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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2014–0760; Airspace Docket No. 14–ANE–8]

RIN 2120–AA66

Revocation of Restricted Areas R–4105A and R–4105B; No Man's Land Island, MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes restricted areas R–4105A and R–4105B, No Man's Land Island, MA. The Air National Guard and U.S. Air Force informed the FAA that they no longer have a requirement for these areas. Management of the land has been transferred to the U.S. Fish and Wildlife Service.

DATES: *Effective date:* 0901 UTC, November 17, 2014.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Policy and Regulations Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

No Man's Land Island, located approximately 3 NM south of Martha's Vineyard, MA, has been used by the military as a gunnery and bombing range dating back to 1943. It was used for this purpose until 1996. In 1998, management of the Island was transferred by the military to the U.S. Fish and Wildlife Service and the Island was designated a National Wildlife Refuge.

Since restricted areas R–4105A and R–4105B, that overlie the Island, are no longer utilized, the Air National Guard reviewed its future plans and requirements and determined that no requirement remains for the airspace.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 73 by removing restricted areas R–4105A and R–4105B, No Man's Land Island, MA. The Air National Guard and the U.S. Air Force notified the FAA that they no longer require these restricted areas and requested that the airspace be returned to the National Airspace System.

Because this action removes restricted airspace that is no longer needed for military purposes and returns the airspace to the National Airspace System, I find that notice and public procedure under 5 U.S.C. 553(b) is unnecessary.

The FAA has determined that this action only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does 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 the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it returns restricted airspace that is no longer needed by the military to the National Airspace System.

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 311c. This action returns restricted airspace to the National Airspace System. It is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 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.

§ 73.41 [Amended]

■ 2. Section 73.41 is amended as follows:

* * * * *

■ 1. R–4105A No Man's Land Island, MA [Removed]

■ 2. R–4105B No Man's Land Island, MA [Removed]

Issued in Washington, DC, on October 8, 2014.

Gary A. Norek,

Manager, Airspace Policy and Regulations Group.

[FR Doc. 2014–24619 Filed 10–15–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 406

[Docket No. FAA–2014–0822; Amdt. No. 406–8]

RIN 2120–AK55

Civil Penalty Inflation Adjustment for Commercial Space Adjudications; Second Amendment

AGENCY: Federal Aviation Administration, DOT.

ACTION: Immediately adopted final rule.

SUMMARY: This final rule is the second mandatory inflation-based adjustment to the maximum civil penalty authorized for violations of the Commercial Space Launch Act of 1984, as amended. This adjustment is done to bring the authorized penalty for violations into compliance with the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996.

DATES: Effective November 17, 2014.

FOR FURTHER INFORMATION CONTACT: Alex Zektser, General Attorney, Office of the Chief Counsel, International Law, Legislation, and Regulations Division, AGC–200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3073; email *Alex.Zektser@faa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking and Applicable Statutes

The statute under which the Secretary of Transportation regulates commercial space transportation, 51 U.S.C. Subtitle V, sections 50901–50923 (chapter 509), provides for the Department of Transportation (DOT), and, through delegation, the Federal Aviation Administration (FAA) to impose civil penalties on persons who violate chapter 509, a regulation issued under chapter 509, or any term or condition of a license or permit issued or transferred under chapter 509. 51 U.S.C. 50906(h)–(i), 50917.

This rule implements the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA), Public Law (Pub. L.) 101–410, as amended by the Debt Collection Improvement Act (DCIA) of 1996, Public Law 104–134, codified at 28 U.S.C. 2461 note.

The FCPIAA and DCIA require Federal agencies to adjust minimum and maximum civil penalty amounts for inflation to preserve their deterrent impact. Under these laws, each agency must make an initial inflationary adjustment for all applicable civil monetary penalties, and further adjust these penalties at least once every four years. The agency must adjust the amount of the penalty using a strict statutory formula discussed in more detail below.

Prior Rulemakings

This rule is the FAA's second adjustment to the maximum civil penalty found in 14 CFR part 406 which governs commercial space transportation adjudications. The initial adjustment to the maximum civil penalty found in 14 CFR part 406 occurred in 2010.[1]

Background

The FCPIAA determines inflationary adjustments by increasing civil penalties by a cost-of-living adjustment (COLA). Under the FCPIAA, the COLA for each civil penalty is the percentage by which the U.S. Department of Labor's Consumer Price Index for all-urban consumers (CPI–U) for the month of June of the calendar year preceding the adjustment exceeds the CPI–U for the month of June of the calendar year in which the amount of such civil penalty was last set or adjusted pursuant to the FCPIAA. The FCPIAA contains specific rules for rounding the inflationary increase.

Method of Calculation

Section 406.9 of 14 CFR currently imposes a maximum civil penalty of $110,000 for violations of chapter 509, a regulation proscribed under chapter 509, or any term or condition of a license or permit issued or transferred under chapter 509. To determine the appropriate adjustment that must be made pursuant to the FCPIAA, we first find the CPI–U for June of the calendar year preceding the year of adjustment is determined. Because the adjustment in this case is being made in 2014, we will use the June of 2013 CPI–U, which is 233.504.[2] Next, we determine the CPI–U for June of the year the civil penalty was last adjusted. Because the civil penalty was last adjusted in 2010, we would use the CPI–U for June of 2010, which is 217.965.[3]

Next, we use the above CPI–U numbers to calculate the COLA. To do this, we subtract the CPI–U for June 2010 (217.965) from the CPI–U of June 2013 (233.504). We then divide the resulting difference (15.539) by the CPI–U for June 2010 (217.965). The resulting quotient (.07129) is then multiplied by 100 yielding a COLA of 7.129%.

To calculate the raw inflationary increase we multiply the current maximum civil penalty ($110,000) by the COLA (7.129%). This provides a raw inflation increase of $7,842. Next, we round the raw inflation amounts by the statutory rounding formula found in Section 5(a) of the FCPIAA. Determination of the proper rounding formula depends on the current amount of the civil penalty at the time the calculation is made, not the size of the raw inflationary increase. The applicable rounding formula for the existing civil penalty of $110,000 would be that "[a]ny increase . . . is rounded to the nearest . . . [m]ultiple of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000 . . ." Thus, the raw increase of $7,842 becomes $10,000 after being rounded to the nearest $10,000. Finally, the increase of $10,000 is added to the current civil penalty $110,000, resulting in an inflation-adjusted civil penalty of $120,000.

Good Cause for Not Having Notice and Comment

Under the Administrative Procedure Act, 5 U.S.C. 553(b)(B), a final rule may be issued without public notice and comment if the agency finds good cause that notice and comment are impractical, unnecessary, or contrary to public interest. Good cause exists in this case to dispense with public notice and comment because adjustments to civil penalties for inflation are required by Congress, as set forth in Section 5 of the FCPIAA, in order to maintain the deterrent effect of civil penalties and promote compliance with the law. The FCPIAA serves as a Congressional mandate and the FAA may not exercise any discretion or policy judgments. The FAA also has no discretion as to the amount of the adjustment because the amount of the adjustment is determined using a strict statutory formula. Since the FCPIAA does not provide the FAA with any discretion regarding any aspect of this rulemaking, the FAA would be unable to make any changes to this rule in response to public comment. Accordingly, public comment is unnecessary in this case.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), requires that

[1] *Civil Penalty Inflation Adjustment for Commercial Space Adjudications,* 75 FR 30690 (June 2, 2010).

[2] *See* Bureau of Labor Statistics, *CPI Detailed Report: Data for June 2013,* Table 1, which may be found at *http://www.bls.gov/cpi/cpid1306.pdf.*

[3] *See* Bureau of Labor Statistics, *CPI Detailed Report: Data for June 2010,* Table 1, which may be found at *http://www.bls.gov/cpi/cpid1006.pdf.*

the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there are no current or new requirements for information collection associated with this rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulations justify its costs. Second, the Regulatory Flexibility Act of 1980 (RFA), Public Law 96–354, codified at 5 U.S.C. 601–612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act of 1999 (Trade Act), Public Law 96–39, codified at 19 U.S.C. 2501–2581, prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the U.S. 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), codified at 2 U.S.C. 658, 1501–03, and 1531–34, 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, in any one year (adjusted for inflation).

DOT Order 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected 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 final rule. The reasoning for this determination is as follows. This rule adjusts for inflation the maximum civil penalty for violations of the Commercial Space Launch Act of 1984, to be in compliance with the Federal Civil Penalties Inflation Adjustment Act of 1990. This inflation adjustment is an economic transfer and not a social cost.

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 objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' 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 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 RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 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.

As already noted, this rule adjusts for inflation only, as required by the Federal Civil Penalties Inflation Adjustment Act of 1990. Therefore, as FAA Administrator, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39) prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. 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 final rule and determined that it would impose identical inflation adjusted civil penalties on domestic and international entities that violate 14 CFR part 406, and thus would have a neutral trade impact. Furthermore, the inflationary adjustment is a legitimate domestic objective preserving the existing deterrent impact of 51 U.S.C. subtitle V, chapter 509. Therefore, we have determined that this rule will result in a neutral impact 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 with the base year 1995) in any one 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 $151 million in lieu of $100 million.

Because this final rule only increases a civil penalty by $10,000, as required by FCPIAA, it does not contain a mandate that meets this threshold amount. Therefore, the requirements of Title II of the act do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The FAA determined that this action would not have a substantial direct effect on the States, or the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this final rule does not have federalism implications.

Environmental Analysis

FAA Order 1050.1E defines FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act (NEPA) in the absence of extraordinary circumstances. The FAA has determined this final rule qualifies for the categorical exclusion identified in Chapter 3, paragraph 312d,

and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);
2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/rulemaking/;* or
3. Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.regulations.gov.*

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact your local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. You can find out more about SBREFA on the Internet at *http://www.faa.gov/regulations-policies/rulemaking/sbre-act/.*

List of Subjects in 14 CFR Part 406

Administrative procedure and review, Commercial space transportation, Enforcement, Investigations, Penalties, Rules of adjudication.

The Amendment

In consideration of the Foregoing, the Federal Aviation Administration amends part 406 of Title 14, Code of Federal Regulations as follows:

PART 406—INVESTIGATIONS, ENFORCEMENT, AND ADMINISTRATIVE REVIEW

■ 1. The authority citation for part 406 continues to read as follows:

Authority: 51 U.S.C. 50901–50923.

■ 2. Amend § 406.9 by revising paragraph (a) to read as follows:

§ 406.9 Civil penalties.

(a) *Civil penalty liability.* Under 51 U.S.C. 50917(c), a person found by the FAA to have violated a requirement of the Act, a regulation issued under the Act, or any term or condition of a license or permit issued or transferred under the Act, is liable to the United States for a civil penalty of not more than $120,000 for each violation, as adjusted for inflation. A separate violation occurs for each day the violation continues.

* * * * *

Issued under authority provided by 49 U.S.C. 106(f) and 51 U.S.C. 50904–50905 in Washington, DC, on September 29, 2014.

Michael P. Huerta,

Administrator.

[FR Doc. 2014–24528 Filed 10–15–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 223

RIN 1510–AB27

Surety Companies Doing Business With the United States

AGENCY: Bureau of the Fiscal Service, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury, Bureau of the Fiscal Service (Treasury) administers the Federal corporate surety program. Treasury issues certificates of authority to qualified sureties to underwrite and reinsure Federal bond obligations. Bonds underwritten by Treasury-certified sureties satisfy bonding requirements, provided such bonds are accepted by the agency bond-approving official. Treasury is amending its regulation to expressly provide that an agency may decline to accept a bond underwritten by a Treasury-certified surety for cause, provided the agency satisfies the requirements specified in the final rule. Treasury is also revising the procedures it uses to adjudicate any complaint received from an agency requesting that a surety's certificate of authority be revoked.

DATES: This rule is effective December 15, 2014.

ADDRESSES: You can download this rule at the following Web site: *http://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/surety_home.htm.* You may also inspect and copy this rule at: Treasury Department Library, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Before visiting, you must call (202) 622–0990 for an appointment.

In accordance with the federal eRulemaking Initiative, the Bureau of the Fiscal Service publishes rulemaking information on *http://www.regulations.gov.*

Regulations.gov offers the public the ability to comment on, search, and view publicly available rulemaking materials, including comments received on rules.

FOR FURTHER INFORMATION CONTACT: Melvin Saunders, Manager, Surety Bond Branch, Bureau of the Fiscal Service, at (202) 874–6850 or *melvin.saunders@fiscal.treasury.gov,* or James J. Regan, Senior Counsel, Bureau of the Fiscal Service, at (202) 874–6680 or *james.regan@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION: On March 17, 2011, Treasury published a notice of proposed rulemaking (NPRM) at 76 FR 14592, requesting comment on a proposed amendment to 31 CFR part 223 (Part 223), which implements the requirements of 31 U.S.C. 9304–9308.

The NPRM proposed two main amendments to Part 223. First, under NPRM § 223.17, Treasury proposed to clarify the circumstances under which a Federal agency bond-approving official could decline to accept a bond underwritten by a Treasury-certified surety. Second, under NPRM § 223.20, Treasury proposed to clarify the procedures and standard of review to be used by Treasury in adjudicating any complaint submitted by an agency to Treasury requesting that a surety's certificate be revoked.

After consideration of the comments received, Treasury is amending its

regulation to expressly provide that an agency has discretion to decline to accept a bond underwritten by a Treasury-certified surety for cause, provided the agency satisfies the requirements specified in the final rule. Treasury is also revising the procedures it uses to adjudicate any complaint received from an agency requesting that a surety's certificate of authority be revoked.

I. Summary of Comments Received and Treasury's Responses

Treasury sought comments on all aspects of the proposed rule. Treasury received 14 comment letters from a cross-section of entities and individuals associated with the surety industry. Five of these comment letters were submitted by surety companies, four by surety trade associations, three by law firms, and two by individuals. The two individuals work for immigration bonding companies or bonding agencies, but the letters were submitted in their individual capacities.

Thirteen of the commenters submitted comments that were opposed to the NPRM, as written, with several commenters suggesting the NPRM be withdrawn. The commenters who suggested the NPRM be withdrawn expressed the opinion that the current statutes and regulations are adequate to address the collection and performance issues that are of concern to Treasury.

One comment from a national trade association representing construction subcontractors, specialty trade contractors, and suppliers, supported the NPRM. This commenter emphasized that subcontractors working on Federal construction projects ''rely on the payment bonds'' underwritten by Treasury-certified sureties to ensure their final payment. This commenter emphasized that the Federal Government's extra oversight of this issue ''will increase the value of this important payment assurance to subcontractors.''

A. Comments on Proposed § 223.17 and Treasury's Responses

1. Several commenters expressed the opinion that proposed § 223.17 conflicts with 31 U.S.C. 9305(e). Section 9305(e) provides that: ''A surety corporation providing a surety bond under section 9304 of this title [31 U.S.C. 9304] may not provide any additional bond under that section if—(1) the corporation does not pay a final judgment or order against it on the bond; and (2) no appeal or stay of the judgment or order is pending 30 days after the judgment or order is entered.'' These commenters suggest that section 9305(e) provides the only circumstances under which an agency can decline to accept a bond from a surety.

Section 223.17 does not conflict with section 9305(e). Section 9305(e) sets the statutory standard under which a surety's certificate of authority to write any additional bond for any agency is revoked by operation of law for failure to pay a final court judgment or order. In contrast, § 223.17, as articulated in the final rule, clarifies the scope of an agency's existing authority to decline to accept a particular bond or bonds from a surety.

Under 31 U.S.C. 9304(b), and its predecessor derivations, Congress expressly conditioned acceptance of a bond on the approval of a Federal agency bond-approving official. This provision authorizes agencies to decline to accept bonds underwritten by Treasury-certified sureties. In enacting this provision, Congress expressed the general intent that Treasury-certification status does not provide a guarantee to a surety that its bonds will be accepted by an agency in all cases. Federal courts have also recognized that agencies have the discretion to decline acceptance of bonds from Treasury-certified sureties. *See, e.g., Concord Casualty & Surety Co.* v. *United States,* 69 F.2d 78 (2d Cir. 1934); *American Druggists Ins. Co.* v. *Bogart,* 707 F.2d 1229 (11th Cir. 1983).

Several commenters appeared to suggest that a certificate, once granted, gives a surety the right to have its bonds approved in all cases, unless the surety's authority to write bonds is revoked by court order or judgment under 31 U.S.C. 9305(e). This view is incorrect as it fails to give effect to the intent of Congress under section 9304(b).

Moreover, a court judgment or order meeting the requirements of section 9305(e) precludes the surety from writing *any* Federal bond for *any* agency. In contrast, § 223.17 authorizes an agency official to decline bonds presented by a Treasury-certified surety to that agency for cause. The Treasury-certified surety is still authorized to present additional bonds to other agencies.

2. Several commenters expressed the view that Federal agencies often err in making administrative determinations that bond obligations are due and owing. These commenters believe that a court is the proper arbiter of bond disputes because agency administrative practices are allegedly deficient.

Treasury recognizes the importance of fair and accurate administrative processes. However, Treasury does not believe it is necessary or appropriate to require an agency to reduce every surety claim to judgment, or submit a surety revocation complaint to Treasury in every instance, in order to facilitate equitable and efficient resolution of surety performance and collection concerns at the agency level.

Under final rule § 223.17(b), a surety company is provided a series of protections before an agency can decline to accept its bonds. First, the agency must provide advance written notice to the surety and provide the surety with the opportunity to rebut the agency's reasons for declination and the opportunity to cure. Second, the agency must consider any submission by the surety and issue a written determination that the bonds should not be accepted. Third, the agency must issue a regulation pursuant to notice and comment rulemaking that articulates the agency's procedures and for cause standards for declining bonds. Treasury believes that these requirements will improve any agency practices that are allegedly deficient and will provide certified surety companies with adequate due process protections before their bonds can be declined by a particular agency.

If a surety is not satisfied with the agency bond-approving official's decision to decline bonds, the surety may petition a court of competent jurisdiction to stay or enjoin the agency's written determination to decline additional bonds from that surety. § 223.17(b)(5)(i).

3. Several commenters expressed concern that ''administratively final bond obligation'' was not defined in the NPRM for purposes of governing the exercise of agency discretion under § 223.17. One commenter suggested this lack of definition could lead to inconsistent definitions, procedures, and decisions across agencies.

Treasury believes that this determination should be left to the agency that is requiring the bond. Accordingly, final rule § 223.17(b)(3) requires the agency to define in its regulation when a bond obligation becomes administratively final under the agency's procedures.

4. Several commenters expressed concern that an agency bond-approving official could decline additional bonds based on a single bond obligation. One commenter stated the standard was coercive because it could force a surety to capitulate to the agency's demand for payment even if the surety has a good defense on a bond claim. One commenter expressed concern that the proposed rule would allow an agency to decline bonds for a ''single, immaterial, or insignificant delinquency'' rather than requiring that the declination be

limited to a situation where the surety is ''significantly delinquent either in the number of outstanding bills or dollar amounts thereof.''

Treasury expects that agencies will act in good faith when exercising their authority to decline bonds. The agency must provide the Treasury-certified surety with extensive administrative due process protections, as specified in § 223.17(b), prior to declining bonds from that surety.

5. Several commenters engaged in one agency's immigration surety bond business alleged that the agency does not afford sureties with adequate due process in determining when a bond obligation is administratively final and that the agency has a high administrative error rate in declaring bond obligations due. One commenter stated that giving that agency's bond-approving official the discretion not to accept additional bonds under the standards articulated in the proposed rule would give the agency unfettered discretion.

Treasury does not believe it would be appropriate to comment specifically on the allegations made by these commenters on a particular agency's alleged internal processes. We do emphasize, however, that Treasury believes that a fair and equitable administrative process is essential.

Our response to *Comment #2* summarizes the due process protections afforded to sureties under the final rule. The final rule ensures a fair and equitable administrative process, and expressly provides that each agency may exercise the discretion to decline additional bonds under § 223.17(b), only in accordance with the specified requirements.

6. One commenter raised a concern that permitting agencies to define additional ''for cause'' reasons to decline bonds in agency-specific regulations, as provided in proposed § 223.17, would provide extraordinary leverage to agencies that already have allegedly flawed administrative processes. Another commenter raised a concern with the proposed ''for cause'' provision because of its inherent ''lack of specificity and consistency, as well as the potential for misapplication and mis-implementation'' across disparate agencies.

''For cause'' includes circumstances when a surety has failed to pay or satisfy an administratively final bond obligation due the agency. Other ''for cause'' reasons for declining bonds will depend on the particular needs and concerns of each agency. The final rule under § 223.17(b)(3) requires an agency to issue a regulation subject to notice and comment rulemaking before declining any bonds. This requirement will ensure that surety companies have the opportunity to comment on the ''for cause'' reasons proposed by each agency.

7. Two commenters suggested the proposed rule would upset, or undermine, the surety bond contract tripartite relationship in which the surety (secondary obligor) agrees to be answerable to the obligee (Federal agency) for the debt or default of the principal (primary obligor). One of these commenters expressed concern that the proposed rule focuses on the obligation of the secondary obligor (the surety) without first affording the primary obligor (the principal) the right to have its position adjudicated. The commenter suggested this focus could yield inconsistent results if the surety satisfies the Federal agency's bond demand and the principal is required to indemnify the surety, but the principal later defeats the Federal agency's default claim in court.

The final rule in § 223.17(b)(3) requires the agency to articulate its procedures and for cause standards for declining bonds in a regulation subject to notice and comment rulemaking before it can decline bonds from a particular surety. That agency regulation must define when a bond obligation is administratively final. The terms of the final rule do not alter existing tripartite bond contract obligations, but reasonably balance the interests of the parties in determining when additional bonds presented to an agency may be declined.

8. As stated in the NPRM, Federal courts have affirmed that section 9304(b) affords agency bond-approving officials discretion to decline to accept a bond underwritten by a Treasury-certified surety, consistent with the due process standards articulated in the proposed rule. *See, e.g., Concord Casualty & Surety Co.* v. *United States,* 69 F.2d 78 (2d Cir. 1934); *American Druggists Ins. Co.* v. *Bogart,* 707 F.2d 1229 (11th Cir. 1983). One commenter stated that these cases, in dicta, merely stand for the proposition that a bond-approving official could disapprove a particular undertaking in a particular case. One commenter stated this authority is not a basis for the NPRM to authorize agencies to bar a surety on a blanket basis.

Treasury has broad administrative authority over certificate of authority matters. *See Concord,* 69 F.2d at 80–81 (The ''supervision, conduct, and responsibility'' of sureties operating under Treasury-issued certificates of authority is placed with Treasury). In the final rule, Treasury, in the exercise of its discretion, has decided that agency bond-approving officials may decline bonds from a Treasury-certified surety under section 9304(b) for cause. The agency must issue a regulation specifying the procedures and for cause standards for declining bonds. The *Concord* and *American Druggists* cases provide roadmaps for agencies to decline bonds in particular cases, in the absence of specific Treasury guidance. These cases do not limit, and in fact expressly recognize, Treasury's plenary authority to regulate certificates of authority that it issues.

9. One commenter stated that 31 U.S.C. 9305(d)(1) clearly and unambiguously provides that Treasury may revoke the authority of a surety corporation to do new business if the Secretary decides the corporation is insolvent or is in violation of sections 9304, 9305, 9306. The commenter stated that none of these three sections ''authorize a Government agency to reject a bond issued by a surety who has an outstanding unpaid bond obligation that the agency contends is due and owing.''

As explained in the discussion under Comment #1, the discretion of a Federal agency to decline additional bonds underwritten by a Treasury-certified surety, consistent with the requirements of §§ 223.16 and 223.17 in the final rule, is authorized under 31 U.S.C. 9304(b).

10. Several commenters expressed the view that the proposed amendment to part 223 is not necessary as Treasury, in the NPRM, stated it has only recognized a problem with sureties in ''anomalous and rare'' cases. One commenter expressed the view that the proposed changes are excessive and punitive to sureties. Another commenter suggested the proposed changes would create more strife by compelling litigation and parallel administrative practices. This commenter stated ''if the surety has independently investigated the merits of a claim and proceeded in a manner consistent with the outcome of its investigation [e.g., denied the agency's claim], it has acted responsibly and properly, even if it is ultimately determined in subsequent litigation that the surety's decision was incorrect.'' In general, these commenters suggested that the government has adequate recourse against sureties, as sureties are precluded from writing additional bonds if they have not paid a final judgment under the standards of 31 U.S.C. 9305(e).

In the NPRM Treasury stated that the regulatory amendment was necessary to facilitate the prompt resolution of bond disputes between Federal agencies and

sureties. Treasury noted that, in a limited number of cases, sureties appear to have simply ignored agency final decisions for extended periods of time. Treasury stated these ''anomalous and rare'' cases represented an unwelcome burden on the Treasury and the public fisc.

The NPRM proposed to address this concern. Treasury is particularly concerned with situations where a surety underwrites high-volume, low-dollar bonds, and hundreds, even thousands, of bond cases remain unresolved for extended periods of time. The commenters appear to suggest that a Treasury certificate, once granted, gives a surety the unilateral authority to decline every agency bond demand with impunity based on the surety's own internal investigations. These commenters suggest that the agency's recourse is to reduce each bond claim to a judgment; otherwise, the agency is compelled to continue doing business with that surety in all cases.

We disagree with this position. In our view, permitting an agency to decline additional bonds under certain circumstances, as provided in the final rule, may reduce litigation as the agency and surety will have the proper incentive to resolve disputes at the administrative level. Moreover, the discretion afforded to agencies under § 223.17(b) is consistent with, and gives effect to, 31 U.S.C. 9304(b).

11. One commenter expressed concern that the proposed rule would enable an agency to reject bonds from a Treasury-certified surety in accordance with standards in an agency-specific rule or regulation. Another commenter expressed concern that agency-specific standards could lead to inconsistent definitions, procedures, and decisions across agencies.

The agency regulations on declining bonds will be subject to notice and comment rulemaking. Surety companies will have the opportunity to express their concerns directly to the agencies during this process.

12. One commenter expressed concern that an agency's decision to decline payment and performance bonds on a project under proposed § 223.17, after the agency has already accepted a project bid bond underwritten by that same surety, could present contract complications, including a claim on the bid bond, because the principal may not be able to obtain a replacement surety in time.

We agree with the commenter that this sequence of events could present unintended contract complications. The final rule has been amended under § 223.17(b)(5)(ii) to provide that an agency's authority to decline bonds does not apply to otherwise acceptable payment and performance contract bonds, when the agency has already accepted a bid bond from the same surety on the particular project.

13. One commenter recommended proposed § 223.17(b)(3) be amended to require that an agency post notice of any proposed declination of bonds in the **Federal Register** within five days of the date the agency gives the surety written notice of its intention to decline bonds. This commenter also recommended that the proposed declination by the agency be posted by Treasury as an on-line supplement to Department Circular 570.

Section 223.17(b)(4), as provided in the final rule, encourages agencies ''to use best efforts to ensure that persons conducting business with the agency are aware that bonds underwritten by the particular certified company will not be accepted.'' Treasury believes each agency is in the best position to determine how this information should be provided to principals who may be seeking to do business with the agency. We do not believe it is appropriate to publish this information in Department Circular 570, as the surety will still be certified by Treasury to write bonds for any other agency.

14. One commenter asked whether the scope of an agency's authority to decline additional bonds under proposed § 223.17 is intended to permit the agency to also require the replacement of bonds previously accepted by that agency.

Section 223.17, in the final rule, is prospective and is not intended to require a principal to obtain replacement bonds that have already been accepted. In contrast, when Treasury *revokes* the authority of a surety to underwrite bonds for any agency, under 31 U.S.C. 9305(b)–(d) and 31 CFR 223.18–223.20, agencies are advised that they should secure new bonds for bonds currently in force if a significant amount of liability remains outstanding, and that continuous bonds should not be renewed.

15. Several commenters expressed concern that the proposed rule would require a surety to obtain injunctive relief in court in order to prevent the agency from declining additional bonds under the authority of § 223.17. One of these commenters expressed concern that this standard would permit an agency to impose sanctions which eliminate the obligation of the agency to prove its claim in court, *i.e.,* reduce the claim to final judgment. Another commenter recommended that the agency not be permitted to decline additional bonds until the time to seek judicial review has expired or the judicial review has been completed. Another commenter noted that the injunctive relief requirement would result in a need to file and engage in inefficient fast-track litigation.

As noted above in our response to Comment #10, Treasury is of the view that permitting an agency to decline additional bonds, subject to a court of competent jurisdiction granting the surety injunctive relief, as provided in the final rule, may reduce litigation as the agency and surety will have the proper incentive to resolve disputes at the administrative level.

16. One commenter expressed concern that the ''willful conduct'' exception in the proposed rule would provide an agency too much discretion in deciding whether to permit the surety to cure its noncompliance to avoid non-acceptance of its bonds by the agency.

Under § 223.17(b)(1)(iv), as provided in the final rule, a surety has the opportunity to cure its noncompliance to avoid non-acceptance of its bonds by the agency. The ''willful conduct'' exception under § 223.20(g), as proposed and in the final rule, whereby a surety does not have the opportunity to cure its noncompliance in specified circumstances, only applies to Treasury revocation actions. Agencies do not have authority to exercise the ''willful conduct'' cure exception.

17. One commenter suggested that an agency's proposed decision to decline bonds should be submitted to an independent Administrative Law Judge under 5 U.S.C. 556, due to what the commenter describes as the serious nature of the action, the impact on the principal and surety, costs, and potential delays.

The formal adjudication requirements under the Administrative Procedure Act only apply in cases ''required by statute to be determined on the record after an opportunity for an agency hearing.'' 5 U.S.C. 554(a) and 556(a). The authority for an agency to decline additional bonds is established under 31 U.S.C. 9304(b) and 31 CFR 223.17(b). Section 556 procedures are not required because the surety statutes, 31 U.S.C. 9304–9308, do not require a formal adjudication to be determined on the record after an opportunity for a hearing.

18. One commenter suggested the proposed rule should be amended to provide guidance on Treasury's role in assuring that the standards in the rule and in an agency's rules and processes, meet minimum due process standards.

Treasury's final rule establishes requirements that apply to all agencies that exercise discretion under

§ 223.17(b) to decline bonds from Treasury-certified sureties.

B. Comments on Proposed § 223.20 and Treasury's Responses

19. Several commenters expressed concern that under proposed § 223.20 Treasury would not conduct a *de novo* review of an agency's administratively final decision (that the surety owes a past-due bond obligation) when adjudicating the agency's complaint requesting that the surety's certificate be revoked. The NPRM specified that Treasury would review whether the agency's administratively final decision (that the surety owes a past-due bond obligation) was reasonable, based on a consideration of relevant factors, and did not involve a clear error of judgment. The commenters expressed concern this standard of review would not provide sufficient opportunity for the surety to present its case to Treasury.

Treasury has amended § 223.20(f) in the final rule to provide that revocation complaints submitted to Treasury will be adjudicated by determining whether the default is clear and whether the company's failure to pay or satisfy the bonds is based on inadequate grounds. This standard of review retains, in large part, the existing standard under current 31 CFR 223.18. This change addresses the concerns raised by these commenters, and ensures that each surety has a meaningful opportunity to present its position to Treasury before a revocation is made. *Matthews* v. *Eldridge,* 424 U.S. 319, 333 (1976) (Fundamental due process is satisfied when an individual is given the opportunity to be heard at a ''meaningful time and in a meaningful manner'').

The final rule under § 223.20(a)(1) requires that an agency submitting a revocation complaint to Treasury certify that the bond obligation that is the subject of the complaint is administratively final under the agency's regulations or other authorities. In contrast to § 223.17 (which requires an agency to publish a regulation), this means that an agency has the discretion to submit a revocation complaint to Treasury without promulgating a regulation, as long as the bond obligation is administratively final under agency authorities and practices. This flexibility is appropriate due, in part, to the array of due process protections afforded to sureties by Treasury under § 223.20.

Treasury anticipates that its revocation decisions under § 223.20(f) will be subject to judicial review under the ''arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law'' standard set forth in 5 U.S.C. 706(2)(A). This is the judicial review standard of informal agency actions, including agency adjudications where no hearing or formal evidentiary standard is required by statute. *Camp* v. *Pitts,* 411 U.S. 138, 142 (1973); *Castillo* v. *Army & Air Force Exchange Serv.,* 849 F.2d 199, 203, n. 1 (5th Cir. 1988) (reasoning that the arbitrary and capricious test of section 706(2)(A) is the appropriate standard for review of an administrative decision when an informal hearing is held or required, but not pursuant to statute).

20. Several commenters stated Treasury can only revoke a surety's certificate of authority to write Federal bonds if the surety fails to pay a final judgment on a bond that has not been stayed or appealed under 31 U.S.C. 9305(e). One commenter stated that proposed § 223.20 was an impermissible attempt to amend 31 U.S.C. 9305(e).

As detailed above in our responses to *Comments #1 and #8,* Congress granted to Treasury the administrative authority and responsibility to issue, regulate, and revoke certificates of authority to write Federal bonds. This broad authority is codified in 31 U.S.C. 9305(a)–(d). Section 9305(e) sets a statutory revocation standard that applies by operation of law when a surety fails to pay a final court judgment or order, without substantive review of the underlying dispute by Treasury. It does not preclude Treasury, as licensor, from establishing an administrative revocation standard based on its independent authority to do so under section 9305(a)–(d). Treasury's existing administrative revocation standards have been codified in regulations for many decades. For example, the source authorities for current 31 CFR 223.18–223.20 were published in the **Federal Register** as early as 1969, 1973, and 1977. Here, Treasury, in the reasonable exercise of its administrative discretion, has decided to update its existing administrative revocation standard under 31 CFR 223.20, as provided in the final rule.

21. Proposed § 223.20(c) provided that Treasury, on receipt of an agency complaint meeting the stated requirements, will notify the surety that its certificate ''will'' be revoked in the absence of a satisfactory explanation. One commenter suggested this provision should be amended to provided that Treasury ''may'' revoke the certificate, which is the standard provided in the current regulation.

The final rule has been amended under § 223.20(c) to provide that Treasury will notify the surety of the agency complaint, and the notice will afford the surety the opportunity to address the complaint and demonstrate its qualifications to retain its certificate. The resolution of the complaint by Treasury is governed by § 223.20.

22. One commenter expressed concern that the formal rules of evidence and the formal adjudication standards provided by the Administrative Procedure Act would not apply to the informal hearing afforded to a surety under proposed § 223.20(f) and (h)(6) and (7).

The formal adjudication standards under the Administrative Procedure Act only apply in cases ''required by statute to be determined on the record after an opportunity for an agency hearing.'' 5 U.S.C. 554(a). As discussed in our response to Comment #17, the surety statutes, 31 U.S.C. 9304–9308, do not require a formal adjudication to be determined on the record after an opportunity for a hearing.

23. Several commenters suggested that the administrative revocation standards under proposed § 223.20 should be amended to provide a surety more due process before Treasury makes a revocation decision. Some commenters suggested the final rule be amended to provide the surety an opportunity for a trial-like evidentiary hearing in § 223.20 revocation actions.

Fundamental due process is satisfied when an individual is given notice and the opportunity to be heard at a ''meaningful time and in a meaningful manner.'' *Matthews* v. *Eldridge,* 424 U.S. 319, 333 (1976). Section 223.20 in the final rule provides a panoply of due process protections to ensure compliance with this standard. Before Treasury commences a revocation action, the agency must certify to Treasury that the bond obligations that are the subject of the complaint are administratively final under the agency's regulations or other authorities. § 223.20(a)(1). The agency must submit documentation to Treasury supporting the complaint. § 223.20(b). In addition, the agency must certify that the surety's obligation to pay the bonds has not been stayed or enjoined by a court of competent jurisdiction. § 223.20(a)(3).

Upon receipt of the complaint, Treasury notifies the surety of the facts and conduct referenced in the complaint, and provides the surety the opportunity to demonstrate its qualifications to retain its certificate. § 223.20(c). Treasury affords the surety the opportunity to request an informal hearing. § 223.20(h)(1). If an informal hearing is requested, Treasury provides the surety with written notice of the time and place of the hearing, directs

the surety to bring all documents necessary and relevant to support its position, offers the surety the opportunity to be represented by counsel at the hearing, and affords the surety the opportunity to present any relevant material and to examine the administrative record. § 223.20(h)(2), (3) and (4). The complaining agency may be requested to send a representative to the hearing to present any relevant material. § 223.20(h)(5). The Treasury Reviewing Official is authorized to require the submission of additional documentation from the complaining agency and the surety to ensure appropriate consideration of relevant factual or legal issues. § 223.20(h)(6). The Treasury Reviewing Official prepares a written recommendation to the Treasury Deciding Official setting forth findings and a recommended disposition. § 223.20(h)(10). The Treasury Deciding Official makes the final decision based on the specified administrative record, which includes documentation submitted by the surety. § 223.20(h)(10).

Due process is flexible ''and calls for such procedural protections as the particular situation demands.'' *Matthews,* 424 U.S. at 334 (internal citations omitted). A surety's protected interest in its certificate of authority to write Federal bonds ''is indeed narrow.'' *American Druggists Ins. Co.* v. *Bogart,* 707 F.2d 1229, 1235 (11th Cir. 1983). Given this narrow interest, rudimentary due process requires ''notice reasonably calculated to apprise the surety of the charge of unreliability, and an opportunity to rebut that charge.'' *Id.* at 1237. The protections in § 223.20, as provided in the final rule, are more than adequate to satisfy the process required.

C. General Comments on the NPRM and Treasury's Responses

24. One trade association, whose members underwrite Federal bonds on which the Customs and Border Protection (CBP) agency is the obligee, expressed the opinion that CBP-specific authorities set a higher standard for actionable surety delinquency and due process standards than the proposed rule. The commenter suggested that Treasury should adopt the CBP standards, or clarify that the Treasury final rule does not take precedence over CBP standards in the context of customs bonds.

CBP has promulgated, under its own specific authority, a regulation that governs when CBP is authorized to decline additional customs bonds from a surety when a surety is in default on a customs bond. *See, e.g.,* 19 U.S.C. 66, 1623, 1624; 19 CFR 113.38. Given the CBP specific authority, the Treasury final rule under § 223.17(b) does not supersede or take precedence over the CBP regulation. However, Treasury declines to accept the CBP standards for government-wide application; therefore, CBP surety bond regulations do not apply to surety bonds presented to, or accepted by, other agencies.

25. The trade association whose members write Federal customs bonds on which the CBP agency is the obligee, recommended that the final rule enhance the CBP-specific regulation in several ways.

Treasury is not in a position to amend a CBP-specific regulation, and declines to do so. Instead, Treasury has considered whether the suggestions made by this commenter are appropriate for the Treasury regulation and has amended the final rule, as appropriate.

26. Two commenters suggested the proposed rule was a ''significant regulatory action'' which should be subject to additional regulatory review procedures under Executive Order 12866. One of these commenters suggested if an agency declines to accept bonds from a Treasury-certified surety, or if Treasury revokes a surety's certificate, it will have an effect on the economy of $100 million or more, depending on which surety is involved.

Treasury has determined that the proposed regulation will not have an effect on the economy of $100 million or more because of the rule's limited scope. Federal bond-approving officials already have statutory authority under 31 U.S.C. 9304(b) to determine which bonds proffered by Treasury-certified sureties are acceptable. Section 223.17(b) of the final rule provides that an agency bond-approving official may decline bonds from a Treasury-certified surety for cause, provided the due process standards are met. This provision does not impact a Treasury-certified surety's authority to underwrite bonds that are presented to other Federal agencies for acceptance. Under final rule 31 CFR 223.17(b)(5)(i), the agency declination authority does not apply when the ''for cause'' basis or reason has been stayed or enjoined by a court of competent jurisdiction. In addition, Treasury already has existing authority under current 31 CFR 223.18 to revoke a surety's certificate of authority based on a complaint received from an agency; *see also* 31 U.S.C. 9305(d)(1) (example of Treasury's revocation authority). The final rule under 31 CFR 223.20 updates the procedures used by Treasury to adjudicate agency revocation complaints. Final rule 31 CFR 223.20(a)(3) requires an agency submitting a revocation complaint to Treasury to certify that the bond obligations which are the subject of the complaint have not been stayed or enjoined by a court of competent jurisdiction.

27. One commenter suggested that the NPRM 60-day comment period should be extended to ensure a sufficient number of responses are received.

The publication of the NPRM in the **Federal Register**, including the 60-day notice and comment period, resulted in the submission of 14 comment letters to Treasury. These letters, which were submitted by individuals and a cross-section of the industry, included substantive and thorough comments on a broad range of issues associated with the proposed rule. The 60-day notice and comment period gave interested parties the opportunity to participate in the rulemaking, consistent with 5 U.S.C. 553(b)(c).

28. One commenter expressed concern that Federal contractors would be impacted by the revocation of surety certificates of authority under the NPRM. This commenter emphasized that it takes time for a contractor, particularly a small and emerging contractor, to develop a relationship with a surety, and if a surety's certificate is revoked under the terms of the proposed rule, such a contractor may not be able to find a replacement in time to qualify for Federal work. This commenter noted this could cause the contractor to fail and may have the effect of lessening competition on agency contracts.

Treasury certifies sureties for the primary purpose of ensuring that a Federal agency's position is protected in the event of a default by a principal. This purpose is not furthered by a surety that fails to satisfy bond obligation(s), or whose certificate of authority is revoked by Treasury, as provided in § 223.20. Section 223.17(b)(5)(ii) of the final rule mitigates against undue impact on Federal contractors by providing that an agency's authority to decline additional bonds does not apply to proffered payment and performance contract bonds, when the agency has already accepted a bid bond from the principal on the same project. Moreover, the surety is given the right to cure to avoid agency declination of bonds under § 223.17(b)(1)(iv), and, in general, is given the right to cure to avoid revocation of its certificate by Treasury under § 223.20(e)(2).

29. One commenter requested the opportunity to provide testimony on the NPRM if Treasury conducts hearings on the proposed revisions.

The 60-day notice and comment period gave interested parties the opportunity to participate in the rulemaking, consistent with 5 U.S.C. 553(b)(c). Treasury received 14 comment letters from individuals and a cross-section of the industry. These letters included substantive and thorough comments on a broad range of issues associated with the proposed rule. Treasury has considered and addressed these comments, as reflected in the final rule, and Treasury does not believe it would be further informed by conducting a hearing on the NPRM. A hearing is not required. 5 U.S.C. 553(b)(c).

II. Section-by-Section Analysis

Section 223.1

Revised § 223.1 states, in plain language, that Part 223 governs the issuance and revocation of certificates of authority of surety companies to do business with the United States as sureties on, or reinsurers of, Federal surety bond obligations, and the acceptance of such obligations. The final rule deletes archaic language and clarifies that the U.S. Department of the Treasury, Bureau of the Fiscal Service (Treasury), acts on behalf of the Secretary of the Treasury in performing these duties.

Section 223.2

Revised § 223.2 provides that applications for certificates of authority should be submitted to Treasury at the location, and in the manner, specified online at *http://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/surety_home.htm,* as amended from time to time.

Section 223.3

Section 223.3(a) establishes, in part, the requirements that must be met by an applicant company in order to be issued a certificate of authority by Treasury. Revised § 223.3(a) restates such requirements in plain language. In addition, the final rule clarifies that any certificate issued by Treasury is expressly subject to continued compliance by the surety with all statutory requirements and the other conditions referenced in this part.

Section 223.4

Revised § 223.4 provides that no company will be issued a certificate of authority by Treasury unless it maintains on deposit with the insurance commissioner of the State in which it is incorporated, or other specified State official, legal investments having a current market value of $100,000 or more, for the protection of claimants, including the surety's policyholders in the United States. Revised § 223.4 adds a sentence requiring a company to submit to Treasury with its initial application for a certificate of authority, and annually thereafter, a written statement signed by the State official attesting to the current market value of the deposit and that the legal investments remain on deposit with the State.

