restore ''inoperable SSCs to an operable but degraded or nonconforming status. In general, these measures should have minimal impact on the operators or plant operations and should be relatively simple to implement.'' If the licensee successfully implements compensatory measures to restore the inoperable EDGs to an operable but nonconforming status; or if the licensee's operability determination evaluation concludes that the EDGs are operable and nonconforming, then the licensee should use its corrective action program to bring the EDGs back into conformance with the CLB.

Summary

In summary, TS SSCs must be capable of performing their specified safety function (i.e., be operable or have operability) whenever a plant is operating in the modes and other specified conditions of the applicability of TS limiting conditions for operation. In addition to providing the safety function, a system is expected to perform as designed, tested, and maintained. Any nonconformance with a GDC in the CLB has the potential to negatively impact the operability of a TS SSC and must be evaluated to determine if the nonconforming condition has rendered any TS SSC inoperable. When system capability is degraded to a point in which it cannot perform with reasonable expectation or reliability, the system should be judged inoperable, even if the system could provide the specified safety function at this instantaneous point in time.

Backfit Discussion

This RIS provides information concerning the NRC staff position on the relationship between Appendix A to 10 CFR part 50 and 10 CFR 50.36 so that the stakeholders may understand the requirements of the regulations more broadly. This RIS is identical to earlier NRC positions on the relationship of the GDC and the TS and, therefore, is not a backfit under 10 CFR 50.109, ''Backfitting.'' Consequently, the NRC staff did not perform a backfit analysis.

Federal Register *Notification*

[Discussion to be provided in final RIS]

Congressional Review Act

[Discussion to be provided in final RIS]

Paperwork Reduction Act Statement

This RIS does not contain any new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing collection requirements under 10 CFR part 50 were approved by the Office of Management and Budget, control number 3150–0011.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, an information collection unless the requesting document displays a currently valid OMB control number.

III. Public Meeting

The NRC plans to hold a public meeting on August 8, 2012, to discuss the draft RIS and to obtain feedback from members of the public. The public meeting notice is available electronically under ADAMS Accession No. ML12188A402. In addition, the meeting agenda will be posted on the NRC's Public Meeting Schedule Web site at *http://www.nrc.gov/public-*

involve/public-meetings/index.cfm. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been cancelled or rescheduled, and the time allotted for public comments can be obtained from the Public Meeting Schedule Web site.

Dated at Rockville, Maryland, this 24th day of July 2012.

For the Nuclear Regulatory Commission.

David L. Pelton,

Chief, Generic Communications Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–18639 Filed 7–30–12; 8:45 am]

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 700, 701, 741 and 750

RIN 3133–AD97

Definition of Troubled Condition

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule with request for comments.

SUMMARY: NCUA proposes to amend the definition of ''troubled condition'' as that term appears in § 701.14 and elsewhere in NCUA's regulations. Generally, under the current definition, only a state supervisory authority (SSA) may declare a federally insured, state-chartered credit union (FISCU) to be in ''troubled condition.'' The proposal expands the definition to permit either NCUA or an SSA to declare a FISCU to be in ''troubled condition.''

DATES: Comments must be received on or before October 1, 2012.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *NCUA Web Site: http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx.* Follow the instructions for submitting comments.
- *Email:* Address to *regcomments@ncua.gov.* Include ''[Your name]—Comments on Notice of Proposed Rulemaking for Parts 700, 701, 741 and 750'' in the email subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for email.
- *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

Public Inspection: You can view all public comments on NCUA's Web site at *http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx* as submitted, except for those we cannot post for technical reasons. NCUA will not edit or remove any identifying or contact information from the public comments submitted. You may inspect paper copies of comments in NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an email to *OGCMail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Steven W. Widerman, Staff Attorney, Office of General Counsel, at the above address or by telephone: (703) 518–6557.

SUPPLEMENTARY INFORMATION:

I. Background

1. *Notification and Disapproval of Change in Officials.* In 1989, the Financial Institutions Reform, Recovery and Enforcement Act, Public Law 101–73, 103 Stat. 183 (1989), amended the Federal Credit Union Act (the Act) to require a federally insured credit union, under two conditions, to notify NCUA prior to adding or replacing any individual serving as a member of the board of directors or of a committee, or employed as a senior executive officer (together, officials). 12 U.S.C. 1790a. One condition is if the insured credit union has been chartered less than 2 years. 12 U.S.C. 1790a(a)(1). The other condition is if the insured credit union ''is in troubled condition, as determined on the basis of such credit union's most recent report of condition or report of examination.'' 12 U.S.C. 1790a(a)(2).

An insured credit union that meets either condition may not add or replace an official if the NCUA issues a Notice of Disapproval in response to a notification of a change in officials. 12 U.S.C. 1790a(b). NCUA may disapprove an individual when ''the competence, experience, character, or integrity of the individual * * * indicates that it would not be in the best interests'' of the credit union's members or the public for the individual to serve. 12 U.S.C. 1790a(e). The credit union may appeal the disapproval to the NCUA Board. 12 CFR 747.904.

2. *Current Definition of ''Troubled Condition''.* To implement the notification requirement, the Act required NCUA to prescribe by regulation a definition for the term ''troubled condition.'' 12 U.S.C. 1790a(f). Since 1990, the NCUA Board has defined a natural person credit union in ''troubled condition'' as either: (1) A federal credit union that has been assigned a ''4'' or ''5'' composite CAMEL rating by NCUA; (2) a FISCU that has been assigned a ''4'' or ''5'' composite CAMEL rating by its SSA; (3) a FISCU that has been assigned a ''4'' or ''5'' composite CAMEL rating by NCUA based on core workpapers received from an SSA; or (4) a federal credit union or FISCU that has received special assistance under sections 208 or 216 of the Act to avoid liquidation. 12 CFR 701.14(b)(3); 55 FR 43086 (Oct. 26, 1990).

In 1999, the NCUA Board adopted a separate definition of ''troubled condition'' for corporate credit unions in order to conform to the Corporate Risk Information System (CRIS). 64 FR 28715 (May 27, 1999). Under that definition, a corporate credit union that is in ''troubled condition'' is either: (1) A corporate federal credit union that is assigned a ''4'' or ''5'' CRIS rating by NCUA in either the Financial Risk or Risk Management composites; (2) a corporate FISCU that is assigned a ''4'' or ''5'' CRIS rating by its SSA in either the Financial Risk or Risk Management composites or, if the state has not adopted CRIS, is assigned a ''4'' or ''5'' composite CAMEL rating by its SSA; (3) a corporate FISCU that is assigned a ''4'' or ''5'' CRIS rating in either the Financial Risk or Risk Management composites by NCUA based on core workpapers received from an SSA in a state that does not use either the CRIS or CAMEL rating systems; or (4) a corporate federal credit union or corporate FISCU that has received special assistance under sections 208 or 216 of the Act to avoid liquidation. 12 CFR 701.14(b)(4).

The ''troubled condition'' definitions for natural person credit unions and corporate credit unions have until now remained unchanged through several modifications to other parts of § 701.14,[1] and the definitions have since been incorporated by reference in parts 711, 741, 747 and 750 of NCUA regulations.

II. Proposed Rule

1. Part 701—Proposed Definition of ''Troubled Condition''

The proposed amendments to the definition of ''troubled condition'' primarily affect natural person FISCUs and corporate FISCUs. Under current

[1] 59 FR 36042 (July 15, 1994) (change of NCUA address); 60 FR 31911 (June 19, 1995) (correcting U.S. Code citation); 66 FR 65622 (Dec. 20, 2001) (substitution of new § 216 for repealed § 116 of the Act); 69 FR 62562 (Oct. 27, 2004) (commencement of service while notification is pending); 75 FR 34620 (June 18, 2010) (changed ''Camel'' to ''CAMEL'').

§ 701.14(b), the CAMEL or CRIS rating assigned by an SSA alone determines if a FISCU is in ''troubled condition.'' 12 CFR 701.14(b)(3)(i)(B), 701.14(b)(4)(i)(B). The proposed rule would define a FISCU as in ''troubled condition'' not just when its SSA assigns it a ''4'' or ''5'' composite CAMEL rating or a ''4'' or ''5'' CRIS rating in either the Financial Risk or Risk Management composites, but when *either* its SSA or NCUA assigns such a rating.

As administrator of the National Credit Union Share Insurance Fund (Fund), the NCUA Board is responsible for taking proactive steps to protect the Fund. NCUA is uniquely positioned to observe national trends in the credit union industry that can affect the Fund. For example, NCUA has seen an increase in the number of credit unions with assets between $250 million and $500 million that have experienced some degree of financial stress. In response to this monitoring, NCUA has increased the number of joint FISCU examinations in which it participates with SSAs. Previously, NCUA generally would only participate in joint examinations of FISCUs with assets over $500 million. More recently, NCUA has begun participating in joint examinations of FISCUs over $250 million. As a result, the number of hours NCUA examiners spend participating in joint examinations has nearly doubled. The NCUA Board emphasizes, however, that only the time spent on joint examinations has doubled, not the number of FISCUs experiencing difficulties.

Statistics indicate that in approximately 2 to 4 percent of all joint FISCU examinations, either the variation between NCUA's CAMEL rating and that given by the applicable SSA made the difference between a troubled versus an untroubled FISCU (*i.e.,* a ''4'' versus a ''3''), or the SSA's troubled rating was lower than that given by NCUA (*i.e.,* a ''5'' instead of a ''4''). These statistics show that disagreement between an SSA and NCUA on a FISCU rating could result from either regulator issuing the higher or lower score. When the variation in scores determines whether a FISCU is troubled versus untroubled, it is significant from a supervisory perspective.

The primary purpose of the proposal is to guard against this ratings discrepancy as a precaution to protect the Fund. Expanding the definition of ''troubled condition'' as proposed enhances the likelihood that problems in a particular FISCU will be identified and corrected because it permits the full utilization of the resources of both the related SSA and the NCUA. NCUA's national perspective and an SSA's in-depth familiarity with local trends complement each other in that effort.

The proposal also makes some technical corrections to § 701.14. For example, § 701.14(b)(3)(ii) and 701.14(b)(4)(ii) of the current rule also define a federally insured credit union as in ''troubled condition'' if it ''has been granted assistance as outlined under Sections 208 or 216 of the Federal Credit Union Act.'' 12 CFR 701.14(b)(3)(ii), 701.14(b)(4)(ii). The citation to section 216 of the Act, 12 U.S.C. 1790d, is inapplicable because it does not pertain to assistance to credit unions.[2] Accordingly, the proposed rule modifies this ''troubled condition'' criterion by deleting the reference to section 216 of the Act, while preserving the reference to assistance under section 208 of the Act. 12 U.S.C. 1788.

The current rule allows NCUA to assign a FISCU's CAMEL rating ''based on core workpapers received from the state supervisor in the case of a [FISCU] in a state that does not use the CAMEL system.'' 12 CFR 701.14(b)(3)(i)(C). Today, all states use the CAMEL system, rendering this alternative obsolete. The proposed rule therefore eliminates it.

Similarly, the current rule allows a state that does not use the CRIS system in rating its corporate FISCUs to instead use the CAMEL rating system. 12 CFR 701.14(b)(4)(i)(B). If a state uses neither the CRIS system nor the CAMEL system, the current rule allows NCUA to assign a CRIS rating ''based on core workpapers received from the state supervisor.'' 12 CFR 701.14(b)(4)(i)(C). However, with the recapitalization and restructuring of the corporate credit union system since 2009, all of the states having jurisdiction over the ten current corporate FISCUs now use the CRIS rating system. The proposed rule therefore eliminates as moot the alternatives of using the CAMEL system to rate corporate FISCUs, and of having NCUA assign CRIS ratings to corporate FISCUs in place of a state that uses neither the CAMEL nor the CRIS rating system.

[2] Section 116 of the Act [reserve transfers], 12 U.S.C. 1762, the predecessor to section 216 of the Act [prompt corrective action], 12 U.S.C. 1790d, was repealed in 1998. Public Law 105–219, § 301(g)(3), 112 Stat. 913, 931 (1998). In 2001, the citations to repealed section 116 of the Act in § 701.14 were replaced with references to section 216 of the Act. 66 FR 65622 (Dec. 20, 2001). Neither section 116 nor 216 of the Act, however, pertain to providing assistance to credit unions, making assistance under either section illusory as a criterion of ''troubled condition.''

2. Part 700—Definition of ''Troubled Condition''

The definition of ''troubled condition'' in § 701.14(b) is incorporated by reference in parts 711 [management official interlocks], 741 [requirements for insurance], 747 [challenge to disapproval of change in officials] and 750 [golden parachute and indemnification payments] of NCUA's regulations. 12 CFR 711.6(a), 741.205, 747.901, 750.1(e)(1) and 750.1(l). For purposes of convenience, uniformity, and ease of cross-referencing, the proposed rule adds to part 700 [general definitions] the definition of ''troubled condition'' for natural person and corporate credit unions exactly as revised in proposed § 701.14(b)(3) and (4).

3. Part 741—Technical Correction

In the case of a FISCU chartered less than 2 years or in ''troubled condition,'' current § 741.205 requires NCUA, before disapproving a change in officials, to ''consult with the state supervisor before making its determination pursuant to § 701.14 (d)(2) and (f) of this chapter. NCUA will notify the state supervisor of its approval/disapproval no later than the time that it notifies the affected individual pursuant to § 701.14(d)(1) of this chapter.'' 12 CFR 741.205. The citations in both sentences are incorrect as § 701.14 has no subsections (d)(1), (d)(2) or (f). The proposed rule deletes those incorrect citations without affecting the meaning of § 741.205.

III. Comments

NCUA welcomes public comment on this proposed rule. To facilitate consideration of the public's views, we ask commenters to organize and identify their comments by corresponding topic, part number or definition. General comments, if any, should be included in a separately identified section. Please recognize that the requirement that a troubled credit union notify NCUA of a change in officials is prescribed by statute. Therefore, this rulemaking will not address comments suggesting that NCUA ignore or eliminate this requirement.

IV. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small credit unions (primarily those under $10 million in assets). This proposed rule does not impose any requirements on small credit unions. NCUA has

determined this proposed rule will not have a significant economic impact on a substantial number of small credit unions, so NCUA is not required to conduct a regulatory flexibility analysis.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or increases an existing burden. 44 U.S.C. 3507(d); 5 CFR part 1320. For purposes of the PRA, a paperwork burden may take the form of either a reporting or a recordkeeping requirement, both referred to as information collections. NCUA has determined that the proposed rule does not impose a new information collection requirement or increase an existing burden.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles. This proposed rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

Treasury and General Government Appropriations Act, 1999

NCUA has determined that this proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

List of Subjects

12 CFR Part 700

Credit unions, Definitions.

12 CFR Part 701

Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 741

Credit unions, Requirements for insurance.

12 CFR Part 750

Credit unions, Golden parachute payments, Indemnity payments.

By the National Credit Union Administration Board on July 24, 2012.

Mary Rupp,

Secretary of the Board.

For the reasons set forth above, NCUA proposes to amend 12 CFR parts 700, 701, 741, and 750 as follows:

PART 700—DEFINITIONS

1. The authority citation for part 700 continues to read as follows:

Authority: 12 U.S.C. 1752, 1757(6), 1766.

2. Amend § 700.2 by redesignating paragraph (j) as (k) and adding new paragraph (j) to read as follows:

§ 700.2 Definitions.

* * * * *

(j) *Troubled condition* means:

(1) In the case of an insured natural person credit union:

(i) A federal credit union that has been assigned a 4 or 5 CAMEL composite rating by NCUA; or

(ii) A federally insured, state-chartered credit union that has been assigned a 4 or 5 CAMEL composite rating by either NCUA or its state supervisor; or

(iii) A federal credit union or a federally insured, state-chartered credit union that has been granted assistance under section 208 of the Federal Credit Union Act, 12 U.S.C. 1788.

(2) In the case of an insured corporate credit union:

(i) A federal credit union that has been assigned a 4 or 5 Corporate Risk Information System (CRIS) rating by NCUA in either the Financial Risk or Risk Management composites; or

(ii) A federally insured, state-chartered credit union that has been assigned a 4 or 5 CRIS rating by either NCUA or its state supervisor in either the Financial Risk or Risk Management composites; or

(iii) A federal credit union or a federally insured, state-chartered credit union that has been granted assistance under section 208 of the Federal Credit Union Act, 12 U.S.C. 1788.

* * * * *

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

3. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761A, 1761B, 1766, 1767, 1782, 1784, 1786, 1787, 1789, section 701.6 is also authorized by 15 U.S.C. 1601, et seq.; 42 U.S.C. 1981 and 3601–3610, section 701.35 is also authorized by 42 U.S.C. 4311–4312.

4. Revise § 701.14(b)(3) and § 701.14(b)(4) to read as follows:

§ 701.14 Change in official or senior executive officer in credit unions that are newly chartered or are in troubled condition.

* * * * *

(b) * * *

(3) In the case of an insured natural person credit union, *Troubled condition* means:

(i) A federal credit union that has been assigned a 4 or 5 CAMEL composite rating by NCUA; or

(ii) A federally insured, state-chartered credit union that has been assigned a 4 or 5 CAMEL composite rating by either NCUA or its state supervisor; or

(iii) A federal credit union or a federally insured, state-chartered credit union that has been granted assistance under section 208 of the Federal Credit Union Act, 12 U.S.C. 1788.

(4) In the case of an insured corporate credit union, *Troubled condition* means:

(i) A federal credit union that has been assigned a 4 or 5 Corporate Risk Information System (CRIS) rating by NCUA in either the Financial Risk or Risk Management composites; or

(ii) A federally insured, state-chartered credit union that has been assigned a 4 or 5 CRIS rating by either NCUA or its state supervisor in either the Financial Risk or Risk Management composites; or

(iii) A federal credit union or a federally insured, state-chartered credit union that has been granted assistance under section 208 of the Federal Credit Union Act, 12 U.S.C. 1788.

PART 741—REQUIREMENTS FOR INSURANCE

5. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766, 1781—1790, and 1790d. Section 741.4 is also authorized by 31 U.S.C. 3717.

6. Amend § 741.205 by revising the last two sentences to read as follows:

§ 741.205 Reporting requirements for credit unions that are newly chartered or in troubled condition.

* * * NCUA will consult with the state supervisor before making its determination. NCUA will notify the state supervisor of its approval/disapproval no later than the time that it notifies the affected individual.

PART 750—GOLDEN PARACHUTE AND INDEMNIFICATION PAYMENTS

7. The authority citation for part 750 continues to read as follows:

Authority: 12 U.S.C. 1786(t).

8. Amend § 750.1 by revising paragraph (e)(1)(ii) to read as follows:

§ 750.1 Definitions.

* * * * *

(ii) * * *

(C) The federally insured credit union is in troubled condition as defined in § 700.2(j) of this chapter; or

(D) In the case of a corporate credit union, the federally insured credit union is undercapitalized as defined in § 704.4 of this chapter; or

(E) The federally insured credit union is subject to a proceeding to terminate or suspend its share insurance; and

* * * * *

9. Remove paragraph (l) of § 750.1.

[FR Doc. 2012–18560 Filed 7–30–12; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0725; Directorate Identifier 2011–NM–207–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Bombardier, Inc. Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), CL–600–2B16 (CL–601–3A, CL–601–3R, & CL–604 Variants) airplanes. This proposed AD was prompted by reports of cracking found on the upper and lower web of the engine support beam. This proposed AD would require revising the maintenance program. We are proposing this AD to detect and correct fatigue cracking of the engine support beam, which could result in failure of the engine support beam and affect the structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by September 14, 2012.

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

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

For service information identified in this proposed AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Stephen Kowalski, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7327; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0725; Directorate Identifier 2011–NM–207–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2011–33, dated August 16, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Cracks on the upper and lower web of the Engine Support Beam (ESB) have been discovered on two (2) Challenger aeroplanes in service. Failure of the ESB could adversely affect the structural integrity of the aeroplane.
>
> A Temporary Revision (TR) has been made to the Time Limits/Maintenance Checks (TLMC) manual to introduce a new Airworthiness Limitations (AWL) task to ensure that fatigue cracking of the ESB is detected and corrected.
>
> This [TCCA] directive mandates the incorporation of the new AWL task.

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

Relevant Service Information

Bombardier, Inc. has issued the following temporary revisions. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

- Task 53–10–00–198, Torque Box specified in Canadair Challenger Temporary Revision (TR) 5–151, dated May 31, 2011, to the Canadair Challenger Time Limits/Maintenance Checks Manual, PSP 605 (for Model CL–600–1A11 (CL–600) airplanes).
- Task 53–10–00–198, Engine Support Beam specified in Canadair Challenger TR 5–250, dated May 31, 2011, to the Canadair Challenger Time Limits/Maintenance Checks Manual, PSP 601–5 (for Model CL–600–2A12 (CL–601) airplanes).
- Task 53–10–00–198, Engine Support Beam specified in Canadair Challenger TR 5–261, dated May 31, 2011, to the Canadair Challenger Time Limits/Maintenance Checks Manual, PSP 601A–5 (for Model CL–600–2B16 (CL–601–3A and CL–601–3R Variants) airplanes).
- Task 53–30–00–155, Detailed Inspection of the Engine Support Beam specified in Bombardier Challenger 604 TR 5–2–47, dated May 31, 2011, to the Bombardier Challenger 604 Time Limits/Maintenance Checks Manual (for Model CL–600–2B16 (CL–604 Variants) airplanes).
- Task 53–30–00–155, Detailed Inspection of the Engine Support Beam

specified in Bombardier Challenger 605 TR 5–2–9, dated May 31, 2011, to the Bombardier Challenger 605 Time Limits/Maintenance Checks Manual (for Model CL–600–2B16 (CL–604 Variants) airplanes).

FAA's Determination and Requirements of This Proposed AD

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 111 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $9,435, or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Bombardier, Inc.: Docket No. FAA–2012–0725; Directorate Identifier 2011–NM–207–AD.

(a) Comments Due Date

We must receive comments by September 14, 2012.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to the airplane models specified in paragraphs (c)(1)(i), (c)(1)(ii), (c)(1)(iii), and (c)(1)(iv) of this AD, certificated in any category.

(i) Bombardier, Inc. Model CL–600–1A11 (CL–600), serial numbers 1004 through 1085 inclusive.

(ii) Bombardier, Inc. Model CL–600–2A12 (CL–601), serial numbers 3001 through 3066 inclusive.

(iii) Bombardier, Inc. Model CL–600–2B16 (CL–601–3A and CL–601–3R Variants), serial numbers 5001 through 5194 inclusive.

(iv) Bombardier, Inc. Model CL–600–2B16 (CL–604 Variants), serial numbers 5301 through 5665 inclusive, and 5701 and subsequent.

(2) This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (j) of this AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in FAA Advisory Circular (AC) 25.1529–1A, dated November 20, 2007 (*http://rgl/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/0/E4111B5537E0B345862573B0006FA23B?OpenDocument*).

(d) Subject

Air Transport Association (ATA) of America Code 05, Periodic Inspections.

(e) Reason

This AD was prompted by reports of cracking found on the upper and lower web of the engine support beam. We are issuing this AD to detect and correct fatigue cracking of the engine support beam, which could result in failure of the engine support beam and affect the structural integrity of the airplane.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Time Limits/Maintenance Checks (TLMC) Manual Revision

Within 60 days after the effective date of this AD, revise the maintenance program to incorporate the applicable information specified in paragraphs (g)(1) through (g)(4) of this AD.

(1) For Model CL–600–1A11 (CL–600) airplanes: Task 53–10–00–198, Torque Box, specified in Canadair Challenger TR 5–151, dated May 31, 2011, to the TLMC Manual, PSP 605.

(2) For Model CL–600–2A12 (CL–601 Variant) airplanes: Task 53–10–00–198, Engine Support Beam, specified in Canadair Challenger TR 5–250, dated May 31, 2011, to the TLMC Manual, PSP 601–5.

(3) For Model CL–600–2B16 (CL–601–3A and CL–601–3B Variant) airplanes: Task 53–10–00–198, Engine Support Beam, specified in Canadair Challenger TR 5–261, dated May 31, 2011, to the TLMC Manual, PSP 601A–5.

(4) For Model CL–600–2B16 (CL–604 Variant) airplanes: Task 53–30–00–155, Detailed Inspection of the Engine Support Beam, specified in Bombardier Challenger 604 TR 5–2–47, dated May 31, 2011, to the Bombardier Challenger 604 TLMC Manual; or Task 53–30–00–155, Detailed Inspection of the Engine Support Beam, specified in Bombardier Challenger 605 TR 5–2–9, dated

May 31, 2011, to the Bombardier Challenger 605 TLMC Manual.

Note 1 to paragraph (g) of this AD: The maintenance program revision required by paragraph (g) of this AD may be done by inserting a copy of Bombardier Temporary Revision (TR) 5–151, TR 5–250, TR 5–261, and TR 5–2–47 or TR 5–2–9, all dated May 31, 2011, into the applicable TLMC manual. When the TR has been included in general revisions of the TLMC manual, the general revisions may be inserted in the TLMC manual, provided the relevant information in the general revision is identical to that in the applicable TR specified in paragraphs (g)(1) through (g)(4) of this AD.

(h) Initial Compliance Times for Inspections

The initial compliance time for the inspections specified in the temporary revisions specified in paragraphs (g)(1) through (g)(4) of this AD, is before the accumulation of 7,800 total flight cycles, or within 12 months after the effective date of this AD, whichever occurs later.

(i) No Alternative Actions or Intervals

After accomplishing the revision required by paragraph (g) of this AD, no alternative actions (e.g., inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j) of this AD.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, New York Aircraft Certification Office, ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/ certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(k) Related Information

(1) Refer to MCAI Canadian Airworthiness Directive CF–2011–33, dated August 16, 2011, and the temporary revisions specified in paragraphs (g)(1) through (g)(4) of this AD, for related information.

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on July 20, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–18585 Filed 7–30–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0662; Airspace Docket No. 08–AWA–2]

RIN 2120–AA66

Proposed Modification of Class B Airspace Area; Philadelphia, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify the Philadelphia, PA, Class B airspace area to ensure the containment of large turbine-powered aircraft within Class B airspace, reduce controller workload, and reduce the potential for midair collision in the Philadelphia terminal area.

DATES: Comments must be received on or before October 1, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; telephone: (202) 366–9826. You must identify FAA Docket No. FAA–2012–0662 and Airspace Docket No. 08–AWA–2, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace, Regulations and ATC Procedures Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2012–0662 and Airspace Docket No. 08–AWA–2) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Nos. FAA–2012–0662 and Airspace Docket No. 08–AWA–2.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Ave., College Park, GA 30337.

Persons interested in being placed on a mailing list for future NPRMs should

contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

In December 1974, the FAA issued a final rule that established the Philadelphia, PA, Terminal Control Area (TCA) with an effective date of March 27, 1975 (39 FR 43710). In 1993, as part of the Airspace Reclassification Final Rule (56 FR 65638), the term ''terminal control area'' was replaced by ''Class B airspace area.''

The primary purpose of Class B airspace is to reduce the potential for midair collisions in the airspace surrounding airports with high density air traffic operations by providing an area in which all aircraft are subject to certain operating rules and equipment requirements. FAA policy requires that Class B airspace areas be designed to contain all instrument procedures and that air traffic controllers vector aircraft to remain within Class B airspace after entry. Controllers must inform the aircraft when leaving and re-entering Class B airspace if it becomes necessary to extend the flight path outside Class B airspace for spacing. However, in the interest of safety, FAA policy dictates that such extensions be the exception rather than the rule.

The configuration of the Philadelphia Class B airspace area has not been modified since its establishment as a TCA in 1975. Since then, increasing operations have prompted a number of changes at the Philadelphia International Airport (PHL). For example, a new runway (8/26) was opened for use in December 1999; Precision Runway Monitor procedures were implemented in 2003, which permitted the use of independent ILS approaches to Runways 27L and 26; and in early 2009, Runway 17/35 was extended to accommodate continued growth in arrival demand. The newly extended runway alleviated congestion and delays on the airport's two major runways. However, the Class B configuration has not kept pace with airport expansion and increasing operations, and the current design makes it difficult to comply with FAA's policy to contain certain aircraft operations within Class B airspace.

Most aircraft operations at PHL are conducted on parallel Runways 9L/R and 27L/R. Wind conditions dictate operating on a west operation (i.e., landing and departing to the west) approximately 75 percent of the year. On a west operation, Runways 27R, 27L and 26 are in use. On an east operation, Runways 9L/R are in use. The crosswind Runway (17/35) is also utilized during both operations.

Changes Needed to Existing Class B Airspace

The current Class B design does not fully contain turbine-powered aircraft once they have entered the airspace as required by FAA policy. This deficiency also contributes to increased air traffic controller workload and frequency congestion. Aircraft on all final approach courses drop below the existing floor of the Class B airspace while flying published ILS procedures. This has been documented using the Performance Data Analysis and Reporting System (PDARS) tool. Lower Class B airspace floors are needed to protect all final approach courses and downwinds. A major area of concern is the truncated boundary along the southeast quadrant of the PHL Class B. The original purpose of this area was to allow aircraft inbound to LaGuardia, Newark and McGuire airports to fly up Federal airways east of PHL without infringing on the Philadelphia Class B airspace area. However, this Class B configuration on the southeast side is inadequate to contain aircraft on the downwind and final approach courses for Runway 27 and Runway 35.

Pre-NPRM Public Input

The FAA prepared a preliminary design of the proposed PHL Class B modifications to illustrate the need for change and to serve as a basis for ad hoc committee review. In part, the preliminary design featured a proposed expansion of the surface area from the current 6-miles to 8-miles; expansion of the outer limit of Class B airspace from 20-miles to 24-miles around the majority of the area; lower floors of Class B airspace in certain subareas; and a cutout around Cross Keys Airport, NJ (17N).

An ad hoc committee was formed in 2009 to review the Philadelphia Class B airspace and provide recommendations to the FAA about the proposed design. Meetings were held in March and May of 2009 at the Delaware Valley Regional Planning Commission's Office of Aviation in Philadelphia, PA.

In addition, as announced in the **Federal Register** of November 30, 2010 (75 FR 74127), six informal airspace meetings were held in the Philadelphia area. The meetings were held on: February 15, 2011, at New Castle Airport, New Castle, DE; February 16, 2011, at New Garden Airport, Toughkenamon, PA; February 17 and February 22, 2011, at Wings Field, Blue Bell, PA; February 23, 2011, at Flying W Airport, Medford, NJ; and February 24, 2011, at Freefall Adventures Skydive School, Williamstown, NJ. The purpose of the meetings was to provide interested airspace users an opportunity to present their views and offer suggestions regarding the proposed modifications to the Philadelphia Class B airspace area.

Discussion of Recommendations and Comments

Ad hoc Committee Input

The ad hoc committee provided the following input on the proposed Philadelphia Class B modifications.

The Committee asked that the surface area cutout be expanded to include Cooper Hospital and Penn's Landing Heliport (P72) to allow Medevac helicopter operations below 1,500 feet, and that an additional ring be created from 6 miles to 8 miles with a 1,000 foot floor so that flights from the Pottstown area could navigate to the Philadelphia center city hospital areas without entering Class B airspace.

The FAA expanded the proposed cutout northeast of PHL to include both Cooper Hospital and Penn's Landing heliports. A direct route of flight from the Pottstown area to center city Philadelphia is almost completely outside of the proposed Class B airspace. A 1,000-foot ring between 6 and 8 miles is unnecessary because aircraft flying from the Pottstown area to downtown Philadelphia could remain outside the proposed Class B with only a small correction to the east.

The Committee said that the proposed cutout for Cross Keys Airport (17N) should be widened to allow VFR traffic to operate in a corridor that provides sufficient access to the airport without encroaching on skydiving operations.

The proposed cutout has been reconfigured to allow for skydiving and access for VFR aircraft arriving from or departing to the southeast.

The Committee suggested a cutout south of Wings Field Airport (LOM) to allow aircraft entering the traffic pattern from the north to cross over the airport at 2,500 feet then descend to traffic pattern altitude. The Committee also noted that VFR aircraft maneuvering south of LOM must be below 2,000 feet to remain below the proposed Class B floor in that area, which could result in compression and concern about the 1,600-foot towers nearby.

Currently, the floor of Class B airspace just to the south of LOM is 3,000 feet. The proposed modifications would lower that floor to 2,000 feet. We are unable to create a cutout south of LOM because that portion of the proposed

Class B is designed to protect aircraft being vectored for the ILS approach to Runway 17 at PHL. Today, aircraft inbound to PHL in this area are routinely vectored to join the ILS localizer at altitudes between 2,000 and 2,500 feet. There would be just over 1 mile available for aircraft approaching LOM from the north and northwest to cross over LOM at 2,500 feet and descend to enter the local traffic pattern without entering the Class B airspace. The requested cutout south of LOM would not allow enough room to keep the Runway 17 arrivals within Class B airspace. The towers referenced above (known as the Roxboro Antennas) are located 7.5 miles south-southeast of LOM and should not be a factor.

The Committee asked for a cutout east of New Garden Airport (N57) to allow glider operations to continue.

While N57 lies well outside the existing 20-mile ring of the Class B airspace area, the proposed modification would extend the Class B airspace boundary out to 24 miles (which would lie just to the east of N57) with a floor of 4,000 feet. N57 is located under an area where a significant amount of commercial traffic is routed on a daily basis. When PHL is on an east operation, aircraft landing Runway 9R are operating in the immediate vicinity of N57. The Runway 9R arrivals from the north and south are handed off to the Final Vector (FV) controller who sequences and spaces these aircraft for landing. To accomplish this, the FV controller vectors and descends the arriving aircraft, blending the two feeds into one. FAA directives require that the aircraft be retained within Class B airspace during this process, but the current Class B configuration does not extend far enough to the west for controllers to comply with this requirement. The requested cutout east of N57 cannot be accommodated because it would not provide sufficient airspace to allow controllers to keep PHL arrivals within Class B airspace.

The Committee said a corridor should be adopted to allow general aviation aircraft flying VFR from the west or northwest of Philadelphia to transit the Class B airspace with some predictability when en route to southeast and southern New Jersey.

The FAA raised the proposed Class B floor in the majority of the 15-mile to 20-mile ring to 3,500 feet. However, two sections between 15 miles and 20 miles (one on the east side and the other on the west side), would still have a 3,000-foot floor. These two 3,000-foot areas are essential for containing aircraft on the ILS approaches to the primary runways. Due to the 3,000-foot areas, pilots would still need to make a small route change when transitioning to or from the north or south, but setting the proposed floor at 3,500 feet in the remainder of the 15-mile to 20-mile ring would allow greater flexibility for general aviation aircraft operating around Philadelphia. Regarding VFR services, the FAA encourages VFR aircraft to contact PHL and request flight following, advisory and/or Class B separation services. This would allow these aircraft to operate at higher altitudes. PHL Airport Traffic Control Tower (ATCT) has made a commitment to the user community to plan for and staff to provide services to aircraft potentially impacted by the proposed changes to the Class B.

The Committee proposed that a ''key hole'', or Runway 24 departure corridor, be established to enable aircraft departing Trenton Mercer Airport (TTN) to climb at a more expeditious rate prior to entering Class B airspace. Also, the use of Continuous Descent Approaches (CDA) for TTN arrivals to Runway 6 should be considered.

TTN currently is, and would remain, well outside the proposed Class B airspace. The FAA believes that the proposed Class B configuration would allow sufficient opportunity (approximately 7 miles) for aircraft departing TTN Runway 24 to either contact Philadelphia approach for Class B clearance or avoid the airspace. CDAs are not operationally feasible in the TTN area. These IFR procedures allow for a continuous descent from an enroute or high initial approach altitude to the runway. ATC sectorization (both inter-facility and intra-facility) in the area northeast of PHL does not allow any procedures (CDAs or Optimized Profile Descents—OPD) that require steep, unrestricted descents.

The Committee opposed the expansion of the surface area radius to 8 miles because it would place the Commodore Barry Bridge (which serves as a landmark used by pilots to stay outside the Class B airspace) within Class B airspace. In addition, the 8-mile ring would place the Pier 36 heliport inside the surface area.

The airspace in this area is required to contain PHL arrivals on the ILS to Runways 9R and 9L. While the proposed 8-mile ring would encompass the bridge, VFR pilots could still use the bridge as a landmark but would have to visually remain 2 miles west of the bridge to avoid the Class B airspace. The expanded ring would also protect small aircraft from possible wake turbulence caused by large and heavy jet aircraft landing Runway 9R. The proposal has been revised so that Pier 36 would be included in the cutout to the northeast of PHL. Helicopters approaching downtown Philadelphia from the west would be required to either obtain a Class B clearance or circumnavigate the airspace as they do today.

The Committee requested a cutout around Perkiomen Valley Airport (N10) to accommodate flight school and skydive operations.

The preliminary Class B design proposed to expand Class B airspace out to a 24-mile ring. This would have resulted in Class B airspace being established above N10 from 4,000 feet up to 7,000 feet. The FAA reevaluated the need for the 24-mile ring, and decided to propose expanding to 24 miles on only east and west ends in order to encompass the extended finals to the primary runways at PHL. Therefore, the outer boundary of Class B airspace would remain at 20 miles in the vicinity of N10 as it is today.

The Committee suggested that the FAA consider VFR routes through the Class B airspace similar to those in Los Angeles, CA.

Charted VFR routes associated with the proposed Philadelphia Class B airspace are currently being considered and evaluated by the Philadelphia ATCT staff.

The Committee provided an alternative proposed Class B design, prepared by the Aircraft Owners and Pilots Association (AOPA). AOPA contended that the FAA's preliminary design appeared overly complex with multiple floors and sectors as well as being larger than needed to contain arriving and departing aircraft.

As previously noted, the FAA changed the proposal remove to the 24-mile ring, except on the east and west ends. However, the alternative design's higher floors and reduced eastern boundary would not meet the need for containing aircraft on ILS approaches to the primary runways. The alternative design's 5,000-foot Class B floor to the east and west of the airport would not provide enough altitudes to separate aircraft on opposing base legs. In both areas, 4,000 feet and 5,000 feet must be available for controllers to comply with the vertical separation requirements while aircraft are on opposing base legs (i.e., head-on). Class B airspace also must be extended and lowered to the south of PHL to contain aircraft being vectored to Runway 35. With the increased usage of that runway, the final approach routinely extends beyond 15 miles.

Informal Airspace Meeting Comments

More than 300 people attended the meetings and 46 written responses were received. Three commenters supported

the FAA's proposal, while the remainder objected to various aspects of the proposal. The following section discusses the issues raised.

Many commenters echoed the ad hoc committee recommendation that the proposed 24-mile ring be eliminated. As discussed above, the FAA changed the proposal to delete the 24-mile ring, except to the east and west of PHL along the extended runway centerlines.

Two commenters contended that the proposed expansion of the surface area from 6 miles to 8 miles was not adequately justified, would result in compression of VFR traffic operating below the Class B floor, would cause the boundary to be difficult to identify visually.

This issue was discussed, in part, in the ''Ad hoc Committee'' section, above. The expansion to 8 miles is necessary because some VFR operations are conducted beneath the final approach courses at locations and altitudes that are causing Traffic Alert and Collision Avoidance System (TCAS) Resolution Advisories (RAs) which cause arriving aircraft to execute unplanned missed approaches. Although the proposed cutout from the surface area was expanded northeast of PHL in response to Ad Hoc Committee input, the alignment of PHL's runways (09/27 and 17/35) makes an 8 mile surface are necessary to protect the final approach courses to those runways.

Several commenters requested either a cutout around Brandywine Airport (OQN) or that the Class B floor above OQN remain at 4,000 feet.

It is necessary to lower the floor of the 20-mile ring (over OQN) from 4,000 feet to 3,500 feet, and the floor of the 15-mile ring (east of OQN), from 3,000 feet to 2,000 feet to contain arrivals landing Runway 9L as they descend on base leg for approach to PHL.

Seven commenters had concerns about the effect of the proposal on glider operations at New Garden Airport (N57). A 5-mile cutout around N57 was requested.

The proposed Class B extension to 24 miles would place the boundary just east of N57, with a floor of 4,000 feet. This airspace is needed to contain arrivals when PHL is on an east operation. Philadelphia ATC personnel are discussing with the users of N57 the possibility of developing procedures via a Letter of Agreement that would minimize the impact of the Class B change on their operation.

Ten commenters were concerned about the potential for compression of traffic and inadvertent Class B intrusions near Wings Field Airport (LOM) and suggested that the Class B floor over LOM be kept at 4,000 feet; the proposed 2,000-foot floor, south of LOM, be raised to 2,500 feet or 3,000 feet; and/or a cutout around LOM be created.

The proposed Class B airspace in the vicinity of LOM is intended to contain aircraft executing the ILS Runway 17 approach at PHL. These arrivals cross a point about 14 NM north of PHL at 3,000 feet, and descend on the glide path for Runway 17. VFR aircraft arriving at LOM currently overfly the airport at 2,500 feet then enter a left traffic pattern for Runway 24. These aircraft pose a potential conflict with PHL Runway 17 arrivals. PHL ATCT encourages VFR aircraft to contact PHL and request flight following, traffic advisories and/or Class B separation services. This would allow these aircraft to operate at higher altitudes. PHL ATCT has made a commitment to the user community to plan for, and staff to provide services to aircraft impacted by the changes to the Class B.

Nine commenters suggested changes on behalf of the following airports located to the east and south of PHL: South Jersey Regional (VAY), Flying W (N14), Red Lion (N73); and Cross Keys (17N). Issues raised included: simplifying the design by changing the 3,500-foot floor northeast of the 17N airport ''cutout'' to either 3,000 feet or 4,000 feet to combine with adjacent areas, making the cutout for 17N larger, compression of VFR traffic, and creating a corridor similar to that in the Los Angeles, CA Class B airspace area.

The proposed 17N cutout has been slightly expanded from the design presented at the informal airspace meetings, but it could not be further expanded without having an impact on traffic flows inside the Class B. Raising the floor to 4,000 feet would not be sufficient to contain arriving aircraft within Class B airspace, while a 3,000-foot floor would be more restrictive than needed to contain those aircraft. The proposal's 3,500-foot floor provides adequate protection for PHL arrivals while minimizing the impact on VFR traffic. The volume and flow of traffic at PHL preclude the development of a corridor like the one through the Los Angeles Class B airspace area. However, VFR flyways under and around the airspace would be developed as part of the proposed Class B modification.

Six commenters suggested changes on the east and south sides of the proposed Class B, including: raise the Class B floor or create a cutout over VAY, N14 and N73; modify the Class B north of the 17N cutout so that the direct route between McGuire VORTAC (GXU) and Cedar Lake VORTAC (VCN) does not create nose-to-nose VFR traffic at 3,000 feet; and expand the ''funnel'' between Robbinsville VORTAC (RBV) and VCN between the Class B boundary and Alert Area A–220 to prevent compression of VFR traffic.

The FAA understands that the proposed changes would reduce the amount of airspace available for VFR operations southeast of the PHL Class B. To lessen this impact, the 24-mile ring has been reduced in size as discussed previously. However, because VAY, N14 and N73 all lie within 24 miles of PHL, as well as in the arrival area, and less than 4 miles from the final approach course, it is not possible to create a cutout or raise the proposed Class B floor over those airports without a significant impact on PHL arrivals. PHL ATC would provide clearance through the Class B airspace to VFR flights whenever possible. In addition, traffic from PNE and TTN that transitions PHL airspace to points in South Jersey represents a large number of the conflictions with arrival traffic to Runways 26 and 27R. As such, the VFR corridor designed, more than 25 years ago, is no longer viable. It is PHL ATCT's expectation that this traffic would contact PHL ATCT for flight-following and/or Class B separation services, thus providing a safer environment for all users of the ATC system. VFR aircraft wishing to transit the portion of Alert Area A–220 that would fall within the proposed Class B airspace would be under the control of ATC and therefore would receive separation services from any military aircraft. Pilots that choose to either circumnavigate the area, or fly at altitudes below the Class B airspace, could operate pretty much as they do today except at slightly lower altitudes. The possibility of developing charted routes through the Class B would be considered as a way to mitigate the potential compression issues identified by the commenters.

One commenter suggested the DME distances should be published to identify the Class B rings.

The distances depicted in this proposal are measured from the PHL Airport Reference Point (ARP) defined as lat. 39°52′20″ N., long. 75°14′27″ W. The lack of a VOR/DME facility at PHL, upon which to base radials and DME distances, limits the options for describing the airspace. There are six ILSs with DME at PHL. The FAA will explore the possibility of publishing an alternate description using ILS/DME distances on the PHL VFR Terminal Area chart with an explanation of how to use the DME distances as a guide for navigating around the area.

One commenter was concerned that the Tabernacle, NJ practice area would not be usable for certain training maneuvers if it was under Class B airspace.

The smaller proposed 24-mile Class B extension would not completely remove the practice area from under Class B airspace; however, no additional adjustments could be made in that area without impacting PHL arrivals. Users of the practice area should be able to get a Class B clearance when PHL is on an east operation and that airspace is not in use for arrivals.

A number of commenters stated that there are too many Class B floor variations in the proposed design which would be confusing to pilots and it would be difficult to determine the boundaries without GPS navigation equipment on board. Further, this could cause compression underneath the Class B.

Simplicity is a goal of airspace design and it is true that using one altitude for the entire circle would be less complex. However, the proposed 3,000-foot floor on the east and west sides could not be raised to 3,500 feet, as some suggested, without impacting PHL arrivals because this airspace is necessary to contain aircraft descending to land at PHL. Lowering the floor to 3,000 feet all the way around for simplicity would create additional impact on VFR operations by designating Class B airspace where a 3,000-foot floor is not required by ATC. The FAA understands the need of VFR pilots to have access to Class B airspace for safety and efficiency of flight, and plans to make this available on request whenever it can be provided without impacting the safety of other aircraft operating in the airspace.

One commenter proposed that the extensions on the east and west be made part-time so that they would only be active when actually being used for traffic containment.

The suggestion for part-time Class B segments could potentially decrease the impact on nonparticipating traffic. A similar concept has been successfully applied to military special use airspace areas. However, further study of various issues is required to determine whether the concept is operationally feasible and could be safely implemented in a Class B airspace environment. These issues include: procedures for activating/deactivating affected Class B sections and ensuring real-time pilot notification of airspace status changes, response to runway changes or closures and inflight emergencies, aeronautical charting specifications, weather factors, safety; etc.

One commenter contended that the need for lower Class B floors could be reduced by eliminating the requirement for aircraft to be below the ILS glideslope when being turned on to final approach and by using a two-stage glide slope set at 3 degrees within 8 to 9 miles from the runway and up to 6 degrees at greater distances.

These suggestions would require a revision of instrument flight procedures and the development of new or additional glideslope equipment which may not be technically feasible and/or may involve flight safety issues. As such, they are outside the scope of this airspace proposal.

The Proposal

The FAA is proposing an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to modify the Philadelphia, PA, Class B airspace area. This action (depicted on the attached chart) proposes to modify the lateral and vertical limits of Class B airspace to ensure the containment of large turbine-powered aircraft once they enter the airspace, reduce frequency congestion and controller workload, and enhance safety in the Philadelphia terminal area. The Class B airspace ceiling would remain at 7,000 feet MSL. Mileages are in nautical miles and, unless otherwise noted, are based on a radius from PHL ARP (lat. 39°52′20″ N., long. 75°14′27″ W.). The proposed modifications of the Philadelphia Class B airspace area, by subarea, are outlined below.

Area A. This area, extending upward from the surface to 7,000 feet MSL, would be expanded from the current 6-mile radius to an 8-mile radius. A cutout would be incorporated in the northeast quadrant of Area A to accommodate helicopter operations as discussed above.

Area B. No changes are proposed to this area, which extends from 300 feet MSL to 7,000 feet MSL.

Area C. This area, which extends from 600 feet MSL to 7,000 feet MSL, would remain largely the same except that its boundaries would be extended outward to meet the proposed 8-mile radius of Area A.

Area D. This area would extend from 1,500 feet to 7,000 feet between the 8-mile and 11-mile rings around PHL, with an extension out to 15-miles to the east of PHL.

Area E. Area E would extend from 2,000 feet MSL to 7,000 feet MSL between the 11-mile and 15-mile rings from PHL with a cutout around 17N. The existing Class B floor in that area is 3,000 feet MSL.

Area F. Area F would consist of two sections between the 15-mile and 20-mile rings. One section would be located west of PHL and the other to the east of PHL. These sections would extend from 3,000 feet MSL to 7,000 feet MSL. The purpose of Area F would be to contain arrivals to the primary runways at PHL.

Area G. This area would extend from 3,500 feet MSL to 7,000 feet MSL. It would generally lie between the 15-mile and 20-mile rings, excluding the airspace in Areas F and H. The current Class B floor in most of that area is 4,000 feet MSL. Area G would also create new Class B airspace out to 20 miles to the east and south of PHL with a cutout to accommodate operations at 17N.

Area H. This area would consist of two sections, extending from 4,000 feet MSL to 7,000 feet MSL, between the 20-mile and 24-mile rings, to the east and west of PHL. The purpose of this new Class B airspace would be to contain arrivals to the primary runways at PHL.

The geographic latitude/longitude coordinates in this proposal are based on North American Datum 83.

Class B airspace areas are published in paragraph 3000 of FAA Order 7400.9V, dated August 9, 2011 and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class B airspace area proposed in this document would be published subsequently in the Order.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there is no new information collection requirement associated with this proposed rule.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements

Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this proposed rule. The reasoning for this determination follows:

In conducting these analyses, the FAA has determined that this proposed rule:

(1) Imposes minimal incremental costs and provides benefits,

(2) Is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866,

(3) Is not significant as defined in DOT's Regulatory Policies and Procedures;

(4) Would not have a significant economic impact on a substantial number of small entities;

(5) Would not have a significant effect on international trade; and

(6) Would not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the monetary threshold identified.

These analyses are summarized below.

The Proposed Action

This action proposes to modify the Philadelphia, PA, Class B airspace area to ensure the containment of large turbine-powered aircraft within Class B airspace, reduce controller workload, and reduce the potential for midair collision in the Philadelphia terminal area.

Benefits of the Proposed Action

The benefits of this action are that it would enhance safety, improve the flow of air traffic, and reduce the potential for midair collisions in the PHL terminal area. In addition this action would support the FAA's national airspace redesign goal of optimizing terminal and enroute airspace areas to reduce aircraft delays and improve system capacity.

Costs of the Proposed Action

Possible costs of this proposal would include the costs of general aviation aircraft that might have to fly further if this proposal were adopted. However, the FAA believes that any such costs would be minimal because the FAA designed the proposal to minimize the effect on aviation users who would not fly in the Class B airspace. In addition the FAA held a series of meetings to solicit comments from people who thought that they might be affected by the proposal. Wherever possible the FAA included the comments from these meetings in the proposal.

Expected Outcome of the Proposal

The expected outcome of the proposal would be a minimal impact with positive net benefits and a regulatory evaluation was not prepared. The FAA requests comments with supporting justification about the FAA determination of minimal impact.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The proposal is expected to improve safety by redefining Class B airspace boundaries and is expected to impose only minimal costs. The expected outcome would be a minimal economic impact on small entities affected by this rulemaking action.

Therefore, the FAA certifies that this proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. The FAA requests comments on this determination. Specifically, the FAA requests comments on whether the proposal creates any specific compliance costs unique to small entities. Please provide detailed economic analysis to support any cost claims. The FAA also invites comments regarding other small entity concerns with respect to the proposal.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the potential effect of this proposed rule and determined that it would have no effect on international trade.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any 1 year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is

deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $143.1 million in lieu of $100 million. This proposal does not contain such a mandate; therefore the requirements of Title II do not apply.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011, is amended as follows:

Paragraph 3000 Subpart B—Class B airspace.

* * * * *

AEA PA B Philadelphia, PA [Revised]

Philadelphia International Airport, PA
(Primary Airport)
(Lat. 39°52′20″ N., long. 75°14′27″ W.)
Northeast Philadelphia Airport, PA
(Lat. 40°04′55″ N., long. 75°00′38″ W.)
Cross Keys Airport, NJ
(Lat. 39°42′20″ N., long. 75°01′59″ W.)

Boundaries

Area A. That airspace extending upward from the surface to and including 7,000 feet MSL within an 8-mile radius of the Philadelphia International Airport (PHL), excluding that airspace bounded by a line beginning at the intersection of the PHL 8-mile radius and the 002° bearing from PHL, thence direct to lat. 39°56′14″ N., long. 75°12′11″ W., thence direct to lat. 39°55′40″ N., long. 75°08′31″ W., thence direct to the intersection of the PHL 8-mile radius and the 061° bearing from PHL, and that airspace within and underlying Areas B and C hereinafter described.

Area B. That airspace extending upward from 300 feet MSL to and including 7,000 feet MSL, beginning at the east tip of Tinicum Island, thence along the south shore of Tinicum Island to the westernmost point, thence direct to the outlet of Darby Creek at the north shore of the Delaware River, thence along the north shore of the river to Chester Creek, thence direct to Thompson Point, thence along the south shore of the Delaware River to Bramell Point, thence direct to the point of beginning.

Area C. That airspace extending upward from 600 feet MSL to and including 7,000 feet MSL, beginning at Bramell Point, thence along the south shore of the Delaware River to Thompson Point, thence direct to the outlet of Chester Creek at the Delaware River, thence along the north shore of the Delaware River to the 8-mile radius of PHL, thence counterclockwise along the 8-mile radius to the 180° bearing from PHL, thence direct to Bramell Point.

Area D. That airspace extending upward from 1,500 feet MSL to and including 7,000 feet MSL within an 11-mile radius of PHL; and that airspace within 7.5 miles north and south of the Runway 27R localizer course extending from the 11-mile radius to the 15-mile radius east of PHL; excluding that airspace within a 5.8-mile radius of North Philadelphia Airport (PNE), and Areas A, B, and C.

Area E. That airspace extending upward from 2,000 feet MSL to and including 7,000 feet MSL within a 15-mile radius of PHL, excluding that airspace within a 5.8-mile radius of PNE, and that airspace bounded by a line beginning at the intersection of the PHL 15-mile radius and the 141° bearing from PHL, thence direct to the intersection of the Cross Keys Airport (17N) 1.5-mile radius and the 212° bearing from 17N, thence clockwise via the 1.5-mile radius of 17N to the 257° bearing from 17N, thence direct to the intersection of the 17N 1.5-mile radius and the 341° bearing from 17N, thence clockwise via the 1.5-mile radius of 17N to the 011° bearing from 17N, thence direct to the intersection of the PHL 15-mile radius and the 127° bearing from PHL, and Areas A, B, C, and D.

Area F. That airspace extending upward from 3,000 feet MSL to and including 7,000 feet MSL within 7.5 miles north and south of the Runway 9R localizer course extending from the 15-mile radius west of PHL to the 20-mile radius west of PHL; and within 7.5 miles north and south of the Runway 27R localizer course extending from the 8-mile radius east of PHL to the 20-mile radius east of PHL, excluding Area D.

Area G. That airspace extending upward from 3,500 feet MSL to and including 7,000 feet MSL within a 20-mile radius of PHL, excluding that airspace south of a line beginning at the intersection of the PHL 20-mile radius and the 158° bearing from PHL, thence direct to the intersection of the PHL 20-mile radius and the 136° bearing from PHL, and that airspace bounded by a line beginning at the intersection of the PHL 20-mile radius and the 136° bearing from PHL, thence direct to the intersection of the PHL 15-mile radius and the 141° bearing from PHL, thence direct to the intersection of the Cross Keys Airport (17N) 1.5-mile radius and the 212° bearing from 17N, thence clockwise via the 1.5-mile radius of 17N to the 257° bearing from 17N, thence direct to the intersection of the 17N 1.5-mile radius and the 341° bearing from 17N, thence clockwise via the 1.5-mile radius of 17N to the 011° bearing from 17N, thence direct to the intersection of the PHL 15-mile radius and the 127° bearing from PHL, thence direct to the intersection of the PHL 20-mile radius and the 120° bearing from PHL, and Areas A, B, C, D, E and F.

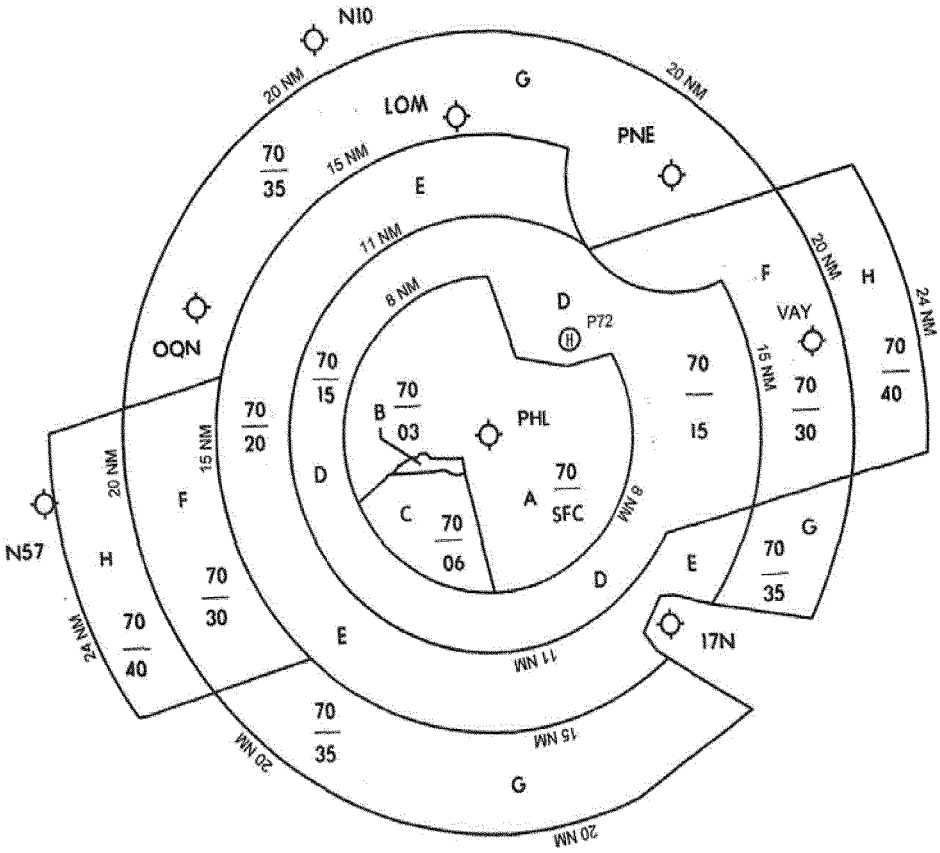
Area H. That airspace extending upward from 4,000 feet MSL to and including 7,000 feet MSL within 7.5 miles north and south of the Runway 9R localizer course extending from the 20-mile radius west of PHL to the 24-mile radius west of PHL; and within 7.5 miles north and south of the Runway 27R localizer course extending from the 20-mile radius east of PHL to the 24-mile radius east of PHL.

Issued in Washington, DC, on July 26, 2012.

Gary A. Norek,

Manager, Airspace Policy and ATC Procedures Group.

PROPOSED MODIFICATION OF THE
PHILADELPHIA, PA, CLASS B AIRSPACE AREA
(Airspace Docket No. 08-AWA-2)



FOR INFORMATION ONLY
Not for Navigation Purposes

[FR Doc. 2012–18644 Filed 7–30–12; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1199

[Docket No. CPSC–2012–0040]

Children's Toys and Child Care Articles Containing Phthalates; Proposed Guidance on Inaccessible Component Parts

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed guidance.

SUMMARY: On August 14, 2008, Congress enacted the Consumer Product Safety Improvement Act of 2008 (CPSIA), Public Law 110–314. Section 108 of the CPSIA, as amended by Public Law 112–28, provides that the prohibition on specified products containing phthalates does not apply to any component part of children's toys or child care articles that is not accessible to a child through normal and

reasonably foreseeable use and abuse of such product. In this document, the Consumer Product Safety Commission (CPSC or Commission) proposes guidance on inaccessible component parts in children's toys or child care articles subject to section 108 of the CPSIA.

DATES: Written comments and submissions in response to this notice must be received by October 1, 2012

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2012–0040, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

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

To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (email) except through *www.regulations.gov.*

Written Submissions

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this proposed guidance. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Kristina M. Hatlelid, Ph.D., M.P.H., Toxicologist, Office of Hazard Identification and Reduction, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone (301) 504–7254; *khatlelid@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

1. Prohibition on Certain Phthalates

On August 14, 2008, Congress enacted the CPSIA (Pub. L. 110–314), as amended on August 12, 2011, by Public Law 112–28. Section 108 of the CPSIA, titled ''Prohibition on Sale of Certain Products Containing Specified Phthalates,'' permanently prohibits the sale of any ''children's toy or child care article'' containing more than 0.1 percent of three specified phthalates (di-(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP), and benzyl butyl phthalate (BBP)). Section 108 of the CPSIA also prohibits, on an interim basis, ''toys that can be placed in a child's mouth'' or ''child care article'' containing more than 0.1 percent of three additional phthalates (diisononyl phthalate (DINP), diisodecyl phthalate (DIDP), and di-n-octyl phthalate (DnOP)). These prohibitions became effective on February 10, 2009. 15 U.S.C. 2057c(a), (b). The terms or phrases ''children's toy,'' ''toy that can be placed in a child's mouth,'' and ''child care article,'' are defined in section 108(g) of the CPSIA. A ''children's toy'' is defined as a ''consumer product designed or intended by the manufacturer for a child 12 years of age or younger for use by the child when the child plays.'' A toy can be placed in a child's mouth ''if any part of the toy can actually be brought to the mouth and kept in the mouth by a child so that it can be sucked and chewed. If the children's product can only be licked, it is not regarded as able to be placed in the mouth. If a toy or part of a toy in one dimension is smaller than 5 centimeters, it can be placed in a child's mouth.'' The term ''child care article'' means ''a consumer product designed or intended by the manufacturer to facilitate sleep or the feeding of children age 3 and younger, or to help such children with sucking or teething.'' 15 U.S.C. 2057c(g).

Section 108 of the CPSIA also directed the Commission, not earlier than 180 days after the date of enactment of this Act [enacted Aug. 14, 2008], to appoint a Chronic Hazard Advisory Panel (CHAP), pursuant to the procedures of section 28 of the CPSA (15 U.S.C. 2077), to study the effects on children's health of all phthalates and phthalate alternatives as used in children's toys and child care articles. 15 U.S.C. 2057c(b)(2). The Commission appointed the CHAP on April 14, 2010, to study the effects on children's health of all phthalates and phthalate alternatives, as used in children's toys and child care articles. The CHAP currently is working on a report, including recommendations to the Commission.

2. Inaccessible Component Parts and the Phthalates Prohibition

Public Law 112–28 amended section 108(d) of the CPSIA to provide an exclusion for certain products containing inaccessible phthalates component parts. That section states:

> The prohibitions * * * shall not apply to any component part of a children's toy or child care article that is not accessible to a child through normal and reasonably foreseeable use and abuse of such product, as determined by the Commission. A component part is not accessible under this paragraph if such component part is not physically exposed by reason of a sealed covering or casing and does not become physically exposed through reasonably foreseeable use and abuse of the product. Reasonably foreseeable use and abuse shall include swallowing, mouthing, breaking, or other children's activities, and the aging of the product.

15 U.S.C. 2057c(d)(1).

The Commission was directed within 1 year after the date of enactment of Public Law 112–28 [enacted August 12, 2011] to: (A) Promulgate a rule providing guidance with respect to what product components, or classes of components, will be considered to be inaccessible; or (B) adopt the same guidance with respect to inaccessibility that was adopted by the Commission with regards to accessibility of lead under section 101(b)(2)(B) (15 U.S.C. 1278a(b)(2)(B)), with additional consideration, as appropriate, of whether such component can be placed in a child's mouth. 15 U.S.C. 2057c(d)(3).

The exclusion for inaccessible component parts for phthalates mirrors the language on inaccessible parts in the CPSIA with regard to the limits on lead content in children's products. The interpretative rule on lead provided that a component part is not accessible if it is not physically exposed by reason of a sealed covering or casing and does not become physically exposed through reasonably foreseeable use and abuse of the product including swallowing, mouthing, breaking, or other children's activities, and the aging of the product. 15 U.S.C. 1278a(b)(2). However, paint, coatings, or electroplating could not be considered to be a barrier that would render lead in the substrate to be inaccessible to a child. 15 U.S.C. 1278a(b)(3). Section 108 did not specifically disqualify paint, coatings, or electroplating as barriers that would render phthalates inaccessible. Because the Commission proposes to adopt the same guidance with respect to

inaccessibility for phthalates that was adopted by the Commission with regard to inaccessibility of lead, the proposed guidance states that paint, coatings, and electroplating may not be considered a barrier that would render phthalate-containing component parts of toys and child care articles inaccessible. Moreover, in some applications, phthalates are added to paint, printing inks, or coatings. However, the Commission seeks comments, information, and data regarding whether certain paint, coatings, or electroplating could ever be considered a barrier in the context of phthalates, and whether such materials could result in sealed covering or casing that would not become physically exposed through reasonably foreseeable use and abuse of the product.

In addition, Public Law 112–28 also includes a provision for phthalates, which is not contained in the statutory requirements for assessing inaccessibility for lead in children's products. Under section 108(d)(2) of the CPSIA, the Commission may revoke any or all exclusions granted based on the inaccessible component parts provision of section 108 of the CPSIA, at any time, and require that any or all component parts manufactured after such exclusion is revoked, comply with the prohibitions of phthalates, if the Commission finds, based on scientific evidence, that such compliance is necessary to protect the public health or safety. 15 U.S.C. 2057c(d)(2).

B. Proposed Guidance for Inaccessible Component Parts in Phthalates

The Commission's interpretive rule regarding inaccessible component parts with respect to lead content was published in the **Federal Register** on August 7, 2009 (74 FR 39535) and codified at 16 CFR 1500.87 (Children's products containing lead: Inaccessible component parts). The Commission proposes to adopt the lead guidance with respect to inaccessibility for phthalates, with the exception of polyvinyl chloride (PVC or vinyl) or other plasticized materials covering mattresses and other sleep surfaces designed or intended by the manufacturer to facilitate sleep of children age 3 and younger.

Accordingly, this proposed guidance would adopt the same definitions and tests used in the interpretative rule regarding inaccessibility of lead-containing parts. An ''accessible component part'' is one that a child may touch, and an ''inaccessible component part'' is one that is located inside the product, and cannot be touched by a child, even if such a part is visible to a user of the product. An accessible component is defined as one where children may contact a lead-containing component part with their fingers or tongues. The tests to determine whether parts are accessible are identical to those already in use by the Commission for addressing sharp points and sharp metal or glass edges on toys or other articles intended for use by children. The Commission's regulations under 16 CFR 1500.48–1500.49 provide specific technical requirements for determining accessibility of sharp points or edges through the use of accessibility probes. These sections provide that an accessible sharp point or edge is present in the product if the test indicates that any part of the specified portion of the accessibility probe contacts the sharp part. Thus, an ''accessible component part'' of a children's product is defined as one that can be contacted by any part of the specified portion of the accessibility probe. The regulations at 16 CFR 1500.48–49 provide that a test for accessibility of sharp points or edges shall be applied before and after use and abuse tests, referencing 16 CFR 1500.50 through 1500.53 (excluding the bite test—paragraph (c) of 16 CFR 1500.51–1500.53).

Use and abuse testing may also be used to evaluate accessibility of phthalate-containing component parts of children's toys and child care articles as a result of normal and reasonably foreseeable use and abuse of the product. The scope of the use and abuse testing regulations does not cover products for children over 96 months of age. However, a ''children's toy'' is defined as a ''consumer product designed or intended by the manufacturer for a child 12 years of age or younger for use by the child when the child plays.'' Therefore, the proposed guidance for the testing of products for determining accessibility based on the use and abuse tests will be extended to children older than 96 months of age and up through age 12 years. This proposed guidance provides that the testing indicated for products for children aged 37–96 months of age should also be used to evaluate the products for children up through age 12 years. Further, as children 12 years of age or younger grow and mature, they become, in many respects, indistinguishable from children older than 12 years, and even adults. Consequently, the intentional disassembly or destruction of products by children older than age 8 years, by means or knowledge not generally available to younger children, should not be considered in evaluating products for accessibility of phthalate-containing components. For example, accessibility arising from the use of tools, such as a screwdriver, should not be considered in accessibility and use and abuse testing.

The interpretive rule on lead also specified that a lead-containing part of a children's product that is enclosed or covered by fabric is to be considered inaccessible to a child, unless the product, or part of the product, in one dimension, is smaller than 5 centimeters. This provision addressed the possibility that a fabric covering is not a suitable barrier to the potential transfer of lead from the part to a child, if the part can be placed in a child's mouth. As is the case with lead, a fabric covering may not be a suitable barrier to the potential transfer of phthalates from a product or component part to a child, if the part can be placed in a child's mouth. If the product can be mouthed, the chemical that is present could mix with saliva that soaks through the fabric and then be transferred back into a child's mouth during further mouthing activity. With the exception of certain vinyl (or other plasticized material) covered mattresses/sleep surfaces, as discussed further below, a children's toy or child care article that is, or contains, a phthalate-containing part that is enclosed, encased, or covered by fabric, and passes the appropriate use and abuse tests on such covers and parts, would be considered to be inaccessible to a child, unless the product or part of the product, in one dimension, is smaller than 5 centimeters. Such fabric-covered items (including dolls, or plush toys with internal plasticized structural parts or housing for electronic parts) should be evaluated for the integrity of the coverings, including seams, using the appropriate use and abuse tests at 16 CFR 1500.50 through 1500.53 (excluding the bite test—paragraph (c) of 16 CFR 1500.51–1500.53). In addition, because the material beneath a fabric covering would be considered to be accessible to a child in the case that mouthing or swallowing of the part may occur, use and abuse testing should be used to evaluate the potential for small components to be removed from products, using the appropriate tests at 16 CFR 1500.50 through 1500.53 (excluding the bite test—paragraph (c) of 16 CFR 1500.51–1500.53).

Section 108(d)(3)(B) provides that if the Commission elects to adopt the same guidance with respect to inaccessibility that was adopted by the Commission with regard to accessibility of lead under section 101(b)(2)(B) of the CPSIA, the Commission must give ''additional consideration, as

appropriate, of whether such component can be placed in a child's mouth.'' 15 U.S.C. 2057c(d)(3). Accordingly, with respect to child care articles, the Commission reviewed phthalate-containing vinyl or other plasticized materials covering mattresses and sleep surfaces designed or intended by the manufacturer to facilitate sleep of children age 3 and younger that have removable fabric covers. These mattresses or sleep surfaces are too large to be placed in a child's mouth. Although such mattresses or sleep surfaces may be covered by fabric, such as sheets or mattress pads, additional consideration was given to whether children would become physically exposed to the vinyl or other plasticized materials covering the surface through reasonably foreseeable use and abuse of the products, including swallowing, mouthing, breaking, or other children's activities, and the aging of the product. 15 U.S.C. 2057c(d)(1). There may be instances in which a child's skin comes into close contact with a fabric covering over a phthalate-containing item for large portions of a day, such as a vinyl or other plasticized material covering a mattress or other sleep surface. Young children typically spend more than half of each day sleeping or resting, likely on a mattress or similar item.[1] While a mattress is typically covered with a sheet or mattress pad, such non-permanently affixed coverings, that are either supplied with the mattress or provided by the consumer, should not be considered to render the underlying material inaccessible. As with the potential transfer of phthalates by saliva during mouthing of an item, a mattress cover dampened with a spilled beverage, saliva, sweat, urine, or other liquid, could facilitate phthalate migration through the fabric. Furthermore, a nonpermanent covering cannot be assumed to be in use at all times; if it is not, the mattress could no longer be considered inaccessible. For these reasons, vinyl (or other plasticized material) covered mattresses/sleep surfaces, which contain phthalates, designed or intended by a manufacturer to facilitate sleep for children age 3 and younger, should not be considered to be made inaccessible through the use of a fabric covering.

The Commission appointed the CHAP on April 14, 2010, to study the effects on children's health of all phthalates and phthalate alternatives, as used in children's toys and child care articles. Currently, the CHAP is working on a report, including recommendations to the Commission. Accordingly, any guidance concerning phthalates may be modified and revised, as appropriate, based on the findings and recommendations of the CHAP.

[1] U.S. EPA (Environmental Protection Agency). (2011) Exposure factors handbook: 2011 Edition. National Center for Environmental Assessment, Washington, DC; EPA/600/R–09/052F. Available from the National Technical Information Service, Springfield, VA, and online at *http://www.epa.gov/ncea/efh*.

C. Effective Date

The Commission was directed to provide guidance on phthalate-containing inaccessible component parts by August 12, 2012. Although guidance documents do not require a particular effective date under the Administrative Procedure Act, 5 U.S.C. 553(d)(2), the Commission recognizes the need for providing the guidance expeditiously. Accordingly, the proposed guidance would take effect upon publication of a final guidance in the **Federal Register**.

List of Subjects in 16 CFR Part 1199

Business and industry, Infants and children, Consumer protection, Imports, Toys.

D. Conclusion

For the reasons stated above, the Commission proposes to add 16 CFR part 1199, as follows:

PART 1199—CHILDREN'S TOYS AND CHILD CARE ARTICLES CONTAINING PHTHALATES: GUIDANCE ON INACCESSIBLE COMPONENT PARTS

Authority: 15 U.S.C. 1251–1289, 86 Stat. 1207, 125 Stat. 273.

§ 1199 Children's Toys and Child Care Articles: Phthalate-Containing Inaccessible Component Parts.

(a) Section 108 of the Consumer Product Safety Improvement Act of 2008 (CPSIA) permanently prohibits the sale of any ''children's toy or child care article'' containing more than 0.1 percent of three specified phthalates (di-(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP), and benzyl butyl phthalate (BBP)). Section 108 of the CPSIA also prohibits, on an interim basis, ''toys that can be placed in a child's mouth'' or ''child care article'' containing more than 0.1 percent of three additional phthalates (diisononyl phthalate (DINP), diisodecyl phthalate (DIDP), and di-n-octyl phthalate (DnOP)). A ''children's toy'' is defined as a consumer product designed or intended by the manufacturer for a child 12 years of age or younger for use by the child when the child plays. A toy can be placed in a child's mouth if any part of the toy can actually be brought to the mouth and kept in the mouth by a child so that it can be sucked and chewed. If the children's product can only be licked, it is not regarded as able to be placed in the mouth. If a toy or part of a toy in one dimension is smaller than 5 centimeters, it can be placed in the mouth. The term ''child care article'' means a consumer product designed or intended by the manufacturer to facilitate sleep or the feeding of children age 3 and younger, or to help such children with sucking or teething.

(b) Section 108(d) of the CPSIA provides that the prohibitions in paragraph (a) do not apply to component parts of a children's toy or child care article that are not accessible to children through normal and reasonably foreseeable use and abuse of such product, as determined by the Commission. A component part is not accessible if it is not physically exposed, by reason of a sealed covering or casing, and does not become physically exposed through reasonably foreseeable use and abuse of the product, including swallowing, mouthing, breaking, or other children's activities, and the aging of the product.

(c) Section 108(d)(3) of the CPSIA directs the Commission to promulgate, by August 12, 2012, a rule to provide guidance with respect to what product components or classes of components will be considered to be inaccessible for a children's toy or child care article that contains phthalates or adopt the same guidance with respect to inaccessibility that was adopted by the Commission with regards to accessibility of lead under section 101(b)(2)(B) (15 U.S.C. 1278a(b)(2)(B)), with additional consideration, as appropriate, of whether such component can be placed in a child's mouth. 15 U.S.C. 2057c(d)(3). The Commission adopts the same guidance with respect to inaccessibility for the phthalates that was adopted by the Commission with regards to accessibility of lead.

(d) The accessibility probes specified for sharp points or edges under the Commissions' regulations at 16 CFR 1500.48–1500.49 will be used to assess the accessibility of phthalate-containing component parts of a children's toy or child care article. A phthalate-containing component part would be considered accessible if it can be contacted by any portion of the specified segment of the accessibility probe. A phthalate-containing component part would be considered inaccessible if it cannot be contacted by any portion of the specified segment of the accessibility probe.

(e) For children's toys or child care articles intended for children that are 18

months of age or younger, the use and abuse tests set forth under the Commission's regulations at 16 CFR 1500.50 and 16 CFR 1500.51 (excluding the bite test of 1500.51(c)), will be used to evaluate accessibility of phthalate-containing component parts of a children's toy or child care article as a result of normal and reasonably foreseeable use and abuse of the product.

(f) For children's toys or child care articles intended for children that are over 18 months, but not over 36 months of age, the use and abuse tests set forth under the Commission's regulations at 16 CFR 1500.50 and 16 CFR 1500.52 (excluding the bite test of 1500.52(c)), will be used to evaluate accessibility of phthalate-containing component parts of a children's toy or child care article as a result of normal and reasonably foreseeable use and abuse of the product.

(g) For children's toys intended for children that are over 36 months, but not over 96 months of age, the use and abuse tests set forth under the Commission's regulations at 16 CFR 1500.50 and 16 CFR 1500.53 (excluding the bite test of 1500.53(c)), will be used to evaluate accessibility of phthalate-containing component parts of a children's toy as a result of normal and reasonably foreseeable use and abuse of the product.

(h) For children's toys intended for children over 96 months through 12 years of age, the use and abuse tests set forth under the Commission's regulations at 16 CFR 1500.50 and 16 CFR 1500.53 (excluding the bite test of 1500.53(c)) intended for children aged 37–96 months will be used to evaluate accessibility of phthalate-containing component parts of a children's toy as a result of normal and reasonably foreseeable use and abuse of the product.

(i) Because the Commission proposes to adopt the same guidance with respect to inaccessibility for phthalates that was adopted by the Commission with regard to inaccessibility of lead, paint, coatings, and electroplating may not be considered a barrier that would render phthalate-containing component parts of toys and child care articles inaccessible. A children's toy or child care article that is or contains a phthalate-containing part that is enclosed, encased, or covered by fabric and passes the appropriate use and abuse tests on such covers, is considered inaccessible to a child, unless the product or part of the product, in one dimension, is smaller than 5 centimeters. However, vinyl (or other plasticized material) covered mattresses/sleep surfaces which contain phthalates that are designed or intended by the manufacturer to facilitate sleep of children age 3 and younger, are considered accessible and would not be considered inaccessible through the use of fabric coverings, including sheets and mattress pads.

(j) The intentional disassembly or destruction of products by children older than age 8 years, by means or knowledge not generally available to younger children, including use of tools, will not be considered in evaluating products for accessibility of phthalate-containing components.

Dated: July 26, 2012.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2012–18620 Filed 7–30–12; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 226

Establishment of the Osage Negotiated Rulemaking Committee

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: On June 18, 2012, the Department published a notice of intent to establish the Osage Negotiated Rulemaking Committee (Committee). The Committee will develop specific recommendations to address future management and administration of the Osage Mineral Estate, including potential revisions to the regulations governing leasing of Osage Reservation lands for oil and gas mining at 25 CFR part 226. This notice establishes the Committee, and announces a public meeting of the Committee.

DATES: *Meeting:* Tuesday, August 21, 2012 from 11:00 a.m. to 6:00 p.m. and Wednesday, August 22, 2012 from 9:00 a.m. to 6:00 p.m. (Central Time).

ADDRESSES: The meetings will be held at the Osage Mineral Council, 813 Grandview Avenue, Pawhuska, OK 74056.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Impson, Designated Federal Officer, Bureau of Indian Affairs, Telephone: (918) 781–4600; Fax: (918) 781–4604, or Email: *robert.impson@bia.gov.* Include the words Osage Negotiated Rulemaking in the subject line.

SUPPLEMENTARY INFORMATION: On October 14, 2011, the United States and the Osage Nation (formerly known as the Osage Tribe) signed a Settlement Agreement to resolve litigation regarding alleged mismanagement of the Osage Nation's oil and gas mineral estate, among other claims. As part of the Settlement Agreement, the parties agreed that it would be mutually beneficial ''to address means of improving the trust management of the Osage Mineral Estate, the Osage Tribal Trust Account, and Other Osage Accounts.'' Settlement Agreement, Paragraph 1.i. The parties agreed that a review and revision of the existing regulations is warranted to better assist the Bureau of Indian Affairs (BIA) in managing the Osage Mineral Estate. The parties agreed to engage in a negotiated rulemaking for this purpose. Settlement Agreement, Paragraph 9.b. After the Committee submits its report, BIA will develop a proposed rule to be published in the **Federal Register**.

Public Comments: Public comments were submitted nominating members of the Osage Minerals Council who were not named or were named as alternates in the June 18, 2012, **Federal Register** Notice. These comments generally expressed concern that some elected members of the Osage Minerals Council were not being allowed to participate on the Committee. The Department understands that the Osage Minerals Council, which is the governing body of the Osage Mineral Estate, voted on the members who would sit on the Committee in order of preference; therefore, the interests of all Council members will be represented by the members voted to serve on the Committee by the Osage Minerals Council. Additionally, alternates will serve on the Committee as an official member when a Committee member is absent. Nominations were also received naming individual Osage Headright holders. The Department believes that as members who vote for the Osage Minerals Council, the interests of each of these individuals will be adequately represented by those members voted to serve on the Committee, each of whom is an elected member of the Osage Minerals Council and empowered to make decisions regarding the Osage Minerals Estate. Public comments were also received nominating non-Osage Headright holders due to concerns that the Osage Minerals Council does not have the best interests of shareholders in mind. Because all shareholders receive the same benefit per headright interest, however, the Department believes that the Osage members of the

Committee, each of whom are also shareholders, will adequately represent the interest of all shareholders. It is relevant to note that all of the individuals who are not appointed to the Committee will have an opportunity to participate in the negotiated rulemaking by attending Committee meetings, submitting information and speaking at Committee meetings during the public comment sessions. Some of the comments nominating the various individuals also raised issues with the Osage Constitution and role of the BIA in managing the Osage Mineral Estate. These issues are not relevant to the nomination and appointment of members to the Committee. In any event, the Osage Nation operates pursuant to a duly enacted Constitution dated March 11, 1996. Additionally, the goal of the negotiated rulemaking is to provide recommendations to improve BIA's management and administration of the Osage Mineral Estate.

Certification and Establishment of Committee: Therefore, in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended (5 USC Appendix 2), and with the concurrence of the General Services Administration, the Department of the Interior is announcing the establishment of the Osage Negotiated Rulemaking Committee. The Committee will report to the Secretary of the Interior through the Designated Federal Officer. The Bureau of Indian Affairs will provide administrative and logistical support to the Committee. The members are those individuals identified in the Notice of Intent published on June 18, 2012.

Public Meeting Information

Meeting Agenda: At the first meeting, the Commission will be receiving informational briefings, discussing its goals and procedures, developing a meeting schedule and work plan, and reviewing the existing regulations and topics required to be included in the negotiated rulemaking pursuant to the Settlement Agreement. The public will be able to make comments on Tuesday, August 21 from 3:00 p.m. to 4:30 p.m.; and Wednesday, August 22, 2012, from 1:00 p.m. to 2:30 p.m. The final agenda will be posted on *www.bia.gov/osageregneg* prior to the meeting.

Public Input: Interested members of the public may present, either orally or through written comments, information for the Committee to consider during the public meeting. Speakers who wish to expand their oral statements, or those who had wished to speak, but could not be accommodated during the public comment period, are encouraged to submit their comments in written form to the Committee after the meeting.

Individuals or groups requesting to make comments at the public Committee meeting will be limited to 5 minutes per speaker. Interested parties should contact Mr. Robert Impson, Designated Federal Officer, in writing (preferably via email), by August 17, 2012 (See **FOR FURTHER INFORMATION CONTACT**), to be placed on the public speaker list for this meeting.

In order to attend this meeting, you must register by close of business August 17, 2012. The meeting location is open to the public, and current, government-issued, photo ID is required to enter. Space is limited, so all interested in attending should pre-register. Please submit your name, time of arrival, email address and phone number to Mr. Robert Impson via email at *robert.impson@bia.gov* or by phone at (918) 781–4600.

Certification Statement: I hereby certify that the establishment of the Osage Negotiated Rulemaking Committee is necessary, is in the public interest and is established under the authority of the Secretary of the Interior.

Dated: July 26, 2012.

Ken Salazar,

Secretary, Department of the Interior.

[FR Doc. 2012–18674 Filed 7–30–12; 8:45 am]

BILLING CODE 4310–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2012–0388; FRL–9705–9]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Prevention of Significant Deterioration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the West Virginia State Implementation Plan (SIP), submitted by the West Virginia Department of Environmental Protection (WVDEP) on August 31, 2011. These revisions pertaining to West Virginia's Prevention of Significant Deterioration (PSD) program incorporate preconstruction permitting regulations for fine particulate matter ($PM_{2.5}$) and Greenhouse Gases (GHGs) into the West Virginia SIP. In addition, EPA is proposing to approve these revisions and portions of other related submissions for the purpose of determining that West Virginia has met its statutory obligations with respect to the infrastructure requirements of the Clean Air Act (CAA) which relate to West Virginia's PSD permitting program and are necessary to implement, maintain, and enforce the 1997 $PM_{2.5}$ and ozone National Ambient Air Quality Standards (NAAQS), the 2006 $PM_{2.5}$ NAAQS, and the 2008 lead and ozone NAAQS. EPA is proposing to approve these revisions in accordance with the requirements of the CAA.

DATES: Written comments must be received on or before August 30, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2012–0388 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: cox.kathleen@epa.gov.*

C. *Mail:* EPA–R03–OAR–2012–0388, Kathleen Cox, Associate Director, Office of Permits and Air Toxics, Mailcode 3AP10, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2012–0388. 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 information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. 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 during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE., Charleston, West Virginia 25304.

FOR FURTHER INFORMATION CONTACT: Mike Gordon, (215) 814–2039, or by email at *gordon.mike@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. On August 31, 2011, WVDEP submitted a formal revision to its SIP (the August 2011 SIP submission). The SIP revision consists of amendments to the PSD permitting regulations under West Virginia State Rule 45CSR14. This action will replace the current SIP-approved version of 45CSR14, Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration, which was previously approved by EPA on May 27, 2011 (76 FR 30832).

The SIP revision submitted by West Virginia generally pertains to two Federal rulemaking actions. The first is the ''Implementation of the New Source Review (NSR) Program for Particulate Matter less than 2.5 Micrometers ($PM_{2.5}$)'' (NSR $PM_{2.5}$ Rule), which was promulgated on May 16, 2008 (73 FR 28321). The second is the ''Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule'' (Tailoring Rule), which was promulgated on June 3, 2010 (75 FR 31514).

Whenever a new or revised NAAQS is promulgated, section 110(a) of the CAA imposes obligations upon states to submit SIP revisions that provide for the implementation, maintenance, and enforcement of the new or revised NAAQS within three years following the promulgation of such NAAQS—the ''infrastructure SIP'' revisions. Although states typically have met many of the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous particulate matter (PM) standards, states (including all the EPA Region III states) were still required to submit SIP revisions that address section 110(a)(2) for the 1997 and 2006 $PM_{2.5}$ NAAQS. In addition to the August 2011 SIP submission, West Virginia has previously submitted SIP revisions addressing requirements set forth in CAA section 110(a)(2) for the 1997 and 2006 $PM_{2.5}$ NAAQS, as well as the 1997 ozone NAAQS and 2008 ozone and lead NAAQS. Because these SIP submissions addressed West Virginia's compliance with CAA section 110(a)(2), these SIP submissions are referred to as infrastructure SIP submissions. These previous submittals, as well as a technical support document (TSD), are included in the docket for today's action. The TSD contains a detailed discussion of these submittals and their relationship to the requirements of CAA section 110(a)(2).

A. Fine Particulate Matter and the NAAQS

On July 18, 1997, EPA revised the NAAQS for PM to add new standards for fine particles, using $PM_{2.5}$ as the indicator. Previously, EPA used PM_{10} (inhalable particles smaller than or equal to 10 micrometers in diameter) as the indicator for the PM NAAQS. EPA established health-based (primary) annual and 24-hour standards for $PM_{2.5}$, setting an annual standard at a level of 15 micrograms per cubic meter ($\mu g/m^3$) and a 24-hour standard at a level of 65 $\mu g/m^3$ (62 FR 38652). At the time the 1997 primary standards were established, EPA also established welfare-based (secondary) standards identical to the primary standards. The secondary standards are designed to protect against major environmental effects of $PM_{2.5}$, such as visibility impairment, soiling, and materials damage. On October 17, 2006, EPA revised the primary and secondary NAAQS for $PM_{2.5}$. In that rulemaking action, EPA reduced the 24-hour NAAQS for $PM_{2.5}$ to 35 $\mu g/m^3$ and retained the existing annual $PM_{2.5}$ NAAQS of 15 $\mu g/m^3$ (71 FR 61236).

B. Implementation of NSR Requirements for $PM_{2.5}$—the NSR $PM_{2.5}$ Rule

On May 16, 2008, EPA promulgated a rule (the NSR $PM_{2.5}$ Rule) to implement the 1997 $PM_{2.5}$ NAAQS, including changes to the NSR program (73 FR 28321). The 2008 NSR $PM_{2.5}$ Rule revised the NSR program requirements to establish the framework for implementing preconstruction permit review for the $PM_{2.5}$ NAAQS in both attainment and nonattainment areas. The 2008 NSR $PM_{2.5}$ Rule also established the following NSR requirements to implement the $PM_{2.5}$ NAAQS: (1) Require NSR permits to address directly emitted $PM_{2.5}$ and precursor pollutants; (2) establish significant emission rates for direct $PM_{2.5}$ and precursor pollutants (including sulfur dioxide (SO_2) and oxides of nitrogen (NO_X); (3) establish $PM_{2.5}$ emission offsets; and (4) require states to account for gases that condense to form particles (condensables) in $PM_{2.5}$ emission limits.

C. GHG Requirements

On June 3, 2010 (effective August 2, 2010), EPA promulgated a final rulemaking action, known as the Tailoring Rule, which established GHG emission thresholds for determining the applicability of PSD requirements to GHG-emitting sources. In a letter dated July 30, 2010 (the 60-day letter), West Virginia stated that it could interpret the current version of 45CSR14 to apply the meaning of the term ''subject to regulation'' established by EPA in the Tailoring Rule in implementing the PSD program, but would still pursue rulemaking action to be consistent with Federal counterpart language. West Virginia has chosen to adopt changes under West Virginia State Rule 45CSR14 consistent with those incorporated by the Tailoring Rule on June 3, 2010 (75 FR 31514). A detailed explanation of GHGs, climate change and the impact on health, society, and the environment is included in EPA's technical support documents (TSDs) for EPA's GHG endangerment finding final rule (Document ID No. EPA–HQ–OAR–2009–0472–11292 at *www.regulations.gov*), as well as the TSD for this current action.

West Virginia has also included in this revision automatic rescission provisions for the regulation of GHGs in the event that an EPA final rule, an act of the United States Congress, a Presidential Executive Order, a final order of the District of Columbia Circuit Court of Appeals, or an order of the United States Supreme Court results in GHGs not being subject to regulation

under the PSD program. EPA's analysis of the approvability of West Virginia's automatic rescission language is provided in the TSD for this current action.

D. Infrastructure Requirements Relating to West Virginia's PSD Permit Program

With the addition of the requirements for PSD described above, West Virginia's program contains all of the emission limitations and control measures and other program elements required by 40 CFR 51.166 related to the $PM_{2.5}$, ozone, and lead NAAQS. Therefore, we are proposing to approve the August 31, 2011 SIP submittal and relevant portions of West Virginia's infrastructure SIP submittals for the purpose of determining that West Virginia has met its statutory obligations relating to its PSD permit program under CAA sections 110(a)(2)(C), (D)(i)(II), and (J) for the 2008 lead NAAQS and 2008 ozone NAAQS. EPA is also making a determination that West Virginia has met its obligations relating to the PSD permit program pursuant to CAA section 110(a)(2)(D)(i)(II) for the 1997 $PM_{2.5}$ NAAQS, 1997 ozone NAAQS, and 2006 $PM_{2.5}$ NAAQS . As already noted, the TSD for this action contains a detailed discussion of the relevant submissions and EPA's rationale for making this determination.

II. Summary of SIP Revision

The SIP revision submitted by WVDEP consists of amendments to the PSD permitting regulations of Articles 45CSR14. The revision fulfills the Federal program requirements established by the EPA rulemaking actions discussed above. The amendments establish the major source threshold and significant emission rate for $PM_{2.5}$ pursuant to the May 2008 NSR PM $_{2.5}$ Rule, and establish thresholds at which GHGs become subject to regulation under the PSD program pursuant to the June 2010 Tailoring Rule. Several minor revisions were made as well in order to be consistent with Federal counterpart language.

The version of 45CSR14 submitted by West Virginia for approval into the SIP was adopted by West Virginia on March 18, 2011, and effective on June 16, 2011. They include revisions to 45CSR14—Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration. Based upon EPA's review of the revisions submitted by West Virginia for approval into the SIP, EPA find these revisions to be consistent with their Federal counterparts. A detailed summary of the NSR $PM_{2.5}$ rule, the Tailoring Rule, and a list of revisions to the state rule is available in the TSD.

III. Proposed Action

EPA's review of the August 31, 2011 submittal finds the regulations consistent with their Federal counterparts. Therefore, EPA is proposing to approve this West Virginia SIP revision. Additionally, in light of this SIP revision, EPA is proposing to approve the portions of West Virginia's submissions dated December 3, 2007, December 11, 2007, April 3, 2008, October 1, 2009, October 26, 2011, and February 17, 2012 which address the obligations set forth at CAA sections 110(a)(2)(C), (D)(i)(II) and (J) relating to the West Virginia PSD permit program. EPA is proposing to determine that West Virginia's SIP meets the statutory obligations relating to its PSD permit program set forth at CAA sections 110(a)(2)(C), (D)(i)(II) and (J) for the 2008 lead NAAQS, as well as the 2008 ozone NAAQS. Based on these and previous SIP submittals, EPA is also proposing to make a determination that West Virginia has met its obligations relating to the PSD permit program pursuant to CAA section 110(a)(2)(D)(i)(II) for the 1997 $PM_{2.5}$ NAAQS, 1997 ozone NAAQS, and 2006 $PM_{2.5}$ NAAQS. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

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

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

In addition, this proposed rule pertaining to NSR requirements for $PM_{2.5}$ and GHGs for the West Virginia SIP 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.

List of Subjects in 40 CFR Part 52

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

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

Dated: July 18, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2012–18664 Filed 7–30–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–0151; FRL–9706–1]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; The 2002 Base Year Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the fine particulate matter ($PM_{2.5}$) 2002 base year emissions inventory portion of the Virginia State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia, through the Virginia Department of Environmental Quality (VDEQ), on April 4, 2008. The emissions inventory is part of the Virginia April 4, 2008 SIP revision that was submitted to meet nonattainment requirements related to Virginia's portion of the Washington DC–MD–VA nonattainment area (hereafter referred to as Virginia Area or Area) for the 1997 $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS) SIP. EPA is proposing to approve the 2002 base year $PM_{2.5}$ emissions inventory in accordance with the requirements of the Clean Air Act (CAA).

DATES: Written comments must be received on or before August 30, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2010–0151 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: mastro.donna@epa.gov.*

C. *Mail:* EPA–R03–OAR–2010–0151, Donna Mastro, Acting Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2010–0151. 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 information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. 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 during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Asrah Khadr, (215) 814–2071, or by email at *khadr.asrah@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Summary of SIP Revision
III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia
IV. Proposed Action
V. Statutory and Executive Order Reviews

I. Background

Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. On July 18, 1997 (62 FR 38652), EPA established the 1997 $PM_{2..5}$ NAAQS, including an annual standard of 15.0 μg/m³ based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and a 24-hour (or daily) standard of 65 μg/m³ based on a 3-year average of the 98th percentile of 24-hour concentrations. EPA established the standards based on significant evidence and numerous health studies demonstrating that serious health effects are associated with exposures to $PM_{2.5}$.

Following promulgation of a new or revised NAAQS, EPA is required by the CAA to designate areas throughout the United States as attaining or not attaining the NAAQS; this designation process is described in section 107(d)(1) of the CAA. In 1999, EPA and state air-quality agencies initiated the monitoring process for the 1997 $PM_{2.5}$ NAAQS and, by January 2001, established a complete set of air-quality monitors. On January 5, 2005, EPA promulgated initial air-quality designations for the 1997 $PM_{2.5}$ NAAQS (70 FR 944), which became effective on April 5, 2005, based on air-quality monitoring data for calendar years 2001–03.

On April 14, 2005, EPA promulgated a supplemental rule amending the agency's initial designations (70 FR 19844), with the same effective date (April 5, 2005) as that which was promulgated at 70 FR 944. As a result of this supplemental rule, $PM_{2.5}$ nonattainment designations are in effect for 39 areas, comprising 208 counties within 20 states (and the District of Columbia) nationwide, with a combined population of approximately 88 million. The Virginia Area which is the subject of this rulemaking was included in the list of areas not attaining the 1997 $PM_{2.5}$ NAAQS. The Virginia Area consists of the following cities and counties in Virginia: Arlington County, Alexandria City, Fairfax County, Loudoun County and Prince William County.

On January 12, 2009 (74 FR 1146), EPA determined that Virginia had attained the 1997 $PM_{2.5}$ NAAQS in the Virginia Area. That determination was based upon quality assured, quality controlled and certified ambient air monitoring data that showed the Area had monitored attainment of the 1997 $PM_{2.5}$ NAAQS for the 2004–2006 monitoring period and that continued to show attainment of the 1997 $PM_{2.5}$ NAAQS based on the 2005–2007 data. The January 12, 2009 determination suspended the requirements for Virginia to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIP revisions related to attainment of the standard for so long as the nonattainment area continues to meet the 1997 $PM_{2.5}$ NAAQS. On January 23, 2012, VDEQ submitted a request for withdrawal of the Virginia 1997 $PM_{2.5}$ SIP revisions including the withdrawal of the attainment plan, analysis of reasonably available control measures, attainment demonstration, contingency plans and mobile source budgets. To meet the requirements of CAA section 172(c)(3), Virginia did not request the withdrawal of the 2002 base

year emission inventory portion of the 1997 $PM_{2.5}$ SIP revisions. Section 172(c)(3) of the CAA requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions.

II. Summary of SIP Revision

The 2002 base year emission inventory submitted by VDEQ on April 4, 2008 includes emissions estimates that cover the general source categories of point sources, non-road mobile sources, area sources, on-road mobile sources, and biogenic sources. The pollutants that comprise the inventory are nitrogen oxides (NO_X), volatile organic compounds (VOCs), $PM_{2.5}$, coarse particles (PM_{10}), ammonia (NH_3), and sulfur dioxide (SO_2). EPA has reviewed the results, procedures and methodologies for the base year emissions inventory submitted by VDEQ. The year 2002 was selected by VDEQ as the base year for the emissions inventory per 40 CFR 51.1008(b). A discussion of the emissions inventory development as well as the emissions inventory can be found in Appendix B of the April 3, 2008 SIP submittal.

Table 1 provides a summary of the annual 2002 emissions of NO_X, VOCs, $PM_{2.5}$, PM_{10}, NH_3, and SO_2 which were included in the Virginia submittal.

TABLE 1—EMISSIONS OF POLLUTANTS IN TONS PER YEAR

[TPY]

Pollutant	NO_X	VOCs	$PM_{2.5}$	PM_{10}	NH_3	SO_2
Emissions (TPY)	75,909.63	92,724.76	8,277.43	29,997.85	2,370.78	49,974.50

The CAA section 172(c)(3) emissions inventory is developed by the incorporation of data from multiple sources. States were required to develop and submit to EPA a triennial emissions inventory according to the Consolidated Emissions Reporting Rule (CERR) for all source categories (i.e., point, area, nonroad mobile and on-road mobile). The 2002 emissions inventory was based on data developed by VDEQ and the Metropolitan Washington Council of Government (MWCOG). The data were developed according to current EPA emissions inventory guidance ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter NAAQS and Regional Haze Regulations,'' August 2005. EPA preliminarily agrees that the process used to develop this emissions inventory is adequate to meet the requirements of CAA section 172(c)(3), the implementing regulations, and EPA guidance for emission inventories. More information regarding the review of the base year inventory can be found in the technical support document (TSD) titled ''2002 SIP Base Year Inventory'' that is located in this docket.

III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. * * *'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. Proposed Action

EPA is proposing to approve the 2002 base year emissions inventory portion of the SIP revision submitted by the

Commonwealth of Virginia through VDEQ on April 4, 2008. We have made the determination that this action is consistent with section 110 of the CAA. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

V. Statutory and Executive Order Reviews

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

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

In addition, this proposed rule, pertaining to the $PM_{2.5}$ 2002 base year emissions inventory portion of the Virginia SIP, 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: July 18, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2012–18657 Filed 7–30–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0448; FRL–9707–7]

Approval and Promulgation of Air Quality Implementation Plans: Georgia; Control Techniques Guidelines and Reasonably Available Control Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve three final and one draft State Implementation Plan (SIP) revisions submitted by the State of Georgia, through the Georgia Environmental Protection Division (GA EPD), to EPA on November 13, 1992, October 21, 2009, March 19, 2012, and July 19, 2012 (draft SIP revision). With regard only to the July 19, 2012, SIP submission, EPA is also proposing, in the alternative, to conditionally approve that revision which relates to certain control techniques guidelines (CTG) categories. Together, these four revisions establish reasonably available control technology (RACT) requirements for the major sources located in the Atlanta, Georgia 1997 8-hour ozone nonattainment area (hereafter referred to as the ''Atlanta Area'') that either emit volatile organic compounds (VOC), nitrogen oxides (NOx), or both. Georgia's SIP revisions include certain VOC source categories for which EPA has issued CTG. EPA has evaluated the proposed revisions to Georgia's SIP, and has made the preliminary determination that they are consistent with statutory and regulatory requirements and EPA guidance.

DATES: Comments must be received on or before August 30, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2012–0448 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: R4–RDS@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2012–0448'' 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.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, 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. 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 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. ''EPA–R04–OAR–2012–0448.'' 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

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 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: Jane Spann, 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. Ms. Spann may be reached by phone at (404) 562–9029, or via electronic mail at *spann.jane@epa.gov*.

SUPPLEMENTARY INFORMATION:

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I. Background
II. Analysis of the State's Submittals
III. Effect of this Proposed Action
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V. Statutory and Executive Order Reviews

I. Background

On April 30, 2004, EPA designated the Atlanta Area as a marginal nonattainment area with respect to the 1997 8-hour ozone national ambient air quality standards (NAAQS). *See* 69 FR 23858. The Atlanta Area includes the following 20 counties: Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding and Walton.[1] For background purposes, portions of the Atlanta Area were designated as a severe nonattainment area for the 1-hour ozone NAAQS. The area was subsequently redesignated to attainment for the 1-hour ozone standard with a maintenance plan. The original Atlanta 1-hour severe ozone nonattainment area consisted of 13 counties including Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding and Rockdale. *See* 56 FR 56694 (November 6, 1991). As such, major sources in the 13-county 1-hour ozone nonattainment area were defined as those sources that emit 25 tpy or more of VOC or NO_X. Therefore, the applicability of some of the rules being approved in today's action is for 25 tpy and above for sources in the 13 county area that was severe for the 1-hour ozone NAAQS and moderate for the 1997 8-hour ozone NAAQS; and 100 tpy and above in the remaining 7 counties that have only been classified as moderate for the 1997 8-hour ozone NAAQS. On March 6, 2008, EPA reclassified the Atlanta Area from a marginal ozone nonattainment area to a moderate ozone nonattainment area. As a result of this designation and subsequent reclassification to moderate, Georgia was required to amend its SIP for the Atlanta Area to satisfy the requirements for a moderate area under section 182 of the Clean Air Act (CAA or Act).

A. Statutory Requirements

Section 182(b)(2) of the CAA requires states to adopt RACT rules for all areas designated nonattainment for ozone and classified as moderate or above. The three parts of the section 182(b)(2) RACT requirements are: (1) RACT for sources covered by an existing CTG (i.e., a CTG issued prior to enactment of the 1990 amendments to the CAA); (2) RACT for sources covered by a post-enactment CTG; and (3) all major sources not covered by a CTG (i.e., non-CTG sources). Pursuant to 40 CFR 51.165, a major source for a moderate ozone area is a source that emits 100 tons per year (tpy) or more of VOC or NO_X.

A CTG is a guidance document issued by EPA which, as a result of CAA section 182(b)(2), triggers a responsibility for states to submit, as part of their SIPs, RACT rules for stationary sources of VOC that are covered by the CTG. EPA defines RACT as ''the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.'' *See* 44 FR 53761, (September 17, 1979). Each CTG includes a ''presumptive norm'' or ''presumptive RACT'' that EPA believes satisfies the definition of RACT.

If a state submits a RACT rule that is consistent with presumptive RACT, the state does not need to submit additional support to demonstrate that the rule meets the CAA's RACT requirement. However, if the state decides to submit an alternative emission limit or level of control for a source or source category for which there is a presumptive RACT, the state must submit independent documentation as to why the rule meets the statutory RACT requirement. As mentioned above, section 182(b)(2) of the CAA addresses moderate and above areas for the 1-hour ozone standard. Further clarification of the RACT requirements for areas classified as moderate or above for the 1997 8-hour ozone NAAQS is provided in EPA's regulations.[2] *See* 40 CFR 51.912.

The CTG established by EPA are guidance to the states and only provide recommendations. A state can develop its own strategy for what constitutes RACT for the various CTG categories, and EPA will review that strategy in the context of the SIP process and determine whether it meets the RACT requirements of the CAA and its implementing regulations. If no major sources of VOC or NO_X emissions (each pollutant should be considered separately) in a particular source category exist in an applicable nonattainment area, a state may submit a negative declaration for that category.

In addition, section 183(e) of the CAA directs EPA to: (1) List for regulation

[1] Effective July 20, 2012, EPA designated 15 counties in the Atlanta metropolitan area as a marginal nonattainment area for the 2008 8-hour ozone NAAQS. Today's proposed action regarding RACT is not related to requirements for the 2008 8-hour ozone NAAQS.

[2] On July 18, 1997, EPA promulgated a revised 8-hour ozone NAAQS of 0.08 parts per million—also referred to as the 1997 8-hour ozone NAAQS. On April 30, 2004, EPA designated areas as unclassifiable/attainment, nonattainment and unclassifiable for the 1997 8-hour ozone NAAQS. In addition, on April 30, 2004, as part of the framework to implement the 1997 8-hour ozone NAAQS, EPA promulgated an implementation rule in two phases (Phase I and II). The Phase I Rule (effective on June 15, 2004), provided the implementation requirements for designated areas under subpart 1 and subpart 2 of the CAA. *See* 69 FR 23951. EPA's Phase II Rule, finalized on November 29, 2005, addressed control and planning requirements as they applied to areas designated nonattainment for the 1997 8-hour ozone NAAQS such as RACT, RACM, reasonable further progress, modeling and attainment demonstrations, new source review, and the impact to reformulated gas for the 1997 8-hour ozone NAAQS transition. *See* 70 FR 71612.

those categories of products that account for at least 80 percent of the VOC emissions, on a reactivity-adjusted basis, from consumer and commercial products in ozone nonattainment areas; and (2) divide the list of categories to be regulated into four groups. EPA published the initial list, following the 1990 CAA Amendments, in the **Federal Register** on March 23, 1995 (60 FR 15264), and has revised the list several times. *See* 71 FR 28320 (May 16, 2006), 70 FR 69759 (November 17, 2005), 64 FR 13422 (March 18, 1999), 63 FR 48792 (September 11, 1998). As authorized by CAA section 183(e)(3)(C), EPA chose to issue CTG in lieu of regulations for each listed product category. *See* 73 FR 58481 (October 7, 2008) (Group IV CTG); 72 FR 57215 (October 9, 2007) (Group III CTG); and 71 FR 58745 (October 5, 2006) (Group II CTG).

B. Regulatory Schedule for Implementing CTG

CTG categories that were established in 1978 ultimately were required to be adopted by the states by 1990 (see schedule below for details). CAA section 182(b)(2) provides that a CTG issued after 1990 must specify the date by which a state must submit a SIP revision in response to the CTG. States were required to have the pre-1990 CAA CTG categories and post-1990 CAA CTG categories for applicable areas addressed in their SIPs according to the following schedule:

Group	**Federal Register** published	SIP due
I	Pre-1990 CAA Amendment CTG. As of January 1978 the first 15 CTG categories were established. Ten additional CTG categories were issued in 1978 (1 of those (vegetable oil) was rescinded).	Pre-CAA Amendment CTG. The first 25 CTG categories were due to be adopted by the states by 1980. EPA initially approved most of these rules into the state SIPs. Subsequently, EPA reviewed these state rules to see if they were technically adequate and if they met national standards for national consistency. Based on this review, EPA issued the RACT fix-ups in 1987 (*See* general preamble (57 FR 13498, April 16, 1992)). In 1988, EPA published a technical document to address technical inadequacies found in these state adopted rules and to address minimum standards of national consistency. States were required to adopt revised rules by 1990. Congress established CTG statutory requirements in the 1990 CAA Amendments. Outstanding CTG requirements were due in 1992 (CAA Section 182(b)(2)(C)).
	Post-1990 CAA Amendment CTG. The group of CTG established in 60 FR 15264, March 23, 1995, were broken into subsets called "Group I, II, III and IV" (some of these CTG are updates of previously established CTG)).	September 15, 2006 (40 CFR 51.912, RACT SIPs due for the 1997 8-hour ozone NAAQS).
II	71 FR 58745, October 5, 2006	October 5, 2007.
III	72 FR 57215, October 9, 2007	October 9, 2008.
IV	73 FR 58481, October 7, 2008	October 7, 2009.

II. Analysis of the State's Submittals

On November 13, 1992, October 21, 2009, and March 19, 2012, GA EPD submitted final SIP revisions to EPA for review and approval into the Georgia SIP. On July 19, 2012, GA EPD submitted a draft SIP revision to EPA for review and approval through parallel process. In the alternative to proposing approval of Georgia's July 19, 2012, draft SIP revision, EPA is proposing to conditionally approve Georgia's July 19, 2012, SIP revisions. These four SIP revisions comprehensively address all of the remaining CTG related requirements for the Atlanta Area [3] and revise Georgia's rules to address the VOC and NO_X RACT provisions for major sources.

Georgia's SIP revisions include changes made by the State of Georgia to its Air Quality Rules, found at Chapter 391–3–1, and include revisions to GA EPD's VOC and NO_X rules, including its VOC and NO_X RACT requirements. Georgia's VOC and NO_X rules for the Atlanta Area are being approved, as they are consistent with the CAA, and EPA VOC and NO_X RACT guidance including CTG guidance. A brief description of the rule changes that GA EPD submitted and that EPA is approving through this action is provided below.

A. Summary of the November 13, 1992, SIP Submittal

On November 13, 1992, the State of Georgia submitted a SIP revision to clarify compliance options and specify solids equivalent limits for certain CTG source categories in order to meet EPA requirements. This revision was originally submitted to address the 1-hour ozone nonattainment area requirements. EPA is now proposing to approve the revisions included as part of the November 13, 1992, SIP revision. A portion of the November 13, 1992, SIP revision was previously acted on in a **Federal Register** notice dated March 8, 1995 (60 FR 12688). A portion of the November 13, 1992, SIP revision was withdrawn. Rule 391–3–1–.02(2)(tt) and Rule 391–3–1–.02(2)(yy) were originally submitted in the November 13, 1992, submittal but GA EPD submitted a December 22, 1997, letter and a subsequent February 27, 2012, letter clarifying that GA EPD withdrew Rule 391–3–1–.02(2)(tt) and Rule 391–3–1–.02(2)(yy) from the November 13, 1992, submittal. The following remaining rule changes from the 1992 SIP revision, supplemented by the October 21, 2009, SIP revisions, are being approved in today's rulemaking, and address the Group I CTG related to certain surface coating methods. See section B of this rulemaking for a summary of the October 21, 2009, SIP revisions. Specifically, Georgia's Rule 391–3–1–.02(2)(u) addresses the control of VOC emissions from can coating operations located in the Atlanta Area; Rule 391–3–1–.02(2)(v) addresses the control of VOC emissions from coil coating operations located in the Atlanta Area; Rule 391–3–1–.02(2)(x) addresses the control of VOC emissions from fabric and vinyl coating operations located in the Atlanta Area; and Rule 391–3–1–.02(2)(aa) addresses the control of VOC emissions from wire coating operations located in the Atlanta Area.

Additionally, there were five other rules, intended to address Group I CTG related to additional surface coating methods, flat wood paneling and graphic arts systems, included in the November 13, 1992, SIP revision. Specifically, Georgia's Rule 391–3–1–

[3] Georgia met some of the Group I CTG requirements through SIP revisions submitted to EPA prior to November 13, 1992.

.02(2)(w) addresses the control of VOC emissions from paper coating operations located in the Atlanta Area; Rule 391–3–1–.02(2)(y) addresses the control of VOC emissions from metal furniture coating operations located in the Atlanta Area; Rule 391–3–1–.02(2)(z) addresses the control of VOC emissions from large appliance surface coating operations located in the Atlanta Area; Rule 391–3–1–.02(2)(jj) addresses the control of VOC emissions from flat wood paneling operations located in the Atlanta Area; and Rule 391–3–1–.02(2)(mm) addresses the control of VOC emissions from graphic arts systems operations located in the Atlanta Area. On March 19, 2012, Georgia updated rules 391–3–1–.02(2)(w), 391–3–1–.02(2)(y), 391–3–1–.02(2)(z), 391–3–1–.02(2)(jj), and 391–3–1–.02(2)(mm). Today, EPA is proposing to take action on the versions of these rules that were submitted in the March 19, 2012, SIP revision. See Section C for a summary of the March 19, 2012, SIP revision.

B. Summary of the October 21, 2009, SIP Submittals

Georgia submitted three SIP revisions dated October 21, 2009.

• ''October 21, 2009, Submittal A'' consists of the Atlanta Area Attainment Demonstration SIP, the Atlanta Area RACT SIP and the Atlanta Area Reasonable Further Progress SIP. Today's action only addresses the Atlanta Area RACT SIP portion of October 21, 2009, Submittal A. The RACT SIP portion states ''A majority of VOC provisions in Georgia Rule 391–3–1–.02(2) apply statewide based on county-specific VOC emission thresholds. The applicability of the VOC provisions that do not apply statewide have been extended to the additional 7 counties that make up the metro Atlanta non-attainment area. In addition, these VOC provisions apply year-round. The applicable NO_X rules already applied to the 7 additional counties and no change is being implemented at this time and they apply May 1 through September 31.'' The submittal then provides a comprehensive list of regulations that were originally submitted November 13, 1992.

• ''October 21, 2009, Submittal B'' includes rule revisions that apply to the Atlanta Area, with state effective dates of June 8, 2008. It includes changes to 12 RACT rules including: (1) six VOC CTG RACT rules; (2) two VOC RACT rules; (3) two NO_X RACT rules; (4) a rule for VOC emissions from major sources; and (5) a rule for NO_X emissions from major sources.

• ''October 21, 2009, Submittal C'' includes rule revisions that apply to the Atlanta Area, with state effective dates of April 12, 2009. It includes changes to eight RACT rules including: (1) Four VOC CTG RACT rules; (2) two VOC RACT rules; and (3) two NO_X RACT rules. This submittal revises seven of the rules contained in the ''October 21, 2009, Submittal B'' SIP revision.

As mentioned above in section II.A., of this rulemaking, the following rule changes from Georgia's November 1992 SIP revision, as supplemented by the October 21, 2009, SIP revisions, addressed Group I CTG: Rule 391–3–1–.02(2)(u), Rule 391–3–1–.02(2)(v), Rule 391–3–1–.02(2)(w), Rule 391–3–1–.02(2)(x), Rule 391–3–1–.02(2)(y), Rule 391–3–1–.02(2)(z), Rule 391–3–1–.02(2)(aa), Rule 391–3–1–.02(2)(jj) and Rule 391–3–1–.02(2)(mm). The October 21, 2009, Submittal B SIP revision also included Rule 391–3–1–.02(2)(pp), Rule 391–3–1–.02(2)(rr), Rule 391–3–1–.02(2)(ss), Rule 391–3–1–.02(2)(tt), Rule 391–3–1–.02(2)(vv), Rule 391–3–1–.02(2)(yy), Rule 391–3–1–.02(2)(ccc), Rule 391–3–1–.02(2)(ddd), Rule 391–3–1–.02(2)(eee), Rule 391–3–1–.02(2)(hhh), Rule 391–3–1–.02(2)(lll) and Rule 391–3–1–.02(2)(rrr). The state effective date of these rule revisions was June 8, 2008. The October 21, 2009, Submittal C SIP revision subsequently revised Rule 391–3–1–.02(2)(vv), Rule 391–3–1–.02(2)(ccc), Rule 391–3–1–.02(2)(ddd), Rule 391–3–1–.02(2)(eee), Rule 391–3–1–.02(2)(hhh), Rule 391–3–1–.02(2)(lll) and Rule 391–3–1–.02(2)(rrr) with a state effective date of April 12, 2009. In addition, the October 21, 2009, Submittal C SIP revision revised Rule 391–3–1–.02(2)(kkk). On March 19, 2012, Georgia later updated Rule 391–3–1–.02(2)(w), Rule 391–3–1–.02(2)(y) and Rule 391–3–1–.02(2)(z) to incorporate the requirements of CAA Section 182(b)(2)(A) for the Group III CTG. On March 19, 2012, Georgia also updated Rule 391–3–1–.02(2)(jj), Rule 391–3–1–.02(2)(mm) and Rule 391–3–1–.02(2)(ddd) to incorporate the requirements of CAA Section 182(b)(2)(A) for the Group II CTG. Today, EPA is proposing to take action on the version of this rule that was submitted in the March 19, 2012, SIP revision. See section C of this rulemaking for a summary of the March 19, 2012, SIP revision.

C. Summary of the March 19, 2012, SIP Submittal

Georgia's March 19, 2012, SIP revision applies to the 20 county Atlanta Area. EPA is proposing to approve the March 19, 2012, SIP revision in its entirety. The rule additions and amendments included in the March 19, 2012, SIP revision are listed below and grouped by pertinent CTG:

• Rule 391–3–1–.01 ''Definitions''

• Rule 391–3–1–.02(2)(a)6 ''General Provisions, VOC Emission Standards, Exemptions, Area Designations, Compliance Schedules and Compliance Determinations''

• *Group II CTG (71 FR 58745, October 5, 2006)*

—Rule 391–3–1–.02(2)(jj) ''VOC Emissions from Surface Coating of Flat Wood Paneling''

—Rule 391–3–1–.02(2)(mm) ''VOC Emissions from Graphic Arts Systems''

—Rule 391–3–1–.02(2)(ddd) ''Volatile Organic Compound Emissions from Offset Lithography and Letterpress''

—Rule 391–3–1–.02(2)(aaaa) ''Industrial Cleaning Solvents''

• *Group III CTG (72 FR 57215, October 9, 2007)*

—Rule 391–3–1–.02(2)(w) ''VOC Emissions from Paper Coating''

—Rule 391–3–1–.02(2)(y) ''VOC Emissions from Metal Furniture Coating''

—Rule 391–3–1–.02(2)(z) ''VOC Emissions from Large Appliance Surface Coating''

• *Group IV CTG (73 FR 58481, October 7, 2008)*

—Rule 391–3–1–.02(2)(t) ''VOC Emissions from Automobile and Light-Duty Truck Manufacturing''

—Rule 391–3–1–.02(2)(ii) ''VOC Emissions from Surface Coating of Miscellaneous Metal Parts and Products''

—Rule 391–3–1–.02(2)(vvv) ''VOC Emissions from Surface Coating of Miscellaneous Plastic Parts and Products''

—Rule 391–3–1–.02(2)(yyy) ''VOC Emissions from the Use of Miscellaneous Industrial Adhesives''

—Rule 391–3–1–.02(2)(zzz) ''VOC Emissions from the Fiberglass Boat Manufacturing'' including a negative declaration regarding the Pleasure Craft Coating Operations emission standard contained in the Group IV CTG

For each of the above March 19, 2012, SIP revision CTG related rule additions or changes, the SIP revision contains:

• New emission standards and/or work practice standards consistent with those in the new or revised CTG. Where existing emission limits were more stringent than the CTG, GA EPD maintained the existing provisions from the previous CTG. For Pleasure Craft Coating Operations, Georgia submitted a negative declaration, affirming that there are no sources applying coatings to pleasure craft in the Atlanta Area;

• New and revised definitions consistent with those in the CTG;
• A schedule for submitting permit applications, completing construction, and full compliance for any modifications necessary for a facility to comply with the new requirements; and
• Modifications to the applicability requirements clarifying which standards remain in effect until January 1, 2015, which standards become applicable on January 1, 2015, and what requirements are applicable after January 1, 2015.

D. Summary of the July 19, 2012, Draft SIP Submittal

On July 19, 2012, GA EPD submitted a draft SIP revision, for parallel processing, to apply the appropriate thresholds and applicability for certain CTG categories and RACT requirements for the 7 counties that were not a part of the original 1-hour ozone nonattainment area for Atlanta. In order to ensure that EPA can timely [4] take final action on today's proposed approval, EPA is proposing alternative actions with regard to the July 19, 2012, draft SIP revision. Because that revision was submitted in draft form, for parallel processing, EPA is today both proposing to approve the revision and alternatively, proposing to conditionally approve the revision based on Georgia's commitment to provide EPA with a revision within one year of final action on the conditional approval. Should EPA timely receive from Georgia the final version of the draft July 19, 2012, SIP revision, EPA will take final action to approve that revision. If, however, Georgia is unable to timely provide EPA with the final SIP revision, EPA will take final action on the conditional approval being proposed today. In either situation, EPA intends to take final action on the RACT SIP revisions provided by Georgia for the Atlanta Area.

Specifically, in the July 19, 2012, draft SIP revision, GA EPD revised Rule 391–3–1–.02(2)(a)(6) addressing the applicability thresholds for Barrow, Bartow, Carroll, Hall, Newton, Spalding and Walton Counties for the following CTG categories and RACT requirements:
• Rule 391–3–1–.02(2)(u) VOC Emissions from Can Coating;
• Rule 391–3–1–.02(2)(v) VOC Emissions from Coil Coating;
• Rule 391–3–1–.02(2)(x) VOC Emissions from Fabric and Vinyl Coating;
• Rule 391–3–1–.02(2)(aa) VOC Emissions from Wire Coating;
• Rule 391–3–1–.02(2)(bb) Petroleum Liquid Storage;
• Rule 391–3–1–.02(2)(cc) Bulk Gasoline Terminals;
• Rule 391–3–1–.02(2)(dd) Cutback Asphalt;
• Rule 391–3–1–.02(2)(ee) Petroleum Refinery;
• Rule 391–3–1–.02(2)(ff) Solvent Metal Cleaning;
• Rule 391–3–1–.02(2)(hh) Petroleum Refinery Equipment Leaks;
• Rule 391–3–1–.02(2)(kk) VOC Emissions from Synthesized Pharmaceutical Manufacturing;
• Rule 391–3–1–.02(2)(ll) VOC Emissions from the Manufacture of Pneumatic Rubber Tires;
• Rule 391–3–1–.02(2)(nn) VOC Emissions from External Floating Roof Tanks;
• Rule 391–3–1–.02(2)(qq) VOC Emissions from Large Petroleum Dry Cleaners;

The July 19, 2012, draft SIP revision, also included a revision to Rule 391–3–1–.02(2)(kkk) VOC Emissions from Aerospace Manufacturing and Rework Facilities which addresses the applicability thresholds for Barrow, Bartow, Carroll, Hall, Newton, Spalding and Walton Counties.

As mentioned above, on July 19, 2012, the State of Georgia, through GA EPD, submitted a request for parallel processing of a draft SIP revision that the State is taking through public comment. GA EPD requested parallel processing so that EPA could begin to take action on its draft SIP revision in advance of the State's submission of the final SIP revision. Consistent with EPA regulations found at 40 CFR Part 51, Appendix V, section 2.3.1, for purposes of expediting review of a SIP submittal, parallel processing allows a state to submit a plan to EPA prior to actual adoption by the state. Generally, the state submits a copy of the proposed regulation or other revisions to EPA before conducting its public hearing. EPA reviews this proposed state action, and prepares a notice of proposed rulemaking. EPA's notice of proposed rulemaking is published in the **Federal Register** during the same time frame that the state is holding its public process. The state and EPA then provide for concurrent public comment periods on both the state action and federal action.

If the revision that is finally adopted and submitted by the State is changed in aspects other than those identified in the proposed rulemaking on the parallel process submission, EPA will evaluate those changes and if necessary and appropriate, issue another notice of proposed rulemaking. The final rulemaking action by EPA will occur only after the SIP revision has been adopted by the State and submitted formally to EPA for incorporation into the SIP. As stated above, the final rulemaking action by EPA will occur only after the SIP revision has been: (1) Adopted by Georgia, (2) submitted formally to EPA for incorporation into the SIP; and (3) evaluated by EPA, including any changes made by the State after the July 19, 2012, draft SIP revision is submitted to EPA.

As explained earlier, in the alternative, EPA is also proposing conditional approval of Georgia's July 19, 2012, draft SIP revision, in order to ensure that EPA can take timely action to act on Georgia's RACT related revisions for the Atlanta Area. On July 19, 2012, Georgia submitted a commitment letter to provide EPA a SIP revision to address the appropriate thresholds and applicability for certain CTG categories and RACT requirements (listed above) for the 7 counties that are in the Atlanta Area but were not a part of the original 1-hour ozone nonattainment area for Atlanta. Georgia requested conditional approval of the CTG categories and RACT requirements until such time (within a year) that the State could submit a SIP revision to fully address these requirements. The State requested conditional approval in coordination with the July 19, 2012, draft SIP revision that the State has out for public comment, and requested conditional approval in the event that EPA had to take action on the CTG and RACT requirements for Georgia in advance of receipt of a final submission. A copy of Georgia's commitment letter is provided in the docket at EPA–R04–OAR–2012–0448 for today's proposed rulemaking.

E. List of Rules Being Approved Into the SIP

Below summarizes the specifics of each rule being proposed for approval in today's action.

a. Definitions and CTG Related Rules

1. Rule 391–3–1–.01, ''Definitions''

Revisions to this rule were state effective June 8, 2008, and submitted to EPA on June 25, 2008, for SIP approval. EPA approved the June 25, 2008, revisions into the SIP on June 11, 2009 (74 FR 27713). Subsequently, this rule was revised on March 7, 2012, to update the definition of Georgia Department of Natural Resources ''Procedures for Testing and Monitoring Sources of Air Pollutants,'' (PTM) to reference the most

[4] On January 16, 2012, EPA was sued in federal court for failure to take action on certain Georgia SIP revisions, including certain revisions regarding RACT requirements for the Atlanta Area. EPA intends to take action on the pertinent RACT related submittals by September 14, 2012.

recent, October 11, 2011, version of the PTM. It was submitted for SIP approval on March 19, 2012, and EPA is proposing to approve into the SIP the March 19, 2012, version of Rule 391–3–1–.01, ''Definitions.''

2. Rule 391–3–1–.02(2)(a)6, ''General Provisions, VOC Emission Standards, Exemptions, Area Designations, Compliance Schedules and Compliance Determinations''

VOC emission standards are required for all CTG source category sources in the 20 county Atlanta Area. Revisions to this rule were state effective June 8, 2008, and submitted to EPA on June 25, 2008, for SIP approval. EPA approved the June 25, 2008, revisions into the SIP on June, 11, 2009 (74 FR 27713). Subsequently, on March 7, 2012, Georgia updated the applicability requirements regarding these sources. The March 7, 2012, changes were submitted to EPA on March 19, 2012, for SIP approval. These changes remove the reference to Rules 391–3–1–.02(2)(t), (w), (y), (z), (ii), (jj), and (mm) from the applicability provisions in subparagraphs 391–3–1–.02(2)(a)6(i)(I). Georgia updated its applicability requirements again and submitted a draft SIP revision on July 19, 2012. These changes expanded the applicability to the entire 20 county Atlanta Area for Rules 391–3–1–.02(2)(u), (v), (x), (aa), (bb), (cc), (dd), (ee), (ff), (hh), (kk), (ll), (nn) and (qq).

EPA is proposing to approve into the SIP the March 19, 2012, version of Rule 391–3–1–.02(2)(a)6, ''General Provisions, VOC Emission Standards, Exemptions, Area Designations, Compliance Schedules and Compliance Determinations.'' EPA is also proposing to approve Georgia's rule changes submitted on July 19, 2012, for parallel processing. In the alternative to proposing approval of Georgia's July 19, 2012, draft SIP revision, EPA is proposing to conditionally approve Georgia's July 19, 2012, SIP revisions.

3. Rule 391–3–1–.02(2)(t) ''VOC Emissions From Automobile and Light-Duty Truck Manufacturing''

In May 1977, EPA issued a CTG document (1977 CTG) for controlling VOC emissions from surface coating of automobiles and light-duty trucks. On October 7, 2008 (73 FR 58481), EPA updated the 1977 CTG, as part of Group IV CTG, addressing the control of VOC emissions from automobile and light-duty truck manufacturing. On January 3, 1991, April 3, 1991, and September 30, 1991, GA EPD corrected VOC RACT deficiencies for a number of rules including Rule 391–3–1–.02(2)(t) ''VOC Emissions from Automobile and Light-Duty Truck Manufacturing.'' EPA approved these 1991 revisions into the SIP on October 13, 1992 (57 FR 46780). Subsequent revisions made to GA EPD's VOC Emissions from Automobile and Light-Duty Truck Manufacturing rule were state effective on December 20, 1994, and submitted to EPA for SIP approval. EPA approved this 1994 rule into the SIP on February 2, 1996. *See* 61 FR 3817).

Revisions to the rule were then made to address this CTG source category for the entire 20 county Atlanta Area and made state effective on March 7, 2012. GA EPD submitted the March 7, 2012, revisions to EPA on March 19, 2012. EPA has reviewed Georgia's revised rule and preliminarily determined that Georgia's rule is consistent with the Group IV CTG for VOC emissions from automobile and light-duty truck manufacturing. EPA is therefore proposing to approve Georgia's rule, submitted on March 19, 2012, regarding VOC emissions from automobile and light-duty truck manufacturing.

4. Rule 391–3–1–.02(2)(u) ''VOC Emissions From Can Coating''

In May 1977, EPA established a CTG addressing the control of VOC emissions from can coating operations. On January 3, 1991, April 3, 1991, and September 30, 1991, GA EPD corrected VOC RACT deficiencies for a number of rules including Rule 391–3–1–.02(2)(u) ''VOC Emissions from Can Coating.'' EPA approved these 1991 revisions into the SIP on October 13, 1992 (57 FR 46780). On November 13, 1992, GA EPD submitted a SIP revision to address this CTG source category for the 13 county Atlanta 1-hour ozone nonattainment area. Subsequently, through the October 21, 2009, ''Submittal A'' SIP revision, and the draft July 19, 2012, SIP revision the applicability of these rules was extended to include the 20 county Atlanta Area.[5] The July 19, 2012, SIP revision revised Rule 391–3–1–.02(2)(a)(6) ''General Provisions, VOC Emission Standards, Exemptions, Area Designations, Compliance Schedules and Compliance Determinations'' which affected the applicability for Rule 391–3–1–.02(2)(u) ''VOC Emissions from Can Coating.''

The purpose of Georgia's rule is to control VOC emissions from can coating operations located in the Atlanta Area. GA EPD's Rule 391–3–1–.02(2)(u) ''VOC Emissions from Can Coating'' was changed to clarify compliance options and to specify solids equivalent limits to be used as a compliance option. EPA has reviewed Georgia's rule changes, submitted on November 13, 1992, and in the October 21, 2009, Submittal A SIP revision and has preliminarily determined that these changes are consistent with EPA RACT guidance and EPA's CTG for Can Coatings, and these changes are therefore proposed for approval. EPA is also proposing to approve Georgia's rule changes submitted on July 19, 2012, for parallel processing and in alternative, proposing conditional approval of Georgia's July 19, 2012, draft SIP revision.

5. Rule 391–3–1–.02(2)(v) ''VOC Emissions From Coil Coating''

In May 1977, EPA established a CTG addressing the control of VOC emissions from coil coating operations. On January 3, 1991, April 3, 1991, and September 30, 1991, GA EPD corrected VOC RACT deficiencies for a number of rules including Rule 391–3–1–.02(2)(v) ''VOC Emissions from Coil Coating.'' EPA approved these 1991 revisions into the SIP on October 13, 1992 (57 FR 46780). On November 13, 1992, GA EPD submitted a SIP revision to address this CTG source category for the 13 county Atlanta 1-hour ozone nonattainment area. Subsequently, through the October 21, 2009, Submittal A SIP revision, and the draft July 19, 2012, SIP revision the applicability of these rules was extended to include the current 20 county 1997 8-hour Atlanta ozone nonattainment area. The July 19, 2012, SIP revision revised Rule 391–3–1–.02(2)(a)(6) ''General Provisions, VOC Emission Standards, Exemptions, Area Designations, Compliance Schedules and Compliance Determinations'' which affected the applicability for Rule 391–3–1–.02(2)(v) ''VOC Emissions from Coil Coating.''

The purpose of Georgia's rule is to control VOC emissions from coil coating operations located in the Atlanta Area. It was changed to clarify compliance options and to specify solids equivalent limits to be used as a compliance option. EPA has reviewed Georgia's rule changes, submitted on November 13,

[5] Under Section 107(d)(1)(C) of the CAA, each ozone area designated nonattainment for the 1-hour ozone NAAQS prior to the enactment of the 1990 CAA Amendments, such as the Atlanta Area, was designated by operation of law upon the 1990 CAA Amendments. Under Section 181(a) of the CAA, each ozone area designated under section 107(d) was also classified by operation of law as ''marginal,'' ''moderate,'' ''serious,'' ''severe,'' or ''extreme,'' depending on the severity of the area's air quality problem. The original Atlanta 1-hour severe ozone nonattainment area, (*See* 56 FR 56694, November 6, 1991), consisted of the 13 counties of Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding and Rockdale. When the Atlanta Area was designated nonattainment for the 1997 8-hour ozone NAAQS, the Area included the previous 1-hour area counties, and an additional seven counties to make the 20 county Atlanta Area.

1992, and in the October 21, 2009, Submittal A SIP revision and has preliminarily determined that these changes are consistent with EPA RACT guidance and EPA's CTG for Coil Coatings, and these changes are therefore proposed for approval. EPA is also proposing to approve Georgia's rule changes submitted on July 19, 2012, for parallel processing. In the alternative, EPA is proposing to conditionally approve of Georgia's July 19, 2012, draft SIP revision.

6. Rule 391–3–1–.02(2)(w) ''VOC Emissions From Paper Coating''

In May 1977, EPA established a CTG addressing the control of VOC emissions from paper coating operations. On October 9, 2007 (73 FR 57215), EPA updated the 1977 CTG, as part of Group III CTG, addressing the control of VOC emissions from paper, film and foil coating operations. On January 3, 1991, April 3, 1991, and September 30, 1991, GA EPD corrected VOC RACT deficiencies for a number of rules including Rule 391–3–1–.02(2)(w) ''VOC Emissions from Paper Coating.'' EPA approved these 1991 revisions into the SIP on October 13, 1992 (57 FR 46780). Subsequent changes to this rule became state effective on September 16, 1992, and were submitted to EPA for SIP approval on November 13, 1992. At the time it was submitted it applied to the 13 counties in the 1-hour ozone nonattainment area. Through the October 21, 2009, Submittal A SIP revision, the applicability of these rules was extended to include the current 20 county Atlanta Area. The Georgia rule was changed again on March 7, 2012, to be consistent with EPA Group III CTG established October 9, 2007 (72 FR 57215), and submitted to EPA for SIP approval on March 19, 2012.

The purpose of this rule is to control VOC emissions from paper coating operations located in the Atlanta Area. It was changed to clarify compliance options and to specify solids equivalent limits to be used as a compliance option. Please see pages A–22 through A–25 of the March 19, 2012, submittal for the specific changes made to this rule. The Georgia submittal can be found in the docket at ''EPA–R04–OAR–2012–0448'' for today's rulemaking. EPA has reviewed Georgia's rule changes, which became state effective on March 7, 2012, and has preliminarily determined that these changes are consistent with EPA RACT guidance and Group III CTG for VOC emissions for Paper, Film and Foil Coatings, and these changes are therefore proposed for approval.

7. Rule 391–3–1–.02(2)(x) ''VOC Emissions From Fabric and Vinyl Coating''

In May 1977, EPA established a CTG addressing the control of VOC emissions from fabric and vinyl coating operations. On January 3, 1991, April 3, 1991, and September 30, 1991, GA EPD corrected VOC RACT deficiencies for a number of rules including Rule 391–3–1–.02(2)(x) ''VOC Emissions from Fabric and Vinyl Coating.'' EPA approved these 1991 revisions into the SIP on October 13, 1992 (57 FR 46780). On November 13, 1992, GA EPD submitted a SIP revision to address this CTG source category for the 13 county Atlanta 1-hour ozone nonattainment area. Subsequently, through the October 21, 2009, Submittal A SIP revision, and the draft July 19, 2012, SIP revision, the applicability of Georgia's rule was extended to include the 20 county Atlanta Area. The July 19, 2012, SIP revision revised Rule 391–3–1–.02(2)(a)(6) ''General Provisions, VOC Emission Standards, Exemptions, Area Designations, Compliance Schedules and Compliance Determinations'' which affected the applicability for Rule 391–3–1–.02(2)(x) ''VOC Emissions from Fabric and Vinyl Coating.''

The purpose of this rule is to control VOC emissions from fabric and vinyl coating operations located in the Atlanta Area. It was changed to clarify compliance options and to specify solids equivalent limits to be used as a compliance option. EPA has reviewed Georgia's rule changes, and has preliminarily determined that these changes, submitted on November 13, 1992, and in the October 21, 2009, Submittal A SIP revision, are consistent with EPA RACT guidance and EPA's CTG for fabric and vinyl coatings, and these changes are therefore proposed for approval. EPA is also proposing to approve Georgia's rule changes submitted on July 19, 2012, for parallel processing and in the alternative, proposing conditional approval of Georgia's July 19, 2012, draft SIP revision.

8. Rule 391–3–1–.02(2)(y) ''VOC Emissions From Metal Furniture Coating''

In June 1978, EPA established a CTG addressing the control of VOC emissions from Metal Furniture Coating. On October 9, 2007 (73 FR 57215), EPA updated the 1978 CTG, as part of Group III CTG, addressing control of VOC emissions from metal furniture coating operations.

On January 3, 1991, April 3, 1991, and September 30, 1991, GA EPD corrected VOC RACT deficiencies for a number of rules including Rule 391–3–1–.02(2)(y) ''VOC Emissions from Metal Furniture Coating.'' EPA approved these 1991 revisions into the SIP on October 13, 1992 (57 FR 46780). Subsequent revisions to this rule became state effective on September 16, 1992, and were submitted to EPA for SIP approval on November 13, 1992. At the time it was submitted it applied to the 13 counties in the Atlanta 1-hour ozone nonattainment area. Through the October 21, 2009, Submittal A SIP revision, the applicability of these rules was extended to include the 20 county Atlanta Area. The Georgia rule was changed again on March 7, 2012, to be consistent with EPA Group III CTG established October 9, 2007, (72 FR 57215) and submitted to EPA for SIP approval on March 19, 2012.

The purpose of this rule is to control VOC emissions from metal furniture coating operations located in the Atlanta Area. It was revised to clarify compliance options and to specify solids equivalent limits to be used as a compliance option. Please see pages A–25 through A–30 of the March 19, 2012, submittal for the specific changes made to this rule. The Georgia submittal can be found in the docket at ''EPA–R04–OAR–2012–0448'' for today's rulemaking. EPA has reviewed Georgia's rule changes, submitted on March 19, 2012, and has preliminarily determined that these changes are consistent with EPA RACT guidance and Group III CTG VOC emissions for metal furniture coatings, and these changes are therefore proposed for approval.

9. Rule 391–3–1–.02(2)(z) ''VOC Emissions From Large Appliance Surface Coating''

In May 1977, EPA established a CTG addressing the control of VOC emissions from large appliance surface coating operations. On October 9, 2007 (73 FR 57215), EPA updated the 1977 CTG, as part of Group III CTG, addressing the control of VOC emissions from large appliance surface coating operations.

On January 3, 1991, April 3, 1991, and September 30, 1991, GA EPD corrected VOC RACT deficiencies for a number of rules including Rule 391–3–1–.02(2)(z) ''VOC Emissions from Large Appliance Surface Coating.'' EPA approved these 1991 revisions into the SIP on October 13, 1992 (57 FR 46780). Subsequent revisions to this rule became state effective on September 16, 1992, and were submitted to EPA for SIP approval on November 13, 1992. At the time it was submitted it applied to the 13 counties in the Atlanta 1-hour ozone nonattainment area. Subsequently,

through the October 21, 2009, Submittal A, SIP revision, the applicability of these rules was extended to include the 20 county Atlanta Area. The Georgia rule was revised again on March 7, 2012, to be consistent with EPA Group III CTG established October 9, 2007, *(see* 72 FR 57215) and submitted to EPA for SIP approval on March 19, 2012. EPA is now approving into the SIP the rule submitted to EPA on March 19, 2012.

The purpose of this rule is to control VOC emissions from large appliance surface coating operations located in the Atlanta Area. It was changed to clarify compliance options and to specify solids equivalent limits to be used as a compliance option. Please see pages A–30 through A–35 of the March 19, 2012, submittal for the specific changes made to this rule. The Georgia submittal can be found in the docket at ''EPA–R04–OAR–2012–0448'' for today's rulemaking. EPA has reviewed Georgia's rule changes in the March 19, 2012, submittal and has preliminarily determined that these changes are consistent with EPA RACT guidance and Group III CTG for VOC emissions for large appliance coatings, and these changes are therefore proposed for approval.

10. Rule 391–3–1–.02(2)(aa) ''VOC Emissions From Wire Coating''

In May 1977, EPA established a CTG addressing the control of VOC emissions from magnet wire coating operations. On January 3, 1991, April 3, 1991, and September 30, 1991, GA EPD corrected VOC RACT deficiencies for a number of rules including Rule 391–3–1–.02(2)(aa) ''VOC Emissions from Wire Coating.'' EPA approved these 1991 revisions into the SIP on October 13, 1992 (57 FR 46780). On November 13, 1992, GA EPD submitted a SIP revision to address this CTG source category for the 13 county Atlanta 1-hour ozone nonattainment area. Subsequently, through the October 21, 2009, Submittal A SIP revision, and the draft July 19, 2012, SIP revision, the applicability of these rules was extended to include the 20 county Atlanta Area. The July 19, 2012, SIP revision revised Rule 391–3–1–.02(2)(a)(6) ''General Provisions, VOC Emission Standards, Exemptions, Area Designations, Compliance Schedules and Compliance Determinations'' which affected the applicability for Rule 391–3–1–.02(2)(aa) ''VOC Emissions from Wire Coating.''

The purpose of Georgia's rule is to control VOC emissions from wire coating operations located in the Atlanta Area. It was changed to clarify compliance options and to specify solids equivalent limits to be used as a compliance option. EPA has reviewed Georgia's rule changes, submitted on November 13, 1992, and in the October 21, 2009, Submittal A SIP revision and has preliminarily determined that these changes are consistent with EPA RACT guidance and EPA's CTG for wire coatings, and these changes are therefore proposed for approval. EPA is also proposing to approve Georgia's rule changes submitted on July 19, 2012, for parallel processing. In the alternative, EPA is proposing to conditionally approve of Georgia's July 19, 2012, draft SIP revision.

11. Rule 391–3–1–.02(2)(ii) ''VOC Emissions From Surface Coating of Miscellaneous Metal Parts and Products''

In June 1978, EPA issued a CTG document to address the control of VOC emissions from surface coating of Miscellaneous Metal Parts and Products. On October 7, 2008 (73 FR 58481), EPA updated the 1978 CTG, as part of Group IV CTG, addressing the control of VOC emissions from surface coating of miscellaneous metal parts and products.

On January 3, 1991, April 3, 1991, and September 30, 1991, GA EPD corrected VOC RACT deficiencies for a number of rules including Rule 391–3–1–.02(2)(ii) ''VOC Emissions from Surface Coating of Miscellaneous Metal Parts and Products.'' EPA approved these 1991 revisions into the SIP on October 13, 1992 (57 FR 46780). On October 28, 1999, GA EPD submitted to EPA a revision to Rule 391–3–1–.02(2)(ii) ''VOC Emissions from Surface Coating of Miscellaneous Metal Parts and Products'' and EPA approved this rule on July 10, 2001 (66 FR 35906). On March 19, 2012, GA EPD submitted another SIP revision revising Rule 391–3–1–.02(2)(ii) ''VOC Emissions from Surface Coating of Miscellaneous Metal Parts and Products,'' to address this CTG source category for the entire 20 county Atlanta Area.

The purpose of Georgia's rule is to control VOC emissions from surface coating of miscellaneous metal parts and products operations located in the Atlanta Area. It was changed to clarify compliance options and to specify solids equivalent limits to be used as a compliance option. The changes set emissions limits and solids equivalent for various coating scenarios. Please see pages A–35 through A–44 of the March 19, 2012, submittal for the specific changes made to this rule. The Georgia submittal can be found in the docket at ''EPA–R04–OAR–2012–0448'' for today's rulemaking. EPA has reviewed Georgia's rule changes, submitted on March 19, 2012, and has preliminarily determined that these changes are consistent with EPA RACT guidance and Group IV CTG for VOC emissions for surface coating of miscellaneous metal parts and products, and these changes are therefore proposed for approval.

12. Rule 391–3–1–.02(2)(jj) ''VOC Emissions From Surface Coating of Flat Wood Paneling''

In June 1978, EPA issued a CTG document to address the control of VOC emissions from surface coating of flat wood paneling. On October 5, 2006 (71 FR 58745), EPA updated the 1978 CTG, as part of Group II CTG, addressing the control of VOC emissions from surface coating of flat wood paneling operations.

On January 3, 1991, April 3, 1991, and September 30, 1991, GA EPD corrected VOC RACT deficiencies for a number of rules including Rule 391–3–1-.02(2)(jj) ''VOC Emissions from Surface Coating of Flat Wood Paneling.'' EPA approved these 1991 revisions into the SIP on October 13, 1992 (57 FR 46780). GA EPD revised the rule again on September 16, 1992, and submitted it to EPA for SIP approval on November 13, 1992. At the time it was submitted it applied to the 13 counties in the 1-hour ozone nonattainment area. Subsequently, through the October 21, 2009, Submittal A, SIP revision, the applicability of these rules was extended to include the 20 county Atlanta Area. The Georgia rule was changed again on March 7, 2012, to be consistent with EPA Group II CTG established October 5, 2006 (71 FR 58745), and was submitted to EPA for SIP approval on March 19, 2012.

The purpose of Georgia's rule is to control VOC emissions from surface coating of flat wood paneling operations located in the Atlanta Area. It was changed to more clearly specify compliance options that are already approved in this section. Specifically, subparagraphs (jjj)2.(i),(ii) and (iii) are changed to more clearly define the compliance options. Please see pages A–44 through A–47 of the March 19, 2012, submittal for the specific changes made to this rule. The Georgia submittal can be found in the docket at ''EPA–R04–OAR–2012–0448'' for today's rulemaking. EPA has reviewed Georgia's rule changes, submitted in the October 21, 2009, Submittal A, and March 19, 2012, SIP revisions and has preliminarily determined that these changes are consistent with EPA RACT guidance and Group II for VOC emissions for surface coating of flat wood paneling, and these revisions are therefore proposed for approval.

13. Rule 391–3–1–.02(2)(mm) ''VOC Emissions From Graphic Arts Systems''

In December 1978, EPA published a CTG for graphic arts (rotogravure printing and flexographic printing) that included flexible packaging printing. On October 5, 2006 (71 FR 58745), EPA updated the1978 CTG, as part of Group II CTG, addressing the control of VOC emissions from graphic arts systems consisting of packaging rotogravure, publication rotogravure or flexographic printing operations.

On January 3, 1991, April 3, 1991, and September 30, 1991, GA EPD corrected VOC RACT deficiencies for a number of rules including Rule 391–3–1–.02(2)(mm) ''VOC Emissions from Graphic Arts Systems.'' EPA approved these 1991 revisions into the SIP on October 13, 1992 (57 FR 46780). GA EPD revised its rule again on September 16, 1992, and submitted the revisions to EPA for SIP approval on November 13, 1992. At the time Georgia's rule was submitted it applied to the 13 counties in the 1-hour ozone nonattainment area. Subsequently, through the October 21, 2009, Submittal A SIP revision, the applicability of these rules was extended to include the 20 county Atlanta Area. The Georgia rule was changed again on March 7, 2012, to be consistent with EPA Group II CTG established October 5, 2006 (71 FR 58745), and submitted to EPA for SIP approval on March 19, 2012. EPA is now proposing to approve into the SIP the rule submitted to EPA on March 19, 2012.

The purpose of Georgia's rule is to control VOC emissions from graphic arts operations located in the Atlanta Area. It was changed to clarify compliance options and to specify solids equivalent limits to be used as a compliance option. The changes also allows for a compliance option to average a 24-hour weighted basis of VOC content, provided the average does not exceed the limits set in this section. Please see pages A–48 through A–52 of the March 19, 2012, submittal for the specific changes made to this rule. The Georgia submittal can be found in the docket at ''EPA–R04–OAR–2012–0448'' for today's rulemaking. EPA has reviewed Georgia's rule changes, submitted on March 19, 2012, and has preliminarily determined that these changes are consistent with EPA RACT guidance and Group II CTG for VOC emissions for graphic arts, and these changes are therefore proposed for approval.

14. Rule 391–3–1–.02(2)(pp) ''Bulk Gasoline Plants''

In 1977, EPA established a CTG addressing the control of VOC emissions from bulk gasoline plants. On January 3, 1991, April 3, 1991, and September 30, 1991, GA EPD corrected VOC RACT deficiencies for a number of rules including Rule 391–3–1–.02(2)(pp) ''Bulk Gasoline Plants.'' EPA approved these 1991 revisions into the SIP on October 13, 1992 (57 FR 46780). On December 31, 2004, GA EPD revised Rule 391–3–1–.02(2)(pp) ''Bulk Gasoline Plants'' again. EPA approved these revisions into the SIP on August 26, 2005, (70 FR 50199). GA EPD revised its rule again on June 8, 2008, and submitted the revisions to EPA for SIP approval in the October 21, 2009, Submittal B SIP revision. EPA is now proposing to approve into the SIP the rule submitted to EPA on October 21, 2009.

The purpose of Rule 391–3–1–.02(2)(pp) ''Bulk Gasoline Plants'' is to comply with section 182 of the CAA, as it relates to the implementation of RACT for bulk gasoline plants. The amendment extends the requirement to all 20 counties in the Atlanta Area, by adding the counties of Barrow, Bartow, Carroll, Hall, Newton, Spalding, and Walton. The compliance date for the seven additional counties is June 1, 2008, to coincide with the applicability of rule 391–3–1–.02(2)(rr) ''Gasoline Dispensing Facility,'' for these counties. Additionally, language has been added to subparagraphs 1.(i), (ii), and (iii), and a definition for ''stationary storage tank'' has been added to subparagraph 5.(v), to further clarify that the provisions in this section apply to stationary storage tanks. These changes, submitted on October 21, 2009, are being proposed for approval, as they appear to be consistent with the federal requirements for RACT (Group I CTG) and the CAA.

15. Rule 391–3–1–.02(2)(rr) ''Gasoline Dispensing Facility''

In 1975, EPA established a CTG addressing the control of VOC emissions from gasoline dispensing facilities. On January 3, 1991, April 3, 1991, and September 30, 1991, GA EPD corrected VOC RACT deficiencies for a number of rules including Rule 391–3–1–.02(2)(rr) ''Gasoline Dispensing Facility.'' EPA approved these 1991 revisions into the SIP on October 13, 1992 (57 FR 46780). On December 31, 2004, GA EPD revised Rule 391–3–1–.02(2)(rr) ''Gasoline Dispensing Facility'' again. EPA approved these revisions into the SIP on August 26, 2005 (70 FR 50199). GA EPD revised its rule again on June 8, 2008, and submitted the revisions to EPA for SIP approval in the October 21, 2009, Submittal B SIP revision. EPA is now proposing to approve into the SIP the rule submitted to EPA on October 21, 2009.

The purpose of Georgia's rule is to comply with section 182 of the CAA, as it relates to the implementation of RACT for gasoline dispensing facilities. Subparagraph (rr)1.-14. of the rule was deleted in its entirety and replaced with a new subparagraph (rr)1.-16. to make the rule more clearly understandable. The installation and operation of Stage I Vapor Recovery control is equivalent to RACT for such plants. The revisions expand the requirements of this subparagraph to include the seven additional counties (Barrow, Bartow, Carroll, Hall, Newton, Spalding, and Walton) that were added to the Atlanta Area, with staggered compliance dates ranging from June 1, 2008, to May 1, 2009, based on gallons per month of gasoline dispensed. Existing facilities in the counties of Catoosa, Richmond and Walker also have staggered compliance dates of May 1, 2006, or May 1, 2007, based on whether they dispense greater than, or less than or equal to, 50,000 gallons of gasoline per month. Any newly constructed or reconstructed facilities would need to be in compliance with the requirements of the subparagraph upon startup of gasoline dispensing operations.

The changes also establish the requirement that applicable gasoline dispensing facilities implement enhanced Stage I vapor recovery systems rather than Stage I vapor recovery systems. The revisions establish compliance dates for the upgrade of existing Stage I vapor control systems to enhanced vapor control systems. The amendment extends the requirement to all 20 counties in the Atlanta Area, by adding the counties of Barrow, Bartow, Carroll, Hall, Newton, Spalding, and Walton. The compliance date for existing facilities in the counties of Cherokee, Clayton, Cobb, Coweta, DeKalb, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding, and Rockdale to be in compliance with the requirements of an approved enhanced Stage I gasoline vapor recovery system is May 1, 2012, and for the counties of Catoosa, Richmond and Walker is May 1, 2023. Any newly constructed or reconstructed facilities would need to be in compliance with the enhanced Stage I requirements upon startup of gasoline dispensing operations. EPA has preliminarily determined that all of the changes and compliance dates in this rule revision submitted in the October 21, 2009, Submittal B SIP revision meet

the requirements of RACT under the CAA and the Group I CTG for ''Design Criteria for Stage I Vapor Control Systems—Gasoline Service Stations,'' and are therefore proposed for approval.

16. Rule 391–3–1–.02(2)(ss) ''Gasoline Transport Vehicles and Vapor Collection Systems''

In December 1978, EPA established a CTG addressing the control of VOC emissions from gasoline transport vehicles and vapor collection systems. On January 3, 1991, April 3, 1991, and September 30, 1991, GA EPD corrected VOC RACT deficiencies for a number of rules including Rule 391–3–1–.02(2)(ss) ''Gasoline Transport Vehicles and Vapor Collection Systems.'' EPA approved these 1991 revisions into the SIP on October 13, 1992 (57 FR 46780). On December 31, 2004, GA EPD revised Rule 391–3–1–.02(2)(ss) ''Gasoline Transport Vehicles and Vapor Collection Systems'' again. EPA approved these revisions into the SIP on August 26, 2005, (70 FR 50199). GA EPD revised its rule again on June 8, 2008, and submitted the revisions to EPA for SIP approval in the October 21, 2009, Submittal B SIP revision. EPA is now proposing to approve into the SIP the rule submitted to EPA on October 21, 2009.

The purpose of this revision is to expand applicability to the seven additional counties (Barrow, Bartow, Carroll, Hall, Newton, Spalding, and Walton) that were added to the Atlanta Area. This will allow the rule requirements to cover gasoline transport vehicles that deliver gasoline to gasoline dispensing facilities in these counties. Additionally, several administrative revisions are made to the rule to clarify and consolidate the rule, including the addition of the term ''vapor'' to clarify that the control system is a vapor control system, and the addition of the definition of ''gasoline.'' These changes, submitted in the October 21, 2009, Submittal B SIP revision appear to meet the requirements of RACT under the CAA, and the Group I CTG for ''Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems,'' and are therefore proposed for approval.

17. Rule 391–3–1–.02(2)(ddd) ''Volatile Organic Compound Emissions From Offset Lithography and Letterpress''

On October 5, 2006 (71 FR 58745), EPA established an offset lithography and letterpress CTG separate from the graphic arts CTG, as part of Group II CTG, addressing the control of VOC emissions from offset lithography and letterpress operations.

On October 28, 1999, GA EPD submitted to EPA a revision to Rule 391–3–1–.02(2)(ddd) ''Volatile Organic Compound Emissions from Offset Lithography and Letterpress'' and EPA approved this rule on July 10, 2001 (66 FR 35906). GA EPD revised its rule again on June 8, 2008, and submitted it to EPA for SIP approval in the October 21, 2009, Submittal B SIP revision. The October 21, 2009, Submittal B, SIP revision updated the list of counties to include Barrow County so the Georgia rule applies to the entire 20 county Atlanta Area and the revision established a compliance date of May 1, 2009, for Barrow County. Subsequently, this rule was revised on April 12, 2009, and submitted to EPA for SIP approval in the October 21, 2009, Submittal C SIP revision. The October 21, Submittal C, SIP revision revised the compliance date to March 1, 2009. Subsequently, this rule was revised again on March 7, 2012, to be consistent with EPA Group II CTG established, October 5, 2006 (71 FR 58745), for the Atlanta Area and submitted to EPA for SIP approval on March 19, 2012. EPA is now proposing to approve into the SIP the rule submitted to EPA on March 19, 2012.

18. Rule 391–3–1–.02(2)(eee) ''Volatile Organic Compound Emissions From Expanded Polystyrene Products Manufacturing''

In 1983, EPA established a CTG addressing the control of VOC emissions from expanded polystyrene products manufacturing. On October 28, 1999, GA EPD submitted to EPA a revision to Rule 391–3–1–.02(2)(eee) ''Volatile Organic Compound Emissions from Expanded Polystyrene Products Manufacturing'' and EPA approved this rule on July 10, 2001 (66 FR 35906). GA EPD revised the rule again on June 8, 2008, and submitted it to EPA for SIP approval in the October 21, 2009, Submittal B SIP revision and then again on April 12, 2009, and submitted it to EPA for SIP approval in the October 21, 2009, Submittal C SIP revision.

The purpose of Georgia's rule is to establish applicability and compliance dates associated with emission limitations from Expanded Polystyrene Products Manufacturing VOC emissions in the Atlanta Area. Rule 391–3–1–.02(2)(eee) ''Volatile Organic Compound Emissions from Expanded Polystyrene Products Manufacturing'' was amended in the October 21, 2009, Submittal B SIP revision to update the list of counties to include Barrow County so that the rule applies to the entire 20 county Atlanta Area and to provide Barrow County with a compliance date of May 1, 2009. This rule was subsequently revised and submitted in the October 21, 2009, Submittal C SIP revision to amend the compliance date for Barrow County to March 1, 2009. These revisions, submitted on October 21, 2009, appear to be consistent with the requirements of RACT under the CAA, and are therefore proposed for approval.

19. Rule 391–3–1–.02(2)(hhh) ''Wood Furniture Finishing and Cleaning Operations''

In 1996, EPA established a CTG addressing the control of VOC emissions from wood furniture finishing and cleaning operations. On October 28, 1999, GA EPD submitted to EPA a revision to Rule 391–3–1–.02(2)(hhh) ''Wood Furniture Finishing and Cleaning Operations'' and EPA approved this rule on July 10, 2001 (66 FR 35906). GA EPD revised the rule on June 8, 2008, and submitted it to EPA for SIP approval in the October 21, 2009, Submittal B SIP revisions and then again on April 12, 2009, and submitted to EPA for SIP approval in the October 21, 2009, Submittal C SIP revision.

The purpose of Georgia's rule is to establish applicability and compliance dates associated with emission limitations from wood furniture finishing and cleaning operation VOC emissions in the Atlanta Area. Rule 391–3–1–.02(2)(hhh) ''Wood Furniture Finishing and Cleaning Operations'' was amended in the October 21, 2009, Submittal B SIP revision to update the list of counties to include Barrow County so that the rule applies to the entire Atlanta Area and to provide Barrow County with a compliance date of May 1, 2009. This rule was subsequently revised and submitted in the October 21, 2009, Submittal C SIP revision to amend the compliance date for Barrow County to March 1, 2009. These revisions, submitted on October 21, 2009, appear to be consistent with the requirements of RACT under the CAA, and are therefore proposed for approval.

20. Rule 391–3–1–.02(2)(kkk) ''VOC Emissions From Aerospace Manufacturing and Rework Facilities''

In December 1997, EPA established a CTG addressing the control of VOC emissions from aerospace manufacturing and rework facilities. On October 28, 1999, GA EPD submitted to EPA a revision to Rule 391–3–1–.02(2)(kkk) ''VOC Emissions from Aerospace Manufacturing and Rework Facilities'' and EPA approved this rule on July 10, 2001 (66 FR 35906). In the October 21, 2009, Submittal C SIP revision, and the draft July 19, 2012, SIP

revision, GA EPD expanded the applicability of Rule 391–3–1–.02(2)(kkk) ''VOC Emissions from Aerospace Manufacturing and Rework Facilities'' to include all the counties in the Atlanta Area.

The purpose of this rule is to limit VOC emissions from aerospace manufacturing and rework facilities that are located within or contribute to ozone levels in ozone nonattainment areas. The rules also limit VOC emissions from major sources (emitting greater than 100 tons per year of VOC emissions) located outside the ozone nonattainment area. The revisions amend the recordkeeping requirements for solvents to be consistent with Federal requirements found at 40 CFR 63, subpart GG. Also the definition of ''cleaning solvent'' is revised to include a definition of ''no VOCs'' (VOC content less than 1.0 weight percent), to make the definition more clear. A typographical error is also corrected. These revisions, submitted on October 21, 2009, appear to be consistent with EPA's CTG under the CAA, and are therefore proposed for approval. EPA is also proposing to approve Georgia's rule changes submitted on July 19, 2012, for parallel processing. In the alternative, EPA is proposing to conditionally approval Georgia's July 19, 2012, draft SIP revision.

21. Rule 391–3–1–.02(2)(vvv) ''VOC Emissions From Surface Coating of Miscellaneous Plastic Parts and Products'' [6]

In June 1978, EPA issued a CTG document addressing the control of VOC emissions from surface coating of Miscellaneous Metal Parts and Products. On October 7, 2008 (73 FR 58481), EPA updated the 1978 CTG, as part of Group IV CTG, addressing the control of VOC emissions from the surface coating of miscellaneous plastic parts and products. On March 19, 2012, GA EPD submitted a SIP revision addressing this CTG source category for the entire 20-county Atlanta Area. EPA has reviewed Georgia's rule, which became state effective on March 7, 2012, and has preliminarily determined that Georgia's rule is consistent with the Group IV CTG for VOC emission from the surface coating of miscellaneous plastic parts and products. EPA is therefore proposing to approve Georgia's SIP revision submitted on March 19, 2012, regarding VOC emissions from source coating of miscellaneous plastic parts and products.

[6] Also see Rule 391–3–1–.02(2)(www) ''VOC Emissions from Surface Coating of Pleasure Craft'' for additional information.

22. Rule 391–3–1–.02(2)(www) ''VOC Emissions From Surface Coating of Pleasure Craft''

On October 7, 2008 (73 FR 58486) EPA published the Miscellaneous Metal and Plastic Part Coatings CTG (MMPPC CTG) as part of the Group IV CTG, addressing the control of VOC emissions from various metal and plastic part coatings. Members of the pleasure craft coatings industry contacted EPA requesting reconsideration of the pleasure craft VOC limits contained in EPA's 2008 MMPPC CTG. In response, EPA issued a memorandum on June 1, 2010, titled ''Control Technique Guidelines for Miscellaneous Metal and Plastic Part Coatings—Industry Request for Reconsideration,'' recommending that the pleasure craft industry work with State agencies during their RACT rule development process to assess what is reasonable for the specific sources regulated. EPA stated that states can use the recommendations from the MMPPC CTG to inform their own determinations as to what constitutes RACT for pleasure craft coating operations in their particular ozone nonattainment area.

In its March 19, 2012, SIP revision, GA EPD provided a negative declaration for the surface coatings of pleasure craft, noting that there are no such sources located in Georgia. EPA has reviewed this negative declaration and has preliminarily determined that there are no sources the emit VOC emissions from surface coating of pleasure craft in the Atlanta Area. EPA is therefore proposing to approve Georgia's negative declaration for surface coatings of pleasure craft submitted on March 19, 2012.

23. Rule 391–3–1–.02(2)(yyy) ''VOC Emissions From the Use of Miscellaneous Industrial Adhesives''

On October 7, 2008 (73 FR 58481), EPA established a CTG, as part of Group IV CTG, addressing the control of VOC emissions from the use of miscellaneous industrial adhesives. On March 19, 2012, GA EPD submitted a SIP revision to address this CTG source category for the entire 20 county Atlanta Area. EPA has reviewed Georgia's rule, which became state effective on March 7, 2012, and has preliminarily determined that Georgia's rule is consistent with the Group IV CTG for VOC emissions from the use of miscellaneous industrial adhesives. EPA is therefore proposing to approve Georgia's SIP revision submitted on March 19, 2012, regarding VOC emissions from the use of miscellaneous industrial adhesives.

24. Rule 391–3–1–.02(2)(zzz) ''VOC Emissions From the Fiberglass Boat Manufacturing''

On October 7, 2008 (73 FR 58481), EPA established a CTG, as part of the Group IV CTG, addressing the control of VOC emissions from the fiberglass boat manufacturing industry.

On March 19, 2012, GA EPD submitted a SIP revision to address this CTG source category for the entire 20 county Atlanta Area. EPA has reviewed Georgia's rule, which became state effective on March 7, 2012, and has preliminarily determined that Georgia's rule is consistent with the Group IV CTG for VOC emissions from the fiberglass boat manufacturing. EPA is therefore proposing to approve Georgia's SIP revision submitted on March 19, 2012, regarding VOC emissions from the fiberglass boat manufacturing.

25. Rule 391–3–1–.02(2)(aaaa) '' Industrial Cleaning Solvents''

On October 5, 2006 (71 FR 58745), as part of the Group II CTG, EPA updated the portion of the 1977 Solvent Metal Cleaning CTG regarding the control of VOC emissions from the use of industrial cleaning solvents.

On March 19, 2012, GA EPD submitted a SIP revision to address this CTG source category for the entire 20 county Atlanta Area. EPA has reviewed Georgia's rule, which became state effective on March 7, 2012, and preliminarily determined that Georgia's rule is consistent with the Group IV CTG for industrial cleaning solvents. EPA is therefore proposing to approve Georgia's SIP revision submitted on March 19, 2012, regarding industrial cleaning solvents.

b. General RACT Rules

Moderate and above ozone nonattainment areas are required to have regulations in place that require major VOC sources and NOx sources to meet RACT requirements. In 1993 the Atlanta 1-hour ozone nonattainment area was required to meet VOC major source RACT and NOx major source RACT for the thirteen counties in the Atlanta 1-hour ozone nonattainment area. The Atlanta Area was designated as a marginal nonattainment for the 1997 8-hour ozone standard on June 15, 2004, and was reclassified to moderate on March 6, 2008. The Area was then required to meet major source VOC RACT and major source NO_X RACT for entire 20-county 1997 8-hour nonattainment area. The following are RACT rules for the 20-county Atlanta Area.

1. Rule 391–3–1–.02(2)(tt) ''Volatile Organic Compound (VOC) Emissions From Major Sources''

On November 13, 1992, GA EPD submitted to EPA a SIP revision that included Rule 391–3–1–.02(2)(tt) ''Volatile Organic Compound (VOC) Emissions From Major Sources.'' Through a December 22, 1997, letter and a subsequent February 27, 2012, letter GA EPD withdrew Rule 391–3–1–.02(2)(tt) (and Rule 391–3–1–.02(2)(yy)) from the November 13, 1992, submittal. On October 28, 1999, GA EPD submitted to EPA a revision to Rule 391–3–1–.02(2)(tt) ''Volatile Organic Compound (VOC) Emissions From Major Sources'' and EPA approved this rule on July 10, 2001 (66 FR 35906). GA EPD revised its rule again on June 8, 2008, and submitted it to EPA for SIP approval in the October 21, 2009, Submittal B SIP revision.

The purpose of Georgia's October 21, 2009, revision is to establish applicability and compliance dates associated with emission limitations from major VOC sources in the Atlanta Area. Specifically, this rule is amended to update the list of counties to include Barrow County so that the rule applies to the entire Atlanta Area. Barrow County has a compliance date of May 1, 2009.

2. Rule 391–3–1–.02(2)(vv) ''Volatile Organic Liquid Handling and Storage''

On October 28, 1999, GA EPD submitted to EPA a revision to Rule 391–3–1–.02(2)(vv) ''Volatile Organic Liquid Handling and Storage'' and EPA approved this rule on July 10, 2001 (66 FR 35906). GA EPD revised its rule on June 8, 2008, and submitted it to EPA for SIP approval in the October 21, 2009, Submittal B SIP revision. The rule was again revised on April 12, 2009, and submitted to EPA for SIP approval in the October 21, 2009, Submittal C SIP revision.

The purpose of this revision is to establish applicability and compliance dates associated with emission limitations from VOC handling and storage sources in the Atlanta Area. Specifically, the October 21, 2009, Submittal B SIP revision amended the list of counties to include Barrow County so that the rule applies to the entire Atlanta Area and to provide Barrow County with a compliance date of May 1, 2009. This rule was subsequently revised and submitted in the October 21, 2009, Submittal C SIP revision to amend the compliance date for Barrow County to March 1, 2009. EPA has reviewed Georgia's rule changes, submitted on October 21, 2009, and has preliminarily determined that these changes are consistent with EPA RACT guidance, and are therefore proposed for approval.

3. Rule 391–3–1–.02(2)(yy) ''Emissions of Nitrogen Oxides (NO_X) Major Sources''

On November 13, 1992, GA EPD submitted to EPA a SIP revision that included Rule 391–3–1–.02(2)(yy) ''Emissions of Nitrogen Oxides (NO_X) Major Sources.'' Through a December 22, 1997, letter and a subsequent February 27, 2012, letter, GA EPD withdrew Rule 391–3–1–.02(2)(yy) (and Rule 391–3–1–.02(2)(tt)) from the November 13, 1992, submittal. On March 15, 2005, GA EPD submitted to EPA a revision to Rule 391–3–1–.02(2)(yy) ''Emissions of Nitrogen Oxides (NO_X) Major Sources'' and EPA approved this revision on May 9, 2005 (70 FR 24310). GA EPD revised its rule again on June 8, 2008, and submitted it to EPA for SIP approval in the October 21, 2009, Submittal B, SIP revision.

The purpose of this rule is to establish applicability and compliance dates associated with emission limitations from NO_X major sources in the Atlanta Area. This rule is amended to update the list of counties to include Barrow County so that the rule applies to the entire Atlanta Area. Barrow County has a compliance date of May 1, 2009. These changes, submitted on October 21, 2009, appear to be consistent with the requirements of RACT under the CAA, and the changes are therefore proposed for approval.

4. Rule 391–3–1–.02(2)(ccc) ''Volatile Organic Compound Emissions From Bulk Mixing Tanks''

On October 28, 1999, GA EPD submitted to EPA a revision to Rule 391–3–1–.02(2)(ccc) ''Volatile Organic Compound Emissions From Bulk Mixing Tanks'' and EPA approved this rule on July 10, 2001 (66 FR 35906). GA EPD revised its rule on June 8, 2008, and submitted it to EPA for SIP approval in the October 21, 2009, Submittal B SIP revision and then again on April 12, 2009, and submitted to EPA for SIP approval in the October 21, 2009, Submittal C SIP revision.

The purpose of this rule is to establish applicability and compliance dates associated with emission limitations from VOC bulk mixing tanks in the Atlanta Area. This rule was amended in the October 21, 2009, Submittal B SIP revision to update the list of counties to include Barrow County so that the rule applies to the entire Atlanta Area and provides a compliance Date of May 1, 2009, for Barrow County. This rule was subsequently revised and submitted in the October 21, 2009, Submittal C SIP revision to amend the compliance date for Barrow County to March 1, 2009. These revisions appear to be consistent with the requirements of RACT under the CAA, and are therefore proposed for approval.

5. Rule 391–3–1–.02(2)(lll) ''Nitrogen Oxide Emissions From Fuel-Burning Equipment''

On October 28, 1999, GA EPD submitted to EPA a revision to Rule 391–3–1–.02(2)(lll) ''Nitrogen Oxide Emissions from Fuel-Burning Equipment'' and EPA approved this rule on July 10, 2001 (66 FR 35906). GA EPD revised the rule on June 8, 2008, and submitted to EPA for SIP approval in the October 21, 2009, Submittal B SIP revision and then again on April 12, 2009, and submitted to EPA for SIP approval in the October 21, 2009, Submittal C SIP revision. October 21, 2009, Submittal B SIP revision exempts wood burning boilers located in counties outside the Atlanta Area. The October 21, 2009, Submittal C SIP revision changes the definition of a wood burning boiler from 50 percent wood fired to 90 percent wood fired. The rule is amended to no longer subject fuel-burning equipment burning wood or wood residue in specific amounts outside of the Atlanta Area to the existing NO_X emission standard. No sources currently exist in these ozone unclassifiable/attainment areas outside the Atlanta Area and any new major source (greater than 100 tpy) would be required to meet Prevention of Significant Deterioration (PSD) requirements. PSD requirements require Best Available Control Technology (BACT) which would meet RACT and the source would have to show that its emissions do not interfere with the Atlanta Area air quality. Any new minor source (less than 100 tpy) would have to go through the state permitting process.

6. Rule 391–3–1–.02(2)(rrr) ''Nitrogen Oxide Emissions From Small Fuel-Burning Equipment''

On October 21, 2009, GA EPD submitted two SIP revisions affecting the applicability and compliance for NO_X emissions from small fuel-burning equipment for the entire 20-county Atlanta Area. The October 21, 2009, Submittal B SIP revision revised Rule 391–3–1–.02(2)(rrr) to expand the rule to the entire 20-county Atlanta Area. The rule applied to sources with greater than 25 tpy of NO_X emissions in Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth,

Fulton, Gwinnett, Henry, Paulding, and Rockdale County and is now revised to include sources with greater than 100 tpy of NO_X emissions in Barrow, Bartow, Carroll, Hall, Newton, Spalding and Walton County. The changes to Georgia's rule also established a May 15, 2005, compliance date for Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding, and Rockdale County and a May 1, 2009, compliance date for Barrow, Bartow, Carroll, Hall, Newton, Spalding and Walton County. The October 21, 2009, Submittal C SIP revision revised the compliance date for Barrow, Bartow, Carroll, Hall, Newton, Spalding and Walton County to March 1, 2009. EPA has reviewed Georgia's rule, which became state effective on June 8, 2008, (October 21, 2009, Submittal B, SIP revision) and April 12, 2009, (October 21, 2009, Submittal C, SIP revision) and has preliminarily determined that Georgia's rule is consistent with the requirements of RACT under the CAA. EPA is therefore proposing to approve Georgia's rule, submitted in the October 21, 2009, Submittal B and Submittal C SIP revisions regarding NO_X emissions from small fuel-burning engines.

III. Effect of This Proposed Action

The effect of this proposed action is to include the aforementioned requirements for RACT and CTG source categories into the Atlanta Area portion of the Georgia SIP. In accordance with the Georgia rules, some affected sources in the Atlanta Area will have to comply with rules in the March 19, 2012, and July 19, 2012, SIP revisions by January 1, 2015, unless the Atlanta Area is redesignated to attainment prior to January 1, 2015. According to the Georgia rules, if the Atlanta Area is redesignated to attainment prior to January 1, 2015, Georgia provides that the new and revised requirements of these rules will not become applicable and instead will be approved into the contingency measures portion of the Georgia SIP.[7] However, in order for that to occur, the redesignation process for the Altanta Area would have to be completed prior to January 1, 2015. Today, EPA is proposing to approve the rules included in the March 19, 2012, and July 19, 2012, SIP revisions (along with other rules, as explained earlier), and simultaneously proposing conditional approval for the July 19, 2012, SIP revision. Any action regarding the movement of rules into the contingency measures portion of the SIP would be effectuated through a separate process (i.e., the redesignation process) and not final action on today's proposal.

IV. Proposed Action

Pursuant to section 110 of the CAA, EPA is proposing to approve the revisions to Georgia's SIP addressing sources subject to NOx RACT and VOC RACT, including Groups I, II, III and IV CTG source categories for the Atlanta Area. EPA has evaluated Georgia's November 13, 1992, October 21, 2009, and March 19, 2012, final SIP revisions and July 19, 2012, draft SIP revisions, and preliminarily determined that they meet the applicable requirements of the CAA and EPA regulations, and EPA has made the preliminary determination that the rules included in the SIP revisions are consistent with the CAA, its implementing regulations and EPA policy on addressing RACT requirements. Although EPA has received a draft SIP revisions from Georgia, dated July 19, 2012, for parallel processing, in the event, that EPA does not receive the final version of that SIP revision within the time frames in which EPA must finalize today's proposal, EPA is also today proposing to conditionally approve Georgia's July 19, 2012, draft SIP revision. The alternative conditional approval option will ensure that EPA can timely finalize its approval of the RACT requirements for the Atlanta Area.

V. Statutory and Executive Order Reviews

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

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

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the determination does not have substantial direct effects on an Indian Tribe. There are no Indian Tribes located within the Atlanta nonattainment area.

List of Subjects in 40 CFR Part 52

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

Dated: July 20, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2012–18649 Filed 7–30–12; 8:45 am]

BILLING CODE 6560–50–P

[7] See the applicability portions of Georgia Rules 391–3–1-.02(t), (w), (y), (z), (ii), (jj), (mm), (ddd), (vvv), (yyy), (zzz) and (aaaa) of the March 19, 2012, SIP submittal; See Georgia Rule 391–3–1–.02(a)(6)(i)(V) and Georgia Rule 391–3–1–.02(kkk)(18) of the July 19, 2012, draft SIP submittal.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0238; FRL–9707–8]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve, through parallel processing, a draft revision to the Mississippi State Implementation Plan (SIP), submitted by the Mississippi Department of Environmental Quality (MDEQ), on July 13, 2012. The draft revisions pertain to Clean Air Act (CAA) section 110(a)(2)(G) for the 1997 annual and 2006 24-hour fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS). Specifically, EPA is proposing to approve Mississippi's December 7, 2007, October 6, 2009, and July 13, 2012, submissions addressing section 110(a)(2)(G), of the CAA for both the 1997 and 2006 $PM_{2.5}$ 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. MDEQ certified that the Mississippi SIP contains provisions that ensure the 1997 and 2006 $PM_{2.5}$ NAAQS are implemented, enforced, and maintained in Mississippi (hereafter referred to as ''infrastructure submission''). The subject of this notice is limited to infrastructure element 110(a)(2)(G). All other applicable Mississippi infrastructure elements are being addressed in a separate rulemaking.

DATES: Written comments must be received on or before August 30, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2012–0238, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: R4-RDS@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2012–0238,'' 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.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, 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. 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 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2012–0238. 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

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 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. What is parallel processing?

Consistent with EPA regulations found at 40 CFR part 51, Appendix V, section 2.3.1, for purposes of expediting review of a SIP submittal, parallel processing allows a state to submit a plan to EPA prior to actual adoption by the state. Generally, the state submits a copy of the proposed regulation or other revisions to EPA before conducting its public hearing. EPA reviews this proposed state action, and prepares a notice of proposed rulemaking. EPA's notice of proposed rulemaking is published in the **Federal Register** during the same time frame that the state is holding its public process. The state and EPA then provide for concurrent public comment periods on both the state action and federal action.

If the revision that is finally adopted and submitted by the State is changed in aspects other than those identified in the proposed rulemaking on the parallel process submission, EPA will evaluate

those changes and if necessary and appropriate, issue another notice of proposed rulemaking. The final rulemaking action by EPA will occur only after the SIP revision has been adopted by the state and submitted formally to EPA for incorporation into the SIP.

On July 13, 2012, the State of Mississippi, through MDEQ, submitted requests for parallel processing of draft SIP revision that the State has taken through public comment. MDEQ requested parallel processing so that EPA could begin to take action on its draft SIP revisions in advance of the State's submission of the final SIP revisions. As stated above, the final rulemaking action by EPA will occur only after the SIP revision has been: (1) Adopted by Mississippi, (2) submitted formally to EPA for incorporation into the SIP; and (3) evaluated by EPA, including any changes made by the State after the July 13, 2012, draft was submitted to EPA.

II. Background

On July 18, 1997 (62 FR 36852), EPA established an annual $PM_{2.5}$ NAAQS at 15.0 micrograms per cubic meter (μg/m³) based on a 3-year average of annual mean $PM_{2.5}$ concentrations. At that time, EPA also established a 24-hour NAAQS of 65 μg/m³. *See* 40 CFR 50.7. On October 17, 2006 (71 FR 61144), EPA retained the 1997 annual $PM_{2.5}$ NAAQS at 15.0 μg/m³ based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and promulgated a new 24-hour NAAQS of 35 μg/m³ based on a 3-year average of the 98th percentile of 24-hour concentrations. By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised NAAQS. Sections 110(a)(1) and (2) require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs to EPA no later than July 2000 for the 1997 annual $PM_{2.5}$ NAAQS, and no later than October 2009 for the 2006 24-hour $PM_{2.5}$ NAAQS.

On March 4, 2004, Earthjustice submitted a notice of intent to sue related to EPA's failure to issue findings of failure to submit related to the ''infrastructure'' requirements for the 1997 annual $PM_{2.5}$ NAAQS. On March 10, 2005, EPA entered into a consent decree with Earthjustice which required EPA, among other things, to complete a **Federal Register** notice announcing EPA's determinations pursuant to section 110(k)(1)(B) as to whether each state had made complete submissions to meet the requirements of section 110(a)(2) for the 1997 $PM_{2.5}$ NAAQS by October 5, 2008. In accordance with the consent decree, EPA made completeness findings for each state based upon what the Agency received from each state for the 1997 $PM_{2.5}$ NAAQS as of October 3, 2008.

On October 22, 2008, EPA published a final rulemaking entitled ''Completeness Findings for Section 110(a) State Implementation Plans Pertaining to the Fine Particulate Matter ($PM_{2.5}$) NAAQS'' making a finding that each state had submitted or failed to submit a complete SIP that provided the basic program elements of section 110(a)(2) necessary to implement the 1997 $PM_{2.5}$ NAAQS (*See* 73 FR 62902). For those states that did receive findings, the findings of failure to submit for all or a portion of a state's implementation plan established a 24-month deadline for EPA to promulgate a Federal Implementation Plan (FIP) to address the outstanding SIP elements unless, prior to that time, the affected states submitted, and EPA approved, the required SIPs.

The findings that all or portions of a state's submission are complete established a 12-month deadline for EPA to take action upon the complete SIP elements in accordance with section 110(k). Mississippi's infrastructure submissions were received by EPA on December 7, 2007, for the 1997 annual $PM_{2.5}$ NAAQS and on October 6, 2009, for the 2006 24-hour $PM_{2.5}$ NAAQS. The submissions were determined to be complete on June 7, 2008, and April 6, 2010, respectively. Mississippi was among other states that did not receive findings of failure to submit because it had provided a complete submission to EPA to address the infrastructure elements for the 1997 $PM_{2.5}$ NAAQS by October 3, 2008.

On July 6, 2011, WildEarth Guardians and Sierra Club filed an amended complaint related to EPA's failure to take action on the SIP submittal related to the ''infrastructure'' requirements for the 2006 24-hour $PM_{2.5}$ NAAQS. On October 20, 2011, EPA entered into a consent decree with WildEarth Guardians and Sierra Club which required EPA, among other things, to complete a **Federal Register** notice of the Agency's final action either approving, disapproving, or approving in part and disapproving in part the Mississippi 2006 24-hour $PM_{2.5}$ NAAQS Infrastructure SIP submittal addressing the applicable requirements of sections 110(a)(2)(A)–(H), (J)–(M), except for section 110(a)(2)(C) the nonattainment area requirements and section 110(a)(2)(D)(i) interstate transport requirements, by September 30, 2012.

Today's action is proposing to approve Mississippi's December 7, 2007, October 6, 2009, and July 13, 2012, infrastructure submissions for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS addressing CAA section 110(a)(2)(G). EPA is taking action on Mississippi's infrastructure submission for the 1997 and 2006 $PM_{2.5}$ NAAQS for sections 110(a)(2)(A)–(F), (H), (J)–(M), except for section 110(a)(2)(C) the nonattainment area requirements and section 110(a)(2)(D)(i) interstate transport and section 110(a)(2)(E)(ii) requirements in a separate action.

III. What elements are required under Sections 110(a)(1) and (2)?

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 depending upon the facts and circumstances. In particular, 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 and 2006 $PM_{2.5}$ 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 mentioned above, 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 the infrastructure rulemaking process are listed below [1]

[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 due at the time the

Continued

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 EPA's September 25, 2009, memorandum entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS) .''

- 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.

In today's action, EPA is only addressing section 110(a)(2) requirements related to element 110(a)(2)(G) for Mississippi for both the 1997 and 2006 $PM_{2.5}$ NAAQS. EPA is addressing the other 1997 and 2006 $PM_{2.5}$ NAAQS infrastructure requirements in a separate rulemaking.

IV. Scope of Infrastructure SIPs

EPA is currently acting upon SIPs that address the infrastructure requirements of CAA section 110(a)(1) and (2) for ozone and $PM_{2.5}$ NAAQS for various states across the country. Commenters on EPA's recent proposals for some states raised concerns about EPA statements that it was not addressing certain substantive issues in the context of acting on those infrastructure SIP submissions.[5] Those Commenters specifically raised concerns involving provisions in existing SIPs and with EPA's statements in other proposals that it would address two issues separately and not as part of actions on the infrastructure SIP submissions: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction (SSM) at sources, that may be contrary to the CAA and EPA's policies addressing such excess emission; and (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (director's discretion). EPA notes that there are two other substantive issues for which EPA likewise stated in other proposals that it would address separately: (i) Existing provisions for minor source New Source Review (NSR) programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs (minor source NSR); and (ii) existing provisions for Prevention of Significant Deterioration (PSD) programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (NSR Reform). In light of the comments, EPA believes that its statements in various proposed actions on infrastructure SIPs with respect to these four individual issues should be explained in greater depth. It is important to emphasize that EPA is taking the same position with respect to these four substantive issues in this action on the infrastructure SIPs for the 1997 and 2006 $PM_{2.5}$ NAAQS from Mississippi.

EPA intended the statements in the other proposals concerning these four issues merely to be informational, and to provide general notice of the potential existence of provisions within the existing SIPs of some states that might require future corrective action. EPA did not want states, regulated entities, or members of the public to be under the misconception that the Agency's approval of the infrastructure SIP submission of a given state should be interpreted as a re-approval of certain types of provisions that might exist buried in the larger existing SIP for such state. Thus, for example, EPA explicitly noted that the Agency believes that some states may have existing SIP approved SSM provisions that are contrary to the CAA and EPA policy, but that ''in this rulemaking, EPA is not proposing to approve or disapprove any existing state provisions with regard to excess emissions during SSM of operations at facilities.'' EPA further explained, for informational purposes, that ''EPA plans to address such State regulations in the future.'' EPA made similar statements, for similar reasons, with respect to the director's discretion, minor source NSR, and NSR Reform issues. EPA's objective was to make clear that approval of an infrastructure SIP for these ozone and $PM_{2.5}$ NAAQS should not be construed as explicit or implicit re-approval of any existing provisions that relate to these four substantive issues. EPA is reiterating that position in this action on the infrastructure SIP for Mississippi.

Unfortunately, the Commenters and others evidently interpreted these statements to mean that EPA considered action upon the SSM provisions and the other three substantive issues to be integral parts of acting on an infrastructure SIP submission, and therefore that EPA was merely postponing taking final action on the issues in the context of the infrastructure SIPs. This was not EPA's intention. To the contrary, EPA only meant to convey its awareness of the potential for certain types of deficiencies in existing SIPs, and to prevent any misunderstanding that it was reapproving any such existing provisions. EPA's intention was to convey its position that the statute does

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 proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the nonattainment planning requirements of 110(a)(2)(C).

[2] This element is only addressed in the $PM_{2.5}$ context as it relates to attainment areas.

[3] Today's proposed rule does not address element 110(a)(2)(D)(i) (Interstate Transport) for the 1997 and 2006 $PM_{2.5}$ NAAQS. Interstate transport requirements were formerly addressed by Mississippi consistent with the Clean Air Interstate Rule (CAIR). On December 23, 2008, CAIR was remanded by the DC Circuit Court of Appeals, without vacatur, back to EPA. *See North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008). Prior to this remand, EPA took final action to approve Mississippi SIP revision, which was submitted to comply with CAIR. *See* 72 FR 56268 (October 3, 2007). In so doing, Mississippi CAIR SIP revision addressed the interstate transport provisions in section 110(a)(2)(D)(i) for the 1997 and 2006 $PM_{2.5}$ NAAQS. In response to the remand of CAIR, EPA has recently finalized a new rule to address the interstate transport of nitrogen oxides and sulfur oxides in the eastern United States. *See* 76 FR 48208 (August 8, 2011) (Transport Rule). That rule was recently stayed by the DC Circuit Court of Appeals. EPA's action on element 110(a)(2)(D)(i) will be addressed in a separate action.

[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 proposed rulemaking.

[5] *See* Comments of Midwest Environmental Defense Center, dated May 31, 2011. Docket # EPA–R05–OAR–2007–1179 (adverse comments on proposals for three states in Region 5). EPA notes that these public comments on another proposal are not relevant to this rulemaking and do not have to be directly addressed in this rulemaking. EPA will respond to these comments in the appropriate rulemaking action to which they apply.

not require that infrastructure SIPs address these specific substantive issues in existing SIPs and that these issues may be dealt with separately, outside the context of acting on the infrastructure SIP submission of a state. To be clear, EPA did not mean to imply that it was not taking a full final agency action on the infrastructure SIP submission with respect to any substantive issue that EPA considers to be a required part of acting on such submissions under section 110(k) or under section 110(c). Given the confusion evidently resulting from EPA's statements in those other proposals, however, we want to explain more fully the Agency's reasons for concluding that these four potential substantive issues in existing SIPs may be addressed separately from actions on infrastructure SIP submissions.

The requirement for the SIP submissions at issue arises out of CAA section 110(a)(1). That provision requires that states must make a SIP submission ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)'' and that these SIPs are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must meet. EPA has historically referred to these particular submissions that states must make after the promulgation of a new or revised NAAQS as ''infrastructure SIPs.'' This specific term does not appear in the statute, but EPA uses the term to distinguish this particular type of SIP submission designed to address basic structural requirements of a SIP from other types of SIP submissions designed to address other different requirements, such as ''nonattainment SIP'' submissions required to address the nonattainment planning requirements of part D, ''regional haze SIP'' submissions required to address the visibility protection requirements of CAA section 169A, NSR permitting program submissions required to address the requirements of part D, and a host of other specific types of SIP submissions that address other specific matters.

Although section 110(a)(1) addresses the timing and general requirements for these infrastructure SIPs, and section 110(a)(2) provides more details concerning the required contents of these infrastructure SIPs, EPA believes that many of the specific statutory provisions are facially ambiguous. In particular, the list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive provisions, and some of which pertain to requirements for both authority and substantive provisions.[6] Some of the elements of section 110(a)(2) are relatively straightforward, but others clearly require interpretation by EPA through rulemaking, or recommendations through guidance, in order to give specific meaning for a particular NAAQS.[7]

Notwithstanding that section 110(a)(2) provides that ''each'' SIP submission must meet the list of requirements therein, EPA has long noted that this literal reading of the statute is internally inconsistent, insofar as section 110(a)(2)(I) pertains to nonattainment SIP requirements that could not be met on the schedule provided for these SIP submissions in section 110(a)(1).[8] This illustrates that EPA must determine which provisions of section 110(a)(2) may be applicable for a given infrastructure SIP submission. Similarly, EPA has previously decided that it could take action on different parts of the larger, general ''infrastructure SIP'' for a given NAAQS without concurrent action on all subsections, such as section 110(a)(2)(D)(i), because the Agency bifurcated the action on these latter ''interstate transport'' provisions within section 110(a)(2) and worked with states to address each of the four prongs of section 110(a)(2)(D)(i) with substantive administrative actions proceeding on different tracks with different schedules.[9] This illustrates that EPA may conclude that subdividing the applicable requirements of section 110(a)(2) into separate SIP actions may sometimes be appropriate for a given NAAQS where a specific substantive action is necessitated, beyond a mere submission addressing basic structural aspects of the state's implementation plans. Finally, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS and the attendant infrastructure SIP submission for that NAAQS. For example, the monitoring requirements that might be necessary for purposes of section 110(a)(2)(B) for one NAAQS could be very different than what might be necessary for a different pollutant. Thus, the content of an infrastructure SIP submission to meet this element from a state might be very different for an entirely new NAAQS, versus a minor revision to an existing NAAQS.[10]

Similarly, EPA notes that other types of SIP submissions required under the statute also must meet the requirements of section 110(a)(2), and this also demonstrates the need to identify the applicable elements for other SIP submissions. For example, nonattainment SIPs required by part D likewise have to meet the relevant subsections of section 110(a)(2) such as section 110(a)(2)(A) or (E). By contrast, it is clear that nonattainment SIPs would not need to meet the portion of section 110(a)(2)(C) that pertains to part C, i.e., the PSD requirements applicable in attainment areas. Nonattainment SIPs required by part D also would not need to address the requirements of section 110(a)(2)(G) with respect to emergency episodes, as such requirements would not be limited to nonattainment areas. As this example illustrates, each type of SIP submission may implicate some subsections of section 110(a)(2) and not others.

Given the potential for ambiguity of the statutory language of section 110(a)(1) and (2), EPA believes that it is appropriate for EPA to interpret that language in the context of acting on the infrastructure SIPs for a given NAAQS. Because of the inherent ambiguity of the list of requirements in section 110(a)(2),

[6] For example, section 110(a)(2)(E) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a substantive program to address certain sources as required by part C of the CAA; section 110(a)(2)(G) provides that states must have both legal authority to address emergencies and substantive contingency plans in the event of such an emergency.

[7] For example, section 110(a)(2)(D)(i) requires EPA to be sure that each state's SIP contains adequate provisions to prevent significant contribution to nonattainment of the NAAQS in other states. This provision contains numerous terms that require substantial rulemaking by EPA in order to determine such basic points as what constitutes significant contribution. *See* ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule,'' 70 FR 25162 (May 12, 2005) (defining, among other things, the phrase ''contribute significantly to nonattainment'').

[8] *See Id.,* 70 FR 25162, at 63–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[9] EPA issued separate guidance to states with respect to SIP submissions to meet section 110(a)(2)(D)(i) for the 1997 ozone and 1997 $PM_{2.5}$ NAAQS. *See* ''Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air Quality Policy Division OAQPS, to Regional Air Division Director, Regions I–X, dated August 15, 2006.

[10] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

EPA has adopted an approach in which it reviews infrastructure SIPs against this list of elements ''as applicable.'' In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the purpose of the submission or the NAAQS in question, would meet each of the requirements, or meet each of them in the same way. EPA elected to use guidance to make recommendations for infrastructure SIPs for these ozone and $PM_{2.5}$ NAAQS.

On October 2, 2007, EPA issued guidance making recommendations for the infrastructure SIP submissions for both the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS.[11] Within this guidance document, EPA described the duty of states to make these submissions to meet what the Agency characterized as the ''infrastructure'' elements for SIPs, which it further described as the ''basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards.''[12] As further identification of these basic structural SIP requirements, ''attachment A'' to the guidance document included a short description of the various elements of section 110(a)(2) and additional information about the types of issues that EPA considered germane in the context of such infrastructure SIPs. EPA emphasized that the description of the basic requirements listed on attachment A was not intended ''to constitute an interpretation of'' the requirements, and was merely a ''brief description of the required elements.''[13] EPA also stated its belief that with one exception, these requirements were ''relatively self explanatory, and past experience with SIPs for other NAAQS should enable States to meet these requirements with assistance from EPA Regions.''[14] However, for the one exception to that general assumption (*i.e.,* how states should proceed with respect to the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS), EPA gave much more specific recommendations. But for other infrastructure SIP submittals, and for certain elements of the submittals for the 1997 $PM_{2.5}$ NAAQS, EPA assumed that each State would work with its corresponding EPA regional office to refine the scope of a State's submittal based on an assessment of how the requirements of section 110(a)(2) should reasonably apply to the basic structure of the State's implementation plans for the NAAQS in question.

On September 25, 2009, EPA issued guidance to make recommendations to states with respect to the infrastructure SIPs for the 2006 $PM_{2.5}$ NAAQS.[15] In the 2009 Guidance, EPA addressed a number of additional issues that were not germane to the infrastructure SIPs for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS, but were germane to these SIP submissions for the 2006 $PM_{2.5}$ NAAQS (e.g., the requirements of section 110(a)(2)(D)(i) that EPA had bifurcated from the other infrastructure elements for those specific 1997 ozone and $PM_{2.5}$ NAAQS). Significantly, neither the 2007 Guidance nor the 2009 Guidance explicitly referred to the SSM, director's discretion, minor source NSR, or NSR Reform issues as among specific substantive issues EPA expected states to address in the context of the infrastructure SIPs, nor did EPA give any more specific recommendations with respect to how states might address such issues even if they elected to do so. The SSM and director's discretion issues implicate section 110(a)(2)(A), and the minor source NSR and NSR Reform issues implicate section 110(a)(2)(C). In the 2007 Guidance and the 2009 Guidance, however, EPA did not indicate to states that it intended to interpret these provisions as requiring a substantive submission to address these specific issues in existing SIP provisions in the context of the infrastructure SIPs for these NAAQS. Instead, EPA's 2007 Guidance merely indicated its belief that the states should make submissions in which they established that they have the basic SIP structure necessary to implement, maintain, and enforce the NAAQS. EPA believes that states can establish that they have the basic SIP structure, notwithstanding that there may be potential deficiencies within the existing SIP. Thus, EPA's proposals for other states mentioned these issues not because the Agency considers them issues that must be addressed in the context of an infrastructure SIP as required by section 110(a)(1) and (2), but rather because EPA wanted to be clear that it considers these potential existing SIP problems as separate from the pending infrastructure SIP actions. The same holds true for this action on the infrastructure SIPs for Mississippi.

EPA believes that this approach to the infrastructure SIP requirement is reasonable because it would not be feasible to read section 110(a)(1) and (2) to require a top to bottom, stem to stern, review of each and every provision of an existing SIP merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts that, while not fully up to date, nevertheless may not pose a significant problem for the purposes of ''implementation, maintenance, and enforcement'' of a new or revised NAAQS when EPA considers the overall effectiveness of the SIP. To the contrary, EPA believes that a better approach is for EPA to determine which specific SIP elements from section 110(a)(2) are applicable to an infrastructure SIP for a given NAAQS, and to focus attention on those elements that are most likely to need a specific SIP revision in light of the new or revised NAAQS. Thus, for example, EPA's 2007 Guidance specifically directed states to focus on the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS because of the absence of underlying EPA regulations for emergency episodes for this NAAQS and an anticipated absence of relevant provisions in existing SIPs.

Finally, EPA believes that its approach is a reasonable reading of section 110(a)(1) and (2) because the statute provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow the Agency to take appropriate tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a ''SIP call'' whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or otherwise to comply with the CAA.[16] Section

[11] See ''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,'' from William T. Harnett, Director Air Quality Policy Division, to Air Division Directors, Regions I–X, dated October 2, 2007 (the ''2007 Guidance'').

[12] *Id.,* at page 2.

[13] *Id.,* at attachment A, page 1.

[14] *Id.,* at page 4. In retrospect, the concerns raised by commenters with respect to EPA's approach to some substantive issues indicate that the statute is not so ''self explanatory,'' and indeed is sufficiently ambiguous that EPA needs to interpret it in order to explain why these substantive issues do not need to be addressed in the context of infrastructure SIPs and may be addressed at other times and by other means.

[15] See ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS),'' from William T, Harnett, Director Air Quality Policy Division, to Regional Air Division Directors, Regions I–X, dated September 25, 2009 (the ''2009 Guidance'').