Section 223.8

Section 223.8 requires Treasury-certified sureties to file annual and quarterly financial reports to Treasury for review. Revised § 223.8(a) updates the specified Treasury official to whom these reports should be submitted. Revised § 223.8(a) specifies that the reports must be submitted using the annual and quarterly statement blanks adopted by the National Association of Insurance Commissioners.

Section 223.9

Section 223.9 establishes the criteria by which Treasury values the assets and liabilities of a company for certificate of authority purposes. Revised § 223.9 provides that Treasury will allow credit for reinsurance in all classes of risk if the reinsuring company holds a certificate of authority from Treasury, or has been recognized as an admitted reinsurer by Treasury. Revised § 223.9 clarifies that this credit for reinsurance will be allowed only if the reinsurer is in continued compliance with all certificate of authority requirements.

Section 223.11

Revised § 223.11(b) provides that a surety can underwrite a Federal bond in excess of its underwriting limitation if the excess amount is reinsured by a company holding a certificate of authority issued by Treasury, provided the specified reinsurance requirements are met. Revised § 223.11(b) states that the requisite reinsurance bond forms are available on the General Services Administration Web site at *www.gsa.gov.*

Section 223.12

Section 223.12 establishes the application requirements and standards for a company to be recognized by Treasury as an admitted reinsurer (except on excess risks running to the United States) for surety companies doing business with the United States. When a Treasury-certified surety cedes non-Federal risks to an admitted reinsurer, Treasury will credit the surety for the ceded reinsurance when valuing its assets and liabilities, provided applicable requirements are met. Revised § 223.12 updates the specified Treasury official to whom applications and reports pertaining to admitted reinsurer status should be submitted.

Section 223.16

Revised § 223.16 adds two new sentences to the end of this subpart. These sentences clarify that Treasury-certified companies have the opportunity to present their bonds to an agency bond-approving official for acceptance, but that the actual acceptance of a bond by an agency bond-approving official is subject to revised § 223.17.

Section 223.17

Revised § 223.17(a) provides that a Treasury-certified company may present its bonds to any agency bond-approving official for acceptance, and that such bond-approving official may accept such bonds.

Revised § 223.17(b)(1) provides that an agency bond-approving official may decline bonds from a Treasury-certified surety for cause, provided the agency gives advance written notice to the agency.

Revised 223.17(b)(2) provides that the agency may decline bonds after consideration of any submission by the company and after a written determination by the agency to decline the bonds that is consistent with agency authorities.

Revised § 223.17(b)(3) requires the agency to issue a regulation articulating the agency's procedures and for cause standards for declining to accept bonds. The regulation should define when a bond obligation becomes administratively final under the agency's procedures.

Revised § 223.17(b)(4) encourages agencies to ensure that persons conducting business with the agency are aware that bonds from a particular certified company will not be accepted.

Revised § 223.17(b)(5) provides that the agency's authority to decline bonds does not apply to bonds where the underlying obligation or other for cause reason that forms the basis for the declination has been stayed or enjoined by a court of competent jurisdiction, or to payment and performance contract bonds when the agency has already accepted a bid bond from the company on a particular project.

Revised § 223.17(b)(6) provides that an agency bond-approving official may decline a bond from a Treasury-certified surety without advance notice to the surety if the bond is not executed in proper form, or is not in the correct penal sum amount, or is otherwise technically deficient.

Section 223.18

Revised § 223.18 states that revocation of a surety's certificate of authority by Treasury can occur in two ways. First, Treasury can initiate a revocation proceeding on its own initiative under final rule § 223.19 when it has reason to believe that a surety is not complying with 31 U.S.C. 9304–9308 and/or Part 223. Second, Treasury can initiate a revocation proceeding under final rule § 223.20 upon receipt of a complaint from an agency meeting the requirements of that section.

Section 223.19

Revised § 223.19 states the process by which Treasury initiates proceedings on its own accord to revoke a surety's certificate of authority for failure to meet the requirements of 31 U.S.C. 9304–9308 and/or Part 223.

Section 223.20

Revised § 223.20 specifies the process for an agency to submit a complaint to Treasury requesting that a certified surety's certificate of authority be revoked for failure to pay or satisfy one or more administratively final bond obligations. Under revised § 223.20(a)(1), the agency submitting the complaint to Treasury must certify that the bond obligations that are the subject of the complaint are administratively final under the agency's regulations or other authorities. The agency must also certify to Treasury that the obligation to pay or satisfy the bond obligations has not been stayed or enjoined by a court. § 223.20(a)(3).

Revised § 223.20(c) and (d) afford the surety the opportunity to demonstrate its qualifications to retain its certificate, and establish the role of the Treasury Reviewing Official and the Treasury Deciding Official in the adjudicative process.

Revised § 223.20(f) provides that revocation complaints will be adjudicated by Treasury based on a determination whether the default is clear and whether the surety's failure to pay or satisfy the bonds is based on inadequate grounds.

Revised § 223.20(h) retains the right of a surety to request an informal hearing before Treasury makes its revocation decision. The final rule specifies the procedures under which such an informal hearing would be conducted. Under the final rule, the formal adjudication standards of the Administrative Procedure Act (APA), 5 U.S.C. 554, 556, 557 do not apply to the informal hearing or adjudication process.

In the event that Treasury sustains the agency's complaint and makes a decision that the surety's certificate should be revoked, revised § 223.20(e)(2) provides a surety will be afforded an opportunity to cure the noncompliance to avoid decertification, unless its noncompliance is ''willful.'' Revised § 223.20(g) articulates the scope and application of the willful exception to the cure opportunity.

Section 223.21

Revised § 223.21 provides that a surety whose certificate of authority has been revoked or not renewed by Treasury can apply for reissuance of a certificate of authority after one year. Among other things, such a surety must demonstrate as a condition of reinstatement that the basis for the non-renewal or revocation of its certificate has been eliminated. Under revised § 223.21 the determination of whether the basis for the non-renewal or revocation has been eliminated or effectively cured will be made by Treasury in its discretion.

DERIVATION CHART FOR REVISED PART 223

Old section	New section
.....	223.17
223.17	223.18
.....	223.19
223.18	223.20
223.19	223.20
223.20	223.20
223.21	223.21
223.22	223.22

III. Procedural Analysis

Regulatory Planning and Review

The final rule does not meet the criteria for a ''significant regulatory action'' as defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

Regulatory Flexibility Act Analysis

It is hereby certified that the final rule will not have a significant economic impact on a substantial number of small entities. Treasury-certified sureties have an existing obligation to make payment on bond obligations to ensure acceptance of their bonds by agency bond-approving officials under 31 U.S.C. 9304(b). The rule merely codifies this existing obligation in the regulation and clarifies that Federal agencies can decline to accept bonds underwritten by Treasury-certified sureties for cause. In addition, the final rule revises the existing procedures and standard of review that will be used by Treasury in adjudicating revocation complaints submitted by agencies. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.)* is not required.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that the agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. We have determined that the final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, we have not prepared a budgetary impact statement or specifically addressed any regulatory alternatives.

List of Subjects in 31 CFR Part 223

Administrative practice and procedure, Surety bonds.

For the reasons set out in the preamble, 31 CFR part 223 is amended to read as follows:

PART 223—SURETY COMPANIES DOING BUSINESS WITH THE UNITED STATES

■ 1. Revise the authority citation for part 223 to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 9304–9308.

■ 2. Revise § 223.1 to read as follows:

§ 223.1 Certificate of authority.

The regulations in this part will govern the issuance by the Secretary of the Treasury, acting through the U.S. Department of the Treasury, Bureau of the Fiscal Service (Treasury), of certificates of authority to bonding companies to do business with the United States as sureties on, or reinsurers of, Federal surety bonds (hereinafter ''bonds'' or ''obligations'') under the authority of 31 U.S.C. 9304–9308 and this part, and the acceptance of such obligations. The regulations in this part also govern the revocation of certificates.

■ 3. Revise § 223.2 to read as follows:

§ 223.2 Application for certificate of authority.

Every company wishing to apply for a certificate of authority shall submit an

application to the Bureau of the Fiscal Service, U.S. Department of the Treasury, c/o Surety Bond Branch, to the location, and in the manner, specified online at *http://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/surety_home.htm,* as amended from time to time. In accordance with 31 U.S.C. 9305(a), the application will include a copy of the applicant's charter or articles of incorporation and a financial statement, signed and sworn to by its president and secretary, showing its assets and liabilities. A fee shall be transmitted with the application in accordance with the provisions of § 223.22(a)(i).

■ 4. In § 223.3, revise paragraph (a) to read as follows:

§ 223.3 Issuance of certificates of authority.

(a)(1)(i) A company submitting an application to be issued a certificate of authority by Treasury to underwrite and reinsure Federal surety bonds must include all required data and information, as determined by Treasury in its discretion, for the application to be complete and ready for review. Upon receipt of a complete application, Treasury will evaluate the submission to determine whether the applicant company:

(A) Is duly authorized under its charter or articles of incorporation to conduct the business referenced under 31 U.S.C. 9304(a)(2);

(B) Has paid-up capital of at least $250,000 in cash or its equivalent;

(C) Is solvent and financially and otherwise qualified to conduct the business referenced under 31 U.S.C. 9304(a)(2); and

(D) Is able and willing to carry out its contracts.

(ii) In making the determination whether a company meets these requirements, Treasury will evaluate the application as a whole, the required financial statement(s) submitted by the company, the company's charter or articles of incorporation, the past history of the company, and any further evidence or information that Treasury may require the company to submit (at the company's expense).

(2) If Treasury determines, in its discretion, that the applicant company meets all of these requirements, Treasury will issue a certificate of authority to the company authorizing it to underwrite and reinsure Federal bonds. The certificate of authority will be effective for a term that expires on the last day of the next June. All such statutory requirements and regulatory requirements under this part are continuing obligations, and any certificate is issued expressly subject to continuing compliance with such requirements. The certificate of authority will be renewed annually on the first day of July, *provided* the company remains qualified under the law, the regulations in this part, and other pertinent Treasury requirements, *and* the company submits the fee required under § 223.22 by March 1st of each year to the address and/or account specified by Treasury.

* * * * *

■ 5. In § 223.4, add a sentence to the end of the section to read as follows:

§ 223.4 Deposits.

* * * The company shall submit to Treasury with its initial application for a certificate of authority, and annually thereafter, a written statement signed by such State official attesting to the current market value of the deposit (not less than $100,000) and that the legal investments remain on deposit with the State under the terms specified.

■ 6. In § 223.8, revise paragraph (a) to read as follows:

§ 223.8 Financial reports.

(a) Every company certified under this part will be required to file with the designated Treasury official annual and quarterly statements of its financial condition using the annual and quarterly statement form blanks adopted by the National Association of Insurance Commissioners. The annual and quarterly statements will be signed and sworn to by the company president and secretary. The timeframes and process for submitting the required annual and quarterly statements to Treasury are provided in Treasury's current Annual Letter to Executive Heads of Surety Companies.

* * * * *

■ 7. In § 223.9, revise the last sentence to read as follows:

§ 223.9 Valuation of assets and liabilities.

* * * Credit will be allowed for reinsurance in all classes of risks if the reinsuring company holds a certificate of authority from the Secretary of the Treasury, *provided* such reinsuring company is in continuing compliance with all certificate of authority requirements, or has been recognized as an admitted reinsurer in accord with § 223.12.

■ 8. In § 223.11, revise paragraph (b)(1) to read as follows:

§ 223.11 Limitation of risk: protective methods.

* * * * *

(b) *Reinsurance.* (1) In respect to bonds running to the United States, liability in excess of the underwriting limitation shall be reinsured within 45 days from the date of execution and delivery of the bond with one or more companies holding a certificate of authority from the Secretary of the Treasury. Such reinsurance shall not be in excess of the underwriting limitation of the reinsuring company. Where reinsurance is contemplated, Federal agencies may accept a bond from the direct writing company in satisfaction of the total bond requirement even though it may exceed the direct writing company's underwriting limitation. Within the 45 day period, the direct writing company shall furnish to the Federal agency any necessary reinsurance agreements. However, a Federal agency may, at its discretion, require that reinsurance be obtained within a lesser period than 45 days, and may require completely executed reinsurance agreements to be provided before making a final determination that any bond is acceptable. Reinsurance may protect bonds required to be furnished to the United States by the Miller Act (40 U.S.C. 3131, as amended) covering contracts for the construction, alteration, or repair of any public building or public work of the United States, as well as other types of Federal bonds. Use of reinsurance or coinsurance to protect such bonds is at the discretion of the direct writing company. Reinsurance shall be executed on reinsurance agreement forms: Standard Form 273 (Reinsurance Agreement for a Miller Act Performance Bond), Standard Form 274 (Reinsurance Agreement for a Miller Act Payment Bond), and Standard Form 275 (Reinsurance Agreement in Favor of the United States for other types of Federal bonds). These Standard Forms are available on the General Services Administration Web site at *www.gsa.gov.*

* * * * *

■ 9. In § 223.12, revise paragraph (a) introductory text, paragraph (a)(5), paragraph (b) introductory text, and paragraph (c) to read as follows:

§ 223.12 Recognition as reinsurer.

(a) *Application by U.S. company.* Any company organized under the laws of the United States or of any State thereof, wishing to apply for recognition as an admitted reinsurer (except on excess risks running to the United States) of surety companies doing business with the United States, shall file the following data with the designated Treasury official, and shall transmit

therewith the fee in accordance with the provisions of § 223.22:

* * * * *

(5) Such other evidence as Treasury may determine is necessary to establish that the company is solvent and able to meet the continuing obligation to carry out its contracts.

(b) *Application by a U.S. branch.* A U.S. branch of an alien company applying for such recognition shall file the following data with the designated Treasury official, and shall transmit therewith the fee in accordance with the provisions of § 223.22:

* * * * *

(c) *Financial reports.* Each company recognized as an admitted reinsurer shall file with the designated Treasury official, on or before the first day of March of each year, its financial statement and such additional evidence as the Secretary of the Treasury determines necessary to establish that the requirements of this section are being met. A fee shall be transmitted with the foregoing data, in accordance with the provisions of § 223.22.

■ 10. Revise § 223.16 to read as follows:

§ 223.16 List of certificate holding companies.

A list of qualified companies is published annually as of July 1 in Department Circular No. 570, Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies, with information as to underwriting limitations, areas in which listed sureties are licensed to transact surety business and other details. If the Secretary of the Treasury shall take any exceptions to the financial statements submitted by a company, he or she shall, before issuing Department Circular 570, give a company due notice of such exceptions. Copies of the Circular are available at *http://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570.htm,* or from the designated Treasury official, upon request. Bonds underwritten by certified companies on the Department Circular No. 570 list may be presented to an agency bond-approving official for acceptance. Selection of a particular qualified company from among all companies holding certificates of authority is discretionary with the principal required to furnish the bond, but the acceptance of a bond by an agency bond-approving official is subject to § 223.17.

§§ 223.18 through 223.20 [Removed]

■ 11. Remove §§ 223.18, 223.19, and 223.20.

§ 223.17 [Redesignated as § 223.18]

■ 12. Redesignate § 223.17 as § 223.18.

■ 13. Add a new § 223.17 to read as follows:

§ 223.17 Acceptance and non-acceptance of bonds.

(a) *Acceptance of bonds.* A bond underwritten by a certified company on the § 223.16 Department Circular No. 570 list may be presented to any agency-bond approving official for acceptance, and such agency bond-approving official may accept such bonds.

(b) *Non-acceptance of bonds.* (1) An agency bond-approving official may decline to accept bonds underwritten by a certified company for cause, but only if the company has been given advance written notice by such agency. The advance written notice shall:

(i) State the intention of the agency to decline bonds underwritten by the company;

(ii) State the reasons for or cause of the proposed declination of such bonds;

(iii) Provide the opportunity for the company to rebut the stated reasons or cause; and

(iv) Provide the company the opportunity to cure the stated reasons or cause.

(2) The agency may decline to accept bonds underwritten by the company if, after consideration of any submission by the company or failure of the company to respond to the agency's notice, the agency issues a written determination that the bonds should not be accepted, consistent with agency authorities.

(3) The agency shall articulate its procedures and for cause standards for declining to accept bonds in an agency regulation prior to declining any bonds in specific cases. The agency regulation should be subject to notice and comment rulemaking. ''For cause'' includes, but is not limited to, circumstances when a surety has not paid or satisfied an administratively final bond obligation due the agency. The agency regulation should define when a bond obligation becomes administratively final under the agency's procedures. Existing agency rules or regulations that substantially comply with, or that are consistent with, the requirement to articulate procedures and standards in advance meet the requirements of this paragraph.

(4) Agencies that decline bonds under this section are encouraged to use best efforts to ensure that persons conducting business with the agency are aware that bonds underwritten by the particular certified company will not be accepted.

(5) The agency's authority to decline bonds under this section does not apply:

(i) When the underlying obligation or other for cause reason that forms the basis for the agency's written determination to decline bonds under paragraph (b)(2) of this section, or the agency written determination to decline bonds, has been stayed or enjoined by a court of competent jurisdiction, or

(ii) To otherwise acceptable payment and performance contract bonds, when the agency has already accepted a project bid bond on a contract before making the written determination under paragraph (b)(2) of this section.

(6) Notwithstanding any provision of this section, an agency bond-approving official may decline a bond from a Treasury-certified surety without advance notice if the bond is not executed in proper form, or is not in the correct penal sum amount, or is otherwise technically deficient on its face.

■ 14. Revise newly redesignated § 223.18 to read as follows:

§ 223.18 Revocation.

(a) A revocation proceeding against a Treasury-certified company can be initiated by Treasury in either of two ways:

(1) Treasury, of its own accord, under § 223.19, may initiate revocation proceedings against the company when it has reason to believe that the company is not complying with 31 U.S.C. 9304–9308 and/or the regulations under this part, or

(2) Treasury, under § 223.20, may initiate revocation proceedings against the company upon receipt of a complaint from an agency that the company has not paid or satisfied one or more administratively final bond obligations due the agency.

(b) A revocation of a company's certificate of authority under § 223.19 or § 223.20 precludes the company from underwriting or reinsuring additional bonds for any agency, and therefore revokes the company's opportunity to have its bonds presented to any agency bond-approving official for acceptance.

■ 15. Add new § 223.19 to read as follows:

§ 223.19 Treasury-initiated revocation proceedings.

Whenever Treasury has reason to believe that a company is not complying with the requirements of 31 U.S.C. 9304–9308 and/or the regulations under this part, including but not limited to a failure to satisfy corporate and financial standards, Treasury shall:

(a) Notify the company of the facts or conduct which indicate such non-compliance, and provide the company an opportunity to respond, and

(b) Revoke a company's certificate of authority after providing notice to the company if:

(1) The company does not respond satisfactorily to Treasury's notification of non-compliance, or

(2) The company, provided an opportunity to demonstrate or achieve compliance, fails to do so.

■ 16. Add new § 223.20 to read as follows:

§ 223.20 Revocation proceedings initiated by Treasury upon receipt of an agency complaint.

(a) *Agency complaint.* If an agency determines that a company has not promptly made full payment or fully satisfied one or more bond obligations naming the agency as obligee, the head of the agency, or his or her designee, may submit a written complaint to the designated Treasury official (with executive oversight over the Treasury surety program, at the Assistant Commissioner level or equivalent), requesting that the company's certificate of authority be revoked for nonperformance. Under such complaint, the agency shall certify that:

(1) The bond obligations that are the subject of the complaint are administratively final under the agency's regulations or other authorities;

(2) The company has not paid or satisfied those bond obligations; and

(3) The company's obligation to pay or satisfy the bond obligations has not been stayed or enjoined by a court of competent jurisdiction.

(b) *Documentation of complaint.* The agency shall include in its complaint copies of the bonds, and documentation indicating that, for each such bond provided:

(1) The agency has determined the principal is in default on the obligation covered by the bond, consistent with agency authorities, or if the default has been litigated, documentation indicating a court of competent jurisdiction has determined the principal is in default;

(2) The agency made a written demand with the company on the bond requesting payment or satisfaction on its own behalf, consistent with agency authorities, or on behalf of laborers, materialmen, or suppliers (on payment bonds), based on the default status of the principal;

(3) The agency afforded the company the opportunity to request administrative review within the agency contesting the agency's demand on the bond;

(4) The agency made a final administrative determination that the bond obligation was due after the completion of such administrative review, or after the time period for the company to request administrative review within the agency has expired;

(5) The agency provided the company the opportunity to enter into a written agreement to pay or satisfy the bond; and

(6) The company has not made full payment or fully satisfied the demand, and the claim on the bond is past due.

(c) *Notice to company.* On receipt of a complaint meeting the requirements of paragraphs (a) and (b) of this section, Treasury will notify the company of the agency complaint. The notice will require the company to submit a written explanatory response to Treasury within 20 business days of the date of the notice. The notice will advise the company of the facts and conduct referenced in the complaint. Treasury will attach a copy of the incoming complaint to the notice. The notice will afford the company the opportunity to address the complaint and demonstrate its qualifications to retain its certificate of authority.

(d) *Reviewing official and deciding official.* The designated Treasury official (with executive oversight over the Treasury surety program, at the Assistant Commissioner level or equivalent) will appoint a Treasury Reviewing Official to conduct a review of the agency complaint referenced in paragraphs (a) and (b) of this section, and the company response referenced in paragraph (c) of this section, to determine whether revocation of the company's certificate of authority is warranted. To ensure appropriate consideration of relevant factual or legal issues, the Reviewing Official is authorized to require the submission of additional documentation from the complaining agency and the company. Upon completion of such review, the Reviewing Official shall prepare a written Recommendation Memorandum addressed to the designated Treasury official setting forth findings and a recommended disposition. The designated Treasury official will be the Deciding Official who will make the final decision whether the company's certificate of authority to write and reinsure bonds should be revoked based on the administrative record. The administrative record consists of the agency complaint referenced in paragraphs (a) and (b) of this section, the company response referenced in paragraph (c) of this section, any other documentation submitted to, or considered by, the Reviewing Official, and the Reviewing Official's Recommendation Memorandum.

(e) *Final decision.* (1) If the Deciding Official's final decision is that revocation is not warranted, the company and the agency will be notified of the basis of this decision and the complaint against the company will be dismissed.

(2) If the Deciding Official's final decision is that the company's certificate of authority shall be revoked, the Deciding Official will notify the company and the agency of the revocation decision and the basis for such decision. Except as provided in paragraph (g) of this section, the notice will afford the company an opportunity to cure its noncompliance by paying or satisfying the bonds (including payment of any interest, penalties, and fees) forming the basis of the final decision within 20 business days. If the company cures its noncompliance within 20 business days, the complaint against the company will be deemed moot and the company will retain its certificate of authority to write Federal bonds. If the company does not cure its noncompliance within 20 business days, the company's certificate of authority shall be revoked by Treasury without further notice.

(f) *Standard of review.* In reviewing whether the revocation of the company's certificate of authority is warranted under this section, the Reviewing Official will recommend, and the Deciding Official will determine, whether the default is clear and whether the company's failure to pay or satisfy the bonds is based on inadequate grounds.

(g) *Consideration of willful conduct.* The company is not entitled to an opportunity to cure its noncompliance if its conduct in failing to carry out its contracts is willful. For purposes of this regulation, ''willful'' means a careless or reckless disregard of a known legal obligation to satisfy an administratively final bond obligation. In considering whether a company's conduct is willful, the Deciding Official may consider whether:

(1) An agency has filed a prior complaint with Treasury requesting that the company's certificate be revoked for a substantially similar bond obligation;

(2) The company asserted substantially similar defenses to such bond obligation;

(3) Such defenses were considered by the agency under pertinent authorities and dismissed;

(4) Treasury made a final decision that revocation of the company's certificate was justified; and

(5) Other pertinent factors.

(h) *Informal hearing.* (1) If a company that is the subject of a complaint under paragraph (a) and (b) of this section believes the opportunity to make known

its views, as provided for under paragraph (c) of this section, is inadequate, it may, within 20 business days of the date of the notice required by paragraph (c), request, in writing, that an informal hearing be convened.

(2) As soon as possible after a written request for an informal hearing is received, the Reviewing Official shall convene an informal hearing, at such time and place as he or she deems appropriate, for the purpose of determining whether the company's certificate of authority should be revoked.

(3) The company shall be advised, in writing, of the time and place of the informal hearing and shall be directed to bring all documents, records and other information as it may find necessary and relevant to support its position.

(4) The company may be represented by counsel and shall have a fair opportunity to present any relevant material and to examine the administrative record.

(5) The complaining agency may be requested by the Reviewing Official to send a representative to the hearing to present any relevant material, and the agency representative may examine the administrative record.

(6) The Reviewing Official is authorized to require the submission of additional documentation from the complaining agency and the company to ensure appropriate consideration of relevant factual or legal issues.

(7) Formal rules of evidence will not apply at the informal hearing.

(8) The formal adjudication standards under the Administrative Procedure Act, 5 U.S.C. 554, 556, 557 do not apply to the informal hearing or adjudication process.

(9) Treasury may promulgate additional procedural guidance governing the conduct of informal hearings. This additional procedural guidance may be contained in the Annual Letter to Executive Heads of Surety Companies referenced in § 223.9, the Treasury Financial Manual, or other Treasury publication or correspondence.

(10) Upon completion of the informal hearing, the Reviewing Official shall prepare a written Recommendation Memorandum addressed to the Deciding Official setting forth findings and a recommended disposition. The Deciding Official will make the final decision whether the company's certificate of authority to write and reinsure Federal bonds should be revoked based on the administrative record. The administrative record consists of the Federal agency complaint referenced in paragraphs (a) and (b) of this section, the company response referenced in paragraph (c), any other documentation submitted to, considered by, or entered into the administrative record by the Reviewing Official, the hearing transcript, and the Reviewing Official's Recommendation Memorandum.

(11) The provisions of paragraphs (e), (f), and (g) of this section shall apply to the adjudication of the agency complaint when an informal hearing is conducted.

■ 17. Revise § 223.21 to read as follows:

§ 223.21 Reinstatement.

If, after one year from the date of the non-renewal or the revocation of its certificate of authority under this part, a company can demonstrate that the basis for the non-renewal or revocation has been cured, as determined by Treasury in its discretion, and that it can comply with, and does meet, all continuing requirements for certification under 31 U.S.C. 9304–9308 and this part, the company may submit an application to Treasury for reinstatement or reissuance of a certificate of authority, which will be granted without prejudice, *provided* all such requirements are met.

■ 18. In § 223.22, revise paragraph (c) to read as follows:

§ 223.22 Fees for services of the Treasury Department.

* * * * *

(c) Specific fee information may be obtained from the designated Treasury official, or online at *http://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/surety_home.htm.* In addition, a notice of the amount of a fee referred to in paragraphs (a)(1) through (4) of this section will be published in the **Federal Register** as each change in such fee is made.

Dated: October 2, 2014.

David A. Lebryk,

Fiscal Assistant Secretary.

[FR Doc. 2014–24460 Filed 10–15–14; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2014–0629; FRL–9917–69–Region–3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; State Boards Requirements

AGENCY: Environmental Protection Agency.

ACTION: Direct Final Rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve a revision to the Commonwealth of Pennsylvania State Implementation Plan (SIP). The SIP revision addresses the State Boards' requirements for all criteria pollutants of the National Ambient Air Quality Standards (NAAQS). EPA is also approving a related infrastructure element from Pennsylvania's September 24, 2012 SIP submittal for the 2008 Lead NAAQS. EPA is approving this SIP revision in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on December 15, 2014 without further notice, unless EPA receives adverse written comment by November 17, 2014. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2014–0629 by one of the following methods:

A. *www.regulations.gov.* Follow the online instructions for submitting comments.

B. *E-Mail: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2014–0629, Cristina Fernandez, Associate Director, Office of Air Program Planning, Air Protection Division, 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–2014–0629. 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 Commonwealth's submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Ruth Knapp, (215) 814–2191, or by email at *knapp.ruth@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 128 of the CAA requires SIPs to comply with the requirements regarding State Boards. Section 110(a)(2)(E)(ii) of the CAA also references these requirements. Section 128(a) of the CAA requires SIPs to contain provisions that: (1) Any board or body which approves permits or enforcement orders under the CAA shall have at least a majority of its members represent the public interest and not derive any significant portion of their income from persons subject to permits or enforcement orders under the CAA; and (2) any potential conflict of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed. The requirements of section 128(a)(1) are not applicable to Pennsylvania because it does not have any board or body which approves air quality permits or enforcement orders. The requirements of section 128(a)(2), however, are applicable because the heads of the Pennsylvania Department of Environmental Protection (PADEP), the Allegheny County Health Department (ACHD), and Philadelphia Air Management Services (AMS), or their designees, approve permits or enforcement orders within Pennsylvania.

On July 15, 2014, the Commonwealth of Pennsylvania, through PADEP, submitted a SIP revision to address the requirements of sections 128 and 110(a)(2)(E)(ii) for all criteria pollutants of the NAAQS in relation to State Boards. This submission addressing sections 128 and 110(a)(2)(E)(ii) for all NAAQS was part of a larger SIP revision submitted on the same date which addresses requirements in section 110(a) for the 2008 ozone NAAQS; however, EPA will take later separate rulemaking action on the remainder of that July 15, 2014 SIP submission.

Previously, on September 24, 2012, Pennsylvania submitted a SIP revision to satisfy several requirements of section 110(a)(2) of the CAA for the 2008 Lead NAAQS. On April 7, 2014, EPA published a Final Rulemaking Notice in which EPA approved certain elements of Pennsylvania's SIP submittal for the 2008 Lead NAAQS and stated that EPA would take separate action on the submittal as it related to requirements in sections 110(a)(2)(E)(ii) and 128 of the CAA. 79 FR 19009.

II. Summary of SIP Revision

This rulemaking action approves certain statutory provisions for the Pennsylvania SIP submitted by PADEP to meet the requirements of section 128 of the CAA. Upon meeting the requirements of section 128, Pennsylvania will also meet the requirements of section 110(a)(2)(E)(ii) of the CAA for all criteria pollutants of the NAAQS in relation to State Boards.

Pennsylvania's statutory provisions governing the relevant section 128 requirements are in Chapter 11 of the Pennsylvania Public Official and Employee Ethics Act (PA Ethics Act), found at 65 Pa.C.S. sections 1101–1109. The Secretary of PADEP and heads of ACHD and AMS, as well as the state employees subordinate to those positions, are subject to the requirements of Chapter 11 of the PA Ethics Act. In order to meet the requirements of CAA sections 128 and 110(a)(2)(E)(ii), Pennsylvania is seeking to incorporate into the SIP the relevant provisions of Chapter 11 of the PA Ethics Act, including certain relevant portions of sections 1101, 1102, 1104, 1105, and 1109. The Commonwealth's effective dates for these sections of Chapter 11 will be listed in the table in 40 CFR 52.2020(c).

III. EPA's Analysis of Pennsylvania's SIP Revision

Sections 128 and 110(a)(2)(E)(ii) require that each state's SIP demonstrate how state boards, bodies or heads of executive agencies which approve CAA permits or enforcement orders disclose any potential conflicts of interest. The Secretary of PADEP and heads of ACHD and AMS, or their designees, approve all CAA permits and enforcement orders in Pennsylvania. All three agencies are executive agencies that act through their respective Secretary, head, or delegated subordinate state or local employees. Pennsylvania submitted relevant provisions of Chapter 11 of the PA Ethics Act for inclusion into the SIP as required by sections 128 and 110(a)(2)(E)(ii). Chapter 11 of the PA Ethics Act applies to public officials and employees and requires them to disclose relevant financial information including direct and indirect financial interests, income and gifts. This SIP revision will incorporate existing Pennsylvania law into the SIP and demonstrates that Pennsylvania complies with the requirements of sections 128 and 110(a)(2)(E)(ii) of the CAA for all NAAQS pollutants through the relevant sections of Chapter 11 of the PA Ethics Act for adequate disclosure of potential conflicts of interest.

IV. Final Action

EPA is approving the portion of the July 15, 2014 Pennsylvania SIP revision that addresses the requirements of sections 128 and 110(a)(2)(E)(ii) of the CAA for all criteria pollutants of the NAAQS. EPA is also specifically approving Pennsylvania's September 24, 2012 SIP revision for the 2008 Lead NAAQS as addressing the requirements in section 110(a)(2)(E)(ii) of the CAA. EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on December 15, 2014 without further notice unless EPA receives adverse

comment by November 17, 2014. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

A. General Requirements

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 approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

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

B. Submission to Congress and the Comptroller General

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).

C. Petitions for Judicial Review

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 December 15, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking action. This action, approving the Pennsylvania SIP revision for purposes of meeting sections 128 and 110(a)(2)(E)(ii) requirements for all criteria pollutants of the NAAQS in relation to State Boards, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: September 23, 2014.

William C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart NN—Pennsylvania

■ 2. In § 52.2020:

■ a. The table in paragraph (c)(1) is amended by adding a new section for ''Title 65 Pennsylvania Statute—Public Officers, Part II—Accountability, Chapter 11—Ethics Standards and Financial Disclosure,'' before the section for Title 67, with new entries for sections 1101, 1102, 1104, 1105, and 1109.

■ b. The table in paragraph (e)(1) is amended by revising the entry for ''Section 110(a)(2) Infrastructure Requirements for the 2008 Pb NAAQS.''

The additions and revisions read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(1) * * *

State citation	Title/subject	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
*	*	*	*	*
Title 65 Pennsylvania Statute—Public Officers Part II—Accountability Chapter 11—Ethics, Standards, and Financial Disclosure				
Section 1101	Short title of chapter	12/14/98	10/16/14 [Insert **Federal Register** citation].	Addresses CAA section 128.
Section 1102	Definitions	1/1/07	10/16/14 [Insert **Federal Register** citation].	Addresses CAA section 128.
Section 1104	Statement of financial interests required to be filed.	12/14/98	10/16/14 [Insert **Federal Register** citation].	Addresses CAA section 128.
Section 1105	Statement of financial interests.	1/1/07	10/16/14 [Insert **Federal Register** citation].	Addresses CAA section 128.
Section 1109	Penalties	12/14/98	10/16/14 [Insert **Federal Register** citation].	Addresses CAA section 128.
*	*	*	*	*

* * * * * (1) * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
Section 110(a)(2) Infrastructure Requirements for the 2008 Pb NAAQS.	Statewide	5/24/12	4/7/2014, 79 FR 19001	This rulemaking action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(I), (D)(i)(II), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J), (K), (L), and (M).
		7/15/14	10/16/14 [Insert **Federal Register** citation].	This rulemaking action addresses the following CAA elements: 110(a)(2)(E)(ii).

* * * * *

[FR Doc. 2014–24340 Filed 10–15–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2013–0746; FRL–9917–64–Region–4]

Approval and Promulgation of Implementation Plans; Florida: Removal of Sulfur Storage and Handling Rules

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the Florida State Implementation Plan (SIP), submitted by the Florida Department of Environmental Protection (FDEP), on April 5, 2012. The revision modifies Florida's SIP to remove two state rules relating to new and existing sulfur storage and handling facilities because they are no longer necessary. EPA has determined that Florida's April 5, 2012, SIP revision regarding sulfur storage and handling facilities is approvable because it is consistent with the Clean Air Act (CAA or Act).

DATES: This rule will be effective November 17, 2014.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2013–0746. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

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

SUPPLEMENTARY INFORMATION:

I. Background

The FDEP revision requests that EPA remove two state rules—Rule 62–212.600, Florida Administrative Code (F.A.C.), ''Sulfur Storage and Handling Facilities'' and Rule 62–296.411, F.A.C.,

''Sulfur Storage and Handling Facilities''—from Florida's SIP. Florida repealed these rules on February 16, 2012.

The requirements of Rule 62–212.600, F.A.C., apply to proposed new or modified sulfur storage and handling facilities. The rule states that the owner or operator of any proposed new or modified sulfur storage and handling facility that is to be located within five kilometers of either a particulate matter (PM) air quality maintenance area or a prevention of significant deterioration (PSD) Class I area shall provide FDEP with an analysis of the probable particulate matter ambient air quality impacts that could result from the operation of the facility. Additionally, the owner or operator shall provide FDEP with an analysis of the probable annual and maximum monthly sulfur deposition rates that could occur as a result of the operation of the facility. The owner or operator shall conduct post-construction air quality and deposition monitoring of sulfur particulate emissions from the facility for two years from the date of issuance of the initial air operation permit for the facility, and, through the permitting process, shall determine the period of time, if any, such monitoring must be continued. The data collected would then be provided to FDEP as specified in the permit. Florida states that the ''General Preconstruction Review Requirements'' and ''Prevention of Significant Deterioration (PSD)'' provisions of the Rules 62–212.300 and 62–212.400, F.A.C., respectively, can be used instead of Rule 62–212.600, F.A.C., to prevent PM emissions that would interfere with attainment and maintenance of national ambient air quality standards (NAAQS), prevention of significant deterioration of air quality, or protection of visibility.

Rule 62–296.411, F.A.C., states that no person shall cause, suffer, or allow elemental sulfur to be stored, handled, or transported within the State in crushed bulk or slate form or in any form other than standard sulfur pellets or in molten form, except that sulfur may be transferred within the boundaries of a single facility in other forms. Facilities using standard sulfur pellets or molten sulfur, or sulfur vatting facilities, may be permitted only in conformance with the practices identified in the rule. Florida states that the ''General Pollutant Emission Limiting Standards'' of Rule 62–296.320, F.A.C., can be applied instead of Rule 62–296.411, F.A.C., to adequately control PM emissions from dry material handling operations such as those associated with sulfur storage and handling facilities.

With removal of the above two rules from the SIP, Florida's PM requirements under the SIP for new and existing sulfur storage and handling facilities would align with the PM requirements for other, similar dry material handling sources in the State. At the time that Florida promulgated its sulfur storage and handling rules, the State was concerned that total suspended particulate matter levels in Florida would be negatively impacted by increased sulfur handling and storage operations to such an extent as to warrant additional facility-specific work practices and monitoring. However, the anticipated increase in sulfur handling and storage operations did not occur, and only 11 facilities are subject to Rule 62–212.300, F.A.C. and Rule 62–212.400, F.A.C. EPA approved these two rules into the SIP on December 24, 1985, at 50 FR 52460.[1]

EPA's primary consideration for determining the approvability of Florida's request to remove the existing sulfur storage and handling facilities rules, 62–212.600, F.A.C. and 62–296.411, F.A.C., from the SIP is whether these requested actions comply with section 110(l) of the CAA. Under section 110(l), EPA cannot approve a SIP revision if that revision would interfere with any applicable requirement regarding attainment, reasonable further progress (RFP), or any other applicable requirement established in the CAA. EPA will approve a SIP revision that removes or modifies control measures in the SIP only after the state makes a ''noninterference'' demonstration that such a removal or modification will not interfere with RFP, attainment or maintenance of any NAAQS, or any other CAA requirement. As such, Florida was required to make a demonstration of noninterference in order to remove the sulfur storage and handling facilities requirements from its SIP.

Because actual emissions are not expected to change, there will be no impact on PSD increments, RFP, visibility, attainment or maintenance of any NAAQS, or any other applicable CAA requirement. Particulate matter, in the form of coarse (PM_{10}) and fine ($PM_{2.5}$) PM, is the pollutant related to the SIP revision. On January 15, 2013 (78 FR 3086), EPA established an annual primary $PM_{2.5}$ NAAQS at 12.0 micrograms per cubic meter (μg/m^3) based on a 3-year average of annual mean $PM_{2.5}$ concentrations. At that time, EPA retained the 2006 24-hour $PM_{2.5}$ NAAQS at 35 μg/m^3 based on a 3-year average of the 98th percentile of 24-hour concentrations. All areas in the State are currently designated as attainment for the PM_{10} and $PM_{2.5}$ NAAQS.

There are no emissions reductions of carbon monoxide (CO), lead, nitrogen oxides, ozone, or sulfur dioxide (SO_2) attributable to the sulfur storage and handling facilities requirements. As a result, the removal of these requirements will not interfere with attainment of these NAAQS.

Of the 11 facilities that are subject to the sulfur handling and storage emission rules, four will experience a relaxation in the opacity limit from 10 or 15 percent to 20 percent if 62–212.600, F.A.C. and 62–296.411, F.A.C. are removed from the SIP, but emissions are not expected to increase because the underlying work practices will remain unchanged. The sulfur particulate emitting emissions units at these four facilities are approximately less than one ton per year, and a majority of the visible emissions tests conducted in 2010–11 for sulfur storage and handling units showed no visible emissions (i.e., zero percent opacity).

Furthermore, several existing state rules incorporated into Florida's SIP can be applied in lieu of Rules 62–212.600, F.A.C. and 62–296.411, F.A.C. to address sulfur PM emissions from sulfur storage and handling emissions units at these facilities. Rules 62–212.300 and 62–212.400, F.A.C., respectively, can be applied instead of the sulfur-specific requirements of paragraph 62–212.600(2)(a), F.A.C., to evaluate potential particulate matter ambient air quality impacts. The sulfur deposition analysis required by paragraph 62–212.600(2)(b), F.A.C., is unnecessary because there is no standard to compare the results with to demonstrate compliance. Rule 62–296.411, F.A.C., the ''General Pollutant Emission Limiting Standards'' of Rule 62–296.320, F.A.C., and, for some emissions units, the PM Reasonably Available Control Technology requirements of Rule 62–296.711, F.A.C., can be applied to control the sulfur PM emissions from sulfur storage and handling emissions units at these facilities. Rule 62–296.711, F.A.C. generally imposes a five percent opacity limit for existing sulfur handling, sizing, screening, crushing, and grinding operations in former total suspended particulate nonattainment

[1] EPA's December 24, 1985, action incorporated the state sulfur storage and handling rules at 17–2.540, F.A.C. and 17–2.600, F.A.C. into Florida's SIP. Florida later reorganized its administrative code and renumbered these rules as 62–212.600, F.A.C. and 62–296.411, F.A.C., respectively. EPA updated the Florida SIP on June 16, 1999 (64 FR 32346), to make it consistent with the revised numbering system.

areas or within 50 kilometers of such former areas except where an emissions unit has received a Best Available Retrofit Technology determination or the emissions are insignificant enough to be exempted under Rule 62–296.700(2), F.A.C. The control techniques and work practice standards found in Rule 62–296.411, F.A.C., to control unconfined emissions of particulate matter can also be required by paragraph 62–296.320(4)(c), F.A.C., which prohibits the emission of unconfined particulate matter without taking reasonable precautions to prevent such emissions.

For the reasons discussed above, EPA has determined that removal of the sulfur storage and handling facilities rules will not interfere with attainment or maintenance of the NAAQS in surrounding states or interfere with any other requirement identified in section 110(l). On July 1, 2014 (79 FR 37255), EPA proposed approval of the Florida April 5, 2012, submission. No adverse comments were received on this proposed action and EPA is hereby finalizing approval of the revision.

II. Final Action

EPA is taking final action to approve Florida's April 5, 2012, SIP revision to remove Rule 62–212.600, F. A. C. and Rule 62–296.411, F. A. C., related to sulfur storage and handling facilities, from the Florida SIP because the Agency has determined that this revision is consistent with section 110(l) of the CAA.

III. Statutory and Executive Order Reviews

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

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 15, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements and Sulfur oxides.

Dated: September 25, 2014.

Heather McTeer Toney,

Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart K—Florida

■ 2. Section 52.520(c) is amended by removing the entries for ''62–212.600'' under Chapter 62–212 Stationary Sources—Preconstruction Review and ''62–296.411'' under Chapter 62–296 Stationary Sources—Emission Standards.