[16] EPA has recently issued a SIP call to rectify a specific SIP deficiency related to the SSM issue. See, ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State

110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[17] Significantly, EPA's determination that an action on the infrastructure SIP is not the appropriate time and place to address all potential existing SIP problems does not preclude the Agency's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on the infrastructure SIP, EPA believes that section 110(a)(2)(A) may be among the statutory bases that the Agency cites in the course of addressing the issue in a subsequent action.[18]

V. What is EPA's analysis of how Mississippi addressed element (G) of Section 110(a)(1) and (2) ''infrastructure'' provisions?

The Mississippi infrastructure submission address the provision of section 110(a)(2) with respect to element (G), as described below.

110(a)(2)(G) Emergency episodes: Section 110(a)(2)(G) requires states to provide for authority to address activities causing imminent and substantial endangerment to public health, including contingency plans to implement the emergency episode provisions in their SIPs. On September 25, 2009, EPA released the guidance entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particulate ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS).'' This guidance clarified that ''to address the section 110(a)(2)(G) element, states with air quality control regions identified as either Priority I, IA, or Priority II by the 'Prevention of Air Pollution Emergency Episodes' rule at 40 CFR 51.150, must develop emergency episode contingency plans.'' EPA's September 25, 2009, guidance also states that ''until the Agency finalized changes to the emergency episode regulation to establish for $PM_{2.5}$ specific levels for classifying areas as Priority I, IA, or II for $PM_{2.5}$, and to establish a significant harm level (SHL) * * *,'' it recommends that states with a 24-Hour $PM_{2.5}$ concentration above 140 μg/m^3 (using the most recent three years of data) develop an emergency episode plan. For states where this level has not been exceeded, the state can certify that it has appropriate general emergency powers to address $PM_{2.5}$ related episodes, and that no specific emergency episode plans are needed at this time.

On December 7, 2007, and October 6, 2009, MDEQ made submissions to EPA certifying that its SIP adequately addressed the section 110(a)(2)(G) requirements for the 1997 and 2006 $PM_{2.5}$ NAAQS, because it is a Class III Priority Area and is exempt from adopting emergency episode plan for the $PM_{2.5}$ NAAQS. However, Mississippi had not previously public noticed its submissions with regard to 110(a)(2)(G) for the $PM_{2.5}$ NAAQS, so on June 16, 2012, Mississippi provided public notice for this element.

EPA has reviewed Mississippi's July 13, 2012, draft SIP revision (requesting parallel processing) and has made the preliminary determination, that this draft SIP revision, and in combination with Mississippi's December 7, 2007, and October 6, 2009, submissions meet the requirements of 110(a)(2)(G). Given the State's monitored $PM_{2.5}$ levels, EPA is proposing that Mississippi is not required to submit an emergency episode plan and contingency measures at this time, for the 1997 and 2006 $PM_{2.5}$ standards. As a result, EPA is proposing to approve Mississippi's infrastructure submissions for the 1997 and 2006 $PM_{2.5}$ NAAQS as these submissions related to the section 110(a)(2)(G) requirement. EPA has made the preliminary determination that Mississippi's SIP and practices are adequate for emergency powers related to the 1997 and 2006 $PM_{2.5}$ NAAQS.

VI. Proposed Action

As described above, EPA is proposing to approve Mississippi's July 13, 2012, draft SIP revision to incorporate provisions into the Mississippi SIP to address section 110(a)(2)(G) of the CAA. Specifically, EPA is proposing to approve Mississippi's December 7, 2007, October 6, 2009, and July 13, 2012, submissions addressing section 110(a)(2)(G), of the CAA for both the 1997 and 2006 $PM_{2.5}$ NAAQS because they are consistent with section 110 of the CAA.

VII. 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. See 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 proposed 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 proposed action:

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

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249,

Implementation Plan Revision,'' 76 FR 21639 (April 18, 2011).

[17] EPA has recently utilized this authority to correct errors in past actions on SIP submissions related to PSD programs. *See* ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,'' 75 FR 82536 (December 30, 2010). EPA has previously used its authority under CAA 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. *See* 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[18] EPA has recently disapproved a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). *See* 75 FR 42342, 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (January 26, 2011) (final disapproval of such provisions).

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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Particulate Matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: July 20, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2012–18653 Filed 7–30–12; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0021; FRL–9707–6]

Approval, Disapproval and Promulgation of Air Quality Implementation Plans; Arizona; Regional Haze State and Federal Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of additional public hearings and extension of comment period.

SUMMARY: EPA is holding two additional public hearings in Arizona on August 14 and 15, 2012, for the proposed rule, ''Approval, Disapproval and Promulgation of Air Quality Implementation Plans; Arizona; Regional Haze State and Federal Implementation Plans'', published in the **Federal Register** on July 20, 2012 (77 FR 42833). The two hearings will provide opportunities for public comment in addition to the public hearing already scheduled for July 31, 2012, in Phoenix, Arizona. EPA also is extending the public comment period to September 18, 2012, to provide 60 days of comment after the publication of the proposed rule.

DATES: The public hearings will be held on August 14 and 15, 2012. See the **SUPPLEMENTARY INFORMATION** section for further details about the public hearings. Extension of comment period: September 18, 2012.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section for hearing locations.

FOR FURTHER INFORMATION CONTACT: If you have questions about the public hearings, please contact Thomas Webb, U.S. EPA, Region 9, phone (415) 947–4139, email *webb.thomas@epa.gov.* If you are a person with a disability under the ADA and require a reasonable accommodation for this event, please contact Philip Kum at *kum.philip@epa.gov* or at (415) 947–3566 by July 31, 2012.

SUPPLEMENTARY INFORMATION: Section 169A of the Clean Air Act (CAA) establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas which impairment results from manmade air pollution.'' Arizona has twelve mandatory Class I areas; several Class I areas in other states are also affected by emissions from Arizona facilities.

Regional haze is visibility impairment caused by the cumulative air pollutant emissions from numerous sources over a wide geographic area. EPA's proposed Regional Haze Federal Implementation Plan (FIP) for Arizona addresses the requirements of the CAA and EPA's regional haze regulations pertaining to Best Available Retrofit Technology (BART) for three electric generating stations in Arizona: Apache Generating Station, Cholla Power Plant and Coronado Generating Station. EPA will propose to address other facilities and other elements of the Arizona SIP in a later action. The proposed rule, ''Approval, Disapproval and Promulgation of Air Quality Implementation Plans; Arizona; Regional Haze State and Federal Implementation Plans'', was published in the **Federal Register** on July 20, 2012 (77 FR 42833).

The proposed rule and information on which the proposed rule relies are available in the docket for this action. Generally, documents in the docket for this action will be available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., Confidential Business Information). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

Public hearings: EPA will hold public hearings at the following dates, times and locations to accept oral and written comments into the record. These hearings will provide further opportunities for public comment beyond the initial hearing scheduled for July 31, 2012, in Phoenix, Arizona. See the proposed rule for more information on the July 31 hearing.

Date: August 14, 2012.

Time: 6:00–8:00 p.m.

Location: Northland Pioneer College, Painted Desert Campus, Tiponi Community Center, Conference Room, 2251 East Navajo Boulevard, Holbrook, AZ 86025.

Date: August 15, 2012.

Time: 6:00–8:00 p.m.

Location: Cochise College, Benson Center, Rooms 113 and 115, 1025 South State Route 90, Benson, AZ 85602–6501.

The public hearings will provide the public with an opportunity to present data, views, or arguments concerning the proposed action for Arizona. EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Simultaneous translation in Spanish will be available during the public hearings. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearings. Please consult the proposed rule for guidance on how to submit written comments to EPA.

At the public hearings, the hearing officer may limit the time available for each commenter to address the proposal to five minutes or less if the hearing officer determines it is appropriate. Any person may provide written or oral comments and data pertaining to our proposal at the public hearings. We will include verbatim transcripts, in English, of the hearing and written statements in the rulemaking docket.

Extension of comment period: EPA also is extending the public comment period for the proposed rule to provide more time for comments and to align with the dates of the public hearings. The comment period will now end on September 18, 2012.

Dated: July 24, 2012.

Kerry J. Drake,

Acting Air Division Director, Region IX.

[FR Doc. 2012–18520 Filed 7–30–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Chapter X

[Docket No. EP–711]

Petition for Rulemaking To Adopt Revised Competitive Switching Rules

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of commencement of proceeding and request for comments.

SUMMARY: The Surface Transportation Board (the Board) is commencing a proceeding to consider a proposal submitted by The National Industrial Transportation League (NITL) to increase rail-to-rail competition. The Board is seeking empirical evidence about the impact of the proposal, if it were to be adopted. Specifically, the Board is seeking public input on the proposal's impact on rail shippers' rates and service, including shippers that would not benefit under NITL's proposal; the proposal's impact on the rail industry, including its financial condition and network efficiencies; along with methodologies for the access price that would be used in conjunction with competitive switching.

DATES: Comments are due by November 23, 2012; responses are due February 21, 2013.

ADDRESSES: Comments may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the ''E-Filing'' link on the Board's Web site, at *http://www.stb.dot.gov*. Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: Docket No. EP 711, 395 E Street SW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Lucille Marvin at the Board's Office of Public Assistance, Governmental Affairs, and Compliance, (202) 245–0238. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION: In 2011, the Board held a hearing to consider the state of competition in the railroad industry and what steps, if any, it should take to increase rail-to-rail competition. *See Competition in the Railroad Industry,* Docket No. EP 705. After the hearing, NITL proposed that the Board modify its standards for mandatory competitive switching. NITL suggests that the Board mandate switching where a ''captive shipper''—one that lacks competitive transportation options—is located within a terminal area and also within 30 miles of a working interchange, and the transportation rate charged by the Class I carrier from origin to destination exceeds 240% of that carrier's variable costs of providing service. This proposal has the potential to promote more rail-to-rail competition and reduce the agency's role in regulating the reasonableness of transportation rates. It could permit the agency to rely on competitive market forces to discipline railroad pricing from origin to destination, and regulate only the access price for the first (or last) 30 miles.

As described more fully in our decision, however, additional information is needed before we can determine how to proceed. The Board therefore is instituting a proceeding to receive empirical evidence on the impact of the proposal on shippers and the railroad industry. Specifically, interested parties are invited to submit information on the following: (1) The impact on rates and service for shippers that would qualify under the competitive switching proposal; (2) the impact on rates and service for captive shippers that would not qualify under this proposal (because they are not located in a terminal area or within 30 miles of a working interchange); (3) the impact on the railroad industry, including its financial condition, network efficiencies or inefficiencies (including the potential for increased traffic); and (4) an access pricing proposal. The empirical evidence we are now requesting would be used to augment the Board's ongoing analysis of NITL's proposal as well as to evaluate other issues raised in the *Competition in the Railroad Industry* proceeding.

Additional information is contained in the Board's decision, which is available on our Web site at w*ww.stb.dot.gov*. Copies of the decision may also be purchased by contacting the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: July 25, 2012.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Begeman.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2012–18687 Filed 7–30–12; 8:45 am]

BILLING CODE 4915–01–P

Notices

Federal Register

Vol. 77, No. 147

Tuesday, July 31, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Information Collection; Measurement Service Records

AGENCY: Farm Service Agency, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) is requesting comments from all interested individuals and organizations on a revision of a currently approved information collection associated with the Measurement Service Records.

DATES: We will consider comments that we receive by October 1, 2012.

ADDRESSES: We invite you to submit comments on this notice. In your comments, include date, volume and page number, the OMB Control Number, and the title of the information collection of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Joe Lewis, Common Provisions Branch, Production Emergencies and Compliance Division, USDA, FSA, Farm Programs, 1400 Independence Avenue SW., Mail Stop 0517, Washington, DC 20250–0517.

You may also send comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Copies of the information collection may be requested by contacting Joe Lewis at the above address.

FOR FURTHER INFORMATION CONTACT: Joe Lewis, telephone, (202) 720–0795.

SUPPLEMENTARY INFORMATION:

Description of Information Collection

Title: Measurement Service Records.

OMB Control Number: 0560–0260.

Expiration Date: May 31, 2013.

Type of Request: Revision.

Abstract: When a producer requests a measurement of acreage or production from FSA, the producers use form FSA–409 (Measurement Service Record) to make the request, which requires a measurement fee to be paid to FSA. Currently, the Measurement Service (MS) process is entirely a manual process.

The ''Modernize and Innovate the Delivery of Agricultural Systems'' (MIDAS) is FSA's initiative to improve the delivery of FSA farm program benefits and services through the re-engineering of farm program business processes and the adoption of enhanced and modernized information technology. The current format of FSA–409 was implemented prior to the MIDAS initiative and therefore needs to be updated in order to be compatible with MIDAS. FSA also wants to simplify the form so that producers will only see the fields needed for the specific MS. Through MIDAS, FSA is automating the MS process, and is also modifying how the FSA–409 will be used.

FSA is not collecting any new information on the FSA–409. FSA is only changing the system such that it will print only what is needed based on the type of MS being performed. The types of MS being performed are currently Land (Office or Field) and Commodity Bin. The current form includes all of these. The proposed changes to the form divide the data fields required by MS type—either Land or Bin. This allows the new system to print only the necessary data fields.

FSA has decided to separate the land and bin measurements into two forms. The FSA–409 L would show land measurement requests and results. The FSA–409 B would show bin measurement requests and results.

In the request, the producer provides FSA: the farm serial number, program year, farm location, contact person, and type of service request (acreage or production). The measurement service procedure is done in accordance with 7 CFR part 718 and FSA Handbook 2–CP. FSA is using the collected information to fulfill producers' measurement request and to ensure that measurements are accurate.

Producers will receive MS information from FSA and provide it to FSA at the time of applying for certain program benefits. The MS information includes, but is not limited to, measuring land and crop areas, quantities of farm-stored commodities, and appraising the yields of crops in the field.

Estimate of Annual Burden: Public reporting burden for this collection of information is estimated to average 15 minutes per response. The travel time, which is included in the total annual burden, is estimated to be 1 hour per respondent.

Respondents: Producers.

Estimated Number of Respondents: 135,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual of Responses: 135,000.

Estimated Total Annual Burden Hours: 168,750 hours.

We are requesting comments on all aspects of this information collection to help us:

(1) Determine whether the continued collection of information is still necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Assess the accuracy of FSA's estimate of burden including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected;

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record on regulation.gov. Comments will be summarized and included in the submission for OMB approval.

Signed on July 20, 2012.

Juan M. Garcia,

Administrator, Farm Service Agency.

[FR Doc. 2012–18648 Filed 7–30–12; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2012–0023]

Availability of Microbial Risk Assessment Guideline: Pathogenic Microorganisms With Focus on Food and in Water

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of availability.

SUMMARY: The Food Safety and Inspection Service (FSIS) and Environmental Protection Agency (EPA) are announcing the availability of a guideline for conducting microbial risk assessment (MRA). The guideline will improve transparency in the way the two Federal agencies conduct MRA and will promote consistency in approaches and methods. The guideline can apply in varied situations and will be a resource for Federal Government risk assessors, their agents, contractors, and other members of the risk assessment community.

DATES: The guideline is effective July 31, 2012.

ADDRESSES: A downloadable version of the guideline and additional related materials, including the external peer review panel's comments and associated responses, is available to view or print at *http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp*. No hard copies of the guideline have been published.

FOR FURTHER INFORMATION CONTACT: Kerry Dearfield, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Ave. SW., Mail Stop 3766, Washington, DC 20250; email: *kerry.dearfield@fsis.usda.gov*; phone: (202) 690–6451; or, Michael Broder, Office of the Science Advisor, Mail Code 8105–R, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; Email: *broder.michael@epa.gov*; phone: (202) 564–3393.

SUPPLEMENTARY INFORMATION:

I. Background

Risk assessment is widely recognized as a systematic way to prepare, organize, and analyze information to help make regulatory decisions, establish programs, and prioritize research and development efforts. In 1983, *Risk Assessment in the Federal Government; Managing the Process* (NRC 1983 report), published by the National Research Council of the National Academics of Science, helped unify the risk assessment process for chemicals in foods and the environment and provided a basic framework that Federal agencies could apply when conducting risk assessments. During the 1990s, it became apparent that the NRC 1983 report had some shortcomings with respect to conducting a MRA for microorganisms. Agencies conducting quantitative microbial risk assessments had to individually adapt and make adjustments to the method described in the NRC 1983 report to meet their specific needs. As a result, there existed no consistent approach to conducting MRA among Federal agencies.

FSIS and EPA, joined by scientists from other Federal agencies, initiated a collaborative effort to develop guidelines that would improve consistency in the way MRA is conducted. The agencies thought that clear and credible risk assessment methods would leverage limited resources, improve efficiencies, improve transparency with stakeholders, and promote joint interaction. This cross-agency activity generated the MRA Guideline.

The guideline facilitates systematic and transparent consideration of all relevant factors that impact the risk assessment and facilitates reproducible risk evaluation. Using the guidelines, agencies assessing similar media or pathogens are able to more readily compare and contrast the details and assumptions of their assessment to another Agency's assessment. The guideline can apply in varied situations and provides for the flexibility necessary for any Agency that chooses to do so to use it effectively.

EPA released a draft of the document for public comment in July 2011 (76 FR 44586). EPA received two comments—one from a member of the public and another from a foreign government authority responsible for the assessment of similar health risks in their country. All comments received by the comment period closing date were shared with an external peer review panel for their consideration. The external peer review panel's comments and associated responses are available for review at: *http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp*.

USDA Nondiscrimination Statement

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To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9410 or call 202–720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Additional Public Notification

FSIS will announce this notice online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp.*

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/*.

Options range from recalls to export information to regulations, directives, and notices.

Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC, on: July 26, 2012.

Alfred V. Almanza,

Administrator.

[FR Doc. 2012–18752 Filed 7–27–12; 4:15 pm]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Sabine Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Sabine Resource Advisory Committee will meet in

Hemphill, Texas. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to discuss New Title II Project Proposals.

DATES: The meeting will be held on Thursday, August 23, 2012, 3:30 p.m.

ADDRESSES: The meeting will be held at the Sabine NF Office, 5050 State Hwy 21 East, Hemphill, TX 75948. Written comments may be submitted as described under Supplementary Information.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at 5050 State Hwy 21 East, Hemphill, TX 75948. Please call ahead to (409) 625–1940 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: William E. Taylor, Jr., Designated Federal Officer, Sabine National Forest, 5050 State Hwy. 21 E., Hemphill, TX 75948: Telephone: 936–639–8501 or email at: *etaylor@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday. Requests for reasonable accommodation for access to the facility or procedings may be made by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: The following business will be conducted: The purpose of the meeting is to review progress on approved Title II Projects. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by August 17, 2012 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to 5050 State Hwy 21 East, Hemphill, TX 75948 or by email to *etaylor@fs.fed.us* or via facsimile to 409–625–1953.

Dated: July 20, 2012.

William E. Taylor, Jr.,

Designated Federal Officer, Sabine National Forest RAC.

[FR Doc. 2012–18408 Filed 7–30–12; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Fresno County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Fresno County Resource Advisory Committee will be meeting in Prather, California, on August 15 and 29, 2012 and September 12, 2012 at 6:00 p.m. The purpose of the August 15 and 29 meetings will be to review new project proposals. The purpose of the meeting on September 12 will be to vote and approve projects to be funded under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 110–343).

DATES: The meetings will be held on August 15 and 29 and September 12. All meetings will begin at 6:00 p.m. in Prather, CA at the High Sierra District Office.

ADDRESSES: All meetings will be located at the High Sierra District Office, 29688 Auberry Rd., Prather, California. Send written comments to Darcy Brown, Fresno County Resource Advisory Committee Coordinator, c/o Sierra National Forest, High Sierra Ranger District, P.O. Box 559, Prather, CA 93651. Electronic comments should be sent to *DLBrown02@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Darcy Brown, Fresno County Resource Advisory Committee Coordinator, (559) 855–5355 ext. 3374.

Ray Porter,

District Ranger, High Sierra Ranger District, Sierra National Forest.

[FR Doc. 2012–18467 Filed 7–30–12; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Ashley Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ashley Resource Advisory Committee will meet in Vernal, Utah. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is conduct introductions, approve meeting minutes, review available short form project proposals, set the next meeting date, time and location and receive public comment on the meeting subjects and proceedings.

DATES: The meetings will be held August 23, 2012, from 6 p.m. to 8 p.m.

ADDRESSES: The meeting will be held in the Interagency Fire Dispatch Center conference room at the Ashley National Forest Supervisor's Office, 355 North Vernal Avenue in Vernal, Utah. Written comments should be sent to Ashley National Forest, 355 North Vernal Avenue, Vernal, UT 84078. Comments may also be sent via email to *ljhaynes@fs.fed.us,* or via facsimile to 435–781–5142.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Ashley National Forest, 355 North Vernal Avenue, Vernal, UT.

FOR FURTHER INFORMATION CONTACT: Louis Haynes, RAC Coordinator, Ashley National Forest, (435) 781–5105; email: *ljhaynes@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Welcome and roll call; (2) Approval of meeting minutes; (3) Evaluation and voting on available short forms for project ideas; (4) review of next meeting purpose, location, and date; (5) Receive public comment. Persons who wish to bring related matters to the attention of the Committee may file written statements with the committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by August 20, 2012 will have the opportunity to address the committee at these meetings.

Dated: July 24, 2012.

John R. Erickson,

Forest Supervisor.

[FR Doc. 2012–18468 Filed 7–30–12; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

White Pine-Nye Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of two meetings.

SUMMARY: The White Pine-Nye Resource Advisory Committee will meet in Eureka, Nevada. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meetings are open to the public. The purpose of the meetings is to review and recommend funding allocation for proposed projects.

DATES: The meetings will be held August 23, 2012, 9:00 a.m. and September 7, 2012, 9:00 a.m.

ADDRESSES: The meetings will be held at Eureka County Annex, 701 S. Main Street, Eureka, Nevada 89316. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Tonopah Ranger District Office, 1400 S. Erie Main Street, Tonopah, Nevada. Please call ahead to 775–482–6286 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Steven Williams, RAC Designated Federal Official, Austin Ranger District, 100 Midas Canyon Road, P.O. Box 130, Austin, Nevada 89310, 775–964–2671, email *swilliams01@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday. Requests for reasonable accomodation for access to the facility or procedings may be made by contacting the person listed **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: The following business will be conducted: Review and approve previous meeting's minutes and business expenses, Recommend funding allocation for proposed projects, and Public Comment. More information is available at: *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf.* Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by August 17, 2012 to be scheduled on the agenda.

Written comments and requests for time for oral comments must be sent to Tonopah Ranger District, P.O. Box 3940, Tonopah, Nevada 89049, or by email to *lebernardi@fs.fed.us* or via facsimile to 775–482–3053.

Dated: July 24, 2012.

Jeanne M. Higgins,

Forest Supervisor.

[FR Doc. 2012–18634 Filed 7–30–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Humboldt (NV) Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Humboldt (NV) Resource Advisory Committee will meet in Winnemucca, Nevada. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose is to review Title II funding procedures and Humboldt (NV) RAC operating guidelines, consider and recommend 2012 RAC project proposals, and review progress made on Humboldt (NV) RAC projects previously authorized.

DATES: The meeting will be held August 15 & 22, 2011 from 10:00 a.m. to 7:00 p.m.

ADDRESSES: The meeting will be held at the Humboldt County Court House Room 201, 50 West 5th Street, Winnemucca, Nevada. Written comments should be sent to USDA Forest Service, 1500 E Winnemucca Blvd., Winnemucca, NV 89445. Comments may also be sent via email to *jlulrich@fs.fed.us,* or via facsimile to 775–625–1200.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at *http://fs.usda.gov/goto/htnf/rac.*

FOR FURTHER INFORMATION CONTACT: Jeff Ulrich, RAC Designated Federal Official, Santa Rosa Ranger District Humboldt-Toiyabe National Forest, 775–352–1215.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meetings are open to the public. The following business will be conducted on the August 15, 2012 meeting: (1) Introductions of all committee members and Forest Service personnel, (2) Review process for considering and recommending Title II projects, (3) Consider and vote on changes to Humboldt (NV) RAC operating guidelines, (4) Review progress made on previously authorized Title II projects, (5) Consider proposed Title II projects, and (6) Public Comment.

The following business will be conducted on the August 22, 2012 meeting: (1) Consider proposed Title II projects, (2) Vote on projects to be recommended, and (3) Public Comment.

Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by August 8, 2011 will have the opportunity to address the Committee at those sessions.

Dated: July 20, 2012.

Jeanne M Higgins,

Forest Supervisor, Humboldt-Toiyabe National Forest.

[FR Doc. 2012–18619 Filed 7–30–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Prince William Sound Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Prince William Sound Resource Advisory Committee will meet via teleconference. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is to review, discuss and

select projects to be funded thru the Secure Rural Schools Act.

DATES: The meeting will be held September 15th, 2012, 9–5 (longer or shorter as needed).

ADDRESSES: The meeting will be held via teleconference. Members and the general public can call into the bridge line 907–586–7820. Telephones will also be set up at the Cordova Ranger District located at 612 2nd Street, Cordova, Alaska and the Glacier Ranger District located at 145 Forest Station Road, Girdwood, Alaska. Written comments should be sent to Teresa Benson P.O. Box 280, Cordova, AK 99574. Comments may also be sent via email to *tbenson@fs.fed.us,* or via facsimile to (907) 424–7214.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Cordova Ranger District (612 2nd Street, Cordova, AK) or the Glacier Ranger District (145 Forest Station Road, Girdwood, AK).

FOR FURTHER INFORMATION CONTACT: Teresa Benson, Designated Federal Official, c/o USDA Forest Service, P.O. Box 280, Cordova, Alaska 99574, telephone (907) 424–4742.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: The Prince William Sound Resource Advisory Committee (RAC) will be discussing and voting on proposals that have been received from communities of the Prince William Sound. The proposals that may receive funding would enhance forest ecosystems or restore and improve land health and water quality on the Chugach National Forest and other near-by lands including the communities of Chenega, Cordova, Tatitlek, Valdez and Whittier. The RAC is responsible for approving projects with funds made available from years 2008–2012.

The public is welcome to attend the September 15th RAC meeting. Committee discussion is limited to Forest Service staff and Committee members. However, public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by close of business August 24th will have the opportunity to address the Committee at those sessions.

Dated: July 23, 2012.

Teresa M. Benson,

District Ranger.

[FR Doc. 2012–18617 Filed 7–30–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Wrangell-Petersburg Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Wrangell-Petersburg Resource Advisory Committee will meet by video-teleconference in Wrangell, Alaska and Petersburg, Alaska. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the Committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to share information regarding reauthorization of the Act, to review progress of previously funded projects, and to review the list of contingency projects that were approved but not funded in 2011. The Committee will also consider whether a new round of project proposals should be solicited.

DATES: The meeting will be held on Monday, August 20, 2012 from 1:00 p.m. to 5:00 p.m., or until business is concluded.

ADDRESSES: The meeting will be held at the Wrangell Ranger District office at 525 Bennett Street in Wrangell, Alaska, and the Petersburg Ranger District office at 12 North Nordic Drive in Petersburg, Alaska. Interested persons may attend in person at either location, or by telephone. A toll free teleconference number for those who wish to call in will be provided on request.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Petersburg Ranger District office at 12 North Nordic Drive or the Wrangell Ranger District office at 525 Bennett Street during regular office hours (Monday through Friday 8 a.m.–4:30 p.m.).

FOR FURTHER INFORMATION CONTACT: Jason Anderson, Petersburg District Ranger, P.O. Box 1328, Petersburg, Alaska 99833, phone (907)772–3871, email *jasonanderson@fs.fed.us,* or Robert Dalrymple, Wrangell District Ranger, P.O. Box 51, Wrangell, Alaska 99929, phone (907)874–2323, email *rdalrymple@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday. Please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed for **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: The following business will be conducted: updating the Committee regarding reauthorization of the Act, reviewing progress of previously funded projects, and reviewing the list of contingency projects that were approved but not funded in 2011. The Committee will also consider whether a new round of project proposals should be solicited. More information on this meeting, including a full agenda, is available online at *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/RAC/Wrangell-Petersburg?OpenDocument.*

Anyone who would like to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. A one-hour public input session will be provided beginning at 3:00 p.m. Individuals wishing to make an oral statement should request in writing by August 13, 2012 to be scheduled on the agenda.

Written comments and requests for time for oral comments should be sent to Jason Anderson, Petersburg District Ranger, P.O. Box 1328, Petersburg, AK 99833, or Robert Dalrymple, Wrangell District Ranger, P.O. Box 51, Wrangell, AK 99929. Comments may also be sent via email to *jasonanderson@fs.fed.us,* or via facsimile to 907–772–5995. A summary of the meeting will be posted at *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/RAC/Wrangell-Petersburg?OpenDocument* within 21 days of the meeting.

Dated: July 20, 2012.

Jason C. Anderson,

District Ranger.

[FR Doc. 2012–18613 Filed 7–30–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Tehama County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tehama County Resource Advisory Committee (RAC) will meet in Red Bluff, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is appoint a new chairperson, review and discuss new project proposals.

DATES: The meeting will be held on August 16, 2012 from 9:00 a.m. and end at approximately 12 noon.

ADDRESSES: The meeting will be held at the Lincoln Street School, Conference Room E, 1135 Lincoln Street, Red Bluff, CA. Written comments may be submitted as described under Supplementary Information.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at 825 N. Humboldt Ave., Willows, CA 95988. Please call ahead to (530) 934–3316 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Randy Jero, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District. Phone voice (530) 934–3316; phone TTY (530) 934–7724; email *rjero@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday. Please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accomodation for access to the facility or procedings by contacting the person listed For Further Information.

SUPPLEMENTARY INFORMATION: The following business will be conducted: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) RAC Administrative Updates, (5) Appoint Chairperson, (6) Project Presentations & Discussion, (7) Next Agenda. The full agenda may be previewed at: *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/Web_Agendas/32B05609E50F20EA85257A45006814DB?OpenDocument.*

Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by August 9, 2012 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Randy Jero, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, 825 N. Humboldt Ave, Willows, CA 95988 or by email to *rjero@fs.fed.us* or via facsimile to 530–934–1212.

A summary of the meeting will be posted at: *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/RAC/FB1EF93E174C265B8825753E004EF1B0?OpenDocument,* within 21 days of the meeting.

Dated: July 24, 2012.

Eduardo Olmedo,

District Ranger.

[FR Doc. 2012–18471 Filed 7–30–12; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1841]

Reorganization of Foreign-Trade Zone 148 Under Alternative Site Framework; Knoxville, TN

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) (74 FR 1170, 01/12/2009; correction 74 FR 3987, 01/22/2009; 75 FR 71069–71070, 11/22/2010) as an option for the establishment or reorganization of general-purpose zones;

Whereas, the Industrial Development Board of Blount County and the Cities of Alcoa and Maryville, Tennessee, grantee of Foreign-Trade Zone 148, submitted an application to the Board (FTZ Docket 16–2012, filed 03/13/2012) for authority to reorganize under the ASF with a service area of Anderson, Blount, Campbell, Claiborne, Cocke, Cumberland, Grainger, Jefferson, Knox, Loudon, Monroe, Morgan, Roane, Scott, Sevier and Union Counties, Tennessee, within and adjacent to the Knoxville U.S. Customs and Border Protection port of entry, FTZ 148's existing Sites 3, 4 and 5 would be categorized as magnet sites, existing Sites 2, 6 and 7 would be categorized as usage-driven sites, and existing Site 1 would be removed from the zone project;

Whereas, notice inviting public comment was given in the **Federal Register** (77 FR 15995–15996, 03/19/2012) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 148 under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project, to a five-year ASF sunset provision for magnet sites that would terminate authority for Sites 4 and 5 if not activated by July 31, 2017, and to a three-year ASF sunset provision for usage-driven sites that would terminate authority for Sites 2, 6 and 7 if no foreign-status merchandise is admitted for a *bona fide* customs purpose by July 31, 2015.

Signed at Washington, DC, this 23rd day of July 2012.

Paul Piquado,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–18680 Filed 7–30–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1842]

Reorganization of Foreign-Trade Zone 18 Under Alternative Site Framework; San Jose, CA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) (74 FR 1170, 01/12/2009; correction 74 FR 3987, 01/22/2009; 75 FR 71069–71070, 11/22/2010) as an option for the establishment or reorganization of general-purpose zones;

Whereas, the City of San Jose, California, grantee of Foreign-Trade Zone 18, submitted an application to the Board (FTZ Docket 28–2012, filed 04/04/2012) for authority to reorganize under the ASF with a service area of San Jose, California, within the San Jose U.S. Customs and Border Protection port of entry, and FTZ 18's existing Site 1 would be categorized as a magnet site;

Whereas, notice inviting public comment was given in the **Federal Register** (77 FR 21527, 04/10/2012) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 18 under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project, and to a five-year ASF sunset provision for magnet sites that would terminate authority for Site 1 if not activated by July 31, 2017.

Signed at Washington, DC, this 23 day of July 2012.

Paul Piquado,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2012–18673 Filed 7–30–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–812]

Honey From Argentina: Preliminary Rescission of Antidumping Duty New Shipper Review

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

DATES: Effective Date: July 31, 2012.

SUMMARY: The Department of Commerce (the ''Department'') is currently conducting a new shipper review (''NSR'') of the antidumping duty order on honey from Argentina for the period of December 1, 2010, through November 30, 2011. As discussed below, we preliminarily determine that the exporter D'Ambros María de los Angeles and D'Ambros María Daniela SH, an Argentine partnership doing business as Apícola Danangie (''Danangie'') did not satisfy the regulatory requirements for an NSR; therefore, we are preliminarily rescinding this NSR. We invite interested parties to comment on this preliminary rescission of review. *See* ''Comments'' section below.

FOR FURTHER INFORMATION CONTACT: Patrick Edwards or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC, 20230; telephone: (202) 482–8029 or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

The antidumping duty order on honey from Argentina was published on December 10, 2001.[1] On January 3, 2012, the Department received a timely filed request for a NSR from Danangie.[2] On January 25, 2012, the Department initiated this NSR. *See Honey from Argentina: Notice of Initiation of Antidumping New Shipper Review,* 77 FR 4763 (January 31, 2012) (''*Initiation Notice''*). Along with the *Initiation Notice,* the Department released its Initiation Checklist. *See* Memorandum to the File, through Angelica L. Mendoza, Program Manager, regarding ''Initiation of the Antidumping Duty New Shipper Review: Honey from Argentina,'' dated January 25, 2012 (''Initiation Checklist''). While the Department found that Danangie met the regulatory and statutory requirements for the initiation of a NSR in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.214(d), the Department noted in the *Initiation Notice* that it had concerns with certain information contained within the entry data received from U.S. Customs and Border Protection (''CBP''). Due to the business proprietary nature of this information, details of the Department's concerns are discussed in the Initiation Checklist. The Department further noted that it intended to address this issue after initiation of the NSR and that, if based on information collected, it determined that an NSR for Danangie was not warranted, the Department may rescind the review or apply facts available pursuant to section 776 of the Act, as appropriate.

On February 23, 2012, the Department issued the antidumping questionnaire to Danangie. On March 15, 2012, Danangie submitted its response to section A of the Department's questionnaire. On April 5, 2012, the Department received Danangie's responses to sections B and C of the questionnaire. On May 25, 2012, the Department issued a supplemental questionnaire to Danangie concerning, among other things, Danangie's organization, ownership, and sales history. Danangie submitted its response to the Department's supplemental questionnaire on June 19, 2012.

Following a review of Danangie's supplemental response, and due to the continued concern over certain information found in the entry data provided by CBP prior to initiation, on June 21, 2012, we requested that Danangie review its sales records to ensure that a previous sale of honey was not made by the company prior to the current NSR period. On July 5, 2012, Danagie filed on the record of this NSR a letter stating that Danangie did make a prior sale of subject merchandise which was shipped to the United States.

Period of Review

Pursuant to 19 CFR 351.214(g), the period of review (''POR'') for this NSR is the annual period of December 1, 2010, through November 30, 2011.

Scope of the Order

The merchandise covered by the order is honey from Argentina. The products covered are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and

[1] *See Notice of Antidumping Duty Order: Honey From Argentina,* 66 FR 63672 (December 10, 2001).

[2] We note that January 3, 2012 was the first business day following the deadline of December 31, 2012.

colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form. The merchandise is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under this order is dispositive.

Preliminary Rescission of the Antidumping New Shipper Review of Danangie

The NSR provisions of the Department's regulations require that the entity making a request for a NSR must document and certify, among other things: (1) The date on which subject merchandise of the exporter or producer making the request was first entered or withdrawn from warehouse, for consumption, or, if it cannot establish the date of first entry, the date on which the exporter or producer first shipped the merchandise for export to the United States; (2) the volume of that and subsequent shipments; and (3) the date of the first sale to an unaffiliated customer in the United States. *See* 19 CFR 351.214(b)(2)(iv). If these provisions, among others, are met, the Department will initiate a NSR to establish an individual weighted-average dumping margin for the new shipper. *See generally* 19 CFR 351.214(b)(2).

In its request for a NSR, Danangie provided certified statements that the first entry of its subject merchandise into the United States occurred during the POR. *See* Letter from Danangie to the Secretary of Commerce, entitled ''Request for New Shipper Review of Honey From Argentina: Apícola Danangie,'' dated December 31, 2011. Based on this information, the Department initiated the NSR for Danangie. *See Initiation Notice.*

However, as noted in the *Initiation Notice* and the Initiation Checklist, based on an analysis of CBP data, the CBP Entry Documents, and Danangie's supplemental questionnaire responses, the Department has determined that Danangie had a prior shipment of subject merchandise to the United States. As noted, in order to qualify for a NSR under 19 CFR 351.214, a company must certify and document among other things, the date of the first entry of its subject merchandise or date of first shipment and the volume of that and subsequent shipments to the United States. *Id.* Further, a request for an NSR must be made within one year of the date of the first entry (or if appropriate, first shipment for export to the United States). *See* 19 CFR 351.214(c). Because record evidence shows that Danangie did not report its first shipment of subject merchandise in its request for a NSR, and did not meet the deadline requirements of section 351.214(c) of the Department's regulations, the Department has preliminarily found that Danangie's request does not satisfy the regulatory requirements for an NSR, and thus the Department preliminarily determines that it is appropriate to rescind the NSR for Danangie. As much of the factual information used in our analysis for the rescission of Danangie's NSR involves business proprietary information, a full discussion of the basis for our preliminary rescission of this review is set forth in the Memorandum to Angelica L. Mendoza, AD/CVD Operations, Office 7, entitled ''Preliminary Analysis of Apicola Danangie's Entries in the Antidumping Duty New Shipper Review of Honey from Argentina,'' dated concurrently with this notice.

Assessment Rate

If the Department proceeds to a final rescission of Danangie's NSR, the assessment rate to which Danangie's shipments will be subject will not be affected pursuant to such rescission. The assessment rate for Danangie's shipments, however, could change as the Department is conducting an administrative review of the antidumping duty order on honey from Argentina covering Danangie and the period of December 1, 2010, through November 30, 2011. Thus, if we proceed to a final rescission, we will instruct CBP to continue to suspend entries during the period December 1, 2010, through November 30, 2011, of subject merchandise exported by Danangie until CBP receives instructions relating to the administrative review of the honey order covering the period December 1, 2010, through November 30, 2011.

Cash Deposit Requirements

If the Department proceeds to a final rescission, effective upon publication of the final rescission of the NSR, we will instruct CBP to discontinue the option of posting a bond or security in lieu of a cash deposit for entries of subject merchandise exported by Danangie. Also, if we proceed to a final rescission of the NSR, the cash deposit rate will continue to be the all other's rate for entries exported by Danangie.

Disclosure

We will disclose our analysis memorandum to the parties to this proceeding not later than five days after the date of public announcement, or, if there is no public announcement, within five days of the date of publication of this notice. *See* 19 CFR 351.224(b).

Comments

Interested parties are invited to comment on this preliminary rescission of review and may submit case briefs within 30 days of the date of publication of this notice, unless otherwise notified by the Department. *See* 19 CFR351.309(c)(ii). Rebuttal briefs, limited to issues raised in the case briefs, will be due five days later, pursuant to 19 CFR 351.309(d). Parties are requested to provide a summary of their arguments not to exceed five pages, and a table of the statutes, regulations, and cases cited.

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 within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in case and rebuttal briefs. The Department will issue the final rescission or final results of this NSR, including the results of our analysis of issues raised in any briefs, not later than 90 days after this preliminary rescission is issued, unless the deadline for the final rescission or final results is extended. *See* 19 CFR 351.214(i).

Notification to Importers

This notice serves as a preliminary reminder to the 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.

The NSR and notice are in accordance with sections 751(a)(2)(B) and 777(i) of the Act, as amended and 19 CFR 351.214(f).

Dated: July 23, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–18679 Filed 7–30–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–970]

Multilayered Wood Flooring From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review

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

SUMMARY: The Department of Commerce (''Department'') has determined that a request for a new shipper review (''NSR'') of the antidumping duty order on multilayered wood flooring from the People's Republic of China (''PRC'') meets the statutory and regulatory requirements for initiation. The period of review (''POR'') for this NSR is May 26, 2011, through May 31, 2012.

DATES: *Effective Date:* July 31, 2012.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander or Erin Kearney, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: 202–482–0182 or 202–482–0167, respectively.

SUPPLEMENTARY INFORMATION:

Background

The notice announcing the antidumping duty order on multilayered wood flooring from the PRC was published in the **Federal Register** on December 8, 2011.[1] On June 28, 2012, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (''Act''), and 19 CFR 351.214(b), the Department received an NSR request from Power Dekor Group Co., Ltd. (''Power Dekor''). Power Dekor's request was made in June 2012, which is the semiannual anniversary month of the *order.*[2]

In its submission, Power Dekor certified that it is the exporter of the subject merchandise upon which the request was based. Pursuant to section 751(a)(2)(B)(i)(I) of the Act and 19 CFR 351.214(b)(2)(i), Power Dekor certified that it did not export multilayered wood flooring to the United States during the period of investigation (''POI''). Further, pursuant to 19 CFR 351.214(b)(2)(ii)(B), Guangzhou Homebon Timber Manufacturing Co., Ltd. (''Guangzhou Homebon''), the producer of subject merchandise exported by Power Dekor, certified that it did not export subject merchandise to the United States during the POI. Pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), Power Dekor and Guangzhou Homebon certified that, since the initiation of the investigation, they have not been affiliated with a PRC exporter or producer who exported multilayered wood flooring to the United States during the POI, including those not individually examined during the investigation. As required by 19 CFR 351.214(b)(2)(iii)(B), Power Dekor and Guangzhou Homebon also certified that their export activities were not controlled by the central government of the PRC.

In addition to the certifications described above, pursuant to 19 CFR 351.214(b)(2)(iv), Power Dekor submitted documentation establishing the following: (1) The date on which Power Dekor first shipped multilayered wood flooring for export to the United States and the date on which the multilayered wood flooring was first entered, or withdrawn from warehouse, for consumption; (2) the volume of its first shipment; and (3) the date of its first sale to an unaffiliated customer in the United States.

The Department conducted U.S. Customs and Border Protection (''CBP'') database queries in an attempt to confirm that Power Dekor's shipments of subject merchandise had entered the United States for consumption and that liquidation of such entries had been properly suspended for antidumping duties. The Department also examined whether the CBP data confirmed that such entries were made during the NSR POR.[3] The information which the Department examined was consistent with that provided by Power Dekor in its request.[4]

Period of Review

In accordance with 19 CFR 351.214(g)(1)(ii)(B), the POR for an NSR initiated in the month immediately following the first semiannual anniversary month normally will cover the period from the date of suspension of liquidation to the end of the month immediately preceding the first semiannual anniversary month. Therefore, the POR for this NSR is May 26, 2011, through May 31, 2012. The sales and entries into the United States of subject merchandise produced by Guangzhou Homebon and exported by Power Dekor occurred during this POR.

Initiation of New Shipper Review

Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(b), the Department finds that the request submitted by Power Dekor meets the threshold requirements for initiation of an NSR for the shipment of multilayered wood flooring from the PRC produced by Guangzhou Homebon and exported by Power Dekor.[5] However, if the information supplied by Power Dekor is later found to be incorrect or insufficient during the course of this proceeding, the Department may rescind the review or apply adverse facts available pursuant to section 776 of the Act, depending upon the facts on record. The Department intends to issue the preliminary results of this NSR no later than 180 days from the date of initiation, and the final results no later than 90 days from the issuance of the preliminary results.[6]

It is the Department's usual practice, in cases involving non-market economies, to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. Accordingly, the Department will issue a questionnaire to Power Dekor, which will include a section requesting information with regard to Power Dekor's export activities for separate rates purposes. The review will proceed if the response provides sufficient indication that Power Dekor is not subject to either *de jure* or *de facto* government control with respect to its export of subject merchandise.

The Department will instruct CBP to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise from Power Dekor in accordance with section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e). Because Power Dekor certified that Guangzhou Homebon produced and Power Dekor exported the subject merchandise, the Department will apply the bonding privilege to Power Dekor for all subject merchandise produced by Guangzhou Homebon and exported by Power Dekor.

To assist in its analysis of the *bona fides* of Power Dekor's sales, upon

[1] *See Multilayered Wood Flooring From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 76 FR 76690 (December 8, 2011) (''*Order*'').

[2] *See* 19 CFR 351.214(d).

[3] *See* July 25, 2012, memorandum to the file, regarding ''U.S. Customs and Border Protection Data.''

[4] *See* Memorandum to the File titled ''Initiation of Antidumping New Shipper Review of Multilayered Wood Flooring from the People's Republic of China: Power Dekor Group Co., Ltd.'' (''Initiation Checklist'') dated concurrently with this notice.

[5] *See* Initiation Checklist.

[6] *See* section 751(a)(2)(B)(iv) of the Act.

initiation of this new shipper review, the Department will require Power Dekor to submit on an ongoing basis complete transaction information concerning any sales of subject merchandise to the United States that were made subsequent to the POR.

Interested parties requiring access to proprietary information in this NSR should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 19 CFR 351.306. This initiation and notice are in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 19 CFR 351.221(c)(1)(i).

Dated: July 25, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–18675 Filed 7–30–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–866]

Folding Gift Boxes From the People's Republic of China: Extension of Time Limits for Preliminary and Final Results of Second Antidumping Duty Sunset Review

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

DATES: *Effective Date:* July 31, 2012.

FOR FURTHER INFORMATION CONTACT: Demitri Kalogeropoulos at 202–482–2623, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Background

On April 2, 2012, the Department of Commerce (''the Department'') initiated the second five-year (''sunset'') review of the antidumping duty (''AD'') order on certain folding gift boxes from the People's Republic of China (''PRC'') pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act'').[1] The Folding Gift Boxes Fair Trade Coalition,[2] a group of producers of the domestic like product, submitted a sufficient substantive response. On May 21, 2012, after analyzing the substantive response of interested parties, consistent with 19 CFR 351.218(e)(1)(ii)(A), the Department determined to conduct an expedited sunset review of this AD duty order on the basis that no respondent interested party submitted a substantive response.

On February 14, 2012, the Department published in the **Federal Register** a notice entitled *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012) (''*Final Modification for Reviews*''). In that notice, the Department announced the modification of its methodology regarding the calculation of the weighted-average dumping margins in certain segments of AD proceedings and stated that it would apply to all sunset reviews for which preliminary or final results were due more than 60 days after publication (*i.e.,* April 16, 2012). On July 23, 2012, the Department reconsidered its determination to conduct an expedited sunset review of this order and determined to conduct a full sunset review of the AD order on folding gift boxes from the PRC.[3] The preliminary results of this full sunset review are currently due July 23, 2012.[4]

Extension of Time Limits

In accordance with section 751(c)(5)(B) of the Act, the Department may extend the period of time for making its determination by not more than 90 days, if it determines that the sunset review is extraordinarily complicated. We determine that this AD sunset review is extraordinarily complicated, pursuant to section 751(c)(5)(C) of the Act, because the issues that the Department must analyze pursuant to the *Final Modification for Reviews* are complex.

The preliminary results of this full sunset review of the AD orders on folding gift boxes from the PRC are currently scheduled for July 23, 2012, and the final results of this review are scheduled for November 28, 2012. The Department is extending the deadlines for both the preliminary and final results of the full sunset review. As a result, the Department intends to issue the preliminary results of this full sunset review of the AD order on folding gift boxes from the PRC no later than October 19, 2012, and the final results of the review no later than February 26, 2013. These dates are 90 days from the original scheduled dates of the preliminary and final results of the full sunset review.

This notice is issued in accordance with sections 751(c)(5)(B) and (C)(v) of the Act.

Dated: July 23, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–18681 Filed 7–30–12; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Initiation of Five-Year (''Sunset'') Review,* 77 FR 19643 (April 2, 2012).

[2] The Folding Gift Boxes Fair Trade Coalition is comprised of Harvard Folding Gift Box Company, Inc. and Graphic Packaging International, Inc., both U.S. producers of folding gift boxes.

[3] *See* Memorandum titled ''Sunset Review of the Antidumping Duty Orders on Folding Gift Boxes from the People's Republic of China: Adequacy Redetermination Memorandum,'' (July 23, 2012).

[4] The due date actually falls on July 21, 2012, which is a weekend. Therefore, the deadline moves to the next business day which is July 23, 2012. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended;* 70 FR 24533 (May 10, 2008).

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Environmental Solutions Toolkit

AGENCY: International Trade Administration, Commerce.

ACTION: Notice and request for comment.

SUMMARY: This notice sets forth a request for input from U.S. businesses capable of exporting their goods or services relevant to (a) groundwater remediation; (b) mercury emissions control from power plants; (c) emissions control from large marine diesel engines; and (d) nutrient removal from municipal wastewater. The Department of Commerce is developing a web-based *U.S. Environmental Solutions Toolkit* to be used by foreign environmental officials and foreign end-users of environmental technologies that will outline U.S. approaches to a series of environmental problems and highlight participating U.S. vendors of relevant U.S. technologies. The Toolkit will support the President's National Export Initiative by fostering export opportunities for the U.S. environmental industry, as well as advancing global environmental protection.

DATES: U.S. companies capable of exporting goods or services relevant to the environmental issues outlined above that are interested in participating in the U.S. Environmental Solutions Toolkit should self-identify by August 17, 2012, at 5:00 p.m. Eastern Daylight Time (EDT).

ADDRESSES: Please indicate interest in participating in the U.S. Environmental Solutions Toolkit by post, email, or fax to the attention of Todd DeLelle, Office of Energy & Environmental Industries,

International Trade Administration, U.S. Department of Commerce, 1401 Constitution Ave. NW., Room 4053, Washington, DC 20230; 202–482–4877; email *todd.delelle@trade.gov;* fax 202–482–5665. Electronic responses should be submitted in Microsoft Word format.

FOR FURTHER INFORMATION CONTACT: Mr. Todd DeLelle, Office of Energy & Environmental Industries (OEEI), International Trade Administration, Room 4053, 1401 Constitution Avenue NW., Washington, DC 20230. (Phone: 202–482–4877; Fax: 202–482–5665; email: *todd.delelle@trade.gov*).

SUPPLEMENTARY INFORMATION: The development of the *U.S. Environmental Solutions Toolkit* requires the identification of U.S. vendors capable of supplying relevant goods and services to foreign buyers. United States exporters interested in being listed on the Toolkit Web site are encouraged to submit their company's name, Web site address, contact information, and environmental solution category of interest from the following list:

(a) Groundwater remediation

(b) Mercury emissions control from power plants

(c) Emissions control from large marine diesel engines

(d) Nutrient removal from municipal wastewater

For purposes of participation in the Toolkit, ''United States exporter'' has the meaning found in 15 U.S.C. 4721(j), which provides: ''United States exporter means (A) a United States citizen; (B) a corporation, partnership, or other association created under the laws of the United States or of any State; or (C) a foreign corporation, partnership, or other association, more than 95 percent of which is owned by persons described in subparagraphs (A) and (B), that exports, or seeks to export, goods or services produced in the United States * * *.''

An expression of interest in being listed on the Toolkit Web site in response to this notice will serve as a certification that the company is a United States exporter, as defined by 15 U.S.C. 4721(j), and seeks to export environmental solutions that fall within the category or categories indicated in your response. Responding to this notification constitutes consent to participate in the Toolkit and to the public sharing of the company name. It also constitutes consent to the inclusion of the name of the company on the Toolkit Web site. The company name will be listed along with a link to the company-specific Web site you indicate in your response to this notice. No additional company information will be posted.

The U.S. Environmental Solutions Toolkit will refer users in foreign markets to U.S. approaches to solving environmental problems and to U.S. companies that can export related technologies. The Toolkit Web site will note that its contents and links do not constitute an official endorsement or approval by the U.S. Commerce Department or the U.S. Government of any of the companies, Web sites, products, or services listed.

Dated: July 24, 2012.

Edward A. O'Malley,

Director, Office of Energy and Environmental Industries.

[FR Doc. 2012–18589 Filed 7–30–12; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

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

SUMMARY: The Department of Commerce (''the Department'') has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with June anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

DATES: *Effective Date:* July 31, 2012.

FOR FURTHER INFORMATION CONTACT: Brenda E. Waters, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various antidumping and countervailing duty orders and findings with June anniversary dates.

All deadlines for the submission of various types of information, certifications, or comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting time.

Notice of No Sales

If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (''POR''), it must notify the Department within 60 days of publication of this notice in the **Federal Register.** All submissions must be filed electronically at *http://iaaccess.trade.gov* in accordance with 19 CFR 351.303. *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011). Such submissions are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended (''Act''). Further, in accordance with 19 CFR 351.303(f)(3)(ii), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the POR. We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties having an APO within seven days of publication of this initiation notice and to make our decision regarding respondent selection within 21 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the applicable review.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department has found that determinations concerning whether particular companies should be ''collapsed'' (*i.e.*, treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this

review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that, with regard to reviews requested on the basis of anniversary months on or after August 2011, the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance has prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

Separate Rates

In proceedings involving non-market economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994). In accordance with the separate rates criteria, the Department assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate rate eligibility, the Department requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on the Department's Web site at *http://www.trade.gov/ia* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to the Department no later than 60 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding [1] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name [2], should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Status Application will be available on the Department's Web site at *http://www.trade.gov/ia* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Status Application, refer to the instructions contained in the application. Separate Rate Status Applications are due to the Department no later than 60 calendar days of publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Status Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

For exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than June 30, 2013.

[1] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.*, an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently complete segment of the proceeding in which they participated.

[2] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

	Period to be reviewed
Antidumping Duty Proceedings	
Japan:	
Carbon and Alloy Seamless Standard, Line and Pressure Pipe (Over 4½ Inches), A–588–850	6/1/11—5/31/12
Canadian Natural Resources Ltd.	
JFE Steel Corporation	
Nippon Steel Corporation	
NKK Tubes	
Sumitomo Metal Industries, Ltd.	
Carbon and Alloy Seamless Standard, Line and Pressure Pipe (Under 4½ Inches), A–588–851	6/1/11—5/31/12
Canadian Natural Resources Ltd.	
Spain:	
Chlorinated Isocyanurates, A–469–814	6/1/11—5/31/12
Ercros, S.A.	
The People's Republic of China:	
Chlorinated Isocyanurates [3], A–570–898	6/1/11—5/31/12
Arch Chemicals (China) Co. Ltd.	
Hebei Jiheng Chemical Co., Ltd.	
Heze Huayi Chemical Co. Ltd.	
Juancheng Kangtai Chemical Co. Ltd.	
Sinoacarbon International Trading Co., Ltd.	
Zhucheng Taisheng Chemical Co., Ltd.	
Polyester Staple Fiber [4], A–570–905	6/1/11—5/31/12
Far Eastern Industries (Shanghai) Ltd. and Far Eastern Polychem Industries	
Hangzhou Best Chemical Fiber Co., Ltd.	
Hangzhou Huachuang Co., Ltd.	
Hangzhou Sanxin Paper Co., Ltd.	
Huvis Sichuan Chemical Fiber Corp., and Huvis Sichuan Polyester Fiber Ltd.	
Jiaxing Fuda Chemical Fibre Factory	
Nantong Luolai Chemical Fiber Co., Ltd.	
Nanyang Textile Co., Ltd.	
Zhaoqing Tifo New Fibre Co., Ltd.	
Silicon Metal [5], A–570–806	6/1/11—5/31/12
Shanghai Jinneng International Trade Co., Ltd.	
Tapered Roller Bearings [6], A–570–601	6/1/11—5/31/12
Changshan Peer Bearing Co., Ltd.	
Dana Heavy Axle S.A. de C.V.	
Ningbo General Bearing Co., Ltd.	
Shanghai General Bearing	
Timken de Mexico S.A. de C.V.	
Xinchang Kaiyuan Automotive Bearing Co., Ltd.	
Zhejiang Sihe Machine Co., Ltd.,	
Zhejiang Zhaofeng Mechanical and Electronic Co., Ltd.	
Countervailing Duty Proceedings	
None.	
Suspension Agreements	
None.	

[3] If one of the above-named companies does not qualify for a separate rate, all other exporters of Chlorinated Isocyanurates from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[4] If one of the above-named companies does not qualify for a separate rate, all other exporters of Polyester Staple Fiber from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[5] If the above-named company does not qualify for a separate rate, all other exporters of Silicon Metal from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[6] If the above-named company does not qualify for a separate rate, all other exporters of Tapered Roller Bearings from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia* v. *United States,* 291 F.3d 806 (Fed Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period, of the order, if such a gap period is applicable to the period of review.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures;*

APO Procedures, 73 FR 3634 (January 22, 2008). Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (*e.g.*, the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Any party submitting factual information in an antidumping duty or countervailing duty proceeding must certify to the accuracy and completeness of that information. *See* section 782(b) of the Act. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all segments of any antidumping duty or countervailing duty proceedings initiated on or after March 14, 2011. *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (February 10, 2011) (''*Interim Final Rule*''), amending 19 CFR 351.303(g)(1) and (2). The formats for the revised certifications are provided at the end of the *Interim Final Rule.* The Department intends to reject factual submissions in any proceeding segments initiated on or after March 14, 2011 if the submitting party does not comply with the revised certification requirements.

These initiations and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: July 26, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–18685 Filed 7–30–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC127

Incidental Taking of Marine Mammals; Taking of Marine Mammals Incidental to the Explosive Removal of Offshore Structures in the Gulf of Mexico

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

ACTION: Notice; issuance of Letters of Authorization (LOA).

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) and implementing regulations, notification is hereby given that NMFS has issued a one-year LOA to take marine mammals incidental to the explosive removal of offshore oil and gas structures (EROS) in the Gulf of Mexico.

DATES: This authorization is effective from September 3, 2012 through July 19, 2013.

ADDRESSES: The application and LOA are available for review by writing to P. Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3235 or by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**), or online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Howard Goldstein or Jolie Harrison, Office of Protected Resources, NMFS, 301–427–8401.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (who has delegated the authority to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made and regulations are issued. Under the MMPA, the term ''take'' means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture, or kill any marine mammal.

Authorization for incidental taking, in the form of annual LOAs, may be granted by NMFS for periods up to five years if NMFS finds, after notice and opportunity for public comment, that the total taking over the five-year period will have a negligible impact on the species or stock(s) of marine mammals, and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). In addition, NMFS must prescribe regulations that include permissible methods of taking and other means of effecting the least practicable adverse impact on the species and its habitat (i.e., mitigation), and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating rounds, and areas of similar significance. The regulations also must include requirements pertaining to the monitoring and reporting of such taking.

Regulations governing the taking of marine mammals incidental to EROS were published on June 19, 2008 (73 FR 34875), and remain in effect through July 19, 2013. For detailed information on this action, please refer to that **Federal Register** notice. The species that applicants may take in small numbers during EROS activities are bottlenose dolphins (*Tursiops truncatus*), Atlantic spotted dolphins (*Stenella frontalis*), pantropical spotted dolphins (*Stenella attenuata*), Clymene dolphins (*Stenella clymene*), striped dolphins (*Stenella coeruleoalba*), spinner dolphins (*Stenella longirostris*), rough-toothed dolphins (*Steno bredanensis*), Risso's dolphins (*Grampus griseus*), melon-headed whales (*Peponocephala electra*), short-finned pilot whales (*Globicephala macrorhynchus*), and sperm whales (*Physeter macrocephalus*). NMFS received requests for a LOA from EOG Resources, Inc. (EOG Resources) for activities covered by EROS regulations.

Reporting

NMFS Galveston Laboratory's Platform Removal Observer Program (PROP) has provided reports for EOG Resources removal of offshore structures during 2011. NMFS PROP observers and non-NMFS observers reported the following during EOG Resource's EROS operations in 2011:

Company	Structure	Dates	Marine mammals sighted (individuals)	Biological impacts observed to marine mammals
EOG Resources	Eugene Island Area, Block 135, Platform B.	June 19 to 25, 2011 ..... July 31 to August 2, 2011 ..	Bottlenose dolphins (88)	None.

Company	Structure	Dates	Marine mammals sighted (individuals)	Biological impacts observed to marine mammals
EOG Resources	Mustang Island Area, Block 759, Platform B.	July 6 to 9, 2011	Bottlenose dolphins (2) Spotted dolphins (14)	None.
EOG Resources	Eugene Island Area, Block 135, Platform A.	July 22 to 31, 2011	Bottlenose dolphins (33)	None.

Pursuant to these regulations, NMFS has issued a LOA to EOG Resources. Issuance of the LOA is based on a finding made in the preamble to the final rule that the total taking over the five-year period (with monitoring, mitigation, and reporting measures) will have a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on subsistence uses. NMFS will review reports to ensure that the applicants are in compliance with meeting the requirements contained in the implementing regulations and LOA, including monitoring, mitigation, and reporting requirements.

Dated: July 25, 2012.

Helen M. Golde,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–18669 Filed 7–30–12; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 12–1]

Maxfield and Oberton Holdings, LLC; Complaint

AGENCY: Consumer Product Safety Commisson.

ACTION: Publication of a Complaint under the Consumer Product Safety Act.

SUMMARY: Under provisions of its Rules of Practice for Adjudicative Proceeding (16 CFR part 1025), the Consumer Product Safety Commission must publish in the **Federal Register** Complaints which it issues. Published below is a Complaint in the matter of Maxfield and Oberton Holdings, LLC.[1]

SUPPLEMENTARY INFORMATION: The text of the Complaint appears below.

[1] The Commission voted 3–1 to authorize issuance of this Complaint. Chairman Inez M. Tenenbaum, Commissioner Anne M. Northup and Commissioner Robert S. Adler voted to authorize issuance of the Complaint. Commissioner Nancy A. Nord voted to not authorize issuance of the Complaint.

Dated: July 26, 2012.

Todd A. Stevenson,

Secretary.

Complaint

Nature of Proceedings

1. This is an administrative enforcement proceeding pursuant to Section 15 of the Consumer Product Safety Act (''CPSA''), as amended, 15 U.S.C. 2064, for public notification and remedial action to protect the public from the substantial risks of injury presented by aggregated masses of high-powered, small rare earth magnets known as Buckyballs® and Buckycubes™ (collectively, the ''Subject Products''), imported and distributed by Maxfield and Oberton Holdings, LLC (''Maxfield'' or ''Respondent'').

2. This proceeding is governed by the Rules of Practice for Adjudicative Proceedings before the Consumer Product Safety Commission (the ''Commission''), 16 CFR Part 1025.

Jurisdiction

3. This proceeding is instituted pursuant to the authority contained in Sections 15(c), (d) and (f) of the CPSA, 15 U.S.C 2064(c), (d) and (f).

Parties

4. Complaint Counsel is the staff of the Division of Compliance within the Office of the General Counsel of the Commission (''Complaint Counsel''). The Commission is an independent federal regulatory agency established pursuant to Section 4 of the CPSA, 15 U.S.C. 2053.

5. Respondent Maxfield is a domestic corporation with its principal place of business located at 180 Varick Street, Suite 212, New York, New York 20014. Respondent is an importer and distributor of the Subject Products known as Buckyballs® and Buckycubes™.

6. As importer and distributor of the Subject Products, Respondent is a ''manufacturer'' and ''distributor'' of a ''consumer product'' that is ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(5), (7), (8) and (11) of the CPSA, 15 U.S.C. 2052(a)(5), (7), (8) and (11).

The Consumer Product

7. The Subject Products are imported and distributed in U.S. commerce and offered for sale to consumers for their personal use in or around a permanent or temporary household or residence, a school, and in recreation or otherwise. The Subject Products consist of small, individual magnets that are packaged as aggregated masses in different sized containers holding 10, 125, and 216 small magnets, ranging in size from approximately 4.01 mm to 5.03 mm, with a variety of coatings, and a flux index of over 50. Upon information and belief, the flux of the Subject Products has reached levels ranging from 204.1 to 556 kg^2mm^2 Surface Flux Index.

8. Upon information and belief, Buckyballs,® which are small spherically shaped magnets, were introduced in U.S. commerce in March 2009.

9. Upon information and belief, Buckycubes™, which are small cube shaped magnets, were introduced in U.S. commerce in October 2011.

10. Upon information and belief, the Subject Products are manufactured by Ningo Prosperous Imp. & Exp. Co. Ltd., of Ningbo City, in China.

11. Upon information and belief, Respondent initially advertised and marketed Buckyballs® to appeal to children, calling it an ''amazing magnetic toy.''

12. Upon information and belief, Respondent advertised and marketed Buckyballs® by comparing its appeal to that of other children's products such as erector sets, hula hoops, and Silly Putty.

13. Upon information and belief, despite making no significant design or physical changes to the product since its introduction in 2009, Respondent subsequently rebranded Buckyballs® as an adult executive desk toy and/or stress reliever, marketing and advertising it as such.

14. The Subject Products are sold with a carrying case and range in retail price from approximately $19.95 to $100.00. Upon information and belief, the Subject Products can also be purchased in sets of 10 for $3.50 without a carrying case.

15. Upon information and belief, more than 2,000,000 Buckyballs® have been sold to consumers in the United States.

16. Upon information and belief, more than 200,000 Buckycubes™ have been sold to consumers in the United States.

The Subject Products Create a Substantial Risk of Injury to the Public

17. The Subject Products pose a risk of magnet ingestion by children below the age of 14, who may, consistent with developmentally appropriate behavior, place single or numerous magnets in their mouth. The risk of ingestion also exists when adolescents and teens use the product to mimic piercings of the mouth, tongue, and cheek and accidentally swallow the magnets.

18. If two or more of the magnets are ingested and the magnetic forces of the magnets pull them together, the magnets can pinch or trap the intestinal walls or other digestive tissue between them, resulting in acute and long-term health consequences. Magnets that attract through the walls of the intestines result in progressive tissue injury, beginning with local inflammation and ulceration, progressing to tissue death, then perforation or fistula formation. Such conditions can lead to infection, sepsis, and death. Ingestion of more than one magnet often requires medical intervention, including endoscopic or surgical procedures. However, because the initial symptoms of injury from magnet ingestion are nonspecific and may include nausea, vomiting, and abdominal pain, caretakers, parents, and medical professionals may easily mistake these nonspecific symptoms for other common gastrointestinal upsets, and erroneously believe that medical treatment is not immediately required.

19. Medical professionals may not be aware of the dangers posed by ingestion of the Subject Products and the corresponding need for immediate evaluation and monitoring. A delay of surgical intervention due to the patient's presentation with non-specific symptoms and/or a lack of awareness by medical personnel of the dangers posed by multiple magnet ingestion can exacerbate life-threatening internal injuries.

20. Magnets which become affixed through the gastrointestinal walls and are not surgically removed may result in intestinal perforations which can lead to necrosis, the formation of fistulas, or ultimately, perforation of the bowel and leakage of toxic bowel contents into the abdominal cavity. These conditions can lead to serious injury and possibly even death.

21. Endoscopic and surgical procedures may also be complicated in cases of multiple magnet ingestion due to the attraction of the magnets to the metal equipment used to retrieve the magnets.

22. Children who undergo surgery to remove multiple magnets from their gastrointestinal tract are also at risk for long-term health consequences, including intestinal scarring, nutritional deficiencies due to loss of portions of the bowel, and possible fertility issues for women.

Count I

The Warnings and Labeling Are Defective as They Do Not Effectively Communicate the Hazards Associated With Ingestion of the Subject Product

23. Paragraphs 1 through 22 are hereby re-alleged and incorporated by reference as though fully set forth herein.

24. Since Buckyballs® were introduced into commerce in 2009, numerous incidents involving ingestions by children under the age of 14 have occurred.

25. Upon information and belief, on January 28, 2010, a 9-year-old boy used Buckyballs® to make tongue and lip rings, and accidentally ingested seven magnets. He was treated at an emergency room.

26. Upon information and belief, on September 5, 2010, a 12-year-old girl accidentally swallowed two Buckyballs®. She sought medical treatment at a hospital, including x-rays and monitoring for infection and internal damage.

27. Since March 2009 to approximately March 11, 2010, the Subject Products were sold in packaging that contained the following warning label: ''Warning: Not intended for children. Swallowing of magnets may cause serious injury and require immediate medical care. Ages 13+.''

28. In February 2010, CPSC notified Respondent that the Buckyballs® failed to comply with the requirement that such products be marketed to children 14+. On or about March 11, 2010, Respondent changed its packaging, warnings, instructions, and labeling on Buckyballs® and later conducted a recall of the products.

29. Since recalling Buckyballs®, Respondent agreed to certain labeling and marketing changes in an effort to prevent the sale of Buckyballs® to children under 14.

30. Despite the marketing and labeling changes made by the Respondent, ingestion incidents continued to occur.

31. Upon information and belief, on or about December 23, 2010, a 3-year-old girl ingested 8 Buckyballs® magnets she found on a refrigerator in her home, requiring surgery to remove the magnets. The magnets had caused intestinal and stomach perforations, and had also become embedded in the girl's trachea and esophagus.

32. Upon information and belief, on or about January 6, 2011, a 4-year-old boy suffered intestinal perforations after ingesting three Buckyballs® magnets he thought were chocolate candy because they looked like the decorations on his mother's wedding cake.

33. In November 2011, the Commission issued a public safety alert warning the public of the dangers of the ingestion of rare earth magnets. However, such ingestion incidents continue to occur. Since the November 10, 2011 safety alert, the Commission has received over one dozen reports of children ingesting the Subject Products, many of which required surgical intervention.

34. Upon information and belief, on or about January 17, 2012, a 10-year-old girl accidentally ingested two Buckyballs® after using them to mimic a tongue piercing. The magnets became embedded in her large intestine, and she had to undergo x-rays, CT scans, endoscopy, and an appendectomy to remove them. The girl's father had purchased the Buckyballs® for her at the local mall.

35. Notwithstanding the labeling, warnings, and efforts taken by Respondents, ingestion incidents requiring surgery continue to occur because such warnings are ineffective.

36. Warnings are ineffective because parents and caregivers do not appreciate the hazard associated with Subject Products and magnet ingestion and will continue to allow children to have access to the Subject Products. Children cannot and do not appreciate the hazard and will continue to mouth the items, swallow them, or, in the case of young adolescents and teens, mimic body piercings.

37. Warnings are ineffective because once the Subject Product is removed from its carrying case, the magnets carry no warning guarding against ingestion or aspiration, and the small size of the individual magnets precludes the addition of such a warning.

38. Warnings are ineffective because individual magnets are easily shared among children such that many end users of the product are likely to have had no exposure to any warning.

39. The Subject Products are defective because their labeling and warning labels cannot guard against the foreseeable misuse of the product and prevent the substantial risk of injury to children.

40. Therefore, the warnings and labeling on the Subject Products are defective pursuant to sections 15(a)(2) of the CPSC, 15 U.S.C. 2064(a)(2).

Count II

The Subject Products as Designed Are Defective and Pose a Substantial Risk of Injury

41. Paragraphs 1 through 40 are hereby realleged and incorporated by reference as though fully set forth herein.

42. The Subject Products are defective because they do not operate exclusively as intended and present a risk of injury to the public. Although the Subject Products warn against placing the magnets in one's mouth, the misuse is forseeable.

43. The Subject Products present a risk of substantial injury to children because the magnets are intensely appealing to children due to their tactile features, their small size, and their highly reflective, shiny metallic coatings.

44. The Subject Products are also appealing to children because they are smooth, unique, and make a soft snapping sound as they are manipulated.

45. The Subject Products also move in unexpected, incongruous ways as the poles on the magnets move to align properly, which may evoke a degree of awe and amusement among children.

46. The design of the Subject Products presents a risk of injury because they do not operate as intended; that is, they do not act as desk toys or manipulatives that are handled solely by adults and remain on adults' desks out of the reach of children.

47. The packaging of the Subject Products is also a design defect. The plastic carrying case that holds the Subject Products does not prevent children from accessing the magnets, nor does it prevent individual magnet pieces from separating from the product. In addition, the packaging of the Subject Product does not allow parents and caregivers to appreciate if a magnet is missing, and potentially, within the reach of a young child who may mouth or ingest the product.

48. Different packaging cannot remedy the hazard posed by Subject Products because users are unlikely to return the magnets to any case, regardless of the packaging design. Users of the Subject Products are unlikely to disassemble magnet configurations, many of which are elaborate and time-consuming to create, after each use.

Count III

The Subject Products Are a Substantial Product Hazard

49. Paragraphs 1 through 48 are hereby realleged and incorporated by reference as though fully set forth herein.

50. The Subject Products present a substantial risk of injury because the pattern of defect—failure to operate as intended, and to effectively communicate warnings that the product should not be purchased for or used by children under the age of 14—is present in all of the Subject Products.

51. The Subject Products, therefore, present a substantial product hazard within the meaning of Section 15(a)(2) of the CPSA, 15 U.S.C. 2064(a)(2), by reasons of the substantial risk of injury or death alleged in paragraphs 1 through 48 above.

52. The Respondents have refused to voluntarily stop sale and conduct a recall of the Subject Products.

Relief Sought

Wherefore, in the public interest, Complaint Counsel requests that the Commission:

A. Determine that Respondents' Subject Products known as Buckyballs® and Buckycubes™ present a ''substantial product hazard'' within the meaning of Section 15 U.S.C. 2064(a)(2).

B. Determine that extensive and effective public notification under Section 15(c) of the CPSA, 15 U.S.C. 2064(c), is required to adequately protect children from risks of injury presented by rare earth magnet products and order Respondents under Section 15(c) of the CPSA, 15 U.S.C. 2064(c) to:

(1) Cease importation and distribution of the product;

(2) Notify all persons that transport, store, distribute, or otherwise handle the rare earth magnet products, or to whom such product has been transported, sold, distributed, or otherwise handled, to cease immediately distribution of the product;

(3) Notify appropriate state and local public health officials;

(4) Give prompt public notice of the defect in the Subject Products, including the incidents and injuries associated with ingestion or aspiration, including posting clear and conspicuous notice on its Internet Web site, and providing notice to any third party Internet Web site on which Respondents have placed the product for sale, and announcements in languages other than English and on radio and television where the Commission determines that a substantial number of consumers to whom the recall is directed may not be reached by other notice;

(5) Mail notice to each distributor or retailer of the Subject Products; and

(6) Mail notice to every person to whom the person required to give notice knows such product was delivered or sold.

C. Determine that action under Section 15(d) of the CPSA, 15 U.S.C. 2064(d), is in the public interest and additionally order Respondents to:

(1) Refund consumers the purchase price of the Subject Products;

(2) Make no charge to consumers and to reimburse consumers for any reasonable and foreseeable expenses incurred in availing themselves of any remedy provided under any Commission Order issued in this matter, as provided by Section 15 U.S.C. 2064(e)(1);

(3) Reimburse retailers for expenses in connection with carrying out any Commission Order issued in this matter, including the costs of returns, refunds and/or replacements, as provided by Section 15 U.S.C. 2064(e)(2);

(4) Submit a plan satisfactory to the Commission, within ten (10) days of service of the Final Order, directing that actions specified in Paragraphs B(1) through (5) and C(1) through (3) above be taken in a timely manner;

(5) To submit monthly reports, in a format satisfactory to the Commission, documenting the progress of the corrective action program;

(6) For a period of five (5) years after issuance of the Final Order in this matter, to keep records of its actions taken to comply with Paragraphs B(1) through (5) and C(1) through (4) above, and supply these records to the Commission for the purpose of monitoring compliance with the Final Order;

(7) For a period of five (5) years after issuance of the Final Order in this matter, to notify the Commission at least sixty (60) days prior to any change in its business (such as incorporation, dissolution, assignment, sale, or petition for bankruptcy) that results in, or is intended to result in, the emergence of a successor corporation, going out of business, or any other change that might affect compliance obligations under a Final Order issued by the Commission in this matter; and

D. Order that Respondents shall take other and further actions as the Commission deems necessary to protect the public health and safety and to comply with the CPSA.

Issued by order of the Commission.

Dated this 25th day of July 2012.

BY: Kenneth Hinson, *Executive Director, U.S. Consumer Product Safety*

Commission, Bethesda, MD 20814, Tel: (301) 504–7854.

Mary B. Murphy, *Assistant General Counsel, Division of Compliance, Office of General Counsel, U.S. Consumer Product Safety Commission, Bethesda, MD 20814, Tel: (301) 504–7809.*

Jennifer Argabright, *Trial Attorney, Sarah Wang, Trial Attorney, Complaint Counsel, Division of Compliance, Office of the General Counsel, U.S. Consumer Product Safety Commission, Bethesda, MD 20814, Tel: (301) 504–7808.*

[FR Doc. 2012–18641 Filed 7–30–12; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

Extension of Public Comment Period for the Environmental Impact Statement for the Proposed Naval Base Coronado Coastal Campus, San Diego, CA

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: A notice of availability was published in the **Federal Register** by the U.S. Environmental Protection Agency on June 29, 2012 (77 FR 38781) for the Department of the Navy's Notice of Intent to prepare an Environmental Impact Statement (EIS) for the proposed Naval Base Coronado Coastal Campus in San Diego, California. The public scoping period ends on July 30, 2012. This notice announces a 15-day extension of the public scoping period until August 14, 2012.

FOR FURTHER INFORMATION CONTACT: Naval Base Coronado Coastal Campus EIS Project Manager, Attn: Ms. Teresa Bresler, 2730 McKean Street, Bldg. 291, San Diego, CA 92136.

SUPPLEMENTARY INFORMATION: This notice announces a 15-day extension of the public scoping period until August 14, 2012. Comments may be submitted in writing to Naval Base Coronado Coastal Campus EIS Project Manager, Attn: Ms. Teresa Bresler, 2730 McKean Street, Bldg. 291, San Diego, CA 92136. Comments may also be submitted via the EIS Web site at *www.nbccoastalcampuseis.com.* All written comments must be postmarked or received (online) by August 14, 2012, to ensure they become part of the official record.

Dated: July 24, 2012.

C.K. Chiappetta,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2012–18646 Filed 7–30–12; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

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), Oak Ridge Reservation. 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: Saturday, August 18, 2012, 8:00 a.m.

ADDRESSES: Holiday Inn, 3230 Parkway, Pigeon Forge, Tennessee 37868.

FOR FURTHER INFORMATION CONTACT: Melyssa P. Noe, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 241–3315; Fax (865) 576–0956 or email: *noemp@oro.doe.gov* or check the Web site at *www.oakridge.doe.gov/em/ssab.*

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: The board will review its work for FY 2012 and do initial planning for its work in FY 2013.

Public Participation: The EM SSAB, Oak Ridge, 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 Melyssa P. Noe 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 statements pertaining to the agenda item should contact Melyssa P. Noe at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Melyssa P. Noe at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.oakridge.doe.gov/em/ssab/minutes.htm.*

Issued at Washington, DC, on July 25, 2012.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2012–18628 Filed 7–30–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

DOE/Advanced Scientific Computing Advisory Committee

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Advanced Scientific Computing Advisory Committee (ASCAC). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, August 14, 2012, 9:00 a.m.–5:00 p.m.; Wednesday, August 15, 2012, 9:00 a.m.–12:00 p.m.

ADDRESSES: American Geophysical Union (AGU), 2000 Florida Avenue NW., Washington, DC 20009–1277.

FOR FURTHER INFORMATION CONTACT: Melea Baker, Office of Advanced Scientific Computing Research; SC–21/Germantown Building; U.S. Department of Energy; 1000 Independence Avenue SW; Washington, DC 20585–1290; Telephone (301)–903–7486.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of this meeting is to provide advice and guidance on a continuing basis to the Department of Energy on scientific priorities within the field of advanced scientific computing research.

Tentative Agenda Topics:

- View from Washington
- View from Germantown
- Update on Exascale
- Update from Committee of Visitors for Computer Science activities
- Facilities update including early science efforts

- Early Career technical talks
- Recompetition results for Scientific Discovery through Advanced Computing (SciDAC) applications
- Co-design
- Public Comment (10-minute rule)

Public Participation: The meeting is open to the public. A webcast of this meeting may be available. Please check the Web site below for updates and information on how to view the meeting. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Melea Baker by telephone at (301) 903–7486 or email at: *Melea.Baker@science.doe.gov.* You must make your request for an oral statement at least 5 business days prior to the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available on the U.S. Department of Energy's Office of Advanced Scientific Computing Web site (*www.sc.doe.gov/ascr*) for viewing.

Issued at Washington, DC, on July 25, 2012.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2012–18626 Filed 7–30–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Mid-Columbia Coho Restoration Program

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

ACTION: Notice of availability of Record of Decision (ROD).

SUMMARY: This notice announces the availability of the ROD for the Mid-Columbia Coho restoration program, sponsored by the Confederated Tribes and Bands of the Yakama Nation and based on the Mid-Columbia Coho Restoration Program EIS (DOE/EIS–0425, March 2012). The purpose of the program is to re-establish naturally spawning coho populations to harvestable levels in tributaries of the Wenatchee and Methow basins in north-central Washington State (Okanogan and Chelan Counties). To accomplish this goal, the Yakama Nation would expand an existing program, ongoing since 1996, by releasing up to 2.16 million coho smolts from up to 24 new acclimation sites in both basins. The Yakama Nation would also continue the use of hatcheries, incubation, and broodstock collection sites already in use by the existing program; build a small new hatchery in the Wenatchee basin; and implement a comprehensive monitoring and evaluation program.

The ROD describes BPA's decision to fund the final phases of this program in order to honor commitments outlined in the 2008 Columbia Basin Fish Accords Memorandum of Agreement and to mitigate for the effects of the Federal Columbia River Power System on fish and wildlife in the Columbia River.

ADDRESSES: Copies of the ROD and EIS may be obtained by calling BPA's toll-free document request line, 1–800–622–4519. The ROD and EIS Summary are also available on our Web sites, *www.bpa.gov/go/midcolumbiacoho* and *http://www.bpa.gov/corporate/pubs/RODS/2012/.*

FOR FURTHER INFORMATION CONTACT: Nancy Weintraub, Bonneville Power Administration—KEC–4, P.O. Box 3621, Portland, Oregon 97208–3621; toll-free telephone number 1–800–622–4519; fax number 503–230–5699; or email *nhweintraub@bpa.gov.*

Issued in Portland, Oregon, on July 19, 2012.

Anita J. Decker,

Acting Administrator and Chief Executive Officer.

[FR Doc. 2012–18635 Filed 7–30–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC12–122–000.
Applicants: DTE Energy Services, Inc.
Description: Application under Section 203 of the FPA of DTE Energy Services, Inc.
Filed Date: 7/20/12.
Accession Number: 20120720–5100.
Comments Due: 5 p.m. ET 8/10/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1459–004.
Applicants: FirstEnergy Solutions Corp.
Description: Revised Affiliate Sales to be effective 6/1/2012.
Filed Date: 7/20/12.
Accession Number: 20120720–5103.
Comments Due: 5 p.m. ET 8/10/12.

Docket Numbers: ER10–2719–007; ER10–2718–007; ER10–2578–009; ER10–2633–007; ER10–2570–007; ER10–2717–007; ER10–3140–006.
Applicants: East Coast Power Linden Holding, L.L.C., Cogen Technologies Linden Venture, L.P., Fox Energy Company, LLC, Birchwood Power Partners, L.P., Shady Hills Power Company LLC, EFS Parlin Holdings, L.L.C., Inland Empire Energy Center, LLC.
Description: Supplement to Notice of Non-material Change in Status of East Coast Power Linden Holding, L.L.C., et al.
Filed Date: 7/20/12.
Accession Number: 20120720–5022.
Comments Due: 5 p.m. ET 8/10/12.

Docket Numbers: ER12–1417–003.
Applicants: San Diego Gas & Electric Company.
Description: Errata to SDGE Appendix X Compliance Filing to be effective 6/1/2012.
Filed Date: 7/20/12.
Accession Number: 20120720–5000.
Comments Due: 5 p.m. ET 8/10/12.

Docket Numbers: ER12–1586–001.
Applicants: Southwest Power Pool, Inc.
Description: Response to Deficiency Letter Docket No. ER12–1586 to be effective 4/30/2012.
Filed Date: 7/20/12.
Accession Number: 20120720–5002.
Comments Due: 5 p.m. ET 8/10/12.

Docket Numbers: ER12–1600–001.
Applicants: Southwest Power Pool, Inc.
Description: 2413 Exelon Market Participant Compliance Filing ER12–1600 to be effective 4/1/2012.
Filed Date: 7/20/12.
Accession Number: 20120720–5109.
Comments Due: 5 p.m. ET 8/10/12.

Docket Numbers: ER12–1685–001.
Applicants: Golden Spread Electric Cooperative, Inc.
Description: Revised Wholesale Power Contracts Filing to be effective 7/20/2012.
Filed Date: 7/20/12.
Accession Number: 20120720–5043.
Comments Due: 5 p.m. ET 8/10/12.

Docket Numbers: ER12–1753–000.
Applicants: Wyoming Colorado Intertie, LLC.
Description: Response to Staff Letter to be effective N/A.
Filed Date: 7/20/12.
Accession Number: 20120720–5040.

Comments Due: 5 p.m. ET 8/10/12.

Docket Numbers: ER12–1846–001.
Applicants: Michigan Electric Transmission Company, LLC.
Description: Certificate of Concurrence to be effective 7/10/2012.
Filed Date: 7/20/12.
Accession Number: 20120720–5056.
Comments Due: 5 p.m. ET 8/10/12.

Docket Numbers: ER12–1997–001.
Applicants: South Jersey Energy ISO1, LLC.
Description: Amendment to be effective 7/1/2012.
Filed Date: 7/20/12.
Accession Number: 20120720–5062.
Comments Due: 5 p.m. ET 8/10/12.

Docket Numbers: ER12–1998–001.
Applicants: South Jersey Energy ISO2, LLC.
Description: Amendment to be effective 7/1/2012.
Filed Date: 7/20/12.
Accession Number: 20120720–5063.
Comments Due: 5 p.m. ET 8/10/12.

Docket Numbers: ER12–2051–002.
Applicants: SPS Alpaugh 50, LLC.
Description: Amended Application for Market-Based Rates to be effective 8/20/2012.
Filed Date: 7/20/12.
Accession Number: 20120720–5085.
Comments Due: 5 p.m. ET 8/10/12.

Docket Numbers: ER12–2052–002.
Applicants: SPS Alpaugh North, LLC.
Description: Amended Market-Based Rates Application to be effective 8/20/2012.
Filed Date: 7/20/12.
Accession Number: 20120720–5088.
Comments Due: 5 p.m. ET 8/10/12.

Docket Numbers: ER12–2217–001.
Applicants: Power Dave Fund LLC.
Description: Power Dave Fund Tariff to be effective 7/20/2012.
Filed Date: 7/20/12.
Accession Number: 20120720–5006.
Comments Due: 5 p.m. ET 8/10/12.

Docket Numbers: ER12–2217–002.
Applicants: Power Dave Fund LLC.
Description: Power Dave Compliance Filing to be effective 7/20/2012.
Filed Date: 7/20/12.
Accession Number: 20120720–5064.
Comments Due: 5 p.m. ET 8/10/12.

Docket Numbers: ER12–2277–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: SA2457 Pheasant Ridge Wind Farm-ITC Midwest to be effective 7/21/2012.
Filed Date: 7/20/12.
Accession Number: 20120720–5026.
Comments Due: 5 p.m. ET 8/10/12.

Docket Numbers: ER12–2279–000.
Applicants: Southern California Edison Company.
Description: Notices of Cancellation to SGIA and DSA 2MW San Bernardino Roof Top Solar Project to be effective 7/25/2012.
Filed Date: 7/20/12.
Accession Number: 20120720–5045.
Comments Due: 5 p.m. ET 8/10/12.

Docket Numbers: ER12–2280–000.
Applicants: PJM Interconnection, L.L.C.
Description: First Revised Service Agreement No. 2860—Queue Position V1–026 & V1–027 to be effective 6/22/2012.
Filed Date: 7/20/12.
Accession Number: 20120720–5055.
Comments Due: 5 p.m. ET 8/10/12.

Docket Numbers: ER12–2281–000.
Applicants: Southern California Edison Company.
Description: Amended SGIA and DSA to 13230 San Bernardino Ave Fontana Roof Top Solar Project to be effective 7/21/2012.
Filed Date: 7/20/12.
Accession Number: 20120720–5060.
Comments Due: 5 p.m. ET 8/10/12.

Docket Numbers: ER12–2282–000.
Applicants: Carolina Power & Light Company.
Description: Service Agreement No. 324 under Carolina Power and Light Company OATT to be effective 7/1/2012.
Filed Date: 7/20/12.
Accession Number: 20120720–5061.
Comments Due: 5 p.m. ET 8/10/12.

Docket Numbers: ER12–2283–000
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: SA AMP–BREC GIA G848 to be effective 7/21/2012.
Filed Date: 7/20/12.
Accession Number: 20120720–5089.
Comments Due: 5 p.m. ET 8/10/12.

Docket Numbers: ER12–2284–000.
Applicants: Carolina Power & Light Company.
Description: Notice of Cancellation of NITSA and NOA with Fayetteville Public Works Commission by Carolina Power & Light Company.
Filed Date: 7/20/12.
Accession Number: 20120720–5117.
Comments Due: 5 p.m. ET 8/10/12.

Docket Numbers: ER12–2285–000.
Applicants: Hartford Steam Company, LLC.
Description: Cancellation of MBR tariff to be effective 7/21/2012.
Filed Date: 7/20/12.
Accession Number: 20120720–5125.
Comments Due: 5 p.m. ET 8/10/12

Docket Numbers: ER12–2286–000
Applicants: Imperial Valley Solar 1, LLC
Description: Co-Tenancy, and Shared Use Agreement to be effective 9/18/2012.
Filed Date: 7/20/12
Accession Number: 20120720–5126
Comments Due: 5 p.m. ET 8/10/12

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH12–19–000
Applicants: Valener Inc.
Description: Notice of Material Change in Facts of Valener Inc.
Filed Date: 7/20/12
Accession Number: 20120720–5082
Comments Due: 5 p.m. ET 8/10/12

Docket Numbers: PH12–20–000
Applicants: Central Vermont Public Service Corporation
Description: Notice of Material Change in Facts of Central Vermont Public Service Corporation.
Filed Date: 7/20/12
Accession Number: 20120720–5083
Comments Due: 5 p.m. ET 8/10/12

Docket Numbers: PH12–21–000
Applicants: Enbridge Inc.
Description: Notice of material change in facts of Enbridge Inc.
Filed Date: 7/20/12
Accession Number: 20120720–5159
Comments Due: 5 p.m. ET 8/10/12

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 23, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–18607 Filed 7–30–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC12–120–000.
Applicants: Pacific Wind, LLC, Pacific Wind Lessee, LLC.
Description: Supplemental information regarding Application of Pacific Wind, LLC and Pacific Wind Lessee, LLC.
Filed Date: 7/23/12.
Accession Number: 20120723–5060.
Comments Due: 5 p.m. ET 8/2/12.

Docket Numbers: EC12–123–000.
Applicants: Public Power, LLC, Regional Energy Holdings, Inc.
Description: Application under Section 203 of the Federal Power Act of Public Power, LLC, et al.
Filed Date: 7/20/12.
Accession Number: 20120720–5179.
Comments Due: 5 p.m. ET 8/10/12.

Docket Numbers: EC12–123–000.
Applicants: Public Power, LLC, Regional Energy Holdings, Inc.
Description: Erratum to July 20, 2012 Application for Order under Section 203 of the FPA of Regional Energy Holdings, Inc. and Public Power, LLC.
Filed Date: 7/23/12.
Accession Number: 20120723–5061.
Comments Due: 5 p.m. ET 8/10/12.

Docket Numbers: EC12–124–000.
Applicants: The Detroit Edison Company.
Description: FPA Section 203 Application of The Detroit Edison Company.
Filed Date: 7/23/12.
Accession Number: 20120723–5115.
Comments Due: 5 p.m. ET 8/13/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–2287–000.
Applicants: Southern California Edison Company.
Description: Notice of Cancellation of Letter Agreement with Alta Windpower Development, LLC to be effective 12/30/2011.
Filed Date: 7/23/12.
Accession Number: 20120723–5065.
Comments Due: 5 p.m. ET 8/13/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 23, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–18608 Filed 7–30–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–2055–001.
Applicants: San Gorgonio Farms, Inc.
Description: Response to July 11, 2012 Request for Additional Information to be effective 6/15/2012.
Filed Date: 7/24/12.
Accession Number: 20120724–5037.
Comments Due: 5 p.m. ET 8/14/12.

Docket Numbers: ER12–2293–000.
Applicants: PJM Interconnection, L.L.C.
Description: Original Service Agreement No. 3355; Queue No. W3–044 to be effective 7/6/2012.
Filed Date: 7/24/12.
Accession Number: 20120724–5031.
Comments Due: 5 p.m. ET 8/14/12.

Docket Numbers: ER12–2294–000.
Applicants: PJM Interconnection, L.L.C.
Description: Original Service Agreement No. 3354; Queue No. X2–054 to be effective 7/6/2012.
Filed Date: 7/24/12.
Accession Number: 20120724–5032.
Comments Due: 5 p.m. ET 8/14/12.

Docket Numbers: ER12–2296–000.
Applicants: Southern California Edison Company.
Description: Amendment to IFA and Distribution Service Agreement with Sierra Power Corp. to be effective 7/26/2012.
Filed Date: 7/24/12.
Accession Number: 20120724–5039.
Comments Due: 5 p.m. ET 8/14/12.

Docket Numbers: ER12–2297–000.
Applicants: BFES Inc.
Description: Initial Tariff Baseline to be effective 9/24/2012.
Filed Date: 7/24/12.
Accession Number: 20120724–5056.
Comments Due: 5 p.m. ET 8/14/12.

Docket Numbers: ER12–2298–000.
Applicants: PJM Interconnection, L.L.C., American Transmission Systems, Incorporation.
Description: PJM TOs submit Revised Rate & Allocation Percentages to PJM Tariff Sch 1A Part B to be effective 8/1/2012.
Filed Date: 7/24/12.
Accession Number: 20120724–5057.
Comments Due: 5 p.m. ET 8/14/12.

Docket Numbers: ER12–2299–000.
Applicants: Carolina Power & Light Company.
Description: Rate Schedule No. 195 of Carolina Power and Light Company to be effective 9/22/2012.
Filed Date: 7/24/12.
Accession Number: 20120724–5059.
Comments Due: 5 p.m. ET 8/14/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 24, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–18610 Filed 7–30–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–1457–002
Applicants: Southern California Edison Company
Description: Amendment to GIA and DSA for San Gorgonio Farms Wind Farm Project to be effective 3/23/2012.
Filed Date: 7/23/12
Accession Number: 20120723–5180
Comments Due: 5 p.m. ET 8/13/12

Docket Numbers: ER12–162–003
Applicants: Bishop Hill Energy II LLC
Description: Triennial market power analysis of Bishop Hill Energy II LLC.

Filed Date: 7/23/12
Accession Number: 20120723–5217
Comments Due: 5 p.m. ET 9/21/12

Docket Numbers: ER12–2288–000
Applicants: PJM Interconnection, L.L.C.
Description: Compliance Filing to Opinion No. 503 in Docket ER06–456, et al. to be effective 7/24/2012.
Filed Date: 7/23/12
Accession Number: 20120723–5144
Comments Due: 5 p.m. ET 8/13/12

Docket Numbers: ER12–2289–000
Applicants: Southwest Power Pool, Inc.
Description: Incorporate Formula Rate Template for Empire District Electric Co. to be effective 8/1/2012.
Filed Date: 7/23/12
Accession Number: 20120723–5148
Comments Due: 5 p.m. ET 8/13/12

Docket Numbers: ER12–2290–000
Applicants: New England Power Company
Description: Operational Interface and Transfer of Asset Agreement with ANP Bellingham to be effective 9/22/2012.
Filed Date: 7/23/12
Accession Number: 20120723–5151
Comments Due: 5 p.m. ET 8/13/12

Docket Numbers: ER12–2291–000
Applicants: New England Power Company
Description: Agreement for Installation of Surge Arrestors with ANP Blackstone to be effective 9/22/2012.
Filed Date: 7/23/12
Accession Number: 20120723–5156
Comments Due: 5 p.m. ET 8/13/12

Docket Numbers: ER12–2292–000
Applicants: Southwest Power Pool, Inc.
Description: Revisions to Attachment AE—Non-Dispatchable Resources Curtailment to be effective 10/15/2012.
Filed Date: 7/23/12
Accession Number: 20120723–5176
Comments Due: 5 p.m. ET 8/13/12

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 24, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–18609 Filed 7–30–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–2297–000]

BFES 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 BFES Inc.'s application for market-based rate authority, with an accompanying rate schedule, 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 August 14, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) 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: July 25, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–18611 Filed 7–30–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–2301–000]

Stream Energy New York, 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 Stream Energy New York, LLC's application for market-based rate authority, with an accompanying rate schedule, 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 August 14, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the

eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) 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: July 25, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–18612 Filed 7–30–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

Notice of Availability of Microbial Risk Assessment Guideline: Pathogenic Microorganisms With Focus on Food and Water

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The U.S. Environmental Protection Agency (EPA) and the Food Safety and Inspection Service (FSIS) of the U.S. Department of Agriculture are announcing the availability of the *Microbial Risk Assessment Guideline: Pathogenic Microorganisms with Focus on Food and Water* (MRA Guideline). The MRA Guideline will improve transparency in the way that the two federal agencies conduct microbial risk assessment and also promote consistency in approaches and methods. The MRA Guideline can be applied to similar scenarios involving microbial contamination, and it will serve a resource for federal government risk assessors, their agents, contractors, and for other members of the risk assessment community. When appropriate, the EPA intends to use the guidance prospectively when conducting risk assessments.

DATES: The document, *Microbial Risk Assessment Guideline: Pathogenic Microorganisms with Focus on Food and Water* will be available on July 31, 2012.

ADDRESSES: A downloadable version and supporting materials are available on-line at *http://www.epa.gov/raf/microbial.htm.*

FOR FURTHER INFORMATION CONTACT: Dr. Michael W. Broder, Risk Assessment Forum, Office of the Science Advisor (8105R), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460. His telephone number is (202) 564–3393. His email address is *broder.michael@epa.gov.*

Internet: The document can be downloaded on-line at *http://www.epa.gov/raf/microbial.htm.*

SUPPLEMENTARY INFORMATION: Risk assessment is used by federal agencies and other entities as a systematic way to prepare, organize, and analyze information to help make informed regulatory decisions, establish programs, and prioritize research.

In 1983, *Risk Assessment in the Federal Government; Managing the Process* was published by the National Research Council (NRC) of the National Academy of Science to formalize the risk assessment process for chemicals in the environment and provide a basic framework that federal agencies could apply when conducting risk assessments. As the use of risk assessment as a tool to assist the federal government in its decision-making process has grown, it became apparent that the 1983 NRC framework document, which was designed to address chemical contaminants, was not as useful for microbial risk assessment. Agencies conducting quantitative microbial risk assessment had to individually modify the 1983 framework to meet their specific needs. As a result, there existed no consistent approach to conducting microbial risk assessment among federal agencies.

The EPA initiated the process of developing a microbial risk assessment guideline and engaged FSIS to co-lead the project. They were joined by scientists from other federal agencies in establishing a collaborative effort to develop this guideline. Clear and credible microbial risk assessment methods will leverage limited resources, promote efficiencies, improve transparency with stakeholders, and encourage joint interaction among agencies.

The MRA Guideline facilitates the systematic and transparent consideration of all relevant factors that impact the risk assessment, and also facilitates reproducible risk evaluation. Using this guideline, agencies assessing a similar microbial medium or pathogen are able to more readily compare and contrast the details and assumptions of their assessment to another agency's assessment. Although the focus of this guideline is microbial contamination of water and food, it will also be useful for microbial risk assessment in a wide range of media and scenarios. The MRA Guideline applies to viruses, bacteria, protozoa, and fungi that are or maybe pathogenic to humans.

EPA released a draft of the document for public comment in July, 2011(76 FR 44586). EPA received two public comments—one from a member of the public and another from a foreign government authority responsible for the assessment of similar health risks in their country. All comments received by the comment period closing date were shared with an external peer review panel for their consideration and considered when revising the document. The MRA Guideline is available at: *http://www.epa.gov/raf/microbial.htm;* the peer review panel's comments and EPA's response to comments can also be found at the same link.

Dated: July 13, 2012.

Glenn Paulson,

Science Advisor.

[FR Doc. 2012–18543 Filed 7–30–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid control number. Comments are requested concerning

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; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written comments should be submitted on or before August 30, 2012. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via fax 202–395–5167, or via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov <mailto:PRA@fcc.gov>* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *<http://www.reginfo.gov/public/do/PRAMain>,* (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–0519.

Title: Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991, CG Docket No. 02–278.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Individuals or households; Not-for-profit institutions.

Number of Respondents and Responses: 50,151 respondents; 147,453,559 responses.

Estimated Time per Response: .004 hours (15 seconds) to 1 hour.

Frequency of Response: Recordkeeping requirement; Annual, on occasion and one-time reporting requirements; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for the information collection requirements is found in the Telephone Consumer Protection Act of 1991 (TCPA), Public Law 102–243 1, December 20, 1991, 105 Stat. 2394, which added Section 227 of the Communications Act of 1934, [47 U.S.C. 227] Restrictions on the Use of Telephone Equipment.

Total Annual Burden: 712,140 hours.

Total Annual Cost: $3,989,700.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's system of records notice (SORN), FCC/CGB–1, ''Informal Complaints and Inquiries.'' As required by the Privacy Act, 5 U.S.C. 552a, the Commission also published a SORN, FCC/CGB–1 ''Informal Complaints and Inquiries'', in the **Federal Register** on December 15, 2009 (74 FR 66356) which became effective on January 25, 2010. A system of records for the do-not-call registry was created by the Federal Trade Commission (FTC) under the Privacy Act. The FTC originally published a notice in the **Federal Register** describing the system. See 68 FR 37494, June 24, 2003. The FTC updated its system of records for the do-not-call registry in 2009. See 74 FR 17863, April 17, 2009.

Privacy Impact Assessment: Yes. The Privacy Impact Assessment (PIA) was completed on June 28, 2007. It may be reviewed at: *http://www.fcc.gov/omd/privacyact/Privacy-Impact-Assessment.html.* The Commission is in the process of updating the PIA to incorporate various revisions made to the SORN.

Needs and Uses: The reporting requirements included under this OMB Control Number 3060–0519 enable the Commission to gather information regarding violations of Section 227 of the Communications Act, the Do-Not-Call Implementation Act (Do-Not-Call Act), and the Commission's implementing rules. If the information collection was not conducted, the Commission would be unable to track and enforce violations of Section 227 of the Communications Act, the Do-Not-Call Act, or the Commission's implementing rules. The Commission's implementing rules provide consumers with several options for avoiding most unwanted telephone solicitations.

The national do-not-call registry supplements the company-specific do-not-call rules for those consumers who wish to continue requesting that particular companies not call them. Any company that is asked by a consumer, including an existing customer, not to call again must honor that request for five (5) years.

A provision of the Commission's rules, however, allows consumers to give specific companies permission to call them through an express written agreement. Nonprofit organizations, companies with whom consumers have an established business relationship, and calls to persons with whom the telemarketer has a personal relationship are exempt from the ''do-not-call'' registry requirements.

On September 21, 2004, the Commission released the Safe Harbor Order establishing a limited safe harbor in which persons will not be liable for placing autodialed and prerecorded message calls to numbers ported from a wireline service within the previous 15 days. The Commission also amended its existing National Do-Not-Call Registry safe harbor to require telemarketers to scrub their lists against the Registry every 31 days.

On December 4, 2007, the Commission released the DNC NPRM seeking comment on its tentative conclusion that registrations with the Registry should be honored indefinitely, unless a number is disconnected or reassigned or the consumer cancels his registration.

On June 17, 2008, in accordance with the Do-Not-Call Improvement Act of 2007, the Commission revised its rules to minimize the inconvenience to consumers of having to re-register their preferences not to receive telemarketing calls and to further the underlying goal of the National Do-Not-Call Registry to protect consumer privacy rights. The Commission released a Report and Order in CG Docket No. 02–278, FCC

08–147, amending the Commission's rules under the Telephone Consumer Protection Act (TCPA) to require sellers and/or telemarketers to honor registrations with the National Do-Not-Call Registry so that registrations will not automatically expire based on the current five year registration period. Specifically, the Commission modified § 64.1200(c)(2) of its rules to require sellers and/or telemarketers to honor numbers registered on the Registry indefinitely or until the number is removed by the database administrator or the registration is cancelled by the consumer.

Most recently, on February 15, 2012, the Commission released a Report and Order in CG Docket No. 02–278, FCC 12–21, revising its rules to: (1) Require prior express written consent for all autodialed or prerecorded telemarketing calls to wireless numbers and for all prerecorded telemarketing calls to residential lines; (2) eliminate the established business relationship exception to the consent requirement for prerecorded telemarketing calls to residential lines; (3) require telemarketers to include an automated, interactive opt-out mechanism in all prerecorded telemarketing calls, to allow consumers more easily to opt out of future robocalls during a robocall itself; and (4) require telemarketers to comply with the 3% limit on abandoned calls during each calling campaign, in order to discourage intrusive calling campaigns.

Finally, the Commission also exempted from the Telephone Consumer Protection Act requirements prerecorded calls to residential lines made by health care-related entities governed by the Health Insurance Portability and Accountability Act of 1996.

Federal Communications Commission.

Bulah P. Wheeler,

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

[FR Doc. 2012–18632 Filed 7–30–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Radio Broadcasting Services; AM or FM Proposals To Change the Community of License

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The following applicants filed AM or FM proposals to change the community of license: NORTHSTAR BROADCATING CORPORATION, Station WRSV, Facility ID 54823, BPH–20120530AFQ, From ROCKY MOUNT, NC, To ELM CITY, NC; SIERRA RADIO, INC., Station KVXX, Facility ID 31618, BPH–20101004ACX, From QUINCY, CA, To CONCOW, CA.

DATES: The agency must receive comments on or before October 1, 2012.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tung Bui, 202–418–2700.

SUPPLEMENTARY INFORMATION: The full text of these applications is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street SW., Washington, DC 20554 or electronically via the Media Bureau's Consolidated Data Base System, *http://svartifoss2.fcc.gov/prod/cdbs/cdbs_pa.htm.* A copy of this application may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *www.BCPIWEB.com.*

Federal Communications Commission.

James D. Bradshaw,

Deputy Chief, Audio Division, Media Bureau.

[FR Doc. 2012–18584 Filed 7–30–12; 8:45 am]

BILLING CODE 6712–01–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 August 24, 2012.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Tri-County Financial Corporation,* Wellington, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of Commerce and Trust Company, Wellington, Kansas.

B. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Independent Bank Group, Inc.,* McKinney, Texas; to merge with Community Group, Inc., and thereby indirectly acquire United Community Bank, National Association, both in Highland Village, Texas.

Board of Governors of the Federal Reserve System, July 26, 2012.

Michael J. Lewandowski,

Assistant Secretary of the Board.

[FR Doc. 2012–18605 Filed 7–30–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the

question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 15, 2012.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. *Westpac Banking Corporation,* Sydney, Australia, to engage *de novo* through its subsidiary, Westpac Capital Markets LLC, New York, New York, in broker dealer and riskless principal transactions, pursuant to sections 225.28(b)(7)(i) and 225.28(b)(7)(ii).

Board of Governors of the Federal Reserve System, July 26, 2012.

Michael J. Lewandowski,

Assistant Secretary of the Board.

[FR Doc. 2012–18606 Filed 7–30–12; 8:45 am]

BILLING CODE 6210–01–P

OFFICE OF GOVERNMENT ETHICS

Privacy Act of 1974; Amendment to System of Records

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice of Modification of Routine Use (l) in OGE/GOVT–1 System of Records.

SUMMARY: The U.S. Office of Government Ethics (OGE) proposes to modify Routine Use (l) to OGE/GOVT–1, Executive Branch Personnel Public Financial Disclosure Reports and Other Name-Retrieved Ethics Program Records. This modification to Routine Use (l) is needed to implement provisions of the Stop Trading on Congressional Knowledge Act of 2012 (Stock Act), Public Law 112–105 (2012), which amend the Ethics in Government Act of 1978, 5 U.S.C. App. This action is necessary to comply with the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of records maintained by the agency (5 U.S.C. 552a(e)(4)). OGE last published OGE/GOVT–1 in 68 FR 3097–3109 (January 22, 2003), as corrected at 68 FR 24744 (May 8, 2003). An additional routine use was added to OGE/GOVT–1 in 76 FR 24489 (May 2, 2011).

DATES: This action will be effective without further notice on August 30, 2012 unless comments received before this date would result in a contrary determination.

ADDRESSES: You may submit comments to OGE on this Privacy Act Notice by any of the following methods:

Email: usoge@oge.gov (Include reference to ''Privacy Act Modified Routine Use Comment'' in the subject line of the message).

Fax: 202–482–9237, Attention: Kerri A. Cox, Privacy Officer.

Mail, Hand Delivery/Courier: Office of Government Ethics, Suite 500, 1201 New York Avenue NW., Washington, DC 20005–3917, Attention: Kerri A. Cox, Privacy Officer.

FOR FURTHER INFORMATION CONTACT: Ms. Cox at the Office of Government Ethics; telephone: 202–482–9312; TTY: 800–877–8339; Fax: 202–482–9237; Email: *kacox@oge.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, 5–U.S.C. 552(a), this document provides public notice that the OGE is proposing to amend the OGE/GOVT–1, Executive Branch Personnel Public Financial Disclosure Reports and Other Name-Retrieved Ethics Program Records. The amendments will (1) update the authority for maintaining the system by adding the citation to the Stock Act; and (2) modify Routine Use (l) to explain that certain records will be automatically posted to official executive branch agency Web sites and/or the OGE Web site.

The system report, as required by 5 U.S.C. 552a(r), has been submitted to the Committee on Homeland Security and Governmental Affairs of the United States Senate, the Committee on Oversight and Government Reform of the House of Representatives and the Office of Management and Budget.

Routine Use (l.)

(l.) to disclose on the OGE Web site and to otherwise disclose to any person, including other departments and agencies: any written ethics agreements filed with the Office of Government Ethics, pursuant to 5 CFR 2634.803, by an individual nominated by the President to a position requiring Senate confirmation when the position also requires the individual to file a public financial disclosure report; and any public filer reports required to be filed by reason of Federal employment or by the president or vice president.

Approved: July 25, 2012.

Don W. Fox,

Acting Director, Office of Government Ethics.

[FR Doc. 2012–18658 Filed 7–30–12; 8:45 am]

BILLING CODE 6345–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

HIT Standards Committee Advisory Meeting; Notice of Meeting

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meeting.

This notice announces a forthcoming meeting of a public advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meeting will be open to the public.

Name of Committee: HIT Standards Committee.

General Function of the Committee: To provide recommendations to the National Coordinator on standards, implementation specifications, and certification criteria for the electronic exchange and use of health information for purposes of adoption, consistent with the implementation of the Federal Health IT Strategic Plan, and in accordance with policies developed by the HIT Policy Committee.

Date and Time: The meeting will be held on August 15, 2012, from 9:00 a.m. to 3:00 p.m. Eastern Time.

Location: This meeting will be VIRTUAL ONLY. Detailed call-in information is posted on the ONC Web site, *http://healthit.hhs.gov.*

Contact Person: MacKenzie Robertson, Office of the National Coordinator, HHS, 355 E Street SW., Washington, DC 20201, 202–205–8089, Fax: 202–260–1276, email: *mackenzie.robertson@hhs.gov.* Please call the contact person for up-to-date information on this meeting. 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.

Agenda: The committee will hear reports from its workgroups and updates from ONC and other Federal agencies. ONC intends to make background material available to the public no later than two (2) business days prior to the meeting. If ONC is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on ONC's Web site after the meeting, at *http://healthit.hhs.gov.*

Procedure: ONC is committed to the orderly conduct of its advisory committee meetings. 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 two days prior to the Committee's meeting date. Oral comments from the public will be scheduled in the agenda. Time allotted for each presentation will be limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled public comment period, ONC will take written comments after the meeting until close of business on that day.

ONC welcomes the attendance of the public at its advisory committee meetings. If you require special assistance due to a disability, please contact MacKenzie Robertson at least seven (7) days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: July 18, 2012.

MacKenzie Robertson,

FACA Program Lead, Office of Policy and Planning, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2012–18592 Filed 7–30–12; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notification of Single Source Cooperative Agreement Award for Project Hope

AGENCY: Department of Health and Human Services (HHS), Assistant Secretary for Preparedness and Response (ASPR), Office of Policy and Planning (OPP).

ACTION: Notification of Single Source Cooperative Agreement Award for Project Hope, the publisher of *Health Affairs,* for strengthening emergency care delivery in the United States healthcare system through health information and promotion in Support of National Health Security Strategy (2009) and Implementation Plan (2012) and Homeland Security Presidential Directive-21 (2007). CFDA#93.078.

Statutory Authority: Public Health Service Act, Section 1703(c), 42 U.S.C. Section 300u–2(c).

Amount of Single Source Award: $50,000.

Project Period: September 15, 2012 to December 15, 2012.

SUMMARY: In FY2012, HHS/ASPR/OPP plans to provide a single source cooperative agreement award to Project Hope to strengthen emergency care delivery in the United States healthcare system through health information and promotion in support of the Homeland Security Presidential Directive-21 (2007) and the National Health Security Strategy (2009) and Implementation Plan (2012).

In the past decade, numerous studies have described the delivery of emergency care in the United States as fragmented, overburdened, underfunded, and challenged in its efforts to provide an appropriate level of high quality and cost effective emergency care for Americans on a daily basis and in response to a public health emergency or disaster. These studies have recommended that the emergency care delivery system be redesigned and more broadly integrated into the U.S. healthcare system and healthcare sub-systems. As these changes will have implications for the broader healthcare community, particularly the primary care sub-system, it is essential that both expert and non-expert healthcare professionals, across the healthcare continuum, be informed and engaged in these key policy discussions.

Project Hope will plan the publication of a *Health Affairs* thematic issue that will identify, explore and propose policy options for developing, strengthening and preparing a regionalized, accountable and coordinated system of emergency care that is broadly integrated into the United States healthcare system and capable of responding to a public health emergency or disaster. The project will serve to educate non-emergency medicine healthcare policy professionals and providers about the current state of emergency care delivery in the United States. It will also promote an interdisciplinary dialogue between emergency and other healthcare professionals and providers regarding policy options for the coordinated and integrated delivery of acute unscheduled care that might result from an acute onset of symptoms, exacerbation of a chronic disease, or a public health emergency or disaster. This project will focus on exploring, identifying and proposing policy options regarding workforce, finance, organization and medical care delivery that are essential to redesigning emergency care delivery and supporting its full integration into other healthcare sub-systems as well as the broader U.S. healthcare system. This work will be performed in the context of Homeland Security Presidential Directive-21 and Strategic Objective (4) of the National Health Security Strategy (2009) and Implementation Plan (2012) that seek to foster integrated, scalable healthcare delivery systems that can meet both daily demands and medical surge demands resulting from a public health emergency or disaster.

Single Source Justification

Over the past few years, emergency care delivery and systems research and policy have largely been discussed in research-focused academic journals, publications and forums that have primarily targeted expert emergency care and pre-hospital care communities. While these forums have been successful in engaging emergency care communities, they have had minimal success in engaging the rest of the U.S. healthcare system policy professionals and providers that impact or are impacted by emergency care delivery. In the past, HHS and other federal departments have addressed similar healthcare policy engagement challenges by having Project Hope develop, provide or, promote key healthcare policy information via easy-to-read *Health Affairs* thematic issues and targeted outreach activities that ensured optimal awareness, engagement and discussion by a wide audience of expert and non-expert healthcare policy professionals, healthcare providers, and the general public.

The Project Hope *Health Affairs* journal is uniquely positioned to execute the proposed thematic issue. Although other publications can and do focus on scientific and clinical aspects of emergency care, none of the journals have a primary focus on policy matters related to workforce, financing, organization and the delivery of medical care. *Health Affairs* also has the largest circulation among healthcare policy publications with an estimated eleven thousand individual and institutional subscribers and more than fifty million online page views per year. *Health Affairs* is considered a trusted source for health policy—frequently cited in congressional testimony and the news media—and has a wide-ranging audience that includes healthcare professionals and providers, academia, private sector, health advocates, opinion leaders, industry decision makers, and government leaders. Project Hope has also successfully developed and published other key *Health Affairs* healthcare thematic issues that have significantly increased expert and non-expert interdisciplinary discussions and the general population's awareness and understanding of these topics.

In making this award, ASPR will capitalize on Project Hope's extensive experience in producing and marketing thematic issues that ensure broader

healthcare professional and provider engagement, interdisciplinary discussion, and general public awareness. Utilizing Project Hope's best practices, this new investment will offer HHS and the healthcare community the opportunity to explore, identify, and propose key policy ideas and initiatives for developing, strengthening and preparing a regionalized, accountable, coordinated, and integrated system of emergency care that is able to meet daily demands and respond to and recover from a public health emergency or disaster.

In summary, Project Hope's experience, status as a trusted policy source, and widespread subscribership and global audience will be critical to the viability of this cooperative agreement. This collaboration will support HHS efforts to develop a resilient U.S. healthcare system that is capable of providing integrated, cost-effective and high-quality emergency care both daily and in response to a public health emergency or disaster.

Additional Information

The agency program contact is Kristen Finne, who can be contacted by phone at (202) 691–2013 or via email at *kristen.finne@hhs.gov.*

Dated: July 25, 2012.

Edward J. Gabriel,

Principal Deputy Assistant Secretary for Preparedness and Response.

[FR Doc. 2012–18683 Filed 7–30–12; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Requirements and Registration for ''The Million Hearts Risk Check Challenge''

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

AWARD APPROVING OFFICIAL: Farzad Mostashari, National Coordinator for Health Information Technology.

ACTION: Notice.

SUMMARY: In communities across America, there are thousands of convenient and inexpensive ways to know your risk for heart-related conditions—often, all it takes is making an appointment for a screening with your doctor or pharmacies. But, according to recent studies, up to 1 in 3 people at risk for cardiovascular disease (CVD) have not been screened and are therefore less likely to take preventative action. Through an initiative sponsored by Million Hearts and the Office of the National Coordinator for Health IT, we are reaching out to the millions of Americans who have significant risks for CVD and do not know it, and those that suspect it but have not yet overcome the inertia to act on their concern. By connecting these individuals to pharmacies for lipid and blood pressure screenings, we are intending to make it easy for them to turn their back-of-mind worries into personal knowledge and then help them hook into the delivery system if necessary.

This new campaign and technology product will follow three steps:

1. Reach out to individuals across the country, taking special aim at those who may be at risk for CVD and don't know it.

2. Conduct a ''light'' health risk assessment that roughly estimates risk in an engaging interface and then ''hooks'' the user by showing that with the addition of LDL and BP readings, the accuracy of the risk assessment could be much more robust. This is done to drive folks to scale the next hurdle: The BP and blood test.

3. Direct individuals to nearby, convenient options for biometric screenings. National pharmacies and others will offer locations and special offers for this step.

The statutory authority for this challenge competition is Section 105 of the America COMPETES Reauthorization Act of 2010 (Public L. 111–358).

DATES: Effective on July 27, 2012. Challenge submission period ends October 31, 2012, 11:59 p.m. et.

FOR FURTHER INFORMATION CONTACT: Adam Wong, 202–720–2866.

SUPPLEMENTARY INFORMATION:

Subject of Challenge Competition

The purpose of the challenge is threefold:

1. Encourage further testing (specifically lipids and BP), especially for those with some risk,

2. Encourage lifestyle changes for those at some risk, and

3. Encourage seeing a health professional if they are at high risk.

In order to engage individuals about their heart risk, and then connect them with nearby options for a biometric screening, we require a new consumer app. Developers will have access to, and will need to hew closely to, two sources of content when responding to the challenge and designing the app:

1. A new Application Programming Interface (API) for conducting the ''light'' health risk assessment over a consumer-facing interface, hosted by Archimedes and built using their Indigo product.

2. Locations (and specific descriptors) of places where individuals can go for a lipid and blood pressure screening, made available through flat files from Million Hearts and a new API hosted by Surescripts.

Each of these source APIs are described in more detail at the challenge registration sites. Unlike some other challenges, HHS would like to formally ''sponsor'' the winning app. For this reason, it will be important (and it is part of the reviewing criteria) for applicants to follow the inputs and outputs of the two APIs specifically.

The app should begin with a ''light'' health risk assessment, designed to engage individuals by asking them personal questions about their health. To conduct the ''light'' health risk assessment, the app should ask questions to follow the required inputs of the Archimedes API (see registration sites and *https://demo-indigo4health.archimedesmodel.com* and *https://demo-indigo4health.archimedesmodel.com/IndiGO4Health/IndiGO4Health*). The app should also ask whether the individual has recent data on their blood pressure and cholesterol measurements (biomarker data). Once an individual has entered complete data including blood pressure and cholesterol measurements, the app should generate and communicate the individual's risk.

In the case that the user does not enter blood pressure and cholesterol values, after prompting individuals about the importance of a blood pressure and lipid screening, the app should then prompt them to enter their address (or use a device-enabled technology for getting their latitude and longitude such as the iPhone's ''current location'' feature). The app should send individuals the closest locations where they can go for a risk screening in a map-like output. Screening locations will be provided from two sources.

1. Through an API from the Surescripts Corporation. This API will be located on the Surescripts network, where it can be accessed by developers working on responding to this challenge, and available for free to the winning app throughout the campaign period. See registration sites for specific detail on the API. This information will also be available via the Million Hearts Challenge Web site.

2. Flat file, which the developers will receive from participating cities and/or HHS, and will be expected to make available to users via the app.

Developers should create an app that uses locations from both sources, and which feeds the closest locations back to the individual.

After connecting individuals with the screening locations, the app should do everything it can to get them to complete the screening. Periodically after connecting individuals to the screening locations, the app should follow-up on whether they have completed their lipid and blood pressure screening. Once the individuals indicate that they have completed their screening, the app should prompt them to enter the values from the blood pressure and lipid screening. Based on these values, and based on the Archimedes API, the app should then update the risk score and the communication of this risk to the individual.

After communicating the risk, the app should provide information about possible approaches to reducing that risk relevant to that individual. The Archimedes API will provide a series of possible interventions associated and associated risk reduction values.

Along with their app submission, entrants must submit a plan for how they will operationalize and sustain their product, and how many users they are capable of supporting, throughout the length of a 12-month promotional campaign associated with this product. The winning app may have the opportunity to be heavily promoted in a campaign supported by the Department of Health and Human Services, the Million Hearts Initiative, and their partners. As a focal point of this campaign, Million Hearts will maintain a Web site that will route consumers to apps that it sponsors. The Web site will be promoted prominently throughout the campaign. The winning app may have the opportunity to receive routings from this Web site.

Although apps are not likely to collect personally identifiable health information, submissions should consider relevant privacy and security issues, laws, and policies, and ensure apps include appropriate privacy and security protections where necessary.

Eligibility Rules for Participating in the Competition

To be eligible to win a prize under this challenge, an individual or entity—

(1) Shall have registered to participate in the competition under the rules promulgated by the Office of the National Coordinator for Health Information Technology.

(2) Shall have complied with all the requirements under this section.

(3) In the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States, and in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States.

(4) May not be a Federal entity or Federal employee acting within the scope of their employment.

(5) Shall not be an HHS employee working on their applications or submissions during assigned duty hours.

(6) Shall not be an employee of Office of the National Coordinator for Health IT.

(7) Federal grantees may not use Federal funds to develop COMPETES Act challenge applications unless consistent with the purpose of their grant award.

(8) Federal contractors may not use Federal funds from a contract to develop COMPETES Act challenge applications or to fund efforts in support of a COMPETES Act challenge submission.

An individual or entity shall not be deemed ineligible because the individual or entity used Federal facilities or consulted with Federal employees during a competition if the facilities and employees are made available to all individuals and entities participating in the competition on an equitable basis.

Entrants must agree to assume any and all risks and waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from my participation in this prize contest, whether the injury, death, damage, or loss arises through negligence or otherwise.

Entrants must also agree to indemnify the Federal Government against third party claims for damages arising from or related to competition activities.

A contingency for entering the contest and submitting an app is that the winning app must be available for free, to all users, until December 31, 2013. This includes hosting and maintaining the Web service in a scalable format, providing technical support with bug fixes, and so on.

Registration Process for Participants

To register for this challenge participants should either:

- Access the *www.challenge.gov* Web site and search for ''The Million Hearts Risk Check Challenge''.
- Access the ONC Investing in Innovation (i2) Challenge Web site at:
  - *http://www.health2con.com/devchallenge/challenges/onc-i2-challenges/.*
  - A registration link for the challenge can be found on the landing page under the challenge description.

Amount of the Prize

- $5,000 each for up to five finalists
- $100,000 to the winner

Awards may be subject to Federal income taxes and HHS will comply with IRS withholding and reporting requirements, where applicable.

Payment of the Prize

Prize will be paid by contractor.

Basis Upon Which Winner Will Be Selected

The ONC review panel will make selections based upon the following criteria:

1. How well the apps follow the specific input and output requirements of the two APIs
2. Effectiveness in getting individuals to answer all the questions for the initial risk assessment
3. Effectiveness in communicating initial risk to individuals, based on guidelines provided by Archimedes API
4. Effectiveness in encouraging further testing (specifically lipids and BP), especially for those with some risk
5. Effectiveness in communicating final risk to individuals, based on guidelines provided by Archimedes API
6. Effectiveness in encouraging lifestyle changes for those at some risk
7. Effectiveness in encouraging seeing a health professional if they are at high risk
8. How user-friendly, engaging, and accessible the app is, for the largest and most demographically-diverse group of people possible. Which app is the most likely to get the largest number of people to know their full cardiovascular risk?
9. Submissions will be judged for their operating plans for the year, and their likelihood of the submitter in successfully maintaining the app to support the campaign. Has the entrant provided a viable plan for initial and ongoing technical capacity to meet projected usage as well as for support, maintenance and enhancement of the application?
10. Demonstration of submitter's current or prior ability to engage consumers.

Additional Information

Ownership of intellectual property is determined by the following:

- Each entrant retains title and full ownership in and to their submission.

Entrants expressly reserve all intellectual property rights not expressly granted under the challenge agreement.

▪ By participating in the challenge, each entrant hereby irrevocably grants to Sponsor and Administrator a limited, non-exclusive, royalty free, worldwide, license and right to reproduce, publically perform, publically display, and use the Submission to the extent necessary to administer the challenge, and to publically perform and publically display the Submission, including, without limitation, for advertising and promotional purposes relating to the challenge.

▪ The winning app must be available for free, to all users, until December 31, 2013. This includes hosting and maintaining the Web service in a scalable format, providing technical support with bug fixes, and so on.

Authority: 15 U.S.C. 3719.

Dated: July 17, 2012.

Farzad Mostashari,

National Coordinator for Health Information Technology.

[FR Doc. 2012–18593 Filed 7–30–12; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Delegation of Authority; International Cooperation

Notice is hereby given that I have delegated to the Director, Center for Global Health, Centers for Disease Control and Prevention (CDC) without authority to redelegate, the authority vested in the Director, CDC, under section 307 of the Public Health Service (PHS) Act (42 U.S.C. 242(1)).

This delegation became effective upon date of signature. I hereby affirm and ratify any actions taken that involve the exercise of the authorities delegated herein prior to the effective date of this delegation.

Dated: July 3, 2012.

Thomas R. Frieden,

Director, CDC.

[FR Doc. 2012–18466 Filed 7–30–12; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Senior Medicare Patrol (SMP) Program Outcome Measurement

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements relating to Senior Medicare Patrol Program outcome measurement.

DATES: Submit written or electronic comments on the collection of information by October 1, 2012.

ADDRESSES: Submit electronic comments on the collection of information to: *doris.summey@aoa.hhs.gov.*

Submit written comments on the collection of information to Administration for Community Living, Washington, DC 20201. Attention: Doris Summey.

FOR FURTHER INFORMATION CONTACT: Doris Summey, by telephone 202–357–3533 or by email: *doris.summey@aoa.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency request or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, ACL is publishing notice of the proposed collection of information set forth in this document. With respect to the following collection of information, ACL invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of ACL's functions, including whether the information will have practical utility; (2) the accuracy of ACL's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

Grantees are required by Congress to provide information for use in program monitoring and for Government Performance and Results Act (GPRA) purposes. This information collection reports the number of active volunteers, issues and inquiries received, other SMP program outreach activities, and the number of Medicare dollars recovered among other SMP performance outcomes.

ACL estimates the burden of this collection of information as follows: 54 SMP grantees at 23 hours per month (276 hours per year, per grantee). Total Estimated Burden Hours: 7,452 hours per year. The proposed data collection tool may be found on the AoA Web site for review at *http://www.aoa.gov/AoARoot/AoA_Programs/Tools_Resources/Cert_Forms.aspx.*

Dated: July 25, 2012.

Kathy Greenlee,

Administrator and Assistant Secretary for Aging.

[FR Doc. 2012–18645 Filed 7–30–12; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–0524]

Draft Guidance for Industry and Food and Drug Administration Staff; Acceptance and Filing Review for Premarket Approval Applications; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Acceptance and Filing Review for Premarket Approval Applications (PMAs).'' The purpose of the acceptance and filing reviews is to make a threshold determination about whether an application is administratively complete. This guidance document is intended to clarify the criteria for accepting and filing a PMA, thereby assuring the consistency of our acceptance and filing decisions. This guidance is applicable to original PMAs and PMA panel-track supplements reviewed in the Center for Devices and Radiological Health (CDRH) and the Center for Biologics Evaluation and Research. This draft guidance is not final nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by September 14, 2012.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled ''Acceptance and Filing Review for Premarket Approval Applications (PMAs)'' to the Division of Small Manufacturers, International and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4613, Silver Spring, MD 20993–0002; or Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–847–8149. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Nicole Wolanski, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1650, Silver Spring, MD 20993–0002, 301–796–6570; or Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

I. Background

The PMA regulation (21 CFR 814.42(e)) identifies the criteria that, if not met, may serve as a basis for refusing to file a PMA. These criteria are discussed in the guidance document ''Guidance for Industry and FDA Staff Premarket Approval Application Filing Review,'' dated May 1, 2003. This document has been used by FDA staff and the device industry to help elucidate the broad preclinical and clinical issues that need to be addressed in a PMA and the key decisions to be made during the filing process.

To further focus the Agency's review resources on complete applications, which will provide a more efficient approach to ensuring that devices that have a reasonable assurance of safety and effectiveness reach patients as quickly as possible, we have modified the PMA filing guidance. In this guidance entitled, ''Acceptance and Filing Review for Premarket Approval Applications (PMAs),'' we have separated the requirements for PMA filing into: (1) Acceptance criteria and (2) filing criteria. Acceptance review involves an early assessment of the completeness of the application, and informing the applicant in a written response within the first 15 calendar days of receipt of the application whether any administrative elements are missing, and if so, identifying the missing administrative element(s).

In order to enhance the consistency of our acceptance and filing decisions and to help applicants understand the types of information FDA needs to conduct a substantive review of a PMA, this guidance and associated checklist clarify the necessary elements and contents of a complete PMA application. The process we outline is applicable to all devices reviewed in a PMA application. Acceptance and filing decisions will be made for all original PMA applications and panel-track PMA supplements.

This guidance is not significantly different from the 2003 PMA guidance document. The ''preliminary questions'' remain the same and the ''filing review questions'' have been separated into ''acceptance decision questions'' (i.e., is the file administratively complete) and ''filing decision questions'' (i.e., are data consistent with the protocol, final device design, and proposed indications). In addition, it should be noted that this document is focused on the regulatory and scientific criteria for making an ''Accept'' or ''Refuse to Accept'' decision as well as ''File'' or ''Not File'' decision for a PMA. It specifically does not alter the following administrative aspects of the PMA filing process: The timeframe for the filing review phase (i.e., 45 days); the processes for document tracking, distribution, and handling; and the procedures for assembling the review team and setting up the filing meeting.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on acceptance and filing reviews for PMAs. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using the Internet. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov.* To receive ''Acceptance and Filing Review for Premarket Approval Applications (PMAs),'' you may either send an email request to *smica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 301–847–8149 to receive a hard copy. Please use the document number 1792 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to currently approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 814, subpart B, have been approved under OMB control number 0910–0231.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), either electronic or written comments regarding this document. 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.

Dated: July 24, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–18603 Filed 7–30–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0785]

Medical Device User Fee Rates for Fiscal Year 2013

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the fee rates and payment procedures for medical device user fees for fiscal year (FY) 2013. The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Medical Device User Fee Amendments of 2012 (Title 2 of the Food and Drug Administration Safety and Innovation Act, Public Law 112–144, which was signed by the President on July 9, 2012) (MDUFA III), authorizes FDA to collect user fees for certain medical device submissions, and annual fees both for certain periodic reports and for establishments subject to registration. The FY 2013 fee rates are provided in this document. These fees apply from October 1, 2012, through September 30, 2013. To avoid delay in the review of your application, you should pay the fee before or at the time you submit your application to FDA. The fee you must pay is the fee that is in effect on the later of the date that your application is received by FDA or the date your fee payment is recognized by the U.S. Treasury. If you want to pay a reduced small business fee, you must qualify as a small business before you make your submission to FDA; if you do not qualify as a small business before you make your submission to FDA, you will have to pay the higher standard fee. This document provides information on how the fees for FY 2013 were determined, the payment procedures you should follow, and how you may qualify for reduced small business fees.

FOR FURTHER INFORMATION CONTACT: *For information on Medical Device User Fees:* Visit FDA's Web site, *http://www.fda.gov/mdufa.*

For questions relating to this notice: David Miller, Office of Financial Management (HFA–100), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–796–7103.

SUPPLEMENTARY INFORMATION:

I. Background

Section 738 of the FD&C Act (21 U.S.C 379j) establishes fees for certain medical device applications, submissions, supplements, and notices (for simplicity, this document refers to these collectively as ''submissions'' or ''applications''); for periodic reporting on class III devices; and for the registration of certain establishments. Under statutorily-defined conditions, a qualified applicant may receive a fee waiver or may pay a lower small business fee. (See 21 U.S.C. 379j(d) and (e).) Additionally, the Secretary may, at the Secretary's sole discretion, grant a fee waiver or reduction if the Secretary finds that such waiver or reduction is in the interest of public health. (See 21 U.S.C. 379j(f).)

Under the FD&C Act, the fee rate for each type of submission is set at a specified percentage of the standard fee for a premarket application (a premarket application is a premarket approval application (PMA), a product development protocol (PDP), or a biologics license application (BLA)). The FD&C Act specifies the base fee for a premarket application for each year from FY 2013 through FY 2017; the base fee for a premarket application received by FDA during FY 2013 is $248,000. From this starting point, this document establishes FY 2013 fee rates for other types of submissions, and for periodic reporting, by applying criteria specified in the FD&C Act.

The FD&C Act specifies the base fee for establishment registration for each year from FY 2013 through FY 2017; the registration fee for FY 2013 is $2,575. There is no reduction in the registration fee for small businesses. Each establishment that is registered (or is required to register) with the Secretary under section 510 of the FD&C Act (21 U.S.C. 360) because such establishment is engaged in the manufacture, preparation, propagation, compounding, or processing of a device is required to pay the annual fee for establishment registration.

II. Fees for FY 2013

Under the FD&C Act, all submission fees and the periodic reporting fee are set as a percent of the standard (full) fee for a premarket application. (See 21 U.S.C. 379j(a)(2)(A).) For FY 2013, the standard fee is the base fee; for FY 2014 through FY 2017, the base fee will be adjusted as specified in the FD&C Act so for these fiscal years, the standard fee will be the adjusted base fee. (See 21 U.S.C. 379j(b) and (c).) The standard fee for a premarket application, including a BLA, and for a premarket report and a BLA efficacy supplement, is $248,000 for FY 2013. (See 21 U.S.C. 379j(b).) The fees set by reference to the standard fee for a premarket application are:

- For a panel-track supplement, 75 percent of the standard fee;
- For a 180-day supplement, 15 percent of the standard fee;
- For a real-time supplement, 7 percent of the standard fee;
- For a 30-day notice, 1.6 percent of the standard fee;
- For a 510(k) premarket notification, 2 percent of the standard fee;
- For a 513(g) request for classification information, 1.35 percent of the standard fee; and
- For an annual fee for periodic reporting concerning a class III device, 3.5 percent of the standard fee.

For all submissions other than a 510(k) premarket notification, a 30-day notice, and a 513(g) request for classification information, the small business fee is 25 percent of the standard (full) fee for the submission. (See 21 U.S.C. 379j(d)(2)(C).) For a 510(k) premarket notification submission, a 30-day notice, and a 513(g) request for classification information, the small business fee is 50 percent of the standard (full) fee for the submission. (See 21 U.S.C. 379j(d)(2)(C) and (e)(2)(C).)

The statute sets the annual fee for establishment registration at $2,575 in FY 2013. There is no small business rate for the annual establishment registration fee; all establishments pay the same fee.

Table 1 of this document set out the FY2013 rates for all medical device fees.

TABLE 1—MEDICAL DEVICE FEES FOR FY 2013

Application fee type	Standard fee, as a percent of the standard fee for a premarket application	FY 2013 standard fee	FY 2013 small business fee
Premarket application (a PMA submitted under section 515(c)(1) of the FD&C Act (21 U.S.C. 360e(c)(1)), a PDP submitted under section 515(f) of the FD&C Act (21 U.S.C. 360e(f)), or a BLA submitted under section 351 of the Public Health Service (PHS) Act (42 U.S.C. 262)).	Base Fee Adjusted as Specified in the Statute.	$248,000	$62,000
Premarket report (submitted under section 515(c)(2) of the FD&C Act)	100%	248,000	62,000
Efficacy supplement (to an approved BLA under section 351 of the PHS Act).	100%	248,000	62,000
Panel-track supplement	75%	186,000	46,500
180-day supplement	15%	37,200	9,300
Real-time supplement	7%	17,360	4,340
510(k) premarket notification submission	2%	4,960	2,480
30-day notice	1.6%	3,968	1,984
513(g) (21 U.S.C. 360c(g)) request for classification information	1.35%	3,348	1,674
Annual Fee Type			
Annual fee for periodic reporting on a class III device	3.5%	8,680	2,170
Annual establishment registration fee (to be paid by the establishment engaged in the manufacture, preparation, propagation, compounding, or processing of a device, as defined by 21 U.S.C. 379i(13)).	Base Fee Adjusted as Specified in the Statute.	2,575	2,575

III. How To Qualify as a Small Business for Purposes of Medical Device Fees

If your business has gross receipts or sales of no more than $100 million for the most recent tax year, you may qualify for reduced small business fees. If your business has gross sales or receipts of no more than $30 million, you may also qualify for a waiver of the fee for your first premarket application (PMA, PDP, or BLA) or premarket report. You must include the gross receipts or sales of all of your affiliates along with your own gross receipts or sales when determining whether you meet the $100 million or $30 million threshold. If you want to pay the small business fee rate for a submission, or you want to receive a waiver of the fee for your first premarket application or premarket report, you should submit the materials showing you qualify as a small business 60 days before you send your submission to FDA. If you make a submission before FDA finds that you qualify as a small business, you must pay the standard (full) fee for that submission.

If your business qualified as a small business for FY 2012, your status as a small business will expire at the close of business on September 30, 2012. You must re-qualify for FY 2013 in order to pay small business fees during FY 2013.

If you are a domestic (U.S.) business, and wish to qualify as a small business for FY 2013, you must submit the following to FDA:

1. A completed FY 2013 MDUFA Small Business Qualification Certification (Form FDA 3602). This form is provided in FDA's guidance document, ''FY 2013 Medical Device User Fee Small Business Qualification and Certification,'' available on FDA's Web site at *http://www.fda.gov/mdufa.* This form is not available separate from the guidance document.

2. A certified copy of your Federal (U.S.) Income Tax Return for the most recent tax year. The most recent tax year will be 2012, except:

- If you submit your FY 2013 MDUFA Small Business Qualification before April 15, 2013, and you have not yet filed your return for 2012, you may use tax year 2011.
- If you submit your FY 2013 MDUFA Small Business Qualification on or after April 15, 2013, and have not yet filed your 2012 return because you obtained an extension, you may submit your most recent return filed prior to the extension.

3. For each of your affiliates, either:

- If the affiliate is a domestic (U.S.) business, a certified copy of the affiliate's Federal (U.S.) Income Tax Return for the most recent tax year, or
- If the affiliate is a foreign business and cannot submit a Federal (U.S.) Income Tax Return, a National Taxing Authority Certification completed by, and bearing the official seal of, the National Taxing Authority of the country in which the firm is headquartered. The National Taxing Authority is the foreign equivalent of the U.S. Internal Revenue Service. This certification must show the amount of gross receipts or sales for the most recent tax year, in both U.S. dollars and the local currency of the country, the exchange rate used in converting the local currency to U.S. dollars, and the dates of the gross receipts or sales collected. The applicant must also submit a statement signed by the head of the applicant's firm or by its chief financial officer that the applicant has submitted certifications for all of its affiliates, identifying the name of each affiliate, or that the applicant has no affiliates.

If you are a foreign business, and wish to qualify as a small business for FY 2013, you must submit the following:

1. A completed FY 2013 MDUFA Foreign Small Business Qualification Certification (Form FDA 3602A). This form is provided in FDA's guidance document, ''FY 2013 Medical Device User Fee Small Business Qualification and Certification,'' available on FDA's Internet site at *http://www.fda.gov/mdufa.* This form is not available separate from the guidance document.

2. A National Taxing Authority Certification, completed by, and bearing the official seal of, the National Taxing Authority of the country in which the firm is headquartered. This Certification must show the amount of gross receipts or sales for the most recent tax year, in both U.S. dollars and the local currency of the country, the exchange rate used in converting the local currency to U.S. dollars, and the dates of the gross receipts or sales collected.

3. For each of your affiliates, either:

- If the affiliate is a domestic (U.S.) business, a certified copy of the affiliate's Federal (U.S.) Income Tax Return for the most recent tax year (2011 or later), or
- If the affiliate is a foreign business and cannot submit a Federal (U.S.) Income Tax Return, a National Taxing

Authority Certification completed by, and bearing the official seal of, the National Taxing Authority of the country in which the firm is headquartered. The National Taxing Authority is the foreign equivalent of the U.S. Internal Revenue Service. This certification must show the amount of gross receipts or sales for the most recent tax year, in both U.S. dollars and the local currency of the country, the exchange rate used in converting the local currency to U.S. dollars, and the dates for the gross receipts or sales collected. The applicant must also submit a statement signed by the head of the applicant's firm or by its chief financial officer that the applicant has submitted certifications for all of its affiliates, identifying the name of each affiliate, or that the applicant has no affiliates.

IV. Procedures for Paying Application Fees

If your application or submission is subject to a fee and your payment is received by FDA from October 1, 2012, through September 30, 2013, you must pay the fee in effect for FY 2013. The later of the date that the application is received in the reviewing center's document room or the date the U.S. Treasury recognizes the payment determines whether the fee rates for FY 2012 or FY 2013 apply. FDA must receive the correct fee at the time that an application is submitted, or the application will not be accepted for filing or review.

FDA requests that you follow the steps below before submitting a medical device application subject to a fee to ensure that FDA links the fee with the correct application. (**Note:** In no case should the check for the fee be submitted to FDA with the application.)

A. Step One—Secure a Payment Identification Number (PIN) and Medical Device User Fee Cover Sheet From FDA Before Submitting Either the Application or the Payment

Log on to the MDUFA Web site at: *http://www.fda.gov/mdufa,* click on ''MDUFA FORMS'' at the left side of the page, and then under the MDUFA Forms heading, click on the link ''Create MDUFA User Fee Cover Sheet.'' Complete the Medical Device User Fee cover sheet. Be sure you choose the correct application submission date range. (Two choices will be offered until October 1, 2012. One choice is for applications that will be received on or before September 30, 2012, which will be subject to FY 2012 fee rates. A second choice is for applications that will be received on or after October 1, 2012, which will be subject to FY 2013 fee rates.) After completing data entry, print a copy of the Medical Device User Fee cover sheet and note the unique PIN located in the upper right-hand corner of the printed cover sheet.

B. Step Two—Electronically Transmit a Copy of the Printed Cover Sheet With the PIN to FDA's Office of Financial Management

Once you are satisfied that the data on the cover sheet is accurate, electronically transmit that data to FDA according to instructions on the screen. Because electronic transmission is possible, applicants are required to set up a user account and use passwords to assure data security in the creation and electronic submission of cover sheets.

C. Step Three—Submit Payment for the Completed Medical Device User Fee Cover Sheet as Described in This Section, Depending on the Method You Will Use to Make Payment

1. If paying with a paper check:

- All paper checks must be in U.S. currency from a U.S. bank and made payable to the Food and Drug Administration. (FDA's tax identification number is 53–0196965, should your accounting department need this information.)
- Please write your application's unique PIN, from the upper right-hand corner of your completed Medical Device User Fee cover sheet, on your check.
- Mail the paper check and a copy of the completed cover sheet to: Food and Drug Administration, P.O. Box 956733, St. Louis, MO 63195–6733. (Please note that this address is for payments of application and annual report fees only and is not to be used for payment of annual establishment registration fees.)

If you prefer to send a check by a courier (such as Federal Express (FedEx), DHL, United Parcel Service (UPS), etc.), the courier may deliver the check to: U.S. Bank, Attn: Government Lockbox 956733, 1005 Convention Plaza, St. Louis, MO 63101. (**Note:** This address is for courier delivery only. Contact the U.S. Bank at 314–418–4013 if you have any questions concerning courier delivery.)

FDA records the official application receipt date as the later of the following: (1) The date the application was received by FDA or (2) the date the U.S. Treasury recognizes the payment. It is helpful if the fee payment arrives at the bank at least 1 day before the application arrives at FDA.

2. If Paying With Credit Card or Electronic Check (Automated Clearing House (ACH)):

FDA has partnered with the U.S. Department of the Treasury to utilize *www.Pay.gov,* a Web-based payment system, for online electronic payment. You may make a payment via electronic check or credit card after submitting your cover sheet. To pay online, select the ''Pay Now'' button. Credit card transactions for cover sheets are limited to $5,000.00.

3. If paying with a wire transfer:

- Please include your application's unique PIN, from the upper right-hand corner of your completed Medical Device User Fee cover sheet, in your wire transfer. Without the PIN your payment may not be applied to your cover sheet and review of your application will be delayed.
- The originating financial institution may charge a wire transfer fee between $15 and $35. Please ask your financial institution about the fee and include it with your payment to ensure that your cover sheet is fully paid.

Use the following account information when sending a wire transfer: New York Federal Reserve Bank, U.S. Department of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No. 75060099, Routing No. 021030004, SWIFT: FRNYUS33, Beneficiary: FDA, 1350 Piccard Drive, Rockville, MD 20850.

D. Step Four—Submit Your Application to FDA With a Copy of the Completed Medical Device User Fee Cover Sheet

Please submit your application and a copy of the completed Medical Device User Fee cover sheet to one of the following addresses:

1. Medical device applications should be submitted to: Food and Drug Administration, Center for Devices and Radiological Health, Document Mail Center, Bldg. 66, rm. 0609, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002.

2. Biologic applications should be sent to: Food and Drug Administration, Center for Biologics Evaluation and Research, Document Control Center (HFM–99), Suite 200N, 1401 Rockville Pike, Rockville, MD 20852–1448.

V. Procedures for Paying the Annual Fee for Periodic Reporting

As of FY 2011, you are no longer able to create a cover sheet and obtain a PIN to pay the MDUFA Annual Fee for Periodic Reporting. Instead, you will be invoiced at the end of the quarter in which your PMA Periodic Report is due. Invoices will be sent based on the details included on your PMA file; you are responsible to ensure your billing information are kept up-to-date (you can

update your contact for the PMA by submitting an amendment).

1. If paying with a paper check:

All paper checks must be in U.S. currency from a U.S. bank and made payable to the Food and Drug Administration. (FDA's tax identification number is 53–0196965, should your accounting department need this information.)

- Please write your invoice number.
- Mail the paper check and a copy of invoice to: Food and Drug Administration, P.O. Box 956733, St. Louis, MO 63195–6733. (Please note that this address is for payments of application and annual report fees only and is not to be used for payment of annual establishment registration fees.)

If you prefer to send a check by a courier (such as FedEx, DHL, UPS, etc.), the courier may deliver the check to: U.S. Bank, Attn: Government Lockbox 956733, 1005 Convention Plaza, St. Louis, MO 63101. (**Note:** This address is for courier delivery only. Contact the U.S. Bank at 314–418–4013 if you have any questions concerning courier delivery.)

2. If paying with a wire transfer:

- Please include your invoice number in your wire transfer. Without the invoice number, your payment may not be applied and you may be referred to collections.
- The originating financial institution may charge a wire transfer fee between $15 and $35. Please ask your financial institution about the fee and include it with your payment to ensure that your invoice is fully paid.

Use the following account information when sending a wire transfer: New York Federal Reserve Bank, U.S. Department of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No. 75060099, Routing No. 021030004, SWIFT: FRNYUS33, Beneficiary: FDA, 1350 Piccard Dr., Rockville, MD 20850.

VI. Procedures for Paying Annual Establishment Fees

In order to pay the annual establishment fee, firms must access the Device Facility User Fee (DFUF) Web site at *https://fdasfinapp8.fda.gov/OA_HTML/fdaCAcdLogin.jsp.* (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.) You will create a DFUF order and you will be issued a PIN once you place your order. After payment has been processed, you will be issued a payment confirmation number (PCN). You will not be able to register your establishment if you do not have a PIN and a PCN. An establishment required to pay an annual establishment registration fee is not legally registered in FY 2013 until it has completed the steps below to register and pay any applicable fee. (See 21 U.S.C. 379j(g)(2).)

Companies that do not manufacture any product other than a licensed biologic are required to register in the Blood Establishment Registration (BER) system. FDA's Center for Biologics Evaluation and Research (CBER) will send establishment registration fee invoices annually to these companies.

A. Step One—Submit a DFUF Order With a PIN From FDA Before Registering or Submitting Payment

To submit a DFUF Order, you must create or have previously created a user account and password for the User Fee Web site listed previously in this section. After creating a user name and password, log into the Establishment Registration User Fee FY 2013 store. Complete the DFUF order by entering the number of establishments you are registering that require payment. Once you are satisfied that the data on the order is accurate, electronically transmit that data to FDA according to instructions on the screen. Print a copy of the final DFUF order and note the unique PIN located in the upper right-hand corner of the printed order.

B. Step Two—Pay for Your DFUF Order

Unless paying by credit card, all payments must be in U. S. currency and drawn on a U.S. bank.

1. If paying by credit card or electronic check (ACH):

The DFUF order will include payment information, including details on how you can pay online using a credit card or electronic check. Follow the instructions provided to make an electronic payment.

2. If paying with a paper check:

If you prefer not to pay online, you may pay by a check, in U.S. dollars and drawn on a U.S. bank, mailed to: Food and Drug Administration, P.O. Box 979108, St. Louis, MO 63197–9000. (**Note:** This address is different from the address for payments of application and annual report fees and is to be used only for payment of annual establishment registration fees.)

If a check is sent by a courier that requests a street address, the courier can deliver the check to: U.S. Bank, Attn: Government Lockbox 979108, 1005 Convention Plaza, St. Louis, MO 63101. (**Note:** This U.S. Bank address is for courier delivery only; do not send mail to this address.)

Please make sure that both of the following are written on your check: (1) The FDA post office box number (P.O. Box 979108) and (2) the PIN that is printed on your order. A copy of your printed order should also be mailed along with your check. FDA's tax identification number is 53–0196965.

3. If paying with a wire transfer:

Wire transfers may also be used to pay annual establishment fees. To send a wire transfer, please read and comply with the following information:

- Include your order's unique PIN, from the upper right-hand corner of your completed Device Facility User Fee order, in your wire transfer. Without the PIN your payment may not be applied to your facility and your registration will be delayed.
- The originating financial institution may charge a wire transfer fee between $15 and $35. Please ask your financial institution about the fee and include it with your payment to ensure that your order is fully paid. Use the following account information when sending a wire transfer: New York Federal Reserve Bank, U.S. Dept of Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No. 75060099, Routing No. 021030004, SWIFT: FRNYUS33, Beneficiary: FDA, 1350 Piccard Drive, Rockville, MD 20850.

C. Step Three—Complete the Information Online To Update Your Establishment's Annual Registration for FY 2013, or To Register a New Establishment for FY 2013

Go to the Center for Devices and Radiological Health's Web site at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/HowtoMarketYourDevice/RegistrationandListing/default.htm* and click the ''Access Electronic Registration'' link on the left of the page. This opens up a new page with important information about the FDA Unified Registration and Listing System (FURLS). After reading this information, click on the link (Access Electronic Registration) at the bottom of the page. This link takes you to an FDA Industry Systems page with tutorials that demonstrate how to create a new FURLS user account if your establishment did not create an account in FY 2012. Manufacturers of licensed biologics should register in the BER system at *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/EstablishmentRegistration/BloodEstablishmentRegistration/default.htm.*

Enter your existing account ID and password to log into FURLS. From the FURLS/FDA Industry Systems menu, click on the Device Registration and Listing Module (DRLM) of FURLS button. New establishments will need to

register and existing establishments will update their annual registration using choices on the DRLM menu. Once you choose to register or update your annual registration, the system will prompt you through the entry of information about your establishment and your devices. If you have any problems with this process, email: *reglist@cdrh.fda.gov* or call 301–796–7400 for assistance. (Note: this email address and this telephone number are for assistance with establishment registration only, and not for any other aspects of medical device user fees.) Problems with BERS should be directed to *bloodregis@fda.hhs.gov* or call 301–827–3546.

D. Step Four—Enter Your DFUF Order PIN and PCN

After completing your annual or initial registration and device listing, you will be prompted to enter your DFUF order PIN and PCN, when applicable. This process does not apply to establishments engaged only in the manufacture, preparation, propagation, compounding, or processing of licensed biologic devices. CBER will send invoices for payment of the establishment registration fee to such establishments.

Dated: July 24, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–18647 Filed 7–30–12; 8:45 a.m.]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer at (301) 443–1984.

Comments are invited on: (a) The proposed collection of information for the proper performance of the functions of the Agency; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Maternal and Child Health Bureau Performance Measures for Discretionary Grants (OMB No. 0915–0298)—[Revision]

The Health Resources and Services Administration's (HRSA) Maternal and Child Health Bureau (MCHB) intends to continue to collect performance data for Special Projects of Regional and National Significance (SPRANS), Community Integrated Service Systems (CISS), and other grant programs administered by MCHB.

HRSA's MCHB proposes to continue using reporting requirements for SPRANS projects, CISS projects, and other grant programs administered by MCHB, including national performance measures, previously approved by OMB, and in accordance with the ''Government Performance and Results Act (GPRA) of 1993'' (Pub. L. 103–62). This Act requires the establishment of measurable goals for Federal Programs that can be reported as part of the budgetary process, thus linking funding decisions with performance. Performance measures for MCHB discretionary grants were initially approved in January 2003. Approval from OMB is being sought to continue the use of these measures. Some of these measures are specific to certain types of programs and will not apply to all grantees. Through the experience of utilizing these measures, we are enhancing them to better reflect program goals. Specifically, additional outcome measures that can be utilized by grantees that predominantly provide infrastructure services are being developed for submission to OMB.

The estimated response burden is as follows:

Form	Number of respondents	Responses per respondent	Total responses	Burden hours per response	Total burden hours
Grant Report	900	1	900	41	36,900
Total	900		900		36,900

Email comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–29, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: July 24, 2012.

Jennifer Riggle,

Deputy Director, Office of Management.

[FR Doc. 2012–18637 Filed 7–30–12; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office

of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Glial Cell Line-Derived Neurotrophic Factor Opposite Strand (GDNFOS) for Treatment of Neurodegenerative Diseases

Description of Technology: Glial cell line-derived neurotrophic factor (GDNF) is a small human protein encoded by the GDNF gene. GDNF has been effective therapy in laboratory animal models of Parkinson's disease and protects several types of neurons in the brain and peripheral nervous system. The NIDA inventors have discovered primate-specific GDNFOS, encoded by the opposite strand of glial cell derived neurotrophic factor (GDNF) gene. The GDNFOS gene encodes for novel peptides that was found to be reduced in human middle temporal gyrus of Alzheimer's disease brains. These secreted growth proteins have potential neurotrophic activity and they might play a synergistic role in neuroprotective effects of GDNF in human brain. The NIDA inventors have also developed antibody against GDNFOS3 and generated compounds that have potential pharmaceutical use. The compounds consist of GDNFOS nucleic acid transcripts, GDNFOS protein or a functional fragment for treatment of human neurodegenerative diseases.

Potential Commercial Applications

- Synergistic role in neuroprotective effects of GDNF.
- Alzheimer's disease, Parkinson's disease, Amyotrophic lateral sclerosis, multiple sclerosis and diseases of peripheral organs such as diabetes mellitus type 1.

Competitive Advantages

- Secreted novel growth peptides.
- An antibody against GDNFOS3 was developed.

Development Stage

- Early-stage.
- Pre-clinical.
- In vitro data available.

Inventors: Qing-Rong Liu, Mikko Airavaara, Barry Hoffer, Brandon K Harvey (all of NIDA).

Publication: Airavaara M, et al. Identification of novel GDNF isoforms and cis-antisense GDNFOS gene and their regulation in human middle temporal gyrus of Alzheimer disease. J Biol Chem. 2011 Dec 30;286(52):45093–102. [PMID 22081608]

Intellectual Property: HHS Reference No. E–044–2012/0—U.S. Provisional Application No. 61/619, 296 filed 02 Apr 2012.

Licensing Contact: Betty B. Tong, Ph.D.; 301–594–6565; *tongb@mail.nih.gov.*

Collaborative Research Opportunity: The National Institute on Drug Abuse is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize GDNFOS peptide and non-coding RNAs as therapeutic agents for neurodegenerative diseases. For collaboration opportunities, please contact Vio Conley at *conleyv@mail.nih.gov.*

Increased Therapeutic Effectiveness of Immunotoxins That Use Toxin Domains Lacking Human B-cell Epitopes

Description of Technology: Immunotoxins kill cancer cells while allowing healthy, essential cells to survive. As a result, patients receiving an immunotoxin are less likely to experience the deleterious side-effects associated with non-discriminate therapies such as chemotherapy or radiation therapy. Unfortunately, the continued administration of immunotoxins often leads to a reduced patient response due to the formation of neutralizing antibodies against immunogenic epitopes contained within Pseudomonas exotoxin A (PE). To improve the therapeutic effectiveness of PE-based immunotoxins through multiple rounds of drug administration, NIH inventors have sought to identify and remove the human B-cell epitopes within PE. Previous work demonstrated that the removal of the murine B-cell and T-cell epitopes from PE reduced the immunogenicity of PE and resulted in immunotoxins with improved therapeutic activity. This technology involves the identification and removal of major human B-cell epitopes on PE by mutation or deletion. Considering these immunotoxins will be administered to humans, the removal of human immunogenic epitopes is important. The resulting PE-based immunotoxins have increased resistance to the formation of neutralizing antibodies, and are expected to have improved therapeutic efficacy.

Potential Commercial Applications

- Essential component of immunotoxins.
- Treatment of any disease associated with increased or preferential expression a specific cell surface receptor.
- Specific diseases include hematological cancers, lung cancer, ovarian cancer, breast cancer, and head and neck cancers.

Competitive Advantages

- PE variants now include the removal of human B-cell epitopes, further reducing the formation of neutralizing antibodies against immunotoxins which contain the PE variants.
- Less immunogenic immunotoxins result in improved therapeutic efficacy by permitting multiple rounds of administration in humans.
- Targeted therapy decreases non-specific killing of healthy, essential cells, resulting in fewer non-specific side-effects and healthier patients.

Development Stage: Pre-clinical.

Inventors: Ira H. Pastan et al. (NCI).

Publication: Liu W, et al. Recombinant immunotoxin engineered for low immunogenicity and antigenicity by identifying and silencing human B-cell epitopes. Proc Natl Acad Sci USA. 2012 Jul 17;109(29):11782–7. [PMID 22753489]

Intellectual Property: HHS Reference No. E–263–2011/0—U.S. Provisional Application No. 61/535,668 filed 16 Sep 2011.

Related Technologies

- PCT Patent Publication WO 2011/032022 (HHS Reference No. E–269–2009/0–PCT–02).
- US Patent Publication US 20100215656 A1 (HHS Reference No. E–292–2007/0–US–06).
- US Patent Publication US 20090142341 A1 (HHS Reference No. E–262–2005/0–US–06).
- Multiple additional patent families.

Licensing Contact: David A. Lambertson, Ph.D.; 301–435–4632; *lambertsond@mail.nih.gov.*

Collaborative Research Opportunity: The National Cancer Institute is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize this technology. For collaboration opportunities, please contact John Hewes, Ph.D. at *hewesj@mail.nih.gov.*

Novel Nitroxyl (HNO) Releasing Compounds and Their Use in Treating Diseases

Description of Technology: Nitroxyl (HNO) is a chemical species that exhibits distinct biological properties in comparison to its oxidized product, nitric oxide (NO). Previous investigations have revealed that the

distinct properties of HNO make it a tempting species for wide therapeutic application as it has shown potential in the treatment of heart failure, cancer, and other diseases in various animal and in vitro models. Non-steroidal anti-inflammatory drugs (NSAIDs), such as aspirin and ibuprofen, are compounds that inhibit cycloxygenase (COX)-mediated conversion of arachidonic acids to prostagladins. NSAIDs are known for their analgesic properties and are therapeutically involved in many physiological functions, including the inhibition of chronic pain and inflammation inhibition, prevention of heart disease, renal function, and cancer. Prolonged use of NSAIDs can lead to serious gastrointestinal and renal side effects, including ulcer perforation, upper gastrointestinal bleeding, and death, which has limited NSAID therapies.

The instant invention described HNO-releasing NSAIDs, which combine the potential therapeutic benefits of HNO and NSAIDs without the toxicities associated with chronic NSAID use. These HNO-releasing NSAIDs provide a reliable controlled release of HNO making them desirable HNO prodrugs. The instant invention disclosed various HNO-releasing NSAIDs and methods of treating or preventing various disorders with these compositions, such as cardiovascular disorders, cancers, pain, inflammation, and alcoholism.

Potential Commercial Applications

- Treatment of cancer.
- Treatment of cardiovascular disease.
- Aversion therapy for alcoholism.

Competitive Advantages

- Combination of therapeutic benefits of HNO and NSAIDs.
- Alleviated toxicity associated with chronic NSAID use.
- Controlled release of HNO.

Development Stage

- Early-stage.
- Pre-clinical.

Inventors: David A. Wink and Larry K. Keefer (NCI).

Publication

Miranda KM, et al. Comparison of the NO and HNO donating properties of diazeniumdiolates: primary amine adducts release HNO in vivo. J Med Chem. 2005 Dec 29;48(26):8220–8. [PMID 16366603]

Intellectual Property: HHS Reference No. E–019–2010/2—International Patent Application PCT/US2011/029072 filed 18 Mar 2011.

Licensing Contact: Betty B. Tong, Ph.D.; 301–594–6565; *tongb@mail.nih.gov.*

Polyclonal Antibodies for the Specialized Signaling G Protein, Gbeta5

Description of Technology: Researchers at NIDDK have developed polyclonal antibodies against the G protein, Gbeta5. Gbeta5 is a unique and highly specialized G protein that exhibits much less homology than other Gbeta isoforms (~50%) and is preferentially expressed in brain and neuroendocrine tissue. It is expressed prominently in the neuronal cell membrane, as well as in the cytosol and nucleus. Although this distribution pattern suggests that Gbeta5 may shuttle information between classical G protein-signaling elements at the plasma membrane and the cell interior, its function in the brain is largely unknown.

The antibodies were separately generated in rabbits to KLH-conjugates of peptides from the N-terminus of Gbeta5 (antibody ATDG) and the C-terminus of Gbeta5 (antibody SGS). The antibodies can be used for immunoblotting (ATDG, SGS), and immunoprecipitation (ATDG). They can be used to facilitate our understanding of the unique biology and function of Gbeta5 in brain and neurons.

Potential Commercial Applications: These antibodies can be used for research purposes (immunoblotting, immunoprecipitation) by those studying the biology and function of Gbeta5.

Competitive Advantages: Very specific antibodies to study Gbeta5 and G protein signaling.

Development Stage: In vitro data available.

Inventors: William Simonds and Jianhua Zhang (NIDDK).

Publications

1. Zhang JH and Simonds WF. Copurification of brain G-protein beta5 with RGS6 and RGS7. J Neurosci. 2000 Feb 1;20(3):RC59. [PMID 10648734]

2. Zhang JH, et al. Nuclear localization of G protein beta 5 and regulator of G protein signaling 7 in neurons and brain. J Biol Chem. 2001 Mar 30;276(13):10284–9. [PMID 11152459]

3. Zhang S, et al. Selective activation of effector pathways by brain-specific G protein beta5. J Biol Chem. 1996 Dec 27;271(52):33575–9. [PMID 8969224]

4. Zachariou V, et al. An essential role for DeltaFosB in the nucleus accumbens in morphine action. Nat Neurosci. 2006 Feb;9(2):205–11. [PMID 16415864]

Intellectual Property: HHS Reference No. E–192–2006/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Contact: Jaime Greene, M.S.; 301–435–5559; *greenejaime@mail.nih.gov.*

Polyclonal Antibodies for the Gbeta5-Associated Regulator of G Protein Signaling Protein, RGS7

Description of Technology: Researchers at NIDDK have developed polyclonal antibodies against the Regulator of G Protein Signalling (RGS) protein, RGS7. RGS7 binds tightly to Gbeta5, a unique and highly specialized G protein that exhibits much less homology than other Gbeta isoforms (~50%). RGS7 is preferentially expressed in brain and neuroendocrine tissue. Like Gbeta5, RGS7 is expressed prominently in the cell membrane, as well as in the cytosol. Although this distribution pattern suggests that complexes containing Gbeta5 and RGS7 may shuttle information between classical G protein-signaling elements at the plasma membrane and the cell interior, the function of the complex in the brain is largely unknown.

The antibodies were generated in rabbits to a glutathione S-transferase (GST) fusion protein with residues 312–469 of bovine RGS7 (antibody 7RC–1) and react with human and rodent RGS7. The antibodies (7RC–1) can be used for immunoblotting and immunoprecipitation. They can be used to facilitate our understanding of the function of Gbeta5/RGS7 complexes in brain and neurons.

Potential Commercial Applications: These antibodies can be used for research purposes (immunoblotting, immunoprecipitation) by those studying the biology and function of RGS7.

Competitive Advantages: High-titer, multi-epitope antibodies to study RGS7 and RGS7/Gbeta5 complexes and G protein signaling.

Development Stage: In vitro data available.

Inventors: William Simonds and Jianhua Zhang (NIDDK).

Publications

1. Rojkova AM, et al. Ggamma subunit selective G protein beta 5 mutant defines regulators of G protein signaling binding requirement for nuclear localization. J Biol Chem. 2003 Apr 4;278(14):12507–12. [PMID 12551930]

2. Cao Y, et al. Retina Specific GTPase Accelerator RGS11/Gbeta5S/R9AP is a Constitutive Heterotrimer Selectively Targeted to mGluR6 in ON–Bipolar Neurons. J Neurosci 2009 July 22; 29 (29): 9301–13. [PMID 19625520]

3. Anderson GR, et al. Changes in striatal signaling induce remodeling of RGS complexes containing Gbeta5 and R7BP subunits. Mol Cell Biol. 2009 Jun;29(11): 3033–44. [PMID 19332565]

4. Panicker LM, et al. Nuclear localization of the G protein beta5/R7-regulator of G protein signaling protein complex is dependent on R7 binding protein. J

Neurochem. 2010 Jun;113(5):1101–12. [PMID 20100282]

Intellectual Property: HHS Reference No. E–077–2011/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Contact: Jaime Greene, M.S.; 301–435–5559; *greenejaime@mail.nih.gov.*

Dated: July 24, 2012.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2012–18651 Filed 7–30–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Skeletal Pathobiology and Orthopedics.

Date: August 28, 2012.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Yi-Hsin Liu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, 301–435–1781, *liuyh@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: July 25, 2012.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–18650 Filed 7–30–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[Docket No. USCBP–2012–0027]

Advisory Committee on Commercial Operations of Customs and Border Protection (COAC)

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security (DHS).

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The Advisory Committee on Commercial Operations of Customs and Border Protection (COAC) will meet on August 15, 2012, in Seattle, WA. The meeting will be open to the public.

DATES: COAC will meet on Wednesday, August 15, 2012 from 1:00 p.m. to 5:30 p.m. PST. Please note that the meeting may close early if the committee has completed its business.

Registration: If you plan on attending, please register either online at *https://apps.cbp.gov/te_registration/index.asp?w=80* or by email to *tradeevents@dhs.gov,* or by fax to 202–325–4290 by close-of-business on August 12, 2012.

If you have completed an online on-site registration and wish to cancel your registration, you may do so at *https://apps.cbp.gov/te_registration/cancel.asp?w=80.* Please feel free to share this information with interested members of your organizations or associations.

ADDRESSES: The meeting will be held at Jackson Federal Building, 915 2nd Avenue, Seattle, WA 98174, in the South Auditorium—4th Floor. All visitors report to main lobby of the building. All visitors to the Jackson Federal Building must show a state-issued ID or Passport to proceed through the security checkpoint to be admitted to the building.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection at 202–344–1661 as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee as listed in the ''Agenda'' section below.

Comments must be submitted in writing no later than August 8, 2012, and must be identified by USCBP–2012–0027 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: Tradeevents@dhs.gov.* Include the docket number in the subject line of the message.
- *Fax:* 202–325–4290
- *Mail:* Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.5A, Washington, DC 20229.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. Do not submit personal information to this docket.

Docket: For access to the docket to read background documents or comments received by the COAC, go to *http://www.regulations.gov.*

There will be two public comment periods held during the meeting on August 15, 2012. Speakers are requested to limit their comments to two (2) minutes or less to facilitate greater participation. Contact the individual listed below to register as a speaker. Please note that the public comment period for speakers may end before the time indicated on the schedule that is posted on the CBP web page at the time of the meeting.

FOR FURTHER INFORMATION CONTACT: Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.5A, Washington, DC 20229; telephone 202–344–1440; facsimile 202–325–4290.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act,* 5 U.S.C. App. (Pub. L. 92–463). The COAC provides advice to the Secretary of Homeland Security, the Secretary of the Treasury, and the Commissioner of U.S. Customs and Border Protection (CBP) on matters pertaining to the commercial operations of CBP and related functions within DHS or the Department of the Treasury.

Agenda

The COAC will hear from the following subcommittees on the topics listed below and then will review, deliberate, and formulate

recommendations on how to proceed on those topics:

• The work of ACE Strategic Communications Working Group and how CBP should proceed in communicating with the trade community as the agency shifts from the Automated Commercial System (ACS) when ACE becomes fully functional.

• The work of the Trade Facilitation Subcommittee: Recommendations and resolutions on CBP's Trade Transformation initiatives, report of findings from the COAC Industry Survey regarding the expected benefits of the Centers of Excellence and Expertise and recommendations on next steps based on Survey results, and conclusions from the Instruments of International Trade (IITs) Residue Work Group on its study of the various concerns regarding establishing a test on the manifesting and entry of ITTs containing residue with no commercial value.

Prior to the COAC taking action on any of these topics of the above-mentioned subcommittees, members of the public will have an opportunity to provide oral or written comments.

The COAC will also receive an update and discuss the following initiatives and subcommittee topics that were discussed at its May 22, 2012 meeting:

• The National Strategy for Global Supply Chain Security as it relates to an effort to solicit, consolidate, and provide to DHS sector and stakeholder input on implementation of the National Strategy.

• The Air Cargo Security Subcommittee work on the Air Cargo Advance Screening (ACAS) pilot, providing feedback on international outreach efforts and Input on a list of Frequently Asked Questions (FAQs).

• The Bond Subcommittee work on proposed modifications to the CBP Form 5106 (Importer Identification Input Record); input on single transaction bonds (STBs) centralization; liquidated damages/mitigation guidelines and the use of STBs when additional security is merited.

• The Intellectual Property Rights Enforcement Subcommittee work on providing CBP guidance on new tools to be used in the port of entry to help identify counterfeit products, the distribution chain management and serialization pilot projects, and modifications to the CBP recordation database of federally registered trademarks, trade names, and copyrights.

• The Anti-Dumping/Countervailing Duties Subcommittee: Updates and observations from the trade community regarding CBP's recent implementation of policy regarding use of single transaction bonds (STBs) as an enforcement tool, update on CBP's efforts to work with various industries on obtaining trade intelligence and subcommittee feedback on CBP's Draft 5 year Anti-Dumping/Countervailing Duties Enforcement Strategy.

• The Land Border Security Subcommittee: Updates and observations on the Customs—Trade Partnership Against Terrorism (C–TPAT) Program Internet survey and the National Strategy for Global Supply Chain Security to include CBP Trusted Trader programs and Beyond the Border initiatives.

• The One U.S. Government at the Border Subcommittee: Updates on discussions regarding Trusted Trader Partnership Programs.

• The work of the Role of the Broker Subcommittee: Receive subcommittee feedback on CBP's efforts to update 19 CFR Part 111 (Broker Regulations).

• The formation of an Export subcommittee; review of subcommittee scope and goals.

Dated: July 26, 2012.

Maria Luisa O'Connell,

Senior Advisor for Trade, Office of Trade Relations.

[FR Doc. 2012–18631 Filed 7–30–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5603–N–53]

Continuum of Care Homeless Assistance Grant Application; Continuum of Care Application

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Pre-established communities, called Continuums of Care (CoC), will complete the Exhibit 1 of the Continuum of Care Homeless Assistance application which collects data about the CoC's strategic planning activities, performance, homeless populations, and data collection methods. This information will be scored using the rating factors listed in the NOFA to determine CoC rank and level of new and renewal funding. State and local governments, public housing authorities and nonprofit organizations will concurrently submit project proposals electronically. The information will be used for grantee selection and monitoring the administration of funds. Response to this request for information is required in order to receive the benefits to be derived.

DATES: *Comments Due Date:* August 30, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2506–0112) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov.* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (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 collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice Also Lists the Following Information

Title *of Proposal:* Continuum of Care Homeless Assistance Grant Application—Continuum of Care Application.

OMB Approval Number: 2506–0112.

Form Numbers: HUD–27300, HUD–2880, HUD–96010, HUD–92041, HUD–2991 .

Description of the Need for the Information and Its Propose

Pre-established communities, called Continuums of Care (CoC), will complete the Exhibit 1 of the Continuum of Care Homeless Assistance application which collects data about the CoC's strategic planning activities, performance, homeless populations, and data collection methods. This information will be scored using the rating factors listed in the NOFA to determine CoC rank and level of new and renewal funding. State and local governments, public housing authorities and nonprofit organizations will concurrently submit project proposals electronically. The information will be used for grantee selection and monitoring the administration of funds. Response to this request for information is required in order to receive the benefits to be derived.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	10,510	2.178		8.070		184,812

Total Estimated Burden Hours: 184,812.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 25, 2012.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2012–18527 Filed 7–30–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–ES–2012–0032; FXES111505000000Z–123–FF05E00000]

Draft Environmental Assessment, Habitat Conservation Plan, and Application for an Incidental Take Permit for Indiana Bat, Criterion Power Partners, LLC

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability, receipt of application.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from Criterion Power Partners, LLC (CPP) for an incidental take permit under the Endangered Species Act of 1973, as amended (ESA). We are considering issuing a 21-year permit to the applicant that would authorize take of the federally endangered Indiana bat incidental to otherwise lawful activities associated with operation, maintenance, and decommissioning of a 28-turbine wind farm. Pursuant to the ESA and the National Environmental Policy Act, we announce the availability of CPP's incidental take permit application and draft habitat conservation plan, as well as the Service's draft environmental assessment (EA), for public review and comment. We provide this notice to seek comments from the public and Federal, Tribal, State, and local governments.

DATES: We will accept comments received or postmarked on or before October 1, 2012. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES: Written comments may be submitted electronically via the Federal eRulemaking Portal: *http://www.regulations.gov* or by hard copy to: Public Comments Processing, Attn: FWS–R5–ES–2012–0032; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203. The docket number for this notice is FWS–R5–ES–2012–0032.

FOR FURTHER INFORMATION CONTACT: Julie Slacum, U.S. Fish and Wildlife Service, Chesapeake Bay Field Office, 177 Admiral Cochrane Drive, Annapolis, MD, (410) 573–4595.

SUPPLEMENTARY INFORMATION: We received an application from CPP for an incidental take permit to take the federally endangered Indiana bat (*Myotis sodalis*) over 21 years during operations, maintenance, and decommissioning activities related to CPP's 28-turbine wind farm. A conservation program to minimize and mitigate for the impacts of the incidental take would be implemented by CPP as described in the draft Criterion Wind Indiana Bat Habitat Conservation Plan (HCP).

To comply with the National Environmental Policy Act (42 U.S.C. 4321 et seq.; NEPA), we prepared a draft EA that describes the proposed action and possible alternatives and analyzes the effects of alternatives on the human environment. The Service will evaluate whether the proposed action, issuance of an incidental take permit to CPP, and analyses in this draft EA are adequate to support a Finding of No Significant Impact.

Availability of Documents

You may obtain copies of the proposed HCP and draft EA on the internet at the Chesapeake Bay Field Office's Web site at: *http://www.fws.gov/chesapeakebay/or* at *http://www.regulations.gov* at Docket Number FWS–R5–ES–2012–0032. Copies of the proposed HCP and draft EA will also be available for public review during regular business hours at the Chesapeake Bay Field Office, 177 Admiral Cochrane Drive, Annapolis, MD. Those who do not have access to the internet or cannot visit our office can request copies by telephone at (410) 573–4599, or by letter to the Chesapeake Bay Field Office.

Background

Section 9 of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations prohibit the ''take'' of animal species listed as endangered or threatened. Take is defined under the ESA as to ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or to attempt to engage in such conduct'' (16 U.S.C. 1538). However, under section 10(a) of the ESA, we may issue permits to authorize incidental take of listed species. ''Incidental take'' is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species, respectively, are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32.

CPP is seeking a permit for the incidental take of Indiana bat for a term of 21 years. Incidental take of this species may occur due to operation, maintenance, and decommissioning of 28 wind turbines. The proposed conservation strategy in the applicant's proposed HCP is designed to avoid,

minimize, and mitigate the impacts of covered activities on the covered species. The biological goals and objectives are to minimize potential take of Indiana bats through onsite minimization measures and to provide habitat conservation measures for Indiana bats to offset any unavoidable impacts to the species during operations of the project.

The HCP provides onsite avoidance and minimization measures, which include turbine operational adjustments, project maintenance procedures, and decommissioning measures. The estimated level of Indiana bat take from the project is 14 Indiana bats over the 21-year project duration. In order to provide maximum conservation benefit to the Indiana bat, CPP will provide funding for an offsite Indiana bat habitat conservation project designed to mitigate the impacts of the incidental take of Indiana bat. CPP intends to provide funding for implementation of a hibernacula acquisition or gating project within the Appalachian Mountain Recovery Unit.

The proposed action consists of the issuance of an incidental take permit and implementation of the proposed HCP. CPP considered two alternatives to the proposed action in its HCP: No action (i.e., operation of the project without an incidental take permit and without onsite or offsite avoidance, minimization, or mitigation of Indiana bat impacts); and operation of the project with an incidental take permit with complete onsite operational curtailment to avoid or minimize Indiana bat impacts only, and no offsite recovery-plan-based mitigation measures. CPP has also negotiated a draft implementation agreement (IA) with the Service that ensures proper implementation of each of the terms and conditions of the HCP and describes the applicable remedies and recourse should any party fail to perform its obligations, responsibilities, and tasks, as set forth in the agreement. The draft IA is being included with the proposed HCP for public review.

National Environmental Policy Act

In compliance with the NEPA, we analyzed the impacts of implementing the HCP, issuance of the permit, and a reasonable range of alternatives. Based on this analysis and any new information resulting from public comment on the proposed action, we will determine if there are any significant impacts or effects caused by issuing the incidental take permit. We have prepared a draft EA on this proposed action and have made it available for public inspection online or in person at the Chesapeake Bay Field Office (see Availability of Documents).

NEPA requires that a range of reasonable alternatives to the proposed action be described. The draft EA analyzes four alternatives that were derived from discussions with CPP during the development of the HCP. We evaluated a no action alternative (do not issue a permit, status quo), the proposed action (issue the permit and implement the HCP), a full minimization alternative (no need for a permit), and a reduced permit duration alternative.

Next Steps

We will evaluate the plan and comments we receive to determine whether the permit application meets the requirements of section 10(a) of the ESA (16 U.S.C. 1531 *et seq.*). We will also evaluate whether issuance of a section 10(a)(1)(B) permit would comply with section 7 of the ESA by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether to issue a permit. If the requirements are met, we will issue the permit to the applicant.

Public Comments

The Service invites the public to comment on the proposed HCP and draft EA during a 60-day public comment period (see **DATES**). You may submit written comments by one of the following methods:

Electronically: Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R5–ES–2012–0032, which is the docket number for this notice. Then, on the left side of the screen, under the Document Type heading, click on the Notices link to locate this document and submit a comment.

By hard copy: Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R5–ES–2012–0032; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will post all public comments and information received electronically or via hardcopy on *http://www.regulations.gov.* All comments received, including names and addresses, will become part of the administrative record and will be available to the public. 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—will be publicly available. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Authority

This notice is provided pursuant to section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Dated: July 12, 2012.

Deborah Rocque,

Acting Regional Director, Northeast Region.

[FR Doc. 2012–18633 Filed 7–30–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2012–N174; FXES11130100000F5–123–FF01E00000]

Endangered and Threatened Wildlife and Plants; Recovery Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following application for a recovery permit to conduct enhancement of survival activities with endangered species. The Endangered Species Act of 1973, as amended (Act), prohibits certain activities with endangered species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing such permits.

DATES: To ensure consideration, please send your written comments by August 30, 2012.

ADDRESSES: Endangered Species Program Manager, Ecological Services, U.S. Fish and Wildlife Service, Pacific Regional Office, 911 NE 11th Avenue, Portland, OR 97232–4181. Please refer to the permit number for the application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Colleen Henson, Fish and Wildlife Biologist, at the above address or by telephone (503–231–6131) or fax (503–231–6243).

SUPPLEMENTARY INFORMATION:

Background

The Act (16 U.S.C. 1531 *et seq.*) prohibits certain activities with endangered and threatened species

unless a Federal permit allows such activity. Along with our implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR 17, the Act provides for certain permits, and requires that we invite public comment before issuing these permits.

A permit granted by us under section 10(a)(1)(A) of the Act authorizes the permittee to conduct activities (including take or interstate commerce) with U.S. endangered or threatened species for scientific purposes or to enhance the propagation or survival of the affected species. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Application Available for Review and Comment

We invite local, State, and Federal agencies, and the public to comment on the following application. Please refer to the appropriate permit number for the application when submitting comments.

Documents and other information submitted with this application are available for review by request from the Endangered Species Program Manager at the address listed in the **ADDRESSES** section of this notice, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552).

Permit Number: TE–77991A

Applicant: Susan Cordell, USDA Forest Service, Hilo, Hawaii

The applicant requests a permit to remove and reduce to possession (collection of seeds and cuttings) *Stenogyne angustifolia* (no common name) and to remove and reduce to possession (collection of seeds) *Colubrina oppositifolia* (kauila), *Haplostachys haplostachya* (honohono), *Pleomele hawaiiensis* (halapepe), *Portulaca sclerocarpa* (ihi makole), *Silene lanceolata* (lanceolate catchfly), *Spermolepis hawaiiensis* (Hawaiian spermolepis), *Stenogyne angustifolia* (narrowleaf stenogyne), and *Zanthoxylum hawaiiense* (ae) for the purpose of enhancing their survival.

Public Availability of Comments

All comments and materials we receive in response to this request will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

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

Authority: We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*)

Dated: July 23, 2012.

Hugh Morrison.

Acting, Regional Director, Pacific Region, U.S. Fish and Wildlife Service.

[FR Doc. 2012–18629 Filed 7–30–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–FHC–2012–N176; FXFR1334088TWG0W4–123–FF08EACT00]

Trinity Adaptive Management Working Group

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Trinity Adaptive Management Working Group (TAMWG) affords stakeholders the opportunity to give policy, management, and technical input concerning Trinity River (California) restoration efforts to the Trinity Management Council (TMC). The TMC interprets and recommends policy, coordinates and reviews management actions, and provides organizational budget oversight. This notice announces a joint TAMWG and TMC meeting, which is open to the public.

DATES: TAMWG and TMC will meet from 9 a.m. to 4:30 p.m. on Monday, August 20, 2012.

ADDRESSES: The morning portion of the meeting will take place at the North Fork Grange Hall, Dutch Creek Road, Junction City, CA 96048. The group will then have lunch and resume the meeting at the Strawhouse Resort, 31301 Hwy 299, Big Flat, CA 96048.

FOR FURTHER INFORMATION CONTACT: *Meeting Information:* Nancy J. Finley, U.S. Fish and Wildlife Service, 1655 Heindon Road, Arcata, CA 95521; telephone: (707) 822–7201. *Trinity River Restoration Program (TRRP) Information:* Robin Schrock, Executive Director, Trinity River Restoration Program, P.O. Box 1300, 1313 South Main Street, Weaverville, CA 96093; telephone: (530) 623–1800; email: *rschrock@usbr.gov.*

SUPPLEMENTARY INFORMATION: Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), this notice announces a joint meeting of the TAMWG and TMC. The meeting will include discussion of the following topics:

- United States Bureau of Reclamation and Rehabilitation Implementation Group update on project activities;
- Discussion of how the project was improved based on partner input;
- Discussion of project implementation challenges based on flow constraints;
- USBR RIG staff demonstration of restoration features;
- FWS staff discussion of monitoring and benefits of restoration features;
- TAMWG and TMC discussion of observations from restoration site visits;
- TAMWG and TMC identification of priority outreach/public relations;
- TAMWG,TMC, and TRRP definition of roles and responsibilities; and
- Discussion of 2013 plan to expand outreach efforts.

Completion of the agenda is dependent on the amount of time each item takes. The meeting could end early if the agenda has been completed.

Dated: July 25, 2012.

Kathleen Brubaker,

Supervisory Fish and Wildlife Biologist, Arcata Fish and Wildlife Office, Arcata, CA.

[FR Doc. 2012–18638 Filed 7–30–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Renewal of Agency Information Collection for Class III Gaming; Tribal Revenue Allocation Plans; Gaming on Trust Lands

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Acting Assistant Secretary—Indian Affairs is seeking comments on the renewal of Office of Management and Budget (OMB) approval for the collection of information for Class III Gaming Procedures authorized by OMB Control Number 1076–0149, Tribal Revenue Allocation Plans authorized by OMB Control Number 1076–0152, and Gaming on Trust Lands Acquired After October 17, 1988 authorized by OMB Control Number 1076–0158. These

information collections expire November 30, 2012.

DATES: Submit comments on or before October 1, 2012.

ADDRESSES: You may submit comments on the information collection to Paula Hart, U.S. Department of the Interior, Office of Indian Gaming, 1849 C Street, NW., Mail Stop 3657, Washington, DC 20240; email: *Paula.Hart@BIA.gov*.

FOR FURTHER INFORMATION CONTACT: Paula Hart, 202–219–4066.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Acting Assistant Secretary—Indian Affairs is seeking comments on the Class III Gaming Procedures, Tribal Revenue Allocation Plans, and Gaming on Trust Lands Acquired After October 17, 1988, as we prepare to renew these collections are required by the Paperwork Reduction Act of 1995. This information is necessary for the Office of Indian Gaming, to ensure that the applicable requirements for IGRA, 25 U.S.C. 2701 et seq., are met with regard to Class III gaming procedures, tribal revenue allocation plans, and applications for gaming on trust lands acquired after October 17, 1988.

II. Request for Comments

The Bureau of Indian Affairs (BIA) requests your comments on this collection concerning: (a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) Ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) Ways we could minimize the burden of the collection of the information on the respondents.

Please note that an agency may not conduct or sponsor, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section. 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.

III. Data

OMB Control Number: 1076–0149.

Title: Class III Gaming Procedures, 25 CFR Part 291.

Brief Description of Collection: The collection of information will ensure that the provisions of IGRA and other applicable requirements are met when federally recognized tribes submit Class III procedures for review and approval by the Secretary of the Interior. Sections 291.4, 291.10, 291.12 and 291.15 of 25 CFR Part 291, Class III Gaming Procedures, specify the information collection requirement. An Indian tribe must ask the Secretary to issue Class III gaming procedures. The information to be collected includes: the name of the tribe, the name of the State, tribal documents, State documents, regulatory schemes, the proposed procedures, and other documents deemed necessary.

Type of Review: Extension without change of currently approved collection.

Respondents: Federally recognized Indian tribes.

Number of Respondents: 12.

Estimated Time per Response: 320 hours.

Estimated Total Annual Hour Burden: 3,840 hours.

* * * * *

OMB Control Number: 1076–0152.

Title: Tribal Revenue Allocation Plans, 25 CFR Part 290.

Brief Description of Collection: An Indian tribe must ask the Secretary to approve a tribal revenue allocation plan. In order for Indian tribes to distribute net gaming revenues in the form of per capita payments, information is needed by the BIA to ensure that tribal revenue allocation plans include (1) Assurances that certain statutory requirements are met, (2) a breakdown of the specific used to which net gaming revenues will be allocated, (3) eligibility requirements for participation, (4) tax liability notification, and (5) the assurance of the protection and preservation of the per capita share of minors and legal incompetents. Sections 290.12, 290.17, 290.24 and 290.26 of 25 CFR Part 290, Tribal Revenue Allocation Plans, specify the information collection requirement. The information to be collected includes: the name of the tribe, tribal documents, the allocation plan, and other documents deemed necessary.

Type of Review: Extension without change of currently approved collection.

Respondents: Federally recognized Indian tribes.

Number of Respondents: 20.

Estimated Time per Response: 100 hours.

Estimated Total Annual Hour Burden: 2,000 hours.

OMB Control Number: 1076–0158.

Title: Gaming on Trust Lands Acquired After October 17, 1988, 25 CFR part 292.

Brief Description of Collection: The collection of information will ensure that the provisions of IGRA, Federal law, and the trust obligations of the United States are met when federally recognized tribes submit an application under 25 CFR Part 292. The applications covered by this OMB Control No. are those seeking a secretarial determination that a gaming establishment on land acquired in trust after October 17, 1988 would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surround community.

Type of Review: Extension without change of currently approved collection.

Respondents: Federally recognized Indian tribes.

Number of Respondents: 2.

Estimated Time per Response: 1,000 hours.

Frequency of Response: Once.

Estimated Total Annual Burden: 2,000 hours.

Estimated Total Annual Hour Burden: $0.

Dated: July 17, 2012.

Alvin Foster,

Assistant Director for Information Resources.

[FR Doc. 2012–18682 Filed 7–30–12; 8:45 am]

BILLING CODE 4310–4M–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal—State Class III Gaming Compact.

SUMMARY: This notice publishes an extension of Gaming between the Oglala Sioux Tribe and the State of South Dakota.

DATES: *Effective Date:* July 31, 2012.

FOR FURTHER INFORMATION CONTACT: Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the

Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. This amendment allows for the extension of the current Tribal-State Compact until December 31, 2012.

Dated: July 24, 2012.

Donald E. Laverdure,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 2012–18676 Filed 7–30–12; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM940000.L1420000.BJ0000]

Notice of Filing of Plats of Survey, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of Plats of Survey.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, thirty (30) calendar days from the date of this publication.

FOR FURTHER INFORMATION CONTACT: These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, 301 Dinosaur Trail, Santa Fe, New Mexico. Copies may be obtained from this office upon payment. Contact Marcella Montoya at 505–954–2097, or by email at *mmontoya@blm.gov,* for assistance. 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.

SUPPLEMENTARY INFORMATION:

Indian Meridian, Oklahoma (OK)

The plat, representing the dependent resurvey and survey in Township 24 North, Range 5 East, of the Indian Meridian, accepted June 4, 2012, for Group 212 OK.

New Mexico Principal Meridian, New Mexico (NM)

The plat, in two sheets, representing the dependent resurvey and survey, in Township 15 North, Range 18 West, of the New Mexico Principal Meridian, accepted June 28, 2012, for Group 1124 NM.

The plat, representing the corrective dependent resurvey in Township 14 North, Range 18 West, of the New Mexico Principal Meridian, accepted June 28, 2012, for Group 1124 NM.

The plat, representing the dependent resurvey and survey for the San Ysidro Grant, of the New Mexico Principal Meridian, accepted June 28, 2012, for Group 1098 NM.

These plats are scheduled for official filing 30 days from the notice of publication in the **Federal Register**, as provided for in the BLM Manual Section 2097—Opening Orders. Notice from this office will be provided as to the date of said publication. If a protest against a survey, in accordance with 43 CFR 4.450–2, of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the Bureau of Land Management New Mexico State Director stating that they wish to protest.

A statement of reasons for a protest may be filed with the Notice of protest to the State Director or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

Robert A. Casias,

Deputy State Director, Cadastral Survey/ GeoSciences.

[FR Doc. 2012–18643 Filed 7–30–12; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–DPOL–10890; 0004–SYP]

Notice of August 16, 2012, Teleconference Meeting of the National Park System Advisory Board

AGENCY: National Park Service, Interior.

ACTION: Meeting Notice.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix, that the National Park System Advisory Board will conduct a teleconference meeting on August 16, 2012. Members of the public may attend the meeting in person in Washington, DC.

DATES: The teleconference meeting will be held on August 16, 2012, from 2:00 p.m., to 3:30 p.m., Eastern Daylight Time, inclusive.

ADDRESSES: The teleconference meeting will be conducted in Meeting Room C of the American Geophysical Union, 2000 Florida Avenue NW., Washington, DC 20009, telephone (202) 462–6900.

Agenda: During this teleconference, the Board will deliberate the report of its Science Committee and make recommendations to the Director of the National Park Service. The Board also will consider the content and format for its year-end report.

FOR FURTHER INFORMATION CONTACT: For information concerning the National Park System Advisory Board or to request to address the Board, contact Shirley Sears Smith, National Park Service, 1201 I Street NW., 12th Floor, Washington, DC 20005, telephone (202) 354–3955, email *shirley_s_smith@nps.gov.*

SUPPLEMENTARY INFORMATION: Due to the limited scope of this meeting, the National Park Service has determined that a teleconference will be the most efficient way to convene the Board members. The Board meeting will be open to the public in the same way that other Board meetings have been open to the public. Space and facilities to accommodate the public are limited and attendees will be accommodated on a first-come basis. Opportunities for oral comment will be limited to no more than 3 minutes per speaker and no more than 15 minutes total. The Board's Chairman will determine how time for oral comments will be allotted. Anyone may file with the Board a written statement concerning matters to be discussed. Before including your address, telephone 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.

Draft minutes of the meeting will be available for public inspection about 12 weeks after the meeting in the 12th floor conference room at 1201 I Street NW., Washington, DC.

Dated: July 25, 2012.

Alma Ripps,

Acting Chief, Office of Policy.

[FR Doc. 2012–18580 Filed 7–30–12; 8:45 am]

BILLING CODE 4310–EE–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–10821; 2200–3200–665]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before July 6, 2012. Pursuant to § 60.13 of 36 CFR Part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by August 15, 2012. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: July 11, 2012

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

ALABAMA

Madison County

Five Points Historic District, Roughly Beirne, Clinton, Eustis, Grayson, McCullough, Pratt, Randolph, Russell, Ward, Wellman, & Wells Aves., Huntsville, 12000522

Maple Hill Cemetery, 203 Maple Hill Dr., Huntsville, 12000523

MINNESOTA

Stearns County

St. Cloud Veterans Administration Hospital Historic District, (United States Second Generation Veterans Hospitals MPS) 4801 Veterans Dr., St. Cloud, 12000524

MISSOURI

Jackson County

85th and Manchester ''Three Trails'' Trail Segment, (Santa Fe Trail MPS) NW. corner of 85th & Manchester, Kansas City, 12000525

New Santa Fe ''Three Trails'' Trail Swales, (Santa Fe Trail MPS) W. Santa Fe Trail, ½ blk. W. of jct. with Madison Ave., Kansas City, 12000526

NEW JERSEY

Burlington County

White Hill Mansion, 217 4th St., Fieldsboro, 12000527

Mercer County

Roebling's, John A., Sons Company, Trenton, N.J., Block 3, Bounded by Hamilton Ave., Clark, Elmer, & E. Canal Sts., Trenton, 12000528

Monmouth County

Towers, The, 27 Prospect Cir., Atlantic Highlands, 12000529

Morris County

Mount Hope Miners' Church, Mount Hope Rd., Rockaway, 12000530

NEW YORK

Broome County

Ansco Company Charles Street Factory Buildings, (Industrial Resources of Broome County, New York MPS) 15 & 17 Charles, & 219 Clinton Sts., Binghamton, 12000531

General Cigar Company—Ansco Camera Factory Building, (Industrial Resources of Broome County, New York MPS) 16 Emma St., Binghamton, 12000532

Essex County

Talichito, Nesa Rd., Schroon Lake, 12000533

Kings County

Loew's Kings Theatre, 1027 Flatbush Ave., Brooklyn, 12000534

Westchester County

Hartsdale Pet Cemetery, 75 N. Central Park Ave., Greenburgh, 12000535

SOUTH DAKOTA

Yankton County

House of Gurney Historic District, 106, 109, & 110 Capital St., Yankton, 12000536

VIRGINIA

Arlington County

Georgetown Pike, From DC/VA boundary at Chain Bridge to jct. with Leesburg Pike at Seneca Rd., Arlington, 12000537

Augusta County

Mt. Airy, Access Rd. off of Technology Dr., Verona, 12000538

Fairfax County

Sydenstricker School, 8511 Hooes Rd., Springfield, 12000539

Fluvanna County

Seay's Chapel Methodist Church, 4916 Shores Rd., Palmyra, 12000540

Loudoun County

Furr Farm, 40590 Snickersville Tnpk., Aldie, 12000541

Lynchburg Independent city, Armstrong Elementary School, 1721 Monsview Pl., Lynchburg (Independent City), 12000542

Mathews County

Riverlawn, 134 Williamsdale Ln., Mathews, 12000543

Middlesex County

F.D. CROCKETT (log deck boat), 287 Jackson Creek Rd., Deltaville, 12000544

Richmond Independent city, Armitage Manufacturing Company, 3200 Williamsburg Ave., Richmond (Independent City), 12000545

Southern Biscuit Company, 900 Terminal Pl., Richmond (Independent City), 12000546

Virginia Beach Independent city, Briarwood, 1500 Southwick Rd., Virginia Beach (Independent City), 12000547

A request for removal has been made for the following resources:

PENNSYLVANIA

Bradford County

Bridge in Athens Township, (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation MPS) LR 08081 over Susquehanna River, Athens, 88000821

Bucks County

Fretz Farm, Almshouse Rd. and PA 611 (Doylestown Township) Doylestown, 85000459

[FR Doc. 2012–18576 Filed 7–30–12; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–753]

Certain Semiconductor Chips and Products Containing Same; Termination of the Investigation With a Finding of No Violation of Section 337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to terminate the above-captioned investigation with a finding of no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2532. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission

may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on January 4, 2011, based on a complaint filed by Rambus Inc. of Sunnyvale, California (''Rambus''), alleging a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain semiconductor chips and products containing the same. 76 FR 384 (Jan. 4, 2011). The complaint alleged the infringement of various claims of patents including U.S. Patent Nos. 6,470,405; 6,591,353; 7,287,109 (collectively, ''the Barth patents''); and Nos. 7,602,857; and 7,715,494 (collectively, ''the Dally patents''). The Barth patents share a common specification, as do the Dally patents. The notice of investigation named as respondents Freescale Semiconductor of Austin, Texas (''Freescale''); Broadcom Corp. of Irvine, California (''Broadcom''); LSI Corporation of Milpitas, California (''LSI''); Mediatek Inc. of Hsin-Chu, Taiwan (''Mediatek''); NVIDIA Corp. of Santa Clara, California (''NVIDIA''); STMicroelectronics N.V. of Geneva, Switzerland; and STMicroelectronics Inc. of Carrollton, Texas (collectively, ''STMicro''), as well as approximately twenty customers of one or more of these respondents.