[FR Doc. 2014–24005 Filed 10–15–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2014–0242; FRL–9916–27–Region 5]

Approval and Promulgation of Air Quality Implementation Plans; Wisconsin; Approval of Revision to PSD Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the Wisconsin State Implementation Plan (SIP) submitted by the Wisconsin Department of Natural Resources (WDNR) to EPA on March 12, 2014, for parallel processing. On August 11, 2014, WDNR submitted an updated submittal with the final rules. The submittal modifies

Wisconsin's Prevention of Significant Deterioration (PSD) program to identify precursors for particulate matter of less than 2.5 micrometers ($PM_{2.5}$), includes the significant emissions rates for $PM_{2.5}$ and emissions of particulate matter of less than 10 micrometers (PM_{10}), and modifies the definition of $PM_{2.5}$ and PM_{10} to include emissions that may condense to form particulate matter in permitting decisions. WDNR requested this revision to address disapprovals of two submissions meant to address requirements of the 2008 Implementation of the New Source Review (NSR) Program for $PM_{2.5}$ and to address a partial disapproval under section 110 of the Clean Air Act (CAA) of what is commonly referred to as an ''infrastructure'' SIP. EPA is taking final action to approve Wisconsin's August 11, 2014, final SIP revision because the Agency has made the determination that this SIP revision is in accordance with the CAA and applicable EPA regulations regarding PSD. The proposed rulemaking was published June 30, 2014. During the comment period which ended July 30, 2014, no comments were received.

DATES: This final rule is effective on November 17, 2014.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2014–0242. 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 Andrea Morgan, Environmental Engineer, at (312) 353–6058 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Andrea Morgan, Environmental Engineer, Air Permits Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–6058, *morgan.andrea@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. Background
II. What comments were received on the proposed rule?
III. What action is EPA taking?
IV. Statutory and Executive Order Reviews

I. Background

This final rulemaking addresses the March 12, 2014, WDNR submittal for parallel processing, supplemented on April 15, 2014, revising the rules in the Wisconsin SIP to comply with the 2008 NSR Implementation Rule for $PM_{2.5}$ (2008 $PM_{2.5}$ NSR Rule) and to address two previous EPA disapprovals. WDNR supplemented its initial submittal for parallel processing with the final version of its rule on August 11, 2014. The original submission for parallel processing, and the supplements thereto, may be found in the docket for this action. EPA proposed approval of this revision to Wisconsin's SIP on June 30, 2014 (79 FR 36689).

WDNR's submittal includes the required PSD elements of the 2008 $PM_{2.5}$ NSR Rule including the identification of precursors for $PM_{2.5}$, the significant emissions rates for $PM_{2.5}$ and the requirement to include emissions which may condense to form particulate matter at ambient temperatures, known as condensables, in permitting decisions. EPA had previously finalized disapprovals of two Wisconsin SIP submissions pertaining to $PM_{2.5}$ NSR implementation. Specifically, on October 29, 2012, EPA finalized disapproval of Wisconsin's infrastructure SIP submittal (77 FR 65478) and on July 25, 2013, EPA finalized disapproval of Wisconsin's May 12, 2011, submittal (78 FR 44881), which included revisions intended to comply with the 2008 $PM_{2.5}$ NSR Rule. EPA disapproved these submittals on the bases that they did not explicitly identify precursors to $PM_{2.5}$ and did not include the required language regarding condensables as required by the 2008 $PM_{2.5}$ NSR Rule and section 110(a)(2)(C) of the CAA. As discussed in the June 30, 2014, proposed approval, EPA has found Wisconsin's March 12, 2014, submittal to contain all of the required elements and to address the previously identified deficiencies.

Although the 2008 $PM_{2.5}$ NSR Rule also codified requirements for $PM_{2.5}$ in the Nonattainment NSR (NNSR) program, there are currently no areas designated as nonattainment for $PM_{2.5}$ located in Wisconsin. As such, Wisconsin is no longer obligated to submit a NNSR plan for $PM_{2.5}$, and there is no longer a Federal Implementation Plan (FIP) obligation for NNSR. As discussed in the June 30, proposed approval, should an area be designated as nonattainment for $PM_{2.5}$, Wisconsin will be required to revise its rules to include a plan to address $PM_{2.5}$ in NNSR.

EPA's June 30, 2014, proposed approval was contingent upon Wisconsin providing a final SIP revision that was substantively the same as the March 12, 2014, submittal for parallel processing. Wisconsin provided its final SIP submittal on August 11, 2014, which included the final rules adopted by WDNR on August 1, 2014. There was a typographical error in Wisconsin's August 11, 2014, SIP submittal in which Wisconsin incorrectly identified the rule number of one revision WDNR requested EPA to approve. In a letter dated August 18, 2014, Wisconsin acknowledged that in the August 11, 2014, submittal it incorrectly requested approval of NR 404.02(27)(a)5m and clarified that it intended to request that EPA approve NR 405.02(27)(a)5m, which aligns with the provisions that EPA proposed approval of on June 30, 2014. There were no differences between the March 12, 2014, draft SIP revision, and the August 11, 2014, final SIP revision.

II. What comments were received on the proposed rule?

EPA provided a 30-day review and comment period. The comment period closed on July 30, 2014. EPA received no comments on the proposed action.

III. What action is EPA taking?

EPA is taking final action to approve revisions to Wisconsin rules NR 400 and 405. As explained in the June 30, 2014, proposed approval EPA finds WDNR's submittal to be consistent with the CAA and applicable Federal requirements. WDNR's March 12, 2014, submittal requests that EPA approve the following revised rules into Wisconsin's SIP: (1) NR 400.02(123m) and (124); (2) NR 405.02(21)(b)5.a. and b. and 6; (3) NR 405.02(25i)(a), (ag) and (ar); (4) 405.02(27)(a)5m; and (5) NR 408.02(20)(e) 5.a and b. and 6. At this time EPA is only taking action on the portions that pertain to the identification of precursors to $PM_{2.5}$ and identification of $PM_{2.5}$ and PM_{10} condensables. Specifically, today's rulemaking is limited to the following provisions: (1) NR 400.02(123m) and (124); (2) NR 405.02(25i)(ag); (3) NR 405.02(25i)(ar)2. and 3.; and, (4) 405.02(27)(a)5m. EPA proposed approval of the remainder of WDNR's

submission as it pertains to NO_X as a precursor to ozone and the definition of major modification in a May 2, 2014 proposed approval (79 FR 25063), and will take a final action on those revisions in a separate rulemaking.

With the final approval of this SIP revisions, the FIP clocks started by EPA's October 29, 2012, narrow disapproval and July 25, 2013, disapproval will stop.

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 approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

This rule is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 17, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Sulfur oxides.

Dated: August 25, 2014.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. Section 52.2570 is amended by adding paragraph (c)(132) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(132) On March 12, 2014, April 15, 2014 and August 11, 2014, the Wisconsin Department of Natural Resources submitted a request to revise Wisconsin's air permitting program to incorporate PSD requirements for $PM_{2.5}$.

(i) Incorporation by reference.

(A) Wisconsin Administrative Code, NR 400.02 Definitions. NR 400.0(123m) and NR 400.0(124) as published in the Wisconsin Administrative Register July 2014, No. 703, effective August 1, 2014.

(B) Wisconsin Administrative Code, NR 405.02 Definitions. NR 405.02(25i)(ag), NR 405.02(25i)(ar)2 and 3, as published in the Wisconsin Administrative Register July 2014, No. 703, effective August 1, 2014.

(C) Wisconsin Administrative Code, NR 405.02 Definitions. NR 405.02(27)(a)5m as published in the Wisconsin Administrative Register November 2010, No. 659, effective December 1, 2010.

[FR Doc. 2014–24174 Filed 10–15–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2014–0177; FRL–9917–67–Region–3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Infrastructure Requirements for the 2008 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Maryland pursuant to the Clean Air Act (CAA). Whenever new or revised National Ambient Air Quality Standards (NAAQS) are promulgated, the CAA requires states to submit a plan for the implementation, maintenance and enforcement of such NAAQS. The plan is required to address the basic program elements including, but not limited to regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment

and maintenance of the standards. These elements are referred to as infrastructure requirements. The State of Maryland has made a submittal addressing the infrastructure requirements for the 2008 ozone NAAQS.

DATES: This final rule is effective on November 17, 2014.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2014–0177. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, 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 for public inspection 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 Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Ruth Knapp, (215) 814–219, or by email at *knapp.ruth@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On May 2, 2014 (79 FR 25054), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. In the NPR, EPA proposed approval of several infrastructure elements to satisfy several requirements of section 110(a)(2) of the CAA for the 2008 ozone NAAQS. The formal SIP revision (12–12) was submitted by the State of Maryland on December 27, 2012.

II. Summary of SIP Revision

In the NPR, EPA proposed approval of the following infrastructure elements: Sections 110(a)(2)(A), (B), (C), D(i)(II), D(ii), (E), (F), (G), (H), (J), (K), (L), and (M) of the CAA. The proposed rulemaking does not include action on section 110(a)(2)(I) of the CAA which pertains to the requirements of part D, Title I of the CAA as explained in the NPR. The proposed rulemaking action also did not include any action on Maryland's December 27, 2012 SIP submission addressing section 110(a)(2)(D)(i)(I). EPA provided in the proposal that it will later take separate action on Maryland's December 27, 2012 SIP submission for the 2008 ozone NAAQS for section 110(a)(2)(D)(i)(I). The rationale supporting EPA's proposed rulemaking action, including the scope of infrastructure SIPs in general, is explained in the NPR and the technical support document (TSD) accompanying the NPR and will not be restated here. The TSD is available online at *www.regulations.gov,* Docket ID Number EPA–R03–OAQ–2014–0177.

III. Infrastructure SIPS and Greenhouse Gases

With respect to elements (C) and (J) in section 110(a)(2) of the CAA, EPA interprets the CAA to require each state to make an infrastructure SIP submission for a new or revised NAAQS that demonstrates that the air agency has a complete Prevention of Significant Deterioration (PSD) permitting program meeting the current requirements for all regulated New Source Review (NSR) pollutants. The requirements of element (D)(i)(II) in Section 110(a)(2) which requires a demonstration that emissions from sources in the state do not interfere with the PSD program of another state, may also be satisfied by demonstrating the air agency has a complete PSD permitting program correctly addressing all regulated NSR pollutants. Maryland has shown that it currently has a PSD program in place that covers all regulated NSR pollutants, including greenhouse gases (GHGs).

On June 23, 2014, the United States Supreme Court issued a decision addressing the application of PSD permitting requirements to GHG emissions. *Utility Air Regulatory Group* v. *Environmental Protection Agency,* 134 S.Ct. 2427. The Supreme Court said that the EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD permit. The Court also said that the EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT). In order to act consistently with its understanding of the Court's decision pending further judicial action to effectuate the decision, the EPA is not continuing to apply EPA regulations that would require that SIPs include permitting requirements that the Supreme Court found impermissible. Specifically, EPA is not applying the requirement that a state's SIP-approved PSD program require that sources obtain PSD permits when GHGs are the only pollutant (i) that the source emits or has the potential to emit above the major source thresholds, or (ii) for which there is a significant emissions increase and a significant net emissions increase from a modification (*e.g.* 40 CFR 51.166(b)(48)(v)). EPA anticipates a need to revise federal PSD rules in light of the Supreme Court opinion. In addition, EPA anticipates that many states will revise their existing SIP-approved PSD programs in light of the Supreme Court's decision. The timing and content of subsequent EPA actions with respect to the EPA regulations and state PSD program approvals are expected to be informed by additional legal process before the United States Court of Appeals for the District of Columbia Circuit. At this juncture, EPA is not expecting states to have revised their PSD programs for purposes of infrastructure SIP submissions and is only evaluating such submissions to assure that the state's program correctly addresses GHGs consistent with the Supreme Court's decision.

At present, EPA has determined the Maryland SIP is sufficient to satisfy elements C, D(i)(II), and J of section 110(a)(2) with respect to GHGs because the PSD permitting program previously-approved by EPA into the SIP continues to require that PSD permits (otherwise required based on emissions of pollutants other than GHGs) contain limitations on GHG emissions based on the application of BACT. Although the approved Maryland PSD permitting program may currently contain provisions that are no longer necessary in light of the Supreme Court decision, this does not render the infrastructure SIP submission inadequate to satisfy elements (C), (D)(i)(II), and (J) in section 110(a)(2) of the CAA. The SIP contains the necessary PSD requirements at this time, and the application of those requirements is not impeded by the presence of other previously-approved provisions regarding the permitting of sources of GHGs that EPA does not consider necessary at this time in light of the Supreme Court decision. Accordingly, the Supreme Court decision does not affect EPA's earlier proposed approval of Maryland's 2008 ozone infrastructure SIP as to the requirements of elements (C), (D)(i)(II), and (J) for Section 110(a)(2). EPA is taking final action to approve these elements.

IV. Public Comments and EPA's Responses

EPA received two sets of comments on the May 2, 2014 proposed rulemaking action on Maryland's 2008 ozone ''infrastructure'' SIP. The

comments were submitted by the State of Maryland and the Sierra Club. The State of Maryland made a brief comment related to the subject matter of transported emissions while Sierra Club made more substantive comments on a variety of subjects including transport of emissions. A full set of these comments is provided in the docket for today's final rulemaking action.

A. Maryland's Comment

Comment: The State of Maryland inquired regarding EPA's plans to take action on the transport portion of its 2008 ozone infrastructure SIP submittal in light of the recent Supreme Court decision in *EPA et al* v. *EME Homer City Generation, L.P. et al,* 134 S. Ct. 1584, 2014 U.S. LEXIS 3108 (2014).[1]

Response: In this rulemaking, EPA is not taking final action with respect to the SIP revision addressing the provisions in section 110(a)(2)(D)(i)(I) of the CAA—the portion of the good neighbor provision which addresses emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS in another state. EPA did not propose to take any action in the NPR with respect to Maryland's obligations pursuant to section 110(a)(2)(D)(i)(I). As indicated in EPA's proposal, EPA anticipates taking later, separate action on the section 110(a)(2)(D)(i)(I) portion of Maryland's December 27, 2012 SIP submission for the 2008 ozone NAAQS.

B. Sierra Club Comments:

Comment 1: Sierra Club contends that EPA cannot approve the Maryland 2008 ozone infrastructure SIP revision because the plain language of section 110(a)(2)(A) of the CAA, legislative history of the CAA, case law, EPA regulations, such as 40 CFR 51.112(a), and EPA interpretations in rulemakings, require the inclusion of enforceable emission limits in an infrastructure SIP to prevent NAAQS violations[2] in areas not designated nonattainment. Specifically, Sierra Club cites air monitoring reports for Kent County, Maryland indicating violations of the NAAQS based on 2010–2012 and 2011–2013 design values. The commenter alleges that these violations demonstrate that the ozone infrastructure SIP fails to impose necessary restrictions on ozone precursor sources sufficient to ensure attainment and maintenance of the 2008 ozone NAAQS and compliance with section 110(a)(2)(A). The commenter claims Maryland must revise its infrastructure SIP to include enforceable emission limits and other measures to ensure attainment and maintenance of the 2008 ozone NAAQS. The commenter asserts the existing emission limits applicable to coal plants in Maryland's SIP were not intended to ensure maintenance of an 8-hour standard. The commenter asserts that Maryland's infrastructure SIP relies on the Maryland Healthy Air Act (HAA) for nitrogen oxide (NO_X) limitations on Maryland's coal-fired power plants yet the HAA imposes only annual and ozone season caps on NO_X at coal-fired power plants while the 8-hour ozone NAAQS requires shorter emissions averaging times. The commenter also urges EPA to encourage Maryland to expeditiously finalize new regulations on coal-fired power plants which Maryland is currently drafting which the commenter claims would require installation and operation of state-of-the-art controls on the largest contributors of NO_X in Maryland. Until these new regulations are finalized, the commenter claims ''Maryland has not tackled emissions'' from the largest NO_X sources and has not demonstrated its SIP is sufficient to attain and maintain the 2008 ozone NAAQS. Therefore, the commenter states EPA cannot approve Maryland's infrastructure SIP. Finally, the commenter states Maryland should use its infrastructure SIP process to address current ozone exceedances in Kent County and should prevent Kent County from being designated nonattainment for the 2008 ozone NAAQS by adding appropriate enforceable NO_X emission limits on sources. The commenter states EPA cannot approve the infrastructure SIP and Maryland must amend its SIP to ensure the largest NO_X sources cannot contribute to exceedances of the 8-hour ozone NAAQS.

Response 1: EPA disagrees with the commenter that the statute is clear on its face that infrastructure SIPs must include detailed attainment and maintenance plans for all areas of the state and must be disapproved if air quality data that became available late in the process or after the SIP was due and submitted changes the status of one or more areas within the state. The commenter's specific arguments that the statutory language, legislative history, case law, EPA regulations, and prior rulemaking actions by EPA mandate the narrow interpretation they advocate are addressed below in subsections (1) through (5) of this response. EPA believes that section 110(a)(2)(A) is reasonably interpreted to require states to submit SIPs that reflect the first step in their planning for attaining and maintaining a new or revised NAAQS and that they contain enforceable control measures and a demonstration that the state has the available tools and authority to develop and implement plans to attain and maintain the NAAQS.

As an initial matter, EPA disagrees that air quality monitoring data that became available, as here, four or more years following promulgation of the 2008 ozone NAAQS and shortly after the SIP was submitted in December 2012 provides a basis for disapproving the Maryland ozone infrastructure SIP. States must develop SIPs based on the information they have during the SIP development process, which preceded December 2012 (when Maryland submitted its SIP), and data that becomes available near the end of that process or after that process is completed cannot undermine the reasonable assumptions that were made by the state based on the information it had available as it developed the plan. Thus, the design values for 2012 and 2013 cited by the commenter (based respectively on the three-years of data from 2010–2012 and 2011–2013) should not be considered in determining whether the SIP should be approved.[3] The suggestion that Maryland's ozone infrastructure SIP must include measures addressing violations of the standard that did not occur until shortly before or after the SIP was due and submitted, as is the case here, cannot be supported. The CAA provides states with three years to develop infrastructure SIPs and states cannot reasonably be expected to address the annual change in an area's design value for each year over that period, nor to predict the air quality data in periods after development and submission of the SIPs. Moreover, the CAA recognizes and has provisions to address changes in air quality over time, such as an area slipping from attainment to nonattainment or changing from nonattainment to attainment. These

[1] The Maryland comment also inquired whether EPA would withdraw prior approvals of ozone infrastructure SIPs for other states which did not include action on section 110(a)(2)(D)(i)(I). As Maryland's comment about other state SIPs and EPA rulemaking on other states' SIPs is not relevant to this rulemaking, EPA need not provide any further response to this comment.

[2] The commenter frequently also uses the term ''exceedance'' in relation to the NAAQS. EPA believes that in many contexts the commenter meant a ''violation'' of the NAAQS. In general, the term exceedance means that the level of the pollutant is above the level of the NAAQS. However, for the 2008 8-hour ozone NAAQS, the form of the NAAQS allows some ''exceedances'' (levels above the 0.075 parts per million (ppm) 8-hour average) in a three year period before an area would be ''violating'' or ''not attaining'' the NAAQS.

[3] The design values for 2012 and 2013 were certified in April 2013 and April 2014 respectively.

include provisions providing for redesignation in section 107(d) and provisions in section 110(k)(5) allowing EPA to call on the state to revise its SIP, as appropriate.

The commenter suggests that EPA must disapprove the Maryland ozone infrastructure SIP because the fact that an area in Maryland now has air quality data slightly above the standard proves that the infrastructure SIP is inadequate to demonstrate attainment and maintenance for that area.[4] EPA disagrees with the commenter because EPA does not believe that section 110(a)(2)(A) requires detailed planning SIPs demonstrating either attainment or maintenance for specific geographic areas of the state. The infrastructure SIP is triggered by promulgation of the NAAQS, not designation. Moreover, infrastructure SIPs are due three years following promulgation of the NAAQS and designations are not due until two years (or in some cases three years) following promulgation of the NAAQS. Thus, during a significant portion of the period that a state has available for developing the infrastructure SIP, it does not know what the designation will be for individual areas of the state.[5] In light of the structure of the CAA, EPA's long-standing position regarding infrastructure SIPs is that they are general planning SIPs to ensure that the state has adequate resources and authority to implement a NAAQS in general throughout the state and not detailed attainment and maintenance plans for each individual area of the state.

EPA's interpretation that infrastructure SIPs are more general planning SIPs is consistent with the statute as understood in light of its history and structure. When Congress enacted the CAA in 1970, it did not include provisions requiring states and the EPA to label areas as attainment or nonattainment. Rather, states were required to include all areas of the state in ''air quality control regions'' (AQCRs) and section 110 set forth the core substantive planning provisions for these AQCRs. At that time, Congress anticipated that states would be able to address air pollution quickly pursuant to the very general planning provisions in section 110 and could bring all areas into compliance with the NAAQS within five years. Moreover, at that time, section 110(a)(2)(A)(i) specified that the section 110 plan provide for ''attainment'' of the NAAQS and section 110(a)(2)(B) specified that the plan must include ''emission limitations, schedules, and timetables for compliance with such limitations, and such other measures as may be necessary to insure attainment and maintenance [of the NAAQS].'' In 1977, Congress recognized that the existing structure was not sufficient and many areas were still violating the NAAQS. At that time, Congress for the first time added provisions requiring states and EPA to identify whether areas of the state were violating the NAAQS (i.e., were nonattainment) or were meeting the NAAQS (i.e., were attainment) and established specific planning requirements in section 172 for areas not meeting the NAAQS. In 1990, many areas still had air quality not meeting the NAAQS and Congress again amended the CAA and added yet another layer of more prescriptive planning requirements for each of the NAAQS, with the primary provisions for ozone in section 182. At that same time, Congress modified section 110 to remove references to the section 110 SIP providing for attainment, including removing pre-existing section 110(a)(2)(A) in its entirety and renumbering subparagraph (B) as section 110(a)(2)(A). Additionally, Congress replaced the clause ''as may be necessary to insure attainment and maintenance [of the NAAQS]'' with ''as may be necessary or appropriate to meet the applicable requirements of this chapter.'' Thus, the CAA has significantly evolved in the more than 40 years since it was originally enacted. While at one time section 110 did provide the only detailed SIP planning provisions for states and specified that such plans must provide for attainment of the NAAQS, under the structure of the current CAA, section 110 is only the initial stepping-stone in the planning process for a specific NAAQS. And, more detailed, later-enacted provisions govern the substantive planning process, including planning for attainment of the NAAQS.

EPA shares the commenter's concern regarding the area that is monitoring violations of the 2008 8-hour ozone NAAQS based on its 2012 and 2013 design values and is working with state and local agencies to address such violations. By approving Maryland's infrastructure SIP revision, EPA is affirming that Maryland has sufficient authority to take the types of actions required by the CAA in order to bring such areas back into attainment. For all of these reasons, EPA disagrees with the commenter that EPA must disapprove an infrastructure SIP revision if there are monitored violations of the standard in the state and the section 110(a)(2)(A) revision does not have detailed plans for demonstrating how the state will bring that area into attainment or for demonstrating maintenance. EPA believes the state has met the basic structural SIP requirements appropriate at the point in time EPA is acting upon the submittal. EPA disagrees with the commenter that Maryland should use the infrastructure SIP required by section 110(a)(1) and (2) of the CAA to address any ''exceedances'' of the 2008 ozone NAAQS or to avoid a designation of nonattainment for Kent County. Other provisions in part D of the CAA address the attainment planning process while section 107(d) of the CAA addresses designations of areas for attainment or nonattainment with a NAAQS. While Maryland may decide to regulate additional sources for pursuing emission reductions in the State to strengthen its SIP, such actions are not relevant to our approval of Maryland's infrastructure SIP in accordance with section 110 of the CAA. As discussed previously, our inquiry at this juncture is whether Maryland's SIP has the required structural elements.

Moreover, as addressed in EPA's proposed approval for this rule, Maryland identified existing emission reduction measures in the SIP that control emissions of volatile organic compounds (VOCs) and NO_X. Maryland's SIP revision reflects several provisions that have the ability to reduce ground level ozone and its precursors. The Maryland SIP relies on measures and programs used to address previous ozone NAAQS. Because there is no substantive difference between the previous ozone NAAQS and the more recent ozone NAAQS, other than the level of the standard, the provisions relied on by Maryland will provide benefits for the new NAAQS; in other words, the measures reduce *overall* ground-level ozone and its precursors and are not limited to reducing ozone levels to meet one specific NAAQS.[6]

Finally, EPA appreciates the commenter's support of Maryland's pursuit of additional NO_X emission

[4] EPA notes that preliminary monitoring data for 2014 indicates that the 2012–2014 design value for Kent County, Maryland will meet the 2008 ozone NAAQS. The 2014 data is not complete, quality assured or certified at this time.

[5] While it is true that there may be some monitors within a state with values so high as to make a nonattainment designation of the county with that monitor almost a certainty, the geographic boundaries of the nonattainment area associated with that monitor would not be known until EPA issues final designations. Moreover, the area of concern to the commenter does not fit that description in any event.

[6] Thus, EPA disagrees with the commenter's assertion that Maryland has not addressed the largest emitters of NO_X in the State. Maryland's HAA specifically imposed NO_X emission limits on coal-fired power plants in Maryland.

limitations at coal-fired power plants in Maryland. Additional NO_X regulations on emissions will likely strengthen the Maryland SIP and lead to additional reductions in NO_X emissions benefiting Maryland. However, EPA does not believe that approval of the infrastructure SIP is contingent on Maryland adopting this rule. Congress established the CAA such that each state has primary responsibility for assuring air quality within the state and determines an emission reduction program for its areas subject to EPA approval, with such approval dependent upon whether the SIP as a whole meets the applicable requirements of the CAA. *See Commonwealth of Virginia, et al.,* v. *EPA,* 108 F.3d 1397, 1410 (D.C. Cir. 1997) (citing *Natural Resources Defense Council, Inc.* v. *Browner,* 57 F.3d 1122, 1123 (DCCir.1995)). EPA cannot condition approval of the Maryland infrastructure SIP upon inclusion of a particular emission reduction program as long as the SIP otherwise meets the requirements of the CAA. As explained in the NPR and the TSD, Maryland's ozone infrastructure SIP meets the requirements in section 110(a)(2).[7]

1. The Plain Language of the CAA

Comment 2: The commenter states that on its face the CAA ''requires I–SIPs to be adequate to prevent exceedances of the NAAQS.'' In support, the commenter quotes the language in section 110(a)(1) which requires states to adopt a plan for implementation, maintenance, and enforcement of the NAAQS and the language in section 110(a)(2)(A) which requires SIPs to include enforceable emissions limitations as may be necessary to meet the requirements of the CAA and which commenter claims include the maintenance plan requirement. Sierra Club notes the CAA definition of emission limit and reads these provisions together to require ''enforceable emission limits on source emissions sufficient to ensure maintenance of the NAAQS.''

Response 2: EPA disagrees that section 110 is clear ''on its face'' and must be interpreted in the manner suggested by Sierra Club. As explained previously, section 110 is only one provision that is part of the complicated structure governing implementation of the NAAQS program under the CAA, as amended in 1990, and it must be interpreted in the context of not only that structure, but also of the historical evolution of that structure. In light of the revisions to section 110 since 1970 and the later-promulgated and more specific planning requirements of the CAA, EPA interprets the requirement in section 110(a)(2)(A) that the plan provide for ''implementation, maintenance and enforcement'' to mean that the infrastructure SIP must contain enforceable emission limits that will aid in attaining and/or maintaining the NAAQS and that the state demonstrate that it has the necessary tools to implement and enforce a NAAQS, such as adequate state personnel and an enforcement program. With regard to the requirement for emission limitations, EPA has interpreted this to mean for purposes of section 110, that the state may rely on measures already in place to address the pollutant at issue or any new control measures that the state may choose to submit. As EPA stated in ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),'' dated September 13, 2013 (Infrastructure SIP Guidance), ''[t]he conceptual purpose of an infrastructure SIP submission is to assure that the air agency's SIP contains the necessary structural requirements for the new or revised NAAQS, whether by establishing that the SIP already contains the necessary provisions, by making a substantive SIP revision to update the SIP, or both. Overall, the infrastructure SIP submission process provides an opportunity . . . to review the basic structural requirements of the air agency's air quality management program in light of each new or revised NAAQS.'' Infrastructure SIP Guidance at p. 2.

The commenter makes general allegations that Maryland does not have sufficient protective measures addressing ozone pollution. EPA addressed the adequacy of Maryland's infrastructure SIP for 110(a)(2)(A) for purposes of meeting applicable requirements of the CAA in the TSD accompanying the May 2, 2014 NPR and explained why the SIP includes enforceable emission limitations and other control measures. These include applicable portions of COMAR 26.11 such as COMAR 26.11.02, and COMAR 26.11.06.14. As discussed in the TSD accompanying the May 2, 2014 NPR, Maryland's enforceable emission limits, control measures, and related SIP approved regulations can be found in 40 CFR 52.1070. These include enforceable emissions limits, control measures, fees, and compliance schedules adopted for the 1-hour and 1997 8-hour ozone NAAQS but which will also provide ozone reductions benefits for the 2008 ozone NAAQS.

2. The Legislative History of the CAA

Comment 3: Sierra Club cites two excerpts from the legislative history of the CAA Amendments of 1970 claiming they support an interpretation that SIP revisions under CAA section 110 must include emissions limitations sufficient to show maintenance of the NAAQS in all areas of Maryland. Sierra Club also contends that the legislative history of the CAA supports the interpretation that infrastructure SIPs under section 110(a)(2) must include enforceable emission limitations, citing the Senate Committee Report and the subsequent Senate Conference Report accompanying the 1970 CAA.

Response 3: As provided in the previous response, the CAA, as enacted in 1970, including its legislative history, cannot be interpreted in isolation from the later amendments that refined the structure of the Act and deleted relevant language from section 110 concerning demonstrating attainment. In any event, the two excerpts of legislative history the commenter cites merely provide that states should include enforceable emission limits in their SIPs and they do not mention or otherwise address whether states are required to include maintenance plans for all areas of the state as part of the infrastructure SIP. As provided earlier in this rulemaking action, the TSD for the proposed rule explains why the SIP includes enforceable emissions limitations and meets the requirement in section 110(a)(2)(A).

3. Case Law

Comment 4: Sierra Club also discusses several cases applying the CAA which Sierra Club claims support their contention that courts have been clear that section 110(a)(2)(A) requires enforceable emissions limits in infrastructure SIPs to prevent violations of the NAAQS. Sierra Club first cites to language in *Train* v. *NRDC,* 421 U.S. 60, 78 (1975), addressing the requirement for ''emission limitations'' and stating that emission limitations ''are specific rules to which operators of pollution sources are subject, and which if enforced should result in ambient air which meet the national standards.'' Sierra Club also cites to *Pennsylvania Dept. of Envtl. Resources* v. *EPA,* 932 F.2d 269, 272 (3d Cir. 1991) for the proposition that the CAA directs EPA to withhold approval of a SIP where it does not ensure maintenance of the NAAQS and *Mision Industrial, Inc.* v. *EPA,* 547 F.2d 123, 129 (1st Cir. 1976), which quoted section 110(a)(2)(B) of the

[7] As stated previously, EPA will take later, separate action on Maryland's ozone infrastructure SIP submittal regarding the portion of the SIP submittal addressing section 110(a)(2)(D)(i)(I).

CAA of 1970. The commenter contends that the 1990 Amendments do not alter how courts have interpreted the requirements of section 110, quoting *Alaska Dept. of Envtl. Conservation* v. *EPA,* 540 U.S. 461, 470 (2004) which in turn quoted section 110(a)(2)(A) of the CAA and also stated that ''SIPs must include certain measures Congress specified'' to ensure attainment of the NAAQS. The commenter also quotes several additional opinions in this vein. *Mont. Sulphur & Chem. Co.* v. *EPA,* 666 F.3d 1174, 1180 (9th Cir. 2012) (''The Clean Air Act directs states to develop implementation plans—SIPs—that 'assure' attainment and maintenance of [NAAQS] through enforceable emissions limitations''); *Hall* v. *EPA* 273 F.3d 1146, 1153 (9th Cir. 2001) (''Each State must submit a [SIP] that specif[ies] the manner in which [NAAQS] will be achieved and maintained within each air quality control region in the State''). Finally, the commenter cites *Mich. Dept. of Envtl. Quality* v. *Browner,* 230 F.3d 181 (6th Cir. 2000) for the proposition that EPA may not approve a SIP revision that does not demonstrate how the rules would not interfere with attainment and maintenance of the NAAQS.

Response 4: None of the cases the commenter cites support the commenter's contention that section 110(a)(2)(A) is clear that infrastructure SIPs must include detailed plans providing for attainment and maintenance of the NAAQS in all areas of the state nor do they shed light on how section 110(a)(2)(A) may reasonably be interpreted. With the exception of *Train,* none of the cases the commenter cites concerned the interpretation of CAA section 110(a)(2)(A) (or section 110(a)(2)(B) of the pre-1990 Act). Rather, the courts reference section 110(a)(2)(A) (or section 110(a)(2)(B) of the pre-1990 CAA) in the background section of decisions in the context of a challenge to an EPA action on revisions to a SIP that was required and approved as meeting other provisions of the CAA or in the context of an enforcement action.

In *Train,* 421 U.S. 60, a case that was decided almost 40 years ago, the Court was addressing a state revision to an attainment plan submission made pursuant to section 110 of the CAA, the sole statutory provision at that time regulating such submissions. The issue in that case concerned whether changes to requirements that would occur before attainment was required were variances that should be addressed pursuant to the provision governing SIP revisions or were ''postponements'' that must be addressed under section 110(f) of the CAA of 1970, which contained prescriptive criteria. The Court concluded that EPA reasonably interpreted section 110(f) not to restrict a state's choice of the mix of control measures needed to attain the NAAQS and that revisions to SIPs that would not impact attainment of the NAAQS by the attainment date were not subject to the limits of section 110(f). Thus the issue was not whether a section 110 SIP needs to provide for attainment or whether emissions limits are needed as part of the SIP; rather the issue was which statutory provision governed when the state wanted to revise the emission limits in its SIP if such revision would not impact attainment or maintenance of the NAAQS. To the extent the holding in the case has any bearing on how section 110(a)(2)(A) might be interpreted, it is important to realize that in 1975, when the opinion was issued, section 110(a)(2)(B) (the predecessor to section 110(a)(2)(A)) expressly referenced the requirement to attain the NAAQS, a reference that was removed in 1990.

The decision in *Pennsylvania Dept. of Envtl. Resources* was also decided based on the pre-1990 provision of the CAA. At issue was whether EPA properly rejected a revision to an approved plan where the inventories relied on by the state for the updated submission had gaps. The Court quoted section 110(a)(2)(B) of the pre-1990 CAA in support of EPA's disapproval, but did not provide any interpretation of that provision. Yet, even if the Court had interpreted that provision, EPA notes that it was modified by Congress in 1990; thus, this decision has little bearing on the issue here.

At issue in *Mision Industrial,* 547 F.2d 123, was the definition of ''emissions limitation'' not whether section 110 requires the state to demonstrate how all areas of the state will attain and maintain the NAAQS as part of their infrastructure SIPs. The language from the opinion the commenter quotes does not interpret but rather merely describes section 110(a)(2)(A). The commenter does not raise any concerns about whether the measures relied on by the state in the infrastructure SIP are ''emissions limitations'' and the decision in this case has no bearing here.[8] In *Mont. Sulphur & Chem. Co.,* 666 F.3d 1174, the Court was reviewing a federal implementation plan that EPA promulgated after a long history of the state failing to submit an adequate state implementation plan. The Court cited generally to sections 107 and 110(a)(2)(A) of the CAA for the proposition that SIPs should assure attainment and maintenance of NAAQS through emission limitations but this language was not part of the Court's holding in the case. The commenter suggests that *Alaska Dept. of Envtl. Conservation,* 540 U.S. 461, stands for the proposition that the 1990 CAA Amendments do not alter how courts interpret section 110. This claim is inaccurate. Rather, the Court quoted section 110(a)(2)(A), which, as noted previously, differs from the pre-1990 version of that provision and the Court makes no mention of the changed language. Furthermore, the commenter also quotes the Court's statement that ''SIPs must include certain measures Congress specified'' but that statement specifically referenced the requirement in section 110(a)(2)(C), which requires an enforcement program and a program for the regulation of the modification and construction of new sources. Notably, at issue in that case was the state's ''new source'' permitting program, not its infrastructure SIP.

Two of the cases the commenter cites, *Mich. Dept. of Envtl. Quality,* 230 F.3d 181, and *Hall,* 273 F.3d 1146, interpret CAA section 110(l), the provision governing ''revisions'' to plans, and not the initial plan submission requirement under section 110(a)(2) for a new or revised NAAQS, such as the infrastructure SIP at issue in this instance. In those cases, the courts cited to section 110(a)(2)(A) solely for the purpose of providing a brief background of the CAA.

4. EPA Regulations, Such as 40 CFR 51.112(a)

Comment 5: The commenter cites to 40 CFR 51.112(a), providing that ''[e]ach plan must demonstrate that the measures, rules and regulations contained in it are adequate to provide for the timely attainment and maintenance of the [NAAQS].'' The commenter asserts that this regulation requires all SIPs to include emissions limits necessary to ensure attainment of the NAAQS. The commenter states that ''[a]lthough these regulations were developed before the Clean Air Act separated infrastructure SIPs from nonattainment SIPs—a process that began with the 1977 amendments and was completed by the 1990 amendments—the regulations apply to I–SIPs.'' The commenter relies on a statement in the preamble to the 1986 action restructuring and consolidating

[8] While the commenter does contend that the State shouldn't be allowed to rely on emission reductions that were developed for the prior ozone standards (which we address above), it does not claim that any of the measures are not ''emissions limitations'' within the definition of the CAA.

provisions in part 51, in which EPA stated that ''[i]t is beyond the scope of th[is] rulemaking to address the provisions of Part D of the Act . . . .'' 51 FR 40656, 40656 (November 7, 1986).

Response 5: The commenter's reliance on 40 CFR 51.112 to support its argument that infrastructure SIPs must contain emission limits ''adequate to prohibit NAAQS exceedances'' and adequate or sufficient to ensure the maintenance of the NAAQS is not supported. As an initial matter, EPA notes and the commenter recognizes this regulatory provision was initially promulgated and ''restructured and consolidated'' prior to the CAA Amendments of 1990, in which Congress removed all references to ''attainment'' in section 110(a)(2)(A). And, it is clear on its face that 40 CFR 51.112 applies to plans specifically designed to attain the NAAQS. EPA interprets these provisions to apply when states are developing ''control strategy'' SIPs such as the detailed attainment and maintenance plans required under other provisions of the CAA, as amended in 1977 and again in 1990, such as section 175A and 182. The commenter suggests that these provisions must apply to section 110 SIPs because in the preamble to EPA's action ''restructuring and consolidating'' provisions in part 51, EPA stated that the new attainment demonstration provisions in the 1977 Amendments to the CAA were ''beyond the scope'' of the rulemaking. It is important to note, however, that EPA's action in 1986 was not to establish new substantive planning requirements, but rather was meant merely to consolidate and restructure provisions that had previously been promulgated. EPA noted that it had already issued guidance addressing the new ''Part D'' attainment planning obligations. Also, as to maintenance regulations, EPA expressly stated that it was not making any revisions other than to re-number those provisions. 51 FR at 40657.

Although EPA was explicit that it was not establishing requirements interpreting the provisions of new ''Part D'' of the CAA, it is clear that the regulations being restructured and consolidated were intended to address control strategy plans. In the preamble, EPA clearly stated that 40 CFR 51.112 was replacing 40 CFR 51.13 (''Control strategy: SO_x and PM (portion)''), 51.14 (''Control strategy: CO, HC, O_x and NO_2 (portion)''), 51.80 (''Demonstration of attainment: Pb (portion)''), and 51.82 (''Air quality data (portion)''). *Id.* at 40660. Thus, the present-day 40 CFR 51.112 contains consolidated provisions that are focused on control strategy SIPs, and the infrastructure SIP is not such a plan.

5. EPA Interpretations in Other Rulemakings

Comment 6: The commenter also references two prior EPA rulemaking actions where EPA disapproved or proposed to disapprove SIPs and claimed they were actions in which EPA relied on section 110(a)(2)(A) and 40 CFR 51.112 to reject infrastructure SIPs. The commenter first points to a 2006 partial approval and partial disapproval of revisions to Missouri's existing plan addressing the sulfur dioxide (SO_2) NAAQS. In that action, EPA cited section 110(a)(2)(A) as a basis for disapproving a revision to the State plan on the basis that the State failed to demonstrate the SIP was sufficient to ensure maintenance of the SO_2 NAAQS after revision of an emission limit and cited to 40 CFR 51.112 as requiring that a plan demonstrates the rules in a SIP are adequate to attain the NAAQS. Second, Sierra Club cites a 2013 disapproval of a revision to the SO_2 SIP for Indiana, where the revision removed an emission limit that applied to a specific emissions source at a facility in the State. In its proposed disapproval, EPA relied on 40 CFR 51.112(a) in proposing to reject the revision, stating that the State had not demonstrated that the emission limit was ''redundant, unnecessary, or that its removal would not result in or allow an increase in actual SO_2 emissions.'' EPA further stated in that proposed disapproval that the State had not demonstrated that removal of the limit would not ''affect the validity of the emission rates used in the existing attainment demonstration.'' Additionally, the commenter states EPA in its September 2013 Infrastructure SIP Guidance purported to postpone certain start-up, shutdown, and malfunction (SSM) requirements but did not postpone other infrastructure SIP requirements, which the commenter asserts indicates the CAA requires infrastructure SIPs to include enforceable limits adequate to ensure attainment of NAAQS and to impose limits without delay.

Response 6: EPA does not agree that the two prior actions referenced by the commenter establish how EPA reviews infrastructure SIPs. It is clear from both the final Missouri rule and the proposed and final Indiana rule that EPA was not reviewing initial infrastructure SIP submissions under section 110 of the CAA, but rather reviewing revisions that would relax the stringency of an already approved SIP. EPA's partial approval and partial disapproval of revisions to restrictions on emissions of sulfur compounds for the Missouri SIP in 71 FR 12623 addressed a control strategy SIP and not an infrastructure SIP. The Indiana action provides even less support for the commenter's position. In that case, the State had an approved SO_2 attainment plan and was seeking to remove from the SIP provisions relied on as part of the modeled attainment demonstration. EPA proposed that the State had failed to demonstrate under section 110(l) of the CAA why the SIP revision would not result in increased SO_2 emissions and thus interfere with attainment of the NAAQS. Nothing in that rulemaking addresses the necessary content of the initial infrastructure SIP for a new or revised NAAQS. Rather, it is simply applying the clear statutory requirement that a state must demonstrate why a revision to an approved SIP will not interfere with attainment of the NAAQS.

Finally, EPA disagrees with the comment regarding the Infrastructure SIP Guidance. The commenter correctly asserts that EPA in its September 2013 Infrastructure SIP Guidance clearly stated that EPA does not interpret section 110(a)(2) to require state air agencies and the EPA to address potentially deficient pre-existing SSM SIP provisions when acting on an infrastructure SIP particularly because EPA has alternative tools in the CAA to address such deficiencies. Infrastructure SIP Guidance at pgs. 19–20. However, this affirmative statement regarding potential SSM deficiencies in a state's SIP cannot be construed to mean or imply EPA cannot approve an infrastructure SIP without a demonstration that the SIP contains adequate enforceable limits to ensure attainment with a NAAQS. For all of the reasons discussed previously, we do not interpret section 110(a)(2)(A) to require that the state demonstrate attainment of the NAAQS. As explained above, and similar to our position on SSM deficiencies, the CAA establishes separate provisions that govern attainment SIPs for areas. As discussed previously, EPA reviews infrastructure SIPs to ensure a SIP has the appropriate structural requirements.