The investigation has since been terminated against many of the respondents on the basis of Rambus's settlements with Broadcom, Freescale, MediaTek, and NVIDIA.

LSI and STMicro are the only two manufacturer respondents remaining. With them as respondents are their customers Asustek Computer, Inc. and Asus Computer International, Inc.; Cisco Systems, Inc.; Garmin International Inc.; Hewlett-Packard Company; Hitachi Global Storage Technologies; and Seagate Technology.

On March 2, 2012, the ALJ issued the final ID. The ID found no violation of section 337 for several reasons. All of the asserted claims were found to be invalid or obvious in view of the prior art under 35 U.S.C. 102 or 103. The Barth patents were found to be unenforceable under the doctrine of unclean hands by virtue of Rambus's destruction of documents. The ID also found that Rambus had exhausted its rights under the Barth patents as to certain products of one respondent. The ID found that all of the asserted patent claims were infringed, and rejected numerous affirmative defenses raised by the respondents.

On March 19, 2012, Rambus, the respondents and the Commission investigative attorney (''IA'') each filed a petition for review of the ID. On March 27, 2012, these parties each filed a response to the others' petitions.

On May 3, 2012, the Commission determined to review the ID in its entirety. 77 FR 27,249 (May 9, 2012). The notice of review asked the parties to brief certain questions.

Having examined the record of this investigation, including the ALJ's final ID, the petitions for review and the responses thereto, and the briefing in response to the notice of review, the Commission has determined to terminate the investigation with a finding of no violation of section 337.

The Commission has determined to find no violation of section 337 for the following reasons: We affirm the ALJ's conclusion that all of the asserted patent claims are invalid under 35 U.S.C. 102 or 103, except for the asserted Dally multiple-transmitter claims ('857 claims 11–13, 32–34, 50–52), for which we find that Rambus has not demonstrated infringement. We reverse the ALJ's determination that Rambus has demonstrated the existence of a domestic industry under 19 U.S.C. 1337(a) for both the Barth patents and Dally patents. We affirm the ALJ's determination that the Barth patents are unenforceable under the doctrine of unclean hands. We affirm the ALJ's finding of exhaustion of the Barth patents as to one respondent. The Commission's determinations, including non-dispositive findings not recited above, will be set forth more fully in the Commission's opinion.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.21, 210.42–46 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.21, 210.42–46 and 210.50).

By order of the Commission.

Issued: July 25, 2012.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–18591 Filed 7–30–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–789]

Certain Digital Televisions and Components Thereof; Determination Not to Review Initial Determinations Terminating the Investigation as to Three Respondents; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review initial determinations (''IDs'') (Order Nos. 69, 70, and 71) granting joint motions to terminate the above-captioned investigation with respect to three respondents on the basis of settlement agreements. The investigation is terminated in its entirety.

FOR FURTHER INFORMATION CONTACT: Jia Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–4737. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on July 19, 2011, based on a complaint filed by Vizio Inc. of Irvine, California (''Vizio''). 76 FR 42728–29 (July 19, 2011). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain digital televisions and components thereof by reason of infringement of certain claims of United States Patent Nos. 5,511,096; 5,621,761; 5,703,887; 5,745,522; and 5,511,082. The notice of investigation named the

following respondents: Coby Electronics Corp. (''Coby'') of Lake Success, NY; Curtis International LTD (''Curtis'') of Ontario, Canada; E&S International Enterprises, Inc. of Van Nuys, CA; MStar Semiconductor, Inc. of ChuPei Hsinchu Hsien, Taiwan; On Corp US, Inc. of San Diego, California; Renesas Electronics Corporation of Kanagawa, Japan, Renesas Electronics America, Inc. of Santa Clara, California; Sceptre Inc. (''Sceptre'') of City of Industry, California; and Westinghouse Digital, LLC of Orange, California. All respondents except for Coby, Curtis, and Sceptre have been terminated from the investigation.

On June 11, 2012, Vizio and respondent Sceptre filed a joint motion under Commission Rule 210.21(a)(2) to terminate the investigation on the basis of a settlement agreement that resolves their litigation. On the same day, Vizio and respondent Coby filed a joint motion under Commission Rule 210.21(a)(2) to terminate the investigation on the basis of a settlement agreement that resolves their litigation. On June 12, 2012, Vizio and Curtis filed a joint motion under Commission Rule 210.21(a)(2) to terminate the investigation on the basis of a settlement agreement that resolves their litigation. Public and confidential versions of the agreements were attached to the motions. The motions stated that there are no other agreements, written or oral, express or implied, between the parties concerning the subject matter of this investigation. The Commission investigative attorney supported the motions. On June 25, 2012, the ALJ issued Order No. 69 granting the joint motion filed by Vizio and Sceptre. On the same day, the ALJ issued Order No. 70 granting the joint motion filed by Vizio and Coby. On June 26, 2012, the ALJ issued Order No. 71 granting the joint motion filed by Vizio and Curtis and terminating the investigation in its entirety. The ALJ found that no extraordinary circumstances exist that would prevent the requested terminations and that the motions fully comply with Commission Rule 210.21. No petitions for review were received.

The Commission has determined not to review the subject IDs. The investigation is terminated in its entirety.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Part 210 of the Commission's Rules of Practice and Procedure (19 CFR Part 210).

By order of the Commission.

Issued: July 25, 2012.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–18597 Filed 7–30–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 337–TA–741/749]

Certain Liquid Crystal Display Devices, Including Monitors, Televisions, Modules, and Components Thereof; Commission Determination Not To Review an Initial Determination Terminating the Investigation as to U.S. Patent No. 6,121,941; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review initial determinations (''ID'') (Order No. 31) granting a joint motion to terminate the above-captioned investigation with respect to U.S. Patent No. 6,121,941. The investigation is terminated in its entirety.

FOR FURTHER INFORMATION CONTACT: Jia Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–4737. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted Inv. No. 337–TA–741 on October 18, 2010, based on a complaint filed by Thomson Licensing SAS of France and Thomson Licensing LLC of Princeton, New Jersey (collectively ''Thomson''). 75 FR. 63856 (Oct. 18, 2010). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended 19 U.S.C. 1337, by reason of infringement of various claims of United States Patent Nos. 6,121,941 (''the '941 patent''); 5,978,063 (''the '063 patent''); 5,648,674 (''the '674 patent''); 5,621,556 (''the '556 patent''); and 5,375,006 (''the '006 patent''). The Commission instituted Inv. No. 337–TA–749 on November 30, 2010, based on a complaint filed by Thomson. 75 FR 74080 (Nov. 30, 2010). The complaint alleged violations of section 337 of the Tariff Act of 1930 by reason of infringement of various claims of the '063, '556, and '006 patents. On January 5, 2011, the Commission consolidated the two investigations. The respondents are Chimei InnoLux Corporation of Taiwan and InnoLux Corportation of Austin, Texas (collectively, ''CMI''); MStar Semiconductor Inc. of Taiwan (''MStar''); Qisda Corporation of Taiwan and Qisda America Corporation of Irvine, California (collectively, ''Qisda''); BenQ Corporation of Taiwan, BenQ America Corporation of Irvine, California, and BenQ Latin America Corporation of Miami, Florida (collectively ''BenQ''); Realtek Semicondustor Corp. of Taiwan (''Realtek''); and AU Optronics Corp. of Taiwan and AU Optronics Corp. America of Houston, Texas.

On January 12, 2012, the ALJ issued his final ID finding no violation with respect to the '941, '063, '556, and '006 patents and a violation with respect to the '674 patent. On June 14, 2012, the Commission affirmed the ALJ's finding of no violation with respect to the '063, '556, and '006 patents. 77 FR 47067 (June 20, 2012). The Commission reversed the ALJ's finding of violation with respect to the '674 patent and remanded the investigation to the ALJ to determine whether the '941 patent is anticipated. *Id.*

On July 6, 2012, complainant Thomson and respondents Qisda, BenQ, CMI, Realtek, and MStar filed a joint motion under Commission Rule 210.21(a)(1) to terminate the investigation with respect to the '941 patent. The motion stated that there are no other agreements, written or oral, express or implied, between the parties concerning the subject matter of this investigation. On July 9, 2012, the ALJ issued the subject ID granting the joint motion. The ALJ found that no extraordinary circumstances exist that would prevent the requested termination and that the motion fully complies with Commission Rule 210.21(a)(1). No petitions for review were received.

The Commission has determined not to review the subject ID. The investigation is terminated in its entirety.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. 2012–18671 Filed 7–30–12; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–852]

Certain Video Analytics Software, Systems, Components Thereof, and Products Containing Same Institution of Investigation Pursuant to 19 U.S.C. 1337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 27, 2012, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of ObjectVideo, Inc. of Reston, Virginia. A letter supplementing the complaint was filed on July 9, 2012. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain video analytics software, systems, components thereof, and products containing same by reason of infringement of certain claims of U.S. Patent No. 6,696,945 (''the '945 patent''); U.S. Patent No. 6,970,083 (''the '083 patent''); U.S. Patent No. 7,868,912 (''the '912 patent''); and U.S. Patent No. 7,932,923 (''the '923 patent''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2012).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on July 24, 2012, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain video analytics software, systems, components thereof, and products containing same that infringe one or more of claims 1–8, 11, 12, 25, 30, 33, and 35–37 of the '945 patent; claims 1–24 and 28 of the '083 patent; claims 12–16 and 18–21 of the '912 patent; and claim 20 of the '923 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: ObjectVideo, Inc., 11600 Sunrise Valley Drive, Suite 290, Reston, VA 20191.

(b) The respondent is the following entity alleged to be in violation of section 337, and is the party upon which the complaint is to be served: Pelco, Inc., 3500 Pelco Way, Clovis, CA 93612–5999.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: July 25, 2012.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–18595 Filed 7–30–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–12–023]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: August 9, 2012 at 1:00 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: None
2. Minutes
3. Ratification List
4. Vote in Inv. No. 731–TA–1189 (Final)(Large Power Transformers from Korea). The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the

Secretary of Commerce on or before August 24, 2012.

5. Outstanding action jackets: none

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: July 26, 2012.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. 2012–18699 Filed 7–27–12; 11:15 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–12–022]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: August 8, 2012 at 1:00 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none
2. Minutes
3. Ratification List
4. Vote in Inv. No. 731–TA–702 (Third Review)(Ferrovanadium and Nitrided Vanadium from Russia). The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before August 22, 2012.
5. Outstanding action jackets: none

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: July 26, 2012.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. 2012–18698 Filed 7–27–12; 11:15 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–784]

Certain Light-Emitting Diodes and Products Containing the Same; Notice of Request for Statements on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the presiding administrative law judge has issued a Final Initial Determination and a Recommended Determination on Remedy and Bonding in the above-captioned investigation. The Commission is soliciting comments on public interest issues raised by the recommended relief, specifically, a limited exclusion order (''LEO'') against light-emitting diodes (''LEDs'') found to infringe claims 1, 3, 4, 6, 8, 22, 24, 25, 26, 29, 32, 33, and 34 of U.S. Patent No. 7,151,283 that are manufactured or imported by LG Electronics, Inc. of Seoul, Republic of Korea; LG Innotek Co., Ltd. of Seoul, Republic of Korea; LG Electronics U.S.A., Inc. of Englewood Cliffs, New Jersey; and LG Innotek U.S.A., Inc. of San Diego, California.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3106. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930 provides that if the Commission finds a violation it shall exclude the articles concerned from the United States:

> unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry. 19 U.S.C. § 1337(d)(1). A similar provision applies to cease and desist orders. 19 U.S.C. § 1337(f)(1).

The Commission is interested in further development of the record on the public interest in these investigations. Accordingly, members of the public are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the administrative law judge's Recommended Determination on Remedy and Bonding issued in this investigation on July 23, 2012. Comments should address whether issuance of a LEO in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the recommended orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;

(iii) Identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) Indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the recommended exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) Explain how the LEO would impact consumers in the United States.

Written submissions must be filed no later than by close of business on August 22, 2012.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (''Inv. No. 337–TA–784'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents

for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with the any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50).

By order of the Commission.
Issued: July 25, 2012.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–18596 Filed 7–30–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on July 25, 2012, a proposed Consent Decree in *United States* v. *James W. Clark, et al.,* Civil Action No. 08–CV–04158, was lodged with the United States District Court for the Northern District of Illinois.

In this action, the United States brought claims against Calumet Heat Treating Company, Thomas G. Cooper, and Nitrex, Inc. (''Settling Defendants'') for response costs associated with the release or threatened release of hazardous substances from facilities at and near the South Green Plating Superfund Site in Chicago, Illinois (hereinafter the ''Site''), pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 *et seq.* (''CERCLA''). The proposed Consent Decree requires Settling Defendants to reimburse the United States' past response costs in the amount of $430,000.00.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *James W. Clark, et al.,* Civil Action No. 08–CV–04158 (N.D. Ill.), D.J. Ref. No. 90–11–3–09477.

During the public comment period, the Consent Decree may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to Environment and Natural Resources Division, Environmental Enforcement Section, fax no. (202) 514–0097, phone confirmation number (202) 514–5271, email *EESCDCopy.ENRD@usdoj.gov.* If requesting a copy from the Consent Decree Library, please enclose a check in the amount of $5.50 for a copy of the complete Consent Decree (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–18517 Filed 7–30–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application; Wildlife Laboratories Inc.

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 21, 2012, Wildlife Laboratories Inc., 1230 W. Ash Street, Suite D, Windsor, Colorado 80550, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Carfentanil (9743), a basic class of controlled substance listed in schedule II.

The company plans to manufacture the above listed controlled substance for sale to veterinary pharmacies, zoos, and for other animal and wildlife applications.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substance, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than October 1, 2012.

Dated: April 17, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–18630 Filed 7–30–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (NIJ) Docket No. 1600]

Guidelines for Cases Requiring On-Scene Death Investigation

AGENCY: National Institute of Justice, Justice.

ACTION: Notice and request for comments.

SUMMARY: In an effort to obtain comments from interested parties, the U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, Scientific Working Group for Medicolegal Death Investigation will make available to the general public a draft document entitled, ''Guidelines for Cases Requiring On-Scene Death Investigation''. The opportunity to provide comments on this document is open to coroner/medical examiner office representatives, law enforcement agencies, organizations, and all other stakeholders and interested parties. Those individuals wishing to obtain and provide comments on the draft document under consideration are directed to the following link: *http://swgmdi.org/index.php?option=com_content&view=article&id=85&Itemid=102.*

DATES: Comments must be received on or before August 22, 2012.

FOR FURTHER INFORMATION CONTACT: Patricia Kashtan, by telephone at 202–353–1856 [**Note:** this is not a toll-free telephone number], or by email at *Patricia.Kashtan@usdoj.gov.*

John Laub,

Director, National Institute of Justice.

[FR Doc. 2012–18623 Filed 7–30–12; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (NIJ) Docket No. 1599]

Increasing the Supply of Forensic Pathologists in the United States: A Report and Recommendations

AGENCY: National Institute of Justice.

ACTION: Notice and request for comments.

SUMMARY: In an effort to obtain comments from interested parties, the U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, Scientific Working Group for Medicolegal Death Investigation will make available to the general public a draft document entitled, ''Increasing the Supply of Forensic Pathologists in the United States: A Report and Recommendations.'' The opportunity to provide comments on this document is open to coroner/medical examiner office representatives, law enforcement agencies, organizations, and all other stakeholders and interested parties. Those individuals wishing to obtain and provide comments on the draft document under consideration are directed to the following link: *http://swgmdi.org/index.php?option=com_content&view=article&id=85&Itemid=102.*

DATES: Comments must be received on or before August 22, 2012.

FOR FURTHER INFORMATION CONTACT: Patricia Kashtan, by telephone at 202–353–1856 [**Note:** This is not a toll-free telephone number], or by email at *Patricia.Kashtan@usdoj.gov.*

John Laub,

Director, National Institute of Justice.

[FR Doc. 2012–18640 Filed 7–30–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board Hearing

Time and Date: 8:30 a.m.–5:00 p.m. on Wednesday, August 22, 2012. 8:30 a.m.–4:00 p.m. on Thursday, August 23, 2012.

Place: U.S. Department of Justice, Main Conference Center, 7th Floor, 950 Pennsylvania Avenue NW., Washington, DC 20530, (202) 514–2000.

Matters to Be Considered: Balancing Fiscal Challenges, Performance-based Budgeting and Public Safety; reengineering population management; cost-effective strategies for meeting policy requirements and legislative mandates; innovative cost-saving strategies; identifying and responding to the future cost needs of corrections in the U.S.

Contact Person for More Information: Shaina Vanek, Executive Assistant, (202) 514–4222.

Morris L. Thigpen, Sr.,

Director, National Institute of Corrections.

[FR Doc. 2012–18464 Filed 7–30–12; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Termination of Abandoned Individual Account Plans

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Termination of Abandoned Individual Account Plans,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before August 30, 2012.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–EBSA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: OMB approval of this ICR would continue PRA authorization for the information collection requirements contained in three regulations promulgated under the Employee Retirement Income Security Act of 1974 (ERISA) that facilitate the termination of, and distribution of benefits from, individual account pension plans that have been abandoned by their sponsoring employers. The first regulation establishes a procedure for financial institutions holding the assets of an abandoned individual account plan to terminate the plan and distribute benefits to plan participants and beneficiaries, with limited liability. The second regulation provides a fiduciary safe harbor for making distributions from terminated plans on behalf of participants and beneficiaries who fail to make an election regarding a form of benefit distribution. The third regulation establishes a simplified method for filing a terminal report for abandoned individual account plans.

The ICR also takes into account to a class prohibited transaction exemption (PTE 2006–06) that permits a qualified termination administrator (QTA) of an individual account plan that has been abandoned by its sponsoring employer to select itself or an affiliate to provide services to the plan in connection with the termination of the plan, to pay itself or an affiliate fees for those services, and to pay itself for services provided prior to the plan's deemed termination, and class Prohibited Transaction Exemption 2004–16, which are the notice and recordkeeping requirements contained in PTE 2004–16, which permits a pension plan fiduciary that is a financial institution and is also the employer maintaining an individual account pension plan for its employees to establish, on behalf of its separated employees, an Individual Retirement Account (IRA) at a financial institution that is either the employer or an affiliate, which IRA would receive mandatory distributions that the fiduciary rolls over from the plan when an employee terminates employment.

These information collections are subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not

display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1210–0127. The current approval is scheduled to expire on July 31, 2012; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on April 5, 2012 (77 FR 20650).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1210–0127. The OMB is particularly interested in comments that:

- 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.

Agency: DOL–EBSA.

Title of Collection: Termination of Abandoned Individual Account Plans.

OMB Control Number: 1210–0127.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 39,330.

Total Estimated Number of Responses: 3,102,640.

Total Estimated Annual Burden Hours: 109,800.

Total Estimated Annual Other Costs Burden: $1,088,000.

Dated: July 25, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–18615 Filed 7–30–12; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

Announcement Regarding States Triggering ''On'' and ''Off'' in the Emergency Unemployment Compensation 2008 (EUC08) Program and the Federal-State Extended Benefits (EB) Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: Announcement regarding states triggering ''on'' and ''off'' in the Emergency Unemployment Compensation 2008 (EUC08) Program and the Federal-State Extended Benefits (EB) Program.

The U.S. Department of Labor (Department) produces trigger notices indicating which states qualify for both EB and EUC08 benefits, and provides the beginning and ending dates of payable periods for each qualifying state. The trigger notices covering state eligibility for these programs can be found at: *http://ows.doleta.gov/unemploy/claims_arch.asp*.

The following changes have occurred since the publication of the last notice regarding states' EB and EUC08 trigger status:

- Based on data released by the Bureau of Labor Statistics on June 15, 2012, the three month average, seasonally adjusted total unemployment rate for Nevada (11.7%), New Jersey (9.1%), and Rhode Island (11.1%) did not meet one of the necessary criteria to remain on in the EB program: Having a rate at least ten percent greater than the comparable rate in any of the three prior years. This triggered these states ''off'' the EB program with the week ending June 16, 2012. The end of the payable period in Nevada, New Jersey, and Rhode Island in the EB program was July 7, 2012.
- Based on data released by the Bureau of Labor Statistics on June 15, 2012, the three month average, seasonally adjusted total unemployment rate for New Mexico and Texas fell below the 7.0% trigger threshold to remain ''on'' in Tier 3 of the EUC 2008 program. As a result, the maximum potential entitlement for these states in the EUC program decreased from 47 weeks to 34 weeks. The week ending July 7, 2012, was the last week in which EUC claimants in these states could exhaust Tier 2, and establish Tier 3 eligibility. Under the phase-out provisions, claimants can receive any remaining entitlement they have in Tier 3 after July 7, 2012.
- Based on data released by the Bureau of Labor Statistics on June 15, 2012, the three month average, seasonally adjusted total unemployment rate for Florida, Georgia, and Mississippi fell below the 9.0% trigger threshold to remain ''on'' in Tier 4 of the EUC 2008 program. As a result, the maximum potential entitlement for these states in the EUC program decreased from 53 weeks to 47 weeks. The week ending July 7, 2012, was the last week in which EUC claimants in these states could exhaust Tier 3, and establish Tier 4 eligibility. Under the phase-out provisions, claimants can receive any remaining entitlement they have in Tier 4 after July 7, 2012.
- The week ending June 30, 2012, concluded a mandatory 13-week ''off'' period in the Virgin Islands for Tier 3 in the EUC 2008 program. Because the current estimated trigger rate for the Virgin Islands is 7.7%, a payable period in Tier 3 has resumed beginning July 1, 2012, and the first payable week for eligible claimants there was the week ending July 7, 2012.
- With the release of national unemployment data by the Bureau of Labor Statistics on July 6, 2012, the estimated three month average, seasonally adjusted total unemployment rate for the Virgin Islands rose above the 9.0% threshold necessary to trigger ''on'' in Tier 4 of the EUC 2008 program. The 13 week mandatory ''off'' period for the Virgin Islands in Tier 4 of the EUC 2008 program concluded May 26, 2012, so the Virgin Islands triggered ''on'' to Tier 4. As a result of this, the maximum potential entitlement for the Virgin Islands in the EUC 2008 program will increase from 47 weeks to 53 weeks. The week beginning July 22, 2012, will be the first week in which EUC claimants in the Virgin Islands who have exhausted Tier 3, and are otherwise eligible, can establish Tier 4 eligibility.

Information for Claimants

The duration of benefits payable in the EUC08 program, and the terms and conditions under which they are payable, are governed by Public Laws 110–252, 110–449, 111–5, 111–92, 111–118, 111–144, 111–157, 111–205, 111–312, 112–96, and the operating instructions issued to the states by the Department. The duration of benefits payable in the EB program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the Department.

In the case of a state beginning or concluding a payable period in EB or EUC08, the State Workforce Agency will furnish a written notice of any change in potential entitlement to each individual who could establish, or had established, eligibility for benefits (20 CFR 615.13(c)(1) and (c)(4)). Persons who believe they may be entitled to benefits under the EB or EUC08 program, or who wish to inquire about their rights under the program, should contact their State Workforce Agency.

FOR FURTHER INFORMATION CONTACT: Scott Gibbons, U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance, 200 Constitution Avenue NW., Frances Perkins Bldg. Room S–4524, Washington, DC 20210, telephone number (202) 693–3008 (this is not a toll-free number) or by email: *gibbons.scott@dol.gov*.

Signed in Washington, DC, this 24th day of July, 2012.

Jane Oates,

Assistant Secretary for Employment and Training.

[FR Doc. 2012–18535 Filed 7–30–12; 8:45 am]

BILLING CODE 4510–FW–P

NATIONAL LABOR RELATIONS BOARD

Sunshine Act Meetings: August 2012

TIME AND DATES: All meetings are held at 2:30 p.m.

Wednesday, August 1; Thursday, August 2; Tuesday, August 7; Wednesday, August 8; Thursday, August 9; Tuesday, August 14; Wednesday, August 15; Thursday, August 16; Tuesday, August 21; Wednesday, August 22; Thursday, August 23; Tuesday, August 28; Wednesday, August 29; Thursday, August 30.

PLACE: Board Agenda Room, No. 11820, 1099 14th St. NW., Washington, DC 20570.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Pursuant to § 102.139(a) of the Board's Rules and Regulations, the Board or a panel thereof will consider ''the issuance of a subpoena, the Board's participation in a civil action or proceeding or an arbitration, or the initiation, conduct, or disposition * * * of particular representation or unfair labor practice proceedings under section 8, 9, or 10 of the [National Labor Relations] Act, or any court proceedings collateral or ancillary thereto.'' See also 5 U.S.C. 552b(c)(10).

CONTACT PERSON FOR MORE INFORMATION: Lester A. Heltzer, Executive Secretary, (202) 273–1067.

Dated: July 26, 2012.

Lester A. Heltzer,

Executive Secretary.

[FR Doc. 2012–18688 Filed 7–27–12; 11:15 am]

BILLING CODE 7545–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission [NRC–2012–0002].

DATES: Weeks of July 30, August 6, 13, 20, 27, September 3, 2012.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of July 30, 2012

There are no meetings scheduled for the week of July 30, 2012.

Week of August 6, 2012—Tentative

Tuesday, August 7, 2012

9:00 a.m. Briefing on the Status of Lessons Learned from the Fukushima Dai-ichi Accident (Public Meeting) (Contact: John Monninger, 301–415–0610).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Week of August 13, 2012—Tentative

There are no meetings scheduled for the week of August 13, 2012.

Week of August 20, 2012—Tentative

There are no meetings scheduled for the week of August 20, 2012.

Week of August 27, 2012—Tentative

There are no meetings scheduled for the week of August 27, 2012.

Week of September 3, 2012—Tentative

There are no meetings scheduled for the week of September 3, 2012.

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301–415–1292. Contact person for more information: Rochelle Bavol, 301–415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301–415–6200, TDD: 301–415–2100, or by email at *william.dosch@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *darlene.wright@nrc.gov*.

Dated: July 26, 2012.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2012–18755 Filed 7–27–12; 4:15 pm]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30151; File No. 812–13512]

Cash Account Trust, et al.; Notice of Application

July 25, 2012.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application 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 APPLICATION: Applicants request an order that would amend and supersede a prior order (the ''Non-Affiliated Sub-Advisor Order'') [1] that permits them to enter into and materially amend subadvisory agreements for certain multi-managed funds with non-affiliated sub-advisors without shareholder approval and grants relief from certain disclosure requirements. The requested order would permit applicants to enter into, and amend, such agreements with Wholly-Owned Sub-Advisors (as

[1] *Cash Account Trust, et al.,* Investment Company Act Release Nos. 29094 (Dec. 16, 2009) (notice) and 29109 (Jan. 12, 2010) (order).

defined below) and non-affiliated sub-advisors without shareholder approval.

APPLICANTS: Cash Account Trust, Cash Management Portfolio, Cash Reserve Fund, Inc., DWS Equity 500 Index Portfolio, DWS Global/International Fund, Inc., DWS Income Trust, DWS Institutional Funds, DWS International Fund, Inc., DWS Investment Trust, DWS Investments VIT Funds, DWS Market Trust, DWS Money Funds, DWS Money Market Trust, DWS Municipal Trust, DWS Portfolio Trust, DWS Securities Trust, DWS State Tax-Free Income Series, DWS Target Date Series, DWS Target Fund, DWS Tax Free Trust, DWS Value Series, Inc., DWS Variable Series I, DWS Variable Series II, Investors Cash Trust, Tax-Exempt California Money Market Fund (each a ''DWS Investment Company'' and collectively, the ''DWS Investment Companies''), and Deutsche Investment Management Americas Inc. (''DIMA'').

FILING DATES: The application was filed on March 14, 2008, and amended on July 30, 2009, October 2, 2009, November 24, 2009, September 10, 2010, November 16, 2010, October 6, 2011, February 7, 2012, and July 23, 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 August 17, 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, Deutsche Investment Management Americas Inc., 345 Park Avenue, New York, New York 10154.

FOR FURTHER INFORMATION CONTACT: Barbara T. Heussler, Senior Attorney, at (202) 551–6990, or Jennifer L. Sawin, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. Each DWS Investment Company is organized as a Massachusetts business trust, a New York trust, or a Maryland corporation and is registered with the Commission as an open-end management investment company under the Act. Each DWS Investment Company may offer one or more series of shares (each a ''Series'' and collectively, ''Series'') with its own distinct investment objectives, policies and restrictions.[2] Each Series has, or will have, as its investment adviser, DIMA, or another investment adviser controlling, controlled by or under common control with DIMA or its successors (each, an ''Advisor'' and, collectively with the Series and the DWS Investment Companies, the ''Applicants'').[3] DIMA, a Delaware corporation, is an indirect, wholly-owned subsidiary of Deutsche Bank AG (''Deutsche Bank''). Deutsche Bank is a major global financial institution that is engaged in a wide range of financial services, including investment management, mutual funds, retail, private and commercial banking, investment banking and insurance.[4]

2. The Advisor serves as the investment adviser to each Series pursuant to an investment advisory agreement with the applicable DWS Investment Company (''Investment Management Agreement''). The Investment Management Agreement for each existing Series was approved by the board of trustees/directors of the applicable DWS Investment Company (the ''Board''), including a majority of the members of the Board who are not ''interested persons'', as defined in section 2(a)(19) of the Act, of the Series or the Advisor (''Independent Board Members'') and by the shareholders of that Series as required by sections 15(a) and 15(c) of the Act and rule 18f–2 thereunder. The terms of these Investment Management Agreements comply with section 15(a) of the Act. Each other Investment Management Agreement will comply with section 15(a) of the Act and will be similarly approved.

3. Under the terms of each Investment Management Agreement, the Advisor, subject to the supervision of the applicable Board, provides continuous investment management of the assets of each Series. The Advisor periodically reviews a Series' investment policies and strategies and based on the need of a particular Series may recommend changes to the investment policies and strategies of the Series for consideration by the Board. For its services to each Series under the applicable Investment Management Agreement, the Advisor receives an investment management fee from that Series based on either the average net assets of that Series or that Series' investment performance over a particular period compared to a benchmark. The terms of each Investment Management Agreement permit the Advisor, subject to the approval of the applicable Board, including a majority of the Independent Board Members, and the shareholders of the applicable Subadvised Series (if required), to delegate portfolio management responsibilities of all or a portion of the assets of a Subadvised Series to one or more sub-advisors.[5]

[2] The term ''Series'' also includes the DWS Investment Companies listed above that do not offer multiple series. Cash Management Portfolio and DWS Equity 500 Index Portfolio are master funds (each a ''Master Fund'') in a master-feeder structure pursuant to section 12(d)(1)(E) of the Act. Certain Series, as well as any future Series and any other investment company or series thereof that is advised by the Advisor, may invest substantially all their assets into one of the Master Funds (each a ''Feeder Fund''). No Feeder Fund will engage any sub-advisors other than through approving the engagement of the applicable Master Fund's sub-advisors, if any.

[3] Each Advisor is, or will be, registered with the Commission as an investment adviser under the Investment Advisers Act of 1940, as amended (''Advisers Act''). 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.

[4] Applicants request that the relief apply to the Applicants, as well as to any future Series and any other existing or future registered open-end management investment company or series thereof that is advised by an Advisor, uses the multi-manager structure described in the application, and complies with the terms and conditions of the application (''Subadvised Series''). All registered open-end investment companies that currently intend to rely on the requested order are named as Applicants. All Series that currently are, or that currently intend to be, Subadvised Series are identified in the application. Any entity that relies on the requested order will do so only in accordance with the terms and conditions contained the application. The requested relief will not extend to any sub-advisor, other than a Wholly-Owned Sub-Advisor (as defined below), who is an affiliated person, as defined in section 2(a)(3) of the Act, of the Subadvised Series, of any Feeder Fund, or of the Advisor, other than by reason of serving as a sub-advisor to one or more of the Subadvised Series (''Affiliated Sub-Advisor'').

[5] As used herein, a ''Sub-Advisor'' is (1) an indirect or direct ''wholly-owned subsidiary'' (as such term is defined in the Act) of the Advisor for that Series, or (2) a sister company of the Advisor for that Series that is an indirect or direct ''wholly-owned subsidiary'' (as such term is defined in the Act) of the same company that, indirectly or

4. Applicants request an order to permit the Advisor, subject to the approval of the Board, including a majority of the Independent Board Members, to, without obtaining shareholder approval: (i) Select Sub-Advisors to manage all or a portion of the assets of a Series and enter into Sub-Advisory Agreements (as defined below) with the Sub-Advisors, and (ii) materially amend Sub-Advisory Agreements with the Sub-Advisors.[6]

5. Pursuant to each Investment Management Agreement, the Advisor has overall responsibility for the management and investment of the assets of each Subadvised Series; these responsibilities include recommending the removal or replacement of Sub-Advisors, determining the portion of that Subadvised Series' assets to be managed by any given Sub-Advisor and reallocating those assets as necessary from time to time. In accordance with each Investment Management Agreement, the Advisor will supervise each Sub-Advisor in its performance of its duties with a view to preventing violations of the federal securities laws.

6. The Advisor has entered into sub-advisory agreements with Sub-Advisors (''Sub-Advisory Agreements'') to provide investment management services to the Subadvised Series.[7] The terms of each Sub-Advisory Agreement comply fully with the requirements of section 15(a) of the Act and were approved by the applicable Board, including a majority of the Independent Board Members, and, to the extent that the Non-Affiliated Sub-Advisor Order did not apply, the shareholders of the Subadvised Series in accordance with sections 15(a) and 15(c) of the Act and rule 18f–2 thereunder. The Sub-Advisors, subject to the supervision of the Advisor and oversight of the applicable Board, determine the securities and other instruments to be purchased or sold by a Subadvised Series and place orders with brokers or dealers that they select. The Advisor will compensate each Sub-Advisor out of the fee paid to the Advisor under the relevant Investment Management Agreement.

7. Subadvised Series will inform shareholders of the hiring of a new Sub-Advisor pursuant to the following procedures (''Modified Notice and Access Procedures''): (a) Within 90 days after a new Sub-Advisor is hired for any Subadvised Series, that Subadvised Series will send its shareholders[8] either a Multi-manager Notice or a Multi-manager Notice and Multi-manager Information Statement;[9] and (b) the Subadvised Series 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 Sub-Advisors provides no more meaningful information to shareholders than the proposed Multi-manager Information Statement. Applicants state that each Board would comply with the requirements of sections 15(a) and 15(c) of the Act before entering into or amending Sub-Advisory Agreements.

8. Applicants also request an order exempting the Subadvised Series from certain disclosure obligations that may require the Applicants to disclose fees paid by the Advisor to each Sub-Advisor. Applicants seek relief to permit each Subadvised Series to disclose (as a dollar amount and a percentage of the Subadvised Series' net assets): (a) The aggregate fees paid to the Advisor and any Wholly-Owned Sub-Advisors; (b) the aggregate fees paid to Non-Affiliated Sub-Advisors; and (c) the fee paid to each Affiliated Sub-Advisor (collectively, the ''Aggregate Fee Disclosure'').[10]

Applicants' Legal Analysis

1. Section 15(a) of the Act states, in 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, which contract, whether with such registered company or with an investment adviser of such registered company, has been approved by the vote of a majority of the outstanding voting securities of such registered company.'' Rule 18f–2 under the Act states that any ''matter required to be submitted * * * to the holders of the outstanding voting securities of a series company shall not be deemed to have been effectively acted upon unless approved by the holders of a majority of the outstanding voting securities of each class or series of stock affected by such matter.'' Further, rule 18(f)–2(c)(1) under the Act provides that a vote to approve an investment advisory contract required by section 15(a) of the Act ''shall be deemed to be effectively acted upon with respect to any class or series of securities of such [registered investment] company if a majority of the outstanding voting securities of such class or series vote for the approval of such matter.''

2. Form N–1A is the registration statement used by open-end investment companies. Item 19(a)(3) of Form N–1A requires a registered investment company to disclose in its statement of additional information the method of computing the ''advisory fee payable'' by the investment company, including the total dollar amounts that the investment company ''paid to the adviser (aggregated with amounts paid to affiliated advisers, if any), and any advisers who are not affiliated persons of the adviser, under the investment advisory contract for the last three fiscal years.''

3. Rule 20a–1 under the Act requires proxies solicited with respect to a registered investment company to

directly, wholly owns the Advisor (each of (1) and (2) a ''Wholly-Owned Sub-Advisor'' and collectively, the ''Wholly-Owned Sub-Advisors''), or (3) not an ''affiliated person'' (as such term is defined in section 2(a)(3) of the Act) of the Series, any Feeder Fund invested in a Series that is a Master Fund, applicable DWS Investment Company, or the Advisor, except to the extent that an affiliation arises solely because the sub-adviser serves as a sub-adviser to a Series (each a ''Non-Affiliated Sub-Advisor'').

[6] Shareholder approval will continue to be required for any other sub-advisor change (not otherwise permitted by rule or other action of the Commission or staff) and material amendments to an existing Sub-Advisory Agreement with any sub-advisor other than a Non-Affiliated Sub-Advisor or a Wholly-Owned Sub-Advisor (all such changes referred to as ''Ineligible Sub-Advisor Changes'').

[7] If the name of any Subadvised Series contains the name of a Sub-advisor, the name of the Advisor that serves as the primary adviser to the Subadvised Series, or a trademark or trade name that is owned by or publicly used to identity that Advisor, will precede the name of the Sub-advisor.

[8] If the Subadvised Series is a Master Fund, for purposes of the Modified Notice and Access Procedures, ''shareholders'' include both the shareholders of the applicable Master Fund and the shareholders of its Feeder Funds.

[9] A ''Multi-manager Notice'' will be modeled on a Notice of Internet Availability as defined in rule 14a–16 under the Securities Exchange Act of 1934 (''Exchange Act''), and specifically will, among other things: (a) Summarize the relevant information regarding the new Sub-Advisor; (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 Subadvised Series.

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 order to permit Aggregate Fee Disclosure, as defined below. Multi-manager Information Statements will be filed with the Commission via the EDGAR system.

[10] Applicants request that, for any Subadvised Series that is a Master Fund, this relief also permit any Feeder Fund invested in that Master Fund to disclose Aggregate Fee Disclosure.

comply with Schedule 14A under the Exchange 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 fee,'' 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 the investment advisory fees.

5. Section 6(c) of the Act provides that the Commission by order upon application may conditionally or unconditionally 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 their requested relief meets this standard for the reasons discussed below.

6. Applicants assert that the shareholders expect the Advisor, subject to review and approval of the applicable Board, to select the Sub-Advisors who are in the best position to achieve the Subadvised Series' investment objective. Applicants assert that, from the perspective of the shareholder, the role of the Sub-Advisors is substantially equivalent to the role of the individual portfolio managers employed by an investment adviser to a traditional investment company. Applicants believe that permitting the Advisor to perform the duties for which the shareholders of the Subadvised Series are paying the Advisor—the selection, supervision and evaluation of the Sub-Advisors—without incurring unnecessary delays or expenses is appropriate in the interest of the Subadvised Series' shareholders and will allow such Subadvised Series to operate more efficiently. Applicants state that each Investment Management Agreement will continue to be fully subject to section 15(a) of the Act and rule 18f–2 under the Act and approved by the applicable Board, including a majority of the Independent Board Members, in the manner required by sections 15(a) and 15(c) of the Act. Applicants are not seeking an exemption with respect to the Investment Management Agreements.

7. Applicants assert that disclosure of the individual fees that the Advisor would pay to the Sub-Advisors of Subadvised Series that operate under the multi-manager structure described in the application would not serve any meaningful purpose. Applicants contend that the primary reasons for requiring disclosure of individual fees paid to Sub-Advisors are to inform shareholders of expenses to be charged by a particular Subadvised Series and to enable shareholders to compare the fees to those of other comparable investment companies. Applicants believe that the requested relief satisfies these objectives because the advisory fee paid to the Advisor will be fully disclosed and, therefore, shareholders will know what the Subadvised Series' fees and expenses are and will be able to compare the advisory fees a Subadvised Series is charged to those of other investment companies. Applicants assert that the requested disclosure relief would benefit shareholders of the Subadvised Series because it would improve the Advisor's ability to negotiate the fees paid to Sub-Advisors. Applicants state that the Advisor may be able to negotiate rates that are below a Sub-Advisor's ''posted'' amounts if the Advisor is not required to disclose the Sub-Advisors' fees to the public. Applicants submit that the relief requested to use Aggregate Fee Disclosure will encourage Sub-Advisors to negotiate lower subadvisory fees with the Advisor if the lower fees are not required to be made public.

8. For the reasons discussed above, Applicants submit that the requested relief meets the standards for relief under section 6(c) of the Act. Applicants state that the operation of the Subadvised Series in the manner described in the application must be approved by shareholders of a Subadvised Series before that Subadvised Series may rely on the requested relief. In addition, Applicants state that the proposed conditions to the requested relief are designed to address any potential conflicts of interest, including any posed by the use of Wholly-owned Sub-Advisors, and provide that shareholders are informed when new Sub-Advisors are hired. Applicants assert that conditions 6, 7, 10 and 11 are designed to provide the Board with sufficient independence and the resources and information it needs to monitor and address any conflicts of interest with affiliated person of the Advisor, including Wholly-Owned Sub-Advisors. Applicants state that, accordingly, they believe the requested relief 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' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Subadvised Series may rely on the order requested in the application, the operation of the Subadvised Series in the manner described in the application, including the hiring of Wholly-Owned Sub-Advisors, will be, or has been, approved by a majority of the Subadvised Series' outstanding voting securities as defined in the Act, which in the case of a Master Fund will include voting instructions provided by shareholders of the Feeder Funds investing in such Master Fund or other voting arrangements that comply with section 12(d)(1)(E)(iii)(aa) of the Act, or, in the case of a new Subadvised Series 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 Subadvised Series' shares to the public. Before relying on the requested relief, each Subadvised Series that sought and obtained shareholder approval to operate in the manner described in the application prior to the date of the requested order and subsequently sold shares based on a prospectus that did not comply with condition 2 below will provide its shareholders with at least 30 days prior written notice of (a) the substance and effect of the relief sought in the application, and (b) the fact that the Subadvised Series intends to employ the multi-manager structure described in the application.

2. The prospectus for each Subadvised Series, and in the case of a Master Fund relying on the requested relief, the prospectus for each Feeder Fund investing in such Master Fund, will disclose the existence, substance, and effect of any order granted pursuant to the application. Each Subadvised Series (and any such Feeder Fund) will hold itself out to the public as employing the multi-manager structure described in the application. Each prospectus will prominently disclose that the Advisor has the ultimate responsibility, subject to oversight by

the applicable Board, to oversee the Sub-Advisors and recommend their hiring, termination and replacement.

3. The Advisor will provide general management services to a Subadvised Series, including overall supervisory responsibility for the general management and investment of the Subadvised Series' assets. Subject to review and approval of the applicable Board, the Advisor will (a) set a Subadvised Series' overall investment strategies, (b) evaluate, select, and recommend Sub-Advisors to manage all or a portion of a Subadvised Series' assets, and (c) implement procedures reasonably designed to ensure that Sub-Advisors comply with a Subadvised Series' investment objective, policies and restrictions. Subject to review by the applicable Board, the Advisor will (a) when appropriate, allocate and reallocate a Subadvised Series' assets among multiple Sub-Advisors; and (b) monitor and evaluate the performance of Sub-Advisors.

4. A Subadvised Series will not make any Ineligible Sub-Advisor Changes without the approval of the shareholders of the applicable Subadvised Series, which in the case of a Master Fund will include voting instructions provided by shareholders of the Feeder Fund investing in such Master Fund or other voting arrangements that comply with section 12(d)(1)(E)(iii)(aa) of the Act.

5. Subadvised Series will inform shareholders, and if the Subadvised Series is a Master Fund, shareholders of any Feeder Funds, of the hiring of a new Sub-Advisor within 90 days after the hiring of a new Sub-Advisor pursuant to the Modified Notice and Access Procedures.

6. At all times, at least a majority of the applicable Board will be Independent Board Members, and the selection and nomination of new or additional Independent Board Members will be placed within the discretion of the then-existing Independent Board Members.

7. Independent Legal Counsel, as defined in rule 0–1(a)(6) under the Act, will be engaged to represent the Independent Board Members. The selection of such counsel will be within the discretion of the then-existing Independent Board Members.

8. The Advisor will provide the applicable board, no less frequently than quarterly, with information about the profitability of the Advisor on a per Subadvised Series basis. The information will reflect the impact on profitability of the hiring or termination of any sub-advisor during the applicable quarter.

9. Whenever a sub-advisor is hired or terminated, the Advisor will provide the applicable Board with information showing the expected impact on the profitability of the Advisor.

10. Whenever a sub-advisor change is proposed for a Subadvised Series with an Affiliated Sub-Advisor or a Wholly-Owned Sub-Advisor, the applicable Board, including a majority of the Independent Board Members, will make a separate finding, reflected in the applicable Board minutes, that such change is in the best interests of the Subadvised Series and its shareholders, and if the Subadvised Series is a Master Fund, the best interests of any applicable Feeder Funds and their respective shareholders, and does not involve a conflict of interest from which the Advisor or the Affiliated Sub-Advisor or Wholly-Owned Sub-Advisor derives an inappropriate advantage.

11. No Board member or officer of a Subadvised Series, or of a Feeder Fund that invests in a Subadvised Series that is a Master Fund, or director, manager, 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 sub-advisor, except for ownership of interests in the Advisor or any entity, except a Wholly-Owned Sub-Advisor, that controls, is controlled by, or is under common control with the Advisor.

12. Each Subadvised Series and any Feeder Fund that invests in a Subadvised Series that is a Master Fund will disclose the Aggregate Fee Disclosure in its registration statement.

13. In the event the Commission adopts a rule under the Act providing substantially similar relief to that 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. 2012–18558 Filed 7–30–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30150; 812–13616–09]

Capital Research and Management Company, et al.; Notice of Application

July 25, 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, as amended (''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: AMCAP Fund, American Balanced Fund, American Funds Fundamental Investors, American Funds Global Balanced Fund, The American Funds Income Series, American Funds Insurance Series, American Funds Money Market Fund, American Funds Mortgage Fund, American Funds Portfolio Series, American Funds Short-Term Tax-Exempt Bond Fund, American Funds Target Date Retirement Series, American Funds Tax-Exempt Fund of New York, The American Funds Tax-Exempt Series I, The American Funds Tax-Exempt Series II, American High-Income Municipal Bond Fund, American High-Income Trust, American Mutual Fund, The Bond Fund of America, Capital Income Builder, Capital World Bond Fund, Capital World Growth and Income Fund Inc., EuroPacific Growth Fund, The Growth Fund of America, Inc., The Income Fund of America, Intermediate Bond Fund of America, International Growth and Income Fund, The Investment Company of America, Limited Term Tax-Exempt Bond Fund of America, The New Economy Fund, New Perspective Fund, Inc., New World Fund, Inc., Short-Term Bond Fund of America, SMALLCAP World Fund, Inc., The Tax-Exempt Bond Fund of America, and Washington Mutual Investors Fund (the ''Investment Companies'') and Capital Research and Management Company (''CRMC'').

Filing Dates: The application was filed on December 19, 2008, and amended on August 5, 2009, April 15, 2010, December 16, 2011, April 19, 2012, and July 13, 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 August 17, 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, Capital Research and Management Company, 333 South Hope Street, 33rd Floor, Los Angeles, California 90071.

FOR FURTHER INFORMATION CONTACT: Barbara T. Heussler, Senior Counsel, at (202) 551–6990, or Jennifer L. Sawin, 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 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 Investment Companies are each registered under the Act as an open-end investment company, consisting of one or more series, and each is organized as a Maryland corporation, Massachusetts business trust or Delaware statutory trust.[1] CRMC is, and each other Adviser will be, registered under the Investment Advisers Act of 1940, as amended (''Advisers Act''). CRMC is a wholly-owned subsidiary of The Capital Group Companies, Inc. (''CGC''), a privately owned Delaware corporation. CGC is the parent company of a group of investment management companies, including CRMC, and related service companies. CRMC currently manages equity assets through two investment divisions, Capital Research Global Investors and Capital World Investors, and manages fixed-income assets through its Fixed Income division. An Adviser will serve as the investment adviser to each Fund pursuant to an investment advisory agreement between the Adviser and the Investment Company, on behalf of the Fund (each, an ''Advisory Agreement''). The Advisory Agreement, and material amendments thereto, will be approved by the shareholders of the Fund and by the applicable board of directors or trustees (the ''Board'') including a majority of the directors or trustees who are not ''interested persons'' (as defined in section 2(a)(19) of the Act) of the applicable Investment Company (''Independent Trustees'') at the time and in the manner required by sections 15(a) and (c) of the Act and rule 18f–2 under the Act.

2. The Adviser will be responsible for providing a program of continuous investment management to the Fund in accordance with the investment objective, policies and limitations of the Fund as stated in its prospectus and statement of additional information. Applicants intend to implement a multi-manager structure in which all sub-advisers are direct or indirect, wholly-owned subsidiaries, as that term is defined in section 2(a)(43) of the Act, of CGC (a ''Wholly Owned Sub-Adviser'') pursuant to an investment sub-advisory agreement (each agreement with a Wholly Owned Sub-Adviser, a ''Sub-Advisory Agreement''). Primary responsibility for management of a Fund, including the selection and supervision of Wholly Owned Sub-Advisers, is vested in its Adviser, subject to the oversight of the Board. The Adviser will select Wholly Owned Sub-Advisers based on its evaluation of the capabilities of the Wholly Owned Sub-Adviser in managing assets pursuant to particular investment styles and will recommend their hiring to the applicable Board. The Adviser will evaluate, allocate assets to, and oversee the Wholly Owned Sub-Advisers, and make recommendations about their hiring, termination and replacement to the Board, at all times subject to the authority of the Board. Each Wholly Owned Sub-Adviser will be an investment adviser registered under the Advisers Act or exempt from such registration.

3. In return for providing overall management services, including Wholly Owned Sub-Adviser selection and monitoring services, the Adviser will have a contractual right to receive from the Fund a periodic fee, computed as a percentage of the Fund's average daily net assets (and in some cases also a percentage of income) in accordance with the relevant requirements of the Act. The Adviser will compensate the Wholly Owned Sub-Adviser(s) out of the fees paid to the Adviser under its Advisory Agreement with the Fund.

4. Applicants request an order to permit an Adviser, subject to the approval of the applicable Board, including a majority of Independent Trustees, to do the following without obtaining shareholder approval: (a) Select Wholly Owned Sub-Advisers to manage all or a portion of the assets of a Fund pursuant to a Sub-Advisory Agreement; and (b) materially amend a Sub-Advisory Agreement (all such changes are referred to as ''Eligible Sub-Adviser Changes'').[2] The requested relief will not extend to any sub-adviser, other than a Wholly Owned Sub-Adviser, who is an affiliated person, as defined in section 2(a)(3) of the Act, of the Fund or of the Adviser, other than by reason of serving as a sub-adviser to one or more of the Funds (''Affiliated Sub-Adviser'').

5. Applicants also request an order exempting the Funds from certain disclosure obligations described below that Applicants believe may require a Fund to disclose fees paid by the Adviser to each Wholly Owned Sub-Adviser. Applicants seek an order to permit the Investment Companies to disclose for each Fund (as both a dollar amount and as a percentage of the applicable Fund's net assets) the aggregate fees paid to the Adviser and any Wholly Owned Sub-Advisers (the ''Aggregate Fee Disclosure''). Any Fund that employs an Affiliated Sub-Adviser that is not a Wholly Owned Sub-Adviser also will provide separate disclosure of any fees paid to such Affiliated Sub-Adviser.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that 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 matter must approve that

[1] Applicants request that any relief granted pursuant to the application apply to any current or future series of the Investment Companies and any other existing or future registered open-end investment company and its series that: (a) Are advised by CRMC or any person controlling, controlled by, or under common control with CRMC or its successors (each, an ''Adviser''); (b) use the multi-manager structure described in the application; and (c) comply with the terms and conditions of the application (any such company or series, a ''Fund'' and collectively the ''Funds''). All Funds that currently intend to rely on the requested order are named as Applicants. 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.

[2] Applicants do not request relief for any other sub-adviser changes not already permitted by Commission rule or other Commission or staff action (all such changes are referred to as ''Ineligible Sub-Adviser Changes''). If the name of a Fund contains the name of a Wholly Owned Sub-Adviser, the name of the Adviser to that Fund, or a trademark or trade name that is owned by the Adviser to that Fund, will precede the name of the Wholly Owned Sub-Adviser.

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 shareholders of the Fund expect the Adviser to select the Wholly Owned Sub-Adviser(s) deemed appropriate by the Adviser and the Board, that provide day-to-day investment management services to the investment company. Applicants assert that, from the perspective of an investor in the Fund, the roles of the Adviser and Wholly Owned Sub-Adviser(s) with respect to the Fund will be substantially equivalent to the roles of an investment adviser and its portfolio-manager employees under a more traditional structure. Applicants state that requiring shareholder approval of each Sub-Advisory Agreement or each material amendment to a Sub-Advisory Agreement would impose unnecessary delays and expenses on the Funds and may preclude the Funds from acting promptly when the Adviser and Board consider it appropriate to hire Wholly Owned Sub-Advisers or amend Sub-Advisory Agreements. Applicants note that the Advisory Agreement for each Fund will remain subject to the shareholder approval requirements of section 15(a) of the Act and rule 18f–2 under the Act.

7. The Fund(s) will inform shareholders of the hiring of a new Wholly Owned Sub-Adviser pursuant to the following procedures (''Modified Notice and Access Procedures''): (a) within 90 days after a Wholly Owned Sub-Adviser 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;[3] 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 statement would provide no more meaningful information to investors than the proposed use of the Multi-manager Information Statement. Applicants state that each Board will comply with the requirements of sections 15(a) and 15(c) of the Act regarding Board actions before entering into, or materially amending any of the Sub-Advisory Agreements.

8. Applicants state that disclosure of the fees that the Adviser pays to each Wholly Owned Sub-Adviser would not serve any meaningful purpose because investors pay the Adviser to retain and compensate the Wholly Owned Sub-Advisers. The Adviser will compensate each Wholly Owned Sub-Adviser out of the fees paid to the Adviser pursuant to its Advisory Agreement with the applicable Fund. The fees negotiated between the Adviser and the Wholly Owned Sub-Advisers under the proposed manager-of-managers structure would be the equivalent of the compensation packages that an investment manager negotiates with its employees who are portfolio managers in a more traditional structure. Applicants submit that granting the requested relief is appropriate in the public interest and consistent with the protection of investors and the policies fairly intended by the policy and provisions of the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:[4]

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, including the hiring of Wholly Owned Sub-Advisers, 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 all of 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. In addition, each Fund will hold itself out to the public as employing the multi-manager structure described in the application. The prospectus will prominently disclose that the Adviser has ultimate responsibility, subject to oversight by the Board, to oversee the Wholly Owned Sub-Advisers and recommend their hiring, termination, and replacement.

3. A Fund will inform shareholders of the hiring of a new Wholly Owned Sub-Adviser within 90 days after the hiring of a new Wholly Owned Sub-Adviser pursuant to the Modified Notice and Access Procedures.

4. The Adviser will not make any Ineligible Sub-Adviser Changes without that sub-advisory agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

[3] 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 Wholly Owned Sub-Adviser; (b) inform shareholders that the Multi-manager Information Statement is available on the 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.

[4] Applicants will only comply with conditions 8, 9 and 12 if they rely on the relief that would allow them to provide Aggregate Fee Disclosure.

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. 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.

7. When a sub-adviser change is proposed for a Fund, the applicable 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 Adviser or any sub-adviser that is an affiliated person of the Adviser derives an inappropriate advantage.

8. The Adviser will provide the Board, no less frequently than quarterly, with information about the profitability of the Adviser on a per-Fund basis. The information will reflect the impact on profitability of the hiring or termination of any sub-adviser during the applicable quarter.

9. Whenever a sub-adviser is hired or terminated, the Adviser will provide the Board with information showing the expected impact on the profitability of the Adviser.

10. The Adviser 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 (except that with respect to (c) and (d) below, no approvals are necessary), the Adviser will: (a) Set the Fund's overall investment strategies; (b) evaluate, select and recommend Wholly Owned Sub-Advisers to manage all or part of the Fund's assets; (c) allocate and, when appropriate, reallocate each Fund's assets among one or more Wholly Owned Sub-Advisers; (d) monitor and evaluate the performance of Wholly Owned Sub-Advisers; and (e) implement procedures reasonably designed to ensure that the Wholly Owned Sub-Advisers comply with the Fund's investment objective, policies and restrictions.

11. No trustee or officer of the Trust, or a Fund, or director, manager, or officer of the Adviser, will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person), any interest in a sub-adviser to a Fund, except for ownership of interests in the Adviser or any entity, except a Wholly Owned Sub-Adviser, that controls, is controlled by, or is under common control with the Adviser.

12. Each Fund will disclose the Aggregate Fee Disclosure in its registration statement.

13. In the event the Commission adopts a rule under the Act providing substantially similar relief to that 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. 2012–18561 Filed 7–30–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Friday, August 3, 2012 at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Paredes, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Friday, August 3, 2012 will be:

institution and settlement of injunctive actions; institution and settlement of administrative proceedings; and other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: July 27, 2012

Elizabeth M. Murphy,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67493; File No. SR–NYSE–2012–27]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Operation of Its Supplemental Liquidity Providers Pilot Until the Earlier of the Securities and Exchange Commission's Approval To Make Such Pilot Permanent or January 31, 2013

July 25, 2012.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on July 12, 2012, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the operation of its Supplemental Liquidity Providers Pilot (''SLP Pilot'' or ''Pilot'') (See Rule 107B), currently scheduled to expire on July 31, 2012, until the earlier of the Securities and Exchange Commission's (''Commission'') approval to make such Pilot permanent or January 31, 2013. 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

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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 proposes to extend the operation of its SLP Pilot,[4] currently scheduled to expire on July 31, 2012, until the earlier of Commission approval to make such Pilot permanent or January 31, 2013.

Background [5]

In October 2008, the NYSE implemented significant changes to its market rules, execution technology and the rights and obligations of its market participants all of which were designed to improve execution quality on the Exchange. These changes are all elements of the Exchange's enhanced market model referred to as the ''New Market Model'' (''NMM Pilot'').[6] The SLP Pilot was launched in coordination with the NMM Pilot (see Rule 107B).

As part of the NMM Pilot, NYSE eliminated the function of specialists on the Exchange creating a new category of market participant, the Designated Market Maker or DMM.[7] Separately, the NYSE established the SLP Pilot, which established SLPs as a new class of market participants to supplement the liquidity provided by DMMs.[8]

The SLP Pilot is scheduled to end operation on July 31, 2012 or such earlier time as the Commission may determine to make the rules permanent. The Exchange is currently preparing a rule filing seeking permission to make the SLP Pilot permanent, but does not expect that filing to be completed and approved by the Commission before July 31, 2012.[9]

Proposal To Extend the Operation of the SLP Pilot

The NYSE established the SLP Pilot to provide incentives for quoting, to enhance competition among the existing group of liquidity providers, including the DMMs, and add new competitive market participants. The Exchange believes that the SLP Pilot, in coordination with the NMM Pilot, allows the Exchange to provide its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity, facilitate the trading of larger orders more efficiently and operates to reward aggressive liquidity providers. As such, the Exchange believes that the rules governing the SLP Pilot (Rule 107B) should be made permanent. Through this filing the Exchange seeks to extend the current operation of the SLP Pilot until January 31, 2013, in order to allow the Exchange to formally submit a filing to the Commission to convert the Pilot rule to a permanent rule.[10]

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the ''Act'') for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the instant filing is consistent with these principles because the SLP Pilot provides its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity and operates to reward aggressive liquidity providers. Moreover, the instant filing requesting an extension of the SLP Pilot will permit adequate time for: (i) The Exchange to prepare and submit a filing to make the rules governing the SLP Pilot permanent; (ii) public notice and comment; and (iii) completion of the 19b–4 approval process.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[13]

[4] *See* Securities Exchange Act Release No. 58877 (October 29, 2008), 73 FR 65904 (November 5, 2008) (SR–NYSE–2008–108) (establishing the SLP Pilot). *See also* Securities Exchange Act Release Nos. 59869 (May 6, 2009), 74 FR 22796 (May 14, 2009) (SR–NYSE–2009–46) (extending the operation of the SLP Pilot to October 1, 2009); 60756 (October 1, 2009), 74 FR 51628 (October 7, 2009) (SR–NYSE–2009–100) (extending the operation of the NMM and the SLP Pilots to November 30, 2009); 61075 (November 30, 2009), 74 FR 64112 (December 7, 2009) (SR–NYSE–2009–119) (extending the operation of the SLP Pilot to March 30, 2010); 61840 (April 5, 2010), 75 FR 18563 (April 12, 2010) (SR–NYSE–2010–28) (extending the operation of the SLP Pilot to September 30, 2010); 62813 (September 1, 2010), 75 FR 54686 (September 8, 2010) (SR–NYSE–2010–62) (extending the operation of the SLP Pilot to January 31, 2011); 63616 (December 29, 2010), 76 FR 612 (January 5, 2011) (SR–NYSE–2010–86) (extending the operation of the SLP Pilot to August 1, 2011); 64762 (June 28, 2011), 76 FR 39145 (July 5, 2011) (SR–NYSE–2011–30) (extending the operation of the SLP Pilot to January 31, 2012); and 66045 (December 23, 2011), 76 FR 82342 (December 30, 2011) (SR–NYSE–2011–66) (extending the operation of the SLP Pilot to July 31, 2012).

[5] The information contained herein is a summary of the NMM Pilot and the SLP Pilot. *See supra* note 4 for a fuller description of those pilots.

[6] *See* Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46).

[7] *See* NYSE Rule 103.

[8] *See* NYSE Rule 107B.

[9] The NMM Pilot was scheduled to expire on July 31, 2012. On July 12, 2012 the Exchange filed to extend the NMM Pilot until January 31, 2013 (*See* SR–NYSE–2012–26) (*See also* Securities Exchange Act Release Nos. 66046 (December 23, 2011), 76 FR 82340 (December 30, 2011) (SR–NYSE–2011–65) (extending the operation of the NMM Pilot to July 31, 2012); 64761 (June 28, 2011) 76 FR 39147 (July 5, 2011) (SR–NYSE–2011–29) (extending the operation of the NMM Pilot to January 31, 2012); 63618 (December 29, 2010) 76 FR 617 (January 5, 2011) (SR–NYSE–2010–85) (extending the operation of the NMM Pilot to August 1, 2011); 62819 (September 1, 2010), 75 FR 54937 (September 9, 2010) (SR–NYSE–2010–61) (extending the operation of the NMM Pilot to January 31, 2011); 61724 (March 17, 2010), 75 FR 14221 (SR–NYSE–2010–25) (extending the operation of the NMM Pilot to September 30, 2010); and 61031 (November 19, 2009), 74 FR 62368 (SR–NYSE–2009–113) (extending the operation of the NMM Pilot to March 30, 2010).

[10] The NYSE MKT SLP Pilot (NYSE MKT Rule 107B—Equities) is also being extended until January 31, 2013 or until the Commission approves it as permanent (*See* SR–NYSEMKT–2012–22).

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

A proposed rule change filed under Rule 19b–4(f)(6) [14] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[15] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the pilot program to continue uninterrupted. Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing.[16]

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–2012–27 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–2012–27. 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 Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSE–2012–27 and should be submitted on or before August 21, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

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[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] 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).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67496; File No. SR–NYSEMKT–2012–22]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Operation of Its Supplemental Liquidity Providers Pilot, Until the Earlier of the Securities and Exchange Commission's Approval To Make Such Pilot Permanent or January 31, 2013

July 25, 2012.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on July 12, 2012, NYSE MKT LLC (''NYSE MKT'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the operation of its Supplemental Liquidity Providers Pilot (''SLP Pilot'' or ''Pilot'') (See Rule 107B—Equities), currently scheduled to expire on July 31, 2012, until the earlier of the Securities and Exchange Commission's (''Commission'') approval to make such Pilot permanent or January 31, 2013. 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 proposes to extend the operation of its SLP Pilot,[4] currently scheduled to expire on July 31, 2012, until the earlier of Commission approval

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 61308 (January 7, 2010), 75 FR 2573 (January 15, 2010) (SR–NYSEAmex–2009–98) (establishing the NYSE Amex Equities SLP Pilot). *See also* Securities Exchange Act Release Nos. 61841 (April 5, 2010), 75 FR 18560 (April 12, 2010) (SR–NYSEAmex–2010–33) (extending the operation of the SLP Pilot to September 30, 2010); 62814 (September 1, 2010), 75 FR 54671 (September 8, 2010) (SR–NYSEAmex–2010–88) (extending the operation of the SLP Pilot to January 31, 2011); 63615 (December 29, 2010), 76 FR 611 (January 5, 2011) (SR–NYSEAmex–2010–123) (extending the operation of the SLP Pilot to August 1, 2011); 64772 (June 29, 2011), 76 FR 39455 (July 6, 2011) (SR–NYSEAmex–2011–44) (extending the operation of the SLP Pilot to January 31, 2012); and 66041 (December 23, 2011), 76 FR 82328 (December 30, 2011) (SR–NYSEAmex–2011–103) (extending the operation of the SLP Pilot to July 31, 2012).

to make such Pilot permanent or January 31, 2013.

Background [5]

In October 2008, the New York Stock Exchange LLC (''NYSE'') implemented significant changes to its market rules, execution technology, and the rights and obligations of its market participants all of which were designed to improve execution quality on the NYSE. These changes were all elements of the NYSE's and the Exchange's enhanced market model referred to as the ''New Market Model'' (''NMM Pilot'').[6] The NYSE SLP Pilot was launched in coordination with the NMM Pilot (see NYSE Rule 107B).

As part of the NMM Pilot, NYSE eliminated the function of specialists on the Exchange creating a new category of market participant, the Designated Market Maker or ''DMM.'' [7] Separately, the NYSE established the SLP Pilot, which established SLPs as a new class of market participants to supplement the liquidity provided by DMMs.[8]

The NYSE adopted NYSE Rule 107B governing SLPs as a six-month pilot program commencing in November 2008. This NYSE pilot has been extended several times, most recently to July 31, 2012.[9] The NYSE is in the process of requesting an extension of their SLP Pilot until January 31, 2013 or until the Commission approves the pilot as permanent.[10] The extension of the NYSE SLP Pilot until January 31, 2013 runs parallel with the extension of the NMM pilot until January 31, 2013, or until the Commission approves the NMM Pilot as permanent.

Proposal To Extend the Operation of the NYSE MKT SLP Pilot

The Exchange established the SLP Pilot to provide incentives for quoting, to enhance competition among the existing group of liquidity providers, including the DMMs, and add new competitive market participants. NYSE MKT Rule 107B—Equities is based on NYSE Rule 107B. NYSE MKT Rule 107B—Equities was filed with the Commission on December 30, 2009, as a ''me too'' filing for immediate effectiveness as a pilot program.[11] The Exchange's SLP Pilot is scheduled to end operation on July 31, 2012 or such earlier time as the Commission may determine to make the rules permanent.

The Exchange believes that the SLP Pilot, in coordination with the NMM Pilot and the NYSE SLP Pilot, allows the Exchange to provide its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity, facilitate the trading of larger orders more efficiently and operates to reward aggressive liquidity providers. As such, the Exchange believes that the rules governing the SLP Pilot (NYSE MKT Rule 107B—Equities) should be made permanent.

Through this filing the Exchange seeks to extend the current operation of the SLP Pilot until January 31, 2013, in order to allow the Exchange to formally submit a filing to the Commission to convert the SLP Pilot rule to a permanent rule. The Exchange is currently preparing a rule filing seeking permission to make the Exchange's SLP Pilot permanent, but does not expect that filing to be completed and approved by the Commission before July 31, 2012.[12]

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the ''Act'') for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the instant filing is consistent with these principles because the SLP Pilot provides its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity and operates to reward aggressive liquidity providers. Moreover, the instant filing requesting an extension of the SLP Pilot will permit adequate time for: (i) The Exchange to prepare and submit a filing to make the rules governing the SLP Pilot permanent; (ii) public notice and comment; and (iii) completion of the 19b–4 approval process.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14] 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[15]

A proposed rule change filed under Rule 19b–4(f)(6) [16] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[17] the

[5] The information contained herein is a summary of the NMM Pilot and the SLP Pilot. *See supra* note 4 and *infra* note 6 for a fuller description of those pilots.

[6] *See* Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46).

[7] *See* NYSE Rule 103.

[8] *See* NYSE Rule 107B and NYSE MKT Rule 107B—Equities.

[9] *See* Securities Exchange Act Release Nos. 58877 (October 29, 2008), 73 FR 65904 (November 5, 2008) (SR–NYSE–2008–108) (adopting SLP Pilot program); 59869 (May 6, 2009), 74 FR 22796 (May 14, 2009) (SR–NYSE–2009–46) (extending SLP Pilot program until October 1, 2009); 60756 (October 1, 2009), 74 FR 51628 (October 7, 2009) (SR–NYSE–2009–100) (extending SLP Pilot program until November 30, 2009); 61075 (November 30, 2009), 74 FR 64112 (December 7, 2009) (SR–NYSE–2009–119) (extending SLP Pilot program until March 30, 2010); 61840 (April 5, 2010), 75 FR 18563 (April 12, 2010) (SR–NYSE–2010–28) (extending the SLP Pilot until September 30, 2010); 62813 (September 1, 2010), 75 FR 54686 (September 8, 2010) (SR–NYSE–2010–62) (extending the SLP Pilot until January 31, 2011); 63616 (December 29, 2010), 76 FR 612 (January 5, 2011) (SR–NYSE–2010–86) (extending the operation of the SLP Pilot to August 1, 2011); 64762 (June 28, 2011), 76 FR 39145 (July 5, 2011) (SR–NYSE–2011–30) (extending the operation of the SLP Pilot to January 31, 2012); and 66045 (December 23, 2011), 76 FR 82342 (December 30, 2011) (SR–NYSE–2011–66) (extending the operation of the SLP Pilot to July 31, 2012).

[10] *See* SR–NYSE–2012–27.

[11] *See* Securities Exchange Act Release No. 61308 (January 7, 2010), 75 FR 2573 (January 15, 2010) (SR–NYSEAmex–2009–98).

[12] The NMM Pilot was scheduled to expire on July 31, 2012 as well. On July 12, 2012, the Exchange filed to extend the NMM Pilot until January 31, 2013 (*See* SR–NYSEMKT–2012–21).

[13] 15 U.S.C. 78s(b)(3)(A)(iii).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and 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.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the pilot program to continue uninterrupted. Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing.[18]

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–NYSEMKT–2012–22 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–NYSEMKT–2012–22. 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 Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEMKT–2012–22 and should be submitted on or before August 21, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67505; File No. SR–NYSEMKT–2012–24]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Deleting Existing Rule Text Found in Rule 923NY(d)(1) to (4) Concerning the Number of ATP's Required by an NYSE Amex Options Market Maker To Quote on the Exchange and Move It to the Fee Schedule

July 26, 2012.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 12, 2012, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to delete existing rule text found in Rule 923NY(d)(1) to (4) concerning the number of ATP's required by an NYSE Amex Options Market Maker to quote on the Exchange and move it to the Fee Schedule. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to delete Rule 923NY(d)(1) to (4) and insert language referencing the Exchange's Fee Schedule. The Exchange further proposes to move the content of Rule 923NY(d)(1) to (4) to the Fee Schedule, without any substantive changes.

With one exception, the Fee Schedule sets forth the fees and charges that participants on the Exchange can be expected to pay. However, even though it implicates a fee issue, ATP Holders acting as NYSE Amex Options Market Makers need to refer to Rule 923NY(d)(1) to (4) to ascertain the number of ATP's they are required to have based on the number of option products that they have in their assignment. The Exchange believes that this information more appropriately belongs in the Fee Schedule so that all participants can have the same source to understand the basis for fees.[4] In

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[18] 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).

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* NASDAQ OMX PHLX fees charged to Streaming Quote Traders and Remote Streaming Quote traders in Section VI ''Membership Fees'' in their fee schedule found here: *http://nasdaq*

particular, because the Exchange charges a fee for each ATP assigned to an ATP Holder, the rule text identifies the fee structure by setting forth the number of trading permits that are required according to the number of options issues including [sic] in their appointment.

Rule 923NY(d)(1) to (4) sets forth the trading appointments of participants acting as Market Makers on the Exchange. They are as follows:

(1) Market Makers with 1 ATP may have up to 100 option issues included in their appointment.

(2) Market Makers with 2 ATPs may have up to 250 option issues included in their electronic appointment.

(3) Market Makers with 3 ATPs may have up to 750 option issues included in their appointment.

(4) Market Makers with 4 ATPs may have all option issues traded on the Exchange included in their appointment.

The Exchange proposes to delete the text found in bullets 1 to 4 above, replace the rule text in 1 and re-number 5 to number 2. The proposed language for 1 is, ''Market Makers shall have the number of ATP's required under the Fee Schedule in order to have a trading appointment on the Exchange.''

Concurrent with this change, the Exchange proposes to add a section to the Fee Schedule under the section entitled, ''NYSE AMEX OPTIONS GENERAL OPTIONS and TRADING PERMIT (ATP) FEES'', that will replicate the rule text deleted in Rules 923NY(d)(1) to (4). No change in the number of ATPs required by Market Makers is being made at this time.

The Exchange proposes to make a non-substantive change when moving the rule text to the Fee Schedule by clarifying in the introduction text that all appointments are electronic appointments, and delete the term ''electronic'' in connection with the entry for Market Makers with 2 ATPs.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) [5] of the Securities Exchange Act of 1934 (the ''Act''), in general, and Section 6(b)(5) [6] of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that [sic] relocating the number of permits required of ATP Holders acting as Market Makers on the Exchange from within the rule text of Rules 923NY(d)(1) through (4) to the Fee Schedule, the Exchange is making it easier and more transparent for participants to understand the basis for fees.

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

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 [7] and Rule 19b–4(f)(6) thereunder.[8]

A proposed rule change filed under Rule 19b–4(f)(6) [9] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[10] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing because the proposal is administrative in nature and simply moves fee-related text from the rules to the Fee Schedule, and because it will make it easier and more transparent for participants to understand the basis for these fees. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[11] Therefore, the Commission designates the proposed rule change to be operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2012–24 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–NYSEMKT–2012–24. 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

omxphlx.cchwallstreet.com/NASDAQOMXPHLXTools/PlatformViewer.asp?selectednode=chp%5F1%5F4%5F1&manual=%2Fnasdaqomxphlx%2Fphlx%2Fphlx%2Drulesbrd%2F.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4) [sic].

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 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 the filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549–1090. Copies of the filing will also be available for inspection and copying at the Exchange's principal office and on its Internet Web site at *www.nyse.com.* 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–NYSEMKT–2012–24 and should be submitted on or before August 21, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–18655 Filed 7–30–12; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67502; File No. SR–EDGX–2012–28]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGX Rule 11.14 To Extend the Operation of the Single Stock Circuit Breaker Pilot Program Until February 4, 2013

July 25, 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 July 18, 2012, the EDGX Exchange, Inc. (the ''Exchange'' or the ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend EDGX Rule 11.14 to extend the operation of the single stock circuit breaker pilot program (the ''Pilot'') pursuant to the Rule until February 4, 2013. The text of the proposed rule change is available on the Exchange's Web site at *www.directedge.com,* at the Exchange's principal office, on the Commission's Web site at *www.sec.gov,* and at the Public Reference Room of 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 self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend EDGX Rule 11.14 to extend the operation of a Pilot that allows the Exchange to provide for uniform market-wide trading pause standards for NMS stocks through February 4, 2013.

Background

Pursuant to Rule 11.14, the Exchange is allowed to pause trading in any NMS stock when the primary listing market for such stock issues a trading pause in such NMS stock. The Exchange will pause trading in such security until trading has resumed on the primary listing market.

EDGX Rule 11.14 was approved by the Commission on June 10, 2010 on a Pilot basis to end on December 10, 2010.[3] The Pilot was subsequently extended until April 11, 2011.[4] The Pilot was then further extended through the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies.[5] The Pilot was again extended through January 31, 2012,[6] and then extended yet again through July 31, 2012.[7]

In its initial filing to adopt EDGX Rule 11.14, the Exchange stated that the original Pilot list of securities was all securities included in the S&P 500® Index (''S&P 500''). The Exchange also noted in that filing that it would continue to assess whether additional securities needed to be added or removed from the Pilot list and whether the parameters of the rule needed to be modified to accommodate trading characteristics of different securities. As noted in comment letters to the initial filing to adopt EDGX Rule 11.14, concerns were raised that including only securities in the S&P 500 in the Pilot rule was too narrow. In particular, commenters noted that securities that experienced volatility on May 6, 2010, including ETFs, should be included in the Pilot.

In response to these concerns, various exchanges and national securities associations collectively determined to expand the list of Pilot securities to include securities in the Russell 1000 and specified ETPs to the Pilot beginning in September 2010.[8] The Exchange believed that adding these securities would address concerns that the scope of the Pilot may be too narrow, while at the same time recognizing that during the Pilot period, the markets would continue to review whether and when to add additional securities to the Pilot and whether the parameters of the rule should be adjusted for different securities.

As a result of consulting with other markets and the staff of the Commission, the Exchange subsequently included all NMS stocks within the Pilot that were not already included therein.[9] In particular, the additional stocks were those not included in the S&P 500, Russell 1000 Index, or specified ETPs, and therefore were more likely to be less liquid securities or securities with lower trading volumes. The Exchange stated

[3] *See* Securities Exchange Act Release No. 62252 (June 10, 2010) (SR–EDGX–2010–01), 75 FR 34186 (June 16, 2010).

[4] *See* Securities Exchange Act Release No. 63507 (December 9, 2010) (SR–EDGX–2010–22), 75 FR 78787 (December 16, 2010).

[5] *See* Securities Exchange Act Release No. 64205 (April 6, 2011) (SR–EDGX–2011–10), 76 FR 20417 (April 12, 2011).

[6] *See* Securities Exchange Act Release No. 65092 (August 10, 2011) (SR–EDGX–2011–23), 76 FR 50786 (August 16, 2011).

[7] *See* Securities Exchange Act Release No. 66228 (January 24, 2012) (SR–EDGX–2012–01), 77 FR 4606 (January 30, 2012).

[8] *See* Securities Exchange Act Release No. 62884 (September 10, 2010) (SR–EDGX–2010–05), 75 FR 56618 (September 16, 2010).

[9] *See* Securities Exchange Act Release No. 64375 (June 23, 2011) (SR–EDGX–2011–14), 76 FR 38243 (June 29, 2011).

that it would continue to assess whether the parameters for invoking a trading pause continued to be appropriate and whether the parameters should be modified.

The Exchange believes that an extension of the Pilot through February 4, 2013 would continue to promote uniformity regarding decisions to pause trading and continue to reduce the negative impacts of sudden, unanticipated price movements in NMS stocks. The Exchange believes that the Pilot is working well, that it has been infrequently invoked during the prior months, and that given the implementation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Securities Exchange Act of 1934 (the ''Limit Up-Limit Down Plan'') on February 4, 2013,[10] the Exchange requests an extension of the Pilot through February 4, 2013. At that time, the Limit Up-Limit Down Plan will replace the Pilot.[11]

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[12] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[13] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes uniformity across markets concerning decisions to pause trading in a security when there are significant price movements. The Exchange believes that the Pilot is working well, that it has been infrequently invoked during the previous months, and that the extension of the Pilot will allow the Exchange to further assess the effect of the Pilot on the market until the implementation of the Limit Up-Limit Down Plan on February 4, 2013.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and Rule 19b–4(f)(6)(iii) thereunder.[17]

A proposed rule change filed under Rule 19b–4(f)(6)[18] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii)[19] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[20]

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 No. SR–EDGX–2012–28 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–EDGX–2012–28. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commissions Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will

[10] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

[11] *Id.*

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78k–1(a)(1).

[14] 15 U.S.C. 78s(b)(3)(A)(iii).

[15] 17 CFR 240.19b–4(f)(6).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii).

[20] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–EDGX–2012–28 and should be submitted by August 21, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–18602 Filed 7–30–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67501; File No. SR–EDGA–2012–31]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGA Rule 11.14 To Extend the Operation of the Single Stock Circuit Breaker Pilot Program Until February 4, 2013

July 25, 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 July 18, 2012, the EDGA Exchange, Inc. (the ''Exchange'' or the ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend EDGA Rule 11.14 to extend the operation of the single stock circuit breaker pilot program (the ''Pilot'') pursuant to the Rule until February 4, 2013. The text of the proposed rule change is available on the Exchange's Web site at *www.directedge.com,* at the Exchange's principal office, on the Commission's Web site at *www.sec.gov,* and at the Public Reference Room of the Commission.

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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 self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend EDGA Rule 11.14 to extend the operation of a Pilot that allows the Exchange to provide for uniform market-wide trading pause standards for NMS stocks through February 4, 2013.

Background

Pursuant to Rule 11.14, the Exchange is allowed to pause trading in any NMS stock when the primary listing market for such stock issues a trading pause in such NMS stock. The Exchange will pause trading in such security until trading has resumed on the primary listing market.

EDGA Rule 11.14 was approved by the Commission on June 10, 2010 on a Pilot basis to end on December 10, 2010.[3] The Pilot was subsequently extended until April 11, 2011.[4] The Pilot was then further extended through the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies.[5] The Pilot was again extended through January 31, 2012,[6] and then extended yet again through July 31, 2012.[7]

In its initial filing to adopt EDGA Rule 11.14, the Exchange stated that the original Pilot list of securities was all securities included in the S&P 500® Index (''S&P 500''). The Exchange also noted in that filing that it would continue to assess whether additional securities needed to be added or removed from the Pilot list and whether the parameters of the rule needed to be modified to accommodate trading characteristics of different securities. As noted in comment letters to the initial filing to adopt EDGA Rule 11.14, concerns were raised that including only securities in the S&P 500 in the Pilot rule was too narrow. In particular, commenters noted that securities that experienced volatility on May 6, 2010, including ETFs, should be included in the Pilot.

In response to these concerns, various exchanges and national securities associations collectively determined to expand the list of Pilot securities to include securities in the Russell 1000 and specified ETPs to the Pilot beginning in September 2010.[8] The Exchange believed that adding these securities would address concerns that the scope of the Pilot may be too narrow, while at the same time recognizing that during the Pilot period, the markets would continue to review whether and when to add additional securities to the Pilot and whether the parameters of the rule should be adjusted for different securities.

As a result of consulting with other markets and the staff of the Commission, the Exchange subsequently included all NMS stocks within the Pilot that were not already included therein.[9] In particular, the additional stocks were those not included in the S&P 500, Russell 1000 Index, or specified ETPs, and therefore were more likely to be less liquid securities or securities with lower trading volumes. The Exchange stated that it would continue to assess whether the parameters for invoking a trading pause continued to be appropriate and whether the parameters should be modified.

The Exchange believes that an extension of the Pilot through February 4, 2013 would continue to promote uniformity regarding decisions to pause trading and continue to reduce the negative impacts of sudden, unanticipated price movements in NMS stocks. The Exchange believes that the Pilot is working well, that it has been infrequently invoked during the prior months, and that given the

[3] *See* Securities Exchange Act Release No. 62252 (June 10, 2010) (SR–EDGA–2010–01), 75 FR 34186 (June 16, 2010).

[4] *See* Securities Exchange Act Release No. 63514 (December 9, 2010) (SR–EDGA–2010–23), 75 FR 78783 (December 16, 2010).

[5] *See* Securities Exchange Act Release No. 64204 (April 6, 2011) (SR–EDGA–2011–11), 76 FR 20394 (April 12, 2011).

[6] *See* Securities Exchange Act Release No. 65091 (August 10, 2011) (SR–EDGA–2011–24), 76 FR 50788 (August 16, 2011).

[7] *See* Securities Exchange Act Release No. 66227 (January 24, 2012) (SR–EDGA–2012–01), 77 FR 4608 (January 30, 2012).

[8] *See* Securities Exchange Act Release No. 62884 (September 10, 2010) (SR–EDGA–2010–05), 75 FR 56618 (September 16, 2010).

[9] *See* Securities Exchange Act Release No. 64375 (June 23, 2011) (SR–EDGA–2011–15), 76 FR 38243 (June 29, 2011).

implementation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Securities Exchange Act of 1934 (the ''Limit Up-Limit Down Plan'') on February 4, 2013,[10] the Exchange requests an extension of the Pilot through February 4, 2013. At that time, the Limit Up-Limit Down Plan will replace the Pilot.[11]

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[12] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[13] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes uniformity across markets concerning decisions to pause trading in a security when there are significant price movements. The Exchange believes that the Pilot is working well, that it has been infrequently invoked during the previous months, and that the extension of the Pilot will allow the Exchange to further assess the effect of the Pilot on the market until the implementation of the Limit Up-Limit Down Plan on February 4, 2013.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

[10] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

[11] *Id.*

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78k–1(a)(1).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and Rule 19b–4(f)(6)(iii) thereunder.[17]

A proposed rule change filed under Rule 19b–4(f)(6)[18] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii)[19] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[20]

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.

[14] 15 U.S.C. 78s(b)(3)(A)(iii).

[15] 17 CFR 240.19b–4(f)(6).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii).

[20] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–EDGA–2012–31 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–EDGA–2012–31. 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 Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–EDGA–2012–31 and should be submitted on or before August 21, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–18601 Filed 7–30–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67500; File No. SR–EDGA–2012–30]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGA Rule 11.13 To Extend the Operation of a Pilot Program pursuant to the Rule Until February 4, 2013

July 25, 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 July 18, 2012, the EDGA Exchange, Inc. (the ''Exchange'' or the ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend EDGA Rule 11.13 to extend the operation of a pilot pursuant to the Rule (the ''Pilot'') until February 4, 2013. The text of the proposed rule change is available on the Exchange's Web site at *www.directedge.com,* at the Exchange's principal office, on the Commission's Web site at *www.sec.gov,* and at the Public Reference Room of 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 self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to extend the effectiveness of the Exchange's current rule applicable to Clearly Erroneous Executions, Rule 11.13, through February 4, 2013.

Background

The rule, explained in further detail below, was initially approved to operate under a Pilot program set to expire on December 10, 2010.[3] Then, it was subsequently extended by the Exchange to April 11, 2011.[4] Then, it was further extended by the Exchange through the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies.[5] Then, it was further extended through January 31, 2012,[6] and again extended through July 31, 2012.[7]

On September 10, 2010, the Commission approved, on a Pilot basis, changes to EDGA Rule 11.13 to provide for uniform treatment: (1) Of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (2) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary market and subsequent transactions that occur before the trading pause is in effect on the Exchange.[8] The Exchange also adopted additional changes to Rule 11.13 that reduced the ability of the Exchange to deviate from the objective standards set forth in Rule 11.13.[9] The Exchange believes the benefits to market participants from the more objective clearly erroneous executions rule should be approved to continue on a Pilot basis through February 4, 2013, the implementation date of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Securities Exchange Act of 1934 (the ''Limit Up-Limit Down Plan'').[10]

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[11] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. More specifically, the Exchange believes that the extension of the Pilot would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[12] and Rule

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–EDGA–2010–03).

[4] *See* Securities Exchange Act Release No. 63517 (December 10, 2010), 75 FR 78318 (December 15, 2010) (SR–EDGA–2010–24).

[5] *See* Securities Exchange Act Release No. 64230 (April 7, 2011), 76 FR 20770 (April 13, 2011) (SR–EDGA–2011–12).

[6] *See* Securities Exchange Act Release No. 65074 (August 9, 2011), 76 FR 50511 (August 15, 2011) (SR–EDGA–2011–25).

[7] *See* Securities Exchange Act Release No. 66223 (January 24, 2012), 77 FR 4600 (January 30, 2012) (SR–EDGA–2012–02).

[8] *See* Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–EDGA–2010–03).

[9] *Id.*

[10] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

19b–4(f)(6) thereunder.[13] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6)(iii) thereunder.[15]

A proposed rule change filed under Rule 19b–4(f)(6)[16] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii)[17] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[18]

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 No. SR–EDGA–2012–30 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–EDGA–2012–30. 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 Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–EDGA–2012–30 and should be submitted on or before August 21, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–18600 Filed 7–30–12; 8:45 am]

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[13] 17 CFR 240.19b–4(f)(6).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and 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.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67499; File No. SR–EDGX–2012–27]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGX Rule 11.13 To extend the Operation of a Pilot Program Pursuant to the Rule Until February 4, 2013

July 25, 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 July 18, 2012, the EDGX Exchange, Inc. (the ''Exchange'' or the ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend EDGX Rule 11.13 to extend the operation of a pilot pursuant to the Rule (the ''Pilot'') until February 4, 2013. The text of the proposed rule change is available on the Exchange's Web site at *www.directedge.com,* at the Exchange's principal office, on the Commission's Web site at *www.sec.gov,* and at the Public Reference Room of 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 self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to extend the effectiveness of the Exchange's current rule applicable to Clearly Erroneous Executions, Rule 11.13, through February 4, 2013.

Background

The rule, explained in further detail below, was initially approved to operate under a Pilot program set to expire on December 10, 2010.[3] Then, it was subsequently extended by the Exchange to April 11, 2011.[4] Then, it was further extended by the Exchange through the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies.[5] Then, it was further extended through January 31, 2012,[6] and again extended through July 31, 2012.[7]

On September 10, 2010, the Commission approved, on a Pilot basis, changes to EDGX Rule 11.13 to provide for uniform treatment: (1) Of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (2) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary market and subsequent transactions that occur before the trading pause is in effect on the Exchange.[8] The Exchange also adopted additional changes to Rule 11.13 that reduced the ability of the Exchange to deviate from the objective standards set forth in Rule 11.13.[9] The Exchange believes the benefits to market participants from the more objective clearly erroneous executions rule should be approved to continue on a Pilot basis through February 4, 2013, the implementation date of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Securities Exchange Act of 1934 (the ''Limit Up-Limit Down Plan'').[10]

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[11] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. More specifically, the Exchange believes that the extension of the Pilot would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6)(iii) thereunder.[15]

A proposed rule change filed under Rule 19b–4(f)(6)[16] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii)[17] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[18]

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:

[3] *See* Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–EDGX–2010–03).

[4] *See* Securities Exchange Act Release No. 63515 (December 10, 2010), 75 FR 78319 (December 15, 2010) (SR–EDGX–2010–23).

[5] *See* Securities Exchange Act Release No. 64229 (April 7, 2011), 76 FR 20738 (April 13, 2011) (SR–EDGX–2011–11).

[6] *See* Securities Exchange Act Release No. 65073 (August 9, 2011), 76 FR 50512 (August 15, 2011) (SR–EDGX–2011–24).

[7] *See* Securities Exchange Act Release No. 66222 (January 24, 2012), 77 FR 4595 (January 30, 2012) (EDGX–2012–02).

[8] *See* Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–EDGX–2010–03).

[9] *Id.*

[10] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and 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.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an Email to *rule-comments@sec.gov.* Please include File No. SR–EDGX–2012–27 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–EDGX–2012–27. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commissions Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for Web site viewing and printing 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–EDGX–2012–27 and should be submitted by August 21, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–18599 Filed 7–30–12; 8:45 am]

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[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67498; File No. SR–NYSEArca–2012–76]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending NYSE Arca Options Rule 6.40 To Specify That the Potential Range for the Settings Applicable to the Market Maker Risk Limitation Mechanism Will Be Between One and 100 Executions per Second, To Eliminate the Current Reference to the Default Setting and, in the Future, To Specify the Applicable Minimum, Maximum and Default Settings via Regulatory Bulletin

July 25, 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 July 12, 2012, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Options Rule 6.40 to specify that the potential range for the settings applicable to the Market Maker Risk Limitation Mechanism (''Mechanism'') will be between one and 100 executions per second, to eliminate the current reference to the default setting and, in the future, to specify the applicable minimum, maximum and default settings via Regulatory Bulletin. 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 proposes to amend NYSE Arca Options Rule 6.40 to specify that the potential range for the settings applicable to the Mechanism will be between one and 100 executions per second, to eliminate the current reference to the default setting and, in the future, to specify the applicable minimum, maximum and default settings via Regulatory Bulletin.

The Mechanism protects Market Makers from the risk associated with an excessive number of nearly simultaneous executions in a single option class.[3] Specifically, if ''n'' executions occur within one second against the Market Maker's quotes in an appointed class, the NYSE Arca System automatically cancels all quotes posted by the Market Maker in that class.

The Mechanism currently defaults the ''n'' number of executions to 50 executions per second.[4] However, a Market Maker may instead set the ''n'' number of executions between five and 100 executions per second.[5] The Exchange proposes to decrease the low end of this range from five to one.[6] The Exchange also proposes to eliminate the reference to the default setting that is applicable to the Mechanism. In addition, the Exchange proposes that, in the future, it will specify the applicable minimum, maximum and default settings for the Mechanism via Regulatory Bulletin, all of which would be within the proposed range of one to 100 executions per second.[7]

The Exchange believes that this proposed change would provide the Exchange with greater flexibility with respect to changing these settings in the future. In particular, the Exchange may need to change the settings from time to time to accommodate systems capacity concerns. The Exchange believes that specifying these settings via Regulatory

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 54238 (July 28, 2006), 71 FR 44758 (August 7, 2006) (SR–NYSEArca–2006–13).

[4] *See* NYSE Arca Options Rule 6.40(b)(1).

[5] *See* NYSE Arca Options Rule 6.40(b)(2).

[6] The high end of the range would remain unchanged at 100 executions per second.

[7] *See* proposed NYSE Arca Options Rule 6.40(b)(1). The Exchange proposes to designate NYSE Arca Options Rule 6.40(b)(2) as ''reserved.''

Bulletin, instead of within NYSE Arca Options Rule 6.40, is consistent with the manner in which the Commission currently permits other option exchanges to communicate settings or parameters for various exchange mechanisms to their members other than through the rule filing process, i.e., via notices, bulletins or circulars.[8]

The Exchange anticipates announcing via Regulatory Bulletin that the applicable minimum, maximum and default settings for the Mechanism will be decreased to 2, 50 and 5 executions per second, respectively. The Exchange believes that decreasing these settings would provide Market Makers with greater flexibility with respect to managing their risk on the Exchange, consistent with the flexibility available on other option markets. In this regard, the Exchange understands that the Commission has previously permitted similar risk mechanisms to be implemented on other option exchanges without requiring *any* applicable minimum, maximum and/or default settings in the exchanges' corresponding rules.[9]

When announcing changes to the Mechanism via Regulatory Bulletin the Exchange will issue such bulletin to all Market Makers at least one trading day in advance of the effective date of the change. All such Regulatory Bulletins will contain information regarding changes to the risk settings in the Mechanism, the effective date of such changes and contact information of Exchange staff who can provide additional information. The Exchange distributes Regulatory Bulletins simultaneously to all Market Makers via email and in addition Regulatory Bulletins are posted to the Exchange's Web site.

Upon receiving notification of a change to the minimum/maximum settings in the Mechanism by the Exchange, Market Makers will able to make adjustments they deem necessary to their own risk settings within the Mechanism using the same electronic interface that they use to send quotes to the Exchange. In addition, Market Makers may elect to adjust risk settings in their own proprietary systems in reaction to any changes initiated by the Exchange. For example, if the Exchange was to raise the minimum number of executions per second in the Mechanism to a level greater than a given Market Maker was using at the time, the Market Maker would take that new setting into consideration and could make appropriate changes to their own risk settings within the Mechanism, and if warranted, could make additional adjustments to their own proprietary quoting systems to achieve risk parameters consistent with their individual business model. When adjusting risk parameters in the Mechanism and/or a proprietary system, in reaction to a change in the minimum/maximum settings by Exchange, Market Makers are able to utilize functionality that is both readily available and user controlled. Accordingly, the Exchange believes that providing Market Makers with at least one day's advance notice prior to making adjustments to the Mechanism will afford Market Makers sufficient time to review their risk settings and make operational and/or technological changes, to either the user controlled risk settings in the Mechanism or to their own proprietary systems, necessary to accommodate any such adjustments made to the Mechanism by the Exchange.

The Exchange is not proposing any other changes to the Mechanism at this time.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change would prevent fraudulent and manipulative acts and practices and promote just and equitable principles of trade because it would continue to provide Market Makers with greater control and flexibility with respect to managing risk and the manner in which they enter quotes. The Exchange believes that this increased control and flexibility also fosters cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in, securities. The Exchange further believes that the proposed rule change would remove impediments to and perfect the mechanisms of a free and open market and a national market system because it would permit the Exchange to adjust the minimum, maximum and default settings for the Mechanism via Regulatory Bulletin, which would be consistent with the manner in which other option exchanges are permitted to communicate settings or parameters for various exchange mechanisms to their members other than through the rule filing process, i.e., via notices, bulletins or circulars.[12] The Exchange further believes that the proposed rule change is consistent with, and furthers the objectives of, the Act because it would permit the Exchange to increase or decrease the minimum, maximum and default settings from their current levels, should the Exchange choose to do so, for example, to accommodate

[8] *See, e.g.,* Chapter VI, Section 16 of the Boston Options Exchange (''BOX'') Rules, which provides that, related to BOX's Quote Removal Mechanism Upon Technical Disconnect, BOX Market Makers will be notified of the value that ''n'' seconds represents via Regulatory Circular. *See also* Securities Exchange Act Release No. 58140 (July 10, 2008), 73 FR 41384 (July 18, 2008) (SR–BSE–2008–40), in which the Commission noted that ''n'' seconds would be configurable by BOX and any subsequent re-configurations will be announced to Market Makers via Regulatory Circular. *See also* Interpretation and Policy .05 to Chicago Board Options Exchange (''CBOE'') Rule 6.74A, which provides that any determinations made by CBOE regarding CBOE's Automated Improvement Mechanism, such as eligible classes, order size parameters and the minimum price increment for certain responses, shall be communicated in a Regulatory Circular. *See also* CBOE Rule 6.13(b)(i)(C)(2)(a), which provides that CBOE may establish certain maximum order size eligibility requirements with respect to automatic executions and announce such determinations via Regulatory Circular. *See also* CBOE Rules 6.45A and 6.45B, which provide that CBOE will issue a Regulatory Circular to specify certain priority-related information, including specifying which priority rules will govern which classes of options any time the Exchange changes the priority. *See also* CBOE Rule 6.25(a)(4)(i), which provides that, for purposes of nullifying a trade due to an erroneous print in an underlying or related instrument, CBOE may announce such underlying or related instrument via Regulatory Circular. *See also* C2 Options Exchange (''C2'') Rule 6.13, which provides that C2 may make certain determinations regarding the price check parameter feature and announce such determinations via Regulatory Circular. *See also* Securities Exchange Act Release No. 65311 (September 9, 2011), 76 FR 57094 (September 15, 2011) (SR–C2–2011–018).

[9] *See, e.g.,* Chapter VI, Section 15 of the BOX Rules, which provides for Automatic Quote Cancellation. *See also* Securities Exchange Act Release No. 65001 (August 1, 2011), 76 FR 47635 (August 5, 2011) (SR–BX–2011–050). *See also* Supplementary Material .01 to International Securities Exchange (''ISE'') Rule 804, which provides for Automated Quotation Adjustments for Market Makers.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] *See supra* note 8.

systems capacity concerns.[13] The Exchange also believes that specifying the applicable minimum, maximum and default settings for the Mechanism via Regulatory Bulletin would further remove impediments to and perfect the mechanisms of a free and open market by reducing the resources that would otherwise be expended, by both the Exchange and the Commission, if the Exchange is required to propose a rule change with the Commission each time it wishes to change the settings.