Comment 7: The commenter states that EPA must evaluate Maryland's provisions submitted in the 2008 ozone NAAQS infrastructure SIP to address section 110(a)(2)(D)(i)(I) and determine whether they are sufficient enough to meet requirements of section 110(a)(2)(D)(i)(I). In light of the Supreme Court's decision in *EME Homer City* in April 2014, the commenter argues that the EPA should act quickly to address pollution that may be contributing to another state's nonattainment or

interfering with another state's maintenance of the 2008 ozone NAAQS. The commenter argues EPA must evaluate whether Maryland addresses the section 110(a)(2)(D)(i)(I) requirements regarding emissions that would contribute to exceedances of or interfere with the maintenance of the 2008 ozone NAAQS and cannot delay its review of Maryland's provisions to address such requirements. The commenter states EPA must disapprove the Maryland infrastructure SIP transport provision and adequately address the impact of ozone emissions from Maryland on other states. Because Maryland's transport SIP submittal relies on CSAPR and the HAA, the commenter asserts EPA should determine Maryland has not adequately addressed its cross-state impacts. The commenter claims CSAPR only addresses the less stringent 1997 ozone NAAQS and claims that even Maryland said additional reductions are needed for 2008 ozone NAAQS beyond CSAPR. The commenter also claims Maryland's HAA was developed under the ''outdated'' 1997 ozone NAAQS and claims Maryland's reductions from the HAA do not demonstrate Maryland is not contributing to nonattainment or interfering with maintenance of the NAAQS. The commenter also claims Maryland cannot rely on voluntary control measures to address transport of emissions. Therefore, the commenter asserts EPA cannot approve the Maryland infrastructure SIP and Maryland must revise its SIP to address section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS.

Response 7: As EPA has stated previously both in the NPR and this final rulemaking, EPA is not taking any final action with respect to the good neighbor provisions in section 110(a)(2)(D)(i)(I). In the NPR, EPA did not propose to take any action with respect to Maryland's obligations pursuant to section 110(a)(2)(D)(i)(I) and is not, in this rulemaking action, taking any such action. Thus, the comments relating to the substance and approvability of Maryland's good neighbor provision in its 2008 ozone NAAQS infrastructure SIP submission are not relevant to this present rulemaking action. As stated herein and in the NPR, EPA will take later, separate action on Maryland's 2008 ozone NAAQS infrastructure SIP submission to address section 110(a)(2)(D)(i)(I).

EPA believes the statutory language in the CAA supports our ability to approve Maryland's December 27, 2012 2008 ozone NAAQS infrastructure SIP while taking later, separate action on the portion of the SIP submittal which addresses Maryland's obligation to address section 110(a)(2)(D)(i)(I). Section 110(k)(3) of the CAA authorizes EPA to approve a plan in full, disapprove it in full, or approve it in part and disapprove it in part, depending on the extent to which such plan meets the requirements of the CAA. This authority to approve the states' SIP revisions in separable parts was included in the 1990 Amendments to the CAA to overrule a decision in the Court of Appeals for the Ninth Circuit holding that EPA could not approve individual measures in a plan submission without either approving or disapproving the plan as a whole. *See* S. Rep. No. 101–228, at 22, 1990 U.S.C.C.A.N. 3385, 3408 (discussing the express overruling of *Abramowitz* v. *EPA,* 832 F.2d 1071 (9th Cir. 1987)).

As such, EPA interprets its authority under section 110(k)(3), as affording EPA the discretion to approve or conditionally approve individual elements of Maryland's infrastructure submission for the 2008 8-hour ozone NAAQS, separate and apart from any action with respect to the requirements of section 110(a)(2)(D)(i)(I) with respect to that NAAQS. EPA views discrete infrastructure SIP requirements, such as the requirements of 110(a)(2)(D)(i)(I), as severable from the other infrastructure elements and interprets section 110(k)(3) as allowing it to act on individual severable measures in a plan submission. The commenter raises no compelling legal or environmental rationale for an alternate interpretation. Nothing in the Supreme Court's April 2014 decision in *EME Homer City* alters our interpretation that we may act on individual severable measures including the requirements of section 110(a)(2)(D)(i)(I) in a SIP submission. *See EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584 (2014) (affirming a state's obligation to submit a SIP revision addressing section 110(a)(2)(D)(i)(I) independent of EPA's action finding significant contribution or interference with maintenance).

EPA's proposed approval of the Maryland December 27, 2012 infrastructure SIP submission for the 2008 ozone NAAQS for the portions described in the NPR was therefore appropriate.

Comment 8: The commenter indicates that Maryland is not meeting the requirements of CAA section 110(a)(2)(J) and does not meet the requirements of section 127 relating to public notification. The commenter asserts section 127 mandates a SIP contain provisions to effectively notify the public of NAAQS exceedances and provides that the state must advise of health hazards of pollution. The commenter contends Maryland's Environmental Article, section 2–103.2(b) ensures air monitoring data is available online but does not provide public notification of NAAQS exceedances. Additionally the commenter questions whether the ozone forecasts provided by Maryland online provide information about ozone NAAQS exceedances and says Maryland must revise its infrastructure SIP to ensure compliance with section 110(a)(2)(J).

Response 8: EPA disagrees with the commenter that the Maryland SIP does not meet the requirement of section 110(a)(2)(J) for public notification. In the TSD accompanying the NPR, EPA discussed Environment Article, section 2–103.2(b) of the Annotated Code of Maryland, which requires public access to all air monitoring data online via the internet. By providing information to the public on the internet for 8-hour ozone levels, the State of Maryland provides adequate public notification of ozone levels and provides to the public both in and outside the State of Maryland information that can be used to examine ozone levels and determine when and where exceedances occurred or might occur. The commenter does not explain why this information is not adequate ''public notice'' of exceedances of the NAAQS. In addition to providing access to the ozone monitor data on the internet, the Maryland SIP contains approved procedures for permitting, attainment planning, and emergency episodes which provide information about the ozone air quality conditions and about the emission controls that may be implemented to reduce ozone levels. Section 2–303(b) of the Environment Article of the Annotated Code of Maryland requires that public hearings be held before Maryland finalizes air quality regulations. In the TSD, EPA also identified other regulatory and statutory provisions in Maryland which address public notification and hearings including COMAR 26.11.02 and 26.11.03 for permits and COMAR 26.11.04.02 which adopts 40 CFR 58.50 for reporting air quality to the public several times per day. In addition, COMAR 26.11.05.02 and 26.11.05.03 provide for public notification when ozone levels may reach or exceed levels considered injurious to human health. The remaining provisions in COMAR 26.11.05 provide for responsive actions to address such injurious accumulations of air pollution. Maryland provides historical information on exceedances statewide for each calendar year at

http://www.mde.state.md.us/programs/Air/AirQualityMonitoring/Pages/HistoricalData.aspx which contains links to a statewide listing of recorded exceedances at specific locations including the Millington monitor in Kent County. Maryland also provides air quality forecasts at *http://www.mde.state.md.us/programs/Air/AirQualityMonitoring/Pages/AQForecast.aspx* which also includes information on actions the public can take to reduce pollution and protect their health.

As explained in the TSD accompanying the NPR and herein, Maryland's ozone infrastructure SIP submission clearly demonstrates that Maryland regularly notifies the public of instances or areas in which the 2008 ozone NAAQS was exceeded, advises the public of the health hazards associated with such exceedances, and enhances public awareness of measures that can prevent such exceedances and of ways in which the public can participate in regulatory and other efforts to improve air quality. Thus, EPA believes the Maryland statutory and regulatory provisions discussed previously and in the TSD provide effective methods to provide information and notification to the public when the ozone standard may be or has been exceeded.

V. Final Action

EPA is approving the following infrastructure elements of Maryland's December 27, 2012 SIP revision for the 2008 ozone NAAQS: Section 110(a)(2)(A), (B), (C), (D)(i)(II), D(ii), (E), (F), (G), (H), (J), (K), (L), and (M) as a revision to the Maryland SIP. This rulemaking action does not include Section 110(a)(2)(I) of the CAA which pertains to the nonattainment requirements of Part D Title I of the CAA. This rulemaking action also does not include any action on Section 110(a)(2)(D)(i)(I). EPA will take later separate action on Maryland's December 27, 2012 SIP submission addressing Section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS.

VI. Statutory and Executive Order Reviews

A. General Requirements

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 approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

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

B. Submission to Congress and the Comptroller General

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).

C. Petitions for Judicial Review

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 December 15, 2014. 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, which satisfies certain infrastructure requirements of section 110(a)(2) of the CAA for the 2008 ozone NAAQS for the State of Maryland, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements.

Dated: September 22, 2014.

William C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart V—Maryland

■ 2. In § 52.1070, the table in paragraph (e) is amended by adding the entry for Infrastructure Requirements for the 2008 Ozone NAAQS at the end of the table to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(e)* * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* *	*	* *	* *	* *
Infrastructure Requirements for the 2008 Ozone NAAQS.	Statewide	12/27/12	10/16/14 *[Insert* **Federal Register** *citation]*.	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II), D(ii), (E), (F), (G), (H), (J), (K), (L), and (M)

[FR Doc. 2014–24256 Filed 10–15–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2011–0969; FRL–9917–62–Region 5]

Approval and Promulgation of Air Quality Implementation Plans; Ohio; Infrastructure SIP Requirements for the 2008 Ozone NAAQS

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve elements of a state implementation plan (SIP) submission from Ohio regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2008 ozone National Ambient Air Quality Standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. The proposed rulemaking associated with today's final action was published on July 25, 2014, and EPA received one comment pertaining to infrastructure for the 2008 ozone NAAQS during the comment period, which ended on August 25, 2014. The 2008 lead (Pb), and 2010 Nitrogen Dioxide (NO_2), and 2010 Sulfur Dioxide (SO_2) infrastructure SIPs were also addressed in the proposed rulemaking but will be addressed in a separate final rulemaking.

DATES: This final rule is effective on November 17, 2014.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2011–0969. All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly-available only in hard copy. Publicly-available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the U.S. 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 Sarah Arra at (312) 886–9401 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Sarah Arra, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–9401, *arra.sarah@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 of these SIP submissions?
A. What does this rulemaking address?
B. Why did the state make this SIP submissions?
C. What is the scope of this rulemaking?
II. What is our response to comments received on the proposed rulemaking?
III. What action is EPA taking?
IV. Statutory and Executive Order Reviews

I. What is the background of these SIP submissions?

A. What does this rulemaking address?

This rulemaking addresses submissions from the Ohio Environmental Protection Agency. The state submitted the infrastructure SIP for the 2008 ozone NAAQS on December 27, 2012, supplemented on June 7, 2013.

B. Why did the state make this SIP submissions?

Under sections 110(a)(1) and (2) of the CAA, states are required to submit infrastructure SIPs to ensure that their SIPs provide for implementation, maintenance, and enforcement of the NAAQS, including the 2008 ozone NAAQS. These submissions must contain any revisions needed for meeting the applicable SIP requirements of section 110(a)(2), or certifications that their existing SIPs for the NAAQS already meet those requirements.

EPA has highlighted this statutory requirement in multiple guidance documents, including the most recent guidance document entitled ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)'' issued on September 13, 2013.

C. What is the scope of this rulemaking?

EPA is acting upon the SIP submission from Ohio that addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2008 ozone NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions ''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 these SIP submissions are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as ''infrastructure SIP'' submissions. Although the term ''infrastructure SIP'' does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as ''nonattainment SIP'' or ''attainment plan SIP'' submissions to address the nonattainment planning requirements of part D of title I of the CAA, ''regional haze SIP'' submissions required by EPA rule to address the

visibility protection requirements of CAA section 169A, and nonattainment new source review (NNSR) permit program submissions to address the permit requirements of CAA, title I, part D.

A detailed rationale, history, and interpretation related to infrastructure SIP requirements can be found in our May 13, 2014 proposed rule entitled, ''Infrastructure SIP Requirements for the 2008 Lead NAAQS'' in the section, ''What is the scope of this rulemaking?'' (*see* 79 FR 27241 at 27242–27245).

This rulemaking will not cover three substantive areas that are not integral to acting on a state's infrastructure SIP submission: (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 ''SSM''; (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 (collectively referred to as ''director's discretion''); and, (iii) existing provisions for 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''). Instead, EPA has the authority to address each one of these substantive areas in separate rulemaking.

In addition, EPA is not acting on section 110(a)(2)(D)(i)—Interstate transport, section 110(a)(2)(J)—visibility protection, and portions of Ohio's submission addressing the prevention of significant deterioration, sections 110(a)(2)(C), (D)(i)(II), (D)(ii), and the prevention of significant deterioration (PSD) portion of (J) for 2008 ozone NAAQS. EPA is also not acting on section 110(a)(2)(I)—Nonattainment Area Plan or Plan Revisions Under Part D, in its entirety. The rationale for not acting on elements of these requirements was included in EPA's July 25, 2014 proposed rulemaking.

II. What is our response to comments received on the proposed rulemaking?

The public comment period for EPA's proposed actions with respect to Ohio's satisfaction of the infrastructure SIP requirements for the 2008 ozone NAAQS closed on August 25, 2014. EPA received one comment letter related to the 2008 ozone NAAQS, and a synopsis of the adverse comments contained in this letter, as well as EPA's response, are provided below.

Comment: The State of Connecticut asserts that Connecticut's ability to attain the 2008 ozone NAAQS is substantially compromised by interstate transport of pollution from upwind states. Specifically, Cross-State Air Pollution Rule (CSAPR) modeling shows emissions from Ohio contributing to the nonattainment problem in Connecticut. The State of Connecticut asserts it has done its share to reduce in-state emissions, and EPA should ensure that each upwind state addresses contribution to another downwind state's nonattainment. Connecticut states that CAA section 110(a)(1) requires states like Ohio to submit, within three years of promulgation of a new NAAQS, a plan which provides for implementation, maintenance, and enforcement of such NAAQS within the state. Connecticut characterizes Ohio's 2008 ozone submission for the good neighbor element of Ohio's SIP as relying on state regulations which implement the Clean Air Interstate Rule and CSAPR, and that such programs were intended by EPA to address the 1997 ozone NAAQS and not the more stringent 2008 standard. Connecticut asserts EPA should therefore disapprove the Ohio submission. Connecticut also argues that, under section 110(a)(2), Ohio was required to submit a complete SIP that demonstrated compliance with the good neighbor provision of section 110(a)(2)(D)(i)(I). Connecticut further argues that the CAA does not give EPA discretion to take no action on the submitted good neighbor provisions on the grounds of taking a separate action. Instead, it asserts that the only action available to EPA is to determine the approvability of the good neighbor provision of Ohio's 2008 ozone NAAQS infrastructure SIP submission, or promulgate a FIP under section 110(c)(1) within two years.

Response: As explained in the notice of proposed rulemaking (NPR), this action does not address, for the 2008 ozone NAAQS, the good neighbor provision in section 110(a)(2)(D)(i)(I), which prohibits emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS in another state. Thus, to the extent the comment relates to the substance or approvability of the good neighbor provision in Ohio's 2008 ozone infrastructure SIP submission, the comment is not relevant to the present rulemaking. As stated herein and in the NPR, EPA will take later, separate action to address section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS.

EPA disagrees with the commenters' argument that EPA cannot approve a SIP without the good neighbor provision. Section 110(k)(3) of the CAA authorizes EPA to approve a plan in full, disapprove it in full, or approve it in part and disapprove it in part, depending on the extent to which such plan meets the requirements of the CAA. This authority to approve the states' SIP revisions in separable parts was included in the 1990 Amendments to the CAA to overrule a decision in the Court of Appeals for the Ninth Circuit holding that EPA could not approve individual measures in a plan submission without either approving or disapproving the plan as a whole. See S. Rep. No. 101–228, at 22, 1990 U.S.C.C.A.N. 3385, 3408 (discussing the express overruling of *Abramowitz* v. *EPA,* 832 F.2d 1071 (9th Cir. 1987)).

The Agency interprets its authority under section 110(k)(3) as affording EPA the discretion to approve or conditionally approve individual elements of Ohio's infrastructure submission for the 2008 ozone NAAQS, separate and apart from any action with respect to the requirements of section 110(a)(2)(D)(i)(I) with respect to that NAAQS. EPA views discrete infrastructure SIP requirements, such as the requirements of 110(a)(2)(D)(i)(I), as severable from the other infrastructure elements, and interprets section 110(k)(3) as allowing EPA to act on individual severable measures in a plan submission. In short, EPA has discretion under section 110(k) to act upon the various individual elements of the state's infrastructure SIP submission, separately or together, as appropriate. The commenters raise no compelling legal or environmental rationale for an alternate interpretation.

EPA notes, however, that it is working with state partners to assess next steps to address air pollution that crosses state boundaries and will later take a separate action to address section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS. EPA's approval of the Ohio infrastructure SIP submission for the 2008 ozone NAAQS for the portions described in the NPR was therefore appropriate.

III. What action is EPA taking?

The proposed rulemaking associated with today's final action was published on July 25, 2014 (79 FR 43338). The 2008 Pb, 2010 NO_2, and 2010 SO_2 infrastructure SIPs were also addressed in the proposed rulemaking but will be addressed in a separate final rulemaking.

For the reasons discussed in our proposed rulemaking and in the above

response to public comment, EPA is taking final action to approve, as proposed, Ohio's infrastructure SIP for the 2008 ozone NAAQS. Our final actions by element of section 110(a)(2) and NAAQS, are contained in the table below.

Element	2008 Ozone
(A): Emission limits and other control measures.	A
(B): Ambient air quality monitoring and data system.	A
(C)1: Enforcement of SIP measures	A
(C)2: PSD program for Pb	NA
(C)3: NO_X as a precursor to ozone for PSD.	NA
(C)4: $PM_{2.5}$ Precursors/$PM_{2.5}$ and PM_{10} condensables for PSD.	NA
(C)5: $PM_{2.5}$ Increments	NA
(C)5: GHG permitting thresholds in PSD regulations.	NA
(D)1: Contribute to nonattainment/interfere with maintenance of NAAQS.	NA
(D)2: PSD	NA
(D)3: Visibility Protection	NA
(D)4: Interstate Pollution Abatement	A
(D)5: International Pollution Abatement.	A
(E): Adequate resources	A
(E): State boards	A
(F): Stationary source monitoring system.	A
(G): Emergency power	A
(H): Future SIP revisions	A
(I): Nonattainment area plan or plan revisions under part D.	NA
(J)1: Consultation with government officials.	A
(J)2: Public notification	A
(J)3: PSD	NA
(J)4: Visibility protection	+
(K): Air quality modeling and data	A
(L): Permitting fees	A
(M): Consultation and participation by affected local entities.	A

In the above table, the key is as follows:
A—Approve.
NA—No Action/Separate Rulemaking.
+—Not germane to infrastructure SIPs.

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 approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

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

This rule is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 15, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, ozone, Reporting and recordkeeping requirements.

Dated: September 30, 2014.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. Section 52.1891 is amended by adding paragraph (g) to read as follows:

§ 52.1891 Section 110(a)(2) infrastructure requirements.

* * * * *

(g) Approval— In a December 27, 2012, submittal, supplemented on June 7, 2013, Ohio certified that the State has satisfied the infrastructure SIP requirements of section 110(a)(2)(A) through (H), and (J) through (M) for the 2008 Ozone NAAQS. We are not finalizing action on section 110(a)(2)(D)(i)—Interstate transport, the visibility portions of section 110(a)(2)(J), and submissions addressing the prevention of significant deterioration requirements (PSD) in sections 110(a)(2)(C), (D)(i)(II), (D)(ii), and the PSD portion of (J).

[FR Doc. 2014–24350 Filed 10–15–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2014–0299; FRL–9917–84–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Infrastructure Requirements for the 2010 Sulfur Dioxide National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of West Virginia pursuant to the Clean Air Act (CAA). Whenever new or revised National Ambient Air Quality Standards (NAAQS) are promulgated, the CAA requires states to submit a plan for the implementation, maintenance, and enforcement of such NAAQS. The plan is required to address basic program elements, including, but not limited to regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards. These elements are referred to as infrastructure requirements. The State of West Virginia has made a submittal addressing the infrastructure requirements for the 2010 sulfur dioxide (SO_2) NAAQS.

DATES: This final rule is effective on November 17, 2014.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2014–0299. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, 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 for public inspection 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: Ellen Schmitt, (215) 814–5787, or by email at *schmitt.ellen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of SIP Revision

On June 22, 2010 (75 FR 35520), EPA promulgated a revised NAAQS for the 1-hour primary SO_2 at a level of 75 parts per billion (ppb), based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe.

On June 25, 2013, the West Virginia Department of Environmental Protection (WV DEP) submitted a SIP revision that addresses the infrastructure elements specified in section 110(a)(2) of the CAA, necessary to implement, maintain, and enforce the 2010 sulfur dioxide NAAQS. On May 14, 2014 (79 FR 27524), EPA published a notice of proposed rulemaking (NPR) for the State of West Virginia proposing approval of West Virginia's submittal. In the NPR, EPA proposed approval of the following infrastructure elements: Section 110(a)(2)(A), (B), (C) (enforcement and minor new source review), (D)(ii), (E)(i) and (iii), (F), (G), (H), (J) (consultation, public notification, and visibility protection), (K), (L), and (M), or portions thereof.[1]

West Virginia did not submit section 110(a)(2)(I) which pertains to the nonattainment requirements of part D, Title I of the CAA, since this element is not required to be submitted by the 3-year submission deadline of section 110(a)(1), and will be addressed in a separate process. EPA will take separate action on the portions of section 110(a)(2)(C), (D)(i)(II), and (J) as they relate to West Virginia's prevention of significant deterioration (PSD) program. EPA had previously approved West Virginia's PSD program with the narrow exception of the definition of regulated new source review pollutant for its failure to include condensables. *See* 77 FR 63736 (October 17, 2012) and 78 FR 27062 (May 9, 2013) (finalizing limited, narrow disapproval). At this time, EPA is not proposing action on section 110(a)(2)(D)(i)(II) for visibility protection for the 2010 SO_2 NAAQS. Although West Virginia's infrastructure SIP submittal for the 2010 SO_2 NAAQS referred to West Virginia's regional haze SIP for section 110(a)(2)(D)(i)(II) for visibility protection, EPA intends to take separate action on West Virginia's submittal for this element at a later date as explained in the technical support document (TSD) for the May 14, 2014 NPR. The Agency will also take separate action on section 110(a)(2)(E)(ii) as it relates to section 128 (State Boards). This rulemaking action also does not include action on section 110(a)(2)(D)(i)(I) of the CAA because West Virginia's June 25, 2013 infrastructure SIP submittal did not include provisions for this element. EPA will take later, separate action on section 110(a)(2)(D)(i)(I) for the 2010 SO_2 NAAQS for West Virginia.

The rationale supporting EPA's proposed rulemaking action, including the scope of infrastructure SIPs in general, is explained in the published NPR and the TSD accompanying the NPR and will not be restated here. The NPR and TSD are available in the docket for this rulemaking at *www.regulations.gov,* Docket ID Number EPA–R03–OAR–2014–0299.

II. Public Comments and EPA's Responses

EPA received comments from the Sierra Club on the May 14, 2014 proposed rulemaking action on West Virginia's 2010 SO_2 infrastructure SIP. A full set of these comments is provided in the docket for today's final rulemaking action.

A. Background Comments

1. The Plain Language of the CAA

Comment 1: Sierra Club contends in background comments that the plain language of section 110(a)(2)(A) of the CAA, legislative history of the CAA, case law, EPA regulations such as 40 CFR 51.112(a), and EPA interpretations in rulemakings require the inclusion of enforceable emission limits in an

[1] In EPA's May 14, 2014 NPR, EPA stated it would take separate action on the portions of CAA section 110(a)(2) infrastructure elements for the 2010 SO_2 NAAQS as they relate to West Virginia's prevention of significant deterioration (PSD) permitting program, as required by part C of Title I of the CAA. 79 FR 27524. This included portions of the following infrastructure elements: section 110(a)(2)(C), (D)(i)(II), and (J). In the ''Proposed Action'' section of the NPR, EPA inadvertently listed section 110(a)(2)(J) in our proposed approval without clarifying the proposed approval was limited to the portions of 110(a)(2)(J) related only to consultation, public notification and visibility protection. As the NPR and accompanying Technical Support Document discussed the elements EPA intended to propose for approval for section 110(a)(2)(J) to the exclusion of PSD portions, EPA believes this omission was inadvertent, and EPA clarifies in this action that our approval of West Virginia's 2010 SO_2 infrastructure SIP for section 110(a)(2)(J) is limited to the portions addressing consultation, public notification, and visibility protection.

infrastructure SIP to prevent NAAQS exceedances in areas not designated nonattainment. Sierra Club then contends that the West Virginia 2010 SO_2 infrastructure SIP revision did not revise the existing SO_2 emission limits in response to the 2010 SO_2 NAAQS and fails to comport with CAA requirements for SIPs to establish enforceable emission limits that are adequate to prohibit NAAQS exceedances in areas not designated nonattainment.

The Commenter states that on its face the CAA ''requires I–SIPs to be adequate to prevent exceedances of the NAAQS.'' In support, the Commenter quotes the language in section 110(a)(1) which requires states to adopt a plan for implementation, maintenance, and enforcement of the NAAQS and the language in section 110(a)(2)(A) which requires SIPs to include enforceable emissions limitations as may be necessary to meet the requirements of the CAA and which commenter claims include the maintenance plan requirement. Sierra Club notes the CAA definition of emission limit and reads these provisions together to require ''enforceable emission limits on source emissions sufficient to ensure maintenance of the NAAQS.''

Response 1: EPA disagrees that section 110 is clear ''on its face'' and must be interpreted in the manner suggested by Sierra Club. Section 110 is only one provision that is part of the complicated structure governing implementation of the NAAQS program under the CAA, as amended in 1990, and it must be interpreted in the context of not only that structure, but also of the historical evolution of that structure. In light of the revisions to section 110 since 1970 and the later-promulgated and more specific planning requirements of the CAA, EPA interprets the requirement in section 110(a)(2)(A) that the plan provide for ''implementation, maintenance and enforcement'' to mean that the infrastructure SIP must contain enforceable emission limits that will aid in attaining and/or maintaining the NAAQS and that the state demonstrate that it has the necessary tools to implement and enforce a NAAQS, such as adequate state personnel and an enforcement program. With regard to the requirement for emission limitations, EPA has interpreted this to mean for purposes of section 110, that the state may rely on measures already in place to address the pollutant at issue or any new control measures that the state may choose to submit. As EPA stated in ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),'' dated September 13, 2013 (Infrastructure SIP Guidance), ''[t]he conceptual purpose of an infrastructure SIP submission is to assure that the air agency's SIP contains the necessary structural requirements for the new or revised NAAQS, whether by establishing that the SIP already contains the necessary provisions, by making a substantive SIP revision to update the SIP, or both. Overall, the infrastructure SIP submission process provides an opportunity . . . to review the basic structural requirements of the air agency's air quality management program in light of each new or revised NAAQS.'' Infrastructure SIP Guidance at p. 2.

The Commenter makes general allegations that West Virginia does not have sufficient protective measures to prevent SO_2 NAAQS exceedances. EPA addressed the adequacy of West Virginia's infrastructure SIP for 110(a)(2)(A) purposes to meet applicable requirements of the CAA in the TSD accompanying the May 14, 2014 NPR and explained why the SIP includes enforceable emission limitations and other control measures necessary for maintenance of the 2010 SO_2 NAAQS throughout the state.[2] These include applicable portions of 45CSR10 (To Prevent and Control Air Pollution from the Emissions of Sulfur Oxides), 45CSR11 (Prevention of Air Pollution Emergency Episodes), 45CSR13 (Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Temporary Permits, General Permits, and Procedures for Evaluation), 45CSR14 (Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration), 45CSR19 (Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution Which Cause or Contribute to Nonattainment), and 45CSR41 (Control of Annual Sulfur Dioxide Emissions to Mitigate Interstate Transport of Fine Particulate Matter and Sulfur Dioxide). Additionally, the following state rules are applicable to sulfur oxide emission limitations and control measures: 45CSR10A (Testing, Monitoring, Recordkeeping and Reporting Requirements Under 45CSR10), 45CSR16 (Standards of Performance for New Stationary Sources), and 45CSR18 (Control of Air Pollution from Combustion of Solid Waste), 45CSR33 (Acid Rain Provisions and Permits). Further, in 2012, EPA granted limited approval and limited disapproval of West Virginia's regional haze SIP which also includes emission measures related to SO_2. 77 FR 16932 (March 23, 2012). As discussed in the TSD for this rulemaking, EPA finds these provisions adequately address section 110(a)(2)(A) to aid in attaining and/or maintaining the NAAQS and finds West Virginia demonstrated that it has the necessary tools to implement and enforce the NAAQS.

1. The Legislative History of the CAA

Comment 2: Sierra Club cites two excerpts from the legislative history of the 1970 CAA claiming they support an interpretation that SIP revisions under CAA section 110 must include emissions limitations sufficient to show maintenance of the NAAQS in all areas of West Virginia. Sierra Club also contends that the legislative history of the CAA supports the interpretation that infrastructure SIPs under section 110(a)(2) must include enforceable emission limitations, citing the Senate Committee Report and the subsequent Senate Conference Report accompanying the 1970 CAA.

Response 2: As provided in the previous response, the CAA, as enacted in 1970, including its legislative history, cannot be interpreted in isolation from the later amendments that refined that structure and deleted relevant language from section 110 concerning demonstrating attainment. In any event, the two excerpts of legislative history the commenter cites merely provide that states should include enforceable emission limits in their SIPs and they do not mention or otherwise address whether states are required to include maintenance plans for all areas of the state as part of the infrastructure SIP. As provided earlier in this rulemaking action, the TSD for the proposed rule explains why the SIP includes enforceable emissions limitations for the relevant area.

2. Case Law

Comment 3: Sierra Club also discusses several cases applying the CAA which Sierra Club claims support their contention that courts have been clear that section 110(a)(2)(A) requires enforceable emissions limits in infrastructure SIPs to prevent violations of the NAAQS. Sierra Club first cites to language in *Train* v. *NRDC,* 421 U.S. 60, 78 (1975), addressing the requirement for ''emission limitations'' and stating that emission limitations ''are specific rules to which operators of pollution sources are subject, and which if

[2] The TSD for this action is available on line at *www.regulations.gov,* Docket ID Number EPA–R03–OAR–2014–0299.

enforced should result in ambient air which meet the national standards.'' Sierra Club also cites to *Pennsylvania Dept. of Envtl. Resources* v. *EPA,* 932 F.2d 269, 272 (3d Cir. 1991) for the proposition that the CAA directs EPA to withhold approval of a SIP where it does not ensure maintenance of the NAAQS, and to *Mision Industrial, Inc.* v. *EPA,* 547 F.2d 123, 129 (1st Cir. 1976), which quoted section 110(a)(2)(B) of the CAA of 1970. The commenter contends that the 1990 Amendments do not alter how courts have interpreted the requirements of section 110, quoting *Alaska Dept. of Envtl. Conservation* v. *EPA,* 540 U.S. 461, 470 (2004) which in turn quoted section 110(a)(2)(A) of the CAA and also stated that ''SIPs must include certain measures Congress specified'' to ensure attainment of the NAAQS. The Commenter also quotes several additional opinions in this vein. *Mont. Sulphur & Chem. Co.* v. *EPA,* 666 F.3d 1174, 1180 (9th Cir. 2012) (''The Clean Air Act directs states to develop implementation plans—SIPs—that 'assure' attainment and maintenance of [NAAQS] through enforceable emissions limitations''); *Hall* v. *EPA* 273 F.3d 1146, 1153 (9th Cir. 2001) (''Each State must submit a [SIP] that specif[ies] the manner in which [NAAQS] will be achieved and maintained within each air quality control region in the State''); *Conn. Fund for Env't, Inc.* v. *EPA,* 696 F.2d 169, 172 (D.C. Cir. 1982) (CAA requires SIPs to contain ''measures necessary to ensure attainment and maintenance of NAAQS''). Finally, the commenter cites *Mich. Dept. of Envtl. Quality* v. *Browner,* 230 F.3d 181 (6th Cir. 2000) for the proposition that EPA may not approve a SIP revision that does not demonstrate how the rules would not interfere with attainment and maintenance of the NAAQS.

Response 3: None of the cases the Commenter cites support the Commenter's contention that section 110(a)(2)(A) is clear that infrastructure SIPs must include detailed plans providing for attainment and maintenance of the NAAQS in all areas of the state, nor do they shed light on how section 110(a)(2)(A) may reasonably be interpreted. With the exception of *Train,* none of the cases the Commenter cites concerned the interpretation of CAA section 110(a)(2)(A) (or section 110(a)(2)(B) of the pre-1990 Act). Rather, the courts reference section 110(a)(2)(A) (or section 110(a)(2)(B) of the pre-1990 CAA) in the background section of decisions in the context of a challenge to an EPA action on revisions to a SIP that was required and approved as meeting other provisions of the CAA or in the context of an enforcement action.

In *Train,* 421 U.S. 60, the Court was addressing a state revision to an attainment plan submission made pursuant to section 110 of the CAA, the sole statutory provision at that time regulating such submissions. The issue in that case concerned whether changes to requirements that would occur before attainment was required were variances that should be addressed pursuant to the provision governing SIP revisions or were ''postponements'' that must be addressed under section 110(f) of the CAA of 1970, which contained prescriptive criteria. The Court concluded that EPA reasonably interpreted section 110(f) not to restrict a state's choice of the mix of control measures needed to attain the NAAQS and that revisions to SIPs that would not impact attainment of the NAAQS by the attainment date were not subject to the limits of section 110(f). Thus the issue was not whether a section 110 SIP needs to provide for attainment or whether emissions limits are needed as part of the SIP; rather the issue was which statutory provision governed when the state wanted to revise the emission limits in its SIP if such revision would not impact attainment or maintenance of the NAAQS. To the extent the holding in the case has any bearing on how section 110(a)(2)(A) might be interpreted, it is important to realize that in 1975, when the opinion was issued, section 110(a)(2)(B) (the predecessor to section 110(a)(2)(A)) expressly referenced the requirement to attain the NAAQS, a reference that was removed in 1990.

The decision in *Pennsylvania Dept. of Envtl. Resources* was also decided based on the pre-1990 provision of the CAA. At issue was whether EPA properly rejected a revision to an approved plan where the inventories relied on by the state for the updated submission had gaps. The Court quoted section 110(a)(2)(B) of the pre-1990 CAA in support of EPA's disapproval, but did not provide any interpretation of that provision. Yet, even if the Court had interpreted that provision, EPA notes that it was modified by Congress in 1990; thus, this decision has little bearing on the issue here.

At issue in *Mision Industrial,* 547 F.2d 123, was the definition of ''emissions limitation'' not whether section 110 requires the state to demonstrate how all areas of the state will attain and maintain the NAAQS as part of their infrastructure SIPs. The language from the opinion the Commenter quotes does not interpret but rather merely describes section 110(a)(2)(A). The Commenter does not raise any concerns about whether the measures relied on by the state in the infrastructure SIP are ''emissions limitations'' and the decision in this case has no bearing here.[3] In *Mont. Sulphur & Chem. Co.,* 666 F.3d 1174, the Court was reviewing a federal implementation plan (FIP) that EPA promulgated after a long history of the state failing to submit an adequate state implementation plan in response to EPA's finding under section 110(k)(5) that the previously approved SIP was in substantially adequate to attain or maintain the NAAQS, which triggered the state's duty to submit a new SIP to show how it would remedy that deficiency and attain the NAAQS. The Court cited generally to sections 107 and 110(a)(2)(A) of the CAA for the proposition that SIPs should assure attainment and maintenance of NAAQS through emission limitations, but this language was not part of the Court's holding in the case, which focused instead on whether EPA's finding of SIP inadequacy and adoption of a remedial FIP were lawful. The Commenter suggests that *Alaska Dept. of Envtl. Conservation,* 540 U.S. 461, stands for the proposition that the 1990 CAA Amendments do not alter how courts interpret section 110. This claim is inaccurate. Rather, the Court quoted section 110(a)(2)(A), which, as noted previously, differs from the pre-1990 version of that provision and the court makes no mention of the changed language. Furthermore, the Commenter also quotes the Court's statement that ''SIPs must include certain measures Congress specified,'' but that statement specifically referenced the requirement in section 110(a)(2)(C), which requires an enforcement program and a program for the regulation of the modification and construction of new sources. Notably, at issue in that case was the state's ''new source'' permitting program, not its infrastructure SIP.

Two of the cases the commenter cites, *Mich. Dept. of Envtl. Quality,* 230 F.3d 181, and *Hall,* 273 F.3d 1146, interpret CAA section 110(l), the provision governing ''revisions'' to plans, and not the initial plan submission requirement under section 110(a)(2) for a new or revised NAAQS, such as the infrastructure SIP at issue in this instance. In those cases, the courts cited to section 110(a)(2)(A) solely for the

[3] While the commenter does contend that the State shouldn't be allowed to rely on emission reductions that were developed for the prior SO_2 standards (which we address herein), it does not claim that any of the measures are not ''emissions limitations'' within the definition of the CAA.

purpose of providing a brief background of the CAA.

Finally, in *Conn. Fund for Env't, Inc.* v. *EPA,* the D.C. Circuit was reviewing EPA action on a control measure SIP provision which adjusted the percent of sulfur permissible in fuel oil. 696 F.2d 169 (D.C. Cir. 1982). The D.C. Circuit focused on whether EPA needed to evaluate effects of SIP revision on one pollutant or effects of change on all possible pollutants; therefore, the D.C. Circuit did not address required measures for infrastructure SIPs and nothing in the opinion addressed whether infrastructure SIPs needed to contain measures to ensure attainment and maintenance of the NAAQS.

3. EPA Regulations, Such as 40 CFR 51.112(a)

Comment 4: The Commenter cites to 40 CFR 51.112(a), providing that ''[e]ach plan must demonstrate that the measures, rules and regulations contained in it are adequate to provide for the timely attainment and maintenance of the [NAAQS].'' The Commenter asserts that this regulation requires all SIPs to include emissions limits necessary to ensure attainment of the NAAQS. The Commenter states that ''[a]lthough these regulations were developed before the Clean Air Act separated infrastructure SIPs from nonattainment SIPs—a process that began with the 1977 amendments and was completed by the 1990 amendments—the regulations apply to I–SIPs.'' The Commenter relies on a statement in the preamble to the 1986 action restructuring and consolidating provisions in part 51, in which EPA stated that ''[i]t is beyond the scope of th[is] rulemaking to address the provisions of Part D of the Act. . . .'' 51 FR 40656, 40656 (November 7, 1986).

Response 4: The Commenter's reliance on 40 CFR 51.112 to support its argument that infrastructure SIPs must contain emission limits ''adequate to prohibit NAAQS exceedances'' and adequate or sufficient to ensure the maintenance of the NAAQS is not supported. As an initial matter, EPA notes and the Commenter recognizes this regulatory provision was initially promulgated and ''restructured and consolidated'' prior to the CAA Amendments of 1990, in which Congress removed all references to ''attainment'' in section 110(a)(2)(A). And, it is clear on its face that 40 CFR 51.112 applies to plans specifically designed to attain the NAAQS. EPA interprets these provisions to apply when states are developing ''control strategy'' SIPs such as the detailed attainment and maintenance plans required under other provisions of the CAA, as amended in 1977 and again in 1990, such as section 175A and 182. The Commenter suggests that these provisions must apply to section 110 SIPs because in the preamble to EPA's action ''restructuring and consolidating'' provisions in part 51, EPA stated that the new attainment demonstration provisions in the 1977 Amendments to the CAA were ''beyond the scope'' of the rulemaking. It is important to note, however, that EPA's action in 1986 was not to establish new substantive planning requirements, but rather was meant merely to consolidate and restructure provisions that had previously been promulgated. EPA noted that it had already issued guidance addressing the new ''Part D'' attainment planning obligations. Also, as to maintenance regulations, EPA expressly stated that it was not making any revisions other than to re-number those provisions. 51 FR at 40657.

Although EPA was explicit that it was not establishing requirements interpreting the provisions of new ''Part D'' of the CAA, it is clear that the regulations being restructured and consolidated were intended to address control strategy plans. In the preamble, EPA clearly stated that 40 CFR 51.112 was replacing 40 CFR 51.13 (''Control strategy: SO_X and PM (portion)''), 51.14 (''Control strategy: CO, HC, O_X and NO_2 (portion)''), 51.80 (''Demonstration of attainment: Pb (portion)''), and 51.82 (''Air quality data (portion)''). *Id.* at 40660. Thus, the present-day 40 CFR 51.112 contains consolidated provisions that are focused on control strategy SIPs, and the infrastructure SIP is not such a plan.

4. EPA Interpretations in Other Rulemakings

Comment 5: The Commenter also references two prior EPA rulemaking actions where EPA disapproved or proposed to disapprove SIPs and claimed they were actions in which EPA relied on section 110(a)(2)(A) and 40 CFR 51.112 to reject infrastructure SIPs. The Commenter first points to a 2006 partial approval and partial disapproval of revisions to Missouri's existing plan addressing the SO_2 NAAQS. In that action, EPA cited section 110(a)(2)(A) as a basis for disapproving a revision to the state plan on the basis that the State failed to demonstrate the SIP was sufficient to ensure maintenance of the SO_2 NAAQS after revision of an emission limit and cited to 40 CFR 51.112 as requiring that a plan demonstrates the rules in a SIP are adequate to attain the NAAQS. Second, Sierra Club cites a 2013 disapproval of a revision to the SO_2 SIP for Indiana, where the revision removed an emission limit that applied to a specific emissions source at a facility in the State. In its proposed disapproval, EPA relied on 40 CFR 51.112(a) in proposing to reject the revision, stating that the State had not demonstrated that the emission limit was ''redundant, unnecessary, or that its removal would not result in or allow an increase in actual SO_2 emissions.'' EPA further stated in that proposed disapproval that the State had not demonstrated that removal of the limit would not ''affect the validity of the emission rates used in the existing attainment demonstration.''

Response 5: EPA does not agree that the two prior actions referenced by the Commenter establish how EPA reviews infrastructure SIPs. It is clear from both the final Missouri rule and the proposed and final Indiana rule that EPA was not reviewing initial infrastructure SIP submissions under section 110 of the CAA, but rather reviewing revisions that would make an already approved SIP designed to demonstrate attainment of the NAAQS less stringent. EPA's partial approval and partial disapproval of revisions to restrictions on emissions of sulfur compounds for the Missouri SIP in 71 FR 12623 addressed a control strategy SIP and not an infrastructure SIP. The Indiana action provides even less support for the Commenter's position. The review in that rule was of a completely different requirement than the section 110(a)(2)(A) SIP. Rather, in that case, the State had an approved SO_2 attainment plan and was seeking to remove from the SIP provisions relied on as part of the modeled attainment demonstration. EPA proposed that the State had failed to demonstrate under section 110(l) of the CAA why the SIP revision would not result in increased SO_2 emissions and thus interfere with attainment of the NAAQS. Nothing in that rulemaking addresses the necessary content of the initial infrastructure SIP for a new or revised NAAQS. Rather, it is simply applying the clear statutory requirement that a state must demonstrate why a revision to an approved attainment plan will not interfere with attainment of the NAAQS.