The Exchange believes that the proposed decrease of the low end of the range of the Mechanism's settings to one execution per second would continue to reasonably ensure that, consistent with their obligations, Market Makers maintain a quote on the Exchange. In this regard, the Exchange notes that the proposed rule change would not relieve Market Makers on the Exchange of their quoting obligations under the Exchange's Rules.[14] As is the case today, a Market Maker quote that is cancelled would no longer count toward satisfying the Market Maker's percentage quoting obligation under NYSE Arca Options Rule 6.37B. The Exchange further notes that the proposed rule change would not relieve a Market Maker of its ''firm quote'' obligation under Rule 602 of Regulation NMS[15] or NYSE Arca Options Rule 6.86, thereby promoting the protection of investors and the public interest.

The Exchange further believes that the proposed rule change is not unfairly discriminatory because the same minimum, maximum and default settings would be applicable to all Market Makers and because the settings would be announced via Regulatory Bulletin to all Market Makers at the same time.

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

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and Rule 19b–4(f)(6) thereunder.[17]

The Exchange has requested that the Commission waive the 30-day operative delay, stating that this proposed rule change is substantially similar in all respects to a proposed rule change recently noticed and approved by the Commission and that no new questions or comments would be raised by this proposed rule change.[18] For these reasons, the Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposal operative upon filing.[19]

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–NYSEArca–2012–76 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2012–76. 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–NYSEArca–2012–76 and should be submitted on or before August 21, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–18598 Filed 7–30–12; 8:45 am]

BILLING CODE 8011–01–P

[13] As noted above, the Exchange anticipates that the current minimum, maximum and default settings will be decreased to 2, 50 and 5 executions per second, respectively. The Exchange understands that the Commission has previously permitted similar risk mechanisms to be implemented on other option exchanges without any applicable minimum, maximum and/or default settings in the exchanges' corresponding rules. *See supra* note 9.

[14] *See, e.g.,* NYSE Arca Options Rule 6.37B.

[15] 17 CFR 242.602.

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[18] *See* Securities Exchange Act Release No. 67314 (June 29, 2012), 77 FR 40139 (July 6, 2012) (SR–NYSEAmex–2012–23). The Commission notes that it received no comments on this identical proposal.

[19] 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).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67497; File No. SR–NYSEMKT–2012–25]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE MKT Rule 500—Equities To Extend the Operation of the Pilot Program That Allows Nasdaq Stock Market Securities To Be Traded on the Exchange Pursuant to a Grant of Unlisted Trading Privileges Until the Earlier of Securities and Exchange Commission Approval To Make Such Pilot Permanent or January 31, 2013

July 25, 2012.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on July 12, 2012, NYSE MKT LLC (''NYSE MKT'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE MKT Rule 500—Equities to extend the operation of the pilot program that allows Nasdaq Stock Market (''Nasdaq'') securities to be traded on the Exchange pursuant to a grant of unlisted trading privileges. The pilot is currently scheduled to expire on July 31, 2012; the Exchange proposes to extend it until the earlier of Securities and Exchange Commission (''Commission'') approval to make such pilot permanent or January 31, 2013. 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

NYSE MKT Rules 500–525—Equities, as a pilot program, govern the trading of any Nasdaq-listed security on the Exchange pursuant to unlisted trading privileges (''UTP Pilot Program'').[4] The Exchange hereby seeks to extend the operation of the UTP Pilot Program, currently scheduled to expire on July 31, 2012, until the earlier of Commission approval to make such pilot permanent or January 31, 2013.

The UTP Pilot Program includes any security listed on Nasdaq that (i) is designated as an ''eligible security'' under the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis, as amended (''UTP Plan''),[5] and (ii) has been admitted to dealings on the Exchange pursuant to a grant of unlisted trading privileges in accordance with Section 12(f) of the Securities Exchange Act of 1934, as amended (the ''Act''),[6] (collectively, ''Nasdaq Securities'').[7]

The Exchange notes that its New Market Model Pilot (''NMM Pilot''), which, among other things, eliminated the function of specialists on the Exchange and created a new category of market participant, the Designated Market Maker (''DMM''),[8] is also scheduled to end on July 31, 2012.[9] The timing of the operation of the UTP Pilot Program was designed to correspond to that of the NMM Pilot. In approving the UTP Pilot Program, the Commission acknowledged that the rules relating to DMM benefits and duties in trading Nasdaq Securities on the Exchange pursuant to the UTP Pilot Program are consistent with the Act [10] and noted the similarity to the NMM Pilot, particularly with respect to DMM obligations and benefits.[11] Furthermore, the UTP Pilot Program rules pertaining to the assignment of securities to DMMs are substantially similar to the rules implemented through the NMM Pilot.[12] The Exchange has similarly filed to extend the operation of the NMM Pilot until the earlier of Commission approval to make the NMM Pilot permanent or January 31, 2013.[13]

Extension of the UTP Pilot Program in tandem with the NMM Pilot, both from July 31, 2012 until the earlier of Commission approval to make such pilots permanent or January 31, 2013, will provide for the uninterrupted trading of Nasdaq Securities on the Exchange on a UTP basis and thus continue to encourage the additional utilization of, and interaction with, the Exchange, and provide market participants with improved price discovery, increased liquidity, more competitive quotes and greater price improvement for Nasdaq Securities.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 62479 (July 9, 2010), 75 FR 41264 (July 15, 2010) (SR–NYSEAmex–2010–31). *See also* Securities Exchange Act Release Nos. 62857 (September 7, 2010), 75 FR 55837 (September 14, 2010) (SR–NYSEAmex–2010–89); 63601 (December 22, 2010), 75 FR 82117 (December 29, 2010) (SR–NYSEAmex–2010–124); 64746 (June 24, 2011), 76 FR 38446 (June 30, 2011) (SR–NYSEAmex–2011–45); and 66040 (December 23, 2011), 76 FR 82324 (December 30, 2011) (SR–NYSEAmex–2011–104).

[5] *See* Securities Exchange Act Release No. 58863 (October 27, 2008), 73 FR 65417 (November 3, 2008) (File No. S7–24–89). The Exchange's predecessor, the American Stock Exchange LLC, joined the UTP Plan in 2001. *See* Securities Exchange Act Release No. 55647 (April 19, 2007), 72 FR 20891 (April 26, 2007) (File No. S7–24–89). In March 2009, the Exchange changed its name to NYSE Amex LLC, and, in May 2012, the Exchange subsequently changed its name to NYSE MKT LLC. *See* Securities Exchange Act Release Nos. 59575 (March 13, 2009), 74 FR 11803 (March 19, 2009) (SR–NYSEALTR–2009–24) and 67037 (May 21, 2012), 77 FR 31415 (May 25, 2012) (SR–NYSEAmex–2012–32).

[6] 15 U.S.C. 78l.

[7] ''Nasdaq Securities'' is included within the definition of ''security'' as that term is used in the NYSE MKT Equities Rules. *See* NYSE MKT Rule 3—Equities. In accordance with this definition, Nasdaq Securities are admitted to dealings on the Exchange on an ''issued,'' ''when issued,'' or ''when distributed'' basis. See NYSE MKT Rule 501—Equities.

[8] *See* NYSE MKT Rule 103—Equities.

[9] *See* Securities Exchange Act Release No. 60758 (October 1, 2009), 74 FR 51639 (October 7, 2009) (SR–NYSEAmex–2009–65). *See also* Securities Exchange Act Release Nos. 61030 (November 19, 2009), 74 FR 62365 (November 27, 2009) (SR–NYSEAmex–2009–83); 61725 (March 17, 2010), 75 FR 14223 (March 24, 2010) (SR–NYSEAmex–2010–28); 62820 (September 1, 2010), 75 FR 54935 (September 9, 2010) (SR–NYSEAmex–2010–86); 63615 (December 29, 2010), 76 FR 611 (January 5, 2011) (SR–NYSEAmex–2010–123); 64773 (June 29, 2011), 76 FR 39453 (July 6, 2011) (SR–NYSEAmex–2011–43); and 66042 (December 23, 2011), 76 FR 82326 (December 30, 2011) (SR–NYSEAmex–2011–102).

[10] 15 U.S.C. 78a.

[11] *See* SR–NYSEAmex–2010–31, *supra* note [4] [sic], at 41271.

[12] *Id.*

[13] *See* SR–NYSEMKT–2012–21.

the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Exchange believes that its proposal to extend the UTP Pilot Program is consistent with (i) Section 6(b) of the Act,[14] in general, and furthers the objectives of Section 6(b)(5) of the Act,[15] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; (ii) Section 11A(a)(1) of the Act,[16] in that it seeks to ensure the economically efficient execution of securities transactions and fair competition among brokers and dealers and among exchange markets; and (iii) Section 12(f) of the Act,[17] which governs the trading of securities pursuant to UTP consistent with the maintenance of fair and orderly markets, the protection of investors and the public interest, and the impact of extending the existing markets for such securities.

Specifically, the Exchange believes that extending the UTP Pilot Program would provide for the uninterrupted trading of Nasdaq Securities on the Exchange on a UTP basis and thus continue to encourage the additional utilization of, and interaction with, the Exchange, thereby providing market participants with additional price discovery, increased liquidity, more competitive quotes and potentially greater price improvement for Nasdaq Securities. Additionally, under the UTP Pilot Program, Nasdaq Securities trade on the Exchange pursuant to rules governing the trading of Exchange-Listed securities that previously have been approved by the Commission. Accordingly, this proposed rule change would permit the Exchange to extend the effectiveness of the UTP Pilot Program in tandem with the NMM Pilot, which the Exchange has similarly proposed to extend until the earlier of Commission approval to make such pilot permanent or January 31, 2013.[18]

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[19] and Rule 19b–4(f)(6) thereunder.[20] 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[21]

A proposed rule change filed under Rule 19b–4(f)(6)[22] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[23] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the pilot program to continue uninterrupted. Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing.[24]

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–NYSEMKT–2012–25 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–NYSEMKT–2012–25. 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 Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEMKT–2012–25 and should be submitted on or before August 21, 2012.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78k–1(a)(1).

[17] 15 U.S.C. 78l(f).

[18] *See supra* note 13.

[19] 15 U.S.C. 78s(b)(3)(A)(iii).

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[22] 17 CFR 240.19b–4(f)(6).

[23] 17 CFR 240.19b–4(f)(6)(iii).

[24] 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).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–18553 Filed 7–30–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67495; File No. SR–NYSEMKT–2012–21]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Operation of Its New Market Model Pilot Until the Earlier of Securities and Exchange Commission Approval To Make Such Pilot Permanent or January 31, 2013

July 25, 2012.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on July 12, 2012, NYSE MKT LLC (''NYSE MKT'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the operation of its New Market Model Pilot, currently scheduled to expire on July 31, 2012, until the earlier of Securities and Exchange Commission (''Commission'') approval to make such pilot permanent or January 31, 2013. 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 proposes to extend the operation of its New Market Model Pilot (''NMM Pilot'') that was adopted pursuant to its merger with the New York Stock Exchange LLC (''NYSE'').[4] The NMM Pilot was approved to operate until October 1, 2009. The Exchange filed to extend the operation of the Pilot to November 30, 2009, March 30, 2010, September 30, 2010, January 31, 2011, August 1, 2011, January 31, 2012, and July 31, 2012, respectively.[5] The Exchange now seeks to extend the operation of the NMM Pilot, currently scheduled to expire on July 31, 2012, until the earlier of Commission approval to make such pilot permanent or January 31, 2013.

The Exchange notes that parallel changes are proposed to be made to the rules of NYSE.[6]

Background[7]

In December 2008, the Exchange implemented significant changes to its equities market rules, execution technology and the rights and obligations of its equities market participants all of which were designed to improve execution quality on the Exchange. These changes are all elements of the Exchange's enhanced market model that it implemented through the NMM Pilot.

As part of the NMM Pilot, the Exchange eliminated the function of equity specialists on the Exchange creating a new category of market participant, the Designated Market Maker or DMM.[8] The DMMs, like specialists, have affirmative obligations to make an orderly market, including continuous quoting requirements and obligations to re-enter the market when reaching across to execute against trading interest. Unlike specialists, DMMs have a minimum quoting requirement[9] in their assigned securities and no longer have a negative obligation. DMMs are also no longer agents for public customer orders.[10]

In addition, the Exchange implemented a system change that allowed DMMs to create a schedule of additional non-displayed liquidity at various price points where the DMM is willing-to interact with interest and provide price improvement to orders in the Exchange's system. This schedule is known as the DMM Capital Commitment Schedule (''CCS'').[11] CCS provides the Display Book®[12] with the amount of shares that the DMM is willing to trade at price points outside, at and inside the Exchange Best Bid or Best Offer (''BBO''). CCS interest is separate and distinct from other DMM interest in that it serves as the interest of last resort.

The NMM Pilot further modified the logic for allocating executed shares

[25] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] NYSE Euronext acquired The Amex Membership Corporation (''AMC'') pursuant to an Agreement and Plan of Merger, dated January 17, 2008 (the ''Merger''). In connection with the Merger, the Exchange's predecessor, the American Stock Exchange LLC (''Amex''), a subsidiary of AMC, became a subsidiary of NYSE Euronext called NYSE Alternext US LLC. *See* Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR–NYSE–2008–60 and SR–Amex–2008–62) (approving the Merger). Subsequently, NYSE Alternext US LLC was renamed NYSE Amex LLC, which was then renamed NYSE MKT LLC and continues to operate as a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, as amended (the ''Act''). *See* Securities Exchange Act Release Nos. 59575 (March 13, 2009), 74 FR 11803 (March 19, 2009) (SR–NYSEALTR–2009–24) and 67037 (May 21, 2012), 77 FR 31415 (May 25, 2012) (SR–NYSEAmex–2012–32).

[5] *See* Securities Exchange Act Release No. 60758 (October 1, 2009), 74 FR 51639 (October 7, 2009) (SR–NYSEAmex–2009–65). *See also* Securities Exchange Act Release Nos. 61030 (November 19, 2009), 74 FR 62365 (November 27, 2009) (SR–NYSEAmex–2009–83); 61725 (March 17, 2010), 75 FR 14223 (March 24, 2010) (SR–NYSEAmex–2010–28); 62820 (September 1, 2010), 75 FR 54935 (September 9, 2010) (SR–NYSEAmex–2010–86); 63615 (December 29, 2010), 76 FR 611 (January 5, 2011) (SR–NYSEAmex–2010–123); 64773 (June 29, 2011), 76 FR 39453 (July 6, 2011) (SR–NYSEAmex–2011–43); and 66042 (December 23, 2011), 76 FR 82326 (December 30, 2011) (SR–NYSEAmex–2011–102).

[6] *See* SR–NYSE–2012–26.

[7] The information contained herein is a summary of the NMM Pilot. *See* Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46) for a fuller description.

[8] *See* NYSE MKT Rule 103—Equities.

[9] *See* NYSE MKT Rule 104—Equities.

[10] *See* NYSE MKT Rule 60—Equities; *see also* NYSE MKT Rules 104—Equities and 1000—Equities.

[11] *See* NYSE MKT Rule 1000—Equities.

[12] The Display Book system is an order management and execution facility. The Display Book system receives and displays orders to the DMMs, contains the order information, and provides a mechanism to execute and report transactions and publish the results to the Consolidated Tape. The Display Book system is connected to a number of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems.

among market participants having trading interest at a price point upon execution of incoming orders. The modified logic rewards displayed orders that establish the Exchange's BBO. During the operation of the NMM Pilot orders, or portions thereof, that establish priority [13] retain that priority until the portion of the order that established priority is exhausted. Where no one order has established priority, shares are distributed among all market participants on parity.

The NMM Pilot was originally scheduled to end operation on October 1, 2009, or such earlier time as the Commission may determine to make the rules permanent. The Exchange filed to extend the operation of the Pilot on several occasions [14] in order to prepare a rule filing seeking permission to make the above described changes permanent. The Exchange is currently still preparing such formal submission but does not expect that filing to be completed and approved by the Commission before July 31, 2012.

Proposal To Extend the Operation of the NMM Pilot

The Exchange established the NMM Pilot to provide incentives for quoting, to enhance competition among the existing group of liquidity providers and to add a new competitive market participant. The Exchange believes that the NMM Pilot allows the Exchange to provide its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity, facilitate the trading of larger orders more efficiently and operates to reward aggressive liquidity providers. As such, the Exchange believes that the rules governing the NMM Pilot should be made permanent. Through this filing the Exchange seeks to extend the current operation of the NMM Pilot until January 31, 2013, in order to allow the Exchange time to formally submit a filing to the Commission to convert the pilot rules to permanent rules.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the ''Act'') for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that this filing is consistent with these principles because the NMM Pilot provides its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity, facilitate the trading of larger orders more efficiently and operates to reward aggressive liquidity providers. Moreover, requesting an extension of the NMM Pilot will permit adequate time for: (i) The Exchange to prepare and submit a filing to make the rules governing the NMM Pilot permanent; (ii) public notice and comment; and (iii) completion of the 19b–4 approval process.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [15] and Rule 19b–4(f)(6) thereunder.[16] 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[17]

A proposed rule change filed under Rule 19b–4(f)(6) [18] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[19] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the pilot program to continue uninterrupted. Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing.[20]

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–NYSEMKT–2012–21 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–NYSEMKT–2012–21. 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

[13] *See* NYSE MKT Rule 72(a)(ii)—Equities.

[14] *See supra* note 5.

[15] 15 U.S.C. 78s(b)(3)(A)(iii).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii).

[20] 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).

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 Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEMKT–2012–21and should be submitted on or before August 21, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–18550 Filed 7–30–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67494; File No. SR–NYSE–2012–26]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Operation of Its New Market Model Pilot, Until the Earlier of Securities and Exchange Commission Approval To Make Such Pilot Permanent or January 31, 2013

July 25, 2012.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on July 12, 2012, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the operation of its New Market Model Pilot, currently scheduled to expire on July 31, 2012, until the earlier of Securities and Exchange Commission (''Commission'') approval to make such pilot permanent or January 31, 2013. 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 proposes to extend the operation of its New Market Model Pilot (''NMM Pilot''),[4] currently scheduled to expire on July 31, 2012, until the earlier of Commission approval to make such pilot permanent or January 31, 2013.

The Exchange notes that parallel changes are proposed to be made to the rules of NYSE MKT LLC.[5]

Background[6]

In October 2008, the NYSE implemented significant changes to its market rules, execution technology and the rights and obligations of its market participants all of which were designed to improve execution quality on the Exchange. These changes are all elements of the Exchange's enhanced market model. Certain of the enhanced market model changes were implemented through a pilot program.

As part of the NMM Pilot, NYSE eliminated the function of specialists on the Exchange creating a new category of market participant, the Designated Market Maker or DMM.[7] The DMMs, like specialists, have affirmative obligations to make an orderly market, including continuous quoting requirements and obligations to re-enter the market when reaching across to execute against trading interest. Unlike specialists, DMMs have a minimum quoting requirement[8] in their assigned securities and no longer have a negative obligation. DMMs are also no longer agents for public customer orders.[9]

In addition, the Exchange implemented a system change that allowed DMMs to create a schedule of additional non-displayed liquidity at various price points where the DMM is willing to interact with interest and provide price improvement to orders in the Exchange's system. This schedule is known as the DMM Capital Commitment Schedule (''CCS'').[10] CCS provides the Display Book®[11] with the amount of shares that the DMM is willing to trade at price points outside, at and inside the Exchange Best Bid or Best Offer (''BBO''). CCS interest is separate and distinct from other DMM interest in that it serves as the interest of last resort.

The NMM Pilot further modified the logic for allocating executed shares among market participants having trading interest at a price point upon execution of incoming orders. The

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46). *See also* Securities Exchange Act Release Nos. 60756 (October 1, 2009), 74 FR 51628 (October 7, 2009) (SR–NYSE–2009–100) (extending Pilot to November 30, 2009); 61031 (November 19, 2009), 74 FR 62368 (November 27, 2009) (SR–NYSE–2009–113) (extending Pilot to March 30, 2010); 61724 (March 17, 2010), 75 FR 14221 (March 24, 2010) (SR–NYSE–2010–25) (extending Pilot to September 30, 2010); 62819 (September 1, 2010), 75 FR 54937 (September 9, 2010) (SR–NYSE–2010–61) (extending Pilot to January 31, 2011); 63616 (December 29, 2010), 76 FR 612 (January 5, 2011) (SR–NYSE–2010–86) (extending Pilot to August 1, 2011); 64761 (June 28, 2011), 76 FR 39147 (July 5, 2011) (SR–NYSE–2011–29) (extending Pilot to January 31, 2012); and 66046 (December 23, 2011), 76 FR 82340 (December 30, 2011) (SR–NYSE–2011–65) (extending Pilot to July 31, 2012).

[5] *See* SR–NYSEMKT–2012–21.

[6] The information contained herein is a summary of the NMM Pilot. *See supra* note [4] [sic] for a fuller description.

[7] *See* NYSE Rule 103.

[8] *See* NYSE Rule 104.

[9] *See* NYSE Rule 60; *see also* NYSE Rules 104 and 1000.

[10] *See* NYSE Rule 1000.

[11] The Display Book system is an order management and execution facility. The Display Book system receives and displays orders to the DMMs, contains the order information, and provides a mechanism to execute and report transactions and publish the results to the Consolidated Tape. The Display Book system is connected to a number of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems.

modified logic rewards displayed orders that establish the Exchange's BBO. During the operation of the NMM Pilot, orders, or portions thereof, that establish priority [12] retain that priority until the portion of the order that established priority is exhausted. Where no one order has established priority, shares are distributed among all market participants on parity.

The NMM Pilot was originally scheduled to end operation on October 1, 2009, or such earlier time as the Commission may determine to make the rules permanent. The Exchange filed to extend the operation of the Pilot on several occasions in order to prepare a rule filing seeking permission to make the above described changes permanent.[13] The Exchange is currently still preparing such formal submission but does not expect that filing to be completed and approved by the Commission before July 31, 2012.

Proposal To Extend the Operation of the NMM Pilot

The NYSE established the NMM Pilot to provide incentives for quoting, to enhance competition among the existing group of liquidity providers and to add a new competitive market participant. The Exchange believes that the NMM Pilot allows the Exchange to provide its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity, facilitate the trading of larger orders more efficiently and operates to reward aggressive liquidity providers. As such, the Exchange believes that the rules governing the NMM Pilot should be made permanent. Through this filing the Exchange seeks to extend the current operation of the NMM Pilot until January 31, 2013, in order to allow the Exchange time to formally submit a filing to the Commission to convert the pilot rules to permanent rules.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the ''Act'') for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that this filing is consistent with these principles because the NMM Pilot provides its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity, facilitate the trading of larger orders more efficiently and operates to reward aggressive liquidity providers. Moreover, requesting an extension of the NMM Pilot will permit adequate time for: (i) The Exchange to prepare and submit a filing to make the rules governing the NMM Pilot permanent; (ii) public notice and comment; and (iii) completion of the 19b–4 approval process.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [14] and Rule 19b–4(f)(6) thereunder.[15] 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[16]

A proposed rule change filed under Rule 19b–4(f)(6) [17] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[18] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the pilot program to continue uninterrupted. Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing.[19]

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–2012–26 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–2012–26. 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

[12] *See* NYSE Rule 72(a)(ii).

[13] *See supra* note 4.

[14] 15 U.S.C. 78s(b)(3)(A)(iii).

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] 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).

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 Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSE–2012–26 and should be submitted on or before August 21, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–18549 Filed 7–30–12; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13154 and #13155]

West Virginia Disaster #WV–00028

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of West Virginia (FEMA—4071—DR), dated 07/23/2012.

Incident: Severe Storms and Straight-line Winds.

Incident Period: 06/29/2012 through 07/01/2012.

Effective Date: 07/23/2012.

Physical Loan Application Deadline Date: 09/21/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 04/23/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 07/23/2012, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Barbour, Boone, Braxton, Cabell, Calhoun, Clay, Doddridge, Fayette, Gilmer, Grant, Greenbrier, Hardy, Harrison, Jackson, Jefferson, Kanawha, Lewis, Lincoln, Logan, Marshall, Mason, McDowell, Mercer, Mingo, Monroe, Nicholas, Pendleton, Pleasants, Pocahontas, Preston, Putnam, Raleigh, Randolph, Ritchie, Roane, Summers, Tucker, Tyler, Upshur, Wayne, Webster, Wetzel, Wirt, Wood, Wyoming.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	3.125
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 13154B and for economic injury is 13155B

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2012–18642 Filed 7–30–12; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 7966]

Advisory Committee on Historical Diplomatic Documentation; Notice of Meeting

SUMMARY: The Advisory Committee on Historical Diplomatic Documentation will meet on September 10–11, 2012, at the Department of State, 2201 ''C'' Street NW., Washington, DC. Portions of the meeting will be closed, as noted below. Prior notification and a valid government-issued photo ID (such as driver's license, passport, U.S. government or military ID) are required for entrance into the building. Members of the public planning to attend the meeting on September 10 must notify Colby Prevost, Office of the Historian (202–663–3901) no later than September 6, 2012, to provide date of birth, valid government-issued photo identification number and type (such as driver's license number/state, passport number/country, or U.S. government ID number/agency or military ID number/branch), and relevant telephone numbers. If you cannot provide one of the specified forms of ID, please consult with Colby Prevost for acceptable alternative forms of picture identification. In addition, any requests for reasonable accommodation should be made no later than September 4, 2012, for the September 10 meeting. Requests for reasonable accommodation received after that time will be considered, but might be impossible to fulfill.

The Committee will meet in open session from 11:00 a.m. until 12:00 Noon on Monday, September 10, 2012, in the Department of State, 2201 ''C'' Street NW., Washington, DC, in Conference Room 1408 to discuss declassification and transfer of Department of State records to the National Archives and Records Administration and the status of the *Foreign Relations* series. The remainder of the Committee's sessions in the afternoon of September 10, 2012, and in the morning on Tuesday, September 11, 2012, will be closed in accordance with Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463). The agenda calls for discussions of agency declassification decisions concerning the *Foreign Relations* series and other declassification issues. These are matters properly classified and not subject to public disclosure under 5 U.S.C. 552b(c)(1) and the public interest requires that such activities be withheld from disclosure. Personal data are requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Security Records System of Records Notice (State-36) at *http://www.state.gov/documents/organization/103419.pdf* for additional information.

Questions concerning the meeting should be directed to Stephen Randolph, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC, 20520, telephone (202) 663–1123, (email *history@state.gov*).

[20] 17 CFR 200.30–3(a)(12).

Dated: July 16, 2012.

Stephen Randolph,

Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State.

[FR Doc. 2012–18662 Filed 7–30–12; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

Letters of Interest for Credit Assistance Under the Transportation Infrastructure Finance and Innovation Act (TIFIA) Program

AGENCIES: Office of the Secretary of Transportation (OST), U.S. Department of Transportation (DOT), Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), Federal Transit Administration (FTA).

ACTION: Notice of funding availability and request for comments.

SUMMARY: Pursuant to the recently enacted Moving Ahead for Progress in the 21st Century Act (MAP–21), DOT announces the availability of funding authorized in the amount of $1.75 billion ($750 million in Federal Fiscal Year (FY) 2013 funds and $1 billion in FY 2014 funds (and any funds that may be available from prior fiscal years)) to provide TIFIA credit assistance for eligible projects. The FY 2013 and FY 2014 funds are subject to an annual obligation limitation that may be established in appropriations law. The amount of TIFIA budget authority available in a given year may be less than the amount authorized for that fiscal year. Under TIFIA, DOT provides secured (direct) loans, lines of credit, and loan guarantees to public and private applicants for eligible surface transportation projects. Projects must meet statutorily specified eligibility criteria to receive credit assistance.

This notice outlines the process that project sponsors must follow in seeking TIFIA credit assistance. DOT is publishing this notice to give project sponsors an opportunity to submit Letters of Interest for the newly authorized funding as soon as possible. However, in addition to authorizing more funding for TIFIA credit assistance, MAP–21 made some significant changes to the TIFIA program's structure, including the terms and conditions pursuant to which DOT can provide TIFIA credit assistance. While this notice provides guidance about how DOT will implement some of the changes made by MAP–21, it does not provide guidance about how DOT will implement all of these changes. Further information about the changes made by MAP–21 and additional DOT guidance for implementation of these provisions is provided in Part VII below. Also, Part VII invites interested parties to submit comments about DOT's implementation of MAP–21 and DOT's guidance for awarding TIFIA credit assistance. Unless otherwise noted, statutory section references in this notice are to sections of title 23 of the U.S. Code, as amended by MAP–21, which takes effect on October 1, 2012.

Letter of Interest Submission: All project sponsors wishing to apply for TIFIA credit assistance must first submit a Letter of Interest, as more fully described in this notice of funding availability. Letters of Interest will be received on a rolling basis commencing on the date hereof, using the form on the TIFIA Web site: *http://www.fhwa.dot.gov/ipd/tifia/guidance_applications/index.htm.* Project sponsors that have previously submitted Letters of Interest for a prior fiscal year's funding, but have not been asked by DOT to submit an application as of the date of this notice, must submit a new Letter of Interest to be considered for the funding described in this notice of funding availability.

Addresses for Letters of Interest: Submit all Letters of Interest to the attention of Mr. Duane Callender via email at: *TIFIACredit@dot.gov.* Submitters should receive a confirmation email, but are advised to request a return receipt to confirm transmission. Only Letters of Interest received via email, as provided above, shall be deemed properly filed.

Addresses for Comments: You must include the agency name (Office of the Secretary of Transportation) and the docket number DOT–OST–2012–0130 with your comments. To ensure your comments are not entered into the docket more than once, please submit comments, identified by the docket number DOT–OST–2012–0130, by only one of the following methods:

Web site: The U.S. Government electronic docket site is *www.regulations.gov.* Go to this Web site and follow the instructions for submitting comments into docket number DOT–OST–2012–0130;

Fax: Telefax comments to: 202–366–2908.

Mail: Mail your comments to U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, Room W12–140, Washington, DC 20590; or

Hand Delivery: Bring your comments to the U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions for Submitting Comments: You must include the agency name (Office of the Secretary of Transportation) and Docket number DOT–OST–2012–0130 for this notice at the beginning of your comments. You should submit two copies of your comments if you submit them by mail or courier. For confirmation that the Office of the Secretary of Transportation has received your comments you must include a self-addressed stamped postcard. Note that all comments received will be posted without change to *www.regulations.gov,* including any personal information provided, and will be available to Internet users. You may review the Department's complete Privacy Act Statement in the **Federal Register** published April 11, 2000 (65 FR 19477), or you may visit *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For further information regarding this notice please contact Duane Callender via email at *TIFIACredit@dot.gov* or via telephone at (202) 366–1059. A TDD is available at (202) 366–7687. Substantial information, including the TIFIA Program Guide and application materials, can be obtained from the TIFIA Web site: *http://www.fhwa.dot.gov/ipd/tifia/.* The TIFIA Program Guide is being updated to reflect changes to the program under MAP–21.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Program Funding
III. Eligible Projects
IV. Types of Credit Assistance
V. Eligibility Requirements
VI. Application Process
VII. Additional Guidance and Request for Comments

I. Background

The Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107, 241 established the Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA), authorizing DOT to provide credit assistance in the form of secured (direct) loans, lines of credit, and loan guarantees to public and private applicants for eligible surface transportation projects. In 2005, Congress enacted the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU)

(Pub. L. 109–59, 119 Stat. 1144), which made a number of amendments to TIFIA including lowering the estimated project cost thresholds and expanding eligibility for TIFIA credit assistance. On July 6, 2012, the President signed into law MAP–21 (Pub. L. 112–141), which provided for substantial changes in the TIFIA credit program under Sections 2001 and 2002 of MAP–21 (such sections are referred to in MAP–21 as the America Fast Forward Financing Innovation Act of 2012). This notice of funding availability addresses certain changes to the TIFIA credit program made by MAP–21 and solicits Letters of Interest for the funding made available under that law. The TIFIA program is a departmental program. The Office of the Assistant Secretary for Budget and Programs and Chief Financial Officer oversees the TIFIA program and the Joint Program Office on behalf of the Secretary, including the evaluation of individual projects, and provides overall policy direction and program decisions for the TIFIA program. Final approval of credit assistance is reserved for the Secretary.

II. Program Funding

MAP–21 authorizes $750 million in FY 2013 and $1 billion in FY 2014 in TIFIA budget authority from the Highway Trust Fund to pay the subsidy cost of credit assistance. Additional funds may also be available from budget authority carried over from previous fiscal years. Any budget authority not obligated in the fiscal year for which it is authorized remains available for obligation in subsequent years.[1] The TIFIA budget authority is subject to an annual obligation limitation that may be established in appropriations law. Like all funds subject to the annual Federal-aid obligation ceiling, the amount of TIFIA budget authority available in a given year may be less than the amount authorized for that fiscal year.

After reductions for administrative expenses and application of the annual obligation limitation, TIFIA will have approximately $690 million available in FY 2013 and $920 million in FY 2014 to provide credit subsidy support to projects. Although dependent on the individual risk profile of each credit instrument, collectively, and based on historic subsidy costs, this budget authority could support approximately $6.9 billion in lending capacity in FY 2013 and $9.2 billion in lending capacity in FY 2014. Given statutory changes in the TIFIA credit program under MAP–21, and the need to calculate credit subsidies on a project-by-project basis, actual lending capacity could vary.

III. Eligible Projects

DOT has provided TIFIA credit assistance across a broad range of project types, including a variety of transportation modes and the surface transportation components of multifaceted development and redevelopment projects. Generally, eligible projects include highway projects, passenger rail projects, transit and intermodal projects, private rail facilities providing public benefit to highway users, surface transportation infrastructure modifications necessary to facilitate direct intermodal transfer and access into and out of a port terminal, intelligent transportation systems, surface transportation projects eligible for Federal assistance under title 23 or title 49 of the U.S. Code, international bridges and tunnels, and intercity passenger bus or rail facilities and vehicles. Additionally, MAP–21 expands eligibility to include related improvement projects grouped together, so long as the individual components are eligible and the related projects are secured by a common pledge.

IV. Types of Credit Assistance

DOT may provide credit assistance in the form of secured (direct) loans, lines of credit, and loan guarantees. These types of credit assistance are defined in Section 601. The TIFIA credit facility, which must have a senior or senior-parity lien in the event of bankruptcy, liquidation or insolvency, can be subordinate as to cash flows absent such an event.[2] MAP–21 increases the maximum amount for a TIFIA secured loan for a project to 49 percent[3] of the project's eligible project costs. For a TIFIA line of credit, the maximum amount remains at 33 percent of the project's eligible project costs. Project sponsors may not include any of the fees assessed by TIFIA, or costs related to the application process (such as charges associated with obtaining the required preliminary rating opinion letter referenced in Part VI), among eligible project costs for the purpose of calculating the maximum 49 or 33 percent credit amount. Project sponsors should identify in each Letter of Interest the level of funding (including the percentage of eligible project costs) being requested, as specified in Part VI.

Section 603(b)(4) provides that the interest rate on a secured loan may not be less than the yield on U.S. Treasury securities of a similar maturity to the maturity of the secured loan on the date of execution of the loan agreement (for lines of credit, Section 604(b)(4) provides that the interest rate may not be lower than the 30-year rate for U.S. Treasury securities, as of the date of execution of the line of credit agreement) (the Treasury Rate). In general, the TIFIA interest rate is equal to the Treasury Rate on the date of execution of the TIFIA credit instrument. However, MAP–21 allows for 10 percent of the TIFIA program's budget authority to be provided to rural infrastructure projects at a reduced interest rate of one-half of the Treasury Rate. Rural infrastructure projects are defined in MAP–21 as surface transportation infrastructure projects located in any area other than a city with a population of more than 250,000 inhabitants within the city limits. The reduced interest rate applies only to rural projects funded with the 10 percent of budget authority set-aside.

To the extent adequate funds may not be available to provide a reduced interest rate to all rural infrastructure projects submitting Letters of Interest, DOT may prioritize rural infrastructure projects to receive the reduced rate based on the project's (i) location outside of an urbanized area (as defined in Section 101(a)(34)), (ii) alignment with MAP–21's reduced total minimum eligible project cost requirement of $25 million for rural infrastructure projects (as noted in Part V below), and (iii) readiness to proceed, to avoid redistribution pursuant to the directive in MAP–21 that any amounts set aside for rural infrastructure that remain unobligated by June 1 of the fiscal year for which the amounts were set aside shall be available for obligation by the Secretary on projects other than rural infrastructure projects.

In addition, MAP–21 allows existing Federal financing instruments for rural infrastructure projects to be refinanced with TIFIA credit assistance.

[1] If the cumulative unobligated and uncommitted balance of funding available as of April 1 of any fiscal year beginning in FY 2014 is more than 75 percent of the amount made available for such fiscal year, then the Secretary must distribute the amount in excess of 75 percent of such amount among the States.

[2] MAP–21 includes a new provision pursuant to which a waiver of TIFIA's nonsubordination requirement may be provided in connection with secured loans or lines of credit for public agency borrowers having senior bonds under preexisting indentures, so long as (i) the TIFIA loan is rated A or higher, (ii) the revenue pledge is not affected by project performance or is a system pledge and (iii) TIFIA is financing 33 percent or less of the eligible project costs. However, in such cases, the maximum credit subsidy to be paid by the Government may not be more than 10 percent of the principal amount of the loan, and the obligor is responsible to pay any remaining subsidy cost.

[3] Limited to 33 percent where the nonsubordination requirement is waived, as described in footnote 3.

V. Eligibility Requirements

A project must meet all of the eligibility criteria set forth in Section 602(a) to receive TIFIA credit assistance.

For instance, projects seeking TIFIA assistance must meet certain statutory threshold requirements for project costs. Generally, the minimum size for TIFIA projects are those having at least $50 million in total eligible project costs; however, the minimum size for TIFIA projects principally involving the installation of an intelligent transportation system is $15 million. MAP–21 requires a minimum of $25 million in total eligible project costs for rural infrastructure projects (as defined in Part IV above).

Each project seeking TIFIA assistance must submit an application acceptable to the Secretary pursuant to the process set forth in this notice, and must satisfy applicable State and local transportation planning requirements. Each private applicant must receive public approval for its project as demonstrated by satisfaction of the applicable planning and programming requirements. Each project must have a dedicated revenue source to repay the TIFIA loan. Projects receiving TIFIA credit assistance have been supported by a variety of revenue sources, including tolls, user fees, payments owing to the obligor under a public-private partnership (or availability payments), and other dedicated revenue sources that also secure or fund the project obligations (including real estate tax increments, interjurisdictional funding agreements and room and sales taxes).

The eligibility criteria also require a determination by DOT that the project is creditworthy, which must be based on, at a minimum: (a) A rate covenant, if applicable, (b) adequate coverage requirements to ensure repayment, and (c) meeting the rating requirements set forth in Part VI below. DOT will also utilize a report and recommendation from an independent financial advisor and any other information it needs to determine a project's creditworthiness.

Section 602(a) further requires that each project: (i) Foster (if appropriate) partnerships that attract public and private investment for the project, (ii) enable the project to proceed at an earlier date than the project would otherwise be able to proceed or reduce lifecycle costs (including debt service costs) of the project, and (iii) reduce the contribution of Federal grant assistance for the project.

MAP–21 provides that all projects demonstrate that the construction contracting process for the project can commence no more than 90 days after execution of a TIFIA credit instrument. MAP–21 codifies an already-existing regulation barring obligation of credit assistance for a project until it receives a categorical exclusion, finding of no significant impact or record of decision, pursuant to the National Environmental Policy Act.

VI. Application Process

MAP–21 establishes a multi-step application process for TIFIA credit assistance. This process begins with the submission of a Letter of Interest and determination of eligibility. Only after a project sponsor has submitted a Letter of Interest and met all statutory eligibility requirements will the project sponsor be invited to submit an application.

The Letter of Interest must (i) describe the project and the location, purpose, and cost of the project, (ii) outline the proposed financial plan, including the requested credit assistance and the proposed obligor, (iii) provide a status of environmental review, and (iv) provide information regarding satisfaction of other eligibility requirements of the TIFIA credit program. Letters of Interest must be submitted using the form on the TIFIA Web site: *http://www.fhwa.dot.gov/ipd/tifia/guidance_applications/index.htm.* DOT has revised the form for the Letter of Interest to reflect changes made to the TIFIA program by MAP–21.[4]

The Letter of Interest form requires project sponsors to provide information demonstrating satisfaction (or expected satisfaction if permitted by the statute) of each of the eligibility requirements included in MAP–21. These eligibility requirements are outlined above in Part V and elsewhere in this notice.

As described in Part IV, MAP–21 authorizes DOT to provide TIFIA secured loans to finance up to 49 percent of reasonably anticipated eligible project costs, which is substantially more than the maximum of 33 percent that DOT could previously provide. The Letter of Interest form requires project sponsors requesting TIFIA credit assistance to provide a rationale for the amount of TIFIA credit assistance they are requesting, as a percentage of their reasonably anticipated eligible project costs. Similarly, the revised form requires any project sponsor to specify whether it has flexibility in its financial plan to finance the project with a reduced percentage of TIFIA credit assistance. In providing a rationale for the amount of credit assistance requested, a project sponsor can demonstrate that traditional sources of financing are not available at feasible rates without the TIFIA assistance, or that the costs of traditional financing options would constrain the sponsor's ability to deliver the project, or that delivery of the project through traditional financing approaches would constrain the sponsor's ability to deliver a group of related projects, or a full capital program. This information will help DOT ensure that it allocates TIFIA's budget authority effectively.

Project sponsors must also describe the purpose of their project in the Letter of Interest form, including the public purpose of the project. Project sponsors should provide quantitative or qualitative information about the public benefits that their projects will achieve. Examples of public benefits include objectives specified in Section 101 and 49 U.S.C. 101(a) and 5301, other DOT grant or credit assistance programs, relevant Federal, state, or local transportation laws or plans, and other public benefits that can be achieved through transportation investments. DOT will evaluate each Letter of Interest to determine whether it would be in the public interest to provide credit assistance to the proposed project. This evaluation of each project's purpose will help DOT ensure accountability in its allocation of TIFIA program funds.

In the context of a public-private partnership, where multiple bidders may be competing for a concession such that the obligor has not yet been identified, the procuring agency must submit the project's Letter of Interest on behalf of the eventual obligor. DOT will not consider Letters of Interest from entities that have not obtained rights to develop the project.

Any project sponsor that has previously submitted a Letter of Interest for a prior fiscal year's funding, but has not been asked by DOT to submit an application as of the date of this notice, must submit a Letter of Interest using the revised form.

DOT will review each Letter of Interest submitted in accordance with this NOFA. DOT may contact project sponsors for clarification of specific information included in the Letter of Interest. DOT will notify project sponsors if DOT determines that their projects are not eligible, or that DOT will not be able to continue reviewing their Letter of Interest until certain eligibility concerns are addressed. If DOT does not determine a project to be ineligible based on its initial review, DOT will request additional information to supplement the Letter of Interest and complete its eligibility determination.

[4] For instance, the revised form no longer requires the project sponsor to demonstrate alignment with specific selection criteria, which were removed by MAP–21.

This information may include, among other things, more detailed descriptions of the project, the project's readiness to proceed, the project's financial plan, including financial commitments to the project from sources other than TIFIA, and/or the applicant and its organizational structure. Before completing its review of a Letter of Interest and rendering a determination of eligibility, DOT will request that the project sponsor provide a preliminary rating opinion letter, as further described below, and DOT will engage an independent financial advisor to prepare a report and recommendation acceptable in form and substance to DOT. DOT may also engage an independent legal advisor to help complete its evaluation of a project's eligibility. There is no fee to submit a Letter of Interest. However, the project sponsor must pay fees in the amount of $100,000 before DOT hires financial and/or legal advisors as part of the Letter of Interest review process. These fees are due upon request by DOT.

After concluding its review of the Letter of Interest and making a determination of eligibility, DOT will inform the project sponsor of its determination. If a project is determined to be eligible, DOT will inform the project sponsor that it may submit an application. If DOT determines that a project is ineligible, it will notify the project sponsors of this determination and/or that DOT will not be able to continue reviewing the Letter of Interest until certain eligibility concerns are addressed. DOT will review Letters of Interest on a rolling basis and invite project sponsors to apply once a favorable eligibility determination is made.

Prior to execution of a TIFIA credit instrument, the senior debt obligations for each project receiving TIFIA credit assistance must obtain investment grade ratings from at least two nationally recognized rating agencies, and the TIFIA debt obligations must obtain ratings from at least two nationally recognized rating agencies, unless the total amount of the debt is less than $75 million, in which case only one investment grade rating is required for the senior debt obligations and one rating for the TIFIA debt obligations. The term rating agency is defined in Section 601(a)(14) and 49 CFR part 80.3. If the TIFIA credit instrument is proposed as the senior debt, then it must receive the investment grade ratings.

To demonstrate the potential to achieve the above rating requirements, each project sponsor must provide a preliminary rating opinion letter from a credit rating agency that addresses the creditworthiness of the senior debt obligations funding the project and concludes that there is a reasonable probability for the senior debt obligations to receive an investment grade rating. The preliminary rating opinion letter should also provide an opinion on the default risk for the TIFIA instrument and must provide indicative ratings for both the senior debt obligations and the TIFIA credit instrument. A project that does not demonstrate the potential for its senior obligations to receive an investment grade rating will not be considered for TIFIA credit assistance. More detailed information about these TIFIA credit opinions and ratings may be found in the Program Guide on the TIFIA Web site at: *http://www.fhwa.dot.gov/ipd/tifia/guidance_applications/index.htm.* As noted elsewhere in this notice of funding availability, the Program Guide is being updated in light of MAP–21.

An invitation to apply for credit assistance does not guarantee DOT's approval, which will remain subject to a project's continued eligibility, including creditworthiness, the successful negotiation of terms acceptable to the Secretary, and the availability of funds. In determining the availability of funds, DOT may consider other projects seeking credit assistance through TIFIA.

MAP–21 contains a timeline for assessing applications for credit assistance. No later than 30 days after receipt of an application, DOT will inform each applicant whether its application is complete, or if not complete, identify additional materials needed to complete the application. No later than 60 days after issuing such notice, the applicant will be notified whether the application is approved or disapproved.

As noted above, the project sponsor must pay fees in the amount of $100,000 before DOT hires financial and/or legal advisors as part of the Letter of Interest review process. These fees are due upon request by DOT. Additional fees will be charged after the credit instrument is executed, including additional amounts required to fully cover TIFIA's financial and legal advisory services costs in connection with the evaluation and negotiation of terms of TIFIA credit assistance for the project. More detailed information about these fees can be found in the TIFIA Program Guide, which is in the process of being updated to reflect the changes made by MAP–21: *http://www.fhwa.dot.gov/ipd/pdfs/tifia/tifia_program_guide_072511.pdf.*

TIFIA borrowers should expect to track and report certain information with respect to each project's performance. The information may be used to assist DOT in determining whether TIFIA is meeting the program's goals of leveraging federal funds and encouraging private co-investment. DOT may also use the information for purposes of identifying and measuring performance with respect to goals, strategies, time frames, resources and stakeholder involvement.

VII. Additional Guidance and Request for Comments

As noted in the Summary section, DOT is publishing this notice to give project sponsors the opportunity to submit Letters of Interest for the newly authorized funding as soon as is practicable. However, in addition to authorizing more funding for TIFIA credit assistance, MAP–21 made some significant changes to the TIFIA program's structure, including the terms and conditions pursuant to which DOT can provide TIFIA credit assistance. This notice identifies the process for submitting letters of interest, and provides guidance about how DOT will implement some of the changes made by MAP–21, but it does not provide comprehensive guidance about how DOT will implement all of the changes made by MAP–21 that become effective on October 1, 2012.

This notice also does not include an exhaustive list of statutory and program requirements. The Background section of this notice identifies the relevant laws that govern the TIFIA program. MAP–21 provides that the Secretary may promulgate such regulations as the Secretary determines to be appropriate to carry out the TIFIA program. The TIFIA regulations (49 CFR part 80), which provide specific guidance on the program requirements, were last updated in 2001, and have not been updated to reflect changes enacted in SAFETEA–LU and MAP–21. Because such existing rules have not been updated, MAP–21 should be the basis for up-to-date guidance. The primary document that the TIFIA program has used in recent years to provide supplemental program guidance has been a ''Program Guide'' published on the TIFIA Web site. DOT expects to update the TIFIA Program Guide on the TIFIA Web site to reflect changes made by MAP–21. For additional guidance, applicants are encouraged to check the TIFIA program Web site regularly to obtain updated programmatic and application information.

Because of the significance of the changes made by MAP–21 to the TIFIA program, this notice invites interested parties to submit comments about

DOT's implementation of MAP–21 and DOT's guidance for awarding TIFIA credit assistance. Interested parties can provide comments on any aspect of DOT's implementation of the changes made by MAP–21. DOT will consider these comments as it continues to implement the program and develop supplemental program guidance. The instructions for submitting comments are included below.

Comments should be sent to DOT by September 1, 2012. Late-filed comments will be considered to the extent practicable.

Authority: 23 U.S.C. §§ 601–609 (as set forth in MAP–21); 49 CFR part 1.48(b)(6); 23 CFR part 180; 49 CFR part 80; 49 CFR part 261; 49 CFR part 640.

Issued on: July 27, 2012.

Ray LaHood,

Secretary.

[FR Doc. 2012–18785 Filed 7–30–12; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Preparation of an Environmental Impact Statement for the Redlands; Passenger Rail Project in the Cities of San Bernardino and Redlands, CA

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Intent to prepare an Environmental Impact Statement/Environmental Impact Report (EIS/EIR).

SUMMARY: FTA and San Bernardino Associated Governments (SANBAG) intend to prepare an EIS/EIR for the Redlands Passenger Rail Project (RPRP or Project). Early in 2012, FTA and SANBAG began the preparation of an Environmental Assessment (EA)/EIR for the RPRP and conducted two scoping meetings; one on April 24 in the City of Redlands and the other on May 2 in the City of San Bernardino. Based on the input received from the community, including written comment letters, and preliminary findings from ongoing technical studies, FTA determined that an EIS is required. The EIS/EIR will be prepared in accordance with regulations implementing the National Environmental Policy Act (NEPA: 42 U.S.C. 4321 et seq.) of 1969 and the regulations implementing NEPA set forth in 40 CFR Parts 1500–1508 and 23 CFR Part 771, as well as provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU). The purpose of this Notice is to:

- Advise the public that FTA is the lead Federal agency;
- Provide information about the proposed project, purpose and need for the project, and alternatives to be considered; and
- Invite public and agency participation in the EIS process.

The EIS/EIR will examine alternatives to provide a cost-effective, alternative travel option for communities located along the Redlands Corridor in a way that improves transit mobility, travel times, and corridor safety.

DATES: The date, time, and location for the public scoping meetings are as follows:

August 14, 2012

5:30 p.m. to 7:30 p.m.

ESRI Café, 380 New York Street, Redlands, CA 92373.

August 15, 2012

5:30 p.m. to 7:30 p.m.

San Bernardino Hilton, 1755 South Waterman Avenue, San Bernardino, CA 92408.

These locations are accessible by persons with disabilities. If special translation or signing services or other special accommodations are needed, please contact Robert Chevez at Westbound Communications (909–384–8188) at least 48 hours before the meeting.

ADDRESSES: Written comments may be submitted to Mitchell A. Alderman, P.E., Director of Transit & Rail Programs, SANBAG, 1170 W. 3rd St, 2nd Floor, San Bernardino, CA 92410, or emailed to *RPRP_Public_Comments@sanbag.ca.gov.* Written comments may also be submitted to Mr. Hymie Luden, City and Regional Planner, FTA, Region 9, 201 Mission Street, Suite 1650 San Francisco, CA 94105.

In accordance with Section 6002 of SAFETEA–LU, FTA and SANBAG invite comment on the scope of the EIS/EIR, specifically on the Project's purpose and need, the alternatives to be evaluated that may address the purpose and need, and the potential impacts of the alternatives considered. Comments on scope of the EIS/EIR must be received no later than 5:00 p.m. Pacific Standard Time on August 31, 2012. A scoping information packet is available on the Web site at: *http://sanbag.ca.gov/projects/redlands-transit.html* or by calling Jane Dreher, SANBAG's Public Information Officer (909–884–8276). Copies will also be available at the scoping meetings.

SUPPLEMENTARY INFORMATION:

Purpose and Need for the Project: The overall purpose of the Project is to provide a cost-effective, travel alternative for communities located along the Redlands Corridor that would improve transit mobility, travel times, and corridor safety while minimizing adverse environmental impacts. The RPRP would provide travelers and commuters with a new mobility option that would achieve more-efficient travel times than automobiles or other transit alternatives within an existing corridor. The Project is needed because population growth has increased roadway congestion, which has increased commute travel times for work and recreational purposes, increased the number of hours of lost productivity, increased fuel consumption, contributed to air pollution, interfered with emergency response vehicles, and caused spillover effects onto secondary and alternative routes. SANBAG also needs to maintain existing freight service along the corridor per its purchase agreement with the Burlington Northern Santa Fe (BNSF) Railroad.

Project Location and Environmental Setting: The RPRP would introduce passenger rail service along an existing railroad right-of-way (ROW) from the City of San Bernardino on the west to the City of Redlands on the east. This existing ROW is commonly referred to as the Redlands Corridor, an approximately 9-mile rail spur segment that extends east from E Street in the City of San Bernardino. Passenger rail service would serve passengers from five platforms located at E Street, Tippecanoe Avenue, New York Street, Orange Street, and University Street. SANBAG proposes the construction of a single track within a ROW 50 feet wide, with a passing siding one-mile long located near the midpoint of the alignment. Project components would include track improvements; boarding platforms; passenger amenities such as ticket vending machines, shade canopies with seating; pedestrian access to the public ROW, lighting, parking areas; grade crossing improvements; utility and traffic improvements; and construction of a train layover facility. The proposed Project would not include the purchase of additional vehicles. Passenger rail operations would start in 2018.

Possible Alternatives: The EIS/EIR will consider alternatives to the proposed Project consistent with the requirements of NEPA. SANBAG anticipates that this may include consideration of Alternative 1—No Build, Alternative 2—Preferred Project, Alternative 3—Reduced Project Footprint, Alternative 4—Light Rail Transit, Alternative 5—Bus Rapid

Transit, Design Option 1—Train Layover Facility (Waterman Avenue), and Design Option 2—Use of Existing Train Layover Facilities. Other alternatives and/or design options may also be considered. These alternatives are described further as follows:

- *Alternative 1—No Build:* Track improvements and facilities would not be constructed to facilitate passenger rail service between San Bernardino and the University of Redlands. Under this alternative, track maintenance and rehabilitation of existing bridge structures would be required throughout the western 3.5 miles of the rail corridor to facilitate continued freight service.
- *Alternative 2—Preferred Project:* SANBAG would construct track and grade crossing improvements, bridge replacements, rail platform, and new train layover facilities to facilitate passenger rail service along the 9-mile corridor.
- *Alternative 3—Reduced Project Footprint:* Track improvements and facilities would be constructed as described for the Preferred Project but they would be constructed within a narrower permanent easement, where feasible, to minimize direct impacts on sensitive biological, cultural, and public park resources. Alternative bridge structures would be constructed at Warm Creek and the Santa Ana River.
- *Alternative 4—Light Rail Transit:* This alternative would involve development of the rail corridor with new tracking and an overhead catenary system to power the light rail transit (LRT) vehicles.
- *Alternative 5—Bus Rapid Transit:* Under this alternative, a new bus rapid transit (BRT) guideway would be constructed adjacent to the existing freight track, which will be used solely by BRT vehicles. Signalization would be required at all existing grade crossings as opposed to the use of crossing gates.
- *Design Option 1—Train Layover Facility (Waterman Avenue):* Track improvements and facilities would be constructed as described for the Preferred Project but the Train Layover Facility would be constructed at a different location, west of the Santa Ana River, east of Waterman Avenue, and immediately north of the rail corridor.
- *Design Option 2—Use of Existing Train Layover Facilities:* Track improvements and facilities would be constructed as described for the Preferred Project. However, instead of constructing new layover facilities as described for the Preferred Project and Alternative 3, the project would not construct layover facilities but use the existing Metrolink layover facilities located west of E Street.

Areas of investigation include, but are not limited to, land use, land acquisitions, displacements, and relocations, community and neighborhood character, transportation, visual quality and aesthetics, air quality, greenhouse gases, and global climate change, noise and vibration, biological and wetland resources (including threatened and endangered species), agricultural resources, floodplains and hydrology, geology, soils, and seismicity, hazardous waste and materials, water quality, energy use, utilities, cultural and historic resources, parklands, community services and facilities, safety and security, socioeconomics, environmental justice, and cumulative effects. Measures to avoid, minimize, or mitigate any significant adverse impacts will be identified.

Probable Effects: The EIS/EIR will consider in detail the potential environmental effects of the alternatives under consideration based on the current scoping efforts. The Draft EIS/EIR and Final EIS/EIR will summarize the results of coordination with federal, state, and local agencies and the public at large; present the appropriate federal, state, and local regulations and policies; inventory and compile previous studies pertinent to the project; describe the methodology used to assess impacts; identify and describe the affected environment; analyze and document the construction related (short-term) and operational (long-term) environmental consequences (direct, indirect, and cumulative) of the project alternatives; and identify opportunities and measures that mitigate any identified adverse impacts. The specific scope of analysis and study areas used to undertake the analysis in the EIS/EIR will be established during the public and agency scoping process.

FTA Procedures: The EIS/EIR is being prepared in accordance with the NEPA of 1969, as amended, and implemented by the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508), FHWA environmental impact regulations (49 CFR part 622, 23 CFR part 771, and 23 CFR part 774), and Section 6002 of the SAFETEA–LU of 2005. The EIS/EIR will also comply with requirements of Section 106 of the National Historic Preservation Act of 1966, as amended, Section 4(f) of the U.S. Department of Transportation Act of 1966, the 1990 Clean Air Act Amendments, Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority and Low-Income Populations), Executive Order 11990 (Protection of Wetlands), and other applicable federal laws, rules, and regulations. The EIS/EIR will also satisfy environmental review requirements of the California Environmental Quality Act (CEQA). Regulations implementing NEPA, as well as provisions of SAFETEA–LU, call for public involvement in the EIS process. Section 6002 of SAFETEA–LU requires that FTA and SANBAG do the following: (1) Extend an invitation to other Federal and non-Federal agencies and Indian tribes that may have an interest in the proposed project to become ''participating agencies,'' (2) provide an opportunity for involvement by participating agencies and the public in helping to define the purpose and need for a proposed project, as well as the range of alternatives for consideration in the impact statement, and (3) establish a plan for coordinating public and agency participation and comments on the environmental review process. An invitation to become a participating agency, with the scoping information packet appended, will be extended to other Federal and non-Federal agencies and Indian tribes that may have an interest in the proposed project. It is possible that we may not be able to identify all Federal and non-Federal agencies and Indian tribes that may have such an interest. Any Federal or non-Federal agency or Indian tribe interested in the proposed Project that does not receive an invitation to become a participating agency should notify at the earliest opportunity the Project Managers identified above under **ADDRESSES**.

A comprehensive public involvement program has been developed and a public and agency involvement Coordination Plan will be created. The program includes, among other things, a Project Web site (*http://sanbag.ca.gov/projects/redlands-transit.html*); outreach to local and county officials and community and civic groups; a public scoping process to define the issues of concern among all parties interested in the Project; establishment of a community advisory committee and organizing periodic meetings with that committee; a public hearing on release of the Draft EIS/EIR; and development and distribution of Project newsletters.

FOR FURTHER INFORMATION CONTACT: Mr. Mitchell A. Alderman, P.E., Director of Transit & Rail Programs, SANBAG, 1170 W. 3rd St, 2nd Floor, San Bernardino, CA 92410, (909) 884–8276. You may also contact Mr. Hymie Luden, City and Regional Planner, FTA, Region 9, 201 Mission Street, Suite 1650 San Francisco, CA 94105, (415) 744–2732.

Issued On: July 25, 2012.

Edward Carranza, Jr.,

Deputy Regional Administrator, Region 9.

[FR Doc. 2012–18636 Filed 7–30–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket ID PHMSA–2012–0175]

Notice of Availability of Draft Environmental Assessment for Public Comment for the Longhorn Pipeline Reversal Project

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of Availability of Draft Environmental Assessment for Public Comment for the Longhorn Pipeline Reversal Project.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321–4347, and the Council on Environmental Quality NEPA implementing regulations, 40 CFR Parts 1500–1508, the Pipeline and Hazardous Materials Safety Administration (PHMSA) is announcing the availability of and requesting comments on the Draft Environmental Assessment (Draft EA) for the Longhorn Pipeline Reversal Project (Proposed Project).

DATES: Submit any comments regarding the Draft EA no later than September 14, 2012.

ADDRESSES: Comments should reference the docket number PHMSA–2012–0175 at the beginning of the comment. Comments are posted without changes or edits to *http://www.regulations.gov,* including any personal information provided. There is a privacy statement published on *http://www.regulations.gov.* Comments may be submitted in the following ways:

E-Gov Web Site: http://www.regulations.gov. This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

Mail: Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. If you submit your comments by mail, please submit two copies. To receive confirmation that PHMSA has received your comments, please include a self-addressed stamped postcard.

Hand Delivery: Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Fax: Docket Management System: U.S. Department of Transportation, Docket Operations, 202–493–2251.

PHMSA has posted the Draft EA at *http://www.regulations.gov* in docket number PHMSA–2012–0175.

The Draft EA is also available for inspection at the following public libraries:

- Austin Public Library—Twin Oaks Branch, 1800 South 5th Street, Austin, TX 78704, 512–974–9980.
- Collier Regional Library, 6200 Pinemont Drive, Houston, TX, 77092, 832–393–1740.
- Abilene Public Library–South Branch, 1401 South Danville Drive, Abilene, TX 79605, 325–698–7565.
- El Paso Main Library, 501 North Oregon Street, El Paso, TX, 79901, 915–543–5433.
- Ector County Public Library, 321 West 5th Street, Odessa, TX, 79761, 432–332–0633.

FOR FURTHER INFORMATION CONTACT: Amelia Samaras, Attorney, Pipeline and Hazardous Materials Safety Administration, Office of the Chief Counsel, 1200 New Jersey Avenue SE., Washington, DC 20590; by phone at 202–366–4362; or email at *amelia.samaras@dot.gov.*

SUPPLEMENTARY INFORMATION: The Longhorn Pipeline runs from El Paso, Texas to Houston, Texas and is owned and operated by Magellan Pipeline Company, L.P. (Magellan). The Longhorn Pipeline currently transports refined petroleum products from east to west (Houston to El Paso). The Proposed Project would convert the segment of the Longhorn Pipeline from Crane, Texas to East Houston, Texas to crude oil service and reverse the flow so that crude oil would flow from west to east (Crane to Houston). At Crane, refined products would enter the pipeline and move west to El Paso. The refined products would enter the Longhorn Pipeline via an existing pipeline segment that connects the Longhorn Pipeline to the existing Orion West Pipeline located to the north of the Longhorn Pipeline. The Orion West Pipeline runs from Frost, Texas to El Paso and is also owned and operated by Magellan.

PHMSA is responsible for regulating the transportation of hazardous liquids via pipeline. PHMSA issues and enforces pipeline safety regulations that dictate requirements for construction, design, testing, operation, and maintenance of natural gas and hazardous liquid (including crude oil, petroleum products, and anhydrous ammonia) pipelines. PHMSA does not typically serve as lead agency for pipeline construction projects, as it has no authority over pipeline siting and does not issue any approval or authorization to commence a pipeline construction project. However, a settlement agreement specific to this action titled: ''The Longhorn Mitigation Plan'' (LMP) resulted from litigation associated with changes to the Longhorn Pipeline in 1999. The LMP provides PHMSA with broader responsibility and oversight of the Longhorn Pipeline.

The Proposed Project would require upgrades to the pipeline and would include construction of a six-mile pipeline segment in El Paso and a 2.5-mile pipeline segment in Houston. Modifications and upgrades to existing infrastructure to facilitate reversal and increased capacity, such as new pump stations and terminals, would occur at various locations along the Longhorn and Orion Pipelines' right-of-ways. Although not originally included in the LMP, activities along the Orion West Pipeline and the segment from Odessa to Crane that would take place as a result of the Proposed Project are analyzed in this Draft EA as connected actions.

This Draft EA analyzes the changes that would take place as a result of the Proposed Project and how the changes could impact the human environment during construction, normal operations, and in the unlikely event of a release. PHMSA has also analyzed the condition of the Longhorn Pipeline and how the change in product and direction would affect the pipeline.

Linda Daugherty,

Deputy Associate Administrator for Policy and Programs.

[FR Doc. 2012–18524 Filed 7–30–12; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2012–0176]

Pipeline Safety: Inspection and Protection of Pipeline Facilities After Railway Accidents

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

ACTION: Notice; Issuance of Advisory Bulletin.

SUMMARY: PHMSA is issuing an advisory bulletin to alert all pipeline owners and operators of the circumstances of the Cherry Valley, Illinois derailment and remind them of the importance of assuring that pipeline facilities have not been damaged either during a railroad accident or other event occurring in the right-of-way. Further, the advisory bulletin reminds pipeline owners and operators of the importance of providing pertinent information to rail operators and emergency response officials during an incident. This information should include the presence, depth and location of the pipelines so that the movement of heavy equipment and debris on the right-of-way does not damage or rupture the pipeline or otherwise pose a hazard to people working in, and around, the accident location. The advisory also encourages pipeline owners and operators to inform rail operators and emergency response officials of the benefits of using the 811 ''Call Before You Dig'' program to identify and notify underground utilities that an incident has occurred in the vicinity of their buried facilities.

FOR FURTHER INFORMATION CONTACT: David Appelbaum by phone at 202–366–1419 or by email at *david.appelbaum@dot.gov.* Information about PHMSA may be found at *http://phmsa.dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

On Friday, June 19, 2009, at approximately 8:36 p.m., CST, a Canadian National Railway Company (CN) freight train U7069l-l8, traveling eastbound at 36 mph, derailed at a highway/rail grade crossing in Cherry Valley, Illinois. The train consisted of two locomotives and 114 cars, 19 of which derailed. All of the derailed cars were tank cars carrying denatured fuel ethanol, a flammable liquid. Thirteen of the derailed tank cars were breached or lost product and caught fire. At the time of the derailment, several motor vehicles were stopped on either side of the grade crossing waiting for the train to pass. As a result of the fire that erupted after the derailment, a passenger in one of the stopped cars was fatally injured, two passengers in the same car received serious injuries, and five occupants of other cars waiting at the highway-rail crossing were injured. Two responding firefighters also sustained minor injuries. The release of ethanol and the resulting fire prompted a mandatory evacuation of about 600 residences within a ½-mile radius of the accident site.

The National Transportation Safety Board (NTSB) determined that the probable cause of the accident was the washout of the track structure that was discovered about one hour before the train's arrival, and CN's failure to notify the train crew of the known washout in time to stop the train because of the inadequacy of CN's emergency communication procedures.

At the site of the derailment was a 12-inch diameter underground natural gas transmission pipeline operated by Nicor Gas. The pipeline well exceeded Federal standards for protective ground cover. Yet, as the wreckage was removed from above the pipeline, Nicor's crews discovered that a railcar wheel and axle assembly had impinged on the pipeline. Although the pipeline was buried about 11 feet deep and protected within a 16-inch diameter casing, the rail car wheels impacted and severely dented the pipeline. The impact caused a severe flattening of the pipe casing with sharp angular bends at two locations where it was contacted by the rail car wheel assembly. This degree of deformation to the 16-inch casing pipe likely caused similar damage to the 12-inch carrier pipe. The NTSB concluded that had the gas pipeline been installed at the railroad crossing with the minimum level of ground cover permitted by the current Federal and industry pipeline construction standards, it likely would have failed as a result of being struck by derailed equipment in this accident.

Advisory Bulletin (ADB–2012–08)

To: Owners and Operators of Hazardous Liquid and Gas Pipeline Systems.

Subject: Inspection and Protection of Pipeline Facilities after Railway Accidents.

Advisory: To further enhance the Department's safety efforts, PHMSA is issuing this advisory bulletin as a reminder for pipeline owners and operators to appropriately inspect and protect pipeline facilities following railroad accidents that occur in pipeline right-of-ways.

As illustrated in the June 19, 2009, Cherry Valley, Illinois train derailment, buried pipelines are susceptible to damage even when depth-of-cover protection exceeds minimum Federal requirements. Pipeline owners and operators should inspect their facilities following a railroad accident or other significant event occurring in right-of-ways to ensure pipeline integrity. Also, during response operations, pipeline owners and operators need to inform rail operators and emergency response officials of the presence, depth and location of the pipelines so that the movement of heavy equipment on the right-of-way does not damage or rupture the pipeline or otherwise pose a hazard to people working in, and around, the accident location.

Additionally, PHMSA encourages pipeline owners and operators, as a part of their public awareness program, to inform rail operators and emergency response officials of the benefits of using the 811 ''Call Before You Dig'' program to identify and notify underground utilities that an incident has occurred in the vicinity of their buried facilities.

Linda Daugherty,

Deputy Associate Administrator for Policy and Programs.

[FR Doc. 2012–18571 Filed 7–30–12; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 14145

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 14145, IRS Applicant Contact Card.

DATES: Written comments should be received on or before October 1, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* IRS Applicant Contact Card.

OMB Number: 1545–XXXX.

Form Number: Form 14145.

Abstract: The Internal Revenue Service contact card is used to collect contact information from individuals who may be interested in working for the IRS now, or at any time in the future (potential applicants). Form 14145 requests information to enter into a database to allow the IRS to send information about jobs to potential applicants. Cards are then destroyed after input into the database. The potential applicant is only contacted about jobs which correspond to the job categories selected by the IRS Recruiter on Form 14145.

Current Actions: This is a new request for approval.

Type of Review: Exiting IC in use that does not contain an OMB control number.

Affected Public: Individuals and households.

Estimated Number of Respondents: 16,045.

Estimated Time per Respondent: 4 hours 6 minutes.

Estimated Total Annual Burden Hours: 66,085.

The following paragraph applies to all of the collections of information covered by this notice:

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 OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information 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.

Approved: July 23, 2012.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2012–18587 Filed 7–30–12; 8:45 am]

BILLING CODE 4830–01–P

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Part II

Department of Housing and Urban Development

24 CFR Part 578

Homeless Emergency Assistance and Rapid Transition to Housing: Continuum of Care Program; Interim Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 578

[Docket No. FR–5476–I–01]

RIN 2506–AC29

Homeless Emergency Assistance and Rapid Transition to Housing: Continuum of Care Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Interim rule.

SUMMARY: The Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act), enacted into law on May 20, 2009, consolidates three of the separate homeless assistance programs administered by HUD under the McKinney-Vento Homeless Assistance Act into a single grant program, and revises the Emergency Shelter Grants program and renames it the Emergency Solutions Grants program. The HEARTH Act also codifies in law the Continuum of Care planning process, a longstanding part of HUD's application process to assist homeless persons by providing greater coordination in responding to their needs. The HEARTH Act also directs HUD to promulgate regulations for these new programs and processes.

This interim rule focuses on regulatory implementation of the Continuum of Care program, including the Continuum of Care planning process. The existing homeless assistance programs that comprise the Continuum of Care program are the following: the Supportive Housing program, the Shelter Plus Care program, and the Moderate Rehabilitation/Single Room Occupancy (SRO) program. This rule establishes the regulations for the Continuum of Care program, and, through the establishment of such regulations, the funding made available for the Continuum of Care program in the statute appropriating Fiscal Year (FY) 2012 funding for HUD can more quickly be disbursed, consistent with the HEARTH Act requirements, and avoid any disruption in current Continuum of Care activities.

DATES: *Effective Date:* August 30, 2012.

Comment Due Date. October 1, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, 451 7th Street SW., Room 10276, Department of Housing and Urban Development, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ann Marie Oliva, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410–7000; telephone number 202–708–4300 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of and Legal Authority for This Interim Rule

This interim rule implements the Continuum of Care program authorized by the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act). Section 1504 of the HEARTH Act directs HUD to establish regulations for this program. (See 42 U.S.C. 11301.) The purpose of the Continuum of Care program is to promote communitywide commitment to the goal of ending homelessness; provide funding for efforts by nonprofit providers, and State and local governments to quickly rehouse homeless individuals and families while minimizing the trauma and dislocation caused to homeless individuals, families, and communities by homelessness; promote access to and effective utilization of mainstream programs by homeless individuals and families; and optimize self-sufficiency among individuals and families experiencing homelessness.

The HEARTH Act streamlines HUD's homeless grant programs by consolidating the Supportive Housing, Shelter Plus Care, and Single Room Occupancy grant programs into one grant program: The Continuum of Care program. Local continuums of care, which are community-based homeless assistance program planning networks, will apply for Continuum of Care grants. By consolidating homeless assistance grant programs and creating the Continuum of Care planning process, the HEARTH Act intended to increase the efficiency and effectiveness of coordinated, community-based systems that provide housing and services to the homeless. Through this interim final rule, HUD will implement the Continuum of Care program by establishing the framework for establishing a local continuum of care and the process for applying for Continuum of Care grants.

Summary of Major Provisions

The major provisions of this rulemaking relate to how to establish and operate a Continuum of Care, how to apply for funds under the program, and how to use the funds for projects approved by HUD. These provisions are summarized below.

1. *General Provisions (Subpart A):* The Continuum of Care program includes transitional housing, permanent supportive housing for

disabled persons, permanent housing, supportive services, and Homeless Management Information Systems (HMIS). To implement the program, HUD had to define several key terms. In particular, HUD distinguishes between ''Continuum of Care,'' ''applicant,'' and ''collaborative applicant.'' A ''Continuum of Care'' is a geographically based group of representatives that carries out the planning responsibilities of the Continuum of Care program, as set out in this regulation. These representatives come from organizations that provide services to the homeless, or represent the interests of the homeless or formerly homeless. A Continuum of Care then designates certain ''applicants'' as the entities responsible for carrying out the projects that the Continuum has identified through its planning responsibilities. A ''Continuum of Care'' also designates one particular applicant to be a ''collaborative applicant.'' The collaborative applicant is the only entity that can apply for a grant from HUD on behalf of the Continuum that the collaborative applicant represents.

2. *Establishing and Operating a Continuum of Care (Subpart B):* In order to be eligible for funds under the Continuum of Care program, representatives from relevant organizations within a geographic area must establish a Continuum of Care. The three major duties of a Continuum of Care are to: (1) Operate the Continuum of Care, (2) designate an HMIS for the Continuum of Care, and (3) plan for the Continuum of Care. HUD has delineated certain operational requirements of each Continuum to help measure a Continuum's overall performance at reducing homelessness, in addition to tracking of performance on a project-by-project basis. In addition, each Continuum is responsible for establishing and operating a centralized or coordinated assessment system that will provide a comprehensive assessment of the needs of individuals and families for housing and services. HUD has also defined the minimum planning requirements for a Continuum so that it coordinates and implements a system that meets the needs of the homeless population within its geographic area. Continuums are also responsible for preparing and overseeing an application for funds. Continuums will have to establish the funding priorities for its geographic area when submitting an application.

3. *Application and Grant Award Process (Subpart C):* The Continuum of Care grant award process begins with a determination of a Continuum's maximum award amount. As directed by statute, HUD has developed a formula for determining award amounts that includes the following factors: A Continuum's Preliminary Pro Rata Need (PPRN) amount; renewal demand; any additional increases in amounts for leasing, rental assistance, and operating costs based on Fair Market Rents, planning and Unified Funding Agency cost funds, and amounts available for bonus dollars. HUD has established selection criteria for determining which applications will receive funding under the Continuum of Care program. Recipients awarded Continuum of Care funds must satisfy several conditions prior to executing their grant agreements. All grants submitted for renewal must also submit an annual performance report. For those applicants not awarded funding, the process also provides an appeals process.

4. *Program Components and Eligible Costs (Subpart D):* Continuum of Care funds may be used for projects under five program components: Permanent housing, transitional housing, supportive services only, HMIS, and, in some limited cases, homelessness prevention. The rule further clarifies how the following activities are considered eligible costs under the Continuum of Care program: Continuum of Care planning activities, Unified Funding Agency costs, acquisition, rehabilitation, new construction, leasing, rental assistance, supportive services, operating costs, HMIS, project administrative costs, relocation costs, and indirect costs.

5. *High-Performing Communities (Subpart E):* HUD will annually, subject to the availability of appropriate data, select those Continuums of Care that best meet application requirements to be designated a high-performing community (HPC). An HPC may use grant funds to provide housing relocation and stabilization services, and short- and/or medium-term rental assistance to individuals and families at risk of homelessness. This is the only time that Continuum of Care funds may be used to serve individuals and families at risk of homelessness.

6. *Program Requirements (Subpart F):* All recipients of Continuum of Care funding must comply with the program regulations and the requirements of the Notice of Funding Availability that HUD will issue each year. Notably, the HEARTH Act requires that all eligible funding costs, except leasing, must be matched with no less than 25 percent cash or in-kind match by the Continuum. Other program requirements of recipients include: Abiding by housing quality standards and suitable dwelling size, assessing supportive services on an ongoing basis, initiating and completing approved activities and projects within certain timelines, and providing a formal process for termination of assistance to participants who violate program requirements or conditions of occupancy.

7. *Grant Administration (Subpart G):* To effectively administer the grants, HUD will provide technical assistance to those who apply for Continuum of Care funds, as well as those who are selected for Continuum of Care funds. After having been selected for funding, grant recipients must satisfy certain recordkeeping requirements so that HUD can assess compliance with the program requirements. For any amendments to grants after the funds have been awarded, HUD has established a separate amendment procedure. As appropriate, HUD has also established sanctions to strengthen its enforcement procedures.

Benefits and Costs

This interim rule is intended to help respond to and work toward the goal of eliminating homelessness. This interim rule provides greater clarity and guidance about planning and performance review to the more than 430 existing Continuums of Care that span all 50 states and 6 United States territories. As reported in HUD's Annual Homelessness Assessment Report to Congress, there were approximately 1.59 million homeless persons who entered emergency shelters or transitional housing in FY 2010. HUD serves roughly half that many persons, nearly 800,000 annually, through its three programs that will be consolidated into the Continuum of Care program under the McKinney-Vento Act as amended by the HEARTH Act (i.e., Shelter Plus Care, Supportive Housing Program, Single Room Occupancy). The changes initiated by this interim rule will encourage Continuums of Care to establish formal policies and review procedures, including evaluation of the effectiveness of their projects, by emphasizing performance measurement and developing performance targets for homeless populations. HUD is confident that this systematic review by Continuums of Care will lead to better use of limited resources and more efficient service models, with the end result of preventing and ending homelessness.

The Consolidated and Further Continuing Appropriations Act, 2012 (Pub. L. 112–55) appropriated $1,593,000,000 for the Continuum of Care and Rural Housing Stability

Assistance programs. Upon publication of this rule, those FY 2012 funds will be available for distribution, as governed by these Continuum of Care regulations.

I. Background—HEARTH Act

On May 20, 2009, the President signed into law ''An Act to Prevent Mortgage Foreclosures and Enhance Mortgage Credit Availability,'' which became Public Law 111–22. This law implements a variety of measures directed toward keeping individuals and families from losing their homes. Division B of this law is the HEARTH Act, which consolidates and amends three separate homeless assistance programs carried out under title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11371 *et seq.*) (McKinney-Vento Act) into a single grant program that is designed to improve administrative efficiency and enhance response coordination and effectiveness in addressing the needs of homeless persons. The HEARTH Act codifies in law and enhances the Continuum of Care planning process, the coordinated response to addressing the needs of the homeless, which was established administratively by HUD in 1995. The single Continuum of Care program established by the HEARTH Act consolidates the following programs: The Supportive Housing program, the Shelter Plus Care program, and the Moderate Rehabilitation/Single Room Occupancy program. The Emergency Shelter Grants program is renamed the Emergency Solutions Grants program and is revised to broaden existing emergency shelter and homelessness prevention activities and to add short- and medium-term rental assistance and services to rapidly rehouse homeless people. The HEARTH Act also creates the Rural Housing Stability program to replace the Rural Homelessness Grant program.

HUD commenced the process to implement the HEARTH Act with rulemaking that focused on the definition of ''homeless.'' HUD published a proposed rule, entitled ''Defining Homeless'' on April 20, 2010 (75 FR 20541), which was followed by a final rule that was published on December 5, 2011 (76 FR 75994). The Defining Homeless rule clarified and elaborated upon the new McKinney-Vento Act definitions for ''homeless'' and ''homeless individual with a disability.'' In addition, the Defining Homeless rule included recordkeeping requirements related to the ''homeless'' definition. On December 5, 2011, HUD also published an interim rule for the Emergency Solutions Grants program (76 FR 75954). This interim rule established the program requirements for the Emergency Solutions Grants program and contained corresponding amendments to the Consolidated Plan regulations. On December 9, 2011, HUD continued the process to implement the HEARTH Act, with the publication of the proposed rule titled ''Homeless Management Information Systems Requirements'' (76 FR 76917), which provides for uniform technical requirements for Homeless Management Information Systems (HMIS), for proper data collection and maintenance of the database, and ensures the confidentiality of the information in the database. Today's publication of the interim rule for the Continuum of Care program continues HUD's implementation of the HEARTH Act.

This rule establishes the regulatory framework for the Continuum of Care program and the Continuum of Care planning process, including requirements applicable to the establishment of a Continuum of Care. Prior to the amendment of the McKinney-Vento Act by the HEARTH Act, HUD's competitively awarded homeless assistance grant funds were awarded to organizations that participate in local homeless assistance program planning networks referred to as a Continuum of Care, a system administratively established by HUD in 1995. A Continuum of Care is designed to address the critical problem of homelessness through a coordinated community-based process of identifying needs and building a system of housing and services to address those needs. The approach is predicated on the understanding that homelessness is not caused merely by a lack of shelter, but involves a variety of underlying, unmet needs—physical, economic, and social.

The HEARTH Act not only codified in law the planning system known as Continuum of Care, but consolidated the three existing competitive homeless assistance grant programs (Supportive Housing, Shelter Plus Care, and Single Room Occupancy) into the single grant program known as the Continuum of Care program. The consolidation of the three existing homeless assistance programs into the Continuum of Care grant program and the codification in law of the Continuum of Care planning process are intended to increase the efficiency and effectiveness of the coordination of the provision of housing and services to address the needs of the homeless. The regulations established by this rule are directed to carrying out this congressional intent.

II. Overview of Interim Rule

As amended by the HEARTH Act, Subpart C of the McKinney-Vento Homeless Assistance Act establishes the Continuum of Care program. The purpose of the program is to promote communitywide commitment to the goal of ending homelessness; provide funding for efforts by nonprofit providers, and State and local governments to quickly rehouse homeless individuals and families while minimizing the trauma and dislocation caused to homeless individuals, families, and communities by homelessness; promote access to and effective utilization of mainstream programs by homeless individuals and families; and optimize self-sufficiency among individuals and families experiencing homelessness.

This interim rule establishes the Continuum of Care as the planning body responsible for meeting the goals of the Continuum of Care program. Additionally, in order to meet the purpose of the HEARTH Act, established in section 1002(b), and the goals of ''Opening Doors: Federal Strategic Plan to Prevent and End Homelessness,'' the Continuum of Care must be involved in the coordination of other funding streams and resources—federal, local, or private—of targeted homeless programs and other mainstream resources. In many communities, the Continuum of Care is the coordinating body, while in other communities it is a local Interagency Council on Homelessness (both would be acceptable forms of coordination under this interim rule). As noted earlier, HUD published on December 9, 2011, a proposed rule to establish HMIS regulations in accordance with the HEARTH Act. However, while the HEARTH Act directed that regulations be established for HMIS, HMIS is not new to many HUD grantees. Until regulations for HMIS are promulgated in final, grantees should continue to follow HUD's existing HMIS instructions and guidance.

The following provides an overview of the proposed rule.

General Provisions (Subpart A)

Purpose and scope. The Continuum of Care program is designed to promote community-wide goals to end homelessness; provide funding to quickly rehouse homeless individuals (including unaccompanied youth) and families while minimizing trauma and dislocation to those persons; promote access to, and effective utilization of, mainstream programs; and optimize self-sufficiency among individuals and

families experiencing homelessness. The program is composed of transitional housing, permanent supportive housing for disabled persons, permanent housing, supportive services, and HMIS.

Definitions. The interim rule adopts the definitions of ''developmental disability,'' ''homeless,'' ''homeless individual,'' and ''homeless person'' established by the December 5, 2011 Defining Homeless final rule. Public comments have already been solicited and additional public comment is not solicited through this rule. The December 5, 2011, final rule was preceded by an April 20, 2010, proposed rule, which sought public comment on these definitions. The final definitions of these terms took into consideration the public comments received on the proposed definitions as set out in the April 20, 2010, proposed rule. This interim rule adopts the definition of ''at risk of homelessness'' established by the December 5, 2011, the Emergency Solutions Grants program interim rule. The interim rule sought public comment on this definition, and additional public comment is not being sought through this rule.

HUD received valuable public comment on the definition of ''chronically homeless,'' through the public comment process on the Emergency Solutions Grants program interim rule. Based on public comment, this rule for the Continuum of Care program is not adopting the full definition of ''chronically homeless'' that was included in the conforming amendments to the Consolidated Plan that were published as a part of the Emergency Solutions Grants program rule. Commenters raised concerns with the meaning of the phrase ''where each homeless occasion was at least 15 days.'' The concerns raised about this phrase, used for the first time in a definition of ''chronically homeless,'' has caused HUD to reconsider proceeding to apply a definition that includes this phrase, without further consideration and opportunity for comment. In this rule, HUD therefore amends the definition of ''chronically homeless'' in the Consolidated Plan regulations to strike this phrase. The removal of this phrase returns the definition to one with which service providers are familiar. The following highlights key definitions used in the Continuum of Care program regulations, and HUD solicits comment on these definitions.

Applicant is defined to mean an entity that has been designated by the Continuum of Care as eligible to apply for assistance on behalf of that Continuum. HUD highlights that the Act does not contain different definitions for ''applicant'' and ''collaborative applicant.'' HUD distinguishes between the applicant(s) designated to apply for and carry out projects (the ''applicant'') and the collaborative applicant designated to apply for a grant on behalf of the Continuum of Care (the ''collaborative applicant''). Please see below for more information on the definition of a collaborative applicant, which is the only entity that may apply for and receive Continuum of Care planning funds.

Centralized or coordinated assessment system is defined to mean a centralized or coordinated process designed to coordinate program participant intake, assessment, and provision of referrals. A centralized or coordinated assessment system covers the geographic area, is easily accessed by individuals and families seeking housing or services, is well advertised, and includes a comprehensive and standardized assessment tool. This definition establishes basic minimum requirements for the Continuum's centralized or coordinated assessment system.

Collaborative applicant is defined to mean an eligible applicant that has been designated by the Continuum of Care to apply for a grant for Continuum of Care planning funds on behalf of the Continuum. As discussed above, the ''applicant'' is the entity(ies) designated to apply for and carry out projects on behalf of the Continuum. In contrast to the definition of ''applicant'' above, the collaborative applicant applies for a grant to carry out the planning activities on behalf of the Continuum of Care. The interim rule simplifies the statutory language in order to make the Continuum of Care planning process clear.

HUD highlights that its definition of collaborative applicant does not track the statutory definition, which is found in section 401 of the McKinney-Vento Act. As will be discussed in further detail later in this preamble, the concept of collaborative applicant, its duties and functions, as provided in the statute, is provided for in this rule. However, HUD uses the term Continuum of Care to refer to the organizations that carry out the duties and responsibilities assigned to the collaborative applicant, with the exception of applying to HUD for grant funds. The clarification is necessary in this rule because Continuums of Care are not required to be legal entities, but HUD can enter into contractual agreements with legal entities only.

Continuum of Care and *Continuum* are defined to mean the group that is organized to carry out the responsibilities required under this part and that is composed of representatives of organizations including nonprofit homeless providers, victim service providers, faith-based organizations, governments, businesses, advocates, public housing agencies, school districts, social service providers, mental health agencies, hospitals, universities, affordable housing developers, law enforcement, organizations that serve homeless and formerly homeless veterans, and homeless and formerly homeless persons. These organizations consist of the relevant parties in the geographic area. Continuums are expected to include representation to the extent that the type of organization exists within the geographic area that the Continuum represents and is available to participate in the Continuum. For example, if a Continuum of Care did not have a university within its geographic boundaries, then HUD would not expect the Continuum to have representation from a university within the Continuum.

These organizations carry out the responsibilities and duties established under Subpart B of this interim rule. The Continuum of Care, as noted above, carries out the statutory duties and responsibilities of a collaborative applicant. HUD established the Continuum of Care in 1995. Local grantees and stakeholders are familiar with the Continuum of Care as the coordinating body for homeless services and homelessness prevention activities across the geographic area. Consequently, HUD is maintaining the Continuum of Care terminology, and the rule provides for the duties and responsibilities of a collaborative applicant to be carried out under the name Continuum of Care.

High-performing community is defined to mean the geographic area under the jurisdiction of a Continuum of Care that has been designated as a high-performing community by HUD. Section 424 of the McKinney-Vento Act provides that HUD shall designate, on an annual basis, which collaborative applicants represent high-performing communities. Consistent with HUD's substitution of the term ''Continuum of Care'' for ''collaborative applicant,'' the definition of ''high-performing community'' in this interim rule provides for designation of Continuums of Care that represent geographic areas designated as high-performing communities. The standards for becoming a high-performing community can be found in § 578.65 of this interim

rule and will be discussed later in this preamble.

Private nonprofit organization is based on the statutory definition for ''private nonprofit organization.'' The term ''private nonprofit organization'' is defined in section 424 of the McKinney-Vento Act as follows: ''The term 'private nonprofit organization' means an organization: '(A) No part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual; (B) that has a voluntary board; (C) that has an accounting system, or has designated a fiscal agent in accordance with requirements established by the Secretary; and (D) that practices nondiscrimination in the provision of assistance.' '' In HUD's regulatory definition of ''private nonprofit organization,'' HUD clarifies that the organization's accounting system must be functioning and operated in accordance with generally accepted accounting principles. HUD has included this language to make certain that accounting systems are workable and abide by definite, accurate standards. As reflected in the statutory definition of ''private nonprofit organization,'' HUD may establish requirements for the designation of a fiscal agent. HUD has determined that the fiscal agent, such as a Unified Funding Agency, a term that is also defined in section 424 of the McKinney-Vento Act, must maintain a functioning accounting system for the organization in accordance with generally accepted accounting principles.

Permanent housing is consistent with the statutory definition of ''permanent housing'' in section 401 of the McKinney-Vento Act, but does not track the statutory language. HUD's regulatory definition of ''permanent housing'' states: ''The term 'permanent housing' means community-based housing without a designated length of stay, and includes both permanent supportive housing and rapid re-housing.'' Additionally, in the regulatory definition of ''permanent housing,'' HUD clarifies that to be permanent housing, ''the program participant must be the tenant on a lease for a term of at least one year that is renewable and is terminable only for cause. The lease must be renewable for terms that are a minimum of one month long. HUD has determined that requiring a lease for a term of at least one year that is renewable and terminable only for cause, assists program participants in obtaining stability in housing, even when the rental assistance is temporary. These requirements are consistent with Section 8 requirements.

Specific request for comment. HUD specifically requests comment on requiring a lease for a term of at least one year to be considered permanent housing.

Project is consistent with the statutory definition of ''project'' in section 401 of the McKinney-Vento Act, but does not track the statutory language. Section 401 defines ''project'' as, with respect to activities carried out under subtitle C, eligible activities described in section 423(a), undertaken pursuant to a specific endeavor, such as serving a particular population or providing a particular resource. In HUD's definition of ''project'' in this interim rule, the eligible activities described in section 423(a) of the McKinney-Vento Act have been identified. In the regulatory text, HUD has clarified that it is a group of one or more of these eligible costs that are identified as a project in an application to HUD for Continuum of Care funds.

Recipient is defined to mean an applicant that signs a grant agreement with HUD. HUD's definition of ''recipient'' is consistent with the statutory definition of ''recipient,'' but does not track the statutory language. Section 424 of the McKinney-Vento Act defines ''recipient'' as ''an eligible entity who—(A) submits an application for a grant under section 422 that is approved by the Secretary; (B) receives the grant directly from the Secretary to support approved projects described in the application; and (C)(i) serves as a project sponsor for the projects; or (ii) awards the funds to project sponsors to carry out the projects.'' All of the activities specified by the statutory definition are in the rule: (A) and (B) are contained in the definition and (C) is covered in the sections of the rule dealing with what a recipient can do with grant funds.

Safe haven is based on the definition of safe haven in the McKinney-Vento Act prior to amendment by the HEARTH Act. Although no longer used in statute, HUD's position is that the term remains relevant for implementation of the Continuum of Care program and, therefore, HUD proposes to include the term in the Continuum of Care program regulations. The term ''safe haven'' is used for purposes of determining whether a person is chronically homeless. The housing must serve hard-to-reach homeless persons with severe mental illness who came from the streets and have been unwilling or unable to participate in supportive services. In addition, the housing must provide 24-hour residence for eligible persons for an unspecified period, have an overnight capacity limited to 25 or fewer persons, and provide low-demand services and referrals for the residents.

Subrecipient is defined to mean a private nonprofit organization, State or local government, or instrumentality of a State or local government that receives a subgrant from the recipient to operate a project. The definition of ''subrecipient'' is consistent with the definition of ''project sponsor'' found in section 401 of the McKinney-Vento Act, but does not track the statutory language. To be consistent with the Emergency Solutions Grants program regulation, and also to ensure that the relationship between the recipient and subrecipient is clear, HUD is using the term subrecipient, instead of project sponsor, throughout this regulation.

Transitional housing is based on the definition of ''transitional housing'' in section 401 of the McKinney-Vento Act, as follows: ''The term 'transitional housing' means housing, the purpose of which is to facilitate the movement of individuals and families experiencing homelessness to permanent housing within 24 months or such longer period as the Secretary determines necessary.'' The definition has been expanded to distinguish this type of housing from emergency shelter. This distinction is necessitated by the McKinney-Vento Act's explicit distinction between what activities can or cannot be funded under the Continuum of Care program. The regulatory definition clarifies that, to be transitional housing, program participants must have signed a lease or occupancy agreement that is for a term of at least one month and that ends in 24 months and cannot be extended.

Unified Funding Agency (UFA) means an eligible applicant selected by the Continuum of Care to apply for a grant for the entire Continuum, which has the capacity to carry out the duties delegated to a UFA in this rule, which is approved by HUD and to which HUD awards a grant. HUD's regulatory definition of UFA departs slightly from the statutory definition. The statutory definition refers to the collaborative applicant. The differences between the statutory definition and HUD's regulatory definition reflect HUD's substitution of Continuum of Care for collaborative applicant.

Establishing and Operating the Continuum of Care (Subpart B)

In general. The statutory authority for the Continuum of Care program is section 422 of the McKinney-Vento Act. As stated under section 1002 of the HEARTH Act, one of the main purposes of the HEARTH Act is to codify the Continuum of Care planning process. Consequently, under this interim rule,

HUD focuses on the rules and responsibilities of those involved in the Continuum of Care planning process and describes how applications and grant funds will be processed.

As discussed earlier in the preamble, HUD's interim rule provides for the duties and functions of the collaborative applicant found in section 401 of the McKinney-Vento Act to be designated to the Continuum of Care, with the exception of applying to HUD for grant funds. HUD chose this approach because the Continuum might not be a legal entity, and therefore cannot enter into enforceable contractual agreements, but is the appropriate body for establishing and implementing decisions that affect the entire geographic area covered by the Continuum, including decisions related to funding. This approach allows the Continuum to retain its duties related to planning and prioritizing need (otherwise designated by statute to the collaborative applicant), while the authority to sign a grant agreement with HUD is designated to an eligible applicant that can enter into a contractual agreement. All of the duties assigned to the Continuum are based on the comparable duties of section 402(f) of the McKinney-Vento Act.

Subpart B of the interim rule identifies how Continuums of Care are established, as well as the required duties and functions of the Continuum of Care.

Establishing the Continuum of Care. In order to be eligible for funds under the Continuum of Care program, representatives from relevant organizations within a geographic area must establish a Continuum of Care. As discussed earlier in this preamble, this body is responsible for carrying out the duties identified in this interim regulation. Representatives from relevant organizations include nonprofit homeless assistance providers, victim service providers, faith-based organizations, governments, businesses, advocates, public housing agencies, school districts, social service providers, mental health agencies, hospitals, universities, affordable housing developers, law enforcement, and organizations that serve veterans and homeless and formerly homeless individuals. Where these organizations are located within the geographic area served by the Continuum of Care, HUD expects a representative of the organization to be a part of the Continuum of Care.

Specific request for comment. HUD specifically requests comments on requiring Continuums of Care to have a board that makes the decisions for the Continuum. HUD requires two characteristics for all board compositions. These characteristics are that the Board must be representative of the subpopulations of homeless persons that exist within the geographic area, and include a homeless or formerly homeless person. Continuums will have 2 years from the effective date of the interim rule to establish a board that meets the criteria established in this section. No board member may participate or influence discussions or decisions concerning the award of a grant or other financial benefits for an organization that the member represents.

HUD is considering four additional characteristics for all board compositions for incorporation in the final rule. HUD did not implement them at this stage in order to seek public comment prior to implementing them as requirements. HUD proposes that all boards must have a chair or co-chairs; be composed of an uneven number, serving staggered terms; include members from the public and private sectors; and include a member from at least one Emergency Solutions Grants program (ESG) recipient's agency located within the Continuum's geographic area. HUD is requesting comment on all of these proposed requirements; however, HUD specifically requests comments from Continuums of Care and ESG recipients on the requirement that the Board include an ESG recipient as part of its membership. HUD invites ESG recipients and Continuums to share challenges that will be encountered when implementing this requirement. Ensuring that ESG recipients are represented on the Board is important to HUD; therefore, in communities where ESG recipients and/or Continuums do not feel this requirement is feasible, HUD asks commenters to provide suggestions for how ESG recipients can be involved in the Continuum at one of the core decision-making levels.

Responsibilities of the Continuum of Care. The interim rule establishes three major duties for which the Continuum of Care is responsible: To operate the Continuum of Care, to designate an HMIS for the Continuum of Care, and to plan for the Continuum of Care.

This section of the interim rule establishes requirements within these three major duties.

Operating the Continuum of Care. The interim rule provides that the Continuum of Care must abide by certain operational requirements. These requirements will ensure the effective management of the Continuum of Care process and ensure that the process is inclusive and fair. HUD has established eight duties required of the Continuum necessary to effectively operate the Continuum of Care. HUD has established the specific minimum standards for operating and managing a Continuum of Care for two main reasons. First, the selection criteria established under section 427 of the McKinney-Vento Act require HUD to measure the Continuum of Care's performance in reducing homelessness by looking at the overall performance of the Continuum, as opposed to measuring performance project-by-project as was done prior to the enactment of the HEARTH Act. This Continuum of Care performance approach results in cooperation and coordination among providers. Second, because Continuums of Care will have grants of up to 3 percent of Final Pro Rata Need (FPRN) to be used for eligible Continuum of Care planning costs, HUD is requiring more formal decision-making and operating standards for the Continuum of Care. This requirement ensures that the Continuums have appropriate funding to support planning costs.

One of the duties established in this interim rule is the requirement that the Continuum establish and operate a centralized or coordinated assessment system that provides an initial, comprehensive assessment of the needs of individuals and families for housing and services. As detailed in the Emergency Solutions Grants program interim rule published on December 5, 2011, through the administration of the Rapid Re-Housing for Families Demonstration program and the Homelessness Prevention and Rapid Re-Housing program, as well as best practices identified in communities, HUD has learned that centralized or coordinated assessment systems are important in ensuring the success of homeless assistance and homeless prevention programs in communities. In particular, such assessment systems help communities systematically assess the needs of program participants and effectively match each individual or family with the most appropriate resources available to address that individual or family's particular needs.

Therefore, HUD has required, through this interim rule, each Continuum of Care to develop and implement a centralized or coordinated assessment system for its geographic area. Such a system must be designed locally in response to local needs and conditions. For example, rural areas will have significantly different systems than urban ones. While the common thread between typical models is the use of a

common assessment tool, the form, detail, and use of that tool will vary from one community to the next. Some examples of centralized or coordinated assessment systems include: A central location or locations within a geographic area where individuals and families must be present to receive homeless services; a 211 or other hotline system that screens and directly connects callers to appropriate homeless housing/service providers in the area; a ''no wrong door'' approach in which a homeless family or individual can show up at any homeless service provider in the geographic area but is assessed using the same tool and methodology so that referrals are consistently completed across the Continuum of Care; a specialized team of case workers that provides assessment services to providers within the Continuum of Care; or in larger geographic areas, a regional approach in which ''hubs'' are created within smaller geographic areas. HUD intends to develop technical assistance materials on a range of centralized and coordinated assessment types, including those most appropriate for rural areas.

HUD recognizes that imposing a requirement for a centralized or coordinated assessment system may have certain costs and risks. Among the risks that HUD wishes specifically to address are the risks facing individuals and families fleeing domestic violence, dating violence, sexual assault, and stalking. In developing the baseline requirements for a centralized or coordinated intake system, HUD is considering whether victim service providers should be exempt from participating in a local centralized or coordinated assessment process, or whether victim service providers should have the option to participate or not.

Specific request for comment. HUD specifically seeks comment from Continuum of Care-funded victim service providers on this question. As set forth in this interim rule, each Continuum of Care is to develop a specific policy on how its particular system will address the needs of individuals and families who are fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, or stalking, but who are seeking shelter or services from non-victim service providers. These policies could include reserving private areas at an assessment location for evaluations of individuals or families who are fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, or stalking; a separate ''track'' within the assessment framework that is specifically designed for domestic violence victims; or the location of victim service providers with centralized assessment teams.

HUD invites suggestions for ensuring that the requirements it imposes regarding centralized or coordinated assessment systems will best help communities use their resources effectively and best meet the needs of all families and individuals who need assistance. Questions that HUD asks commenters to specifically address are: What barriers to accessing housing/services might a centralized or coordinated intake system pose to victims of domestic violence? How can those barriers be eliminated? What specific measures should be implemented to ensure safety and confidentiality for individuals and families who are fleeing or attempting to flee domestic violence situations? How should those additional standards be implemented to ensure that victims of domestic violence have immediate access to housing and services without increasing the burden on those victims? For communities that already have centralized or coordinated assessment systems in place, are victims of domestic violence and/or domestic violence service providers integrated into that system? Under either scenario (they are integrated into an assessment process or they are not integrated into it), how does your community ensure the safety and confidentiality of this population, as well as access to homeless housing and services? What HUD-sponsored training would be helpful to assist communities in completing the initial assessment of victims of domestic violence in a safe and confidential manner?

In addition to comments addressing the needs of victims of domestic violence, dating violence, sexual assault, and stalking, HUD invites general comments on the use of a centralized or coordinated assessment system, particularly from those in communities that have already implemented one of these systems who can share both what has worked well and how these systems could be improved. HUD specifically seeks comment on any additional risks that a centralized or coordinated assessment system may create for victims of domestic violence, dating violence, sexual assault, or stalking who are seeking emergency shelter services due to immediate danger, regardless of whether they are seeking services through a victim service provider or nonvictim service provider.

Another duty set forth in this part, is the requirement to establish and consistently follow written standards when administering assistance under this part. These requirements, established in consultation with recipients of Emergency Solutions Grants program funds within the geographic area, are intended to coordinate service delivery across the geographic area and assist Continuums of Care and their recipients in evaluating the eligibility of individuals and families consistently and administering assistance fairly and methodically. The written standards can be found in § 578.7(a)(9) of this interim rule.

Designating and operating an HMIS. The Continuum of Care is responsible for designating an HMIS and an eligible applicant to manage the HMIS, consistent with the requirements, which will be codified in 24 CFR part 580. This duty is listed under section 402(f)(2) of the McKinney-Vento Act. In addition, the Continuum is responsible for reviewing, revising, and approving a privacy plan, security plan, and data quality plan for the HMIS and ensuring consistent participation of recipients and subrecipients in the HMIS.

Continuum of Care planning. The Continuum is responsible for coordinating and implementing a system for its geographic area to meet the needs of the homeless population and subpopulations within the geographic area. The interim rule defines the minimum requirements for this systematic approach under § 578.7(c)(1), such as emergency shelters, rapid rehousing, transitional housing, permanent supportive housing, and prevention strategies. Because there are not sufficient resources available through the Continuum of Care program to prevent and end homelessness, coordination and integration of other funding streams, including the Emergency Solutions Grants program and mainstream resources, is integral to carrying out the Continuum of Care System.

HUD has determined that since the Continuum of Care will be the larger planning organization, the Continuum of Care must develop and follow a Continuum of Care plan that adheres, not only to the requirements being established by this interim rule, but to the requirements and directions of the most recently issued notice of funding availability (NOFA).

While these planning duties are not explicitly provided in section 402(f) of the Act, HUD has included them to facilitate and clarify the Continuum of Care planning process. Consistent with the goals of the HEARTH Act, HUD strives, through this interim rule, to provide a comprehensive, well-

coordinated and clear planning process, which involves the creation of the Continuum of Care and the duties the Continuum of Care will have to fulfill.

Other planning duties for Continuums established in this section of the interim rule are planning for and conducting at least a biennial-point-in-time count of homeless persons within the geographic area, conducting an annual gaps analysis of the homeless needs and services available within the geographic area, providing information necessary to complete the Consolidated Plan(s) within the geographic area, and consulting with State and local government Emergency Solutions Grants program recipients within the Continuum of Care on the plan for allocating Emergency Solutions Grants program funds and reporting on and evaluating the performance of Emergency Solutions Grants program recipients and subrecipients.

Preparing an application for funds. A major function of the Continuum of Care is preparing and overseeing an application for funds under this part. This section of the interim rule establishes the duties of the Continuum of Care related to the preparation of the application. This section of the interim rule establishes that the Continuum is responsible for designing, operating, and following a collaborative process for the development of applications, as well as approving the submission of applications, in response to a NOFA published by HUD.

The Continuum must also establish priorities for funding projects within the geographic area and determine the number of applications being submitted for funding. As previously noted in this preamble, since the Continuum of Care might not be a legal entity, and therefore may not be able to enter into a contractual agreement with HUD, the Continuum must select one or more eligible applicants to submit an application for funding to HUD on its behalf. If the Continuum of Care is an eligible applicant, the Continuum of Care may submit an application. If the Continuum selects more than one application, the Continuum must select one eligible applicant to be the collaborative applicant. That applicant will collect and combine the required application information from all of the other eligible applicants and for all projects within the geographic area that the Continuum has designated. If only one application is submitted by the collaborative applicant, the collaborative applicant will collect and combine the required application information from all projects within the geographic area that the Continuum has designated for funding. The collaborative applicant will always be the only applicant that can apply for Continuum of Care planning costs. In the case that there is one application for projects, the recipient of the funds is required to have signed agreements with its subrecipients as set forth in § 578.23(c), and is required to monitor and sanction subrecipients in compliance with § 578.107.

Whether the Continuum of Care submits the application or designates an eligible applicant to submit the application for funding, the Continuum of Care retains all of its duties.

Unified Funding Agencies. To be designated as the Unified Funding Agency (UFA) for the Continuum of Care, the Continuum must select the collaborative applicant to apply to HUD to be designated as the UFA for the Continuum. The interim rule establishes the criteria HUD will use when determining whether to designate the collaborative applicant as a UFA. These standards were developed to ensure that collaborative applicants have the capacity to manage the grant and carry out the duties in 578.11(b), and are described below.

The duties of the UFA established in § 578.11 are consistent with the duties set forth in section 402(g) of the Act. Even if the Continuum designates a UFA to submit the application for funding, the Continuum of Care retains all of its duties.

Remedial actions. Section 402(c) of the McKinney-Vento Act gives HUD the authority to ensure the fair distribution of grant amounts for this program, such as designating another body as a collaborative applicant, replacing the Continuum of Care for the geographic area, or permitting other eligible entities to apply directly for grants. Section 578.13 of this interim rule addresses the remedial actions that may be taken.

Overview of the Application and Grant Award Process (Subpart C)

Eligible applicants. Under this interim rule, eligible applicants consist of nonprofit organizations, State and local governments, and instrumentalities of local governments. An eligible applicant must have been designated by the Continuum of Care to submit an application for grant funds under this part. The Continuum's designation must state whether the Continuum is designating more than one applicant to apply for funds, and if it is, which applicant is being designated the collaborative applicant. A Continuum of Care that is designating only one applicant for funds must designate that applicant to be the collaborative applicant. For-profit entities are not eligible to apply for grants or to be subrecipients of grant funds.

Section 401(10) of the McKinney-Vento Act identifies that collaborative applicants may be legal entities, and a legal entity may include a consortium of instrumentalities of a State or local government that has constituted itself as an entity. HUD has not included a consortium in the list of eligible applicants. As noted earlier in this preamble, a Continuum of Care is defined to mean a group that is composed of representatives of organizations across the entire geographic area claimed by the Continuum of Care. A Continuum is able to combine more than one metropolitan city or county into the geographic area that the Continuum represents. In essence, the Continuum of Care acts as a consortium, and it is therefore HUD's position that the inclusion of consortiums in the interim rule would be redundant.

Determining the Continuum's maximum award amount. The total amount for which a Continuum of Care is eligible to apply and be awarded is determined through a four-step process, including the following factors: A Continuum's PPRN amount; renewal demand; any additional increases in amounts for leasing, rental assistance, and operating costs based on Fair Market Rents (FMRs); planning and UFA cost funds; and the amounts available for bonus dollars.

Using the formula that will be discussed below, HUD will first determine a Continuum of Care's PPRN amount, as authorized under section 427(b)(2)(B) of the McKinney-Vento Act. This amount is the sum of the PPRN amounts for each metropolitan city, urban county, non-urban county, and insular area claimed by the Continuum of Care as part of its geographic area, excluding any counties applying for, or receiving funds under the Rural Housing Stability Assistance program, the regulations for which will be established in 24 CFR part 579. The PPRN for each of these areas is based upon the ''need formula'' under § 579.17(a)(2) and (3). Under the McKinney-Vento Act, HUD is required to publish, by regulation, the formula used to establish grant amounts. The need formula under § 579.17(a)(2) and (3) satisfies this requirement, and HUD specifically seeks comment on this formula. HUD will announce the PPRN amounts prior to the publication of the NOFA on its Web site.

To establish the amount on which the need formula is run, HUD will deduct an amount, which will be published in

the NOFA, to be set aside to provide a bonus, and the amount necessary to fund Continuum of Care planning activities and UFA costs from the total funds made available for the program each fiscal year. On this amount, HUD will use the following process to establish an area's PPRN. First, 2 percent of the total funds available shall be allocated among the four insular areas (American Samoa, Guam, the Commonwealth of the Northern Marianas, and the Virgin Islands) based upon the percentage each area received in the previous fiscal year under section 106 of the Housing and Community Development Act of 1974. Second, 75 percent of the remaining funds made available shall be allocated to metropolitan cities and urban counties that have been funded under the Emergency Solutions Grants program (formerly known as the Emergency Shelter Grants program) every year since 2004. Third, the remaining funds made available shall be allocated to Community Development Block Grant (CDBG) metropolitan cities and urban counties that have not been funded under the Emergency Solutions Grants program every year since 2004 and all other counties in the United States and Puerto Rico.

Recognizing that in some federal fiscal years, the amount available for the formula may be less than the amount required to renew all existing projects eligible for renewal in that year for at least one year, HUD has included a method for distributing the reduction of funds proportionally across all Continuums of Care in § 578.17(a)(4) of this interim rule. HUD will publish the total dollar amount that each Continuum will be required to deduct from renewal projects Continuum-wide, and Continuums will have the authority to determine how to administer the cuts to projects across the Continuum.

Specific request for comment. HUD specifically requests comment on the method established in § 578.17(a)(4) to reduce the total amount required to renew all projects eligible for renewal in that one year, for at least one year, for each Continuum of Care when funding is not sufficient to renew all projects nationwide for at least one year.

The second step in determining a Continuum's maximum award amount is establishing a Continuum of Care's ''renewal demand.'' The Continuum's renewal demand is the sum of the annual renewal amounts of all projects eligible within the Continuum of Care's geographic area to apply for renewal in that federal fiscal year's competition before any adjustments to rental assistance, leasing, and operating line items based on changes to the FMRs in the geographic area.

Third, HUD will determine the Continuum of Care's Final Pro Rata Need (FPRN), which is the higher of: (1) PPRN, or (2) renewal demand for the Continuum of Care. The FPRN establishes the base for the maximum award amount for the Continuum of Care.

Fourth, HUD will determine the maximum award amount. The maximum award amount for the Continuum of Care is the FPRN amount plus any additional eligible amounts for Continuum planning; establishing fiscal controls for the Continuum; updates to leasing, operating, and rental assistance line items based on changes to FMR; and the availability of any bonus funding during the competition.

Application process. Each fiscal year, HUD will issue a NOFA. All applications, including applications for grant funds, and requests for designation as a UFA or HPC, must be submitted to HUD in accordance with the requirements of the NOFA and contain such information as the NOFA specifies. Applications may request up to the maximum award amount for Continuums of Care.

An applicant that is a State or a unit of general local government must have a HUD-approved, consolidated plan in accordance with HUD's Consolidated Plan regulations in 24 CFR part 91. The applicant must submit a certification that the application for funding is consistent with the HUD-approved consolidated plan(s) in the project's jurisdiction(s). Applicants that are not States or units of general local government must submit a certification that the application for funding is consistent with the jurisdiction's HUD-approved consolidated plan. The certification must be made by the unit of general local government or the State, in accordance with HUD's regulations in 24 CFR part 91, subpart F. The required certification must be submitted by the funding application submission deadline announced in the NOFA.

An applicant may provide assistance under this program only in accordance with HUD subsidy layering requirements in section 102 of the Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545). In this interim rule, HUD clarifies that the applicant must submit information in its application on other sources of funding the applicant has received, or reasonably expects to receive, for a proposed project or activities.

Awarding funds. HUD will review applications in accordance with the guidelines and procedures specified in the NOFA and award funds to recipients through a national competition based on selection criteria as defined in section 427 of the McKinney-Vento Act. HUD will announce the awards and notify selected applicants of any conditions imposed on the awards.

Grant agreements. A recipient of a conditionally awarded grant must satisfy all requirements for obligation of funds; otherwise, HUD will withdraw its offer of the award. These conditions include establishing site control, providing proof of match, complying with environmental review under § 578.31, and documenting financial feasibility within the deadlines under § 578.21(a)(3). HUD has included in the interim rule the deadlines for conditions that may be extended and the reasons for which HUD will consider an extension.

The interim rule requires that site control be established by each recipient receiving funds for acquisition, rehabilitation funding, new construction, or operating costs, or for providing supportive services. HUD has determined that the time to establish site control is 12 months for projects not receiving new construction, acquisition, or rehabilitation funding, as stated under section 426(a) of the McKinney-Vento Act, not 9 months as stated under section 422(d) of the McKinney-Vento Act, for projects receiving operating and supportive service funds. HUD's determination on the time needed to establish site control is based on previous program policy, and the longer time frame takes into consideration the reality of the housing market. Projects receiving acquisition, rehabilitation, or new construction funding must provide evidence of site control no later than 24 months after the announcement of grant awards, as provided under section 422(d) of the McKinney-Vento Act.

The interim rule requires that HUD perform an environmental review for each property as required under HUD's environmental regulations in 24 CFR part 50. All recipients of Continuum of Care program funding under this part must supply all available, relevant information necessary to HUD, and carry out mitigating measures required by HUD. The recipient, its project partners, and its project partner's contractors may not perform any eligible activity for a project under this part, or commit or expend HUD or local funds for such activities until HUD has performed an environmental review and the recipient has received HUD approval of the property agreements.

Executing grant agreements. If a Continuum designates more than one applicant for the geographic area, HUD

will enter into a grant agreement with each designated recipient for which an award is announced. If a Continuum designates only one recipient for the geographic area, HUD may enter into one grant agreement with that recipient for new awards, if any; and one grant agreement for renewals and Continuum of Care planning costs and UFA costs, if any. These two grant agreements will cover the entire geographic area, and a default by the recipient under one of these agreements will also constitute a default under the other. If the Continuum is a UFA, HUD will enter into one grant agreement with the UFA for new awards, if any; and one for renewal and Continuum of Care planning costs and UFA costs, if any. Similarly, these two grant agreements will cover the entire geographic area and a default by the recipient under one of those agreements will also constitute a default under the other.

HUD requires the recipient to enter into the agreement described in § 578.23(c). Under this agreement, the grant recipient must agree to ensure that the operation of the project will be in accordance with the McKinney-Veto Act and the requirements under this part. In addition, the recipient must monitor and report the progress of the projects to the Continuum of Care and to HUD. The recipient must ensure that individuals and families experiencing homelessness are involved in the operation of the project, maintain confidentiality of program participants, and monitor and report matching funds to HUD, among other requirements. The recipient must also agree to use the centralized or coordinated assessment system established by the Continuum of Care, unless the recipient or subrecipient is a victim service provider. Victim service providers may choose not to use the centralized or coordinated assessment system provided that all victim service providers in the area use a centralized or coordinated assessment system that meets HUD's minimum requirements. HUD has provided this optional exception because it understands the unique role that victim service providers have within the Continuum of Care.

Renewals. The interim rule provides that HUD may fund, through the Continuum of Care program, all projects that were previously eligible under the McKinney-Vento Act prior to the enactment of the HEARTH Act. These projects may be renewed to continue ongoing leasing, operations, supportive services, rental assistance, HMIS, and administration beyond the initial funding period even if those projects would not be eligible under the Continuum of Care program. For projects that would no longer be eligible under the Continuum of Care program (*e.g.,* safe havens), but which are serving homeless persons; HUD wants to ensure that housing is maintained and that persons do not become homeless because funding is withdrawn.

HUD may renew projects that were submitted on time and in such manner as required by HUD, but did not have a total score that would allow the project to be competitively funded. HUD may choose to exercise this option to ensure that homeless or formerly homeless persons do not lose their housing. The interim rule provides, based on the language in section 421(e) of the McKinney-Vento Act, that HUD may renew the project, upon a finding that the project meets the purposes of the Continuum of Care program, for up to one year and under such conditions as HUD deems appropriate.

Annual Performance Report. The interim rule also provides that HUD may terminate the renewal of any grant and require the recipient to repay the renewal grant if the recipient fails to submit a HUD Annual Performance Report (APR) within 90 days of the end of the program year or if the recipient submits an APR that HUD deems unacceptable or shows noncompliance with the requirements of the grant and this part. Section 578.103(e) of the Continuum of Care program regulations further clarifies that recipients receiving grant funds for acquisition, rehabilitation, or new construction are expected to submit APRs for 15 years from the date of initial occupancy or the date of initial service provision, unless HUD provides an exception. The recipient's submission of the APR helps HUD review whether the recipient is carrying out the project in the manner proposed in the application. Recipients agree to submit an APR as a condition of their grant agreement. This requirement allows HUD to ensure that recipients submit APRs on grant agreements that have expired as a condition of receiving approval for a new grant agreement for the renewal project.

Appeals. The interim rule provides certain appeal options for applicants that were not awarded funding.

Under section 422(g) of the McKinney-Vento Act, if more than one collaborative applicant submits an application covering the same geographic area, HUD must award funds to the application that scores the highest score based on the selection criteria set forth in section 427 of the Act. Consistent with HUD's use of the term Continuum of Care in the interim rule where the statute uses collaborative applicant, as explained earlier in the preamble, the interim rule stipulates that if more than one Continuum of Care claims the same geographic area, then HUD will award funds to the Continuum applicant(s) whose application(s) has the highest total score and that no projects from the lower scoring Continuum of Care will be funded (and that any projects submitted with both applications will not be funded). To appeal HUD's decision to fund the competing Continuum of Care, the applicant(s) from the lower-scoring Continuum of Care must file the written appeal in such form and manner as HUD may require within 45 days of the date of HUD's announcement of award.

If an applicant has had a certification of consistency with a consolidated plan withheld, that applicant may appeal such a decision to HUD. HUD has established a procedure to process the appeals and no later than 45 days after the date of receipt of an appeal, HUD will make a decision.

Section 422(h) of the McKinney-Vento Act provides the authority for a solo applicant to submit an application to HUD and be awarded a grant by HUD if it meets the criteria under section 427 of the McKinney-Vento Act. The interim rule clarifies that a solo applicant must submit its application to HUD by the deadline established in the NOFA to be considered for funding. The statute also requires that HUD establish an appeal process for organizations that attempted to participate in the Continuum of Care's process and believe they were denied the right to reasonable participation, as reviewed in the context of the local Continuum's process. An organization may submit a solo application to HUD and appeal the Continuum's decision not to include it in the Continuum's application. If HUD finds that the solo applicant was not permitted to participate in the Continuum of Care process in a reasonable manner, then HUD may award the grant to that solo applicant and may direct the Continuum to take remedial steps to ensure reasonable participation in the future. HUD may also reduce the award to the Continuum's applicant(s).

Section 422(h)(1) of the McKinney-Vento Act requires that ''HUD establish a timely appeal procedure for grant amounts awarded or denied under this subtitle to a collaborative application.'' The interim rule sets an appeal process for denied or decreased funding under § 578.35(c). Applicants that are denied funds by HUD, or that requested more funds than HUD awarded, may appeal

by filing a written appeal within 45 days of the date of HUD's announcement of the award. HUD will notify applicant of its decision on the appeal within 60 days of the date of HUD's receipt of the written appeal.

Program Components and Eligible Costs (Subpart D)

Program components. The interim rule provides that Continuum of Care funds may be used for projects under five program components: Permanent housing, transitional housing, supportive services only, HMIS, and, in some cases, homelessness prevention. Administrative costs are eligible under all components. Where possible, the components set forth in the Continuum of Care program are consistent with the components set forth under the Emergency Solutions Grants program. This will ease the administrative burden on recipients of both programs and will ensure that reporting requirements and data quality benchmarks are consistently established and applied to like projects. One significant distinction between the Emergency Solutions Grants program and this part can be found in the eligible activities and administration requirements for assistance provided under the rapid rehousing component in this interim rule. The significant differences between this component in the Emergency Solutions Grants program and this part are discussed below.

The interim rule sets forth the costs eligible for each program component in § 578.37(a). The eligible costs for contributing data to the HMIS designated by the Continuum of Care are also eligible under all components.

Consistent with the definition of permanent housing in section 401 of the McKinney-Vento Act and § 578.3 of this interim rule, the permanent housing component is community-based housing without a designated length of stay that permits formerly homeless individuals and families to live as independently as possible. The interim rule clarifies that Continuum of Care funds may be spent on two types of permanent housing: Permanent supportive housing for persons with disabilities (PSH) and rapid rehousing that provides temporary assistance (i.e., rental assistance and/or supportive services) to program participants in a unit that the program participant retains after the assistance ends.

Although the McKinney-Vento Act authorizes permanent housing without supportive services, the interim rule does not. Based on its experience with the Supportive Housing and Shelter Plus Care programs, HUD has determined that programs should require at least case management for some initial period after exiting homelessness. HUD has imposed the requirement that rapid rehousing include, at a minimum, monthly case management meetings with program participants (except where prohibited by the Violence Against Women Act (VAWA) and the Family Violence Prevention and Services Act (FVPSA)) and allows for a full range of supportive services to be provided for up to 6 months after the rental assistance stops. Many other HUD programs, such as Section 8 and HOME, provide housing without supportive services to low-income individuals and families.

With respect to rapid rehousing, the interim rule provides that funds under this part may be used to provide supportive services and short-term and/or medium-term rental assistance. While the time frames under which a program participant may receive short-term or medium-term rental assistance set forth in this part match the time frames set forth in the Emergency Solutions Grants program, the supportive services available to program participants receiving rapid rehousing assistance under the Continuum of Care program are not limited to housing relocation and stabilization services as they are in the Emergency Solutions Grants program. Program participants receiving rapid rehousing under this part may receive any of the supportive services set forth in § 578.53 during their participation in the program. The Continuum of Care, however, does have the discretion to develop written policies and procedures that limit the services available to program participants that better align the services available to program participants with those set forth in the Emergency Solutions Grants program.

Specific request for comment. While HUD's experience with the Supportive Housing and Shelter Plus Care programs is the basis for HUD's determination to require case management for some initial period after exiting homelessness, HUD specifically welcomes comment on other experiences with monthly case management.

The interim rule provides that the HMIS component is for funds that are used by HMIS Leads only. Eligible costs include leasing a structure in which the HMIS is operated, operating funds to operate a structure in which the HMIS is operated, and HMIS costs related to establishing, operating, and customizing a Continuum of Care's HMIS.

As set forth in Section 424(c) of the McKinney-Veto Act, Continuum of Care funds may be used only for the homelessness prevention component by recipients in Continuums of Care that have been designated HPCs by HUD. Eligible activities are housing relocation and stabilization services, and short- and/or medium-term rental assistance, as set forth in 24 CFR 576.103, necessary to prevent an individual or family from becoming homeless.

Planning activities. Under this interim rule, HUD lists eligible planning costs for the Continuum of Care under § 578.39(b) and (c). HUD will allow no more than 3 percent of the FPRN, or a maximum amount to be established by the NOFA, to be used for certain costs. These costs must be related to designing a collaborative process for an application to HUD, evaluating the outcomes of funded projects under the Continuum of Care and Emergency Solutions Grants programs, and participating in the consolidated plan(s) for the geographic area(s). Under section 423 of the McKinney-Vento Act, a collaborative applicant may use no more than 3 percent of total funds made available to pay for administrative costs related to Continuum of Care planning.

HUD is defining ''of the total funds made available'' to mean FPRN, the higher of PPRN or renewal demand, in the interim rule. HUD has determined that FPRN strikes the correct balance, as it is the higher of PPRN or renewal demand. This will help Continuums of Care (CoC) balance: (1) Having sufficient planning dollars to be successful in its duties and compete for new money (which would be the PPRN), and (2) being able to monitor and evaluate actual projects in operation (and plan for renewal demand). The administrative funds related to CoC planning made available will be added to a CoC's FPRN to establish the CoCs maximum award amount.

Unified Funding Agency Costs. Under this interim rule, HUD lists eligible UFA costs in § 578.41(b) and (c). Similar to the cap on planning costs for CoC, HUD will allow no more than 3 percent of the FPRN, or a maximum amount to be established by the NOFA, whichever is less, to be used for UFA costs. This amount is in addition to the amount made available for CoC planning costs. UFA costs include costs associated with ensuring that all financial transactions carried out under the Continuum of Care program are conducted and records maintained in accordance with generally accepted accounting principles, including arranging for an annual survey, audit, or evaluation of the financial records of each project carried out by a subrecipient funded by a grant received through the Continuum of Care program. The funds made

available to UFAs related to establishing fiscal controls will be added to a CoC's FPRN to establish the CoC maximum award amount.

Leasing. Under this interim rule, grant funds may be used to pay the costs of leasing a structure or structures, or portions of structures, to provide housing or supportive services. The interim rule further clarifies that leasing means that the lease is between the recipient of funds and the landlord. HUD recognizes that some grantees receiving funds through the Supportive Housing Program may have been using their leasing funds in a manner consistent with the rental assistance requirements established in § 578.51; therefore, since the Continuum of Care program authorizes both leasing and rental assistance, the rule provides for an allowance for projects originally approved to carry out leasing to renew and request funds for rental assistance, so long as the rental assistance meets the requirements in § 578.51. The rule provides that a recipient of a grant awarded under the McKinney-Vento Act, prior to enactment of the HEARTH Act, must apply for leasing if the lease is between the recipient and the landlord, notwithstanding that the grant was awarded prior to the HEARTH Act amendments to the McKinney-Vento Act.

The interim rule provides that leasing funds may not be used to lease units or structures owned by the recipient, subrecipient, their parent organization(s), any other related organization(s), or organizations that are members of a partnership where the partnership owns the structure, unless HUD authorizes an exception for good cause. The interim rule establishes minimum requirements that a request for an exception must include. These exceptions are based on HUD's experience in administering the Homelessness Prevention and Rapid Re-Housing Program (HPRP).

The interim rule establishes that projects for leasing may require that program participants pay an occupancy charge (or in the case of a sublease, rent) of no more than 30 percent of their income. Income must be calculated in accordance with HUD's regulations in 24 CFR 5.609 and 24 CFR 5.611(a). However, the interim rule clarifies that projects may not charge program fees.

Rental assistance. Under this interim rule, rental assistance is an eligible cost for permanent and transitional housing, and this rule clarifies that the rental assistance may be short-term, up to 3 months of rent; medium-term, for 3 to 24 months of rent; and long-term, for longer than 24 months of rent. This section provides that rental assistance may include tenant-based, project-based, or sponsor-based rental assistance. This section also provides that project-based rental assistance may include rental assistance to preserve existing permanent supportive housing for homeless individuals and families. Given that the availability of affordable rental housing has been shown to be a key factor in reducing homelessness, the availability of funding for short-term, medium-term, and long-term rental assistance under both the Emergency Solutions Grants program and the Continuum of Care program is not inefficient use of program funds, but rather effective use of funding for an activity that lowers the number of homeless persons.

As noted in the above discussion of rental housing available for funding under the Continuum of Care program, one eligible form of rental assistance is tenant-based, which allows the program participant to retain rental assistance for another unit. The interim rule limits this retention to within the Continuum of Care boundaries. HUD has determined that Continuum of Care program funds must be used within the Continuum's geographic boundaries. If program participants move outside of the Continuum, the Continuum may pay moving costs, security deposits, and the first month of rent for another unit; however, the Continuum would have to organize assistance with the relevant Continuum of Care for the program participant if rental assistance is to continue. The program participant may be transferred to a rental assistance program in a different Continuum without having to become homeless again. The recipient may also limit the movement of the assistance to a smaller area if this is necessary to coordinate service delivery.

Under this interim rule, the only exception to the limitation for retention of tenant-based rental assistance is for program participants who are victims of domestic violence, dating violence, sexual assault, or stalking. Under the definition of ''tenant-based'' in the McKinney-Vento Act (section 401(28) of the McKinney-Vento Act), these participants must have complied with all other obligations of the program and reasonably believe that he or she is imminently threatened by harm from further violence if he or she remains in the assisted dwelling unit.

In the interim rule, HUD has clarified that the imminent threat of harm must be from *further* domestic violence, dating violence, sexual assault, or stalking, which would include threats from a third party, such as a friend or family member of the perpetrator of the violence. HUD requires that the program participant provide appropriate documentation of the original incident of domestic violence, dating violence, sexual assault, or stalking, and any evidence of the current imminent threat of harm. Examples of appropriate documentation of the original incident of domestic violence, dating violence, sexual assault, or stalking include written observation by the housing or service provider; a letter or other documentation from a victim service provider, social worker, legal assistance provider, pastoral counselor, mental health provider, or other professional from whom the victim has sought assistance; or medical or dental, court, or law enforcement records. Documentation of reasonable belief of further domestic violence, dating violence, sexual assault, or stalking includes written observation by the housing or service provider; a letter or other written documentation from a victim service provider, social worker, legal assistance provider, pastoral counselor, mental health provider, or other professional from whom the victim has requested assistance; a current restraining order, recent court order, or other court records; or law enforcement reports or records. The housing or service provider may also consider other documentation such as emails, voicemails, text messages, social media posts, and other communication. Because of the particular safety concerns surrounding victims of domestic violence, the interim rule provides that acceptable evidence for both the original violence and the reasonable belief include an oral statement. This oral statement does not need to be verified, but it must be documented by a written certification by the individual or head of household.

This provision is specific to victims of domestic violence, dating violence, sexual assault, and stalking who are receiving tenant-based rental assistance in permanent housing. This interim rule contains other policies for moving program participants receiving any type of assistance under this interim rule, including tenant-based rental assistance, within the Continuum of Care geographic area, or smaller geographic area required by the provider to coordinate service delivery. Moving program participants outside of the geographic area where providers can coordinate service-delivery is administratively difficult for providers and makes it difficult to monitor that program participants have access to, and are receiving, appropriate supportive

services; therefore, moves outside of the geographic area where the provider can effectively deliver and monitor service coordination are allowed only under exceptional circumstances. HUD has established these provisions to provide an exception and to address the challenges that are associated with such a move.

Based on HUD's experience in administering the Shelter Plus Care program, the interim rule includes provisions to clarify when rental payments may continue to be made to a landlord when the program participant no longer resides in the unit. For vacated units, the interim rule provides that assistance may continue for a maximum of 30 days from the end of the month in which the unit was vacated, unless the unit is occupied by another eligible person. A person staying in an institution for less than 90 days is not considered as having vacated the unit. Finally, the recipient may use grant funds, in an amount not to exceed one month's rent, to pay for any damage to housing due to the action of the program participant, one-time, per program participant, per unit. This assistance can be provided only at the time the program participant exits the housing unit.

Supportive services. Grant funds may be used to pay eligible costs of supportive services for the special needs of program participants. All eligible costs are eligible to the same extent for program participants who are unaccompanied homeless youth; persons living with Human Immunodeficiency Virus (HIV)/ Acquired Immune Deficiency Syndrome (AIDS) (HIV/AIDS); and victims of domestic violence, dating violence, sexual assault, or stalking. Any cost that is not described as an eligible cost under this interim rule is not an eligible cost of providing supportive services. Eligible costs consist of assistance with moving costs, case management, child care, education services, employment assistance and job training, housing search and counseling services, legal services, life skills training, mental health services, outpatient health services, outreach services, substance abuse treatment services, transportation, and utility deposits.

The definition of ''supportive services'' in section 401(27) of the McKinney-Vento Act includes the provision of mental health services, trauma counseling, and victim services. HUD has determined that victim services are eligible as supportive services, and are included as eligible program costs in this interim rule. Providers are allowed to provide services specifically to victims of domestic violence, dating violence, sexual assault, and stalking. The eligible costs for providing victim services are listed as eligible costs in the supportive services funding category. Rather than create a new eligible line item in the project budget, HUD has determined that these costs can be included in the funding categories already established.

Indirect costs. Indirect costs are allowed as part of eligible program costs. Programs using indirect cost allocations must be consistent with Office of Management and Budget (OMB) Circulars A–87 and A–122, as applicable. OMB Circular A–87 and the regulations at 2 CFR part 225 pertain to ''Cost Principles for State, Local, and Indian Tribal Governments.'' OMB Circular A–122 and the regulations codified at 24 CFR part 230 pertain to ''Cost Principles for Non-Profit Organizations.''

Other costs. In addition to the eligible costs described in this preamble, the regulation addresses the following other eligible costs: acquisition, rehabilitation, new construction, operating costs, HMIS, project administrative costs, and relocation costs.

High-Performing Communities (Subpart E)

Section 424 of the McKinney-Vento Act establishes the authority for the establishment of and requirements for HPCs. Applications must be submitted by the collaborative applicant at such time and in such manner as HUD may require and contain such information as HUD determines necessary under § 578.17(b). Applications will be posted on the HUD Web site (*www.hud.gov*) for public comments. In addition to HUD's review of the applications, interested members of the public will be able to provide comment to HUD regarding the applications.

Requirements. The Continuum of Care must use HMIS data (HUD will publish data standards and measurement protocols) to determine that the standards for qualifying as a HPC are met. An applicant must submit a report showing how the Continuum of Care program funds were expended in the prior year, and provide information that the Continuum meets the standards for HPCs.

Standards. In order to qualify as an HPC, a Continuum of Care must demonstrate through reliable data that it meets all of the required standards. The interim rule clarifies which standards will be measured with reliable data from a Continuum's HMIS and which standards will be measured through reliable data from other sources and presented in a narrative form or other format prescribed by HUD.

Continuums must use the HMIS to demonstrate the following measures: (1) That the mean length of homelessness must be less than 20 days for the Continuum's geographic area, or the Continuum's mean length of episodes for individuals and families in similar circumstances was reduced by at least 10 percent from the preceding year; (2) that less than 5 percent of individuals and families that leave homelessness become homeless again any time within the next 2 years, or the percentage of individuals and families in similar circumstances who became homeless again within 2 years after leaving homelessness was decreased by at least 20 percent from the preceding year; and (3) for Continuums of Care that served homeless families with youth defined as homeless under other federal statutes, that 95 percent of those families did not become homeless again within a 2-year period following termination of assistance and that 85 percent of those families achieved independent living in permanent housing for at least 2 years following the termination of assistance.

The McKinney-Vento Act requires that HUD set forth standards for preventing homelessness among the subset of those at the highest risk of becoming homeless among those homeless families and youth defined as homeless under other federal statutes, the third measure above, one of which includes achieving independent living in permanent housing among this population. HUD has set forth the standards of 95 percent and 85 percent. HUD recognizes that these standards are high, but standards are comparable to the other standards in the Act, which are high. It is HUD's position that HPCs should be addressing the needs of those homeless individuals within their communities prior to receiving designation of a HPC and being allowed to spend funds in accordance with § 578.71.

The final standard that the Continuum must use its HMIS data to demonstrate is provided under section 424(d)(4) of the Act. The statute requires each homeless individual or family who sought homeless assistance to be included in the data system used by that community. HUD has defined this as bed-coverage and service-volume coverage rates of at least 80 percent. The documentation that each homeless individual or family who sought homeless assistance be included in the HMIS is not measurable by HUD. This type of standard would be entirely reliant upon self-reporting. Additionally, individuals and families

have the right to decline having their data entered into the HMIS. HUD uses bed-coverage rates and service-volume coverage rates as a proxy for measuring the rate of inclusion of persons who are present for services or housing in the HMIS. This is a measurable standard, and HUD defines the calculation in the HMIS rule; therefore, the measurement will be consistent between Continuums.

Continuums must use reliable data from other sources and presented in a narrative form or other format prescribed by HUD to measure two standards: Community action and renewing HPC status. Section 424(d)(4) of the McKinney-Vento Act establishes another standard for HPCs, which is ''community action.'' This statutory section provides that communities that compose the geographic area must have actively encouraged homeless individuals and families to participate in housing and services available in the geographic area and included each homeless individual or family who sought homeless assistance services in the data system used by that community for determining compliance. HUD has defined ''communities that compose the geographic area'' to mean the entire geographic area of the Continuum. This definition will also provide consistency of measurement since most of HUD's measurements are across the entire Continuum of Care geographic area. HUD has further defined ''actively encourage'' within this standard as a comprehensive outreach plan, including specific steps for identifying homeless persons and referring them to appropriate housing and services in that geographic area. The measurement of the last part of this standard, ''each homeless individual or family who sought homeless assistance services in the data system used by that community,'' will be measured using reliable data from an HMIS and has been discussed earlier in this preamble. HUD has determined this will provide clarity and ensure consistent measurement across Continuums.

The interim rule provides that a Continuum of Care that was an HPC in the prior year and used Continuum funds for activities described under § 578.71 must demonstrate that these activities were effective at reducing the number of persons who became homeless in that community, to be renewed as a HPC.

Selection. HUD will select up to 10 Continuums of Care each year that best meet the application requirements and the standards set forth in § 578.65. Consistent with section 424 of the McKinney-Vento Act, the interim rule provides a HPC designation for the grants awarded in the same competition in which the designation is applied for and made. The designation will be for a period of one year.

Eligible activities. Recipients and subrecipients in Continuums that have been designated an HPC may use grant funds to provide housing relocation and stabilization services and short- and/or medium-term rental assistance to individuals and families at risk of homelessness as set for in the Emergency Solutions Grants program. All eligible activities discussed in this section must be effective at stabilizing individuals and families in their current housing, or quickly moving such individuals and families to other permanent housing. This is the only time that Continuum of Care funds may be used to serve nonhomeless individuals and families. Recipients and subrecipients using grant funds on these eligible activities must follow the written standards established by the Continuum of Care in § 578.7(a)(9)(v), and the recordkeeping requirements set for the Emergency Solutions Grants program rule.

Program Requirements (Subpart F)

All recipients of Continuum of Care funding must comply with the program regulations and the requirements of the NOFA issued annually by HUD.

Matching. The HEARTH Act allows for a new, simplified match requirement. All eligible funding costs except leasing must be matched with no less than a 25 percent cash or in-kind match. The interim rule clarifies that the match must be provided for the entire grant, except that recipients that are UFAs or are the sole recipient for the Continuum may provide the match on a Continuum-wide basis.

For in-kind match, the governmentwide grant requirements of HUD's regulations in 24 CFR 84.23 (for private nonprofit organizations) and 85.24 (for governments) apply. The regulations in 24 CFR parts 84 and 85 establish uniform administrative requirements for HUD grants. The requirements of 24 CFR part 84 apply to subrecipients that are private nonprofit organizations. The requirements of 24 CFR part 85 apply to the recipient and subrecipients that are units of general purpose local government. The match requirement in 24 CFR 84.23 and in 24 CFR 85.24 applies to administration funds, as well as Continuum of Care planning costs and UFA's financial management costs. All match must be spent on eligible activities as required under subpart D of this interim rule, except that recipients and subrecipients in HPCs may use match on eligible activities described under § 578.71.

General operations. Recipients of grant funds must provide housing or services that comply with all applicable State and local housing codes, licensing requirements, and any other requirements in the project's jurisdiction. In addition, this interim rule clarifies that recipients must abide by housing quality standards and suitable dwelling size. Recipients must also assess supportive services on an ongoing basis, have residential supervision, and provide for participation of homeless individuals as required under section 426(g) of the McKinney-Vento Act.

Specific request for comment. With respect to housing quality standards, HUD includes in this rule the longstanding requirement from the Shelter Plus Care program that recipients or subrecipients, prior to providing assistance on behalf of a program participant, must physically inspect each unit to assure that the unit meets housing quality standards. This requirement is designed to ensure that program participants are placed in housing that is suitable for living. Additionally, these requirements are consistent with HUD's physical inspection requirements in its other mainstream rental assistance programs. Notwithstanding that this is a longstanding requirement, HUD welcomes comment on alternatives to inspection of each unit that may be less burdensome but ensure that the housing provided to a program participant is decent, safe, and sanitary.

Under Section 578.75, General Operations, subsection (h), entitled ''Supportive Service Agreements,'' states that recipients and subrecipients may require program participants to take part in supportive services so long as they are not disability-related services, provided through the project as a condition of continued participation in the program. Examples of disability-related services include, but are not limited to, mental health services, outpatient health services, and provision of medication, which are provided to a person with a disability to address a condition caused by the disability.

This provision further states that if the purpose of the project is to provide substance abuse treatment services, recipients and subrecipients may require program participants to take part in such services as a condition of continued participation in the program. For example, if a Continuum of Care recipient operates a transitional housing program with substance abuse treatment

services, the recipient may require program participants to participate in those services. By contrast, in a program that offers services but whose purpose is not substance abuse treatment, a recipient may not require a person who is an alcoholic, for example, to sign a supportive service agreement at initial occupancy stating that he or she will participate in substance abuse treatment services as a condition of occupancy. All program participants must, however, meet all terms and conditions of tenancy, including lease requirements. If, as a result of a person's behavior stemming from substance use, a person violates the terms of the lease, a recipient may consider requiring participation in services or any other action necessary in order for such a person to successfully meet the requirements of tenancy.

Finally, the interim rule clarifies that in units where the qualifying member of the household has died, or has been incarcerated or institutionalized for more than 90 days, assistance may continue until the expiration of the lease in effect at the time of the qualifying member's death, incarceration, or institutionalization.

Displacement, relocation, and acquisition. All recipients must ensure that they have taken all reasonable steps to minimize the displacement of persons as a result of projects assisted under this part. This section of the interim rule is substantially revised from the previous programs to increase clarity and comprehension of the directions to recipients and subrecipients in the use of grant funds.

Timeliness standards. Recipients must initiate approved activities and projects promptly. Recipients of funds for rehabilitation and new construction must begin construction activities within 9 months of the signing of the grant, and such activities must be completed within 24 months. HUD is providing these requirements to assist communities in meeting the obligation and expenditure deadline historically imposed by the annual HUD appropriations act. HUD may reduce a grant term to a term of one year if implementation delays reduce the amount of funds that can be used during the original grant term.

Limitation on use of funds. Recipients of funds provided under this part must abide by any limitations that apply to the use of such funds, such as use of funds for explicitly religious activities.

The limitation on use of funds also addresses limitation on uses where religious activities may be concerned. It is HUD's position that faith-based organizations are able to compete for HUD funds and participate in HUD programs on an equal footing with other organizations; that no group of applicants competing for HUD funds should be subject, as a matter of discretion, to greater or fewer requirements than other organizations solely because of their religious character or affiliation, or, alternatively, the absence of religious character or affiliation. HUD's general principles regarding the equal participation of such organizations in its programs are codified at 24 CFR 5.109. Program-specific requirements governing faith-based activities are codified in the regulations for the individual HUD programs. (See, for example, 24 CFR 574.300(c), 24 CFR 582.115(c), and 24 CFR 583.150(b).)

HUD's equal participation regulations were prompted by Executive Order 13279, Equal Protection of the Laws for Faith-Based and Community Organizations, issued by President Bush on December 12, 2002, and published in the **Federal Register** on December 16, 2002 (67 FR 77141). Executive Order 13279 set forth principles and policymaking criteria to guide federal agencies in ensuring the equal protection of the laws for faith-based and community organizations. Executive Order 13279 was amended by Executive Order 13559 (Fundamental Principles and Policymaking Criteria for Partnerships With Faith-Based and Other Neighborhood Organizations), issued by President Obama on November 17, 2010, and published in the **Federal Register** on November 22, 2010 (75 FR 71319).

Executive Order 13559 expands on the equal participation principles provided in Executive Order 13279 to strengthen the capacity of faith-based and other neighborhood organizations to deliver services effectively and ensure the equal treatment of program beneficiaries. Executive Order 13559 reiterates a key principle underlying participation of faith-based organizations in federally funded activities and that is that faith-based organizations be eligible to compete for federal financial assistance used to support social service programs and to participate fully in social service programs supported with federal financial assistance without impairing their independence, autonomy, expression outside the programs in question, or religious character.

With respect to program beneficiaries, the Executive Order states that organizations, in providing services supported in whole or in part with federal financial assistance, and in their outreach activities related to such services, should not be allowed to discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. The Executive Order directs that organizations that engage in explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) must perform such activities and offer such services outside of programs that are supported with direct federal financial assistance (including through prime awards or subawards), separately in time or location from any such programs or services supported with direct federal financial assistance, and participation in any such explicitly religious activities must be voluntary for the beneficiaries of the social service program supported with such federal financial assistance. For purposes of greater clarity and comprehensibility, the Executive Order uses the term ''explicitly religious'' in lieu of ''inherently religious.'' The Executive Order further directs that if a beneficiary or prospective beneficiary of a social service program supported by federal financial assistance objects to the religious character of an organization that provides services under the program, that organization shall, within a reasonable time after the date of the objection, refer the beneficiary to an alternative provider.

Executive Order 13559 provides for the establishment of an Interagency Working Group on Faith-Based and Other Neighborhood Partnerships (Working Group) to review and evaluate existing regulations, guidance documents, and policies, and directs the OMB to issue guidance to agencies on uniform implementation following receipt of the Working Group's report. On April 27, 2012, the Working Group issued its report, recommending a model set of regulations and guidance for agencies to adopt.[1]

HUD intends to wait for OMB guidance before initiating any rulemaking directed to broader changes to HUD's existing faith-based regulations, to ensure consistency with faith-based regulations of other federal agencies. However, HUD has revised its regulatory provisions governing faith-based activities to incorporate the principles of Executive Order 13559 pertaining to equal treatment of program beneficiaries and to adopt terminology, such as ''explicitly religious'' and ''overt

[1] The report is available at: *http://www.whitehouse.gov/sites/default/files/uploads/finalfaithbasedworkinggroupreport.pdf.*

religious content,'' that offers greater clarity to the limitations placed on faith-based organizations when using federal funds for their supportive services. Additionally, HUD is putting in place through this rulemaking the provision of Executive Order 13559 that directs the referral to alternative providers. Executive Order 13559 provides that if a beneficiary or prospective beneficiary of a social service program supported by federal financial assistance objects to the religious character of an organization that provides services under the program, that organization shall, within a reasonable time frame after the date of the objection, refer the beneficiary to an alternative provider. While HUD will benefit from OMB guidance on other provisions of the Executive Order, specifically those which the Working Group is charged to provide recommendations, the ''referral'' provision of the Executive Order is one that HUD believes it can immediately put in place. HUD may, following receipt of public comment and further consideration of this issue, revise how recipients and subrecipients document the referral to other providers when beneficiaries may assert objections to the original provider. For now, HUD is requiring that any objections and any referrals be documented in accordance with the recordkeeping provisions of § 578.013.

This section of the interim rule also contains limitations on the types of eligible assistance that may not be combined in a single structure or housing unit. As the Continuum of Care substantially increases the types of assistance that may be combined in a project from previous programs, HUD has established standards in this section to provide recipients with clarity about the types of activities that may not be carried out in a single structure or housing unit.

Termination of assistance. The interim rule provides that a recipient may terminate assistance to a participant who violates program requirements or conditions of occupancy. The recipient must provide a formal process that recognizes the due process of law. Recipients may resume assistance to a participant whose assistance has been terminated.

Recipients that are providing permanent supportive housing for hard-to-house populations of homeless persons must exercise judgment and examine all circumstances in determining whether termination is appropriate. Under this interim rule, HUD has determined that a participant's assistance should be terminated only in the most severe cases. HUD is carrying over this requirement from the Shelter Plus Care program.

Fair Housing and Equal Opportunity requirements. The Continuum of Care, as well as its members and subrecipients, are required to comply with applicable civil rights laws. Section 578.93, addressing nondiscrimination and equal opportunity requirements, is provided to offer greater direction to recipients and subrecipients on the use of grant funds. Section 578.93(a) states that the nondiscrimination and equal opportunity requirements set forth in 24 CFR 5.105(a) apply. This includes, but is not limited to, the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 (Section 504), and title II of the Americans with Disabilities Act.

Section 578.93(b) explains when recipients and subrecipients may exclusively serve a particular subpopulation in transitional or permanent housing. As part of these requirements, recipients must also administer programs and activities receiving federal financial assistance in the most integrated setting appropriate to the needs of qualified individuals with disabilities. This ''integration mandate'' requires that HUD-funded programs or activities enable individuals with disabilities to interact with nondisabled persons to the fullest extent possible. In reviewing requests for funding through the Continuum of Care NOFA, HUD will be considering each recipient's proposals to provide integrated housing to individuals with disabilities.

There are certain situations in which a recipient or subrecipient may limit housing to a specific subpopulation, so long as admission does not discriminate against any protected class, as well as instances where recipients or subrecipients may limit admission or provide a preference to certain subpopulations of homeless persons and families who need the specialized services provided in the housing. For example, § 578.93(b)(2) states that the housing may be limited to homeless veterans, so long as admission is not denied based on any membership in a protected class; *e.g.,* homeless veterans with families must be admitted. Similarly, housing may be limited to domestic violence victims and their families or persons who are at risk of institutionalization, so long as admission is not denied based on any membership in a protected class.

Section 578.93(b)(3) states that housing may be limited to families with children.

Section 578.93(b)(1) states that, in consideration of personal privacy, housing may only be limited to a single sex when such housing consists of a single structure with shared bedrooms or bathing facilities such that the considerations of personal privacy and the physical limitations of the configuration of the housing make it appropriate for the housing to be limited to one sex.

Further, §§ 578.93(b)(4) and (5) clearly outline instances when sex offenders or violent offenders may be excluded from housing, and when projects providing sober housing may exclude persons.

HUD's Section 504 regulations permit housing funded under a particular program to be reserved for persons with a specific disability when a federal statute or executive order specifically authorizes such a limitation. Section 578.93(b)(6) states that if the housing is assisted with funds under a federal program that is limited by federal statute or executive order to a specific subpopulation, the housing may be limited to that subpopulation.

Section 578.93(b)(7) provides clarification to recipients of funds under this part as to when a project can limit admission to a specific subpopulation of homeless individuals and families based on the service package offered in the project. To help recipients better understand these requirements, the following paragraphs provide a detailed explanation of the regulatory provision, along with a few examples.

Section 578.93(b)(7) states that recipients may limit admission to or provide a preference for the housing to subpopulations of homeless persons and families who *need* the specialized supportive services that are provided in the housing. The regulation contains the following examples: Substance abuse addiction treatment, domestic violence services, or a high-intensity package designed to meet the needs of hard-to-reach homeless persons. However, § 578.93(b)(7) further states that while the housing may offer services for a particular type of disability, no otherwise eligible individual with a disability, or family that includes an individual with a disability, who may benefit from the services provided may be excluded on the grounds that they do not have a particular disability. Below are general examples to offer guidance on this subsection. Please note that these examples are nonexhaustive, but emphasize that the proper focus is on the services available as part of the Continuum of Care project as opposed to a person's category or subcategory of disability. While these general principles are offered to help clarify this

section, a change in the factual scenario may change the analysis.

One clarifying example is as follows. A private, nonprofit organization or a local government applies for and receives a new grant under this part to provide project-based rental assistance and services, including case management, intensive therapy provided by a psychiatrist, and medication management. The recipient or subrecipient may establish a preference for individuals who are chronically homeless. When filling an opening in the housing, the recipient or subrecipient may target chronically homeless individuals or families, but if there are no such individuals or families either on a waiting list or applying for entrance to the program, the recipient or subrecipient cannot deny occupancy to individuals or families who apply for entrance into the program and who may benefit from the services provided. When filling a vacancy in the housing, the recipient or subrecipient, if presented with two otherwise eligible persons, one who is chronically homeless and one who is not, may give a preference to the chronically homeless individual.

By comparison, § 578.93(b)(6) addresses situations where Continuum of Care funds are combined with HUD funding for housing that may be restricted to a specific disability. For example, if Continuum of Care funds for a specific project are combined with construction or rehabilitation funding for housing from the Housing Opportunities for People With AIDS program, the program may limit eligibility for the project to persons with HIV/AIDS and their families. An individual or a family that includes an individual with a disability may be denied occupancy if the individual or at least one member of the family does not have HIV/AIDS.

In another example, a private, nonprofit organization applies for and receives Continuum of Care funds from a local governmental entity to rehabilitate a five-unit building, and provides services including assistance with daily living and mental health services. While the nonprofit organization intends to target and advertise the project as offering services for persons with developmental disabilities, an individual with a severe psychiatric disability who does not have a developmental disability but who can benefit from these services cannot be denied.

Section 578.93(e) incorporates the ''preventing involuntary family separation'' requirement set forth in Section 404 of the McKinney-Veto Act into this interim rule. This provision clarifies, especially for projects where the current policy is to deny the admittance of a boy under the age of 18, that denying admittance to a project based on age and gender is no longer permissible. HUD encourages Continuums of Care to use their centralized or coordinated assessment systems to find appropriate shelter or housing for families with male children under the age of 18.

Specific request for comment. HUD specifically seeks comments from Continuum of Care-funded recipients on this requirement. HUD invites comments about the difficulty that recipients are going to experience, if any, in implementing this requirement. In addition to comments about the difficulties, HUD invites communities that have already implemented this requirement locally to describe their methods for use in HUD's technical assistance materials and for posting on the HUD Homeless Resource Exchange.

Other standards. In addition to the program requirements described in this preamble, the interim rule sets forth other program requirements by which all recipients of grant funds must abide. These include a limitation on the use of grant funds to serve persons defined as homeless under other federal laws, conflicts of interest standards, and standards for identifying uses of program income.

Additionally, recipients are required to follow other federal requirements contained in this interim rule under § 578.99. These include compliance with such federal requirements as the Coastal Barriers Resources Act, OMB Circulars, HUD's Lead-Based Paint regulations, and audit requirements. The wording of these requirements has been substantially revised from previous programs, with the objective being to increase clarity and comprehension of the directions to recipients and subrecipients in the use of grant funds.

Administration (Subpart G)

Technical assistance. The purpose of technical assistance under the Continuum of Care program is to increase the effectiveness with which Continuums of Care, eligible applicants, recipients, subrecipients, and UFAs implement and administer their Continuum of Care planning process. Technical assistance will also improve the capacity to prepare applications, and prevent the separation of families in projects funded under the Emergency Solutions Grants, Continuum of Care, and Rural Housing Stability Assistance programs. Under this interim rule, technical assistance means the transfer of skills and knowledge to entities that may need, but do not possess, such skills and knowledge. The assistance may include written information, such as papers, manuals, guides, and brochures; person-to-person exchanges; and training and related costs.

Therefore, as needed, HUD may advertise and competitively select providers to deliver technical assistance. HUD may enter into contracts, grants, or cooperative agreements to implement the technical assistance. HUD may also enter into agreements with other federal agencies when awarding technical assistance funds.

Recordkeeping requirements. Grant recipients under the Supportive Housing Program and the Shelter Plus Care program have always been required to show compliance with regulations through appropriate records. However, the existing regulations are not specific about the records to be maintained. The interim rule for the Continuum of Care program elaborates upon the recordkeeping requirements to provide sufficient notice and clarify the documentation that HUD requires for assessing compliance with the program requirements. The recordkeeping requirements for documenting homeless status were published in the December 5, 2011, Defining Homeless final rule. Because these recordkeeping requirements already went through a 60-day comment period, HUD is not seeking further comment on these requirements. Additionally, recordkeeping requirements with similar levels of specificity apply to documentation of ''at risk of homelessness'' and these requirements can be found in § 576.500(c) of the Emergency Solutions Grants program interim rule published on December 5, 2011. Because the documentation requirements pertaining to ''at risk of homelessness'' were already subject to a 60-day public comment period, HUD is not seeking additional comment on these requirements. Further requirements are modeled after the recordkeeping requirements for the HOME Investment Partnerships Program (24 CFR 92.508) and other HUD regulations.

Included along with these changes are new or expanded requirements regarding confidentiality, rights of access to records, record retention periods, and reporting requirements. Most significantly, to protect the safety and privacy of all program participants, the Continuum of Care rule broadens the program's confidentiality requirements. The McKinney-Vento Act requires only procedures to ensure the

confidentiality of records pertaining to any individual provided family violence prevention or treatment services under this program. The interim rule requires written procedures to ensure the security and confidentiality of all records containing personally identifying information of any individual or family who applies for and/or receives Continuum of Care assistance.

Grant and project changes. The interim rule provides that recipients of grants may not make any significant changes to use of grant funds without prior HUD approval, evidenced by a grant amendment signed by HUD and the recipient. The interim rule provides separate standards for determining when a grant amendment is required for Continuums having only one recipient, including UFAs, and Continuums having more than one recipient. Additionally, the interim rule provides contingencies that must be met before HUD will approve the grant amendment. These contingencies are necessary to ensure that recipients meet the capacity requirements established in the NOFA and to ensure that eligible persons within the geographic area are better served and, since the Continuum of Care program is a competitive program, that the priorities established under the NOFA continue to be met. Any changes to an approved grant or project that do not require a grant amendment, as set forth in this section, must be fully documented in the recipient's or subrecipient's records.

Sanctions. The interim rule establishes sanctions based on existing regulations and strengthens the enforcement procedures and array of remedial actions and sanctions for recipients and subrecipients of Continuum of Care funds. These revisions draw from the requirements at 24 CFR 85.43 and other HUD program regulations.

Close-out. The interim rule provides that grants must be closed out at the end of their grant term if recipients are not seeking renewal. Section 578.109 of this interim rule specifies the actions that must be taken after the closeout, including grantee submission of financial, final performance, or other reports required by HUD within 90 days of the end of the grant term. Any unused funds must be deobligated and returned to HUD.

The interim rule stipulates, for grants seeking renewal, that failure to submit final performance reports, or other reports required by HUD within 90 days, may cause renewal funds to be withdrawn and grant funds expended on the renewal grant to be repaid.

III. Regulations for HUD Homeless Assistance Programs Existing Prior to Enactment of HEARTH Act

Because grants are still being administered under the Shelter Plus Care program and the Supportive Housing program, the regulations for these programs in 24 CFR parts 582, and 583, respectively, will remain in the Code of Federal Regulations for the time being. When no more, or very few, grants remain under these programs, HUD will remove the regulations in these parts by a separate rule (if no grants exist) or will replace them with a savings clause, which will continue to govern grant agreements executed prior to the effective date of the HEARTH Act regulations.

IV. Conforming Regulations

In addition to establishing the new regulations for the Continuum of Care program, HUD is amending the following regulations, which reference the Shelter Plus Care Program and the Supportive Housing Program, to include reference to the Continuum of Care program. These regulations are the regulations pertaining to: (1) Family Income and Family Payment; Occupancy Requirements for Section 8 and Public Housing, Other HUD-Assisted Housing Serving Persons with Disabilities, and Section 8 Project-Based Assistance, the regulations for which are in 24 CFR part 5, subpart F, specifically, § 5.601 (Purpose and Applicability), paragraphs (d) and (e) of this section; § 5.603 (Definitions), specifically the definition of ''Responsible Entity;'' § 5.617 (Self-Sufficiency Incentives for Persons with Disabilities—Disallowance of Increase in Annual Income), paragraph (a) of this section; (2) Environmental Review Responsibilities for Entities Assuming HUD Environmental Responsibilities, the regulations for which are in 24 CFR part 58, specifically § 58.1 (Purpose and Applicability), paragraph (b)(3) of this section; and (3) the Consolidated Submissions for Community Planning and Development Programs, the regulations for which are in 24 CFR part 91, specifically, § 91.2 (Applicability), paragraph (b) of this section.

V. Justification for Interim Rulemaking

In accordance with its regulations on rulemaking at 24 CFR part 10, HUD generally publishes its rules for advance public comment.[2] Notice and public procedures may be omitted, however, if HUD determines that, in a particular case or class of cases, notice and public comment procedure are ''impracticable, unnecessary, or contrary to the public interest.'' (See 24 CFR 10.1.)

In this case, HUD has determined that it would be contrary to the public interest to delay promulgation of the regulations for the Continuum of Care program.[3] Congress has provided funding for this new program in the Consolidated and Further Continuing Appropriations Act, 2012 (Pub. L. 112–55, approved November 18, 2011) (FY 2012 Appropriations Act). The FY 2012 Appropriations Act, under the account for Homeless Assistance Grants, appropriates not less than $1.593 billion for the Continuum of Care and Rural Housing Stability programs. While many federal programs, including HUD programs, received a reduction in funding in the FY 2012 Appropriations Act, Congress increased funding for HUD's homeless assistance grants, including the Continuum of Care program. Additionally, the Conference Report accompanying the FY 2012 Appropriations Act (House Report 112–284) states in relevant part, as follows: ''The conferees express concern that HUD continued to implement pre-HEARTH grant programs in FY 2011, due to a lack of regulations. The conferees direct HUD to publish *at least* interim guidelines for the Emergency Solutions Grants and Continuum of Care programs this fiscal year and to implement the new grant programs as soon as possible so that the updated policies and practices in HEARTH can begin to govern the delivery of homeless assistance funding.'' (See Conf. Rpt. at page 319. Emphasis added.) Given this congressional direction, HUD is issuing this rule providing for regulations for the Continuum of Care program as an interim rule. Having interim regulations in place will allow HUD to move forward in making FY 2012 funds available to grantees, and avoid a significant delay that would result from issuance, first, of a proposed rule. As

[2] The Administrative Procedure Act (5 U.S.C. Subchapter II) (APA), which governs federal rulemaking, provides in section 553(a) that matters involving a military or foreign affairs function of the United States or a matter relating to federal agency management or personnel or to public property, loans, grants, benefits, or contracts are exempt from the advance notice and public comment requirement of sections 553(b) and (c) of the APA. In its regulations in 24 CFR 10.1, HUD has waived the exemption for advance notice and public comment for matters that relate to public property, loans, grants, benefits, or contracts, and has committed to undertake notice and comment rulemaking for these matters.

[3] Although HUD's regulation in 24 CFR 10.1 provide that HUD will involve public participation in its rulemaking, this regulation also provides that notice and public procedure will be omitted if HUD determines in a particular case or class of cases that notice and public procedure are impracticable, unnecessary, or contrary to the public interest.

has been discussed in this preamble, the foundation for the Continuum of Care regulations is the criteria and requirements provided in NOFAs for the Continuum of Care Homeless Assistance Grants Competition program, which HUD has funded for more than 10 years. Through the Continuum of Care Homeless Assistance Grants Competition program, HUD provided funding for the Supportive Housing program, the Shelter Plus Care program, and the Section 8 Moderate Rehabilitation Single Room Occupancy program. The HEARTH Act consolidated these three competitive programs into the statutorily established Continuum of Care program, which was established as a single grant program. Interim regulations will provide certainty with respect to funding requirements and eligible expenditures for FY 2012, and the public comment solicited through this interim rule will help inform the public procedures that HUD is contemplating in its regulations in 24 CFR part 10, and this public comment, in turn, will inform the final rule that will follow this interim rule and govern the funding years following FY 2012.

For the reasons stated above, HUD is issuing this rule to take immediate effect, but welcomes all comments on this interim rule and all comments will be taken into consideration in the development of the final rule.

VI. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This rule was determined to be a ''significant regulatory action,'' as defined in section 3(f) of Executive Order 12866 (although not an economically significant regulatory action, as provided under section 3(f)(1) of the Executive Order).

As has been discussed in this preamble, this interim rule establishes the regulations for the Continuum of Care program, which is the HEARTH Act's codification of HUD's long-standing Continuum of Care planning process. The HEARTH Act not only codified in law the planning system known as Continuum of Care, but consolidated the three existing competitive homeless assistance grant programs (Supportive Housing, Shelter Plus Care, and Single Room Occupancy) into the single grant program known as the Continuum of Care program. As discussed in the preceding section of the preamble, HUD funded these three programs for more than 10 years through a NOFA, which was titled the Continuum of Care Homeless Assistance Grants Competition Program. However, the funding of the three competitive grant programs, although done through a single NOFA, delineated the different statutes and regulations that governed each of the three programs (see, for example, HUD's 2008 Continuum of Care NOFA at 73 FR 398450, specifically page 39845). In consolidating these three competitive programs into a single grant program, the HEARTH Act achieves the administrative efficiency that HUD strived to achieve to the extent possible, through its administrative establishment of the Continuum of Care planning process. To the extent permitted by the HEARTH Act and where feasible, the regulations build-in flexibility for grantees, based on experience in administering the Continuum of Care program to date. Given the transition from administrative operation of the Continuum of Care program to statutory operation of the Continuum of Care program, this interim rule would also have no discernible impact upon the economy.

The docket file is available for public inspection in the Regulations Division, Office of the General Counsel, Room 10276, 451 7th Street SW., Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339.

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This interim rule does not impose a federal mandate on any State, local, or tribal government, or on the private sector, within the meaning of UMRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule solely addresses the allocation and use of grant funds under the new McKinney-Vento Act homeless assistance programs, as consolidated and amended by the HEARTH Act. As discussed in the preamble, the majority of the regulatory provisions proposed by this rule track the regulatory provisions of the Continuum of Care program, with which prospective recipients of the Supportive Housing program and the Shelter Plus Care program are familiar. Accordingly, the program requirements should raise minimal issues because applicants and grantees are familiar with these requirements, and in response to HUD's solicitations to them on the burden of the requirements for the Supportive Housing program and the Shelter Plus Care program, grantees have not advised that such requirements are burdensome. Therefore, HUD has determined that this rule would not

have a significant economic impact on a substantial number of small entities.

Notwithstanding HUD's determination that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments nor preempts State law within the meaning of the Executive Order.

Paperwork Reduction Act

The information collection requirements contained in this interim rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

The burden of the information collections in this interim rule is estimated as follows:

REPORTING AND RECORDKEEPING BURDEN

Information collection	Number of respondents	Response frequency (average)	Total annual responses	Burden hours per response	Total annual hours
§ 578.5(a) Establishing the CoC	450	1	450	8.0	3,600
§ 578.5(b) Establishing the Board	450	1	450	5.0	2,250
§ 578.7(a)(1) Hold CoC Meetings	450	2	900	4.0	3,600
§ 578.7(a)(2) Invitation for New Members	450	1	450	1.0	450
§ 578.7(a)(4) Appoint committees	450	2	900	0.5	450
§ 578.7(a)(5) Governance charter	450	1	450	7.0	3,150
§ 578.7(a)(6) and (7) Monitor performance and evaluation	450	4	450	9.0	4,050
§ 578.7(a)(8) Centralized or coordinated assessment system	450	1	450	8.0	3,600
§ 578.7(a)(9) Written standards	450	1	450	5.0	2,250
§ 578.7(b) Designate HMIS	450	1	450	10.0	4,500
§ 578.9 Application for funds	450	1	450	180.0	81,000
§ 578.11(c) Develop CoC plan	450	1	450	9.0	4,050
§ 578.21(c) Satisfying conditions	8,000	1	8,000	4.0	32,000
§ 578.23 Executing grant agreements	8,000	1	8,000	1.0	8,000
§ 578.35(b) Appeal—solo	10	1	10	4.0	40
§ 578.35(c) Appeal—denied or decreased funding	15	1	15	1.0	15
§ 578.35(d) Appeal—competing CoC	10	1	10	5.0	50
§ 578.35(e) Appeal—Consolidated Plan certification	5	1	5	2.0	10
§ 578.49(a)—Leasing exceptions	5	1	5	1.5	7.5
§ 578.65 HPC Standards	20	1	20	10.0	200
§ 578.75(a)(1) State and local requirements—appropriate service provision	7,000	1	7,000	0.5	3,500
§ 578.75(a)(1) State and local requirements—housing codes	20	1	20	3.0	60
§ 578.75(b) Housing quality standards	72,800	2	145,600	1.0	145,600
§ 578.75(b) Suitable dwelling size	72,800	2	145,600	0.08	11,648
§ 578.75(c) Meals	70,720	1	70,720	0.5	35,360
§ 578.75(e) Ongoing assessment of supportive services	8,000	1	8,000	1.5	12,000
§ 578.75(f) Residential supervision	6,600	3	19,800	0.75	14,850
§ 578.75(g) Participation of homeless individuals	11,500	1	11,500	1.0	11,500
§ 578.75(h) Supportive service agreements	3,000	100	30,000	0.5	15,000
§ 578.77(a) Signed leases/occupancy agreements	104,000	2	208,000	1.0	208,000
§ 578.77(b) Calculating occupancy charges	1,840	200	368,000	0.75	276,000
§ 578.77(c) Calculating rent	2,000	200	400,000	0.75	300,000
§ 578.81(a) Use restriction	20	1	20	0.5	10
§ 578.91(a) Termination of assistance	400	1	400	4.00	1,600
§ 578.91(b) Due process for termination of assistance	4,500	1	4,500	3.0	13,500
§ 578.95(d)—Conflict-of-Interest exceptions	10	1	10	3.0	30
§ 578.103(a)(3) Documenting homelessness	300,000	1	300,000	0.25	75,000
§ 578.103(a)(4) Documenting at risk of homelessness	10,000	1	10,000	0.25	2,500
§ 578.103(a)(5) Documenting imminent threat of harm	200	1	200	0.5	100
§ 578.103(a)(7) Documenting program participant records	350,000	6	2,100,000	0.25	525,000
§ 578.103(a)(7) Documenting case management	8,000	12	96,000	1.0	96,000
§ 578.103(a)(13) Documenting faith-based activities	8,000	1	8,000	1.0	8,000
§ 578.103(b) Confidentiality procedures	11,500	1	11,500	1.0	11,500
§ 578.105(a) Grant/project changes—UFAs	20	2	40	2.0	80
§ 578.105(b) Grant/project changes—multiple project applicants	800	1	800	2.0	1,600
Total					1,921,710.5

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions HUD, including whether the information will have practical utility;

(2) Evaluate the accuracy of HUD's estimate of the burden of the proposed collection of information;

(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 collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Comments must refer to the proposal by name and docket number (FR–5476–I–01) and be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax: (202) 395–6947, and Reports Liaison Officer, Office of the Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7233, Washington, DC 20410–7000.

Interested persons may submit comments regarding the information collection requirements electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

List of Subjects in 24 CFR Part 578

Community facilities, Continuum of Care, Emergency solutions grants, Grant programs—housing and community development, Grant program—social programs, Homeless, Rural housing, Reporting and recordkeeping requirements, Supportive housing programs— housing and community development, Supportive services.

Accordingly, for the reasons described in the preamble, HUD adds part 578 to subchapter C of chapter V of subtitle B of 24 CFR to read as follows:

PART 578—CONTINUUM OF CARE PROGRAM

Subpart A—General Provisions

Sec.

578.1 Purpose and scope.
578.3 Definitions.

Subpart B—Establishing and Operating a Continuum of Care

578.5 Establishing the Continuum of Care.
578.7 Responsibilities of the Continuum of Care.
578.9 Preparing an application for funds.
578.11 Unified Funding Agency.
578.13 Remedial action.

Subpart C—Application and Grant Award Process

578.15 Eligible applicants.
578.17 Overview of application and grant award process.
578.19 Application process.
578.21 Awarding funds.
578.23 Executing grant agreements.
578.25 Site control.
578.27 Consolidated plan.
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578.31 Environmental review.
578.33 Renewals.
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Subpart D—Program Components and Eligible Costs

578.37 Program components and uses of assistance.
578.39 Continuum of Care planning activities.
578.41 Unified Funding Agency costs.
578.43 Acquisition.
578.45 Rehabilitation.
578.47 New construction.
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578.57 Homeless Management Information System.
578.59 Project administrative costs.
578.61 Relocation costs.
578.63 Indirect costs.

Subpart E—High-Performing Communities

578.65 Standards.
578.67 Publication of application.
578.69 Cooperation among entities.
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Subpart F—Program Requirements

578.73 Matching requirements.
578.75 General operations.
578.77 Calculating occupancy charges and rent.
578.79 Limitation on transitional housing.
578.81 Term of commitment, repayment of grants, and prevention of undue benefits.
578.83 Displacement, relocation, and acquisition.
578.85 Timeliness standards.
578.87 Limitation on use of funds.
578.89 Limitation on use of grant funds to serve persons defined as homeless under other federal laws.
578.91 Termination of assistance to program participants.
578.93 Fair Housing and Equal Opportunity.
578.95 Conflicts of interest.
578.97 Program income.
578.99 Applicability of other federal requirements.

Subpart G—Grant Administration

578.101 Technical assistance.
578.103 Recordkeeping requirements.
578.105 Grant and project changes.
578.107 Sanctions.
578.109 Closeout.

Authority: 42 U.S.C. 11371 *et seq.,* 42 U.S.C. 3535(d).

Subpart A—General Provisions

§ 578.1 Purpose and scope.

(a) The Continuum of Care program is authorized by subtitle C of title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11381–11389).

(b) The program is designed to:

(1) Promote communitywide commitment to the goal of ending homelessness;

(2) Provide funding for efforts by nonprofit providers, States, and local governments to quickly rehouse homeless individuals (including unaccompanied youth) and families, while minimizing the trauma and dislocation caused to homeless individuals, families, and communities by homelessness;

(3) Promote access to and effective utilization of mainstream programs by homeless individuals and families; and

(4) Optimize self-sufficiency among individuals and families experiencing homelessness.

§ 578.3 Definitions.

As used in this part:

Act means the McKinney-Vento Homeless Assistance Act as amended (42 U.S.C. 11371 *et seq.*).

Annual renewal amount means the amount that a grant can be awarded on an annual basis when renewed. It includes funds only for those eligible activities (operating, supportive services, leasing, rental assistance, HMIS, and administration) that were funded in the original grant (or the original grant as amended), less the unrenewable activities (acquisition, new construction, rehabilitation, and any administrative costs related to these activities).

Applicant means an eligible applicant that has been designated by the Continuum of Care to apply for assistance under this part on behalf of that Continuum.

At risk of homelessness. (1) An individual or family who:

(i) Has an annual income below 30 percent of median family income for the area, as determined by HUD;

(ii) Does not have sufficient resources or support networks, *e.g.,* family, friends, faith-based or other social networks, immediately available to prevent them from moving to an emergency shelter or another place described in paragraph (1) of the ''Homeless'' definition in this section; and

(iii) Meets one of the following conditions:

(A) Has moved because of economic reasons two or more times during the 60 days immediately preceding the application for homelessness prevention assistance;

(B) Is living in the home of another because of economic hardship;

(C) Has been notified in writing that their right to occupy their current housing or living situation will be terminated within 21 days of the date of application for assistance;

(D) Lives in a hotel or motel and the cost of the hotel or motel stay is not paid by charitable organizations or by federal, State, or local government programs for low-income individuals;

(E) Lives in a single-room occupancy or efficiency apartment unit in which there reside more than two persons, or lives in a larger housing unit in which there reside more than 1.5 people per room, as defined by the U.S. Census Bureau;

(F) Is exiting a publicly funded institution, or system of care (such as a health-care facility, a mental health facility, foster care or other youth facility, or correction program or institution); or

(G) Otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness, as identified in the recipient's approved consolidated plan;

(2) A child or youth who does not qualify as ''homeless'' under this section, but qualifies as ''homeless'' under section 387(3) of the Runaway and Homeless Youth Act (42 U.S.C. 5732a(3)), section 637(11) of the Head Start Act (42 U.S.C. 9832(11)), section 41403(6) of the Violence Against Women Act of 1994 (42 U.S.C. 14043e–2(6)), section 330(h)(5)(A) of the Public Health Service Act (42 U.S.C. 254b(h)(5)(A)), section 3(m) of the Food and Nutrition Act of 2008 (7 U.S.C. 2012(m)), or section 17(b)(15) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)(15)); or

(3) A child or youth who does not qualify as ''homeless'' under this section, but qualifies as ''homeless'' under section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), and the parent(s) or guardian(s) of that child or youth if living with her or him.

Centralized or coordinated assessment system means a centralized or coordinated process designed to coordinate program participant intake assessment and provision of referrals. A centralized or coordinated assessment system covers the geographic area, is easily accessed by individuals and families seeking housing or services, is well advertized, and includes a comprehensive and standardized assessment tool.

Chronically homeless. (1) An individual who:

(i) Is homeless and lives in a place not meant for human habitation, a safe haven, or in an emergency shelter; and

(ii) Has been homeless and living or residing in a place not meant for human habitation, a safe haven, or in an emergency shelter continuously for at least one year or on at least four separate occasions in the last 3 years; and

(iii) Can be diagnosed with one or more of the following conditions: substance use disorder, serious mental illness, developmental disability (as defined in section 102 of the Developmental Disabilities Assistance Bill of Rights Act of 2000 (42 U.S.C. 15002)), post-traumatic stress disorder, cognitive impairments resulting from brain injury, or chronic physical illness or disability;

(2) An individual who has been residing in an institutional care facility, including a jail, substance abuse or mental health treatment facility, hospital, or other similar facility, for fewer than 90 days and met all of the criteria in paragraph (1) of this definition, before entering that facility; or

(3) A family with an adult head of household (or if there is no adult in the family, a minor head of household) who meets all of the criteria in paragraph (1) of this definition, including a family whose composition has fluctuated while the head of household has been homeless.

Collaborative applicant means the eligible applicant that has been designated by the Continuum of Care to apply for a grant for Continuum of Care planning funds under this part on behalf of the Continuum.

Consolidated plan means the HUD-approved plan developed in accordance with 24 CFR 91.

Continuum of Care and Continuum means the group organized to carry out the responsibilities required under this part and that is composed of representatives of organizations, including nonprofit homeless providers, victim service providers, faith-based organizations, governments, businesses, advocates, public housing agencies, school districts, social service providers, mental health agencies, hospitals, universities, affordable housing developers, law enforcement, organizations that serve homeless and formerly homeless veterans, and homeless and formerly homeless persons to the extent these groups are represented within the geographic area and are available to participate.

Developmental disability means, as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15002):

(1) A severe, chronic disability of an individual that—

(i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(ii) Is manifested before the individual attains age 22;

(iii) Is likely to continue indefinitely;

(iv) Results in substantial functional limitations in three or more of the following areas of major life activity:

(A) Self-care;

(B) Receptive and expressive language;

(C) Learning;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living;

(G) Economic self-sufficiency.

(v) Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

(2) An individual from birth to age 9, inclusive, who has a substantial developmental delay or specific congenital or acquired condition, may be considered to have a developmental disability without meeting three or more of the criteria described in paragraphs (1)(i) through (v) of the definition of ''developmental disability'' in this section if the individual, without services and supports, has a high probability of meeting these criteria later in life.

Eligible applicant means a private nonprofit organization, State, local government, or instrumentality of State and local government.

Emergency shelter is defined in 24 CFR part 576.

Emergency Solutions Grants (ESG) means the grants provided under 24 CFR part 576.

Fair Market Rent (FMR) means the Fair Market Rents published in the **Federal Register** annually by HUD.

High-performing community (HPC) means a Continuum of Care that meets the standards in subpart E of this part and has been designated as a high-performing community by HUD.

Homeless means:

(1) An individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:

(i) An individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground;

(ii) An individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, State, or local government programs for low-income individuals); or

(iii) An individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution;

(2) An individual or family who will imminently lose their primary nighttime residence, provided that:

(i) The primary nighttime residence will be lost within 14 days of the date of application for homeless assistance;

(ii) No subsequent residence has been identified; and

(iii) The individual or family lacks the resources or support networks, *e.g.,* family, friends, faith-based or other social networks, needed to obtain other permanent housing;

(3) Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who:

(i) Are defined as homeless under section 387 of the Runaway and Homeless Youth Act (42 U.S.C. 5732a), section 637 of the Head Start Act (42 U.S.C. 9832), section 41403 of the Violence Against Women Act of 1994 (42 U.S.C. 14043e–2), section 330(h) of the Public Health Service Act (42 U.S.C. 254b(h)), section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012), section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)), or section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a);

(ii) Have not had a lease, ownership interest, or occupancy agreement in permanent housing at any time during the 60 days immediately preceding the date of application for homeless assistance;

(iii) Have experienced persistent instability as measured by two moves or more during the 60-day period immediately preceding the date of applying for homeless assistance; and

(iv) Can be expected to continue in such status for an extended period of time because of chronic disabilities; chronic physical health or mental health conditions; substance addiction; histories of domestic violence or childhood abuse (including neglect); the presence of a child or youth with a disability; or two or more barriers to employment, which include the lack of a high school degree or General Education Development (GED), illiteracy, low English proficiency, a history of incarceration or detention for criminal activity, and a history of unstable employment; or

(4) Any individual or family who:

(i) Is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence;

(ii) Has no other residence; and

(iii) Lacks the resources or support networks, *e.g.,* family, friends, and faith-based or other social networks, to obtain other permanent housing.

Homeless Management Information System (HMIS) means the information system designated by the Continuum of Care to comply with the HMIS requirements prescribed by HUD.

HMIS Lead means the entity designated by the Continuum of Care in accordance with this part to operate the Continuum's HMIS on its behalf.

Permanent housing means community-based housing without a designated length of stay, and includes both permanent supportive housing and rapid rehousing. To be permanent housing, the program participant must be the tenant on a lease for a term of at least one year, which is renewable for terms that are a minimum of one month long, and is terminable only for cause.

Permanent supportive housing means permanent housing in which supportive services are provided to assist homeless persons with a disability to live independently.

Point-in-time count means a count of sheltered and unsheltered homeless persons carried out on one night in the last 10 calendar days of January or at such other time as required by HUD.

Private nonprofit organization means an organization:

(1) No part of the net earnings of which inure to the benefit of any member, founder, contributor, or individual;

(2) That has a voluntary board;

(3) That has a functioning accounting system that is operated in accordance with generally accepted accounting principles, or has designated a fiscal agent that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting principles; and

(4) That practices nondiscrimination in the provision of assistance.

A private nonprofit organization does not include governmental organizations, such as public housing agencies.

Program participant means an individual (including an unaccompanied youth) or family who is assisted with Continuum of Care program funds.

Project means a group of eligible activities, such as HMIS costs, identified as a project in an application to HUD for Continuum of Care funds and includes a structure (or structures) that is (are) acquired, rehabilitated, constructed, or leased with assistance provided under this part or with respect to which HUD provides rental assistance or annual payments for operating costs, or supportive services under this subtitle.

Recipient means an applicant that signs a grant agreement with HUD.

Safe haven means, for the purpose of defining chronically homeless, supportive housing that meets the following:

(1) Serves hard to reach homeless persons with severe mental illness who came from the streets and have been unwilling or unable to participate in supportive services;

(2) Provides 24-hour residence for eligible persons for an unspecified period;

(3) Has an overnight capacity limited to 25 or fewer persons; and

(4) Provides low-demand services and referrals for the residents.

State means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Marianas, and the Virgin Islands.

Subrecipient means a private nonprofit organization, State, local government, or instrumentality of State or local government that receives a

subgrant from the recipient to carry out a project.

Transitional housing means housing, where all program participants have signed a lease or occupancy agreement, the purpose of which is to facilitate the movement of homeless individuals and families into permanent housing within 24 months or such longer period as HUD determines necessary. The program participant must have a lease or occupancy agreement for a term of at least one month that ends in 24 months and cannot be extended.

Unified Funding Agency (UFA) means an eligible applicant selected by the Continuum of Care to apply for a grant for the entire Continuum, which has the capacity to carry out the duties in § 578.11(b), which is approved by HUD and to which HUD awards a grant.

Victim service provider means a private nonprofit organization whose primary mission is to provide services to victims of domestic violence, dating violence, sexual assault, or stalking. This term includes rape crisis centers, battered women's shelters, domestic violence transitional housing programs, and other programs.

Subpart B—Establishing and Operating a Continuum of Care

§ 578.5 Establishing the Continuum of Care.

(a) *The Continuum of Care.* Representatives from relevant organizations within a geographic area shall establish a Continuum of Care for the geographic area to carry out the duties of this part. Relevant organizations include nonprofit homeless assistance providers, victim service providers, faith-based organizations, governments, businesses, advocates, public housing agencies, school districts, social service providers, mental health agencies, hospitals, universities, affordable housing developers, law enforcement, and organizations that serve veterans and homeless and formerly homeless individuals.

(b) *The board.* The Continuum of Care must establish a board to act on behalf of the Continuum using the process established as a requirement by § 578.7(a)(3) and must comply with the conflict-of-interest requirements at § 578.95(b). The board must:

(1) Be representative of the relevant organizations and of projects serving homeless subpopulations; and

(2) Include at least one homeless or formerly homeless individual.

(c) *Transition.* Continuums of Care shall have 2 years after August 30, 2012 to comply with the requirements of paragraph (b) of this section.

§ 578.7 Responsibilities of the Continuum of Care.

(a) *Operate the Continuum of Care.* The Continuum of Care must:

(1) Hold meetings of the full membership, with published agendas, at least semi-annually;

(2) Make an invitation for new members to join publicly available within the geographic at least annually;

(3) Adopt and follow a written process to select a board to act on behalf of the Continuum of Care. The process must be reviewed, updated, and approved by the Continuum at least once every 5 years;

(4) Appoint additional committees, subcommittees, or workgroups;

(5) In consultation with the collaborative applicant and the HMIS Lead, develop, follow, and update annually a governance charter, which will include all procedures and policies needed to comply with subpart B of this part and with HMIS requirements as prescribed by HUD; and a code of conduct and recusal process for the board, its chair(s), and any person acting on behalf of the board;

(6) Consult with recipients and subrecipients to establish performance targets appropriate for population and program type, monitor recipient and subrecipient performance, evaluate outcomes, and take action against poor performers;

(7) Evaluate outcomes of projects funded under the Emergency Solutions Grants program and the Continuum of Care program, and report to HUD;

(8) In consultation with recipients of Emergency Solutions Grants program funds within the geographic area, establish and operate either a centralized or coordinated assessment system that provides an initial, comprehensive assessment of the needs of individuals and families for housing and services. The Continuum must develop a specific policy to guide the operation of the centralized or coordinated assessment system on how its system will address the needs of individuals and families who are fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, or stalking, but who are seeking shelter or services from nonvictim service providers. This system must comply with any requirements established by HUD by Notice.

(9) In consultation with recipients of Emergency Solutions Grants program funds within the geographic area, establish and consistently follow written standards for providing Continuum of Care assistance. At a minimum, these written standards must include:

(i) Policies and procedures for evaluating individuals' and families' eligibility for assistance under this part;

(ii) Policies and procedures for determining and prioritizing which eligible individuals and families will receive transitional housing assistance;

(iii) Policies and procedures for determining and prioritizing which eligible individuals and families will receive rapid rehousing assistance;

(iv) Standards for determining what percentage or amount of rent each program participant must pay while receiving rapid rehousing assistance;

(v) Policies and procedures for determining and prioritizing which eligible individuals and families will receive permanent supportive housing assistance; and

(vi) Where the Continuum is designated a high-performing community, as described in subpart G of this part, policies and procedures set forth in 24 CFR 576.400(e)(3)(vi), (e)(3)(vii), (e)(3)(viii), and (e)(3)(ix).

(b) *Designating and operating an HMIS.* The Continuum of Care must:

(1) Designate a single Homeless Management Information System (HMIS) for the geographic area;

(2) Designate an eligible applicant to manage the Continuum's HMIS, which will be known as the HMIS Lead;

(3) Review, revise, and approve a privacy plan, security plan, and data quality plan for the HMIS.

(4) Ensure consistent participation of recipients and subrecipients in the HMIS; and

(5) Ensure the HMIS is administered in compliance with requirements prescribed by HUD.

(c) *Continuum of Care planning.* The Continuum must develop a plan that includes:

(1) Coordinating the implementation of a housing and service system within its geographic area that meets the needs of the homeless individuals (including unaccompanied youth) and families. At a minimum, such system encompasses the following:

(i) Outreach, engagement, and assessment;

(ii) Shelter, housing, and supportive services;

(iii) Prevention strategies.

(2) Planning for and conducting, at least biennially, a point-in-time count of homeless persons within the geographic area that meets the following requirements:

(i) Homeless persons who are living in a place not designed or ordinarily used as a regular sleeping accommodation for

humans must be counted as unsheltered homeless persons.

(ii) Persons living in emergency shelters and transitional housing projects must be counted as sheltered homeless persons.

(iii) Other requirements established by HUD by Notice.

(3) Conducting an annual gaps analysis of the homeless needs and services available within the geographic area;

(4) Providing information required to complete the Consolidated Plan(s) within the Continuum's geographic area;

(5) Consulting with State and local government Emergency Solutions Grants program recipients within the Continuum's geographic area on the plan for allocating Emergency Solutions Grants program funds and reporting on and evaluating the performance of Emergency Solutions Grants program recipients and subrecipients.

§ 578.9 Preparing an application for funds.

(a) The Continuum must:

(1) Design, operate, and follow a collaborative process for the development of applications and approve the submission of applications in response to a NOFA published by HUD under § 578.19 of this subpart;

(2) Establish priorities for funding projects in the geographic area;

(3) Determine if one application for funding will be submitted for all projects within the geographic area or if more than one application will be submitted for the projects within the geographic area;

(i) If more than one application will be submitted, designate an eligible applicant to be the collaborative applicant that will collect and combine the required application information from all applicants and for all projects within the geographic area that the Continuum has selected funding. The collaborative applicant will also apply for Continuum of Care planning activities. If the Continuum is an eligible applicant, it may designate itself;

(ii) If only one application will be submitted, that applicant will be the collaborative applicant and will collect and combine the required application information from all projects within the geographic area that the Continuum has selected for funding and apply for Continuum of Care planning activities;

(b) The Continuum retains all of its responsibilities, even if it designates one or more eligible applicants other than itself to apply for funds on behalf of the Continuum. This includes approving the Continuum of Care application.

§ 578.11 Unified Funding Agency.

(a) *Becoming a Unified Funding Agency.* To become designated as the Unified Funding Agency (UFA) for a Continuum, a collaborative applicant must be selected by the Continuum to apply to HUD to be designated as the UFA for the Continuum.

(b) *Criteria for designating a UFA.* HUD will consider these criteria when deciding whether to designate a collaborative applicant a UFA:

(1) The Continuum of Care it represents meets the requirements in § 578.7;

(2) The collaborative applicant has financial management systems that meet the standards set forth in 24 CFR 84.21 (for nonprofit organizations) and 24 CFR 85.20 (for States);

(3) The collaborative applicant demonstrates the ability to monitor subrecipients; and

(4) Such other criteria as HUD may establish by NOFA.

(c) *Requirements.* HUD-designated UFAs shall:

(1) Apply to HUD for funding for all of the projects within the geographic area and enter into a grant agreement with HUD for the entire geographic area.

(2) Enter into legally binding agreements with subrecipients, and receive and distribute funds to subrecipients for all projects within the geographic area.

(3) Require subrecipients to establish fiscal control and accounting procedures as necessary to assure the proper disbursal of and accounting for federal funds in accordance with the requirements of 24 CFR parts 84 and 85 and corresponding OMB circulars.

(4) Obtain approval of any proposed grant agreement amendments by the Continuum of Care before submitting a request for an amendment to HUD.

§ 578.13 Remedial action.

(a) If HUD finds that the Continuum of Care for a geographic area does not meet the requirements of the Act or its implementing regulations, or that there is no Continuum for a geographic area, HUD may take remedial action to ensure fair distribution of grant funds within the geographic area. Such measures may include:

(1) Designating a replacement Continuum of Care for the geographic area;

(2) Designating a replacement collaborative applicant for the Continuum's geographic area; and

(3) Accepting applications from other eligible applicants within the Continuum's geographic area.

(b) HUD must provide a 30-day prior written notice to the Continuum and its collaborative applicant and give them an opportunity to respond.

Subpart C—Application and Grant Award Process

§ 578.15 Eligible applicants.

(a) *Who may apply.* Nonprofit organizations, States, local governments, and instrumentalities of State or local governments are eligible to apply for grants.

(b) *Designation by the Continuum of Care.* Eligible applicant(s) must have been designated by the Continuum of Care to submit an application for grant funds under this part. The designation must state whether the Continuum is designating more than one applicant to apply for funds and, if it is, which applicant is being designated as the collaborative applicant. If the Continuum is designating only one applicant to apply for funds, the Continuum must designate that applicant to be the collaborative applicant.

(c) *Exclusion.* For-profit entities are not eligible to apply for grants or to be subrecipients of grant funds.

§ 578.17 Overview of application and grant award process.

(a) *Formula.* (1) After enactment of the annual appropriations act for each fiscal year, and issuance of the NOFA, HUD will publish, on its Web site, the Preliminary Pro Rata Need (PPRN) assigned to metropolitan cities, urban counties, and all other counties.

(2) HUD will apply the formula used to determine PPRN established in paragraph (a)(3) of this section, to the amount of funds being made available under the NOFA. That amount is calculated by:

(i) Determining the total amount for the Continuum of Care competition in accordance with section 413 of the Act or as otherwise directed by the annual appropriations act;

(ii) From the amount in paragraph (a)(2)(i) of this section, deducting the amount published in the NOFA as being set aside to provide a bonus to geographic areas for activities that have proven to be effective in reducing homelessness generally or for specific subpopulations listed in the NOFA or achieving homeless prevention and independent living goals established in the NOFA and to meet policy priorities set in the NOFA; and

(iii) Deducting the amount of funding necessary for Continuum of Care planning activities and UFA costs.

(3) PPRN is calculated on the amount determined under paragraph (a)(2) of this section by using the following formula:

(i) Two percent will be allocated among the four insular areas (American Samoa, Guam, the Commonwealth of the Northern Marianas, and the Virgin Islands) on the basis of the ratio of the population of each insular area to the population of all insular areas.

(ii) Seventy-five percent of the remaining amount will be allocated, using the Community Development Block Grant (CDBG) formula, to metropolitan cities and urban counties that have been funded under either the Emergency Shelter Grants or Emergency Solutions Grants programs in any one year since 2004.

(iii) The amount remaining after the allocation under paragraphs (a)(1) and (2) of this section will be allocated, using the CDBG formula, to metropolitan cities and urban counties that have not been funded under the Emergency Solutions Grants program in any year since 2004 and all other counties in the United States and Puerto Rico.

(4) If the calculation in paragraph (a)(2) of this section results in an amount less than the amount required to renew all projects eligible for renewal in that year for at least one year, after making adjustments proportional to increases in fair market rents for the geographic area for leasing, operating, and rental assistance for permanent housing, HUD will reduce, proportionately, the total amount required to renew all projects eligible for renewal in that year for at least one year, for each Continuum of Care. HUD will publish, via the NOFA, the total dollar amount that every Continuum will be required to deduct from renewal projects Continuum-wide.

(b) *Calculating a Continuum of Care's maximum award amount.* (1) *Establish the PPRN amount.* First, HUD will total the PPRN amounts for each metropolitan city, urban county, other county, and insular area claimed by the Continuum as part of its geographic area, excluding any counties applying for or receiving funding from the Rural Housing Stability Assistance program under 24 CFR part 579.

(2) *Establishing renewal demand.* Next, HUD will determine the renewal demand within the Continuum's geographic area. Renewal demand is the sum of the annual renewal amounts of all projects within the Continuum eligible to apply for renewal in that fiscal year's competition, before any adjustments to rental assistance, leasing, and operating line items based on FMR changes.

(3) *Establishing FPRN.* The higher of PPRN or renewal demand for the Continuum of Care is the FPRN, which is the base for the maximum award amount for the Continuum.

(4) *Establishing the maximum award amount.* The maximum award amount for the Continuum is the FPRN amount plus any additional eligible amounts for Continuum planning; UFA costs; adjustments to leasing, operating and rental assistance line items based on changes to FMR; and available bonuses.

§ 578.19 Application process.

(a) *Notice of Funding Availability.* After enactment of the annual appropriations act for the fiscal year, HUD will issue a NOFA in accordance with the requirements of 24 CFR part 4.

(b) *Applications.* All applications to HUD, including applications for grant funds and requests for designation as a UFA or HPC, must be submitted at such time and in such manner as HUD may require, and contain such information as HUD determines necessary. At a minimum, an application for grant funds must contain a list of the projects for which it is applying for funds; a description of the projects; a list of the projects that will be carried out by subrecipients and the names of the subrecipients; a description of the subpopulations of homeless or at risk of homelessness to be served by projects; the number of units to be provided and/or the number of persons to be served by each project; a budget request by project; and reasonable assurances that the applicant, or the subrecipient, will own or have control of a site for the proposed project not later than the expiration of the 12-month period beginning upon notification of an award for grant assistance.

§ 578.21 Awarding funds.

(a) *Selection.* HUD will review applications in accordance with the guidelines and procedures provided in the NOFA and will award funds to recipients through a national competition based on selection criteria as defined in section 427 of the Act.

(b) *Announcement of awards.* HUD will announce awards and notify selected applicants of any conditions imposed on awards. Conditions must be satisfied before HUD will execute a grant agreement with the applicant.

(c) *Satisfying conditions.* HUD will withdraw an award if the applicant does not satisfy all conditions imposed on it. Correcting all issues and conditions attached to an award must be completed within the time frame established in the NOFA. Proof of site control, match, environmental review, and the documentation of financial feasibility must be completed within 12 months of the announcement of the award, or 24 months in the case of funds for acquisition, rehabilitation, or new construction. The 12-month deadline may be extended by HUD for up to 12 additional months upon a showing of compelling reasons for delay due to factors beyond the control of the recipient or subrecipient.

§ 578.23 Executing grant agreements.

(a) *Deadline.* No later than 45 days from the date when all conditions are satisfied, the recipient and HUD must execute the grant agreement.

(b) *Grant agreements.* (1) *Multiple applicants for one Continuum.* If a Continuum designates more than one applicant for the geographic area, HUD will enter into a grant agreement with each designated applicant for which an award is announced.

(2) *One applicant for a Continuum.* If a Continuum designates only one applicant for the geographic area, after awarding funds, HUD may enter into a grant agreement with that applicant for new awards, if any, and one grant agreement for renewals, Continuum of Care planning, and UFA costs, if any. These two grants will cover the entire geographic area. A default by the recipient under one of those grant agreements will also be a default under the other.

(3) *Unified Funding Agencies.* If a Continuum is a UFA that HUD has approved, then HUD will enter into one grant agreement with the UFA for new awards, if any, and one grant agreement for renewals, Continuum of Care planning and UFA costs, if any. These two grants will cover the entire geographic area. A default by the UFA under one of those grant agreements will also be a default under the other.