As discussed in detail in the TSD and NPR, EPA finds the West Virginia SIP meets the appropriate and relevant structural requirements of section 110(a)(2) of the CAA that will aid in attaining and/or maintaining the NAAQS and that the State demonstrated that it has the necessary tools to implement and enforce a NAAQS.

Therefore, EPA approves the West Virginia SO_2 infrastructure SIP.[4]

B. Comments on West Virginia SIP SO_2 Emission Limits

Comment 6: Citing section 110(a)(2)(A) of the CAA, Sierra Club contends that EPA may not approve the proposed infrastructure SIP because it does not include enforceable 1-hour SO_2 emission limits for sources currently allowed to cause NAAQS exceedances. Sierra Club asserts the proposed infrastructure SIP fails to include enforceable 1-hour SO_2 emissions limits or other required measures to ensure attainment and maintenance of the SO_2 NAAQS in areas not designated nonattainment as required by section 110(a)(2)(A). Sierra Club asserts that emission limits are especially important for meeting the 1-hour SO_2 NAAQS because SO_2 impacts are strongly source-oriented. Sierra Club states coal-fired electric generating units (EGUs) are large contributors to SO_2 emissions but contends West Virginia did not demonstrate that emissions allowed by the proposed infrastructure SIP from such large sources of SO_2 will ensure compliance with the 2010 1-hour SO_2 NAAQS. The commenter claims the proposed infrastructure SIP would allow major sources to continue operating with present emission limits. Sierra Club then refers to air dispersion modeling it conducted for three coal-fired EGUs in West Virginia including the John E. Amos Plant (Amos), the Harrison Power Station (Harrison), and the Kanawha River Plant (Kanawha). Sierra Club asserts the results of the air dispersion modeling it conducted employing EPA's AERMOD program for modeling used the plants' allowable and maximum emissions and showed the plants could cause exceedances of the 2010 SO_2 NAAQS with either allowable or maximum emissions.[5] Based on the modeling, Sierra Club asserts the West Virginia SO_2 infrastructure SIP submittal authorizes the three EGUs to cause exceedances of the NAAQS with allowable and maximum emission rates and therefore the infrastructure SIP fails to include adequate enforceable emission limitations or other required measures for sources of SO_2 sufficient to ensure attainment and maintenance of the 2010 SO_2 NAAQS and, therefore, EPA must disapprove West Virginia's proposed SIP revision. In addition, Sierra Club asserts ''EPA must impose additional emission limits on the plants that ensure attainment and maintenance of the NAAQS at all times.''

Response 6: EPA believes that section 110(a)(2)(A) of the CAA is reasonably interpreted to require states to submit SIPs that reflect the first step in their planning for attainment and maintenance of a new or revised NAAQS. These SIP revisions, also known as infrastructure SIPs, should contain enforceable control measures and a demonstration that the state has the available tools and authority to develop and implement plans to attain and maintain the NAAQS. In light of the structure of the CAA, EPA's long-standing position regarding infrastructure SIPs is that they are general planning SIPs to ensure that the state has adequate resources and authority to implement a NAAQS in general throughout the state and not detailed attainment and maintenance plans for each individual area of the state. As mentioned above, with regard to the requirement for emission limitations, EPA has interpreted this to mean that states may rely on measures already in place to address the pollutant at issue or any new control measures that the state may choose to submit.

EPA's interpretation that infrastructure SIPs are more general planning SIPs is consistent with the CAA as understood in light of its history and structure. When Congress enacted the CAA in 1970, it did not include provisions requiring states and the EPA to label areas as attainment or nonattainment. Rather, states were required to include all areas of the state in ''air quality control regions'' (AQCRs) and section 110 set forth the core substantive planning provisions for these AQCRs. At that time, Congress anticipated that states would be able to address air pollution quickly pursuant to the very general planning provisions in section 110 and could bring all areas into compliance with a new NAAQS within five years. Moreover, at that time, section 110(a)(2)(A)(i) specified that the section 110 plan provide for ''attainment'' of the NAAQS and section 110(a)(2)(B) specified that the plan must include ''emission limitations, schedules, and timetables for compliance with such limitations, and such other measures as may be necessary to insure attainment and maintenance [of the NAAQS].'' In 1977, Congress recognized that the existing structure was not sufficient and many areas were still violating the NAAQS. At that time, Congress for the first time added provisions requiring states and EPA to identify whether areas of a state were violating the NAAQS (i.e., were nonattainment) or were meeting the NAAQS (i.e., were attainment) and established specific planning requirements in section 172 for areas not meeting the NAAQS. In 1990, many areas still had air quality not meeting the NAAQS and Congress again amended the CAA and added yet another layer of more prescriptive planning requirements for each of the NAAQS. At that same time, Congress modified section 110 to remove references to the section 110 SIP providing for attainment, including removing pre-existing section 110(a)(2)(A) in its entirety and renumbering subparagraph (B) as section 110(a)(2)(A). Additionally, Congress replaced the clause ''as may be necessary to insure attainment and maintenance [of the NAAQS]'' with ''as may be necessary or appropriate to meet the applicable requirements of this chapter.'' Thus, the CAA has significantly evolved in the more than 40 years since it was originally enacted. While at one time section 110 of the CAA did provide the only detailed SIP planning provisions for states and specified that such plans must provide for attainment of the NAAQS, under the structure of the current CAA, section 110 is only the initial stepping-stone in the planning process for a specific NAAQS. And, more detailed, later-enacted provisions govern the substantive planning process, including planning for attainment of the NAAQS.

As stated in response to a previous comment, EPA asserts that section 110 of the CAA is only one provision that is part of the complicated structure governing implementation of the NAAQS program under the CAA, as amended in 1990, and it must be interpreted in the context of not only that structure, but also of the historical evolution of that structure. In light of the revisions to section 110 since 1970 and the later-promulgated and more specific planning requirements of the CAA, EPA reasonably interprets the requirement in section 110(a)(2)(A) of the CAA that the plan provide for ''implementation, maintenance and enforcement'' to mean that the infrastructure SIP must contain enforceable emission limits that will aid in attaining and/or maintaining the NAAQS and that the state demonstrate that it has the necessary tools to implement and enforce a NAAQS, such as adequate state personnel and an enforcement program. As discussed

[4] As stated previously, EPA will take later, separate action on several portions of West Virginia's SO_2 infrastructure SIP submittal including the portions of the SIP submittal addressing section 110(a)(2)(C), (D)(i)(II), and (J) for PSD, 110(a)(2)(D)(i)(II) (visibility protection), and 110(a)(2)(E)(ii) for State Boards.

[5] Sierra Club asserts its modeling followed protocols pursuant to 40 CFR Part 50, Appendix W and EPA's March 2011 guidance for implementing the 2010 SO_2 NAAQS.

above, EPA has interpreted the requirement for emission limitations in section 110 to mean that the state may rely on measures already in place to address the pollutant at issue or any new control measures that the state may choose to submit. Finally, as EPA stated in the Infrastructure SIP Guidance which specifically provides guidance to states in addressing the 2010 SO_2 NAAQS, ''[t]he conceptual purpose of an infrastructure SIP submission is to assure that the air agency's SIP contains the necessary structural requirements for the new or revised NAAQS, whether by establishing that the SIP already contains the necessary provisions, by making a substantive SIP revision to update the SIP, or both.'' Infrastructure SIP Guidance at p. 2.

On April 12, 2012, EPA explained its expectations regarding the 2010 SO_2 NAAQS via letters to each of the states. EPA communicated in the April 2012 letters that all states were expected to submit SIPs meeting the ''infrastructure'' SIP requirements under section 110(a)(2) of the CAA by June 2013. At the time, the EPA was undertaking a stakeholder outreach process to continue to develop possible approaches for determining attainment with the SO_2 NAAQS and implementing this NAAQS. EPA was abundantly clear in the April 2012 letters to states that EPA did not expect states to submit substantive attainment demonstrations or modeling demonstrations showing attainment for unclassifiable areas in infrastructure SIPs due in June 2013 as EPA had previously suggested in its 2010 SO_2 NAAQS preamble based upon information available at the time and in prior draft implementation guidance in 2011 while EPA was gathering public comment. The April 2012 letters to states recommended states focus infrastructure SIPs due in June 2013, such as West Virginia's SO_2 infrastructure SIP, on traditional infrastructure elements'' in section 110(a)(1) and (2) rather than on modeling demonstrations for future attainment for unclassifiable areas.[6]

Therefore, EPA asserts the elements of section 110(a)(2) which address SIP revisions for nonattainment areas including measures and modeling demonstrating attainment are due by the dates statutorily prescribed under subparts 2 through 5 under part D, extending as far as 10 years following area designations for some elements. The CAA directs states to submit these 110(a)(2) elements for nonattainment areas on a separate schedule from the ''structural requirements'' of 110(a)(2) which are due within three years of adoption or revision of a NAAQS. The infrastructure SIP submission requirement does not move up the date for any required submission of a part D plan for areas designated nonattainment for the new NAAQS. Thus, elements relating to demonstrating attainment for areas not attaining the NAAQS are not necessary for states to include in the infrastructure SIP submission, and the CAA does not provide explicit requirements for demonstrating attainment for areas designated as ''unclassifiable'' (or that have not yet been designated) regarding attainment with a particular NAAQS.

As stated previously, EPA believes that the proper inquiry at this juncture is whether West Virginia has met the basic structural SIP requirements appropriate at the point in time EPA is acting upon the infrastructure submittal. Emissions limitations and other control measures needed to attain the NAAQS in areas designated nonattainment for that NAAQS are due on a different schedule from the section 110 infrastructure elements. A state, like West Virginia, may reference pre-existing SIP emission limits or other rules contained in part D plans for previous NAAQS in an infrastructure SIP submission. For example, West Virginia submitted a list of existing emission reduction measures in the SIP that control emissions of SO_2 as discussed above in response to a prior comment and discussed in detail in our TSD. West Virginia's SIP revision reflects several provisions that have the ability to reduce SO_2. Although the West Virginia SIP relies on measures and programs used to implement previous SO_2 NAAQS, these provisions will provide benefits for the 2010 SO_2 NAAQS. The identified West Virginia SIP measures help to reduce overall SO_2 and are not limited to reducing SO_2 levels to meet one specific NAAQS.

Additionally, as discussed in EPA's TSD supporting the NPR, West Virginia has the ability to revise its SIP when necessary (e.g in the event the Administrator finds the plan to be substantially inadequate to attain the NAAQS or otherwise meet all applicable CAA requirements) as required under element H of section 110(a)(2). *See* W.Va. Code section 22–5–4(a)(16) (authorizing WV DEP to do all things necessary to prepare and submit SIPs).

EPA believes the requirements for emission reduction measures for an area designated nonattainment to come into attainment with the 2010 primary SO_2 NAAQS are in sections 172 and 192 of the CAA, and, therefore, the appropriate time for implementing requirements for necessary emission limitations for demonstrating attainment with the 2010 1-hour SO_2 NAAQS is through the attainment planning process contemplated by those sections of the CAA. On August 5, 2013, EPA designated as nonattainment most areas in locations where existing monitoring data from 2009–2011 indicated violations of the 1-hour SO_2 standard. EPA designated portions of Brooke and Marshall Counties in West Virginia as nonattainment areas for the 2010 1-hour SO_2 NAAQS. 78 FR 47191 (August 5, 2013). In separate future actions, EPA intends to address the designations for all other areas for which the Agency has yet to issue designations. *See* 79 FR 27446 (May 13, 2014) (proposing process and timetables by which state air agencies would characterize air quality around SO_2 sources through ambient monitoring and/or air quality modeling techniques and submit such data to the EPA for designations with 2010 SO_2 NAAQS). For the partial areas designated nonattainment in August 2013 within West Virginia, attainment SIPs are due by April 4, 2015 and must contain demonstrations that the areas will attain as expeditiously as

[6] In EPA's final SO_2 NAAQS preamble (75 FR 35520 (June 22, 2010)) and subsequent draft guidance in March and September 2011, EPA had expressed its expectation that many areas would be initially designated as unclassifiable due to limitations in the scope of the ambient monitoring network and the short time available before which states could conduct modeling to support their designations recommendations due in June 2011. In order to address concerns about potential violations in these unclassifiable areas, EPA initially recommended that states submit substantive attainment demonstration SIPs based on air quality modeling by June 2013 (under section 110(a)) that show how their unclassifiable areas would attain and maintain the NAAQS in the future. *Implementation of the 2010 Primary 1-Hour SO_2 NAAQS, Draft White Paper for Discussion,* May 2012 (for discussion purposes with Stakeholders at meetings in May and June 2012), available at *http://www.epa.gov/airquality/sulfurdioxide/implement.html.* However, EPA clearly stated in this 2012 Draft White Paper its clarified implementation position that it was no longer recommending such attainment demonstrations for unclassifiable areas for June 2013 infrastructure SIPs. *Id.* EPA had stated in the preamble to the NAAQS and in the prior 2011 draft guidance that EPA intended to develop and seek public comment on guidance for modeling and development of SIPs for sections 110 and 191 of the CAA. Section 191 of the CAA requires states to submit SIPs in accordance with section 172 for areas designated nonattainment with the SO_2 NAAQS. After seeking such comment, EPA has now issued guidance for the nonattainment area SIPs due pursuant to sections 191 and 172. *See Guidance for 1-Hour SO_2 Nonattainment Area SIP Submissions,* Stephen D. Page, Director, EPA's Office of Air Quality Planning and Standards, to Regional Air Division Directors Regions 1–10, April 23, 2014. In September 2013, EPA had previously issued specific guidance relevant to infrastructure SIP submissions due for the NAAQS, including the 2010 SO_2 NAAQS. *See* Infrastructure SIP Guidance.

practicable, but no later than October 4, 2018 pursuant to sections 172, 191 and 192, including a plan for enforceable measures to reach attainment of the NAAQS. EPA believes it is not appropriate to bypass the attainment planning process by imposing separate requirements outside the attainment planning process. Such actions would be disruptive and premature absent exceptional circumstances and would interfere with a state's planning process. *See In the Matter of EME Homer City Generation LP and First Energy Generation Corp.,* Order on Petitions Numbers III–2012–06, III–2012–07, and III 2013–01 (July 30, 2014) (hereafter, *Homer City/Mansfield Order*) at 10–19 (finding Pennsylvania SIP did not require imposition of SO_2 emission limits on sources independent of the part D attainment planning process contemplated by the CAA). EPA believes that the history of the CAA and intent of Congress for the CAA as described above demonstrate clearly that it is within the section 172 and general part D attainment planning process that West Virginia must include additional SO_2 emission limits on sources in order to demonstrate future attainment, where needed, for the portions of Brooke and Marshall Counties designated nonattainment to reach attainment with the 2010 1-hour SO_2 NAAQS.

The Commenter's reliance on 40 CFR 51.112 to support its argument that infrastructure SIPs must contain emission limits adequate to provide for timely attainment and maintenance of the standard is also not supported. As explained previously in response to the background comments, EPA notes this regulatory provision clearly on its face applies to plans specifically designed to attain the NAAQS and not to infrastructure SIPs which show the states have in place structural requirements necessary to implement the NAAQS. Therefore, EPA finds 40 CFR 51.112 inapplicable to its analysis of the West Virginia SO_2 infrastructure SIP.

As noted in EPA's preamble for the 2010 SO_2 NAAQS, determining compliance with the SO_2 NAAQS will likely be a source-driven analysis and EPA has explored options to ensure that the SO_2 designations process realistically accounts for anticipated SO_2 reductions at sources that we expect will be achieved by current and pending national and regional rules. *See* 75 FR 35520. As mentioned previously above, EPA has proposed a process to address additional areas in states which may not be attaining the 2010 SO_2 NAAQS. 79 FR 27446 (proposing process for further designations with additional monitoring or modeling). In addition, in response to lawsuits in district courts seeking to compel EPA's remaining designations of undesignated areas under the NAAQS, EPA has proposed to enter a settlement under which this process would require an earlier round of designations focusing on areas with larger sources of SO_2 emissions, as well as enforceable deadlines for the later rounds of designations. However, because the purpose of an infrastructure SIP submission is for more general planning purposes, EPA does not believe West Virginia was obligated during this infrastructure SIP planning process to account for controlled SO_2 levels at individual sources. *See Homer City/Mansfield Order* at 10–19.

Regarding the air dispersion modeling conducted by Sierra Club pursuant to AERMOD for the coal-fired EGUs including Amos, Harrison, and Kanawha, EPA is not at this stage prepared to opine on whether it demonstrates violations of the NAAQS, and does not find the modeling information relevant at this time for review of an infrastructure SIP. EPA has issued non-binding guidance for states to use in conducting, if they choose, additional analysis to support designations for the 2010 SO_2 *NAAQS. SO_2 NAAQS Designations Modeling Technical Assistance Document,* EPA Office of Air and Radiation and Office of Air Quality Planning and Standards, December 2013, available at *http://www.epa.gov/airquality/sulfurdioxide/implement.html.* Sierra Club's AERMOD modeling for the West Virginia EGUs was conducted prior to the issuance of this guidance and may not address all recommended elements EPA may consider important to modeling for 2010 SO_2 NAAQS for designations purposes or for eventual attainment demonstration purposes for the counties in West Virginia designated nonattainment. In addition, while EPA has extensively discussed the use of modeling for attainment demonstration purposes and for designations, EPA has recommended that such modeling was not needed for the SO_2 infrastructure SIPs needed for the 2010 SO_2 NAAQS. *See* April 12, 2012 letters to states regarding SO_2 implementation and *Implementation of the 2010 Primary 1-Hour SO_2 NAAQS, Draft White Paper for Discussion,* May 2012, available at *http://www.epa.gov/airquality/sulfurdioxide/implement.html.* In contrast, EPA recently discussed modeling for designations in our May 14, 2014 proposal at 79 FR 27446 and for nonattainment planning in the April 23, 2014 *Guidance for 1-Hour SO_2 Nonattainment Area SIP Submissions.*

In conclusion, EPA disagrees with Sierra Club's statements that EPA must disapprove West Virginia's infrastructure SIP submission because it does not establish at this time specific enforceable SO_2 emission limits either on coal-fired EGUs or other large SO_2 sources in order to demonstrate attainment with the NAAQS.

Comment 7: Sierra Club asserts that modeling is the appropriate tool for evaluating adequacy of infrastructure SIPs and ensuring attainment and maintenance of the 2010 SO_2 NAAQS. The commenter refers to EPA's historic use of air dispersion modeling for attainment designations as well as ''SIP revisions.'' The Commenter cites to prior EPA statements that the Agency has used modeling for designations and attainment demonstrations, including statements in the 2010 SO_2 NAAQS preamble, EPA's 2012 Draft White Paper for Discussion on Implementing the 2010 SO_2 NAAQS, and a 1994 SO_2 Guideline Document, as modeling could better address the source-specific impacts of SO_2 emissions and historic challenges from monitoring SO_2 emissions.[7]

The Commenter also cited to several cases upholding EPA's use of modeling in NAAQS implementation actions, including the *Montana Sulphur* case, *Sierra Club* v. *Costle,* 657 F.2d 298 (D.C. Cir. 1981), *Republic Steel Corp.* v. *Costle,* 621 F.2d 797 (6th Cir. 1980), and *Catawba County* v. *EPA,* 571 F.3d 20 (D.C. Cir. 2009). The Commenter discusses statements made by EPA staff discussing use of modeling and monitoring in setting emission limitations or determining ambient concentrations resulting from sources, discussing performance of AERMOD as a model, and discussing that modeling is capable of predicting whether the NAAQS is attained and whether individual sources contribute to SO_2 NAAQS violations. The Commenter cites to EPA's history of employing air dispersion modeling for increment compliance verifications in the permitting process for the PSD program required in part C of the CAA. The Commenter claims the Amos, Kanawha, and Harrison plants are examples of sources in elevated terrain where the AERMOD model functions

[7] The Commenter also cites to a 1983 EPA Memorandum on section 107 designations policy regarding use of modeling for designations and to the 2012 *Mont. Sulphur & Chem. Co.* case where EPA had designated an area in Montana as nonattainment due to modeled violations of the NAAQS.

appropriately in evaluating ambient impacts.

The Commenter asserts EPA's use of air dispersion modeling was upheld in *GenOn REMA, LLC* v. *EPA,* 722 F.3d 513 (3rd Cir. 2013) where an EGU challenged EPA's use of CAA section 126 to impose SO_2 emission limits on a source due to cross-state impacts. The Commenter claims the Third Circuit in *GenOn REMA* upheld EPA's actions after examining the record which included EPA's air dispersion modeling of the one source as well as other data.

The Commenter cites to *Vehicle Mfrs. Ass'n* v. *State Farm Mut. Auto Ins. Co.,* 463 U.S. 29,43 (1983) and *NRDC* v. *EPA,* 571 F.3d 1245, 1254 (D.C. Cir. 2009) for the general proposition that it would be arbitrary and capricious for an agency to ignore an aspect of an issue placed before it and for the statement that an agency must consider information presented during notice-and-comment rulemaking.

Finally, the Commenter claims that West Virginia's proposed SO_2 infrastructure SIP lacks emission limitations informed by air dispersion modeling and therefore fails to ensure West Virginia will achieve and maintain the 2010 SO_2 NAAQS. Sierra Club claims EPA must require adequate, 1-hour SO_2 emission limits in the infrastructure SIP that show no exceedances of NAAQS when modeled.

Response 7: EPA agrees with the Commenter that air dispersion modeling, such as AERMOD, can be an important tool in the CAA section 107 designations process and in the attainment SIP process pursuant to sections 172 and 192, including supporting required attainment demonstrations. EPA agrees that prior EPA statements, EPA guidance, and case law support the use of air dispersion modeling in the designations process and attainment demonstration process, as well as in analyses of whether existing approved SIPs remain adequate to show attainment and maintenance of the SO_2 NAAQS. However, EPA disagrees with the Commenter that EPA must disapprove the West Virginia SO_2 infrastructure SIP for its alleged failure to include source-specific SO_2 emission limits that show no exceedances of the NAAQS when modeled.

As discussed previously above and in the Infrastructure SIP Guidance, EPA believes the conceptual purpose of an infrastructure SIP submission is to assure that the air agency's SIP contains the necessary structural requirements for the new or revised NAAQS and that the infrastructure SIP submission process provides an opportunity to review the basic structural requirements of the air agency's air quality management program in light of the new or revised NAAQS. *See* Infrastructure SIP Guidance at p. 2. EPA believes the attainment planning process detailed in part D of the CAA, including attainment SIPs required by sections 172 and 192 for areas not attaining the NAAQS, is the appropriate place for the state to evaluate measures needed to bring nonattainment areas into attainment with a NAAQS and to impose additional emission limitations such as SO_2 emission limits on specific sources. While EPA had initially suggested in the final 2010 SO_2 NAAQS preamble (75 FR 35520) and subsequent draft guidance in March and September 2011 that EPA recommended states submit substantive attainment demonstration SIPs based on air quality modeling in section 110(a) SIPs due in June 2013 to show how areas expected to be designated as unclassifiable would attain and maintain the NAAQS, these initial statements in the preamble and 2011 draft guidance were based on EPA's initial expectation that most areas would by June 2012 be initially designated as unclassifiable due to limitations in the scope of the ambient monitoring network and the short time available before which states could conduct modeling to support designations recommendations in 2011. However, after receiving comments from the states regarding these initial statements and the timeline for implementing the NAAQS, EPA subsequently stated in the April 12, 2012 letters to the states and in the May 2012 *Implementation of the 2010 Primary 1-Hour SO_2 NAAQS, Draft White Paper for Discussion* that EPA was clarifying its implementation position and that EPA was no longer recommending such attainment demonstrations supported by air dispersion modeling for unclassifiable areas (which had not yet been designated) for June 2013 infrastructure SIPs. EPA reaffirmed this position that EPA did not expect attainment demonstrations for areas not designated nonattainment for infrastructure SIPs in the February 6, 2013 memorandum, ''Next Steps for Area Designations and Implementation of the Sulfur Dioxide National Ambient Air Quality Standard.'' [8] As previously mentioned, EPA had stated in the preamble to the NAAQS and in the prior 2011 draft guidance that EPA intended to develop and seek public comment on guidance for modeling and development of SIPs for sections 110, 172 and 191–192 of the CAA. After receiving such further comment, EPA has now issued guidance for the nonattainment area SIPs due pursuant to sections 191–192 and 172 and proposed a process for further designations for the 2010 SO_2 NAAQS, which could include use of air dispersion modeling. *See* April 23, 2014 *Guidance for 1-Hour SO_2 Nonattainment Area SIP Submissions* and 79 FR 27446 (proposing process and timetables for additional SO_2 designations informed through ambient monitoring and/or air quality modeling). While the EPA guidance for attainment SIPs and the proposed process for additional designations discusses use of air dispersion modeling, EPA's 2013 Infrastructure SIP Guidance did not require use of air dispersion modeling to inform emission limitations for section 110(a)(2)(A) to ensure no exceedances of the NAAQS when sources are modeled. Therefore, as discussed previously, EPA believes the West Virginia SO_2 infrastructure SIP submittal contains the structural requirements to address elements in section 110(a)(2) as discussed in detail in our TSD supporting our proposed approval and in our Response to a prior comment. EPA believes infrastructure SIPs are general planning SIPs to ensure that a state has adequate resources and authority to implement a NAAQS. Infrastructure SIP submissions are not intended to act or fulfill the obligations of a detailed attainment and/or maintenance plan for each individual area of the state that is not attaining the NAAQS. While infrastructure SIPs must address modeling authorities in general for section 110(a)(2)(K), EPA believes 110(a)(2)(K) requires infrastructure SIPs to provide the state's authority for air quality modeling and for submission of modeling data to EPA, not specific air dispersion modeling for large stationary sources of pollutants such as SO_2 in a SO_2 infrastructure SIP. In the TSD for this rulemaking action, EPA provided a detailed explanation of West Virginia's ability and authority to conduct air quality modeling when required and its authority to submit modeling data to the EPA.

EPA finds Sierra Club's discussion of case law, guidance, and EPA staff statements regarding advantages of AERMOD as an air dispersion model to be irrelevant to our analysis here of the West Virginia infrastructure SIP, as this SIP for section 110(a) is not an attainment SIP required to demonstrate

[8] The February 6, 2013 ''Next Steps for Area Designations and Implementation of the Sulfur Dioxide National Ambient Air Quality Standard,'' one of the April 12, 2012 state letters, and the May 2012 *Draft White Paper* are available at *http://www.epa.gov/airquality/sulfurdioxide/implement.html.*

attainment of the NAAQS pursuant to section 172. In addition, Sierra Club's comments relating to EPA's use of AERMOD or modeling in general in designations pursuant to section 107, including its citation to *Catawba County,* are likewise irrelevant as EPA's present approval of West Virginia's infrastructure SIP is unrelated to the section 107 designations process. Nor is our action on this infrastructure SIP related to any new source review (NSR) or PSD permit program issue. As outlined in the August 23, 2010 clarification memo, ''Applicability of Appendix W Modeling Guidance for the 1-hour SO_2 National Ambient Air Quality Standard'' (U.S. EPA, 2010a), AERMOD is the preferred model for single source modeling to address the 1-hour SO_2 NAAQS as part of the NSR/PSD permit programs. Therefore, as attainment SIPs, designations, and NSR/PSD actions are outside the scope of a required infrastructure SIP for the 2010 SO_2 NAAQS for section 110(a), EPA provides no further response to the Commenter's discussion of air dispersion modeling for these applications. If Sierra Club resubmits its air dispersion modeling for the West Virginia EGUs or updated modeling information in the appropriate context, EPA will address the resubmitted modeling or updated modeling in the appropriate future context when an analysis of whether West Virginia's emissions limits are adequate to show attainment and maintenance of the NAAQS is warranted.

The Commenter correctly noted that the Third Circuit upheld EPA's Section 126 Order imposing SO_2 emissions limitations on an EGU pursuant to CAA section 126. *GenOn REMA, LLC* v. *EPA,* 722 F.3d 513. Pursuant to section 126, any state or political subdivision may petition EPA for a finding that any major source or group of stationary sources emits or would emit any air pollutant in violation of the prohibition of section 110(a)(2)(D)(i)(I) which relates to significant contributions to nonattainment or maintenance in another state. The Third Circuit upheld EPA's authority under section 126 and found EPA's actions neither arbitrary nor capricious after reviewing EPA's supporting docket which included air dispersion modeling as well as ambient air monitoring data showing violations of the NAAQS. The Commenter appears to have cited to this matter to demonstrate again EPA's use of modeling for certain aspects of the CAA. EPA agrees with the Commenter regarding the appropriate role air dispersion modeling has for designations, attainment SIPs, and demonstrating significant contributions to interstate transport. However, EPA's approval of West Virginia's infrastructure SIP is based on our determination that West Virginia has the required structural requirements pursuant to section 110(a)(2) in accordance with our explanation of the intent for infrastructure SIPs as discussed in the 2013 Infrastructure SIP Guidance. Therefore, while air dispersion modeling may be appropriate for consideration in certain circumstances, EPA does not find air dispersion modeling demonstrating no exceedances of the NAAQS to be a required element before approval of infrastructure SIPs for section 110(a) or specifically for 110(a)(2)(A). Thus, EPA disagrees with the Commenter that EPA must require additional emission limitations in the West Virginia SO_2 infrastructure SIP informed by air dispersion modeling and demonstrating attainment and maintenance of the 2010 NAAQS.

In its comments, Sierra Club relies on *Motor Vehicle Mfrs. Ass'n* and *NRDC* v. *EPA* to support its comments that EPA must consider the Sierra Club's modeling data on the Amos, Kanawha, and Harrison plants based on administrative law principles regarding consideration of comments provided during a rulemaking process. EPA asserts that it has considered the modeling submitted by the Commenter as well as all the submitted comments of Sierra Club. As discussed in detail in the Responses above, however, EPA does not believe the infrastructure SIPs required by section 110(a) are the appropriate place to require emission limits demonstrating future attainment with a NAAQS. Part D of the CAA contains numerous requirements for the NAAQS attainment planning process including requirements for attainment demonstrations in section 172 supported by appropriate modeling. As also discussed previously, section 107 supports EPA's use of modeling in the designations process. In *Catawba,* the D.C. Circuit upheld EPA's consideration of data or factors for designations other than ambient monitoring. EPA does not believe state infrastructure SIPs must contain emission limitations informed by air dispersion modeling in order to meet the requirements of section 110(a)(2)(A). Thus, EPA has not evaluated the persuasiveness of the Commenter's submitted modeling in finding that it is not relevant to the approvability of West Virginia's proposed infrastructure SIP for the 2010 SO_2 NAAQS.

Comment 8: Sierra Club asserts that EPA may not approve the West Virginia proposed SO_2 infrastructure SIP because it fails to include enforceable emission limitations with a 1-hour averaging time that applies at all times. The Commenter cites to CAA section 302(k) which requires emission limits to apply on a continuous basis. The Commenter claims EPA has stated that 1-hour averaging times are necessary for the 2010 SO_2 NAAQS citing to a February 3, 2011, EPA Region 7 letter to the Kansas Department of Health and Environment regarding need for 1-hour SO_2 emission limits in a PSD permit, an EPA Environmental Hearing Board (EHB) decision rejecting use of 3-hour averaging time for a SO_2 limit in a PSD permit, and EPA's disapproval of a Missouri SIP which relied on annual averaging for SO_2 emission rates.[9]

Sierra Club also contends EPA must include monitoring of SO_2 emission limits on a continuous basis using a continuous emission monitor system or systems (CEMs) and cites to section 110(a)(2)(F) which requires a SIP to establish a system to monitor emissions from stationary sources and to require submission of periodic emission reports. Sierra Club contends infrastructure SIPs must require such SO_2 CEMs to monitor SO_2 sources regardless of whether sources have control technology installed to ensure limits are protective of the NAAQS. Thus, Sierra Club contends EPA must require enforceable emission limits, applicable at all times, with 1-hour averaging periods, monitored continuously by large sources of SO_2 emissions and must disapprove West Virginia's infrastructure SIP which fails to require emission limits with adequate averaging times.

Response 8: EPA disagrees that EPA must disapprove the proposed West Virginia infrastructure SIP without enforceable SO_2 emission limitations with 1-hour averaging periods that apply at all times and with required CEMs, as these issues are not appropriate for resolution at this stage in advance of the state's submission of an attainment demonstration for its designated nonattainment areas. As explained in detail in previous Responses, the purpose of the infrastructure SIP is to ensure that a state has the structural capability to attain and maintain the NAAQS and thus additional SO_2 emission limitations to ensure attainment and

[9] Sierra Club cited to *In re: Mississippi Lime Co.,* PSDAPLPEAL 11–01, 2011 WL 3557194, at *26–27 (EPA Aug. 9, 2011) and 71 FR 12623, 12624 (March 13, 2006) (EPA disapproval of a control strategy SO_2 SIP).

maintenance of the NAAQS are not required for such infrastructure SIPs.[10] Likewise, EPA need not address for the purpose of approving West Virginia's infrastructure SIP whether CEMs or some other appropriate monitoring of SO_2 emissions is necessary to demonstrate compliance with emission limits to show attainment of the 2010 NAAQS as EPA believes such SO_2 emission limits and an attainment demonstration are not a prerequisite to our approval of West Virginia's infrastructure SIP.[11] Therefore, because EPA finds West Virginia's SO_2 infrastructure SIP approvable without the additional SO_2 emission limitations showing attainment of the NAAQS, EPA finds the issues of appropriate averaging periods and monitoring requirements for such future limitations not relevant at this time for our approval of the infrastructure SIP. Sierra Club has cited to prior EPA discussion on emission limitations required in PSD permits (from an EAB decision and EPA's letter to Kansas' permitting authority) pursuant to part C of the CAA which is not relevant nor applicable to section 110 infrastructure SIPs. In addition, as discussed previously, the EPA disapproval of the 2006 Missouri SIP was a disapproval relating to a control strategy SIP required pursuant to part D attainment planning and is likewise not relevant to our analysis of infrastructure SIP requirements.

EPA has explained in the TSD supporting this rulemaking action how the West Virginia SIP meets requirements in section 110(a)(2)(F) related to monitoring. W.Va. Code section 22–5–4(a)(15) authorizes West Virginia to require installation, maintenance, and replacement of equipment such as CEMs to monitor continuously SO_2 emissions where necessary and required. Further, W.Va. Code section 22–5–4(a)(14) and (15) authorizes West Virginia to require information such as periodic reports on the nature and amounts of emissions and emissions-related data from owners or operators of stationary sources of SO_2 emissions which West Virginia then requires through permits and compliance orders. Pursuant to 40 CFR Part 51, subpart A, ''Air Emission Reporting Rule,'' West Virginia provides source-specific emissions data to EPA. Thus, EPA finds West Virginia has the authority and responsibility to monitor air quality for the relevant NAAQS pollutants at appropriate locations and to submit data to EPA in a timely manner in accordance with 110(a)(2)(F) and the Infrastructure SIP Guidance. *See* Infrastructure SIP Guidance at p. 45–46.

Comment 9: Sierra Club states that enforceable emission limits in SIPs or permits are necessary to avoid nonattainment designations in areas where modeling or monitoring shows SO_2 levels exceed the 1-hour SO_2 NAAQS and cites to a February 6, 2013 EPA document, *Next Steps for Area Designations and Implementation of the Sulfur Dioxide Nation Ambient Air Quality Standard,* which Sierra Club contends discussed how states could avoid future nonattainment designations. The Commenter asserts EPA should add enforceable emission limits to the West Virginia Infrastructure SIP to prevent future nonattainment designations and to protect public health. The Commenter claims the modeling it conducted for Amos, Kanawha, and Harrison indicates thirty-one counties in West Virginia are at risk for being designated nonattainment with the 2010 SO_2 NAAQS without such enforceable SO_2 limits. The Commenter states EPA must ensure large sources cannot cause exceedances of the one-hour SO_2 NAAQS to comply with section 110(a)(2)(A) and to avoid future nonattainment designations. The Commenter asserts nonattainment designations create rigorous CAA requirements which could be avoided presently if states adopt and EPA approves such SO_2 emission limitations. In addition, the Commenter asserts adding SO_2 emission limitations on certain sources now would bring regulatory certainty for coal-fired EGUs and ultimately save such entities money as the sources could plan now for compliance with emission limits as well as with other CAA requirements such as the Mercury Air Toxic Standards, transport rules and regional haze requirements. In summary, the Commenter asserts EPA must disapprove the West Virginia infrastructure SIP and establish enforceable emission limits to ensure large sources of SO_2 do not cause exceedances of the 2010 SO_2 NAAQS which would avoid nonattainment designations and bring ''regulatory certainty'' to sources in West Virginia.

Response 9: EPA appreciates the Commenter's concern with assisting West Virginia in avoiding nonattainment designations with the 2010 SO_2 NAAQS and with assisting coal-fired EGUs in achieving regulatory certainty as EGUs make informed decisions on how to comply with CAA requirements. However, Congress designed the CAA such that states have the primary responsibility for assuring air quality within their geographic area by submitting SIPs which will specify how the state will achieve and maintain the NAAQS within the state. Pursuant to section 107(d), the states make initial recommendations of designations for areas within each state and EPA then promulgates the designations after considering the state's submission and other information. EPA promulgated initial designations for the 2010 SO_2 NAAQS in August 2013. EPA proposed on May 14, 2014 an additional process for further designations of additional areas in each state for the 2010 SO_2 NAAQS. 79 FR 27446. EPA has also proposed to enter a settlement to resolve deadline suits reading the remaining designations that would, if entered by the court, impose deadlines for three more rounds of designations. Under these proposed schemes, West Virginia would have the initial opportunity for proposing additional areas for designations for the 2010 SO_2 NAAQS. While EPA appreciates Sierra Club's comments, further designations will occur pursuant to the section 107(d) process, and in accordance with any applicable future court orders addressing the designations deadline suits and, if promulgated, future EPA rules addressing additional monitoring or modeling to be conducted by states. West Virginia may on its own accord decide to impose additional SO_2 emission limitations to avoid future designations to nonattainment. However, such considerations are not required of West Virginia to consider at the infrastructure SIP stage of NAAQS implementation, as this action relates to our approval of West Virginia's SO_2 infrastructure SIP submittal pursuant to section 110(a) of the CAA, and Sierra Club's comments regarding designations under section 107 are neither relevant nor germane to EPA's approval of West Virginia's SO_2 infrastructure SIP.

[10] For a discussion on emission averaging times for emissions limitations for SO_2 attainment SIPs, see the April 23, 2014 *Guidance for 1-Hour SO_2 Nonattainment Area SIP Submissions.* EPA explained that it is possible, in specific cases, for states to develop control strategies that account for variability in 1-hour emissions rates through emission limits with averaging times that are longer than 1-hour, using averaging times as long as 30-days, but still provide for attainment of the 2010 SO_2 NAAQS as long as the limits are of at least comparable stringency to a 1-hour limit at the critical emission value. EPA has not yet evaluated any specific submission of such a limit, and so is not at this time prepared to take final action to implement this concept. If and when a state submits an attainment demonstration that relies upon a limit with such a longer averaging time, EPA will evaluate it then.

[11] EPA believes the appropriate time for application of monitoring requirements to demonstrate continuous compliance by specific sources is when such 1-hour emission limits are set for specific sources whether in permits issued by West Virginia pursuant to the SIP or in attainment SIPs submitted in the part D planning process.

Likewise, while EPA appreciates Sierra Club's concern for providing ''regulatory certainty'' for coal-fired EGUs in West Virginia, such concerns for regulatory certainty are not requirements for infrastructure SIPs as outlined by Congress in section 110(a)(2) nor as discussed in EPA's Infrastructure SIP Guidance. *See Commonwealth of Virginia, et al.,* v. *EPA,* 108 F.3d 1397, 1410 (D.C. Cir. 1997) (citing *Natural Resources Defense Council, Inc.* v. *Browner,* 57 F.3d 1122, 1123 (D.C. Cir. 1995)) (discussing that states have primary responsibility for determining an emission reductions program for its areas subject to EPA approval dependent upon whether the SIP as a whole meets applicable requirements of the CAA). Thus, EPA does not believe it is appropriate and necessary to condition approval of West Virginia's infrastructure SIP upon inclusion of a particular emission reduction program as long as the SIP otherwise meets the requirements of the CAA. Sierra Club's comments regarding emission limits providing ''regulatory certainty'' for EGUs are irrelevant to our approval of West Virginia's infrastructure SIP for the 2010 SO_2 NAAQS, and EPA disagrees that we must disapprove the infrastructure SIP for not including enforceable emissions limitations to prevent future nonattainment designations or aid in providing ''regulatory certainty.''

Comment 10: The Commenter claims EPA must disapprove the proposed 2010 SO_2 NAAQS for its failure to include measures to ensure compliance with section 110(a)(2)(A) for the 2010 SO_2 NAAQS. The Commenter claims the provisions listed by West Virginia for section 110(a)(2)(A) in its 2010 SO_2 NAAQS infrastructure SIP are not appropriate for the NAAQS as evidenced by the Commenter's modeling for plants which are not in areas presently designated nonattainment for the 2010 SO_2 NAAQS. Sierra Club claims West Virginia wrongly relies on CAA part D attainment planning requirements to address NAAQS exceedances. The Commenter asserts that the infrastructure SIP required by section 110(a) must provide assurances that the NAAQS will be attained and maintained for areas not designated nonattainment. The Commenter claims the proposed infrastructure SIP relies on emission limits added to the SIP prior to the 2010 SO_2 NAAQS and does not include hourly SO_2 emission limits. Sierra Club therefore contends the proposed infrastructure SIP cannot ensure West Virginia will attain and maintain the 2010 SO_2 NAAQS and EPA must disapprove the SIP and require 1-hour emission limits to address exceedances shown by Sierra Club's submitted modeling.

Response 10: EPA disagrees with Sierra Club that it must disapprove the West Virginia proposed infrastructure SIP for the 2010 SO_2 NAAQS for the reasons already discussed in response to other comments from Sierra Club. Generally, it is not appropriate to bypass the attainment planning process by imposing separate requirements, such as additional SO_2 emission limits on sources, outside the attainment planning process. Such actions would be disruptive and premature absent exceptional circumstances. *See Homer City/Mansfield Order* at 10–19 (finding Pennsylvania SIP did not require imposition of 1-hour SO_2 emission limits on sources independent of the part D attainment planning process contemplated by the CAA). As discussed in the *Homer City/Mansfield Order,* imposing different emission limitation requirements outside of the attainment planning process contemplated by Congress in part D of the CAA to address requirements for attaining the NAAQS might ultimately prove inconsistent with the attainment SIP West Virginia will submit for nonattainment areas even where one source is likely responsible for nonattainment. *Id.* As discussed in great detail above, the conceptual purpose of an infrastructure SIP submission is to assure that an air agency's SIP contains the necessary structural requirements for the new or revised NAAQS. Infrastructure SIP Guidance at p. 2.

As mentioned previously, while EPA had in 2010 initially suggested that states submit in section 110(a) infrastructure SIPs substantive attainment demonstration SIPs for unclassifiable areas based on air dispersion modeling, EPA subsequently gathered additional information and clarified its position. The April 12, 2012 letters to states, draft White Paper in May 2012 and February 6, 2013 memorandum on next steps, as previously discussed, clearly recommend states focus section 110(a) infrastructure SIPs due in June 2013, such as West Virginia's SO_2 infrastructure SIP, on ''traditional infrastructure elements'' in section 110(a)(1) and (2) rather than on modeling demonstrations for future attainment for unclassifiable areas.[12]

Therefore, EPA disagrees with the Commenter that the infrastructure SIP must be disapproved for failure to include measures to ensure compliance with the 2010 SO_2 NAAQS. As Congress provided for state primacy in implementing the NAAQS, West Virginia will appropriately evaluate and impose necessary SO_2 emission limits on sources where needed for areas in West Virginia designated nonattainment with the 2010 SO_2 NAAQS under section 107.[13]

Comment 11: The Commenter alleges that the proposed SO_2 infrastructure SIP does not address sources significantly contributing to nonattainment or interfering with maintenance of the NAAQS in other states as required by section 110(a)(2)(D)(i)(I) of the CAA, and states EPA must therefore disapprove the infrastructure SIP and impose a Federal implementation plan (FIP). Sierra Club claims its modeling shows that at least one plant in the State, Harrison, is contributing to exceedances in other states. Sierra Club states that the CAA requires infrastructure SIPs to address cross-state air pollution within three years of the NAAQS promulgation. The Commenter argues that West Virginia has not done so and that the EPA must disapprove the proposed infrastructure SIP and issue a FIP to correct these shortcomings. The Commenter references the recent Supreme Court decision, *EPA* v. *EME Homer City Generation, L.P. et al.,* 134 S. Ct. 1584 (2014), which supports the states' mandatory duty to address cross-state pollution under section 110(a)(2)(D)(i)(I) and affirmed EPA's ability to impose a FIP upon states' failures to address cross-state air pollution.

Response 11: EPA disagrees with Sierra Club's statement that EPA must disapprove the submitted 2010 SO_2 infrastructure SIP due to West Virginia's failure to address section

[12] The February 6, 2013 memorandum is more completely the February 6, 2013 memorandum, ''Next Steps for Area Designations and Implementation of the Sulfur Dioxide National Ambient Air Quality Standard'' available at *http://www.epa.gov/airquality/sulfurdioxide/implement.html.*

[13] EPA also notes that in EPA's final rule regarding the 2010 SO_2 NAAQS, EPA noted that it anticipates several forthcoming national and regional rules, such as the Industrial Boilers standard under CAA section 112, are likely to require significant reductions in SO_2 emissions over the next several years. *See* 75 FR 35520. EPA continues to believe similar national and regional rules will lead to SO_2 reductions that will help achieve compliance with the 2010 SO_2 NAAQS prior to 2017. If it appears that states with areas designated nonattainment in 2013 will nevertheless fail to attain the NAAQS as expeditiously as practicable (but no later than August 2018) during EPA's review of attainment SIPs required by section 172, the CAA provides authorities and tools for EPA to solve such failure, including, as appropriate, disapproving submitted SIPs and promulgating federal implementation plans.

110(a)(2)(D)(i)(I). In EPA's NPR proposing to approve West Virginia's infrastructure SIP for the 2010 SO_2 NAAQS, EPA clearly stated that it was not taking any final action with respect to the good neighbor provision in section 110(a)(2)(D)(i)(I) which addresses emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS in another state. West Virginia did not make a SIP submission to address the requirements of section 110(a)(2)(D)(i)(I) for the 2010 SO_2 NAAQS, and thus there is no such submission upon which EPA could take action under section 110(k) of the CAA. EPA cannot act under section 110(k) to disapprove a SIP submission that has not been submitted to EPA. EPA also disagrees with the Commenter that EPA cannot approve an infrastructure SIP submission without the good neighbor provision. EPA additionally believes there is no basis for the contention that EPA has triggered its obligation to issue a FIP addressing the good neighbor obligation under section 110(c), as EPA has neither found that West Virginia failed to timely submit a required 110(a)(2)(D)(i)(I) SIP submission as to the 2010 SO_2 NAAQS or made such a submission that was incomplete, nor has EPA disapproved a SIP submission addressing 110(a)(2)(D)(i)(I) with respect to the 2010 SO_2 NAAQS.

EPA acknowledges the Commenter's concern for the interstate transport of air pollutants and agrees in general with the Commenter that sections 110(a)(1) and (a)(2) of the CAA generally require states to submit, within three years of promulgation of a new or revised NAAQS, a plan which addresses cross-state air pollution under section 110(a)(2)(D)(i)(I). However, EPA disagrees with the Commenter's argument that EPA cannot approve an infrastructure SIP submission without the good neighbor provision. Section 110(k)(3) of the CAA authorizes EPA to approve a plan in full, disapprove it in full, or approve it in part and disapprove it in part, depending on the extent to which such plan meets the requirements of the CAA. This authority to approve state SIP revisions in separable parts was included in the 1990 Amendments to the CAA to overrule a decision in the Court of Appeals for the Ninth Circuit holding that EPA could not approve individual measures in a plan submission without either approving or disapproving the plan as a whole. *See* S. Rep. No. 101–228, at 22, 1990 U.S.C.C.A.N. 3385, 3408 (discussing the express overruling of *Abramowitz* v. *EPA,* 832 F.2d 1071 (9th Cir. 1987)).

EPA interprets its authority under section 110(k)(3) of the CAA, as affording EPA the discretion to approve or conditionally approve individual elements of West Virginia's infrastructure SIP submission for the 2010 1-hour SO_2 NAAQS, separate and apart from any action with respect to the requirements of section 110(a)(2)(D)(i)(I) of the CAA with respect to that NAAQS. EPA views discrete infrastructure SIP requirements, such as the requirements of 110(a)(2)(D)(i)(I), as severable from the other infrastructure elements and interprets section 110(k)(3) as allowing it to act on individual severable measures in a plan submission. In short, EPA believes that even if West Virginia had made a SIP submission for section 110(a)(2)(D)(i)(I) of the CAA for the 2010 SO_2 NAAQS, which to date it has not, EPA would still have discretion under section 110(k) of the CAA to act upon the various individual elements of the state's infrastructure SIP submission, separately or together, as appropriate.

The Commenter raises no compelling legal or environmental rationale for an alternate interpretation. Nothing in the Supreme Court's April 2014 decision in *EME Homer City* alters our interpretation that we may act on individual severable measures, including the requirements of section 110(a)(2)(D)(i)(I), in a SIP submission. *See EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584 (affirming a state's obligation to submit a SIP revision addressing section 110(a)(2)(D)(i)(I) independent of EPA's action finding significant contribution or interference with maintenance). In sum, the concerns raised by the Commenter do not establish that it is inappropriate or unreasonable for EPA to approve the portions of West Virginia's June 25, 2013 infrastructure SIP submission for the 2010 SO_2 NAAQS.

Furthermore, as discussed above, EPA has no obligation to issue a FIP pursuant to 110(c)(1) to address West Virginia's obligations under section 110(a)(2)(D)(i)(I) until EPA first either finds West Virginia failed to make the required submission addressing the element or the State has made such a submission but it is incomplete, or EPA disapproves a SIP submittal addressing that element. Until either occurs, EPA does not have the authority to issue a FIP pursuant to section 110(c) with respect to the good neighbor provision. Therefore, EPA disagrees with the Commenter's contention that it must issue a FIP for West Virginia to address 110(a)(2)(D)(i)(I) for the 2010 SO_2 NAAQS at this time.

Comment 12: Sierra Club contends that the EPA must disapprove the proposed infrastructure SIP because it does not contain adequate provisions to prohibit sources and emissions in West Virginia from interfering with another state's visibility as required by section 110(a)(2)(D)(i)(II) of the CAA. The Commenter cites to the Supreme Court's decision in *EME Homer City* in support of its statement that West Virginia's duty to protect visibility is a mandatory duty. The Commenter asserts EPA ignores its deadline by not acting in the present rulemaking on the visibility prong of section 110(a)(2)(D)(i)(II) and asserts EPA cites no legally defensible reason for not acting. The Commenter also asserts EPA must also act on section 110(a)(2)(J) when a NAAQS is revised. Finally, the Commenter argues that the ''deadline for state action has passed'' and EPA must disapprove the SO_2 infrastructure SIP and issue a FIP to address the failings of the infrastructure SIP to protect visibility in other states.

Response 12: EPA disagrees with the Commenter that in today's rulemaking action EPA must disapprove the West Virginia SO_2 infrastructure SIP for its failure to protect visibility and issue a FIP for West Virginia addressing visibility protection. In EPA's NPR proposing to approve West Virginia's infrastructure SIP for the 2010 SO_2 NAAQS, EPA clearly stated that it was not proposing to take final action at that time with respect to the visibility protection provisions in section 110(a)(2)(D)(i)(II). While West Virginia did make a SIP submission to address the requirements of section 110(a)(2)(D)(i)(II) for visibility protection and cited to its regional haze SIP as meeting these requirements, EPA did not propose to take any action in the NPR with respect to West Virginia's visibility protection obligations pursuant to section 110(a)(2)(D)(i)(II).[14]

[14] On March 23, 2012 (77 FR 16937), EPA finalized a limited approval and limited disapproval of West Virginia's June 18, 2008 regional haze SIP to address the first implementation period for regional haze. There was a limited disapproval of this SIP because of West Virginia's reliance on the Clean Air Interstate Rule (CAIR) to meet certain regional haze requirements, which EPA replaced in August 2011 with the Cross-State Air Pollution Rule (CSAPR) (76 FR 48208 (August 8, 2011)). In a separate but related action, EPA issued a FIP that replaced West Virginia's reliance on CAIR with reliance on CSAPR for certain regional haze requirements. 77 FR 33642 (June 7, 2012). Later, the D.C. Circuit issued a decision in *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7 (D.C. Cir. 2012), cert. granted 133 U.S. 2857 (2013) vacating CSAPR and keeping CAIR in place pending the promulgation of a valid replacement rule. Subsequently, on April 30, 2014, the Supreme Court vacated the D.C. Circuit decision

Continued

As indicated in EPA's NPR, EPA anticipates taking action in the future on the portion of West Virginia's June 25, 2013 SIP submission addressing visibility protection.[15] EPA disagrees with the Commenter that EPA cannot approve a portion of an infrastructure SIP submittal without taking action on the visibility protection provision. Further, there is no basis for the contention that EPA must issue a FIP under section 110(c) within two years, as EPA has neither disapproved nor found that West Virginia failed to submit a required 110(a)(2)(D)(i)(II) SIP submission addressing visibility protection for the 2010 SO_2 NAAQS.

As previously discussed regarding good-neighbor SIP provisions for infrastructure SIPs, EPA disagrees with the Commenter's argument that EPA cannot approve a SIP without certain elements such as the visibility protection element. Section 110(k)(3) of the CAA authorizes EPA to approve a plan in full, disapprove it in full, or approve it in part and disapprove it in part, depending on the extent to which such plan meets the requirements of the CAA. As discussed above, this authority to approve SIP revisions in separable parts was included in the 1990 Amendments to the CAA. *See* S. Rep. No. 101–228, at 22, 1990 U.S.C.C.A.N. 3385, 3408 (discussing the express overruling of *Abramowitz* v. *EPA).*

As discussed above, EPA interprets its authority under section 110(k)(3) of the CAA, as affording EPA the discretion to approve individual elements of West Virginia's infrastructure submission for the 2010 SO_2 NAAQS, separate and apart from any action with respect to the requirements of section 110(a)(2)(D)(i)(II) for visibility protection. EPA views discrete infrastructure SIP requirements as severable from the other infrastructure elements and interprets section 110(k)(3) as allowing it to act on individual, severable measures. In short, EPA believes we have discretion under section 110(k) of the CAA to act upon the various individual elements of the state's infrastructure SIP submission, separately or together, as appropriate. The concerns raised by the Commenter do not establish that it is inappropriate or unreasonable for EPA to approve portions of West Virginia's June 25, 2013 infrastructure SIP submission for the 2010 SO_2 NAAQS.

EPA also has no obligation to issue a FIP to address West Virginia's obligations under section 110(a)(2)(D)(i)(II) until EPA first finds West Virginia failed to satisfy its visibility protection obligations with a complete SIP submittal addressing that element or disapproves any SIP submittal addressing that element. Until such occurs, EPA may not issue any further FIP for visibility protection pursuant to section 110(c).

With regards to the Commenter's concerns for section 110(a)(2)(J), EPA also disagrees with the Commenter that EPA ''must act'' on section 110(a)(2)(J) when a NAAQS is revised. Preliminarily, EPA notes that we did propose to approve in the NPR the portion of the June 25, 2013 infrastructure SIP submittal for the 2010 SO_2 NAAQS which addressed section 110(a)(2)(J) for visibility protection. As discussed in the TSD accompanying the NPR for this rulemaking, EPA stated that it recognizes that states are subject to visibility and regional haze program requirements under part C of the CAA.[16] In the establishment of a new NAAQS such as the 2010 SO_2 NAAQS, however, the visibility and regional haze program requirements under part C of Title I of the CAA do not change and there are no applicable visibility obligations under part C ''triggered'' under section 110(a)(2)(J) when a new NAAQS becomes effective. Therefore, EPA appropriately proposed approval of West Virginia's 2010 SO_2 infrastructure SIP revision for section 110(a)(2)(J) for the reasons identified in the TSD (i.e., West Virginia's SIP addresses visibility protection for section 110(a)(2)(J) and for part C of the CAA through its regional haze SIP).

III. Final Action

EPA is approving the following infrastructure elements or portions thereof of West Virginia's SIP revision: Section 110(a)(2)(A), (B), (C) (enforcement and minor new source review), (D)(ii), (E)(i) and (iii), (F), (G), (H), (J) (consultation, public notification, and visibility protection), (K), (L), and (M). EPA will take separate rulemaking action for the 2010 SO_2 NAAQS on the portions of section 110(a)(2)(C), (D)(i)(II), and (J) as they relate to West Virginia's PSD program and will take separate action on section 110(a)(2)(E)(ii) as it relates to section 128 (State Boards) and section 110(a)(2)(D)(i)(II) for visibility protection. This rulemaking action does not include section 110(a)(2)(I) of the CAA which pertains to the nonattainment requirements of part D, Title I of the CAA, since this element is not required to be submitted by the 3-year submission deadline of section 110(a)(1), and will be addressed in a separate process. This rulemaking action also does not include action on section 110(a)(2)(D)(i)(I) for the 2010 SO_2 NAAQS.

IV. Statutory and Executive Order Reviews

A. General Requirements

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 approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

and remanded the matter including CSAPR to the D.C. Circuit for further proceedings. *EME Homer City,* 134 S. Ct. 1584. EPA believes that the *EME Homer City* decision impacts the reasoning that formed the basis for EPA's limited approval and limited disapproval of West Virginia's regional haze SIP and the FIP. Depending upon the outcome of additional proceedings concerning CSAPR in the D.C. Circuit on remand, EPA will take further rulemaking action, if necessary or required, regarding the limited approval and limited disapproval of the West Virginia regional haze SIP. As of the time of this rulemaking, CSAPR remains stayed before the D.C. Circuit pending further proceedings.

[15] One way in which section 110(a)(2)(D)(i)(II) for visibility protection may be satisfied for any relevant NAAQS is through an air agency's confirmation in its infrastructure SIP submission that it has an approved regional haze SIP that fully meets the requirements of 40 CFR 51.308 or 51.309. Infrastructure SIP Guidance at p. 33. As previously indicated, West Virginia has a regional haze SIP with limited approval and limited disapproval and a FIP which addresses replacement of CSAPR for CAIR for certain regional haze requirements.

[16] The TSD is available in the docket for this rulemaking at *www.regulations.gov,* Docket ID Number EPA–R03–OAR–2014–0299.

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

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

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

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

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

B. Submission to Congress and the Comptroller General

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).

C. Petitions for Judicial Review

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 December 15, 2014. 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, which satisfies certain infrastructure requirements of section 110(a)(2) of the CAA for the 2008 ozone NAAQS for the State of West Virginia, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: September 30, 2014.

William C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart XX—West Virginia

■ 2. In § 52.2520, the table in paragraph (e) is amended by adding the entry for Section 110(a)(2) Infrastructure Requirements for the 2010 Sulfur Dioxide NAAQS at the end of the table to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
Section 110(a)(2) Infrastructure Requirements for the 2010 1-Hour Sulfur Dioxide NAAQS.	Statewide	6/25/13	10/16/14 [*Insert* **Federal Register** *citation*].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C) (enforcement and minor new source review), (D)(ii), (E)(i) and (iii), (F), (G), (H), (J) (consultation, public notification, and visibility protection), (K), (L), and (M).

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2011–0888; FRL–9917–61–Region 5]

Approval and Promulgation of Air Quality Implementation Plans; Indiana; Infrastructure SIP Requirements for the 2008 Lead NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve elements of a state implementation plan (SIP) submission by Indiana regarding the infrastructure requirements of sections 110(a)(1) and (2) of the Clean Air Act (CAA) for the 2008 lead (Pb) national ambient air quality standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. The proposed rulemaking associated with today's final action was published on August 19, 2013, and EPA received one comment letter during the comment period, which ended on September 18, 2013. The concerns raised in this letter, as well as EPA's responses, will be addressed in this final action.

DATES: This final rule is effective on November 17, 2014.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2011–0888. All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly-available only in hard copy. Publicly-available docket materials are available either electronically in *www.regulations.gov* or

in hard copy at the U.S. 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 Sarah Arra at (312) 886–9401 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT:

Sarah Arra, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–9401, *arra.sarah@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 of this SIP submission?
A. What does this rulemaking address?
B. Why did the state make this SIP submission?
C. What is the scope of this rulemaking?
II. What is our response to comments received on the proposed rulemaking?
III. What action is EPA taking?
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I. What is the background of this SIP submission?

A. What does this rulemaking address?

This rulemaking addresses a December 12, 2011, submission from the Indiana Department of Environmental Management (IDEM) intended to meet the applicable infrastructure SIP requirements for the 2008 Pb NAAQS.

B. Why did the state make this SIP submission?

Under sections 110(a)(1) and (2) of the CAA, states are required to submit infrastructure SIPs to ensure that their SIPs provide for implementation, maintenance, and enforcement of the NAAQS, including the 2008 Pb NAAQS. These submissions must contain any revisions needed for meeting the applicable SIP requirements of section 110(a)(2), or certifications that their existing SIPs for Pb already meet those requirements.

EPA has highlighted this statutory requirement in multiple guidance documents, including the most recent guidance document entitled ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)'' issued on September 13, 2013.

C. What is the scope of this rulemaking?

EPA is acting upon the SIP submission Indiana that addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2008 Pb NAAQS. The requirement for states to make SIP submissions of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions ''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 these SIP submissions are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as ''infrastructure SIP'' submissions. Although the term ''infrastructure SIP'' does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as ''nonattainment SIP'' or ''attainment plan SIP'' submissions to address the nonattainment planning requirements of part D of title I of the CAA, ''regional haze SIP'' submissions required by EPA rule to address the visibility protection requirements of CAA section 169A, and nonattainment new source review (NNSR) permit program submissions to address the permit requirements of CAA, title I, part D.

This rulemaking will not cover three substantive areas that are not integral to acting on a state's infrastructure SIP submission: (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 emissions; (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 (collectively referred to as ''director's discretion''); and, (iii) 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''). Instead, EPA has the authority to address each one of these substantive areas in separate rulemaking. A detailed rationale, history, and interpretation related to infrastructure SIP requirements can be found in our May 13, 2014, proposed rule entitled, ''Infrastructure SIP Requirements for the 2008 Lead NAAQS'' in the section, ''What is the scope of this rulemaking?'' (*see* 79 FR 27241 at 27242—27245).

In addition, on a portion of section 110(a)(2)(J)—visibility protection. EPA is also not acting on section 110(a)(2)(I)—Nonattainment Area Plan or Plan Revisions Under Part D, in its entirety. The rationale for not acting on elements of these requirements was included in EPA's August 19, 2013, proposed rulemaking or discussed below in today's response to comments.

II. What is our response to comments received on the proposed rulemaking?

The public comment period for EPA's proposed actions with respect to Indiana's satisfaction of the infrastructure SIP requirements for the 2008 Pb NAAQS closed on September 18, 2013. EPA received one comment letter, which was from the Sierra Club, and a synopsis of the comments contained in this letter and EPA's responses, are provided below.

Comment 1: The Sierra Club states that on its face the CAA ''requires I–SIPs to be adequate to prevent violations of the NAAQS.'' In support, the commenter quotes the language in section 110(a)(1) which requires states to adopt a plan for implementation, maintenance, and enforcement of the NAAQS and the language in section 110(a)(2)(A) which requires SIPs to include enforceable emissions limitations as may be necessary to meet the requirements of the CAA and which commenters claimed include the maintenance plan requirement. Sierra Club notes the CAA definition of emission limit and reads these provisions together to require ''enforceable emission limitations on source emissions sufficient to ensure maintenance of the NAAQS.''

Response 1: EPA disagrees that section 110 must be interpreted in the manner suggested by Sierra Club. Section 110 is only one provision that is part of the complex structure governing implementation of the NAAQS program under the CAA, as amended in 1990, and it must be interpreted in the context of not only that structure, but also of the historical

evolution of that structure. In light of the revisions to section 110 since 1970 and the later-promulgated and more specific planning requirements of the CAA, EPA interprets the requirement in section 110(a)(2)(A) that the plan provide for ''implementation, maintenance and enforcement'' to mean that the infrastructure SIP must contain enforceable emission limits that will aid in attaining and/or maintaining the NAAQS and that the state demonstrate that it has the necessary tools to implement and enforce a NAAQS, such as adequate state personnel and an enforcement program. With regard to the requirement for emission limitations, EPA has interpreted this to mean that, for purposes of section 110, the state may rely on measures already in place to address the pollutant at issue or any new control measures that the state may choose to submit. As EPA stated in ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),'' dated September 13, 2013 (Infrastructure SIP Guidance), ''[t]he conceptual purpose of an infrastructure SIP submission is to assure that the air agency's SIP contains the necessary structural requirements for the new or revised NAAQS, whether by establishing that the SIP already contains the necessary provisions, by making a substantive SIP revision to update the SIP, or both. Overall, the infrastructure SIP submission process provides an opportunity . . . to review the basic structural requirements of the air agency's air quality management program in light of each new or revised NAAQS.'' Infrastructure SIP Guidance at p. 2.

Comment 2: Sierra Club also cites two excerpts from the legislative history of the CAA Amendments of 1970 claiming they support an interpretation that SIP revisions under CAA section 110 must include emissions limitations sufficient to show maintenance of the NAAQS in all areas of Indiana. Sierra Club also contends that the legislative history of the CAA supports the interpretation that infrastructure SIPs under section 110(a)(2) must include enforceable emission limitations, citing the Senate Committee Report and the subsequent Senate Conference Report accompanying the 1970 CAA.

Response 2: The CAA, as enacted in 1970, including its legislative history, cannot be interpreted in isolation from the later amendments that refined that structure and deleted relevant language from section 110 concerning demonstrating attainment. In any event, the two excerpts of legislative history the commenter cites merely provide that states should include enforceable emission limits in their SIPs; they do not mention or otherwise address whether states are required to include maintenance plans for all areas of the state as part of the infrastructure SIP.

Comment 3: The commenter cites to 40 CFR 51.112(a), providing that each plan must ''demonstrate that the measures, rules, and regulations contained in it are adequate to provide for the timely attainment and maintenance of the [NAAQS].'' The commenter asserts that this regulation requires all SIPs to include emissions limits necessary to ensure attainment of the NAAQS. The commenter states that ''[a]lthough these regulations were developed before the Clean Air Act separated Infrastructure SIPs from nonattainment SIPs—a process that began with the 1977 amendments and was completed by the 1990 amendments—the regulations apply to I–SIPs.'' The commenter relies on a statement in the preamble to the 1986 action restructuring and consolidating provisions in part 51, in which EPA stated that ''[i]t is beyond the scope of th[is] rulemaking to address the provisions of Part D of the Act. . . .'' 51 FR 40656 (November 7, 1986).

Response 3: The commenter's reliance on 40 CFR 51.112 to support its argument that infrastructure SIPs must contain emission limits ''adequate to prohibit NAAQS violations'' and adequate or sufficient to ensure the maintenance of the NAAQS is not supported. As an initial matter, EPA notes and the commenter recognizes this regulatory provision was initially promulgated and ''restructured and consolidated'' prior to the CAA Amendments of 1990, in which Congress removed all references to ''attainment'' in section 110(a)(2)(A). In addition, it is clear on its face that 40 CFR 51.112 applies to plans specifically designed to attain the NAAQS. EPA interprets these provisions to apply when states are developing ''control strategy'' SIPs such as the detailed attainment and maintenance plans required under other provisions of the CAA, as amended in 1977 and again in 1990, such as section 175A and 182. The commenter suggests that these provisions must apply to section 110 SIPs because in the preamble to EPA's action ''restructuring and consolidating'' provisions in part 51, EPA stated that the new attainment demonstration provisions in the 1977 Amendments to the CAA were ''beyond the scope'' of the rulemaking. It is important to note, however, that EPA's action in 1986 was not to establish new substantive planning requirements, but rather to consolidate and restructure provisions that had previously been promulgated. EPA noted that it had already issued guidance addressing the new ''Part D'' attainment planning obligations. Also, as to maintenance regulations, EPA expressly stated that it was not making any revisions other than to re-number those provisions. Id. at 40657.

Although EPA was explicit that it was not establishing requirements interpreting the provisions of new ''part D'' of the CAA, it is clear that the regulations being restructured and consolidated were intended to address control strategy plans. In the preamble, EPA clearly stated that 40 CFR 51.112 was replacing 40 CFR 51.13 (''Control strategy: SO_X and PM (portion)''), 51.14 (''Control strategy: CO, HC, OX and NO_2 (portion)''), 51.80 (''Demonstration of attainment: Pb (portion)''), and 51.82 (''Air quality data (portion)''). Id. at 40660. Thus, the present-day 51.112 contains consolidated provisions that are focused on control strategy SIPs, and the infrastructure SIP is not such a plan.

Comment 4: The commenter references two prior EPA rulemaking actions where EPA disapproved or proposed to disapprove SIPs, and claimed they were actions in which EPA relied on section 110(a)(2)(A) and 40 CFR 51.112 to reject infrastructure SIPs. The commenter first points to a 2006 partial approval and partial disapproval of revisions to Missouri's existing plan addressing the sulfur dioxide (SO_2) NAAQS. In that action, EPA cited section 110(a)(2)(A) as a basis for disapproving a revision to the State plan on the basis that the State failed to demonstrate the SIP was sufficient to ensure maintenance of the SO_2 NAAQS after revision of an emission limit and cited to 40 CFR 51.112 as requiring that a plan demonstrates the rules in a SIP are adequate to attain the NAAQS. Second, commenter cites a 2013 proposed disapproval of a revision to the SO_2 SIP for Indiana, where the revision removed an emission limit that applied to a specific emissions source at a facility in the State. EPA relied on 40 CFR 51.112(a) in proposing to reject the revision, stating that the State had not demonstrated that the emission limit was ''redundant, unnecessary, or that its removal would not result in or allow an increase in actual SO_2 emissions.'' EPA further stated in that proposed disapproval that the State had not demonstrated that removal of the limit would not ''affect the validity of the emission rates used in the existing attainment demonstration.''

Response 4: EPA does not agree that the two prior actions referenced by the commenter establish how EPA reviews

infrastructure SIPs. It is clear from both the final Missouri rule and the now final Indiana rule that EPA was not reviewing initial infrastructure SIP submissions under section 110 of the CAA, but rather reviewing revisions that would make an already approved SIP designed to demonstrate attainment of the NAAQS less stringent. EPA's partial approval and partial disapproval of revisions to restrictions on emissions of sulfur compounds for the Missouri SIP addressed a control strategy SIP and not an infrastructure SIP (71 FR 12623). The Indiana action provides even less support for the commenter's position (78 FR 78720). The review in that rule was of a completely different requirement than the 110(a)(2)(A) SIP. Rather, in that case, the State had an approved SO_2 attainment plan and was seeking to remove from the SIP, provisions relied on as part of the modeled attainment demonstration. EPA determined that the State had failed to demonstrate under section 110(l) of the CAA why the SIP revision would not result in increased SO_2 emissions and thus interfere with attainment of the NAAQS. Nothing in that rulemaking addresses the necessary content of the initial infrastructure SIP for a new or revised NAAQS. Rather, it is simply applying the clear statutory requirement that a state must demonstrate why a revision to an approved attainment plan will not interfere with attainment of the NAAQS.

Comment 5: Sierra Club discusses several cases applying to the CAA which Sierra Club claims support their contention that courts have been clear that section 110(a)(2)(A) requires enforceable emissions limits in infrastructure SIPs to prevent violations of the NAAQS. Sierra Club first cites to language in *Train* v. *NRDC,* 421 U.S. 60, 78 (1975), addressing the requirement for ''emission limitations'' and stating that emission limitations ''are specific rules to which operators of pollution sources are subject, and which if enforced should result in ambient air which meet the national standards.'' Sierra Club also cites to *Pennsylvania Dept. of Envtl. Resources* v. *EPA,* 932 F.2d 269, 272 (3d Cir. 1991) for the proposition that the CAA directs EPA to withhold approval of a SIP where it does not ensure maintenance of the NAAQS and *Mision Industrial, Inc.* v. *EPA,* 547 F.2d 123, 129 (1st Cir. 1976), which quoted section 110(a)(2)(B) of the CAA of 1970. The commenter contends that the 1990 Amendments do not alter how courts have interpreted the requirements of section 110, quoting *Alaska Dept. of Envtl. Conservation* v. *EPA,* 540 U.S. 461, 470 (2004) which in turn quoted section 110(a)(2)(A) of the CAA and also stated that ''SIPs must include certain measures Congress specified'' to ensure attainment of the NAAQS. The commenter also quotes several additional opinions in this vein. *Mont. Sulphur & Chem. Co.* v. *EPA,* 666 F.3d 1174, 1180 (9th Cir. 2012) (''The Clean Air Act directs states to develop implementation plans—SIPs—that 'assure' attainment and maintenance of [NAAQS] through enforceable emissions limitations''); *Hall* v. *EPA* 273 F.3d 1146, 1153 (9th Cir. 2001) (''Each State must submit a [SIP] that specif[ies] the manner in which [NAAQS] will be achieved and maintained within each air quality control region in the State''). The commenter also cites *Mich. Dept. of Envtl. Quality* v. *Browner,* 230 F.3d 181 (6th Cir. 2000) for the proposition that EPA may not approve a SIP revision that does not demonstrate how the rules would not interfere with attainment and maintenance of the NAAQS.

Response 5: None of the cases the commenter cites supports the commenter's contention that section 110(a)(2)(A) requires that infrastructure SIPs include detailed plans providing for attainment and maintenance of the NAAQS in all areas of the state, nor do they shed light on how section 110(a)(2)(A) may reasonably be interpreted. With the exception of *Train,* 421 U.S. 60, none of the cases the commenter cites concerned the interpretation of CAA section 110(a)(2)(A) (or section 110(a)(2)(B) of the pre-1990 Act). Rather, in the context of a challenge to an EPA action, revisions to a SIP that were required and approved as meeting other provisions of the CAA or in the context of an enforcement action, the court references section 110(a)(2)(A) (or section 110(a)(2)(B) of the pre-1990 CAA) in the background section of its decision.

In *Train,* a case that was decided almost 40 years ago, the Court was addressing a state revision to an attainment plan submission made pursuant to section 110 of the CAA, the sole statutory provision at that time regulating such submissions. The issue in that case concerned whether changes to requirements that would occur before attainment was required were variances that should be addressed pursuant to the provision governing SIP revisions or were ''postponements'' that must be addressed under section 110(f) of the CAA of 1970, which contained prescriptive criteria. The court concluded that EPA reasonably interpreted section 110(f) not to restrict a state's choice of the mix of control measures needed to attain the NAAQS and that revisions to SIPs that would not impact attainment of the NAAQS by the attainment date were not subject to the limits of section 110(f). Thus the issue was not whether a section 110 SIP needs to provide for attainment or whether emissions limits are needed as part of the SIP; rather the issue was which statutory provision governed when the state wanted to revise the emission limits in its SIP if such revision would not impact attainment or maintenance of the NAAQS. To the extent the holding in the case has any bearing on how section 110(a)(2)(A) might be interpreted, it is important to realize that in 1975, when the opinion was issued, section 110(a)(2)(B) (the predecessor to section 110(a)(2)(A)) expressly referenced the requirement to attain the NAAQS, a reference that was removed in 1990.

The decision in *Pennsylvania Dept. of Envtl. Resources* was also decided based on the pre-1990 provision of the CAA. At issue was whether EPA properly rejected a revision to an approved plan where the inventories relied on by the state for the updated submission had gaps. The court quoted section 110(a)(2)(B) of the pre-1990 CAA in support of EPA's disapproval, but did not provide any interpretation of that provision. Yet, even if the court had interpreted that provision, EPA notes that it was modified by Congress in 1990; thus, this decision has little bearing on the issue here.

At issue in *Mision Industrial,* 547 F.2d 123, was the definition of ''emissions limitation'' not whether section 110 requires the state to demonstrate how all areas of the state will attain and maintain the NAAQS as part of their infrastructure SIPs. The language from the opinion the commenter quotes does not interpret but rather merely describes section 110(a)(2)(A). The commenters do not raise any concerns about whether the measures relied on by the state in the infrastructure SIP are ''emissions limitations'' and the decision in this case has no bearing here. In *Mont. Sulphur & Chem. Co.,* 666 F.3d 1174, the court was reviewing a Federal implementation plan that EPA promulgated after a long history of the state failing to submit an adequate state implementation plan. The court cited generally to section 107 and 110(a)(2)(A) of the CAA for the proposition that SIPs should assure attainment and maintenance of NAAQS through emission limitations but this language was not part of the court's holding in the case. The commenter suggests that *Alaska Dept. of Envtl. Conservation,* 540 U.S. 461, stands for the proposition that

the 1990 CAA Amendments do not alter how courts interpret section 110. This claim is inaccurate. Rather, the court quoted section 110(a)(2)(A), which, as noted previously, differs from the pre-1990 version of that provision and the court makes no mention of the changed language. Furthermore, the commenter also quotes the court's statement that ''SIPs must include certain measures Congress specified'' but that statement specifically referenced the requirement in section 110(a)(2)(C), which requires an enforcement program and a program for the regulation of the modification and construction of new sources. Notably, at issue in that case was the state's ''new source'' permitting program, not its infrastructure SIP.

Two of the cases the commenter cites, *Mich. Dept. of Envtl. Quality,* 230 F.3d 181, and *Hall,* 273 F.3d 1146, interpret CAA section 110(l), the provision governing ''revisions'' to plans, and not the initial plan submission requirement under section 110(a)(2) for a new or revised NAAQS, such as the infrastructure SIP at issue in this instance. In those cases, the courts cited to section 110(a)(2)(A) solely for the purpose of providing a brief background of the CAA.

Comment 6: The commenter asserted that Indiana's infrastructure SIP fails to meet the requirements of section 110(a)(2)(A) and section 110(a)(2)(E) because IC 13–14–8–8 contains provisions that would allow the board to grant variances to rules when the rules would impose ''undue hardships or burden.'' The commenter noted that EPA had cited IC 13–14–8 as one of IDEM's mechanisms for satisfying the requirements of section 110(a)(2)(A) and section 110(a)(2)(E), but contended that the variance provisions in IC 13–14–8–8 are too broad and vague to ensure that emission limits and controls are properly enforced, or to ensure that adequate legal authority is provided to carry out Indiana's SIP. Therefore, EPA cannot approve IC 13–14–8 to meet any requirements of section 110.

Response 6: EPA disagrees the commenter's claim that Indiana's infrastructure SIP fails to meet the requirements of section 110(a)(2)(A) and section 110(a)(2)(E). As an initial matter, IC 13–14–8–8 is not a regulation that has been approved into the SIP. Thus, any variance granted by the state pursuant to this provision would not modify the requirements of the SIP. Furthermore, for a variance from the state to be approved into the SIP, a demonstration must be made under CAA section 110(l) showing that the revision does not interfere with any requirements of the act including attainment or maintenance of a NAAQS. We disagree that the existence of this provision as solely a matter of State law means that the State does not have adequate authority to carry out the implementation plan.

Comment 7: The commenter asserted that EPA must disapprove Indiana's infrastructure SIP because it does not address the visibility provisions under section 110(a)(2)(D)(i)(II). The commenter noted that EPA's basis for proposing approval for the visibility protection provisions of section 110(a)(2)(D)(i)(II) was contingent upon EPA's claim that Indiana has an approved regional haze SIP. The commenter contended that Indiana's regional haze SIP was only partially approved and no action has been taken on issues addressing the Best Available Retrofit Technology requirements for EGUs. Therefore, the commenter believes that EPA must disapprove the visibility protection requirements found in section 110(a)(2)(D)(i)(II) for Indiana's infrastructure SIP.

Response 7: Section 110(a)(2)(D)(i)(II) of the CAA requires that states have a SIP, or submit a SIP revision, containing provisions ''prohibiting any source or other type of emission activity within the state from emitting any air pollutant in amounts which will . . . interfere with measures required to be included in the applicable implementation plan for any other State under part C [of the CAA] to protect visibility.'' States were required to submit a SIP by December 2007 with measures to address regional haze—visibility impairment that is caused by the emissions of air pollutants from numerous sources located over a wide geographic area. Under the regional haze program, each State with a Class I area must submit a SIP with reasonable progress goals for each such area that provides for an improvement in visibility for the most impaired days and ensures no degradation of the best days.

Because of the often significant impacts on visibility from the interstate transport of pollutants, we interpret the ''good neighbor'' provisions of section 110 of the CAA described above as requiring states to include in their SIPs measures to prohibit emissions that would interfere with the reasonable progress goals set to protect Class I areas in other states. This is consistent with the requirements in the regional haze program which explicitly require each State to address its share of the emission reductions needed to meet the reasonable progress goals for surrounding Class I areas. 64 FR 35714, 35735 (July 1, 1999). States working together through a regional planning process are required to address an agreed upon share of their contribution to visibility impairment in the Class I areas of their neighbors. 40 CFR 51.308(d)(3)(ii). Indiana worked through a regional planning organization, the Midwest Regional Planning Organization (Midwest RPO), and consulted directly with other states to develop strategies to address regional haze in the Class I areas potentially affected by emissions from Indiana.

The commenter is correct that EPA issued a limited disapproval of Indiana's regional haze SIP, but our limited disapproval was based on Indiana's reliance on the Clean Air Interstate Rule (CAIR) to satisfy certain requirements for controlling emissions of SO_2 and NO_X from EGUs. EPA disagrees, however, with the commenter that because Indiana's regional haze SIP did not fully meet certain requirements for controlling emissions of SO_2 and NO_X, EPA must disapprove its infrastructure SIP for Pb.

Pb generally has an insignificant impact on visibility. According to the Memorandum from Mark Schmidt, Office of Air Quality Planning and Standards (OAQPS), when evaluating the extent that Pb could impact visibility, Pb-related visibility impacts were found to be insignificant (e.g., less than 0.10%) (''Ambient Pb's Contribution to Class 1 Area Visibility Impairment,'' June 17, 2011). There is no evidence in Indiana's regional haze SIP to indicate that emissions of Pb from sources in the state were anticipated to cause or contribute to visibility impairment in any Class I area. In addition, nothing in the Indiana regional haze SIP indicates that any state assumed (or requested) that Indiana would be making reductions in emission of Pb to improve visibility. As such, the reasonable progress goals for the Class I areas in nearby states do not reflect any assumptions regarding Pb emissions from Indiana. Given this, we conclude that the Indiana SIP contains adequate measures to ensure that emissions of Pb from sources in the State will not interfere with the reasonable progress goals of nearby Class I areas.

Comment 8: The commenter asserted that EPA must disapprove Indiana's infrastructure SIP because it does not address the visibility protection provisions, as described above, for section 110(a)(2)(J). The commenter contended that EPA did not provide a rationale for why the visibility provisions in section 110(a)(2)(J) are not applicable to the 2008 Pb and 2008 ozone NAAQS.

Response 8: The visibility provisions in section 110(a)(2)(J) are not applicable to the 2008 Pb NAAQS for the following reason. Under 40 CFR part 51 subpart P, implementing the visibility requirements of CAA title I, part C, states are subject to requirements for RAVI, new source review for possible impacts on air quality related values in Class I areas, and regional haze planning. Specific requirements stemming from these CAA sections are codified at 40 CFR 55 part 51, subpart P. However, when the EPA establishes or revises a NAAQS, these requirements under part C do not change. The EPA believes that there are no new visibility protection requirements under part C as a result of a revised NAAQS. Therefore, there are no newly applicable visibility protection obligations pursuant to Element J after the promulgation of a new or revised NAAQS.

Comment 9: The commenter asserted that EPA must clarify two repealed regulations that were cited in the proposed rulemaking. Specifically, the commenter observed that EPA cited 326 IAC 11–5 as helping Indiana satisfy the requirements of section 110(a)(2)(G) ''Emergency Powers'' and IC 13–4–8 which was cited to satisfy section 110(a)(2)(H), ''Future SIP Revisions.''

Response 9: EPA did not intend to engender any confusion with these citations. The commenter is correct in noting that 326 IAC 11–5 has been repealed. That rule was of little relevance to section 110(a)(2)(G) and was incorrectly cited; the correct citation that was provided by IDEM is SIP-approved IAC 1–5, ''Alert Levels.'' In a similar manner, IDEM provided IC 13–14–8 as helping to meet the requirements under section 110(a)(2)(H), but EPA incorrectly cited IC 13–4–8.

Comment 10: The commenter asserted that EPA must disapprove portions of Indiana's infrastructure SIP for the 2008 Pb NAAQS addressing certain $PM_{2.5}$ requirements under section 110(a)(2)(C). In particular, the commenter objected that Indiana has not codified the increments for areas designated Class I or Class III for $PM_{2.5}$. The commenter noted that while Indiana does not have Class I or Class III areas, the increments for Class I and Class III areas are still a requirement to satisfy section 110(a)(2)(C). The commenter contends it is insufficient for EPA to ''hope'' that the state will adopt the increments if areas in the state are later redesignated to Class I or Class III, and therefore EPA must disapprove this section of Indiana's infrastructure SIP.

Response 10: EPA disagrees with the commenter's view that Indiana's infrastructure SIP related to section 110(a)(2)(C) must be disapproved because the state has not codified the $PM_{2.5}$ increments for Class I and Class III areas as provided at 40 CFR 52.166(c) and 40 CFR 52.21(c). As explained in the August 19, 2013 proposed approval, Indiana does not currently have any areas designated Class I or Class III for $PM_{2.5}$. Accordingly, EPA does not consider the $PM_{2.5}$ increments for Class I and Class III areas to be necessary for the implementation of PSD permitting in Indiana at this time. In the event that areas in Indiana are one day classified as Class I or Class III, EPA expects IDEM to adopt these increments and submit them for incorporation into the SIP (*see* 78 FR 50360 at 50364). Section 40 CFR 51.166(g)(1) and 52.21(g)(1) specify that if a state seeks to have an area reclassified to either Class I or Class III, it must submit such a request as a revision to its SIP for approval by the EPA Administrator. Thus, no areas in Indiana can be reclassified to Class I or Class III without EPA approval, and the process of evaluating such a request for approval requires a notice-and-comment rulemaking process. The EPA and other interested parties can evaluate the adequacy of Indiana's PSD regulations as they apply to the proposed reclassified area at that time and, if necessary, initiate a process to cure any identified deficiency. However, at this time, EPA does not believe there to be an applicability gap for the $PM_{2.5}$ increments as they apply in the state of Indiana.