(c) *Required agreements.* Recipients will be required to sign a grant agreement in which the recipient agrees:

(1) To ensure the operation of the project(s) in accordance with the provisions of the McKinney-Veto Act and all requirements under 24 CFR part 578;

(2) To monitor and report the progress of the project(s) to the Continuum of Care and HUD;

(3) To ensure, to the maximum extent practicable, that individuals and families experiencing homelessness are involved, through employment, provision of volunteer services, or otherwise, in constructing, rehabilitating, maintaining, and operating facilities for the project and in providing supportive services for the project;

(4) To require certification from all subrecipients that:

(i) Subrecipients will maintain the confidentiality of records pertaining to any individual or family that was provided family violence prevention or treatment services through the project;

(ii) The address or location of any family violence project assisted under this part will not be made public, except with written authorization of the person responsible for the operation of such project;

(iii) Subrecipients will establish policies and practices that are consistent with, and do not restrict, the exercise of rights provided by subtitle B of title VII of the Act and other laws relating to the provision of educational and related services to individuals and families experiencing homelessness;

(iv) In the case of projects that provide housing or services to families, that subrecipients will designate a staff person to be responsible for ensuring that children being served in the program are enrolled in school and connected to appropriate services in the community, including early childhood programs such as Head Start, part C of the Individuals with Disabilities Education Act, and programs authorized under subtitle B of title VII of the Act;

(v) The subrecipient, its officers, and employees are not debarred or suspended from doing business with the Federal Government; and

(vi) Subrecipients will provide information, such as data and reports, as required by HUD; and

(5) To establish such fiscal control and accounting procedures as may be necessary to assure the proper disbursal of, and accounting for grant funds in order to ensure that all financial transactions are conducted, and records maintained in accordance with generally accepted accounting principles, if the recipient is a UFA;

(6) To monitor subrecipient match and report on match to HUD;

(7) To take the educational needs of children into account when families are placed in housing and will, to the maximum extent practicable, place families with children as close as possible to their school of origin so as not to disrupt such children's education;

(8) To monitor subrecipients at least annually;

(9) To use the centralized or coordinated assessment system established by the Continuum of Care as set forth in § 578.7(a)(8). A victim service provider may choose not to use the Continuum of Care's centralized or coordinated assessment system, provided that victim service providers in the area use a centralized or coordinated assessment system that meets HUD's minimum requirements and the victim service provider uses that system instead;

(10) To follow the written standards for providing Continuum of Care assistance developed by the Continuum of Care, including the minimum requirements set forth in § 578.7(a)(9);

(11) Enter into subrecipient agreements requiring subrecipients to operate the project(s) in accordance with the provisions of this Act and all requirements under 24 CFR part 578; and

(12) To comply with such other terms and conditions as HUD may establish by NOFA.

§ 578.25 Site control.

(a) *In general.* When grant funds will be used for acquisition, rehabilitation, new construction, operating costs, or to provide supportive services, the recipient or subrecipient must demonstrate that it has site control within the time frame established in section § 578.21 before HUD will execute a grant agreement. This requirement does not apply to funds used for housing that will eventually be owned or controlled by the individuals or families served or for supportive services provided at sites not operated by the recipient or subrecipient.

(b) *Evidence.* Acceptable evidence of site control is a deed or lease. If grant funds will be used for acquisition, acceptable evidence of site control will be a purchase agreement. The owner, lessee, and purchaser shown on these documents must be the selected applicant or intended subrecipient identified in the application for assistance.

(c) *Tax credit projects.* (1) Applicants that plan to use the low-income housing tax credit authorized under 26 U.S.C. 42 to finance a project must prove to HUD's satisfaction that the applicant or subrecipient identified in the application is in control of the limited partnership or limited liability corporation that has a deed or lease for the project site.

(i) To have control of the limited partnership, the applicant or subrecipient must be the general partner of the limited partnership or have a 51 percent controlling interest in that general partner.

(ii) To have control of the limited liability company, the applicant or subrecipient must be the sole managing member.

(2) If grant funds are to be used for acquisition, rehabilitation, or new construction, the recipient or subrecipient must maintain control of the partnership or corporation and must ensure that the project is operated in compliance with law and regulation for 15 years from the date of initial occupancy or initial service provision. The partnership or corporation must own the project site throughout the 15-year period. If grant funds were not used for acquisition, rehabilitation, or new construction, then the recipient or subrecipient must maintain control for the term of the grant agreement and any renewals thereof.

§ 578.27 Consolidated plan.

(a) *States or units of general local government.* An applicant that is a State or a unit of general local government must have a HUD-approved, complete or abbreviated, consolidated plan in accordance with 24 CFR part 91. The applicant must submit a certification that the application for funding is consistent with the HUD-approved consolidated plan(s) for the jurisdiction(s) in which the proposed project will be located. Funded applicants must certify in a grant agreement that they are following the HUD-approved consolidated plan.

(b) *Other applicants.* Applicants that are not States or units of general local government must submit a certification by the jurisdiction(s) in which the proposed project will be located that the applicant's application for funding is consistent with the jurisdiction's HUD-approved consolidated plan. The certification must be made by the unit of general local government or the State, in accordance with the consistency certification provisions under 24 CFR part 91, subpart F. If the jurisdiction refuses to provide a certification of consistency, the applicant may appeal to HUD under § 578.35.

(c) *Timing of consolidated plan certification submissions.* The required certification that the application for funding is consistent with the HUD-approved consolidated plan must be submitted by the funding application submission deadline announced in the NOFA.

§ 578.29 Subsidy layering.

HUD may provide assistance under this program only in accordance with HUD subsidy layering requirements in section 102 of the Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) and 24 CFR part 4, subpart A. An applicant must submit information in its application on other sources of governmental assistance that the applicant has received, or reasonably expects to receive, for a proposed project or activities. HUD's review of this information is intended to prevent excessive public assistance for

proposed project or activities by combining (layering) assistance under this program with other governmental housing assistance from federal, State, or local agencies, including assistance such as tax concessions or tax credits.

§ 578.31 Environmental review.

(a) Activities under this part are subject to environmental review by HUD under 24 CFR part 50. The recipient or subrecipient shall supply all available, relevant information necessary for HUD to perform, for each property, any environmental review required by 24 CFR part 50. The recipient or subrecipient must carry out mitigating measures required by HUD or select an alternate eligible property. HUD may eliminate from consideration any application that would require an Environmental Impact Statement.

(b) The recipient or subrecipient, its project partners, and their contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct property for a project under this part, or commit or expend HUD or local funds for such eligible activities under this part, until HUD has performed an environmental review under 24 CFR part 50 and the recipient or subrecipient has received HUD approval of the property.

§ 578.33 Renewals.

(a) *In general.* Awards made under this part and title IV of the Act, as in effect before August 30, 2012 (the Supportive Housing Program and the Shelter Plus Care program), may be renewed to continue ongoing leasing, operations, supportive services, rental assistance, HMIS, and administration beyond the initial funding period. To be considered for funding, recipients must submit a request in a form specified by HUD, must meet the requirements of this part, and must submit the request within the time frame established by HUD.

(b) *Length of renewal.* HUD may award up to 3 years of funds for supportive services, leasing, HMIS, and operating costs. Renewals of tenant-based and sponsor-based rental assistance may be for up to one year of rental assistance. Renewals of project-based rental assistance may be for up to 15 years of rental assistance, subject to availability of annual appropriations.

(c) *Assistance available.* (1) Assistance during each year of a renewal period may be for:

(i) Up to 100 percent of the amount for supportive services and HMIS costs in the final year of the prior funding period;

(ii) Up to 100 percent of the amount for leasing and operating in the final year of the prior funding period adjusted in proportion to changes in the FMR for the geographic area; and

(iii) For rental assistance, up to 100 percent of the result of multiplying the number and unit size(s) in the grant agreement by the number of months in the renewal grant term and the applicable FMR.

(d) *Review criteria.* (1) Awards made under title IV of the Act, as in effect before August 30, 2012 are eligible for renewal in the Continuum of Care program even if the awardees would not be eligible for a new grant under the program, so long as they continue to serve the same population and the same number of persons or units in the same type of housing as identified in their most recently amended grant agreement signed before August 30, 2012. Grants will be renewed if HUD receives a certification from the Continuum that there is a demonstrated need for the project, and HUD finds that the project complied with program requirements applicable before August 30, 2012. For purposes of meeting the requirements of this part, a project will continue to be administered in accordance with 24 CFR 582.330, if the project received funding under the Shelter Plus Care program, or 24 CFR 583.325, if the project received funding under the Supportive Housing Program.

(2) *Renewal of awards made after August 30, 2012.* Review criteria for competitively awarded renewals made after August 30, 2012 will be described in the NOFA.

(e) *Unsuccessful projects.* HUD may renew a project that was eligible for renewal in the competition and was part of an application that was not funded despite having been submitted on time, in the manner required by HUD, and containing the information required by HUD, upon a finding that the project meets the purposes of the Continuum of Care program. The renewal will not exceed more than one year and will be under such conditions as HUD deems appropriate.

(f) *Annual Performance Report condition.* HUD may terminate the renewal of any grant and require the recipient to repay the renewal grant if:

(1) The recipient fails to timely submit a HUD Annual Performance Report (APR) for the grant year immediately prior to renewal; or

(2) The recipient submits an APR that HUD deems unacceptable or shows noncompliance with the requirements of the grant and this part.

§ 578.35 Appeal.

(a) *In general.* Failure to follow the procedures or meet the deadlines established in this section will result in denial of the appeal.

(b) *Solo applicants.* (1) *Who may appeal.* Nonprofits, States, and local governments, and instrumentalities of State or local governments that attempted to participate in the Continuum of Care planning process in the geographic area in which they operate, that believe they were denied the right to participate in a reasonable manner, and that submitted a solo application for funding by the application deadline established in the NOFA, may appeal the decision of the Continuum to HUD.

(2) *Notice of intent to appeal.* The solo applicant must submit a written notice of intent to appeal, with a copy to the Continuum, with their funding application.

(3) *Deadline for submitting proof.* No later than 30 days after the date that HUD announces the awards, the solo applicant shall submit in writing, with a copy to the Continuum, all relevant evidence supporting its claim, in such manner as HUD may require by Notice.

(4) *Response from the Continuum of Care.* The Continuum shall have 30 days from the date of its receipt of the solo applicant's evidence to respond to HUD in writing and in such manner as HUD may require, with a copy to the solo applicant.

(5) *Decision.* HUD will notify the solo applicant and the Continuum of its decision within 60 days of receipt of the Continuum's response.

(6) *Funding.* If HUD finds that the solo applicant was not permitted to participate in the Continuum of Care planning process in a reasonable manner, then HUD may award a grant to the solo applicant when funds next become available and may direct the Continuum of Care to take remedial steps to ensure reasonable participation in the future. HUD may also reduce the award to the Continuum's applicant(s).

(c) *Denied or decreased funding.* (1) *Who may appeal.* Eligible applicants that are denied funds by HUD, or that requested more funds than HUD awarded to them, may appeal the award by filing a written appeal, in such form and manner as HUD may require by Notice, within 45 days of the date of HUD's announcement of the award.

(2) *Decision.* HUD will notify the applicant of its decision on the appeal within 60 days of HUD's receipt of the written appeal. HUD will reverse a decision only when the applicant can show that HUD error caused the denial or decrease.

(3) *Funding.* Awards and increases to awards made upon appeal will be made from next available funds.

(d) *Competing Continuums of Care.* (1) *In general.* If more than one Continuum of Care claims the same geographic area, HUD will award funds to the Continuum applicant(s) whose application(s) has the highest total score. No projects will be funded from the lower scoring Continuum. No projects that are submitted in two or more competing Continuum of Care applications will be funded.

(2) *Who may appeal.* The designated applicant(s) for the lower scoring Continuum may appeal HUD's decision to fund the application(s) from the competing Continuum by filing a written appeal, in such form and manner as HUD may require by Notice, within 45 days of the date of HUD's announcement of the award.

(3) *Decision.* HUD will notify the applicant(s) of its decision on the appeal within 60 days of the date of HUD's receipt of the written appeal. HUD will reverse a decision only upon a showing by the applicant that HUD error caused the denial.

(e) *Consolidated plan certification.* (1) *In general.* An applicant may appeal to HUD a jurisdiction's refusal to provide a certification of consistency with the Consolidated Plan.

(2) *Procedure.* The applicant must submit a written appeal with its application to HUD and send a copy of the appeal to the jurisdiction that denied the certification of consistency. The appeal must include, at a minimum:

(i) A copy of the applicant's request to the jurisdiction for the certification of consistency with the Consolidated Plan;

(ii) A copy of the jurisdiction's response stating the reasons for denial, including the reasons the proposed project is not consistent with the jurisdiction's Consolidated Plan in accordance with 24 CFR 91.500(c); and

(iii) A statement of the reasons why the applicant believes its project is consistent with the jurisdiction's Consolidated Plan.

(3) *Jurisdiction response.* The jurisdiction that refused to provide the certification of consistency with the jurisdiction's Consolidated Plan shall have 10 days after receipt of a copy of the appeal to submit a written explanation of the reasons originally given for refusing to provide the certification and a written rebuttal to any claims made by the applicant in the appeal.

(4) *HUD review.* (i) HUD will issue its decision within 45 days of the date of HUD's receipt of the jurisdiction's response. As part of its review, HUD will consider:

(A) Whether the applicant submitted the request to the appropriate political jurisdiction; and

(B) The reasonableness of the jurisdiction's refusal to provide the certificate.

(ii) If the jurisdiction did not provide written reasons for refusal, including the reasons why the project is not consistent with the jurisdiction's Consolidated Plan in its initial response to the applicant's request for a certification, HUD will find for the applicant without further inquiry or response from the political jurisdiction.

Subpart D—Program Components and Eligible Costs

§ 578.37 Program components and uses of assistance.

(a) Continuum of Care funds may be used to pay for the eligible costs listed in § 578.39 through § 578.63 when used to establish and operate projects under five program components: permanent housing; transitional housing; supportive services only; HMIS; and, in some cases, homelessness prevention. Although grant funds may be used by recipients and subrecipients in all components for the eligible costs of contributing data to the HMIS designated by the Continuum of Care, only HMIS Leads may use grant funds for an HMIS component. Administrative costs are eligible for all components. All components are subject to the restrictions on combining funds for certain eligible activities in a single project found in § 578.87(c). The eligible program components are:

(1) *Permanent housing (PH).* Permanent housing is community-based housing, the purpose of which is to provide housing without a designated length of stay. Grant funds may be used for acquisition, rehabilitation, new construction, leasing, rental assistance, operating costs, and supportive services. PH includes:

(i) *Permanent supportive housing for persons with disabilities (PSH).* PSH can only provide assistance to individuals with disabilities and families in which one adult or child has a disability. Supportive services designed to meet the needs of the program participants must be made available to the program participants.

(ii) *Rapid rehousing.* Continuum of Care funds may provide supportive services, as set forth in § 578.53, and/or short-term (up to 3 months) and/or medium-term (for 3 to 24 months) tenant-based rental assistance, as set forth in § 578.51(c), as necessary to help a homeless individual or family, with or without disabilities, move as quickly as possible into permanent housing and achieve stability in that housing. When providing short-term and/or medium-term rental assistance to program participants, the rental assistance is subject to § 578.51(a)(1), but not § 578.51(a)(1)(i) and (ii); (a)(2); (c) and (f) through (i); and (l)(1). These projects:

(A) Must follow the written policies and procedures established by the Continuum of Care for determining and prioritizing which eligible families and individuals will receive rapid rehousing assistance, as well as the amount or percentage of rent that each program participant must pay.

(B) May set a maximum amount or percentage of rental assistance that a program participant may receive, a maximum number of months that a program participant may receive rental assistance, and/or a maximum number of times that a program participant may receive rental assistance. The recipient or subrecipient may also require program participants to share in the costs of rent. For the purposes of calculating rent for rapid rehousing, the rent shall equal the sum of the total monthly rent for the unit and, if the tenant pays separately for utilities, the monthly allowance for utilities (excluding telephone) established by the public housing authority for the area in which the housing is located.

(C) Limit rental assistance to no more than 24 months to a household.

(D) May provide supportive services for no longer than 6 months after rental assistance stops.

(E) Must re-evaluate, not less than once annually, that the program participant lacks sufficient resources and support networks necessary to retain housing without Continuum of Care assistance and the types and amounts of assistance that the program participant needs to retain housing. The recipient or subrecipient may require each program participant receiving assistance to notify the recipient or subrecipient of changes in the program participant's income or other circumstances (*e.g.,* changes in household composition) that affect the program participant's need for assistance. When notified of a relevant change, the recipient or subrecipient must reevaluate the program participant's eligibility and the amount and types of assistance that the program participant needs.

(F) Require the program participant to meet with a case manager not less than once per month to assist the program participant in ensuring long-term housing stability. The project is exempt

from this requirement if the Violence Against Women Act of 1994 (42 U.S.C. 13925 *et seq.*) or the Family Violence Prevention and Services Act (42 U.S.C. 10401 *et seq.*) prohibits the recipient carrying out the project from making its housing conditional on the participant's acceptance of services.

(2) *Transitional Housing (TH).* Transitional housing facilitates the movement of homeless individuals and families to PH within 24 months of entering TH. Grant funds may be used for acquisition, rehabilitation, new construction, leasing, rental assistance, operating costs, and supportive services.

(3) *Supportive Service Only (SSO).* Funds may be used for acquisition, rehabilitation, relocation costs, or leasing of a facility from which supportive services will be provided, and supportive services in order to provide supportive services to unsheltered and sheltered homeless persons for whom the recipient or subrecipient is not providing housing or housing assistance. SSO includes street outreach.

(4) *HMIS.* Funds may be used by HMIS Leads to lease a structure in which the HMIS is operated or as operating funds to operate a structure in which the HMIS is operated, and for other costs eligible in § 578.57.

(5) *Homelessness prevention.* Funds may be used by recipients in Continuums of Care-designated high-performing communities for housing relocation and stabilization services, and short- and/or medium-term rental assistance, as described in 24 CFR 576.105 and 24 CFR 576.106, that are necessary to prevent an individual or family from becoming homeless.

(b) *Uses of assistance.* Funds are available to pay for the eligible costs listed in § 578.39 through § 578.63 when used to:

(1) Establish new housing or new facilities to provide supportive services;

(2) Expand existing housing and facilities in order to increase the number of homeless persons served;

(3) Bring existing housing and facilities into compliance with State and local government health and safety standards, as described in § 578.87;

(4) Preserve existing permanent housing and facilities that provide supportive services;

(5) Provide supportive services for residents of supportive housing or for homeless persons not residing in supportive housing;

(6) Continue funding permanent housing when the recipient has received funding under this part for leasing, supportive services, operating costs, or rental assistance;

(7) Establish and operate an HMIS or comparable database; and

(8) Establish and carry out a Continuum of Care planning process and operate a Continuum of Care.

(c) *Multiple purposes.* Structures used to provide housing, supportive housing, supportive services, or as a facility for HMIS activities may also be used for other purposes. However, assistance under this part will be available only in proportion to the use of the structure for supportive housing or supportive services. If eligible and ineligible activities are carried out in separate portions of the same structure or in separate structures, grant funds may not be used to pay for more than the actual cost of acquisition, construction, or rehabilitation of the portion of the structure or structures used for eligible activities. If eligible and ineligible activities are carried out in the same structure, the costs will be prorated based on the amount of time that the space is used for eligible versus ineligible activities.

§ 578.39 Continuum of Care planning activities.

(a) *In general.* Collaborative applicants may use up to 3 percent of their FPRN, or a maximum amount to be established by the NOFA, for costs of:

(1) Designing and carrying out a collaborative process for the development of an application to HUD;

(2) Evaluating the outcomes of projects for which funds are awarded in the geographic area under the Continuum of Care and the Emergency Solutions Grants programs; and

(3) Participating in the consolidated plan(s) for the geographic area(s).

(b) *Continuum of Care planning activities.* Eligible planning costs include the costs of:

(1) Developing a communitywide or regionwide process involving the coordination of nonprofit homeless providers, victim service providers, faith-based organizations, governments, businesses, advocates, public housing agencies, school districts, social service providers, mental health agencies, hospitals, universities, affordable housing developers, law enforcement, organizations that serve veterans, and homeless and formerly homeless individuals;

(2) Determining the geographic area that the Continuum of Care will serve;

(3) Developing a Continuum of Care system;

(4) Evaluating the outcomes of projects for which funds are awarded in the geographic area, including the Emergency Solutions Grants program;

(5) Participating in the consolidated plan(s) of the jurisdiction(s) in the geographic area; and

(6) Preparing and submitting an application to HUD on behalf of the entire Continuum of Care membership, including conducting a sheltered and unsheltered point-in-time count and other data collection as required by HUD.

(c) *Monitoring costs.* The costs of monitoring recipients and subrecipients and enforcing compliance with program requirements are eligible.

§ 578.41 Unified Funding Agency costs.

(a) *In general.* UFAs may use up to 3 percent of their FPRN, or a maximum amount to be established by the NOFA, whichever is less, for fiscal control and accounting costs necessary to assure the proper disbursal of, and accounting for, federal funds awarded to subrecipients under the Continuum of Care program.

(b) *UFA costs.* UFA costs include costs of ensuring that all financial transactions carried out under the Continuum of Care program are conducted and records are maintained in accordance with generally accepted accounting principles, including arranging for an annual survey, audit, or evaluation of the financial records of each project carried out by a subrecipient funded by a grant received through the Continuum of Care program.

(c) *Monitoring costs.* The costs of monitoring subrecipients and enforcing compliance with program requirements are eligible for costs.

§ 578.43 Acquisition.

Grant funds may be used to pay up to 100 percent of the cost of acquisition of real property selected by the recipient or subrecipient for use in the provision of housing or supportive services for homeless persons.

§ 578.45 Rehabilitation.

(a) *Use.* Grant funds may be used to pay up to 100 percent of the cost of rehabilitation of structures to provide housing or supportive services to homeless persons.

(b) *Eligible costs.* Eligible rehabilitation costs include installing cost-effective energy measures, and bringing an existing structure to State and local government health and safety standards.

(c) *Ineligible costs.* Grant funds may not be used for rehabilitation of leased property.

§ 578.47 New construction.

(a) *Use.* Grant funds may be used to:

(1) Pay up to 100 percent of the cost of new construction, including the

building of a new structure or building an addition to an existing structure that increases the floor area by 100 percent or more, and the cost of land associated with that construction, for use as housing.

(2) If grant funds are used for new construction, the applicant must demonstrate that the costs of new construction are substantially less than the costs of rehabilitation or that there is a lack of available appropriate units that could be rehabilitated at a cost less than new construction. For purposes of this cost comparison, costs of rehabilitation or new construction may include the cost of real property acquisition.

(b) *Ineligible costs.* Grant funds may not be used for new construction on leased property.

§ 578.49 Leasing.

(a) *Use.* (1) Where the recipient or subrecipient is leasing the structure, or portions thereof, grant funds may be used to pay for 100 percent of the costs of leasing a structure or structures, or portions thereof, to provide housing or supportive services to homeless persons for up to 3 years. Leasing funds may not be used to lease units or structures owned by the recipient, subrecipient, their parent organization(s), any other related organization(s), or organizations that are members of a partnership, where the partnership owns the structure, unless HUD authorized an exception for good cause.

(2) Any request for an exception must include the following:

(i) A description of how leasing these structures is in the best interest of the program;

(ii) Supporting documentation showing that the leasing charges paid with grant funds are reasonable for the market; and

(iii) A copy of the written policy for resolving disputes between the landlord and tenant, including a recusal for officers, agents, and staff who work for both the landlord and tenant.

(b) *Requirements.* (1) *Leasing structures.* When grants are used to pay rent for all or part of a structure or structures, the rent paid must be reasonable in relation to rents being charged in the area for comparable space. In addition, the rent paid may not exceed rents currently being charged by the same owner for comparable unassisted space.

(2) *Leasing individual units.* When grants are used to pay rent for individual housing units, the rent paid must be reasonable in relation to rents being charged for comparable units, taking into account the location, size, type, quality, amenities, facilities, and management services. In addition, the rents may not exceed rents currently being charged for comparable units, and the rent paid may not exceed HUD-determined fair market rents.

(3) *Utilities.* If electricity, gas, and water are included in the rent, these utilities may be paid from leasing funds. If utilities are not provided by the landlord, these utility costs are an operating cost, except for supportive service facilities. If the structure is being used as a supportive service facility, then these utility costs are a supportive service cost.

(4) *Security deposits and first and last month's rent.* Recipients and subrecipients may use grant funds to pay security deposits, in an amount not to exceed 2 months of actual rent. An advance payment of the last month's rent may be provided to the landlord in addition to the security deposit and payment of the first month's rent.

(5) *Occupancy agreements and subleases.* Occupancy agreements and subleases are required as specified in § 578.77(a).

(6) *Calculation of occupancy charges and rent.* Occupancy charges and rent from program participants must be calculated as provided in § 578.77.

(7) *Program income.* Occupancy charges and rent collected from program participants are program income and may be used as provided under § 578.97.

(8) *Transition.* Beginning in the first year awards are made under the Continuum of Care program, renewals of grants for leasing funds entered into under the authority of title IV, subtitle D of the Act as it existed before May 20, 2009, will be renewed either as grants for leasing or as rental assistance, depending on the characteristics of the project. Leasing funds will be renewed as rental assistance if the funds are used to pay rent on units where the lease is between the program participant and the landowner or sublessor. Projects requesting leasing funds will be renewed as leasing if the funds were used to lease a unit or structure and the lease is between the recipient or subrecipient and the landowner.

§ 578.51 Rental assistance.

(a) *Use.* (1) Grant funds may be used for rental assistance for homeless individuals and families. Rental assistance cannot be provided to a program participant who is already receiving rental assistance, or living in a housing unit receiving rental assistance or operating assistance through other federal, State, or local sources.

(i) The rental assistance may be short-term, up to 3 months of rent; medium-term, for 3 to 24 months of rent; or long-term, for longer than 24 months of rent and must be administered in accordance with the policies and procedures established by the Continuum as set forth in § 578.7(a)(9) and this section.

(ii) The rental assistance may be tenant-based, project-based, or sponsor-based, and may be for transitional or permanent housing.

(2) Grant funds may be used for security deposits in an amount not to exceed 2 months of rent. An advance payment of the last month's rent may be provided to the landlord, in addition to the security deposit and payment of first month's rent.

(b) *Rental assistance administrator.* Rental assistance must be administered by a State, unit of general local government, or a public housing agency.

(c) *Tenant-based rental assistance.* Tenant-based rental assistance is rental assistance in which program participants choose housing of an appropriate size in which to reside. When necessary to facilitate the coordination of supportive services, recipients and subrecipients may require program participants to live in a specific area for their entire period of participation, or in a specific structure for the first year and in a specific area for the remainder of their period of participation. Program participants who are receiving rental assistance in transitional housing may be required to live in a specific structure for their entire period of participation in transitional housing.

(1) Up to 5 years worth of rental assistance may be awarded to a project in one competition.

(2) Program participants who have complied with all program requirements during their residence retain the rental assistance if they move within the Continuum of Care geographic area.

(3) Program participants who have complied with all program requirements during their residence and who have been a victim of domestic violence, dating violence, sexual assault, or stalking, and who reasonably believe they are imminently threatened by harm from further domestic violence, dating violence, sexual assault, or stalking (which would include threats from a third party, such as a friend or family member of the perpetrator of the violence), if they remain in the assisted unit, and are able to document the violence and basis for their belief, may retain the rental assistance and move to a different Continuum of Care geographic area if they move out of the

assisted unit to protect their health and safety.

(d) *Sponsor-based rental assistance.* Sponsor-based rental assistance is provided through contracts between the recipient and sponsor organization. A sponsor may be a private, nonprofit organization, or a community mental health agency established as a public nonprofit organization. Program participants must reside in housing owned or leased by the sponsor. Up to 5 years worth of rental assistance may be awarded to a project in one competition.

(e) *Project-based rental assistance.* Project-based rental assistance is provided through a contract with the owner of an existing structure, where the owner agrees to lease the subsidized units to program participants. Program participants will not retain rental assistance if they move. Up to 15 years of rental assistance may be awarded in one competition.

(f) *Grant amount.* The amount of rental assistance in each project will be based on the number and size of units proposed by the applicant to be assisted over the grant period. The amount of rental assistance in each project will be calculated by multiplying the number and size of units proposed by the FMR of each unit on the date the application is submitted to HUD, by the term of the grant.

(g) *Rent reasonableness.* HUD will only provide rental assistance for a unit if the rent is reasonable. The recipient or subrecipient must determine whether the rent charged for the unit receiving rental assistance is reasonable in relation to rents being charged for comparable unassisted units, taking into account the location, size, type, quality, amenities, facilities, and management and maintenance of each unit. Reasonable rent must not exceed rents currently being charged by the same owner for comparable unassisted units.

(h) *Payment of grant.* (1) The amount of rental assistance in each project will be reserved for rental assistance over the grant period. An applicant's request for rental assistance in each grant is an estimate of the amount needed for rental assistance. Recipients will make draws from the grant funds to pay the actual costs of rental assistance for program participants.

(2) For tenant-based rental assistance, on demonstration of need:

(i) Up to 25 percent of the total rental assistance awarded may be spent in any year of a 5-year grant term; or

(ii) A higher percentage if approved in advance by HUD, if the recipient provides evidence satisfactory to HUD that it is financially committed to providing the housing assistance described in the application for the full 5-year period.

(3) A recipient must serve at least as many program participants as shown in its application for assistance.

(4) If the amount in each grant reserved for rental assistance over the grant period exceeds the amount that will be needed to pay the actual costs of rental assistance, due to such factors as contract rents being lower than FMRs and program participants being able to pay a portion of the rent, recipients or subrecipients may use the excess funds for covering the costs of rent increases, or for serving a greater number of program participants.

(i) *Vacancies.* If a unit assisted under this section is vacated before the expiration of the lease, the assistance for the unit may continue for a maximum of 30 days from the end of the month in which the unit was vacated, unless occupied by another eligible person. No additional assistance will be paid until the unit is occupied by another eligible person. Brief periods of stays in institutions, not to exceed 90 days for each occurrence, are not considered vacancies.

(j) *Property damage.* Recipients and subrecipients may use grant funds in an amount not to exceed one month's rent to pay for any damage to housing due to the action of a program participant. This shall be a one-time cost per participant, incurred at the time a participant exits a housing unit.

(k) *Resident rent.* Rent must be calculated as provided in § 578.77. Rents collected from program participants are program income and may be used as provided under § 578.97.

(l) *Leases.* (1) *Initial lease.* For project-based, sponsor-based, or tenant-based rental assistance, program participants must enter into a lease agreement for a term of at least one year, which is terminable for cause. The leases must be automatically renewable upon expiration for terms that are a minimum of one month long, except on prior notice by either party.

(2) *Initial lease for transitional housing.* Program participants in transitional housing must enter into a lease agreement for a term of at least one month. The lease must be automatically renewable upon expiration, except on prior notice by either party, up to a maximum term of 24 months.

§ 578.53 Supportive services.

(a) *In general.* Grant funds may be used to pay the eligible costs of supportive services that address the special needs of the program participants. If the supportive services are provided in a supportive service facility not contained in a housing structure, the costs of day-to-day operation of the supportive service facility, including maintenance, repair, building security, furniture, utilities, and equipment are eligible as a supportive service.

(1) Supportive services must be necessary to assist program participants obtain and maintain housing.

(2) Recipients and subrecipients shall conduct an annual assessment of the service needs of the program participants and should adjust services accordingly.

(b) *Duration.* (1) For a transitional housing project, supportive services must be made available to residents throughout the duration of their residence in the project.

(2) Permanent supportive housing projects must provide supportive services for the residents to enable them to live as independently as is practicable throughout the duration of their residence in the project.

(3) Services may also be provided to former residents of transitional housing and current residents of permanent housing who were homeless in the prior 6 months, for no more than 6 months after leaving transitional housing or homelessness, respectively, to assist their adjustment to independent living.

(4) Rapid rehousing projects must require the program participant to meet with a case manager not less than once per month as set forth in § 578.37(a)(1)(ii)(F), to assist the program participant in maintaining long-term housing stability.

(c) *Special populations.* All eligible costs are eligible to the same extent for program participants who are unaccompanied homeless youth; persons living with HIV/AIDS; and victims of domestic violence, dating violence, sexual assault, or stalking.

(d) *Ineligible costs.* Any cost that is not described as an eligible cost under this section is not an eligible cost of providing supportive services using Continuum of Care program funds. Staff training and the costs of obtaining professional licenses or certifications needed to provide supportive services are not eligible costs.

(e) *Eligible costs.*

(1) *Annual Assessment of Service Needs.* The costs of the assessment required by § 578.53(a)(2) are eligible costs.

(2) *Assistance with moving costs.* Reasonable one-time moving costs are eligible and include truck rental and hiring a moving company.

(3) *Case management.* The costs of assessing, arranging, coordinating, and monitoring the delivery of individualized services to meet the needs of the program participant(s) are eligible costs. Component services and activities consist of:

(i) Counseling;

(ii) Developing, securing, and coordinating services;

(iii) Using the centralized or coordinated assessment system as required under § 578.23(c)(9).

(iv) Obtaining federal, State, and local benefits;

(v) Monitoring and evaluating program participant progress;

(vi) Providing information and referrals to other providers;

(vii) Providing ongoing risk assessment and safety planning with victims of domestic violence, dating violence, sexual assault, and stalking; and

(viii) Developing an individualized housing and service plan, including planning a path to permanent housing stability.

(4) *Child care.* The costs of establishing and operating child care, and providing child-care vouchers, for children from families experiencing homelessness, including providing meals and snacks, and comprehensive and coordinated developmental activities, are eligible.

(i) The children must be under the age of 13, unless they are disabled children.

(ii) Disabled children must be under the age of 18.

(iii) The child-care center must be licensed by the jurisdiction in which it operates in order for its costs to be eligible.

(5) *Education services.* The costs of improving knowledge and basic educational skills are eligible.

(i) Services include instruction or training in consumer education, health education, substance abuse prevention, literacy, English as a Second Language, and General Educational Development (GED).

(ii) Component services or activities are screening, assessment and testing; individual or group instruction; tutoring; provision of books, supplies, and instructional material; counseling; and referral to community resources.

(6) *Employment assistance and job training.* The costs of establishing and operating employment assistance and job training programs are eligible, including classroom, online and/or computer instruction, on-the-job instruction, services that assist individuals in securing employment, acquiring learning skills, and/or increasing earning potential. The cost of providing reasonable stipends to program participants in employment assistance and job training programs is also an eligible cost.

(i) Learning skills include those skills that can be used to secure and retain a job, including the acquisition of vocational licenses and/or certificates.

(ii) Services that assist individuals in securing employment consist of:

(A) Employment screening, assessment, or testing;

(B) Structured job skills and job-seeking skills;

(C) Special training and tutoring, including literacy training and pre-vocational training;

(D) Books and instructional material;

(E) Counseling or job coaching; and

(F) Referral to community resources.

(7) *Food.* The cost of providing meals or groceries to program participants is eligible.

(8) *Housing search and counseling services.* Costs of assisting eligible program participants to locate, obtain, and retain suitable housing are eligible.

(i) Component services or activities are tenant counseling; assisting individuals and families to understand leases; securing utilities; and making moving arrangements.

(ii) Other eligible costs are:

(A) Mediation with property owners and landlords on behalf of eligible program participants;

(B) Credit counseling, accessing a free personal credit report, and resolving personal credit issues; and

(C) The payment of rental application fees.

(9) *Legal services.* Eligible costs are the fees charged by licensed attorneys and by person(s) under the supervision of licensed attorneys, for advice and representation in matters that interfere with the homeless individual or family's ability to obtain and retain housing.

(i) Eligible subject matters are child support; guardianship; paternity; emancipation; legal separation; orders of protection and other civil remedies for victims of domestic violence, dating violence, sexual assault, and stalking; appeal of veterans and public benefit claim denials; landlord tenant disputes; and the resolution of outstanding criminal warrants.

(ii) Component services or activities may include receiving and preparing cases for trial, provision of legal advice, representation at hearings, and counseling.

(iii) Fees based on the actual service performed (i.e., fee for service) are also eligible, but only if the cost would be less than the cost of hourly fees. Filing fees and other necessary court costs are also eligible. If the subrecipient is a legal services provider and performs the services itself, the eligible costs are the subrecipient's employees' salaries and other costs necessary to perform the services.

(iv) Legal services for immigration and citizenship matters and issues related to mortgages and homeownership are ineligible. Retainer fee arrangements and contingency fee arrangements are ineligible.

(10) *Life skills training.* The costs of teaching critical life management skills that may never have been learned or have been lost during the course of physical or mental illness, domestic violence, substance abuse, and homelessness are eligible. These services must be necessary to assist the program participant to function independently in the community. Component life skills training are the budgeting of resources and money management, household management, conflict management, shopping for food and other needed items, nutrition, the use of public transportation, and parent training.

(11) *Mental health services.* Eligible costs are the direct outpatient treatment of mental health conditions that are provided by licensed professionals. Component services are crisis interventions; counseling; individual, family, or group therapy sessions; the prescription of psychotropic medications or explanations about the use and management of medications; and combinations of therapeutic approaches to address multiple problems.

(12) *Outpatient health services.* Eligible costs are the direct outpatient treatment of medical conditions when provided by licensed medical professionals including:

(i) Providing an analysis or assessment of an individual's health problems and the development of a treatment plan;

(ii) Assisting individuals to understand their health needs;

(iii) Providing directly or assisting individuals to obtain and utilize appropriate medical treatment;

(iv) Preventive medical care and health maintenance services, including in-home health services and emergency medical services;

(v) Provision of appropriate medication;

(vi) Providing follow-up services; and

(vii) Preventive and noncosmetic dental care.

(13) *Outreach services.* The costs of activities to engage persons for the purpose of providing immediate support and intervention, as well as identifying

potential program participants, are eligible.

(i) Eligible costs include the outreach worker's transportation costs and a cell phone to be used by the individual performing the outreach.

(ii) Component activities and services consist of: initial assessment; crisis counseling; addressing urgent physical needs, such as providing meals, blankets, clothes, or toiletries; actively connecting and providing people with information and referrals to homeless and mainstream programs; and publicizing the availability of the housing and/or services provided within the geographic area covered by the Continuum of Care.

(14) *Substance abuse treatment services.* The costs of program participant intake and assessment, outpatient treatment, group and individual counseling, and drug testing are eligible. Inpatient detoxification and other inpatient drug or alcohol treatment are ineligible.

(15) *Transportation.* Eligible costs are:

(i) The costs of program participant's travel on public transportation or in a vehicle provided by the recipient or subrecipient to and from medical care, employment, child care, or other services eligible under this section.

(ii) Mileage allowance for service workers to visit program participants and to carry out housing quality inspections;

(iii) The cost of purchasing or leasing a vehicle in which staff transports program participants and/or staff serving program participants;

(iv) The cost of gas, insurance, taxes, and maintenance for the vehicle;

(v) The costs of recipient or subrecipient staff to accompany or assist program participants to utilize public transportation; and

(vi) If public transportation options are not sufficient within the area, the recipient may make a one-time payment on behalf of a program participant needing car repairs or maintenance required to operate a personal vehicle, subject to the following:

(A) Payments for car repairs or maintenance on behalf of the program participant may not exceed 10 percent of the Blue Book value of the vehicle (Blue Book refers to the guidebook that compiles and quotes prices for new and used automobiles and other vehicles of all makes, models, and types);

(B) Payments for car repairs or maintenance must be paid by the recipient or subrecipient directly to the third party that repairs or maintains the car; and

(C) The recipients or subrecipients may require program participants to share in the cost of car repairs or maintenance as a condition of receiving assistance with car repairs or maintenance.

(16) *Utility deposits.* This form of assistance consists of paying for utility deposits. Utility deposits must be a one-time fee, paid to utility companies.

(17) *Direct provision of services.* If the service described in paragraphs (e)(1) through (e)(16) of this section is being directly delivered by the recipient or subrecipient, eligible costs for those services also include:

(i) The costs of labor or supplies, and materials incurred by the recipient or subrecipient in directly providing supportive services to program participants; and

(ii) The salary and benefit packages of the recipient and subrecipient staff who directly deliver the services.

§ 578.55 Operating costs.

(a) *Use.* Grant funds may be used to pay the costs of the day-to-day operation of transitional and permanent housing in a single structure or individual housing units.

(b) *Eligible costs.* (1) The maintenance and repair of housing;

(2) Property taxes and insurance;

(3) Scheduled payments to a reserve for replacement of major systems of the housing (provided that the payments must be based on the useful life of the system and expected replacement cost);

(4) Building security for a structure where more than 50 percent of the units or area is paid for with grant funds;

(5) Electricity, gas, and water;

(6) Furniture; and

(7) Equipment.

(c) *Ineligible costs.* Program funds may not be used for rental assistance and operating costs in the same project. Program funds may not be used for the operating costs of emergency shelter- and supportive service-only facilities. Program funds may not be used for the maintenance and repair of housing where the costs of maintaining and repairing the housing are included in the lease.

§ 578.57 Homeless Management Information System.

(a) *Eligible costs.* (1) The recipient or subrecipient may use Continuum of Care program funds to pay the costs of contributing data to the HMIS designated by the Continuum of Care, including the costs of:

(i) Purchasing or leasing computer hardware;

(ii) Purchasing software or software licenses;

(iii) Purchasing or leasing equipment, including telephones, fax machines, and furniture;

(iv) Obtaining technical support;

(v) Leasing office space;

(vi) Paying charges for electricity, gas, water, phone service, and high-speed data transmission necessary to operate or contribute data to the HMIS;

(vii) Paying salaries for operating HMIS, including:

(A) Completing data entry;

(B) Monitoring and reviewing data quality;

(C) Completing data analysis;

(D) Reporting to the HMIS Lead;

(E) Training staff on using the HMIS; and

(F) Implementing and complying with HMIS requirements;

(viii) Paying costs of staff to travel to and attend HUD-sponsored and HUD-approved training on HMIS and programs authorized by Title IV of the McKinney-Vento Homeless Assistance Act;

(ix) Paying staff travel costs to conduct intake; and

(x) Paying participation fees charged by the HMIS Lead, as authorized by HUD, if the recipient or subrecipient is not the HMIS Lead.

(2) If the recipient or subrecipient is the HMIS Lead, it may also use Continuum of Care funds to pay the costs of:

(i) Hosting and maintaining HMIS software or data;

(ii) Backing up, recovering, or repairing HMIS software or data;

(iii) Upgrading, customizing, and enhancing the HMIS;

(iv) Integrating and warehousing data, including development of a data warehouse for use in aggregating data from subrecipients using multiple software systems;

(v) Administering the system;

(vi) Reporting to providers, the Continuum of Care, and HUD; and

(vii) Conducting training on using the system, including traveling to the training.

(3) If the recipient or subrecipient is a victim services provider, or a legal services provider, it may use Continuum of Care funds to establish and operate a comparable database that complies with HUD's HMIS requirements.

(b) *General restrictions.* Activities funded under this section must comply with the HMIS requirements.

§ 578.59 Project administrative costs.

(a) *Eligible costs.* The recipient or subrecipient may use up to 10 percent of any grant awarded under this part, excluding the amount for Continuum of Care Planning Activities and UFA costs, for the payment of project administrative costs related to the planning and execution of Continuum

of Care activities. This does not include staff and overhead costs directly related to carrying out activities eligible under § 578.43 through § 578.57, because those costs are eligible as part of those activities. Eligible administrative costs include:

(1) *General management, oversight, and coordination.* Costs of overall program management, coordination, monitoring, and evaluation. These costs include, but are not limited to, necessary expenditures for the following:

(i) Salaries, wages, and related costs of the recipient's staff, the staff of subrecipients, or other staff engaged in program administration. In charging costs to this category, the recipient may include the entire salary, wages, and related costs allocable to the program of each person whose primary responsibilities with regard to the program involve program administration assignments, or the pro rata share of the salary, wages, and related costs of each person whose job includes any program administration assignments. The recipient may use only one of these methods for each fiscal year grant. Program administration assignments include the following:

(A) Preparing program budgets and schedules, and amendments to those budgets and schedules;

(B) Developing systems for assuring compliance with program requirements;

(C) Developing agreements with subrecipients and contractors to carry out program activities;

(D) Monitoring program activities for progress and compliance with program requirements;

(E) Preparing reports and other documents directly related to the program for submission to HUD;

(F) Coordinating the resolution of audit and monitoring findings;

(G) Evaluating program results against stated objectives; and

(H) Managing or supervising persons whose primary responsibilities with regard to the program include such assignments as those described in paragraph (a)(1)(i)(A) through (G) of this section.

(ii) Travel costs incurred for monitoring of subrecipients;

(iii) Administrative services performed under third-party contracts or agreements, including general legal services, accounting services, and audit services; and

(iv) Other costs for goods and services required for administration of the program, including rental or purchase of equipment, insurance, utilities, office supplies, and rental and maintenance (but not purchase) of office space.

(2) *Training on Continuum of Care requirements.* Costs of providing training on Continuum of Care requirements and attending HUD-sponsored Continuum of Care trainings.

(3) *Environmental review.* Costs of carrying out the environmental review responsibilities under § 578.31.

(b) *Sharing requirement.* (1) *UFAs.* If the recipient is a UFA that carries out a project, it may use up to 10 percent of the grant amount awarded for the project on project administrative costs. The UFA must share the remaining project administrative funds with its subrecipients.

(2) *Recipients that are not UFAs.* If the recipient is not a UFA, it must share at least 50 percent of project administrative funds with its subrecipients.

§ 578.61 Relocation costs.

(a) *In general.* Relocation costs under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 are eligible.

(b) *Eligible relocation costs.* Eligible costs are costs to provide relocation payments and other assistance to persons displaced by a project assisted with grant funds in accordance with § 578.83.

§ 578.63 Indirect costs.

(a) *In general.* Continuum of Care funds may be used to pay indirect costs in accordance with OMB Circulars A–87 or A–122, as applicable.

(b) *Allocation.* Indirect costs may be allocated to each eligible activity as provided in subpart D, so long as that allocation is consistent with an indirect cost rate proposal developed in accordance with OMB Circulars A–87 or A–122, as applicable.

(c) *Expenditure limits.* The indirect costs charged to an activity subject to an expenditure limit under §§ 578.39, 578.41, and 578.59 must be added to the direct costs charged for that activity when determining the total costs subject to the expenditure limits.

Subpart E—High-Performing Communities

§ 578.65 Standards.

(a) *In general.* The collaborative applicant for a Continuum may apply to HUD to have the Continuum be designated a high-performing community (HPC). The designation shall be for grants awarded in the same competition in which the designation is applied for and made.

(b) *Applying for HPC designation.* The application must be submitted at such time and in such manner as HUD may require, must use HMIS data where required to show the standards for qualifying are met, and must contain such information as HUD requires, including at a minimum:

(1) A report showing how the Continuum of Care program funds received in the preceding year were expended;

(2) A specific plan for how grant funds will be expended; and

(3) Information establishing that the Continuum of Care meets the standards for HPCs.

(c) *Standards for qualifying as an HPC.* To qualify as an HPC, a Continuum must demonstrate through:

(1) Reliable data generated by the Continuum of Care's HMIS that it meets all of the following standards:

(i) *Mean length of homelessness.* Either the mean length of episode of homelessness within the Continuum's geographic area is fewer than 20 days, or the mean length of episodes of homelessness for individuals or families in similar circumstances was reduced by at least 10 percent from the preceding federal fiscal year.

(ii) *Reduced recidivism.* Of individuals and families who leave homelessness, less than 5 percent become homeless again at any time within the next 2 years; or the percentage of individuals and families in similar circumstances who become homeless again within 2 years after leaving homelessness was decreased by at least 20 percent from the preceding federal fiscal year.

(iii) *HMIS coverage.* The Continuum's HMIS must have a bed coverage rate of 80 percent and a service volume coverage rate of 80 percent as calculated in accordance with HUD's HMIS requirements.

(iv) *Serving families and youth.* With respect to Continuums that served homeless families and youth defined as homeless under other federal statutes in paragraph (3) of the definition of homeless in § 576.2:

(A) 95 percent of those families and youth did not become homeless again within a 2-year period following termination of assistance; or

(B) 85 percent of those families achieved independent living in permanent housing for at least 2 years following termination of assistance.

(2) Reliable data generated from sources other than the Continuum's HMIS that is provided in a narrative or other form prescribed by HUD that it meets both of the following standards:

(i) *Community action.* All the metropolitan cities and counties within the Continuum's geographic area have a

comprehensive outreach plan, including specific steps for identifying homeless persons and referring them to appropriate housing and services in that geographic area.

(ii) *Renewing HPC status.* If the Continuum was designated an HPC in the previous federal fiscal year and used Continuum of Care grant funds for activities described under § 578.71, that such activities were effective at reducing the number of individuals and families who became homeless in that community.

§ 578.67 Publication of application.

HUD will publish the application to be designated an HPC through the HUD Web site, for public comment as to whether the Continuum seeking designation as an HPC meets the standards for being one.

§ 578.69 Cooperation among entities.

An HPC must cooperate with HUD in distributing information about its successful efforts to reduce homelessness.

§ 578.71 HPC-eligible activities.

In addition to using grant funds for the eligible costs described in subpart D of this part, recipients and subrecipients in Continuums of Care designated as HPCs may also use grant funds to provide housing relocation and stabilization services and short- and/or medium-term rental assistance to individuals and families at risk of homelessness as set forth in 24 CFR 576.103 and 24 CFR 576.104, if necessary to prevent the individual or family from becoming homeless. Activities must be carried out in accordance with the plan submitted in the application. When carrying out housing relocation and stabilization services and short- and/or medium-term rental assistance, the written standards set forth in § 578.7(a)(9)(v) and recordkeeping requirements of 24 CFR 576.500 apply.

Subpart F—Program Requirements

§ 578.73 Matching requirements.

(a) *In general.* The recipient or subrecipient must match all grant funds, except for leasing funds, with no less than 25 percent of funds or in-kind contributions from other sources. For Continuum of Care geographic areas in which there is more than one grant agreement, the 25 percent match must be provided on a grant-by-grant basis. Recipients that are UFAs or are the sole recipient for their Continuum, may provide match on a Continuum-wide basis. Cash match must be used for the costs of activities that are eligible under subpart D of this part, except that HPCs may use such match for the costs of activities that are eligible under § 578.71.

(b) *Cash sources.* A recipient or subrecipient may use funds from any source, including any other federal sources (excluding Continuum of Care program funds), as well as State, local, and private sources, provided that funds from the source are not statutorily prohibited to be used as a match. The recipient must ensure that any funds used to satisfy the matching requirements of this section are eligible under the laws governing the funds in order to be used as matching funds for a grant awarded under this program.

(c) *In-kind contributions.* (1) The recipient or subrecipient may use the value of any real property, equipment, goods, or services contributed to the project as match, provided that if the recipient or subrecipient had to pay for them with grant funds, the costs would have been eligible under Subpart D, or, in the case of HPCs, eligible under § 578.71.

(2) The requirements of 24 CFR 84.23 and 85.24 apply.

(3) Before grant execution, services to be provided by a third party must be documented by a memorandum of understanding (MOU) between the recipient or subrecipient and the third party that will provide the services. Services provided by individuals must be valued at rates consistent with those ordinarily paid for similar work in the recipient's or subrecipient's organization. If the recipient or subrecipient does not have employees performing similar work, the rates must be consistent with those ordinarily paid by other employers for similar work in the same labor market.

(i) The MOU must establish the unconditional commitment, except for selection to receive a grant, by the third party to provide the services, the specific service to be provided, the profession of the persons providing the service, and the hourly cost of the service to be provided.

(ii) During the term of the grant, the recipient or subrecipient must keep and make available, for inspection, records documenting the service hours provided.

§ 578.75 General operations.

(a) *State and local requirements.* (1) Housing and facilities constructed or rehabilitated with assistance under this part must meet State or local building codes, and in the absence of State or local building codes, the International Residential Code or International Building Code (as applicable to the type of structure) of the International Code Council.

(2) Services provided with assistance under this part must be provided in compliance with all applicable State and local requirements, including licensing requirements.

(b) *Housing quality standards.* Housing leased with Continuum of Care program funds, or for which rental assistance payments are made with Continuum of Care program funds, must meet the applicable housing quality standards (HQS) under 24 CFR 982.401 of this title, except that 24 CFR 982.401(j) applies only to housing occupied by program participants receiving tenant-based rental assistance. For housing rehabilitated with funds under this part, the lead-based paint requirements in 24 CFR part 35, subparts A, B, J, and R apply. For housing that receives project-based or sponsor-based rental assistance, 24 CFR part 35, subparts A, B, H, and R apply. For residential property for which funds under this part are used for acquisition, leasing, services, or operating costs, 24 CFR part 35, subparts A, B, K, and R apply.

(1) Before any assistance will be provided on behalf of a program participant, the recipient, or subrecipient, must physically inspect each unit to assure that the unit meets HQS. Assistance will not be provided for units that fail to meet HQS, unless the owner corrects any deficiencies within 30 days from the date of the initial inspection and the recipient or subrecipient verifies that all deficiencies have been corrected.

(2) Recipients or subrecipients must inspect all units at least annually during the grant period to ensure that the units continue to meet HQS.

(c) *Suitable dwelling size.* The dwelling unit must have at least one bedroom or living/sleeping room for each two persons.

(1) Children of opposite sex, other than very young children, may not be required to occupy the same bedroom or living/sleeping room.

(2) If household composition changes during the term of assistance, recipients and subrecipients may relocate the household to a more appropriately sized unit. The household must still have access to appropriate supportive services.

(d) *Meals.* Each recipient and subrecipient of assistance under this part who provides supportive housing for homeless persons with disabilities must provide meals or meal preparation facilities for residents.

(e) *Ongoing assessment of supportive services.* To the extent practicable, each

project must provide supportive services for residents of the project and homeless persons using the project, which may be designed by the recipient or participants. Each recipient and subrecipient of assistance under this part must conduct an ongoing assessment of the supportive services needed by the residents of the project, the availability of such services, and the coordination of services needed to ensure long-term housing stability and must make adjustments, as appropriate.

(f) *Residential supervision.* Each recipient and subrecipient of assistance under this part must provide residential supervision as necessary to facilitate the adequate provision of supportive services to the residents of the housing throughout the term of the commitment to operate supportive housing. Residential supervision may include the employment of a full- or part-time residential supervisor with sufficient knowledge to provide or to supervise the provision of supportive services to the residents.

(g) *Participation of homeless individuals.* (1) Each recipient and subrecipient must provide for the participation of not less than one homeless individual or formerly homeless individual on the board of directors or other equivalent policymaking entity of the recipient or subrecipient, to the extent that such entity considers and makes policies and decisions regarding any project, supportive services, or assistance provided under this part. This requirement is waived if a recipient or subrecipient is unable to meet such requirement and obtains HUD approval for a plan to otherwise consult with homeless or formerly homeless persons when considering and making policies and decisions.

(2) Each recipient and subrecipient of assistance under this part must, to the maximum extent practicable, involve homeless individuals and families through employment; volunteer services; or otherwise in constructing, rehabilitating, maintaining, and operating the project, and in providing supportive services for the project.

(h) *Supportive service agreement.* Recipients and subrecipients may require the program participants to take part in supportive services that are not disability-related services provided through the project as a condition of continued participation in the program. Examples of disability-related services include, but are not limited to, mental health services, outpatient health services, and provision of medication, which are provided to a person with a disability to address a condition caused by the disability. Notwithstanding this provision, if the purpose of the project is to provide substance abuse treatment services, recipients and subrecipients may require program participants to take part in such services as a condition of continued participation in the program.

(i) *Retention of assistance after death, incarceration, or institutionalization for more than 90 days of qualifying member.* For permanent supportive housing projects surviving, members of any household who were living in a unit assisted under this part at the time of the qualifying member's death, long-term incarceration, or long-term institutionalization, have the right to rental assistance under this section until the expiration of the lease in effect at the time of the qualifying member's death, long-term incarceration, or long-term institutionalization.

§ 578.77 Calculating occupancy charges and rent.

(a) *Occupancy agreements and leases.* Recipients and subrecipients must have signed occupancy agreements or leases (or subleases) with program participants residing in housing.

(b) *Calculation of occupancy charges.* Recipients and subrecipients are not required to impose occupancy charges on program participants as a condition of residing in the housing. However, if occupancy charges are imposed, they may not exceed the highest of:

(1) 30 percent of the family's monthly adjusted income (adjustment factors include the number of people in the family, age of family members, medical expenses, and child-care expenses);

(2) 10 percent of the family's monthly income; or

(3) If the family is receiving payments for welfare assistance from a public agency and a part of the payments (adjusted in accordance with the family's actual housing costs) is specifically designated by the agency to meet the family's housing costs, the portion of the payments that is designated for housing costs.

(4) *Income.* Income must be calculated in accordance with 24 CFR 5.609 and 24 CFR 5.611(a). Recipients and subrecipients must examine a program participant's income initially, and if there is a change in family composition (*e.g.,* birth of a child) or a decrease in the resident's income during the year, the resident may request an interim reexamination, and the occupancy charge will be adjusted accordingly.

(c) *Resident rent.* (1) *Amount of rent.* (i) Each program participant on whose behalf rental assistance payments are made must pay a contribution toward rent in accordance with section 3(a)(1) of the U.S. Housing Act of 1937 (42 U.S.C. 1437a(a)(1)).

(ii) Income of program participants must be calculated in accordance with 24 CFR 5.609 and 24 CFR 5.611(a).

(2) *Review.* Recipients or subrecipients must examine a program participant's income initially, and at least annually thereafter, to determine the amount of the contribution toward rent payable by the program participant. Adjustments to a program participant's contribution toward the rental payment must be made as changes in income are identified.

(3) *Verification.* As a condition of participation in the program, each program participant must agree to supply the information or documentation necessary to verify the program participant's income. Program participants must provide the recipient or subrecipient with information at any time regarding changes in income or other circumstances that may result in changes to a program participant's contribution toward the rental payment.

§ 578.79 Limitation on transitional housing.

A homeless individual or family may remain in transitional housing for a period longer than 24 months, if permanent housing for the individual or family has not been located or if the individual or family requires additional time to prepare for independent living. However, HUD may discontinue assistance for a transitional housing project if more than half of the homeless individuals or families remain in that project longer than 24 months.

§ 578.81 Term of commitment, repayment of grants, and prevention of undue benefits.

(a) *In general.* All recipients and subrecipients receiving grant funds for acquisition, rehabilitation, or new construction must operate the housing or provide supportive services in accordance with this part, for at least 15 years from the date of initial occupancy or date of initial service provision. Recipient and subrecipients must execute and record a HUD-approved Declaration of Restrictive Covenants before receiving payment of grant funds.

(b) *Conversion.* Recipients and subrecipients carrying out a project that provides transitional or permanent housing or supportive services in a structure may submit a request to HUD to convert a project for the direct benefit of very low-income persons. The request must be made while the project is operating as homeless housing or supportive services for homeless

individuals and families, must be in writing, and must include an explanation of why the project is no longer needed to provide transitional or permanent housing or supportive services. The primary factor in HUD's decision on the proposed conversion is the unmet need for transitional or permanent housing or supportive services in the Continuum of Care's geographic area.

(c) *Repayment of grant funds.* If a project is not operated as transitional or permanent housing for 10 years following the date of initial occupancy, HUD will require repayment of the entire amount of the grant used for acquisition, rehabilitation, or new construction, unless conversion of the project has been authorized under paragraph (b) of this section. If the housing is used for such purposes for more than 10 years, the payment amount will be reduced by 20 percentage points for each year, beyond the 10-year period in which the project is used for transitional or permanent housing.

(d) *Prevention of undue benefits.* Except as provided under paragraph (e) of this section, upon any sale or other disposition of a project site that received grant funds for acquisition, rehabilitation, or new construction, occurring before the 15-year period, the recipient must comply with such terms and conditions as HUD may prescribe to prevent the recipient or subrecipient from unduly benefiting from such sale or disposition.

(e) *Exception.* A recipient or subrecipient will not be required to comply with the terms and conditions prescribed under paragraphs (c) and (d) of this section if:

(1) The sale or disposition of the property used for the project results in the use of the property for the direct benefit of very low-income persons;

(2) All the proceeds are used to provide transitional or permanent housing that meet the requirements of this part;

(3) Project-based rental assistance or operating cost assistance from any federal program or an equivalent State or local program is no longer made available and the project is meeting applicable performance standards, provided that the portion of the project that had benefitted from such assistance continues to meet the tenant income and rent restrictions for low-income units under section 42(g) of the Internal Revenue Code of 1986; or

(4) There are no individuals and families in the Continuum of Care geographic area who are homeless, in which case the project may serve individuals and families at risk of homelessness.

§ 578.83 Displacement, relocation, and acquisition.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, recipients and subrecipients must ensure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of projects assisted under this part. ''Project,'' as used in this section, means any activity or series of activities assisted with Continuum of Care funds received or anticipated in any phase of an undertaking.

(b) *Temporary relocation.* (1) *Existing Building Not Assisted under Title IV of the McKinney-Vento Act.* No tenant may be required to relocate temporarily for a project if the building in which the project is being undertaken or will be undertaken is not currently assisted under Title IV of the McKinney-Vento Act. The absence of such assistance to the building means the tenants are not homeless and the tenants are therefore not eligible to receive assistance under the Continuum of Care program. When a tenant moves for such a project under conditions that cause the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), 42 U.S.C. 4601–4655, to apply, the tenant must be treated as permanently displaced and offered relocation assistance and payments consistent with paragraph (c) of this section.

(2) *Existing Transitional Housing or Permanent Housing Projects Assisted Under Title IV of the McKinney-Vento Act.* Consistent with paragraph (c)(2)(ii) of this section, no program participant may be required to relocate temporarily for a project if the person cannot be offered a decent, safe, and sanitary unit in the same building or complex upon project completion under reasonable terms and conditions. The length of occupancy requirements in § 578.79 may prevent a program participant from returning to the property upon completion (See paragraph (c)(2)(iii)(D) of this section). Any program participant who has been temporarily relocated for a period beyond one year must be treated as permanently displaced and offered relocation assistance and payments consistent with paragraph (c) of this section. Program participants temporarily relocated in accordance with the policies described in this paragraph must be provided:

(i) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly rent/occupancy charges and utility costs; and

(ii) Appropriate advisory services, including reasonable advance written notice of:

(A) The date and approximate duration of the temporary relocation;

(B) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

(C) The reasonable terms and conditions under which the program participant will be able to occupy a suitable, decent, safe, and sanitary dwelling in the building or complex upon completion of the project; and

(D) The provisions of paragraph (b)(2)(i) of this section.

(c) *Relocation assistance for displaced persons.* (1) *In general.* A displaced person (defined in paragraph (c)(2) of this section) must be provided relocation assistance in accordance with the requirements of the URA and implementing regulations at 49 CFR part 24. A displaced person must be advised of his or her rights under the Fair Housing Act. Whenever possible, minority persons must be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require providing a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling. See 49 CFR 24.205(c)(2)(ii)(D).

(2) *Displaced person.* (i) For the purposes of paragraph (c) of this section, the term ''displaced person'' means any person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project. This includes any permanent, involuntary move for a project, including any permanent move from the real property that is made:

(A) After the owner (or person in control of the site) issues a notice to move permanently from the property, or refuses to renew an expiring lease, if the move occurs after the date of the submission by the recipient or subrecipient of an application for assistance to HUD (or the recipient, as applicable) that is later approved and funded and the recipient or subrecipient has site control as evidenced in accordance with § 578.25(b); or

(B) After the owner (or person in control of the site) issues a notice to move permanently from the property, or refuses to renew an expiring lease, if the move occurs after the date the recipient or subrecipient obtains site control, as evidenced in accordance with § 578.25(b), if that occurs after the application for assistance; or

(C) Before the date described under paragraph (c)(2)(i)(A) or (B) of this section, if the recipient or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the project; or

(D) By a tenant of a building that is not assisted under Title IV of the McKinney-Vento Act, if the tenant moves after execution of the agreement covering the acquisition, rehabilitation, or demolition of the property for the project; or

(ii) For the purposes of paragraph (c) of this section, the term ''displaced person'' means any person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project. This includes any permanent, involuntary move for a project that is made by a program participant occupying transitional housing or permanent housing assisted under Title IV of the McKinney-Vento Act, if any one of the following three situations occurs:

(A) The program participant moves after execution of the agreement covering the acquisition, rehabilitation, or demolition of the property for the project and is either not eligible to return upon project completion or the move occurs before the program participant is provided written notice offering the program participant an opportunity to occupy a suitable, decent, safe, and sanitary dwelling in the same building or complex upon project completion under reasonable terms and conditions. Such reasonable terms and conditions must include a lease (or occupancy agreement, as applicable) consistent with Continuum of Care program requirements, including a monthly rent or occupancy charge and monthly utility costs that does not exceed the maximum amounts established in § 578.77; or

(B) The program participant is required to relocate temporarily, does not return to the building or complex, and any one of the following situations occurs:

(*1*) The program participant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation;

(*2*) The program participant is not eligible to return to the building or complex upon project completion; or

(*3*) Other conditions of the temporary relocation are not reasonable; or

(C) The program participant is required to move to another unit in the same building or complex, and any one of the following situations occurs:

(*1*) The program participant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move;

(*2*) The program participant is not eligible to remain in the building or complex upon project completion; or

(*3*) Other conditions of the move are not reasonable.

(iii) Notwithstanding the provisions of paragraph (c)(2)(i) or (ii) of this section, a person does not qualify as a ''displaced person'' if:

(A) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement; the eviction complied with applicable federal, State, or local requirements (see § 578.91); and the recipient or subrecipient determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(B) The person moved into the property after the submission of the application but, before signing a lease or occupancy agreement and commencing occupancy, was provided written notice of the project's possible impact on the person (*e.g.,* the person may be displaced, temporarily relocated, or incur a rent increase) and the fact that the person would not qualify as a ''displaced person'' (or for any relocation assistance provided under this section), as a result of the project;

(C) The person is ineligible under 49 CFR 24.2(a)(9)(ii));

(D) The person is a program participant occupying transitional housing or permanent housing assisted under Title IV of the Act who must move as a direct result of the length-of-occupancy restriction under § 578.79; or

(E) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(iv) The recipient may request, at any time, HUD's determination of whether a displacement is or would be covered under this section.

(3) *Initiation of negotiations.* For purposes of determining the formula for computing replacement housing payment assistance to be provided to a displaced person pursuant to this section, if the displacement is a direct result of privately undertaken rehabilitation, demolition, or acquisition of the real property, ''initiation of negotiations'' means the execution of the agreement between the recipient and the subrecipient, or between the recipient (or subrecipient, as applicable) and the person owning or controlling the property. In the case of an option contract to acquire property, the initiation of negotiations does not become effective until execution of a written agreement that creates a legally enforceable commitment to proceed with the purchase, such as a purchase agreement.

(d) *Real property acquisition requirements.* Except for acquisitions described in 49 CFR 24.101(b)(1) through (5), the URA and the requirements of 49 CFR part 24, subpart B apply to any acquisition of real property for a project where there are Continuum of Care funds in any part of the project costs.

(e) *Appeals.* A person who disagrees with the recipient's (or subrecipient's, if applicable) determination concerning whether the person qualifies as a displaced person, or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the recipient (see 49 CFR 24.10). A low-income person who is dissatisfied with the recipient's determination on his or her appeal may submit a written request for review of that determination to the local HUD field office.

§ 578.85 Timeliness standards.

(a) *In general.* Recipients must initiate approved activities and projects promptly.

(b) *Construction activities.* Recipients of funds for rehabilitation or new construction must meet the following standards:

(1) Construction activities must begin within 9 months of the later of signing of the grant agreement or of signing an addendum to the grant agreement authorizing use of grant funds for the project.

(2) Construction activities must be completed within 24 months of signing the grant agreement.

(3) Activities that cannot begin until after construction activities are completed must begin within 3 months of the date that construction activities are completed.

(c) *Distribution.* A recipient that receives funds through this part must:

(1) Distribute the funds to subrecipients (in advance of expenditures by the subrecipients);

(2) Distribute the appropriate portion of the funds to a subrecipient no later than 45 days after receiving an approvable request for such distribution from the subrecipient; and

(3) Draw down funds at least once per quarter of the program year, after eligible activities commence.

§ 578.87 Limitation on use of funds.

(a) *Maintenance of effort.* No assistance provided under this part (or any State or local government funds used to supplement this assistance) may be used to replace State or local funds previously used, or designated for use, to assist homeless persons.

(b) *Faith-based activities.* (1) *Equal treatment of program participants and program beneficiaries.* (i) *Program participants.* Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the Continuum of Care program. Neither the Federal Government nor a State or local government receiving funds under the Continuum of Care program shall discriminate against an organization on the basis of the organization's religious character or affiliation. Recipients and subrecipients of program funds shall not, in providing program assistance, discriminate against a program participant or prospective program participant on the basis of religion or religious belief.

(ii) *Beneficiaries.* In providing services supported in whole or in part with federal financial assistance, and in their outreach activities related to such services, program participants shall not discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

(2) *Separation of explicitly religious activities.* Recipients and subrecipients of Continuum of Care funds that engage in explicitly religious activities, including activities that involve overt religious content such as worship, religious instruction, or proselytization, must perform such activities and offer such services outside of programs that are supported with federal financial assistance separately, in time or location, from the programs or services funded under this part, and participation in any such explicitly religious activities must be voluntary for the program beneficiaries of the HUD-funded programs or services.

(3) *Religious identity.* A faith-based organization that is a recipient or subrecipient of Continuum of Care program funds is eligible to use such funds as provided under the regulations of this part without impairing its independence, autonomy, expression of religious beliefs, or religious character. Such organization will retain its independence from federal, State, and local government, and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use direct program funds to support or engage in any explicitly religious activities, including activities that involve overt religious content, such as worship, religious instruction, or proselytization, or any manner prohibited by law. Among other things, faith-based organizations may use space in their facilities to provide program-funded services, without removing or altering religious art, icons, scriptures, or other religious symbols. In addition, a Continuum of Care program-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(4) *Alternative provider.* If a program participant or prospective program participant of the Continuum of Care program supported by HUD objects to the religious character of an organization that provides services under the program, that organization shall, within a reasonably prompt time after the objection, undertake reasonable efforts to identify and refer the program participant to an alternative provider to which the prospective program participant has no objection. Except for services provided by telephone, the Internet, or similar means, the referral must be to an alternate provider in reasonable geographic proximity to the organization making the referral. In making the referral, the organization shall comply with applicable privacy laws and regulations. Recipients and subrecipients shall document any objections from program participants and prospective program participants and any efforts to refer such participants to alternative providers in accordance with the requirements of § 578.103(a)(13). Recipients shall ensure that all subrecipient agreements make organizations receiving program funds aware of these requirements.

(5) *Structures.* Program funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for explicitly religious activities. Program funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. When a structure is used for both eligible and explicitly religious activities, program funds may not exceed the cost of those portions of the acquisition, new construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to the Continuum of Care program. Sanctuaries, chapels, or other rooms that a Continuum of Care program-funded religious congregation uses as its principal place of worship, however, are ineligible for Continuum of Care program-funded improvements. Disposition of real property after the term of the grant, or any change in the use of the property during the term of the grant, is subject to governmentwide regulations governing real property disposition (see 24 CFR parts 84 and 85).

(6) *Supplemental funds.* If a State or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds.

(c) *Restriction on combining funds.* In a single structure or housing unit, the following types of assistance may not be combined:

(1) Leasing and acquisition, rehabilitation, or new construction;

(2) Tenant-based rental assistance and acquisition, rehabilitation, or new construction;

(3) Short- or medium-term rental assistance and acquisition, rehabilitation, or new construction;

(4) Rental assistance and leasing; or

(5) Rental assistance and operating.

(d) *Program fees.* Recipients and subrecipients may not charge program participants program fees.

§ 578.89 Limitation on use of grant funds to serve persons defined as homeless under other federal laws.

(a) *Application requirement.* Applicants that intend to serve unaccompanied youth and families with children and youth defined as homeless under other federal laws in paragraph (3) of the homeless definition in § 576.2 must demonstrate in their application, to HUD's satisfaction, that the use of grant funds to serve such persons is an equal or greater priority than serving persons defined as homeless under paragraphs (1), (2), and (4) of the

definition of homeless in § 576.2. To demonstrate that it is of equal or greater priority, applicants must show that it is equally or more cost effective in meeting the overall goals and objectives of the plan submitted under section 427(b)(1)(B) of the Act, especially with respect to children and unaccompanied youth.

(b) *Limit.* No more than 10 percent of the funds awarded to recipients within a single Continuum of Care's geographic area may be used to serve such persons.

(c) *Exception.* The 10 percent limitation does not apply to Continuums in which the rate of homelessness, as calculated in the most recent point-in-time count, is less than one-tenth of one percent of the total population.

§ 578.91 Termination of assistance to program participants.

(a) *Termination of assistance.* The recipient or subrecipient may terminate assistance to a program participant who violates program requirements or conditions of occupancy. Termination under this section does not bar the recipient or subrecipient from providing further assistance at a later date to the same individual or family.

(b) *Due process.* In terminating assistance to a program participant, the recipient or subrecipient must provide a formal process that recognizes the rights of individuals receiving assistance under the due process of law. This process, at a minimum, must consist of:

(1) Providing the program participant with a written copy of the program rules and the termination process before the participant begins to receive assistance;

(2) Written notice to the program participant containing a clear statement of the reasons for termination;

(3) A review of the decision, in which the program participant is given the opportunity to present written or oral objections before a person other than the person (or a subordinate of that person) who made or approved the termination decision; and

(4) Prompt written notice of the final decision to the program participant.

(c) *Hard-to-house populations.* Recipients and subrecipients that are providing permanent supportive housing for hard-to-house populations of homeless persons must exercise judgment and examine all extenuating circumstances in determining when violations are serious enough to warrant termination so that a program participant's assistance is terminated only in the most severe cases.

§ 578.93 Fair Housing and Equal Opportunity.

(a) *Nondiscrimination and equal opportunity requirements.* The nondiscrimination and equal opportunity requirements set forth in 24 CFR 5.105(a) are applicable.

(b) *Housing for specific subpopulations.* Recipients and subrecipients may exclusively serve a particular homeless subpopulation in transitional or permanent housing if the housing addresses a need identified by the Continuum of Care for the geographic area and meets one of the following:

(1) The housing may be limited to one sex where such housing consists of a single structure with shared bedrooms or bathing facilities such that the considerations of personal privacy and the physical limitations of the configuration of the housing make it appropriate for the housing to be limited to one sex;

(2) The housing may be limited to a specific subpopulation, so long as admission does not discriminate against any protected class under federal nondiscrimination laws in 24 CFR 5.105 (*e.g.,* the housing may be limited to homeless veterans, victims of domestic violence and their children, or chronically homeless persons and families).

(3) The housing may be limited to families with children.

(4) If the housing has in residence at least one family with a child under the age of 18, the housing may exclude registered sex offenders and persons with a criminal record that includes a violent crime from the project so long as the child resides in the housing.

(5) Sober housing may exclude persons who refuse to sign an occupancy agreement or lease that prohibits program participants from possessing, using, or being under the influence of illegal substances and/or alcohol on the premises.

(6) If the housing is assisted with funds under a federal program that is limited by federal statute or Executive Order to a specific subpopulation, the housing may be limited to that subpopulation (*e.g.,* housing also assisted with funding from the Housing Opportunities for Persons with AIDS program under 24 CFR part 574 may be limited to persons with acquired immunodeficiency syndrome or related diseases).

(7) Recipients may limit admission to or provide a preference for the housing to subpopulations of homeless persons and families who need the specialized supportive services that are provided in the housing (*e.g.,* substance abuse addiction treatment, domestic violence services, or a high intensity package designed to meet the needs of hard-to-reach homeless persons). While the housing may offer services for a particular type of disability, no otherwise eligible individuals with disabilities or families including an individual with a disability, who may benefit from the services provided may be excluded on the grounds that they do not have a particular disability.

(c) *Affirmatively furthering fair housing.* A recipient must implement its programs in a manner that affirmatively furthers fair housing, which means that the recipient must:

(1) Affirmatively market their housing and supportive services to eligible persons regardless of race, color, national origin, religion, sex, age, familial status, or handicap who are least likely to apply in the absence of special outreach, and maintain records of those marketing activities;

(2) Where a recipient encounters a condition or action that impedes fair housing choice for current or prospective program participants, provide such information to the jurisdiction that provided the certification of consistency with the Consolidated Plan; and

(3) Provide program participants with information on rights and remedies available under applicable federal, State and local fair housing and civil rights laws.

(d) *Accessibility and integrative housing and services for persons with disabilities.* Recipients and subrecipients must comply with the accessibility requirements of the Fair Housing Act (24 CFR part 100), Section 504 of the Rehabilitation Act of 1973 (24 CFR part 8), and Titles II and III of the Americans with Disabilities Act, as applicable (28 CFR parts 35 and 36). In accordance with the requirements of 24 CFR 8.4(d), recipients must ensure that their program's housing and supportive services are provided in the most integrated setting appropriate to the needs of persons with disabilities.

(e) *Prohibition against involuntary family separation.* The age and gender of a child under age 18 must not be used as a basis for denying any family's admission to a project that receives funds under this part.

§ 578.95 Conflicts of interest.

(a) *Procurement.* For the procurement of property (goods, supplies, or equipment) and services, the recipient and its subrecipients must comply with the codes of conduct and conflict-of-interest requirements under 24 CFR 85.36 (for governments) and 24 CFR

84.42 (for private nonprofit organizations).

(b) *Continuum of Care board members.* No Continuum of Care board member may participate in or influence discussions or resulting decisions concerning the award of a grant or other financial benefits to the organization that the member represents.

(c) *Organizational conflict.* An organizational conflict of interest arises when, because of activities or relationships with other persons or organizations, the recipient or subrecipient is unable or potentially unable to render impartial assistance in the provision of any type or amount of assistance under this part, or when a covered person's, as in paragraph (d)(1) of this section, objectivity in performing work with respect to any activity assisted under this part is or might be otherwise impaired. Such an organizational conflict would arise when a board member of an applicant participates in decision of the applicant concerning the award of a grant, or provision of other financial benefits, to the organization that such member represents. It would also arise when an employee of a recipient or subrecipient participates in making rent reasonableness determinations under § 578.49(b)(2) and § 578.51(g) and housing quality inspections of property under § 578.75(b) that the recipient, subrecipient, or related entity owns.

(d) *Other conflicts.* For all other transactions and activities, the following restrictions apply:

(1) No covered person, meaning a person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient or its subrecipients and who exercises or has exercised any functions or responsibilities with respect to activities assisted under this part, or who is in a position to participate in a decision-making process or gain inside information with regard to activities assisted under this part, may obtain a financial interest or benefit from an assisted activity, have a financial interest in any contract, subcontract, or agreement with respect to an assisted activity, or have a financial interest in the proceeds derived from an assisted activity, either for him or herself or for those with whom he or she has immediate family or business ties, during his or her tenure or during the one-year period following his or her tenure.

(2) *Exceptions.* Upon the written request of the recipient, HUD may grant an exception to the provisions of this section on a case-by-case basis, taking into account the cumulative effects of the criteria in paragraph (d)(2)(ii) of this section, provided that the recipient has satisfactorily met the threshold requirements of paragraph (d)(2)(ii) of this section.

(i) *Threshold requirements.* HUD will consider an exception only after the recipient has provided the following documentation:

(A) Disclosure of the nature of the conflict, accompanied by a written assurance, if the recipient is a government, that there has been public disclosure of the conflict and a description of how the public disclosure was made; and if the recipient is a private nonprofit organization, that the conflict has been disclosed in accordance with their written code of conduct or other conflict-of-interest policy; and

(B) An opinion of the recipient's attorney that the interest for which the exception is sought would not violate State or local law, or if the subrecipient is a private nonprofit organization, the exception would not violate the organization's internal policies.

(ii) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the recipient has satisfactorily met the threshold requirements under paragraph (c)(3)(i) of this section, HUD must conclude that the exception will serve to further the purposes of the Continuum of Care program and the effective and efficient administration of the recipient's or subrecipient's project, taking into account the cumulative effect of the following factors, as applicable:

(A) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project that would otherwise not be available;

(B) Whether an opportunity was provided for open competitive bidding or negotiation;

(C) Whether the affected person has withdrawn from his or her functions, responsibilities, or the decision-making process with respect to the specific activity in question;

(D) Whether the interest or benefit was present before the affected person was in the position described in paragraph (c)(1) of this section;

(E) Whether undue hardship will result to the recipient, the subrecipient, or the person affected, when weighed against the public interest served by avoiding the prohibited conflict;

(F) Whether the person affected is a member of a group or class of persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class; and

(G) Any other relevant considerations.

§ 578.97 Program income.

(a) *Defined.* Program income is the income received by the recipient or subrecipient directly generated by a grant-supported activity.

(b) *Use.* Program income earned during the grant term shall be retained by the recipient, and added to funds committed to the project by HUD and the recipient, used for eligible activities in accordance with the requirements of this part. Costs incident to the generation of program income may be deducted from gross income to calculate program income, provided that the costs have not been charged to grant funds.

(c) *Rent and occupancy charges.* Rents and occupancy charges collected from program participants are program income. In addition, rents and occupancy charges collected from residents of transitional housing may be reserved, in whole or in part, to assist the residents from whom they are collected to move to permanent housing.

§ 578.99 Applicability of other federal requirements.

In addition to the requirements set forth in 24 CFR part 5, use of assistance provided under this part must comply with the following federal requirements:

(a) *Environmental review.* Activities under this part are subject to environmental review by HUD under 24 CFR part 50 as noted in § 578.31.

(b) *Section 6002 of the Solid Waste Disposal Act.* State agencies and agencies of a political subdivision of a state that are using assistance under this part for procurement, and any person contracting with such an agency with respect to work performed under an assisted contract, must comply with the requirements of Section 6003 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. In accordance with Section 6002, these agencies and persons must:

(1) Procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired in the preceding fiscal year exceeded $10,000;

(2) Procure solid waste management services in a manner that maximizes energy and resource recovery; and

(3) Must have established an affirmative procurement program for the procurement of recovered materials identified in the EPA guidelines.

(c) *Transparency Act Reporting.* Section 872 of the Duncan Hunter Defense Appropriations Act of 2009, and additional requirements published by the Office of Management and Budget (OMB), requires recipients to report subawards made either as pass-through awards, subrecipient awards, or vendor awards in the Federal Government Web site *www.fsrs.gov* or its successor system. The reporting of award and subaward information is in accordance with the requirements of the Federal Financial Assistance Accountability and Transparency Act of 2006, as amended by section 6202 of Public Law 110–252 and in OMB Policy Guidance issued to the federal agencies on September 14, 2010 (75 FR 55669).

(d) *The Coastal Barrier Resources Act of 1982* (16 U.S.C. 3501 *et seq.*) may apply to proposals under this part, depending on the assistance requested.

(e) *Applicability of OMB Circulars.* The requirements of 24 CFR part 85—Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments and 2 CFR part 225—Cost Principles for State, Local and Indian Tribal Governments (OMB Circular A–87)—apply to governmental recipients and subrecipients except where inconsistent with the provisions of this part. The requirements of 24 CFR part 84—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations; 2 CFR part 230—Cost Principles for Non-Profit Organizations (OMB Circular A–122); and 2 CFR part 220—Cost Principles for Education Institutions apply to the nonprofit recipients and subrecipients, except where inconsistent with the provisions of the McKinney-Vento Act or this part.

(f) *Lead-based paint.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at 24 CFR part 35, subparts A, B, H, J, K, M, and R apply to activities under this program.

(g) *Audit.* Recipients and subrecipients must comply with the audit requirements of OMB Circular A–133, ''Audits of States, Local Governments, and Non-profit Organizations.''

(h) *Davis-Bacon Act.* The provisions of the Davis-Bacon Act do not apply to this program.

(i) *Section 3 of the Housing and Urban Development Act.* Recipients and subrecipients must, as applicable, comply with Section 3 of the Housing and Urban Development Act of 1968 and its implementing regulations at 24 CFR part 135, as applicable.

Subpart G—Grant Administration

§ 578.101 Technical assistance.

(a) *Purpose.* The purpose of Continuum of Care technical assistance is to increase the effectiveness with which Continuums of Care, eligible applicants, recipients, subrecipients, and UFAs implement and administer their Continuum of Care planning process; improve their capacity to prepare applications; prevent the separation of families in projects funded under the Emergency Solutions Grants, Continuum of Care, and Rural Housing Stability Assistance programs; and adopt and provide best practices in housing and services for persons experiencing homelessness.

(b) *Defined.* Technical assistance means the transfer of skills and knowledge to entities that may need, but do not possess, such skills and knowledge. The assistance may include, but is not limited to, written information such as papers, manuals, guides, and brochures; person-to-person exchanges; web-based curriculums, training and Webinars, and their costs.

(c) *Set-aside.* HUD may set aside funds annually to provide technical assistance, either directly by HUD staff or indirectly through third-party providers.

(d) *Awards.* From time to time, as HUD determines the need, HUD may advertise and competitively select providers to deliver technical assistance. HUD may enter into contracts, grants, or cooperative agreements, when necessary, to implement the technical assistance. HUD may also enter into agreements with other federal agencies for awarding the technical assistance funds.

§ 578.103 Recordkeeping requirements.

(a) *In general.* The recipient and its subrecipients must establish and maintain standard operating procedures for ensuring that Continuum of Care program funds are used in accordance with the requirements of this part and must establish and maintain sufficient records to enable HUD to determine whether the recipient and its subrecipients are meeting the requirements of this part, including:

(1) *Continuum of Care records.* Each collaborative applicant must keep the following documentation related to establishing and operating a Continuum of Care:

(i) Evidence that the Board selected by the Continuum of Care meets the requirements of § 578.5(b);

(ii) Evidence that the Continuum has been established and operated as set forth in subpart B of this part, including published agendas and meeting minutes, an approved Governance Charter that is reviewed and updated annually, a written process for selecting a board that is reviewed and updated at least once every 5 years, evidence required for designating a single HMIS for the Continuum, and monitoring reports of recipients and subrecipients;

(iii) Evidence that the Continuum has prepared the application for funds as set forth in § 578.9, including the designation of the eligible applicant to be the collaborative applicant.

(2) *Unified funding agency records.* UFAs that requested grant amendments from HUD, as set forth in § 578.105, must keep evidence that the grant amendment was approved by the Continuum. This evidence may include minutes of meetings at which the grant amendment was discussed and approved.

(3) *Homeless status.* Acceptable evidence of the homeless as status is set forth in 24 CFR 576.500(b).

(4) *At risk of homelessness status.* For those recipients and subrecipients that serve persons at risk of homelessness, the recipient or subrecipient must keep records that establish ''at risk of homelessness'' status of each individual or family who receives Continuum of Care homelessness prevention assistance. Acceptable evidence is found in 24 CFR 576.500(c).

(5) *Records of reasonable belief of imminent threat of harm.* For each program participant who moved to a different Continuum of Care due to imminent threat of further domestic violence, dating violence, sexual assault, or stalking under § 578.51(c)(3), each recipient or subrecipient of assistance under this part must retain:

(i) Documentation of the original incidence of domestic violence, dating violence, sexual assault, or stalking, only if the original violence is not already documented in the program participant's case file. This may be written observation of the housing or service provider; a letter or other documentation from a victim service provider, social worker, legal assistance provider, pastoral counselor, mental health provider, or other professional from whom the victim has sought assistance; medical or dental records; court records or law enforcement records; or written certification by the

program participant to whom the violence occurred or by the head of household.

(ii) Documentation of the reasonable belief of imminent threat of further domestic violence, dating violence, or sexual assault or stalking, which would include threats from a third-party, such as a friend or family member of the perpetrator of the violence. This may be written observation by the housing or service provider; a letter or other documentation from a victim service provider, social worker, legal assistance provider, pastoral counselor, mental health provider, or other professional from whom the victim has sought assistance; current restraining order; recent court order or other court records; law enforcement report or records; communication records from the perpetrator of the violence or family members or friends of the perpetrator of the violence, including emails, voicemails, text messages, and social media posts; or a written certification by the program participant to whom the violence occurred or the head of household.

(6) *Annual income.* For each program participant who receives housing assistance where rent or an occupancy charge is paid by the program participant, the recipient or subrecipient must keep the following documentation of annual income:

(i) Income evaluation form specified by HUD and completed by the recipient or subrecipient; and

(ii) Source documents (*e.g.,* most recent wage statement, unemployment compensation statement, public benefits statement, bank statement) for the assets held by the program participant and income received before the date of the evaluation;

(iii) To the extent that source documents are unobtainable, a written statement by the relevant third party (*e.g.,* employer, government benefits administrator) or the written certification by the recipient's or subrecipient's intake staff of the oral verification by the relevant third party of the income the program participant received over the most recent period; or

(iv) To the extent that source documents and third-party verification are unobtainable, the written certification by the program participant of the amount of income that the program participant is reasonably expected to receive over the 3-month period following the evaluation.

(7) *Program participant records.* In addition to evidence of ''homeless'' status or ''at-risk-of-homelessness'' status, as applicable, the recipient or subrecipient must keep records for each program participant that document:

(i) The services and assistance provided to that program participant, including evidence that the recipient or subrecipient has conducted an annual assessment of services for those program participants that remain in the program for more than a year and adjusted the service package accordingly, and including case management services as provided in § 578.37(a)(1)(ii)(F); and

(ii) Where applicable, compliance with the termination of assistance requirement in § 578.91.

(8) *Housing standards.* The recipient or subrecipient must retain documentation of compliance with the housing standards in § 578.75(b), including inspection reports.

(9) *Services provided.* The recipient or subrecipient must document the types of supportive services provided under the recipient's program and the amounts spent on those services. The recipient or subrecipient must keep record that these records were reviewed at least annually and that the service package offered to program participants was adjusted as necessary.

(10) *Match.* The recipient must keep records of the source and use of contributions made to satisfy the match requirement in § 578.73. The records must indicate the grant and fiscal year for which each matching contribution is counted. The records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services must be supported by the same methods that the organization uses to support the allocation of regular personnel costs.

(11) *Conflicts of interest.* The recipient and its subrecipients must keep records to show compliance with the organizational conflict-of-interest requirements in § 578.95(c), the Continuum of Care board conflict-of-interest requirements in § 578.95(b), the other conflict requirements in § 578.95(d), a copy of the personal conflict-of-interest policy developed and implemented to comply with the requirements in § 578.95, and records supporting exceptions to the personal conflict-of-interest prohibitions.

(12) *Homeless participation.* The recipient or subrecipient must document its compliance with the homeless participation requirements under § 578.75(g).

(13) *Faith-based activities.* The recipient and its subrecipients must document their compliance with the faith-based activities requirements under § 578.87(b).

(14) *Affirmatively Furthering Fair Housing.* Recipients and subrecipients must maintain copies of their marketing, outreach, and other materials used to inform eligible persons of the program to document compliance with the requirements in § 578.93(c).

(15) *Other federal requirements.* The recipient and its subrecipients must document their compliance with the federal requirements in § 578.99, as applicable.

(16) *Subrecipients and contractors.* (i) The recipient must retain copies of all solicitations of and agreements with subrecipients, records of all payment requests by and dates of payments made to subrecipients, and documentation of all monitoring and sanctions of subrecipients, as applicable.

(ii) The recipient must retain documentation of monitoring subrecipients, including any monitoring findings and corrective actions required.

(iii) The recipient and its subrecipients must retain copies of all procurement contracts and documentation of compliance with the procurement requirements in 24 CFR 85.36 and 24 CFR part 84.

(17) *Other records specified by HUD.* The recipient and subrecipients must keep other records specified by HUD.

(b) *Confidentiality.* In addition to meeting the specific confidentiality and security requirements for HMIS data, the recipient and its subrecipients must develop and implement written procedures to ensure:

(1) All records containing protected identifying information of any individual or family who applies for and/or receives Continuum of Care assistance will be kept secure and confidential;

(2) The address or location of any family violence project assisted with Continuum of Care funds will not be made public, except with written authorization of the person responsible for the operation of the project; and

(3) The address or location of any housing of a program participant will not be made public, except as provided under a preexisting privacy policy of the recipient or subrecipient and consistent with State and local laws regarding privacy and obligations of confidentiality;

(c) *Period of record retention.* All records pertaining to Continuum of Care funds must be retained for the greater of 5 years or the period specified below. Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(1) Documentation of each program participant's qualification as a family or individual at risk of homelessness or as a homeless family or individual and other program participant records must

be retained for 5 years after the expenditure of all funds from the grant under which the program participant was served; and

(2) Where Continuum of Care funds are used for the acquisition, new construction, or rehabilitation of a project site, records must be retained until 15 years after the date that the project site is first occupied, or used, by program participants.

(d) *Access to records.* (1) *Federal Government rights.* Notwithstanding the confidentiality procedures established under paragraph (b) of this section, HUD, the HUD Office of the Inspector General, and the Comptroller General of the United States, or any of their authorized representatives, must have the right of access to all books, documents, papers, or other records of the recipient and its subrecipients that are pertinent to the Continuum of Care grant, in order to make audits, examinations, excerpts, and transcripts. These rights of access are not limited to the required retention period, but last as long as the records are retained.

(2) *Public rights.* The recipient must provide citizens, public agencies, and other interested parties with reasonable access to records regarding any uses of Continuum of Care funds the recipient received during the preceding 5 years, consistent with State and local laws regarding privacy and obligations of confidentiality and confidentiality requirements in this part.

(e) *Reports.* In addition to the reporting requirements in 24 CFR parts 84 and 85, the recipient must collect and report data on its use of Continuum of Care funds in an Annual Performance Report (APR), as well as in any additional reports as and when required by HUD. Projects receiving grant funds only for acquisition, rehabilitation, or new construction must submit APRs for 15 years from the date of initial occupancy or the date of initial service provision, unless HUD provides an exception under § 578.81(e).

§ 578.105 Grant and project changes.

(a) *For Unified Funding Agencies and Continuums having only one recipient.* (1) The recipient may not make any significant changes without prior HUD approval, evidenced by a grant amendment signed by HUD and the recipient. Significant grant changes include a change of recipient, a shift in a single year of more than 10 percent of the total amount awarded under the grant for one approved eligible activity category to another activity and a permanent change in the subpopulation served by any one project funded under the grant, as well as a permanent proposed reduction in the total number of units funded under the grant.

(2) Approval of substitution of the recipient is contingent on the new recipient meeting the capacity criteria in the NOFA under which the grant was awarded, or the most recent NOFA. Approval of shifting funds between activities and changing subpopulations is contingent on the change being necessary to better serve eligible persons within the geographic area and ensuring that the priorities established under the NOFA in which the grant was originally awarded, or the most recent NOFA, are met.

(b) *For Continuums having more than one recipient.* (1) The recipients or subrecipients may not make any significant changes to a project without prior HUD approval, evidenced by a grant amendment signed by HUD and the recipient. Significant changes include a change of recipient, a change of project site, additions or deletions in the types of eligible activities approved for a project, a shift of more than 10 percent from one approved eligible activity to another, a reduction in the number of units, and a change in the subpopulation served.

(2) Approval of substitution of the recipient is contingent on the new recipient meeting the capacity criteria in the NOFA under which the grant was awarded, or the most recent NOFA. Approval of shifting funds between activities and changing subpopulations is contingent on the change being necessary to better serve eligible persons within the geographic area and ensuring that the priorities established under the NOFA in which the grant was originally awarded, or the most recent NOFA, are met.

(c) *Documentation of changes not requiring a grant amendment.* Any other changes to an approved grant or project must be fully documented in the recipient's or subrecipient's records.

§ 578.107 Sanctions.

(a) *Performance reviews.* (1) HUD will review the performance of each recipient in carrying out its responsibilities under this part, with or without prior notice to the recipient. In conducting performance reviews, HUD will rely primarily on information obtained from the records and reports from the recipient and subrecipients, as well as information from on-site monitoring, audit reports, and information generated from HUD's financial and reporting systems (*e.g.,* LOCCS and e-snaps) and HMIS. Where applicable, HUD may also consider relevant information pertaining to the recipient's performance gained from other sources, including citizen comments, complaint determinations, and litigation.

(2) If HUD determines preliminarily that the recipient or one of its subrecipients has not complied with a program requirement, HUD will give the recipient notice of this determination and an opportunity to demonstrate, within the time prescribed by HUD and on the basis of substantial facts and data that the recipient has complied with the requirements. HUD may change the method of payment to require the recipient to submit documentation before payment and obtain HUD's prior approval each time the recipient draws down funds. To obtain prior approval, the recipient may be required to manually submit its payment requests and supporting documentation to HUD in order to show that the funds to be drawn down will be expended on eligible activities in accordance with all program requirements.

(3) If the recipient fails to demonstrate to HUD's satisfaction that the activities were carried out in compliance with program requirements, HUD may take one or more of the remedial actions or sanctions specified in paragraph (b) of this section.

(b) *Remedial actions and sanctions.* Remedial actions and sanctions for a failure to meet a program requirement will be designed to prevent a continuation of the deficiency; to mitigate, to the extent possible, its adverse effects or consequences; and to prevent its recurrence.

(1) HUD may instruct the recipient to submit and comply with proposals for action to correct, mitigate, and prevent noncompliance with program requirements, including:

(i) Preparing and following a schedule of actions for carrying out activities and projects affected by the noncompliance, including schedules, timetables, and milestones necessary to implement the affected activities and projects;

(ii) Establishing and following a management plan that assigns responsibilities for carrying out the remedial actions;

(iii) Canceling or revising activities or projects likely to be affected by the noncompliance, before expending grant funds for them;

(iv) Reprogramming grant funds that have not yet been expended from affected activities or projects to other eligible activities or projects;

(v) Suspending disbursement of grant funds for some or all activities or projects;

(vi) Reducing or terminating the remaining grant of a subrecipient and either reallocating those funds to other

subrecipients or returning funds to HUD; and

(vii) Making matching contributions before or as draws are made from the recipient's grant.

(2) HUD may change the method of payment to a reimbursement basis.

(3) HUD may suspend payments to the extent HUD determines necessary to preclude the further expenditure of funds for affected activities or projects.

(4) HUD may continue the grant with a substitute recipient of HUD's choosing.

(5) HUD may deny matching credit for all or part of the cost of the affected activities and require the recipient to make further matching contributions to make up for the contribution determined to be ineligible.

(6) HUD may require the recipient to reimburse the recipient's line of credit in an amount equal to the funds used for the affected activities.

(7) HUD may reduce or terminate the remaining grant of a recipient.

(8) HUD may condition a future grant.

(9) HUD may take other remedies that are legally available.

(c) *Recipient sanctions.* If the recipient determines that a subrecipient is not complying with a program requirement or its subrecipient agreement, the recipient must take one of the actions listed in paragraphs (a) and (b) of this section.

(d) *Deobligation.* HUD may deobligate funds for the following reasons:

(1) If the timeliness standards in § 578.85 are not met;

(2) If HUD determines that delays completing construction activities for a project will mean that the funds for other funded activities cannot reasonably be expected to be expended for eligible costs during the remaining term of the grant;

(3) If the actual total cost of acquisition, rehabilitation, or new construction for a project is less than the total cost agreed to in the grant agreement;

(4) If the actual annual leasing costs, operating costs, supportive services costs, rental assistance costs, or HMIS costs are less than the total cost agreed to in the grant agreement for a one-year period;

(5) Program participants have not moved into units within 3 months of the time that the units are available for occupancy; and

(6) The grant agreement may set forth in detail other circumstances under which funds may be deobligated and other sanctions may be imposed.

§ 578.109 Closeout.

(a) *In general.* Grants will be closed out in accordance with the requirements of 24 CFR parts 84 and 85, and closeout procedures established by HUD.

(b) *Reports.* Applicants must submit all reports required by HUD no later than 90 days from the date of the end of the project's grant term.

(c) *Closeout agreement.* Any obligations remaining as of the date of the closeout must be covered by the terms of a closeout agreement. The agreement will be prepared by HUD in consultation with the recipient. The agreement must identify the grant being closed out, and include provisions with respect to the following:

(1) Identification of any closeout costs or contingent liabilities subject to payment with Continuum of Care program funds after the closeout agreement is signed;

(2) Identification of any unused grant funds to be deobligated by HUD;

(3) Identification of any program income on deposit in financial institutions at the time the closeout agreement is signed;

(4) Description of the recipient's responsibility after closeout for:

(i) Compliance with all program requirements in using program income on deposit at the time the closeout agreement is signed and in using any other remaining Continuum of Care program funds available for closeout costs and contingent liabilities;

(ii) Use of real property assisted with Continuum of Care program funds in accordance with the terms of commitment and principles;

(iii) Use of personal property purchased with Continuum of Care program funds; and

(iv) Compliance with requirements governing program income received subsequent to grant closeout.

(5) Other provisions appropriate to any special circumstances of the grant closeout, in modification of or in addition to the obligations in paragraphs (c)(1) through (4) of this section.

Dated: June 28, 2012.

Mark Johnston,

Assistant Secretary for Community Planning and Development (Acting).

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