III. What action is EPA taking?

For the reasons discussed in our August 19, 2013, proposed rulemaking and in the above responses to public comments, EPA is taking final action to approve, as proposed, Indiana's infrastructure SIPs for the 2008 Pb NAAQS. In EPA's August 19, 2013, proposed rulemaking for these infrastructure SIPs, we also proposed to approve Indiana's satisfaction of the state board requirements contained in section 128 of the CAA, as well as certain PSD requirements obligated by EPA's October 20, 2010, final rule on the ''Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)'' (2010 NSR Rule). The final approvals for each of the above requirements were published in the **Federal Register** on December 24, 2013 (*see* 78 FR 77599, state board requirements), July 2, 2014 (*see* 79 FR 37646, 2010 NSR Rule requirements) and August 11, 2013 (see 79 FR 46709, 2010 NSR Rule requirements, continued). EPA also proposed rulemaking on the 2008 ozone NAAQS and will be taking final action in a separate rulemaking. In today's rulemaking, we are taking final action on only the infrastructure SIP requirements for the 2008 Pb NAAQS. Our final actions by element of section 110(a)(2) and NAAQS, are contained in the table below.

Element	2008 Pb NAAQS
(A): Emission limits and other control measures	A
(B): Ambient air quality monitoring and data system	A
(C)1: Enforcement of SIP measures	A
(C)2: PSD Provisions for Pb and ozone	A
(C)3: $PM_{2.5}$ precursors and $PM_{2.5}/PM_{10}$ condensables for PSD	A
(C)4: $PM_{2.5}$ increments for PSD	A
(C)5: GHG permitting thresholds in PSD regulations	A
(D)1: Contribute to nonattainment/interfere with maintenance of NAAQS	A
(D)2: PSD	**
(D)3: Visibility Protection	A
(D)4: Interstate Pollution Abatement	A
(D)5: International Pollution Abatement	A
(E)1: Adequate resources	A
(E)2: State boards	A
(F): Stationary source monitoring system	A
(G): Emergency power	A
(H): Future SIP revisions	A
(I): Nonattainment area plan or plan revisions under part D	NA
(J)1: Consultation with government officials	A
(J)2: Public notification	A
(J)3: PSD	**
(J)4: Visibility protection (Regional Haze)	+
(K): Air quality modeling and data	A
(L): Permitting fees	A
(M): Consultation and participation by affected local entities	A

In the table above, the key is as follows:

A	Approve.
NA	No Action/Separate Rulemaking.
D	Disapprove.
+	Not relevant in these actions.
**	Previously discussed in element (C).

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 approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

This rule is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 15, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Reporting and recordkeeping requirements.

Dated: September 30, 2014.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. Amend § 52.770, paragraph (e) table by adding an entry in alphabetical order for ''Section 110(a)(2) Infrastructure Requirements for the 2008 Lead NAAQS'' to read as follows:

§ 52.770 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED INDIANA NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Title	Indiana date	EPA approval	Explanation
* *	*	*	* * *
Section 110(a)(2) Infrastructure Requirements for the 2008 Lead NAAQS.	12/12/2011	10/16/2014, [INSERT **FEDERAL REGISTER** CITATION].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(I), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
* *	*	*	* * *

[FR Doc. 2014–24493 Filed 10–15–14; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2011–0969; EPA–R05–OAR–2012–0991; EPA–R05–OAR–2013–0435; FRL–9917–60–Region 5]

Approval and Promulgation of Air Quality Implementation Plans; Illinois; Infrastructure SIP Requirements for the 2008 Ozone, 2010 NO_2, and 2010 SO_2 NAAQS

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve some elements and disapprove other elements of a state implementation plan (SIP) submission from Illinois regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2008 ozone, 2010 nitrogen dioxide (NO_2), and 2010 sulfur dioxide (SO_2) National Ambient Air Quality Standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. Illinois already administers Federally promulgated regulations that address the disapprovals described in this rulemaking. Therefore, the state will not be obligated to submit any new or additional regulations as a result of this final disapproval. The proposed rulemaking associated with this final action was published on July 14, 2014, and EPA received one comment letter during the comment period, which ended on August 13, 2014. The concerns raised in this letter, as well as EPA's responses, will be addressed in this final action.

DATES: This final rule is effective on November 17, 2014.

ADDRESSES: EPA has established dockets for this action under Docket ID No. EPA–R05–OAR–2011–0969 (2008 ozone infrastructure SIP elements), Docket ID No. EPA–R05–OAR–2012–0991 (2010 NO_2 infrastructure SIP elements), and Docket ID No. EPA–R05–OAR–2013–0435 (2010 SO_2 infrastructure SIP elements). All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly-available only in hard copy. Publicly-available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the U.S. 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 Sarah Arra at (312) 886–9401 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Sarah Arra, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–9401, *arra.sarah@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 of these SIP submissions?
A. What state SIP submissions does this rulemaking address?
B. Why did the state make these SIP submissions?
C. What is the scope of this rulemaking?
II. What is our response to comments received on the proposed rulemaking?
III. What action is EPA taking?
IV. Statutory and Executive Order Reviews

I. What is the background of these SIP submissions?

A. What state SIP submissions does this rulemaking address?

This rulemaking addresses a December 31, 2012, submission and a June 11, 2014, clarification from the Illinois Environmental Protection Agency (Illinois EPA) intended to address all applicable infrastructure requirements for the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

B. Why did the state make these SIP submissions?

Under sections 110(a)(1) and (2) of the CAA, states are required to submit infrastructure SIPs to ensure that their SIPs provide for implementation, maintenance, and enforcement of the NAAQS, including the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS. These submissions must contain any revisions needed for meeting the applicable SIP requirements of section 110(a)(2), or certifications that their existing SIPs for the NAAQS already meet those requirements.

EPA has highlighted this statutory requirement in multiple guidance documents, including the most recent guidance document entitled ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)'' issued on September 13, 2013.

C. What is the scope of this rulemaking?

EPA is acting upon the SIP submission from Illinois that address the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions ''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 these SIP submissions are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as ''infrastructure SIP'' submissions. Although the term ''infrastructure SIP'' does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as ''nonattainment SIP'' or ''attainment plan SIP'' submissions to address the nonattainment planning requirements of part D of title I of the CAA, ''regional haze SIP'' submissions required by EPA rule to address the visibility protection requirements of CAA section 169A, and nonattainment new source review (NNSR) permit program submissions to address the permit requirements of CAA, title I, part D.

This rulemaking will not cover three substantive areas that are not integral to acting on a state's infrastructure SIP submission: (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 emissions; (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 (collectively referred to as ''director's discretion''); and, (iii) existing provisions for 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''). Instead, EPA has the authority to address each one of these substantive areas in separate rulemaking. A detailed rationale, history, and interpretation related to infrastructure SIP requirements can be found in our May 13, 2014, proposed rule entitled, ''Infrastructure SIP Requirements for the 2008 Lead NAAQS'' in the section, ''What is the scope of this rulemaking?'' (*see* 79 FR 27241 at 27242–27245).

In addition, EPA is not acting on portions of section 110(a)(2)(D)(i)—Interstate transport for 2008 ozone and 2010 SO_2, and portions of section 110(a)(2)(J)—visibility protection and section 110(a)(2)(E)—state boards, for 2008 ozone, 2010 NO_2, and 2010 SO_2. EPA is also not acting on section 110(a)(2)(I)—Nonattainment Area Plan or Plan Revisions Under Part D, in its entirety. The rationale for not acting on elements of these requirements was included in EPA's July 14, 2014, proposed rulemaking. EPA will also not be taking action on 110(a)(2)(A) and the rational is included in the response to comments.

II. What is our response to comments received on the proposed rulemaking?

The public comment period for EPA's proposed actions (79 FR 40693) with respect to Illinois' satisfaction of the infrastructure SIP requirements for the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS closed on August 13, 2014. EPA received one comment letter. A synopsis of the adverse comments contained in this letter and EPA's responses are provided below.

Comment 1—The commenter states that the plain language of the CAA requires infrastructure SIPs to be adequate to prevent violations of the NAAQS. In support, the commenter quotes the language in section 110(a)(1) that requires states to adopt a plan for implementation, maintenance, and enforcement of the NAAQS and the language in section 110(a)(2)(A) that requires SIPs to include enforceable emissions limitations as may be necessary to meet the requirements of the CAA and which commenters claimed include the maintenance plan requirement. Sierra Club also contends that the legislative history of the CAA supports the interpretation that infrastructure SIPs under section 110(a)(2) must include enforceable emission limitations, citing the Senate Committee Report and the subsequent Senate Conference Report accompanying the 1970 CAA. The commenter cites 40 CFR 51.112(a), providing that each plan must ''demonstrate that the measures, rules, and regulations contained in it are adequate to provide for the timely attainment and maintenance of the [NAAQS].'' The commenter asserts that this regulation requires all SIPs to include emissions limits necessary to ensure attainment of the NAAQS. The commenter states that ''[a]lthough these regulations were developed before the Clean Air Act separated Infrastructure SIPs from nonattainment SIPs—a process that began with the 1977 amendments and was completed by the 1990 amendments—the regulations apply to I–SIPs.'' The commenter also references two prior EPA rulemaking actions where EPA disapproved or proposed to disapprove SIPs and claimed they were actions in which EPA relied on section 110(a)(2)(A) and 40 CFR 51.112 to reject infrastructure SIPs including a 2006 partial approval and partial disapproval of revisions to Missouri's existing plan addressing the sulfur dioxide (SO_2) NAAQS, where EPA cited section 110(a)(2)(A) as a basis for disapproving a revision to the state plan on the basis that the state failed to demonstrate the SIP was sufficient to ensure maintenance of the SO_2 NAAQS and a 2013 disapproval of a revision to the SO_2 SIP for Indiana, where the revision removed an emission limit that applied to a specific emissions source at a facility in the state. Sierra Club also discusses several cases applying to the CAA which Sierra Club claims support their contention that courts have been clear that section 110(a)(2)(A) requires enforceable emissions limits in infrastructure SIPs to prevent violations of the NAAQS including Train v. NRDC, 421 U.S. 60, 78 (1975), Pennsylvania Dept. of Envtl. Resources v. EPA, 932 F.2d 269, 272 (3d Cir. 1991), Mision Industrial, Inc. v. EPA, 547 F.2d 123, 129 (1st Cir. 1976), Alaska Dept. of Envtl. Conservation v. EPA, 540 U.S. 461, 470 (2004), Mont. Sulphur & Chem. Co. v. EPA, 666 F.3d 1174, 1180 (9th Cir. 2012), and Mich. Dept. of Envtl. Quality v. Browner, 230 F.3d 181 (6th Cir. 2000). The commenter also contends that Illinois' infrastructure SIP does not adequately protect the 2008 ozone NAAQS because it does not provide emissions limits for ozone precursors. The commenter notes that the state has exceedances of the standard and should add emissions limits, especially for coal-fired power plants.

Response 1—While EPA does not agree with all of the statements made by the commenter regarding what is required under CAA section 110(a)(2)(A), we do agree that Illinois' submittal lacks identification of ''emissions limitations'' in the existing EPA-approved SIP provisions or new SIP provisions that the Illinois EPA has adopted and submitted for EPA approval that limit emissions of pollutants relevant to the 2008 ozone standard, including limits on ozone precursors. We are aware that the state does have numerous provisions in existing SIP that may be adequate to meet this requirement and we are working with the state to provide a submission that addresses this requirement. At this time, EPA is not taking final action on 110(a)(2)(A) for the 2008 ozone standard. We will take action in a separate rulemaking after providing the state with an opportunity to provide the necessary information.

Comment 2—The commenter contends that the current emissions limits in the permits of several Illinois coal-fired power plants are ''insufficient to attain and maintain the 2010 SO_2 NAAQS.'' The commenter supplies air dispersion modeling for several Illinois power plants showing their asserted impact on the 2010 SO_2 NAAQS and tables summarizing the concentration of SO_2 from the different facilities. The commenter alleges that the air dispersion modeling shows exceedances of the standard that should be addressed through emissions limits in Illinois' SO_2 Infrastructure SIP. The commenter also contends that ''air dispersion modeling is the best method for evaluating the short-term impacts of large SO_2 sources,'' supporting this reasoning with statements from EPA's 1994 SO_2 Guideline Document, EPA's 1983 Section 107 Designation Policy Summary and EPA's final 2010 SO_2 NAAQS rule, as well as the court cases *Montana Sulphur, Sierra Club* v. *Costle, Republic Steel Corp.* v. *Costle,* and *Catawba County* v. *EPA.* The commenter also contends that compliance with 110(a)(2)(A) requires proper averaging time for emissions limits, specifically a one-hour averaging time for the one-hour SO_2 NAAQS. The

commenter cites a February 3, 2011 letter from EPA Region 7 to the Kansas Department of Health and Environment regarding the need for one-hour SO_2 emission limits in a PSD permit, EPA's disapproval of a Missouri SIP which relied on annual averaging for SO_2 emission rates, and *In re: Mississippi Lime Co.,* PSDAPPEAL 11–01, 2011 WL 3557194, at *26–27 (EPA Aug. 9, 2011) and 71 FR 12623, 12624 (March 13, 2006), where EPA disapproved a control strategy SO_2 SIP for which the commenter quotes, ''Emission limits should be based on concentration estimates for the averaging time that results in the most stringent control requirements.'' The commenter also contends that the number of nonattainment areas in Illinois will jump with future rounds of designations, therefore establishing emissions limits in the infrastructure SIP that comply with NAAQS provides regulatory certainty for facilities currently considering controls for other rules.

The commenter contends that Illinois must require continuous emissions monitoring systems (CEMS) to comply with the requirements of section 110(a)(2)(F) for a system to monitor emissions from stationary sources.

Response 2—While EPA does not agree with all of the statements made by the commenter regarding what is required under CAA section 110(a)(2)(A), we do agree that Illinois' submittal lacks identification of ''emissions limitations'' in the existing EPA-approved SIP provisions or new SIP provisions that the air agency has adopted and submitted for EPA approval that limit emissions of pollutants relevant to the 2010 SO_2 standard. We are aware that the state does have numerous provisions in existing SIP that may be adequate to meet this requirement and we are working with the state to provide a submission that addresses this requirement. At this time, EPA is not taking final action on 110(a)(2)(A) for the 2010 SO_2 standard. We will take action in a separate rulemaking after providing the state with an opportunity to provide the necessary information.

Regarding the requirement in 110(a)(2)(F), this provision merely requires the state to address monitoring and reporting requirements ''prescribed by the Administrator.'' EPA has not prescribed any new or different monitoring or reporting requirements for the 2010 SO_2 NAAQS.

Comment 3—The commenter contends that Illinois' 2010 NO_2 infrastructure SIP fails to ensure attainment and maintenance of the 2010 NO_2 NAAQS because it does not include emissions limits or additional monitoring.

Response 3—While EPA does not agree with all of the statements made by the commenter regarding what is required under CAA section 110(a)(2)(A), EPA agrees that Illinois' submittal lacks identification of ''emissions limitations'' in the existing EPA-approved SIP provisions or new SIP provisions that the air agency has adopted and submitted for EPA approval that limit emissions of pollutants relevant to the 2010 NO_2 standard. We are aware that the state does have numerous provisions in existing SIP that may be adequate to meet this requirement and we are working with the state to provide a submission that addresses this requirement. At this time, EPA is not taking final action on 110(a)(2)(A) for the 2010 NO_2 standard. We will take action in a separate rulemaking after providing the state with an opportunity to provide the necessary information.

Comment 4—The commenter contends that the Illinois infrastructure SIPs for 2008 ozone, 2010 NO_2, and 2010 SO_2 are inadequate to protect those NAAQS because they allow for ''ambient air incremental increases, variances, exemptions, or exclusions with regard to limits placed on sources of pollutants.'' The commenter claims that 415 ILCS 5/28.1 and 415 ILCS 5/35 provide for wide discretion to amend or promulgate rules that exempt certain sources from complying with standards. The commenter also mentions the example of a variance in 2013 for the formerly Ameren-owned power plants. The commenter also asserts that it was not able to intervene in the proceeding of a variance, and that the Illinois Court of Appeals rejected the commenter's petition for judicial review of that variance. Therefore, the commenter also contends that the infrastructure SIP prohibits judicial review of variances. The commenter contends that the allowance of these variances, inadequacies, and exemptions implies that the infrastructure SIP cannot ensure the protection of the NAAQS.

Response 4—The statutes mentioned are not part of the SIP, and any variance granted pursuant to that state authority would not affect the approved SIP requirement. If the state exercised its authority to grant a variance pursuant to those state regulations, the requirement in the SIP would only be changed if the state submits the new requirement to EPA as a SIP revision and EPA approves that change into the SIP.

Comment 5—The commenter contends that Illinois' infrastructure SIP fails to address interstate transport with respect to NO_2 and that as a result EPA should disapprove the submittal. The commenter notes that infrastructure SIPs must be submitted within three years of promulgation of a NAAQS under CAA section 110. The commenter contends that the state cannot rely on EPA's failure to address the interstate transport provisions in its 2013 infrastructure SIP guidance as a basis for not addressing this component in its SIP. The commenter also contends that under the Cross-State Air Pollution Rule (CSAPR), Illinois was required to reduce NO_X and SO_2 emissions to address cross-state pollution for ozone and $PM_{2.5}$ standards that were less stringent than the 2008 ozone and 2010 SO_2 standards. In addition, the commenter claims that Illinois cannot rely on Illinois Mercury Rule, 35 IAC part 225, to demonstrate that it is addressing its contributions to other states without conducting modeling to determine the transport of NO_X emissions.

Response 5—EPA is not entirely clear which standards the commenter believed were deficient as to the interstate transport obligation in CAA section 110(a)(2)(D)(i)(I). Therefore, EPA will respond to the comment first as to the 2010 NO_2 standard and then as to the ozone and SO_2 standards.

For the 2010 NO_2 standard, as the commenter notes, the transport provisions of infrastructure SIPs should prohibit emissions that will contribute significantly to a nonattainment area in another state or interfere with another state's maintenance of a NAAQS. However, the infrastructure submittal requirement applies only to the promulgated standard that triggered the requirement for the infrastructure submittal. The commenter's argument appears to be that the 2010 NO_2 standard is not being met because of existing modeling from CSAPR showing NO_X transport. However, the commenter does not explain how the modeling demonstrates issues associated with the attainment and maintenance of the 2010 NO_2 NAAQS. The arguments that the commenter does make rely on modeling of NO_X and SO_2 as precursors to $PM_{2.5}$ and ozone, which is not solely based on NO_2 emissions and is not germane to the attainment or maintenance of the 2010 NO_2 standard. Even if the CSAPR modeling demonstrates that NO_X emissions from the Illinois are generally transported downwind, the commenter has not demonstrated that these emissions are associated with a nonattainment or maintenance problem as to the 2010 NO_2 NAAQS in a downwind state. As noted in the proposed rule, Illinois does have rules

controlling NO_2 emissions, including the Illinois Mercury Rule, and because there are no areas violating the 2010 NO_2 standard or any expected future violations, EPA finds the current controls sufficient to meet the requirements of 110(a)(2)(D)(i)(I) for the 2010 NO_2 standard.

To the extent that the commenter alleges the state has failed to address interstate transport as to the 2008 ozone and 2010 SO_2 NAAQS, as explained in the notice of proposed rulemaking (NPR), this action does not address the ''good neighbor provision'' in section 110(a)(2)(D)(i)(I) as to these NAAQS. Illinois did not make a SIP submission to address the requirements of section 110(a)(2)(D)(i)(I) as to ozone or SO_2 and thus there is no such submission upon which EPA could take action under section 110(k). EPA did not propose to take any action with respect to Illinois' obligations pursuant to section 110(a)(2)(D)(i)(I) as to these NAAQS and is not in this rulemaking action taking any such action. Further, EPA could not act under section 110(k) to disapprove a SIP that has not been submitted to EPA. Thus, to the extent the comment relates to the substance or approvability of the ''good neighbor provision'' as to the 2008 ozone and 2010 SO_2 infrastructure SIP submissions, the comment is not relevant to this present rulemaking. As stated in this final action and in the proposed rule, EPA will take later, separate action to address section 110(a)(2)(D)(i)(I) requirements for the 2008 ozone and 2010 SO_2 NAAQS.

EPA disagrees with the commenters' argument to the extent it asserts that EPA cannot approve a SIP without the ''good neighbor provision.'' Section 110(k)(3) of the CAA authorizes EPA to approve a plan in full, disapprove it in full, or approve it in part and disapprove it in part, depending on the extent to which such plan meets the requirements of the CAA. This authority to approve the states' SIP revisions in separable parts was included in the 1990 Amendments to the CAA to overrule a decision in the Court of Appeals for the Ninth Circuit holding that EPA could not approve individual measures in a plan submission without either approving or disapproving the plan as a whole. See S. Rep. No. 101–228, at 22, 1990 U.S.C.C.A.N. 3385, 3408 (discussing the express overruling of *Abramowitz* v. *EPA,* 832 F.2d 1071 (9th Cir. 1987)).

As such, the Agency interprets its authority under section 110(k)(3) as affording EPA the discretion to approve or conditionally approve individual elements of Illinois' infrastructure submission for the 2008 ozone and 2010 SO_2 NAAQS, separate and apart from any action with respect to the requirements of section 110(a)(2)(D)(i)(I) with respect to those NAAQS. EPA views discrete infrastructure SIP requirements, such as the requirements of 110(a)(2)(D)(i)(I), as severable from the other infrastructure elements and interprets section 110(k)(3) as allowing it to act on individual severable measures in a plan submission. In short, EPA has discretion under section 110(k) to act upon the various individual elements of the state's infrastructure SIP submission, separately or together, as appropriate. The commenters raise no compelling legal or environmental rationale for an alternate interpretation.

EPA notes, however, that it is working with state partners to assess next steps to address air pollution that crosses state boundaries and will later take a separate action to address section 110(a)(2)(D)(i)(I) for the 2008 ozone and 2010 SO_2 NAAQS. EPA's approval of the Illinois infrastructure SIP submission for the 2008 ozone and 2010 SO_2 NAAQS for the portions described in the NPR is therefore appropriate.

Comment 6—The commenter contends that Illinois does not have the adequate personnel, funding, and authority, required by section 110(a)(2)(E) of the CAA, to properly administer its Title V program, shown by overdue permits and improper reissuing of expired permits. The commenter provided an example of a recently proposed significant modification action for the Kincaid Generation Station as an interim step for a 20-year process that ''based on an application submitted almost nineteen years ago . . . left unacceptable gaps in the permit's conditions.'' The commenter states that this improper process is also the case for two other coal-fired power plants and, therefore, the state's Title V program for coal-fired power plants is seriously deficient.

Response 6—EPA disagrees that the issue raised by the commenter implies that Illinois EPA does not meet the criteria of section 110(a)(2)(E). Although Title V programs are not a component of the SIP, EPA fully approved Illinois' Title V program on December 4, 2001 (66 FR 62946). Illinois has funding for its program through Title V fees, and has the authority to implement the programs though a number of state rules to implement 40 CFR part 70, and dedicated staff for implementation of their Title V program. EPA acknowledges the commenter's concern over the backlog issue at Illinois EPA, including the Kincaid permit, however, Illinois EPA is actively addressing this issue, and has taken many corrective actions, including significant increases in recent personnel hirings and permit issuance rates.

III. What action is EPA taking?

For the reasons discussed in our July 14, 2014, proposed rulemaking and in the above responses to public comments, EPA is taking final action to approve, Illinois' infrastructure SIPs for the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS with the exception of section 110(a)(2)(D)(i)—Interstate transport for 2008 ozone and 2010 SO_2. EPA is also not taking action on section 110(a)(2)(I)—Nonattainment Area Plan or Plan Revisions Under Part D, section 110(a)(2)(A)- Emission Limits, portions of section 110(a)(2)(E)—state boards, or portions of section 110(a)(2)(J)—visibility protection for the 2008 ozone, 2010 NO_2, and 2010 SO_2 standards.

Our final actions by element of section 110(a)(2) and NAAQS, are contained in the table below.

Element	2008 Ozone	2010 NO_2	2010 SO_2
(A): Emission limits and other control measures	NA	NA	NA
(B): Ambient air quality monitoring and data system	A	A	A
(C) 1: Enforcement of SIP measures	A	A	A
(C) 2: NO_X as a precursor to ozone for PSD	D,*	D,*	D,*
(C) 3: $PM_{2.5}$ Precursors/$PM_{2.5}$ and PM_{10} condensables for PSD	D,*	D,*	D,*
(C) 4: $PM_{2.5}$ Increments	D,*	D,*	D,*
(C) 5: GHG permitting thresholds in PSD regulations	D,*	D,*	D,*
(D) 1: Contribute to nonattainment/interfere with maintenance of NAAQS	NA	A	NA
(D) 2: PSD	**	**	**

Element	2008 Ozone	2010 NO_2	2010 SO_2
(D) 3: Visibility Protection	A	A	A
(D) 4: Interstate Pollution Abatement	D,*	D,*	D,*
(D) 5: International Pollution Abatement	A	A	A
(E): Adequate resources	A	A	A
(E): State boards	NA	NA	NA
(F): Stationary source monitoring system	A	A	A
(G): Emergency power	A	A	A
(H): Future SIP revisions	A	A	A
(I): Nonattainment area plan or plan revisions under part D	NA	NA	NA
(J) 1: Consultation with government officials	A	A	A
(J) 2: Public notification	A	A	A
(J) 3: PSD	**	**	**
(J) 4: Visibility protection	+	+	+
(K): Air quality modeling and data	A	A	A
(L): Permitting fees	A	A	A
(M): Consultation and participation by affected local entities	A	A	A

In the above table, the key is as follows:

A	Approve.
NA	No Action/Separate Rulemaking.
D	Disapprove.
+	Not germane to infrastructure SIPs.
*	Federally promulgated rules in place.
**	Previously discussed in element (C).

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 approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

This rule is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 15, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: September 30, 2014.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. Section 52.745 is amended by adding paragraphs (e), (f), and (g) to read as follows:

§ 52.745 Section 110(a)(2) infrastructure requirements.

* * * * *

(e) Approval and Disapproval—In a December 31, 2012, submittal, Illinois certified that the State has satisfied the infrastructure SIP requirements of section 110(a)(2)(A) through (H), and (J) through (M) for the 2008 ozone NAAQS except for 110(a)(2)(D)(i)(I). EPA is not taking action on the state board requirements of (E)(ii) or 110(a)(2)(A). Although EPA is disapproving portions of Illinois' submission addressing the prevention of significant deterioration, Illinois continues to implement the Federally promulgated rules for this purpose as they pertain to (C), (D)(i)(II), (D)(ii), and the prevention of significant deterioration (PSD) portion of (J).

(f) Approval and Disapproval—In a December 31, 2012, submittal, Illinois certified that the state has satisfied the infrastructure SIP requirements of section 110(a)(2)(A) through (H), and (J) through (M) for the 2010 nitrogen dioxide (NO_2) NAAQS. EPA is not taking action on the state board requirements of (E)(ii) or 110(a)(2)(A). Although EPA is disapproving portions of Illinois' submission addressing the prevention of significant deterioration, Illinois continues to implement the Federally promulgated rules for this purpose as they pertain to (C), (D)(i)(II), (D)(ii), and the prevention of significant deterioration (PSD) portion of (J).

(g) Approval and Disapproval—In a December 31, 2012, submittal, Illinois certified that the state has satisfied the infrastructure SIP requirements of section 110(a)(2)(A) through (H), and (J) through (M) for the 2010 sulfur dioxide (SO_2) NAAQS except for 110(a)(2)(D)(i)(I). EPA is not taking action on the state board requirements of (E)(ii) or 110(a)(2)(A). Although EPA is disapproving portions of Illinois' submission addressing the prevention of significant deterioration, Illinois continues to implement the Federally promulgated rules for this purpose as they pertain to (C), (D)(i)(II), (D)(ii), and the prevention of significant deterioration (PSD) portion of (J).

[FR Doc. 2014–24353 Filed 10–15–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

30 CFR Part 1290

Office of Hearings and Appeals

43 CFR Part 4

[Docket No. ONRR–2011–0017; DS63610000 DR2PS0000.CH7000 145D0102R2]

RIN 1012–AA08

Clarification of Appeal Procedures

AGENCY: Office of Natural Resources Revenue and Office of Hearings and Appeals, Interior.

ACTION: Final rule.

SUMMARY: The Office of Natural Resources Revenue (ONRR) and Office of Hearing and Appeals (OHA) are amending and clarifying regulations concerning certain aspects of appeals of ONRR correspondence and clarifying the final administrative nature of ONRR orders that are not paid or appealed.

DATES: *Effective Date:* November 17, 2014.

FOR FURTHER INFORMATION CONTACT: For questions on technical issues, contact Bonnie Robson, Office of Enforcement and Appeals, ONRR, telephone (303) 231–3729, or email *bonnie.robson@onrr.gov.* For other questions, contact Armand Southall, Regulatory Specialist, ONRR, telephone (303) 231–3221, or email *armand.southall@onrr.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

ONRR is amending its appeal regulations. On May 13, 1999, the Department of the Interior (Department) published in the **Federal Register** (64 FR 26240) a final rule governing the appeal of the former Minerals Management Service's (MMS) Minerals Revenue Management (MRM) orders. In this rule, ONRR clarifies the appeal regulations by removing ambiguity regarding the ONRR definition of an *Order,* the timing of appeals of orders to perform restructured accounting, and the orders that have become final for the Department that the recipient has not paid or appealed.

II. Reorganization of Title 30 CFR

On May 19, 2010, the Secretary of the Interior (Secretary) separated the responsibilities previously performed by the former MMS and reassigned those responsibilities to three separate organizations. As part of this reorganization, the Secretary renamed MMS's MRM the Office of Natural Resources Revenue and directed that ONRR transition from the Office of the Assistant Secretary for Land and Minerals Management to the Office of the Assistant Secretary for Policy, Management and Budget (PMB). This change required the reorganization of title 30, *Code of Federal Regulations* (30 CFR). In response, ONRR published a direct final rule on October 4, 2010 (75 FR 61051), to establish a new chapter XII in 30 CFR; to remove certain regulations from chapter II; and to recodify these regulations in the new chapter XII. Therefore, all references to ONRR in this rule include its predecessor MRM, and all references to 30 CFR part 1290 in this rule include former 30 CFR part 290, subpart B.

III. Comments on the Proposed Amendments

ONRR published the proposed rule on July 22, 2013 (78 FR 43843). We received comments on the proposed rule from 1 oil and gas producer, 1 Indian Tribe, and 1 trade association. We have analyzed these comments, which are discussed below:

A. 30 CFR Part 1290—Appeals

1. § 1290.102 Definition of ''order.''

Public Comments: Both the company and trade association expressed concern over the definition of an ''order.'' Specifically, they believe that paragraph 2(vi) which states that ''[a]ny correspondence that does not include the right to appeal in writing'' is not an ''order,'' is too broad, confusing, and unnecessary. Their primary concern is that correspondence that contains a requirement to pay or other ''substantive obligation to perform,'' but does not set out the right to appeal, forces the recipient to either (1) comply with the correspondence ''but have no right to appeal'' or (2) call ONRR to find out if ONRR intentionally left out the appeals language. The trade association thus suggests that we delete paragraph 2(vi) in the final rule or add language to paragraph 2(vi) that correspondence ''without express appeal language has no immediate legal effect on the recipient.'' The company suggests that ONRR correspondence state whether it is appealable or not instead of stating in the rule that correspondence is not appealable if it does not contain appeal rights.

ONRR Response: In the proposed rule we explained that ''the rule proposes to amend existing appeal regulations in titles 30 and 43 to clarify which ONRR correspondence are appealable orders . . . [because] ONRR has received appeals filed in response to ''Dear

Payor,'' ''Dear Operator,'' and ''Dear Reporter'' letters. These letters contain policy and guidance that do not contain mandatory or ordering language, and, thus, are not ONRR orders.'' In addition to clarifying that such correspondence are not appealable ''orders,'' we also proposed to add new language stating that any ONRR correspondence that does not set out the right to appeal in writing is not an appealable ''order'' consistent with the Interior Board of Land Appeals (IBLA) decision in *Xanadu Exploration Company,* 157 IBLA 183, 186 (2002).

With respect to our proposal to add a new paragraph 2(vi) that provides an order does not include ''[a]ny correspondence that does not include the right to appeal in writing'' we disagree with removing paragraph 2(vi) in the final rule for a several reasons.

First, the concern that a company could receive correspondence that actually was an ''order'' with a ''substantive obligation to perform,'' but would have no right to appeal is unfounded. If you receive correspondence from ONRR that does not contain the right to appeal, then by definition under paragraph 2(vi) of § 1290.102 it is not an ''order'' and, thus, the company need not comply. Simply stated, if you received a document from ONRR that tells you to take some action, but does not contain appeal rights, you have no obligation to comply with that correspondence and may not appeal that correspondence because under new paragraph 2(iv), it is not an ''order.'' However, if you received a document from ONRR that tells you to take some action and sets out the right to appeal, you have an obligation to comply with that correspondence and may appeal that ''order.''

Second, we do not believe we need to add language to paragraph 2(vi) to state that correspondence without appeal rights has no legal effect. By definition, as explained above, such correspondence is not an ''order,'' and, thus, has no legal effect. We also do not agree that adding language to the final rule that documents without express appeal language have no legal effect would clarify the definition of what constitutes an ''order''. We agree that ONRR correspondence should state whether it is appealable or not—and often does. For example, Preliminary Determination Letters—so-called ''Issue Letters''—that ONRR, States, and Tribes send to companies prior to an order do not state they are appealable—because they are not. On the other hand, Dear Payor Letters that merely provide guidance state they are not appealable. Finally, some ONRR correspondence such as orders to pay or report or interest bills, do state that they are appealable, and thus are appealable ''orders.'' Nevertheless, we decline to codify that all ONRR correspondence must state whether it is appealable or not because if a company received correspondence that was silent on the right to appeal, it would create the same problem this rule is remedying—the company would be forced to appeal the correspondence in case ONRR merely omitted language providing a right to appeal. Whereas, under this rule, if the correspondence does not set out the right to appeal, as stated above, the recipient is not legally required to comply with the correspondence because, under this final rule the correspondence is not an ''order.'' Therefore, we are retaining paragraph 2(vi) in the final rule.

Public Comments: The trade association suggests that we also clarify the portion of the definition of an order that states an order ''means any document issued by the ONRR Director or a delegated state. . . .'' Specifically, it recommends removing the word ''Director'' from the quoted portion of the definition because it allows an appeal of a Director's Order to the Director. The trade association believes this language conflicts with § 1290.110(b)(1) which states an appellant does not have to exhaust administrative remedies (*i.e.* appeal to the IBLA) if an order was made effective by the Director.

ONRR Response: We agree that inclusion of the word ''Director'' in the definition of ''order'' is confusing and are removing it in the final rule. An order or decision the ONRR Director issues is appealable to the IBLA, not the Director. Therefore, we are making that clear in the final rule. Also, we are making a corresponding change to § 1290.110(b) which states appellants do not have to exhaust administrative remedies if an order was made effective by the Director. Appellants do have to exhaust administrative remedies if an order is made effective by the Director. The ONRR Director and the BIA Director are not delegated authority to issue orders or decisions that are final for the Department and nonappealable. Paragraph (b)(1) conflicts with the requirement to appeal orders to perform a restructured accounting the Director issues to the IBLA under 1290.105(a)(2) and orders and decisions the ONRR Director issues to the IBLA under § 1290.108. Accordingly, we are removing paragraph (b)(1) in this final rule.

2. 1290.105(a)(1)(i) How do I appeal an order?

Upon reviewing revised 30 CFR 1290.105(a)(1)(i), we determined we inadvertently omitted the phrase ''Indian mineral leases'' from the portion of this subparagraph pertaining to appeals of Orders to Perform Restructured Accounting. We have added this phrase to clarify that the 30-day appeal period applies to Orders to Perform Restructured Accounting involving Indian mineral leases.

3. § 1290.108 How do I appeal to the IBLA?

Public Comments: The trade association suggests that we also clarify proposed 30 CFR 1290.108(a) covering appeals to the IBLA. Specifically, it recommends removing the statement that a party may appeal ''a final decision of the ONRR Director or the Director, Bureau of Indian Affairs'' to the IBLA and instead state that a party may appeal ''an order issued or made effective by the Director.'' The trade association believes that the term ''final decision'' should be reserved for decisions that are final for the Department—such as IBLA and Assistant Secretary's decisions.

Both the company and trade association disagree with our proposal to extend the period for ONRR to file an answer in an appeal to the IBLA in proposed 1290.108(b). The trade association believes ONRR's stated premise for the change ''to allow ONRR to assemble the administrative record in royalty appeals'' is flawed because it believes ''ONRR should have already prepared and submitted the administrative record in support of its order prior to the due date for the appellant's Statement of Reasons.'' It also is concerned that allowing ONRR more time to assemble the administrative record could ''impair'' an appellant's access to the administrative record. The company believes that ONRR should already have all of the information so no time is necessary to assemble the administrative record.

ONRR Response: We agree that ONRR and BIA Director's decisions and orders are not ''final for the Department''—which, as discussed above, is why we are removing § 1290.110(b)(1) in this final rule. Therefore, in the final rule, we are also revising section 1290.108(a) to state that a party may appeal to the IBLA ''an order the ONRR Director issues or a decision the ONRR Director or Director, Bureau of Indian Affairs issues under this part.''

With respect to 1290.108(b), ONRR will retain the extended period for it to

file its answer in the final rule for two reasons. First, any assumption that ONRR has all of the records already in its possession, and the administrative record is already assembled, is incorrect. When a party appeals an order to the Director, the Director's decision is based on the order, issue letter, responses to the issue letter, appellant's statement of reasons, field reports if requested, and additional information either the appellant or office that issued the order provides. Also, the Director's decision is limited to only the issues the appellant raises on appeal. However, appellants often raise new issues or arguments on appeal to the IBLA. In order to ensure we provide a complete record to the IBLA and appellant, the Office of Enforcement and Appeal's Litigation Support Branch (LSB) asks the office that issued the order to send the LSB all audit and compliance review records, even if portions of those audits or compliance reviews were not at issue in the appeal to the Director (for example, schedules not at issue in the appeal). Because an order may be issued by ONRR satellite offices, a delegated State, or by ONRR based on a delegated State or Tribal audit, it takes time for LSB to gather all of the documents to include in the record. LSB then organizes, indexes, and bates stamps the record—a service that benefits not only ONRR, but also the appellant and IBLA.

Second, we believe the concern that allowing ONRR more time to assemble the administrative record could somehow ''impair'' an appellant's access to the administrative record is unwarranted. As stated above, ONRR's goal is to provide the most complete, well-organized record possible. Moreover, the appellant should already have most of the documents necessary to prepare its statement of reasons. And, to the extent the administrative record contains information the appellant did not have prior to filing its statement of reasons, which is not likely, the appellant may file a reply brief within 15 days of ONRR filing an answer. 43 CFR 4.412(d).

4. § 1290.111 What happens if I do not pay or appeal an order?

Public Comments: The Tribe submitted a comment in support of proposed § 1290.111. Section 1290.111 makes clear that, if you receive an ONRR order and you neither pay nor appeal that order under 30 CFR part 1290, the order is the final decision of the Department, and you may not contest the merits of that order in any subsequent proceeding seeking to enforce the order under 30 CFR part 1241. For example, if ONRR issued a Notice of Noncompliance (NONC) under 30 CFR part 1241 to enforce an order you did not pay or appeal, you may not contest your liability under the order in a hearing on the NONC. However, if you did not comply with the NONC enforcing the order, and ONRR assessed civil penalties for your failure to comply with the NONC, you could contest the amount of the penalty assessment.

ONRR Response: ONRR appreciates the Tribe's support and will retain § 1290.111 in the final rule.

43 CFR Part 4 Subpart J—Special Rules Applicable to Appeals Concerning Federal Oil and Gas Royalties and Related Matters

5. § 43 CFR 4.903 Definition of ''order.''

Public Comments: The trade association and company made the same comments to the definition of ''order'' in section 4.903 as those they made for 30 CFR 1290.102. Definition of ''order'' discussed above.

ONRR Response: See our response to the comments to 30 CFR 1290.102 above.

IV. Procedural Matters

1. Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

2. Regulatory Flexibility Act

The Department certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule will affect lessees under Federal and Indian mineral leases and other recipients of ONRR orders or other official correspondence. Lessees of Federal and Indian mineral leases are generally companies classified under the North American Industry Classification System (NAICS) Code 211111, which includes companies that extract crude petroleum and natural gas. For this NAICS code classification, a small company is one with fewer than 500 employees. Because this rule applies to all mineral leases, even though the NAICS classification only applies to oil and gas leases, we are using the same classification system for all mineral leases. The Department believes that a meaningful number of businesses affected by this rule will be small businesses.

This rule will have no economic effect on small businesses. Businesses will not lose any opportunity to appeal any orders which may have an economic effect. This rule only will serve to clarify the proper forum for certain appeals, conform with other regulations, and codify previously enacted Federal law. A Regulatory Flexibility Analysis will not be required. Accordingly, a Small Entity Compliance Guide will not be required.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and ten Regional Fairness Boards receive comments from small businesses about Federal agency enforcement actions. The Ombudsman annually evaluates the enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the actions of ONRR, call 1–888–734–3247. You may comment to the Small Business Administration without fear of retaliation. Allegations of discrimination/retaliation filed with the Small Business Administration will be investigated for appropriate action.

3. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2) of the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*). This rule:

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

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or

the ability of U.S.-based enterprises to compete with foreign-based enterprises.

4. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments, or the private sector of more than $100 million per year. This rule will not have a significant or unique effect on State, local, or Tribal governments, or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) is not required.

5. Takings (E.O. 12630)

Under the criteria in section 2 of E.O. 12630, this rule does not have any significant takings implications. This rule is not a governmental action capable of interference with constitutionally protected property rights. A Takings Implication Assessment is not required.

6. Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. This rule does not substantially and directly affect the relationship between the Federal and State governments. To the extent that State and local governments have a role in Outer Continental Shelf (OCS) activities, this rule does not affect that role. A Federalism summary impact statement is not required.

7. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

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

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

8. Consultation With Indian Tribes (E.O. 13175)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and tribal sovereignty. Under the Department's consultation policy and the criteria in E.O. 13175, we evaluated this rule and determined that it will have no substantial direct effects on federally recognized Indian Tribes. Indian Tribes will be unaffected by clarifications to this appeals rule because the changes would affect the procedures for appeal by lessees, but not the rights of lessors, such as individual Indian mineral owners and Tribes.

9. Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission to OMB is not required under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

10. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. We are not required to provide a detailed statement under the National Environmental Policy Act of 1969 (NEPA) because this rule qualifies for categorical exclusion under 43 CFR 46.210(c) and (i) and the DOI Departmental Manual, part 516, section 15.4.D: ''*(c) Routine financial transactions including such things as . . . audits, fees, bonds, and royalties . . . (i) Policies, directives, regulations, and guidelines: That are of an administrative, financial, legal, technical, or procedural nature.*'' See 43 CFR 46.210(i) and the DOI Departmental Manual, part 516, section 15.4.D (2004). We have also determined that this rule is not involve in any of the extraordinary circumstances listed in 43 CFR 46.215 that requires further analysis under NEPA. The procedural changes resulting from these amendments have no consequences with respect to the physical environment. This rule will not alter, in any material way, natural resource exploration, production, or transportation.

11. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

List of Subjects

30 CFR Part 1290

Administrative practice and procedure.

43 CFR Part 4

Administrative practice and procedure, Civil rights, Claim, Equal access to justice, Estates, Government contracts, Grazing lands, Indians, Lawyers, Mines, Penalties, Public lands, Surface mining, Whistleblowing.

Dated: October 2, 2014.

Rhea Suh,

Assistant Secretary for Policy, Management and Budget.

Authority and Issuance

For the reasons stated in the preamble, the Department of the Interior amends 30 CFR part 1290 and 43 CFR part 4, subpart J, as follows:

TITLE 30—MINERAL RESOURCES

CHAPTER XII—OFFICE OF NATURAL RESOURCES REVENUE, DEPARTMENT OF THE INTERIOR

Subchapter B—Appeals

PART 1290—APPEAL PROCEDURES

■ 1. The authority citation for part 1290 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.;* 43 U.S.C. 1331.

■ 2. Amend the definition of *Order* in § 1290.102 by revising the introductory text and paragraphs (1)(i), (1)(ii), (2)(iii), and (2)(iv) and adding paragraphs (2)(v) and (2)(vi) to read as follows:

§ 1290.102 What definitions apply to this part?

* * * * *

Order, for purposes of this part only, means any document issued by ONRR or a delegated State that contains mandatory or ordering language that requires the recipient to do any of the following for any lease subject to this part: Report, compute, or pay royalties or other obligations, report production, or provide other information.

(1) * * *

(i) An order to pay (Order to Pay) or to compute and pay (Order to Perform a Restructured Accounting); and

(ii) An ONRR or delegated State decision to deny a lessee's, designee's, or payor's written request that asserts an obligation due the lessee, designee, or payor (Denial).

(2) * * *

(iii) An order to pay that ONRR issues to a refiner or other person involved in disposition of royalty taken in kind;

(iv) A Notice of Noncompliance or a Notice of Civil Penalty issued under 30 U.S.C. 1719 and 30 CFR part 1241, or a decision of an administrative law judge or of the IBLA following a hearing on the record on a Notice of Noncompliance or Notice of Civil Penalty;

(v) A ''Dear Payor,'' ''Dear Operator,'' or ''Dear Reporter'' letter unless it explicitly includes the right to appeal in writing; or

(vi) Any correspondence that does not include the right to appeal in writing.

* * * * *

■ 3. Amend § 1290.105 by revising paragraph (a) to read as follows:

§ 1290.105 How do I appeal an order?

(a)(1) You may appeal to the Director, Office of Natural Resources Revenue (ONRR Director), by filing a Notice of Appeal in the office of the official issuing the Order:

(i) Within 30 days from service of an Order to Pay or a Denial involving Federal or Indian mineral leases, or an Order to Perform a Restructured Accounting involving Indian mineral leases or Federal solid mineral or geothermal leases; or

(ii) Within 60 days from service of an Order to Perform a Restructured Accounting involving Federal oil and gas leases if a delegated State issued the Order to Perform a Restructured Accounting.

(2) If the ONRR Director, or other most senior career professional responsible for the ONRR royalty management program, issued the Order to Perform a Restructured Accounting for a Federal oil and gas lease, then you may appeal that order to the IBLA within 60 days under § 1290.108.

(3) For appeals to the ONRR Director under paragraph (a)(1) of this section, within the same 30-day or 60-day period, whichever is applicable, you must file in the office of the official issuing the Order to Pay, Order to Perform a Restructured Accounting, or Denial, a statement of reasons, or written arguments, or brief that includes the arguments on the facts or law that you believe justify reversal or modification of the Order to Pay, Order to Perform a Restructured Accounting, or Denial.

(4) If you are a designee, when you file your Notice of Appeal, you must concurrently serve your Notice of Appeal on the lessees for the leases in the Order to Pay, Order to Perform a Restructured Accounting, or Denial you appealed.

* * * * *

■ 4. Revise § 1290.108 to read as follows:

§ 1290.108 How do I appeal to the IBLA?

(a) Any party to a case adversely affected by an order the ONRR Director issues or a decision the ONRR Director or Director, Bureau of Indian Affairs issues under this part shall have a right of appeal to the IBLA under the procedures provided in 43 CFR part 4, subpart E.

(b) Notwithstanding 43 CFR 4.414(a), a party shall file an answer or appropriate motion within 60 days after service of the statement of reasons for appeal unless an extension of time is requested and granted.

■ 5. Amend § 1290.110 by revising paragraphs (b)(1), (b)(2), and (b)(3) to read as follows:

§ 1290.110 How do I exhaust administrative remedies?

* * * * *

(b) * * *

(1) The Assistant Secretary for Policy, Management and Budget;

(2) The Assistant Secretary for Indian Affairs; or

(3) The Interior Board of Land Appeals under 43 CFR part 4.

* * * * *

■ 6. Add new § 1290.111 to read as follows:

§ 1290.111 What happens if I do not pay or appeal an order?

If you neither pay nor appeal an order under this part, that order is the final decision of the Department, you have failed to exhaust administrative remedies as required under § 1290.110(a), and you may not contest the validity or merits of that order in any subsequent proceeding to enforce that order under 30 U.S.C. 1719 and part 1241 of this chapter.

TITLE 43—PUBLIC LANDS: INTERIOR

SUBTITLE A—Office of the Secretary of the Interior

PART 4—DEPARTMENT HEARINGS AND APPEALS PROCEDURES

Subpart J—Special Rules Applicable to Appeals Concerning Federal Oil and Gas Royalties and Related Matters

■ 7. The authority citation for subpart J continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.,* 396a *et seq.,* 2101 *et seq.*; 30 U.S.C. 181 *et seq.,* 351 *et seq.,* 1001 *et seq.,* 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.,* 1331 *et seq.,* and 1801 *et seq.*

■ 8. Amend the sections in part 4 indicated in the left column of the table by removing the text in the center column and adding in its place the text in the right column.

§§ 4.902, 4.903, 4.906, 4.907, and 4.908 [Amended]

AMENDMENT TABLE FOR PART 4

Amend	By removing the reference to:	And adding in its place:
§ 4.902(a)	30 CFR part 290 in effect prior to May 13, 1999 and contained in the 30 CFR, parts 200 to 699, edition revised as of July 1, 1998, 30 CFR part 290 subpart B.	30 CFR part 1290.
§ 4.902(a)	Minerals Management Service (MMS)	Office of Natural Resources Revenue (ONRR).
§ 4.903, definition of *Delegated State*	MMS	ONRR.
§ 4.903, definition of *Delegated State*	30 CFR part 227	30 CFR part 1227.
§ 4.903, definition of *Designee*	30 CFR 218.52	30 CFR 1218.52.
§ 4.903, definition of *Monetary obligation*	MMS	ONRR.
§ 4.903, definition of *Notice of Order* (two times)	MMS	ONRR.
§ 4.903, definition of *Party*	MMS	ONRR.
§ 4.903, definition of *Party* (two times)	30 CFR part 290 subpart B	30 CFR part 1290.
§ 4.906(b)(1)	MMS	ONRR.
§ 4.906(b)(2)	MMS	ONRR.
§ 4.906(d) (three times)	MMS	ONRR.
§ 4.907 (table of contents and section heading)	MMS	ONRR.
§ 4.907(a) (two times)	MMS	ONRR.
§ 4.907(b)	MMS	ONRR.
§ 4.907(c)	MMS's	ONRR's.
§ 4.908(a)	MMS	ONRR.
§ 4.908(b)	MMS	ONRR.
§ 4.908(c)	MMS	ONRR.

■ 9. Revise the definitions of *Order* and *Payor* in § 4.903 to read as follows:

§ 4.903 What definitions apply to this subpart?

* * * * *

Order means any document or portion of a document issued by ONRR or a delegated State that contains mandatory or ordering language regarding any monetary or nonmonetary obligation under any Federal oil and gas lease or leases.

(1) Order includes:

(i) An order to pay (Order to Pay) or to compute and pay (Order to Perform a Restructured Accounting); and

(ii) An ONRR or delegated State decision to deny a lessee's, designee's, or payor's written request that asserts an obligation due the lessee, designee, or payor.

(2) Order does not include:

(i) A non-binding request, information, or guidance, such as:

(A) Advice or guidance on how to report or pay, including valuation determination, unless it contains mandatory or ordering language; and

(B) A policy determination;

(ii) A subpoena;

(iii) An order to pay that ONRR issues to a refiner or other person involved in disposition of royalty taken in kind; or

(iv) A Notice of Noncompliance or a Notice of Civil Penalty issued under 30 U.S.C. 1719 and 30 CFR part 1241, or a decision of an administrative law judge or of the IBLA following a hearing on the record on a Notice of Noncompliance or Notice of Civil Penalty.

(v) A ''Dear Payor,'' ''Dear Operator,'' or ''Dear Reporter'' letter unless it explicitly includes the right to appeal in writing; or

(vi) Any correspondence that does not include the right to appeal in writing.

* * * * *

Payor means any person responsible for reporting and paying royalties for Federal oil and gas leases.

■ 10. Revise § 4.904 to read as follows:

§ 4.904 When does my appeal commence and end?

For purposes of the period in which the Department must issue a final decision in your appeal under § 4.906:

(a) Your appeal commences on the date ONRR receives your Notice of Appeal.

(b) Your appeal ends on the same day of the 33rd calendar month after your appeal commenced under paragraph (a) of this section, plus the number of days of any applicable time extensions under § 4.909 or 30 CFR 1290.109. If the 33rd calendar month after your appeal commenced does not have the same day of the month as the day of the month your appeal commenced, then the initial 33-month period ends on the last day of the 33rd calendar month.

■ 11. Amend § 4.906 by revising paragraph (b)(3) to read as follows:

§ 4.906 What if the Department does not issue a decision by the date my appeal ends?

* * * * *

(b) * * *

(3) If the ONRR Director issues an order or a decision in your appeal, and if you do not appeal the Director's order or decision to IBLA within the time required under 30 CFR part 1290, then the ONRR Director's order or decision is the final decision of the Department and 30 U.S.C. 1724(h)(2) has no application.

* * * * *

[FR Doc. 2014–24305 Filed 10–15–14; 8:45 am]

BILLING CODE 4310–T2–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 131021878–4158–02]

RIN 0648–XD557

Fisheries of the Exclusive Economic Zone Off Alaska; Greenland Turbot in the Bering Sea Subarea of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary Rule; Closure.

SUMMARY: NMFS is prohibiting directed fishing for non-CDQ Greenland turbot in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2014 Greenland turbot initial total allowable catch (ITAC) in the Bering Sea subarea of the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 12, 2014, through 2400 hrs, A.l.t., December 31, 2014.

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

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

The 2014 Greenland turbot ITAC in the Bering Sea subarea of the BSAI is 1,410 metric tons (mt) as established by the final 2014 and 2015 harvest specifications for groundfish in the BSAI (79 FR 12108, March 4, 2014). In accordance with § 679.20(d)(1)(i) and (ii)(B), the Administrator, Alaska Region, NMFS, has determined that the 2014 Greenland turbot ITAC in the Bering Sea subarea of the BSAI will be needed as incidental catch to support other groundfish fisheries. Therefore, the Regional Administrator is establishing a directed fishing allowance of 0 mt, and is setting aside the remaining 1,410 mt as incidental catch. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Greenland turbot in the Bering Sea subarea of the BSAI.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishing closure of Greenland turbot in the Bering Sea subarea of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 9, 2014.

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

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

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

Dated: October 10, 2014.

James P. Burgess,

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

[FR Doc. 2014–24621 Filed 10–10–14; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 131021878–4158–02]

RIN 0648–XD544

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Bering Sea Subarea of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific ocean perch in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area. This action is necessary to fully use the 2014 total allowable catch of Pacific ocean perch specified for the Bering Sea subarea of the Bering Sea and Aleutian Islands management area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 15, 2014, through 1200 hrs, A.l.t., December 31, 2014. Comments must be received at the following address no later than 4:30 p.m., A.l.t., October 31, 2014.

ADDRESSES: You may submit comments on this document, identified by FDMS Docket Number 2013–0152 by any of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0152,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- Mail: Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.
- Fax: Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to 907–586–7557.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

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

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

NMFS closed the directed fishery for Pacific ocean perch (POP) in the Bering Sea subarea of the BSAI under § 679.20(d)(1)(iii) (79 FR 12108, March 4, 2014).

NMFS has determined that approximately 4,500 metric tons of POP remain in the directed fishing allowance. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully utilize the 2014 total allowable catch of POP in the Bering Sea subarea of the BSAI, NMFS is terminating the previous closure and is opening directed fishing for POP in Bering Sea subarea of the BSAI, effective 1200 hrs, A.l.t., October 15, 2014, through 1200 hrs, A.l.t., December 31, 2014. This will enhance the socioeconomic well-being of harvesters dependent on POP in this area.

The Administrator, Alaska Region considered the following factors in reaching this decision: (1) The current catch of POP in the BSAI and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels participating in this fishery.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B), as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of POP directed fishing in the Bering Sea subarea of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 11, 2014.

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

Without this inseason adjustment, NMFS could not allow the fishery for POP in the Bering Sea subarea of the BSAI to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until October 31, 2014.

This action is required by § 679.20 and § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: October 10, 2014.

James P. Burgess,

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

[FR Doc. 2014–24620 Filed 10–10–14; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 130925836–4174–02]

RIN 0648–XD545

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch, Northern Rockfish, and Dusky Rockfish in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; modification of closure.

SUMMARY: NMFS is opening directed fishing for Pacific ocean perch, northern rockfish, and dusky rockfish in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to fully use the total allowable catch of Pacific ocean perch, northern rockfish, and dusky rockfish in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 15, 2014, through 2400 hrs, A.l.t., December 31, 2014. Comments must be received at the following address no later than 4:30 p.m., A.l.t., October 27, 2014.

ADDRESSES: You may submit comments on this document, identified by FDMS Docket Number NOAA–NMFS–2013–0147, by any of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=[NOAA-NMFS-2013-0147],* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- Mail: Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

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

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

NMFS closed directed fishing for Pacific ocean perch, northern rockfish, and dusky rockfish in the Western Regulatory Area of the GOA under § 679.20(d)(1)(iii) on July 1, 2014 (79 FR 37960, July 3, 2014).

As of September 30, 2014, NMFS has determined that approximately 2,300 metric tons (mt) of Pacific ocean perch, 1,250 mt of northern rockfish, and 295 mt of dusky rockfish TAC remain in the Western Regulatory Area of the GOA. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully utilize the TAC of Pacific ocean perch, northern rockfish, and dusky rockfish in the Western Regulatory Area of the GOA, NMFS is terminating the previous closure and is reopening directed fishing for Pacific ocean perch, northern rockfish, and dusky rockfish in the Western Regulatory Area of the GOA, effective 1200 hrs, A.l.t., October 15, 2014.

The Administrator, Alaska Region (Regional Administrator) considered the following factors in reaching this decision: (1) The current catch of Pacific ocean perch, northern rockfish, and dusky rockfish in the Western Regulatory Area of the GOA and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels in participating in this fishery.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of directed fishing for Pacific ocean perch, northern rockfish, and dusky rockfish in the Western Regulatory Area of the GOA. Immediate notification is necessary to allow for the orderly conduct and efficient operation of these fisheries, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet and processors. NMFS was unable to publish a document providing time for public comment because the most recent, relevant data only became available as of October 8, 2014.

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

Without this inseason adjustment, NMFS could not allow these rockfish fisheries the Western Regulatory Area of the GOA to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until October 27, 2014.

This action is required by § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: October 10, 2014.

James P. Burgess,

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

[FR Doc. 2014–24622 Filed 10–10–14; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 79, No. 200
Thursday, October 16, 2014

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2014–0002]

RIN 0579–AD98

Importation of Kiwi From Chile Into the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the fruits and vegetables regulations to list kiwi (*Actinidia deliciosa* and *Actinidia chinensis*) from Chile as eligible for importation into the United States subject to a systems approach. Under this systems approach, the fruit would have to be grown in a place of production that is registered with the Government of Chile and certified as having a low prevalence of *Brevipalpus chilensis.* The fruit would have to undergo pre-harvest sampling at the registered production site. Following post-harvest processing, the fruit would have to be inspected in Chile at an approved inspection site. Each consignment of fruit would have to be accompanied by a phytosanitary certificate with an additional declaration stating that the fruit had been found free of *Brevipalpus chilensis* based on field and packinghouse inspections. This proposed rule would allow for the safe importation of kiwi from Chile using mitigation measures other than fumigation with methyl bromide.

DATES: We will consider all comments that we receive on or before December 15, 2014.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0002.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2014–0002, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0002* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Claudia Ferguson, Senior Regulatory Policy Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1236; (301) 851–2352.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in ''Subpart-Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–71, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

The regulations in § 319.56–4(a) provide that fruits and vegetables that can be imported using one or more of the designated phytosanitary measures in § 319.56–4(b) to mitigate risk will be listed, along with the applicable requirements for their importation, on the Internet (currently in the Fruits and Vegetables Import Requirements [FAVIR] database at *www.aphis.usda.gov/favir*). Under those provisions, kiwi from Chile (*Actinidia deliciosa* and *Actinidia chinensis*) are currently listed in the FAVIR database as enterable subject to inspection in Chile or treatment with methyl bromide.

The regulations in § 319.56–4(a) also provide that commodities that require phytosanitary measures other than those measures cited in § 319.56–4(b) may only be imported in accordance with applicable requirements in § 319.56–3 and commodity-specific requirements contained elsewhere in the subpart. Under those provisions, baby kiwi (*Actinidia arguta)* from Chile are authorized for importation into the continental United States under a systems approach. The conditions applicable to the importation of baby kiwi from Chile are listed in § 319.56–53.

In this document, we are proposing to amend § 319.56–53 to include kiwi that is currently enterable into the United States subject to inspection or treatment, thereby making the kiwi eligible for importation under the same systems approach as baby kiwi.

Our review of the information supporting the safe importation into the United States of Chilean kiwi under the listed phytosanitary measures is examined in a commodity import evaluation document (CIED) titled ''Importation of Fresh Fruits of Kiwi (*Actinidia deliciosa* and *Actinidia chinensis*) from Chile into the United States.'' The CIED may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for instructions for accessing Regulations.gov and information on the location and hours of the reading room). You may request paper copies of the CIED by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT.**

In June 2010, APHIS recognized all of Chile as a Medfly-free area. Therefore, the CIED identifies one quarantine pest that could be introduced into the United States in consignments of kiwi from Chile: *Brevipalpus chilensis.* A quarantine pest is defined in § 319.56–2 as ''a pest of potential economic importance to the area endangered thereby and not yet present there, or present but not widely distributed and being officially controlled.'' In the CIED, the likelihood and consequences of introducing this pest to the United States are considered, and *B. chilensis* is rated as having a medium pest risk potential. Pests receiving a rating within the medium range may necessitate specific phytosanitary measures in addition to standard port-of-entry inspection of the commodity being imported into the United States.

Based on the findings of our CIED, we are proposing to allow the importation of fresh kiwi from Chile into the United States, subject to the same systems

approach in place for baby kiwi from Chile. Under a systems approach, a set of phytosanitary conditions, at least two of which have an independent effect in mitigating the pest risk associated with the movement of commodities, is specified, whereby fruits and vegetables may be imported into the United States from countries that are not free of certain plant pests. The systems approach for fresh kiwi from Chile would require the fruit to be grown in a place of production that is registered with the national plant protection organization (NPPO) of Chile. The fruit would have to undergo pre-harvest sampling at the registered production site under the direction of the NPPO of Chile and, once harvested, placed in field cartons or containers marked to allow for traceback to the production site. The NPPO of Chile would present a list of production sites certified as having a low prevalence of *B. chilensis* to APHIS. Following post-harvest processing, the fruit would have to be inspected in Chile at an APHIS-approved inspection site under the direction of APHIS inspectors in coordination with the NPPO of Chile. Each consignment of the fruit would have to be accompanied by a phytosanitary certificate with an additional declaration stating that the fruit had been found free of *B. chilensis* based on field and packinghouse inspections.

The mitigation measures in the proposed systems approach are discussed in greater detail below.

Production Site Registration

The production site where the fruit is grown would have to be registered with the NPPO of Chile. Harvested kiwi would have to be placed in field cartons or containers that are marked to show the official registration number of the production site. Registration would have to be renewed annually.

Registration of production sites with the NPPO of Chile and marking of field cartons or containers with the registration numbers would allow traceback to the production site if pest problems were found on fruit shipped to the United States. Problem production sites could then be removed from the program until further mitigation measures were taken to reduce pest populations.

Low-Prevalence Production Site Certification

Between 1 and 30 days prior to harvest, random samples of fruit would have to be collected from each registered production site under the direction of the NPPO of Chile. The number of fruit required to be sampled would be set forth in an operational workplan. An operational workplan is an agreement between APHIS' Plant Protection and Quarantine program, officials of the NPPO of a foreign government, and, when necessary, foreign commercial entities that specifies in detail the phytosanitary measures that will comply with our regulations governing the import or export of a specific commodity. Operational workplans apply only to the signatory parties and establish detailed procedures and guidance for the day-to-day operations of specific import/export programs. Operational workplans also establish how specific phytosanitary issues are dealt with in the exporting country and make clear who is responsible for dealing with those issues. The implementation of a systems approach typically requires an operational workplan to be developed. We are proposing to amend the regulations to require that the NPPO of Chile provide APHIS with an operational workplan for the importation of baby kiwi and kiwi.

The random samples of fruit would have to undergo a pest detection and evaluation method as follows: The fruit would have to be washed using a flushing method, placed in a 20-mesh sieve on top of a 200-mesh sieve, sprinkled with a liquid soap and water solution, washed with water at high pressure, and washed with water at low pressure. The washing process would then be repeated immediately after the first washing. The contents of the 200-mesh sieve would then be placed on a petri dish and analyzed for the presence of live *B. chilensis* mites. If a single live *B. chilensis* mite were found, the production site would not qualify for certification as a low-prevalence production site. Each production site would have only one opportunity per season to qualify as a low-prevalence production site, and certification of low prevalence would be valid for one harvest season only. The NPPO of Chile would be required to present a list of certified production sites to APHIS annually.

Production site low-prevalence certification would identify problem production sites and prevent the shipment of fruit with *B. chilensis* mites from such sites. This mite sampling method is identical to the method currently in use for baby kiwi production areas in Chile and has been found to be successful in identifying production areas with high and low populations of mites.

Post-Harvest Processing

After harvest, all damaged or diseased fruits would have to be culled at the packinghouse, and the remaining fruit would have to be packed into new, clean boxes, crates, or other APHIS-approved packing containers. Each container would have to have a label identifying the registered production site where the fruit originated and the packing shed where it was packed.

Post-harvest processing procedures, such as culling damaged fruit and sampling for mites, would remove fruit that could contain pests from consignments being shipped to the United States. Culling is a standard procedure to produce quality fruit without pests. Labeling of containers to identify both production site and packing shed would aid in traceback.

Phytosanitary Inspection

The fruit would have to be inspected in Chile at an APHIS-approved inspection site under the direction of APHIS inspectors in coordination with the NPPO of Chile following any post-harvest processing. A biometric sample would have to be drawn from each consignment. In order to be eligible for shipment to the continental United States, the fruit in the consignment would have to pass inspection by meeting the following requirements:

- Fruit presented for inspection would have to be identified in the shipping documents accompanying each lot of fruit to specify the production site(s) where the fruit was produced and the packing shed(s) where the fruit was processed. This identification would have to be maintained until the fruit is released for entry into the United States.
- The biometric sample referred to above of the boxes, crates, or other APHIS-approved packing containers from each consignment would be selected by the NPPO of Chile, and the fruit from these boxes, crates, or other APHIS-approved packing containers would be visually inspected for quarantine pests. A sample of the fruit selected in accordance with the operational workplan would have to be washed with soapy water and the collected filtrate microscopically examined for *B. chilensis.* If a single live *B. chilensis* mite were found during the inspection process, the certified low-prevalence production site where the fruit was grown would lose its certification. In addition, the production site of origin would be suspended from the low prevalence certification program for the remainder of the harvest season.

The proposed requirements for the identification in shipping documents of

the kiwi to their production sites and packing sheds would aid in traceback if pests were found. The proposed requirements for visual inspection and biometric sampling of the fruit would provide additional layers of protection against the possibility of kiwi infested with quarantine pests being shipped from Chile to the United States. These methods have proved effective when employed to inspect consignments of citrus and baby kiwi from Chile.

Phytosanitary Certificate

Each consignment of fruit would have to be accompanied by a phytosanitary certificate issued by the NPPO of Chile that contains an additional declaration stating that the fruit in the consignment was inspected and found free of *B. chilensis* based on field and packinghouse inspections and grown, packed, and shipped in accordance with § 319.56–53.

Requiring a phytosanitary certificate would ensure that the NPPO of Chile has inspected the fruit and certified that the fruit meets the conditions for export to the United States.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

APHIS is proposing to amend the fruits and vegetables regulations to list kiwi (*Actinidia deliciosa* and *Actinidia chinensis*) from Chile as eligible for importation into the United States subject to a systems approach to pest risk mitigation. The systems approach, which integrates prescribed measures that cumulatively achieve the appropriate level of phytosanitary protection, would be the same that is currently applicable for the entry of baby kiwi (*Actinidia arguta*) from Chile into the continental United States. Kiwi from Chile is currently listed as enterable subject to inspection in Chile or treatment with methyl bromide.

Production, consumption, and trade of kiwi by the United States have been expanding and are expected to continue to increase. Over the 5 years from 2008 through 2012, U.S. kiwi production and imports expanded by about 29 percent and 24 percent, respectively, and U.S. exports by 48 percent. U.S. consumption of kiwi grew by about 23 percent over this same 5-year period. However, the United States is dependent on imports for the major share of its kiwi supply. In 2012, nearly four of every five kiwis consumed in the United States were imported. Chile is the principal foreign source, supplying one-half of the kiwis imported by the United States in 2012, up from approximately one-third of U.S. kiwi imports in 2008. Chile is expected to continue to dominate the supply of kiwi to the United States in the near term. Under the proposed rule, Chile's kiwi exporters would have the option of using the systems approach rather than relying on inspection of the fruit in Chile or fumigation with methyl bromide to meet import requirements.

Although the United States is a net importer of kiwi, the percentage increase in U.S. kiwi exports, 2008–2012, was twice the percentage increase in U.S. kiwi imports; U.S. producers are actively expanding their sales to other countries. We also note that kiwi imports from Chile are largely counter-seasonal to kiwi sales by domestic producers. California produces 98 percent of the kiwis grown in the United States, and the California season runs October through May. Kiwi from Chile is predominantly imported during the spring and summer months. Ninety-four percent of Chilean kiwi imported in 2012 arrived between April and September. Although kiwi production in the United States is expanding, it remains a relatively small agricultural industry, with fewer than 300 growers whose farms average about 13 acres each. Nevertheless, it is a vibrant industry with an expanding export market. This fact, together with the counter-seasonality of kiwi imports from Chile, suggests that the economic impact of the proposed rule for U.S. small entities would be minor.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule would allow kiwi to be imported into the United States from Chile. If this proposed rule is adopted, State and local laws and regulations regarding kiwi imported under this rule would be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Lists of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 3. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 4. Section 319.56–53 is amended as follows:

■ a. By revising the section heading;

■ b. By revising the introductory text;

■ c. By redesignating paragraphs (a), (b), (c), (d), and (e) as paragraphs (b), (c), (d), (e), and (f), respectively, and adding a new paragraph (a);

■ d. By revising the first and second sentences after the heading of newly designated paragraph (b);

■ e. By revising the third sentence after the heading of newly designated paragraph (e); and

■ f. By revising newly designated paragraph (f).

The revisions and addition read as follows:

§ 319.56–53 Fresh kiwi and baby kiwi from Chile.

Fresh kiwi (*Actinidia deliciosa* and *Actinidia chinensis)* may be imported into the United States from Chile, and fresh baby kiwi (*Actinidia arguta*) may be imported into the continental United States from Chile under the following conditions:

(a) The national plant protection organization (NPPO) of Chile must provide a workplan to APHIS that details the activities that the NPPO of Chile will, subject to APHIS' approval of the workplan, carry out to meet the requirements of this section.

(b) * * * The production site where the fruit is grown must be registered with the NPPO of Chile. Harvested kiwi and baby kiwi must be placed in field cartons or containers that are marked to

show the official registration number of the production site. * * *

* * * * *

(e) * * * Kiwi in any consignment may be shipped to the United States, and baby kiwi in any consignment may be shipped to the continental United States, under the conditions of this section only if the consignment passes inspection as follows:

* * * * *

(f) *Phytosanitary certificate.* Each consignment of fresh kiwi and fresh baby kiwi must be accompanied by a phytosanitary certificate issued by the NPPO of Chile that contains an additional declaration stating that the fruit in the consignment was inspected and found free of *Brevipalpus chilensis* and was grown, packed, and shipped in accordance with the requirements of 7 CFR 319.56–53.

* * * * *

Done in Washington, DC, this 9th day of October 2014.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2014–24631 Filed 10–15–14; 8:45 am]

BILLING CODE 3410–34–P

FARM CREDIT ADMINISTRATION

12 CFR Part 611

RIN 3052–AC85

Organization; Institution Stockholder Voting Procedures

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA, we or our) proposes to amend its existing rules related to Farm Credit System (Farm Credit or System) bank and association stockholder voting policies and procedures so as to continue to address confidentiality and security in voting. This rulemaking would amend FCA's regulations to clarify and enhance voting procedures for tabulating votes, the use of tellers committees, and other items as identified.

DATES: Comments on this proposed rule must be submitted on or before December 15, 2014.

ADDRESSES: We offer a variety of methods for you to submit your comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by email or through the FCA's Web site. As facsimiles (faxes) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we no longer accept comments submitted via fax. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- *Email:* Send us an email at *reg-comm@fca.gov.*
- *FCA Web site: http://www.fca.gov.* Select ''Public Commenters,'' then ''Public Comments,'' and follow the directions for ''Submitting a Comment.''
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Barry F. Mardock, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

You may review copies of comments we receive at our office in McLean, Virginia, or on our Web site at *http://www.fca.gov.* Once you are in the Web site, select ''Public Commenters,'' then ''Public Comments,'' and follow the directions for ''Reading Submitted Public Comments.'' We will show your comments as submitted, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove email addresses to help reduce Internet spam.

FOR FURTHER INFORMATION CONTACT:

Thomas R. Risdal, Senior Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA, (703) 883–4257, TTY (703) 883–4056; or

Nancy Tunis, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4061, TTY (703) 883–4056.

SUPPLEMENTARY INFORMATION:

I. Objectives

The primary objective of this proposed rule is to clarify § 611.340 of our regulations regarding confidentiality and security in stockholder voting procedures and facilitate their safe and sound implementation by System institutions. Specifically, this proposed rule would clarify that:

- A System bank or association may use a tellers committee [1] to tabulate ballots and still maintain confidentiality and security of the voting process; and
- A small number of administrative employees of a bank or association may assist a tellers committee in verifying a stockholder's eligibility to vote.

II. Background

The Farm Credit Act of 1971, as amended (Act) [2], authorizes the FCA to issue regulations implementing the Act's provisions.[3] Our regulations are intended to ensure the safe and sound operations of System institutions. In order to fulfill our responsibility to maintain the safety and soundness of System institutions, the FCA's regulations provide that banks and associations must ensure the confidentiality and security of stockholder voting, while maintaining cooperative principles.[4]

Section 611.340 of the FCA's regulations requires that the board of directors of each System bank and association adopt policies and procedures to ensure the confidentiality and security of all records and materials related to a stockholder vote including, but not limited to, ballots, proxy ballots, and other related materials. Also, this section requires that System bank and association policies and procedures ensure that ballots and proxy ballots are provided only to stockholders who are eligible to vote as of the record date set for the stockholder vote. Banks and associations must ensure the confidentiality of all information and materials regarding how or whether an individual stockholder has voted, including protecting the information from disclosure to anyone except vote tabulators and the FCA.

III. Analysis

We request any interested person to submit comments on this proposed rule and ask that you support your comments with relevant data or examples. The FCA proposes the following changes to § 611.340:

A. Section 611.340(a)

In order to facilitate stockholders participation in their bank's or association's voting process and potentially reduce the cost of tabulating votes, the FCA seeks to clarify the language of § 611.340(a)(3) and § 611.340(a)(4) regarding the use of a tellers committee. Existing

[1] Section 611.340(a)(4) requires that a tellers committee only consist of voting stockholders who are not directors, director-nominees, or members of that election cycle's nominating committee.

[2] Public Law 92–181, 85 Stat. 583 (1971), 12 U.S.C. 2001 *et seq.*

[3] Section 5.17(a)(9) of the Act authorizes the FCA to prescribe rules and regulations necessary or appropriate for carrying out {the} Act.

[4] Section 4.20 of the Act requires that ''[i]n any election or merger vote, or other proceeding subject to a vote of the stockholders . . . the institution (1) may not use signed ballots; and (2) shall implement measures to safeguard the voting process for the protection of the right of stockholders . . . to a secret ballot.''

§ 611.340(a)(3) requires that each System bank and association ensure that all information and materials regarding how or whether an individual stockholder has voted remain confidential, including protecting the information from disclosure to the institution's directors, stockholders, or employees, or any other person. However, the information may be disclosed to an independent third party tabulating the vote or the FCA.

The use of a tellers committee, consisting of voting stockholders as provided for in § 611.340(a)(4), could be interpreted to be in conflict with the confidentiality provision in § 611.340(a)(3) that information and materials regarding how or whether an individual stockholder voted be protected from other bank or association stockholders. One means of reconciling the language in the related provisions would be to require that stockholder votes at System banks and associations be tabulated only by an independent third party.

Based on questions to the FCA regarding this regulation, we considered whether System banks and associations should be required to use only independent third party tabulators for System elections. That approach would accomplish the result of maintaining confidentiality and security in voting, but the cost of using an independent third party in all situations could be burdensome, particularly to small associations. We considered whether using a tellers committee to tabulate votes could be a confidential and secure method. A tellers committee could be significantly more cost effective and could enhance participation of stockholders in the affairs of their institution, which is one of the guiding cooperative principles.

After considering the alternatives, the FCA proposes this rule amendment to clarify and affirm the ability of System banks and associations to utilize a tellers committee for tabulating votes. Accordingly, we propose adding the tellers committee as an additional exception in § 611.340(a)(3) to the vote tabulating process. If a tellers committee is added, the current requirements of § 611.340(a)(3) related to bank and association policies and procedures on confidentiality of the vote and protecting voting information from disclosure would apply equally to each member of the tellers committee as it does to an independent third party tabulator. Policies and procedures would need to ensure that information shared with a tellers committee remains confidential, similar to confidentiality clauses contained in an independent third party contract. If a tellers committee is used, the FCA proposes that only a small number of specifically authorized administrative employees of the bank or association be allowed to assist in the verification of stockholder eligibility to vote. Such employees could not be part of management or principally involved in the loan making, pricing or servicing functions. Such employees would also be subject to the policies and procedures on confidentiality in the same manner as the independent third party and members of the tellers committee.

The FCA proposes the following revisions to § 611.340(a):

1. Make existing paragraph (a)(4) paragraph (a)(3) and revise it to add ''employees'' in the list of stockholders prohibited from serving on a tellers committee. While in some instances, an institution employee may also be a stockholder, the FCA does not believe that it would be appropriate in any instance for an employee to serve on a tellers committee.

2. Add a new paragraph (a)(4) to:

- Require that a list of eligible voting stockholders as of the voting record date be provided to the vote tabulation group, either a tellers committee or an independent third party, to ensure the validity of votes cast; and
- Allow for a small number of specifically authorized administrative employees of the institution to assist the tellers committee solely in the verification of eligible ballots cast. In order to preserve confidentiality and security in voting when using a tellers committee, the FCA would require that verifying eligibility of votes cast be conducted separately from tabulating the votes. Therefore, in the event of ballots received by mail, if stockholder eligibility is verified by the tellers committee members, such verification would be required to occur separate and apart from vote tabulation.

3. Re-designate existing paragraph (a)(3) as paragraph (a)(5) and add paragraph (a)(5)(i) to provide that the information could be disclosed to a duly appointed tellers committee and add paragraph (a)(5)(ii) to provide that the information could be disclosed to a small number of administrative staff supporting the tellers committee solely for the purpose of validating voter eligibility. Existing paragraphs (a)(3)(i) and (ii) would become (a)(5)(iii) and (iv), respectively.

B. Section 611.340(b)

Existing § 611.340(b) discusses balloting procedures, such as the use of an identity code ''on the ballot.'' However, in common practice, when identity codes are used in the vote validation and tabulation process, the codes are not ''on the ballot.'' The identity code is usually printed on a sealed envelope containing the ballot, thereby identifying that a valid ballot has been cast, but not linking a specific ballot with an identifiable identity code. Accordingly, we propose to delete the terms ''on the ballot'' and ''how or'' from the second sentence of § 611.340(b).

To maintain consistency with the proposed changes to § 611.340(a) discussed above regarding the use of tellers committees, we propose to delete the phrase ''has voted only if the votes are tabulated by an independent third party'' from the second sentence of paragraph (b). The requirement for use of an independent third party tabulator for ''weighted voting'' would be retained.

In addition, we propose to move the last sentence of paragraph (b) to a new § 611.340(c) and include ''or each member of the tellers committee'' after ''[a]n independent third party'' as well as adding ''and any administrative employees assisting the tellers committee in verifying eligibility to vote'' to reflect the addition of a duly appointed tellers committee and small number of administrative staff as an exception at new § 611.340(a)(5)(i) and (ii).

The proposed new § 611.340(c) would emphasize that anyone involved in the tabulation of votes or verification of voter eligibility must acknowledge the importance of maintaining secrecy by signing a written certification declaring that the individual will protect the confidentiality of the voting process.

C. Sections 611.340(c)–(e)

Existing §§ 611.340(c)–(e) would be redesignated as § 611.340(d)–(f), respectively, without change to content.

IV. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA hereby certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, Farm Credit System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 611

Agriculture, Banks, banking, Rural areas.

For the reasons stated in the preamble, part 611 of chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 611—ORGANIZATION

■ 1. The authority citation for part 611 continues to read as follows:

Authority: Secs. 1.2, 1.3, 1.4, 1.5, 1.12, 1.13, 2.0, 2.1, 2.2, 2.10, 2.11, 2.12, 3.0, 3.1, 3.2, 3.3, 3.7, 3.8, 3.9, 3.21, 4.3A, 4.12, 4.12A, 4.15, 4.20, 4.21, 4.25, 4.26, 4.27, 4.28A, 5.9, 5.17, 5.25, 7.0–7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2002, 2011, 2012, 2013, 2020, 2021, 2071, 2072, 2073, 2091, 2092, 2093, 2121, 2122, 2123, 2124, 2128, 2129, 2130, 2142, 2154a, 2183, 2184, 2203, 2208, 2209, 2211, 2212, 2213, 2214, 2243, 2252, 2261, 2279a–2279f–1, 2279aa–5(e)); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638; sec. 414 of Pub. L. 100–399, 102 Stat. 989, 1004.

■ 2. Section 611.340 is revised to read as follows:

§ 611.340 Confidentiality and security in voting.

(a) Each Farm Credit bank and association's board of directors must adopt policies and procedures that:

(1) Ensure the security of all records and materials related to a stockholder vote including, but not limited to, ballots, proxy ballots, and other related materials.

(2) Ensure that ballots and proxy ballots are provided only to stockholders who are eligible to vote as of the record date set for the stockholder vote.

(3) Provide for the establishment of a tellers committee or an independent third party who will be responsible for validating ballots and proxies and tabulating voting results. A tellers committee may only consist of voting stockholders who are not employees, directors, director-nominees, or members of that election cycle's nominating committee.

(4) Ensure that a list of eligible voting stockholders (or identity codes of eligible voting stockholders) as of the voting record date is provided to the tellers committee or independent third party that will be tabulating the vote to ensure the validity of the votes cast. A small number of specifically authorized administrative employees of the institution may assist the tellers committee in such verifications, provided the institution implements procedures to ensure the confidentiality and security of the information made available to the employees. If an institution is using a tellers committee, verification of voter eligibility must be done separate and apart from the opening and tabulating of the actual ballots.

(5) Ensure that all information and materials regarding how or whether an individual stockholder has voted remain confidential, including protecting the information from disclosure to the institution's directors, stockholders, or employees, or any other person except:

(i) A duly appointed tellers committee;

(ii) A small number of specifically authorized administrative employees assisting the tellers committee by validating stockholders' eligibility to vote;

(iii) An independent third party tabulating the vote; or

(iv) The Farm Credit Administration.

(b) No Farm Credit bank or association may use signed ballots in stockholder votes. A bank or association may use balloting procedures, such as an identity code, that can be used to identify whether an individual stockholder is eligible to vote or has previously submitted a vote. In weighted voting, the votes must be tabulated by an independent third party.

(c) An independent third party or each member of the tellers committee that tabulates the votes, and any administrative employees assisting the tellers committee in verifying stockholder eligibility to vote, must sign a certificate declaring that such party, member, or employee will not disclose to any person (including the institution, its directors, stockholders, or employees) any information about how or whether an individual stockholder has voted, except that the information must be disclosed to the Farm Credit Administration, if requested.

(d) Once a Farm Credit bank or association receives a ballot, the vote of that stockholder is final, except that a stockholder may withdraw a proxy ballot before balloting begins at a stockholders' meeting. A Farm Credit bank or association may give a stockholder voting by proxy an opportunity to give voting discretion to the proxy of the stockholder's choice, provided that the proxy is also a stockholder eligible to vote.

(e) Ballots and proxy ballots must be safeguarded before the time of distribution or mailing to voting stockholders and after the time of receipt by the bank or association until disposal. When stockholder meetings are held for the purpose of conducting elections or other votes, only proxy ballots may be accepted prior to any or all sessions of the stockholders' meeting and mail ballots may only be distributed after the conclusion of the meeting. In an election of directors, ballots, proxy ballots, and election records must be retained at least until the end of the term of office of the director. In other stockholder votes, ballots, proxy ballots, and records must be retained for at least 3 years after the vote.

(f) An institution and its officers, directors, and employees may not make any public announcement of the results of a stockholder vote before the tellers committee or independent third party has validated the results of the vote.

Dated: October 10, 2014.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2014–24643 Filed 10–15–14; 8:45 am]

BILLING CODE 6705–01–P

SMALL BUSINESS ADMINISTRATION

2 CFR Part 2700

13 CFR Parts 103, 124 and 134

RIN 3245–AG40

Agent Revocation and Suspension Procedures

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: This rule proposes detailed procedures for the suspension and revocation of an Agent's privilege to do business with the United States Small Business Administration (SBA) within a single Part of the Code of Federal Regulations; remove 8(a) program specific procedures for Agent suspension and revocation; clarify existing and related regulations as to suspension, revocation, and debarment; and remove Office of Hearings and Appeals jurisdiction over Agent suspensions and revocations and government-wide debarment and suspension actions. This proposed rule would also conform SBA suspension and revocation procedures for Agents with general government-wide non-procurement suspension and debarment procedures.

DATES: Comments must be received on or December 15, 2014.

ADDRESSES: You may submit comments, identified by RIN: 3245–AG40 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail/Hand Delivery/Courier:* Debra L. Mayer, Chief, Supervision and Enforcement, Office of Credit Risk

Management, 409 Third Street SW., 8th Floor, Washington, DC 20416.

SBA will post all comments to this proposed rule without change on *www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* you must submit such information to Debra L. Mayer, Chief, Supervision and Enforcement, Office of Credit Risk Management, 409 Third Street SW., 8th Floor, Washington, DC 20416 or send an email to *debra.mayer@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Debra L. Mayer, Chief, Supervision and Enforcement, Office of Credit Risk Management, 202–205–7577, email: *debra.mayer@sba.gov.*

SUPPLEMENTARY INFORMATION:

I. Background Information

Under Part 103 of Title 13 of the Code of Federal Regulations (CFR), SBA may, for good cause, suspend or revoke an Agent's privilege to conduct business with SBA. Part 103 applies to ''Agents''—people/entities that represent applicants or participants in SBA programs, per 13 CFR 103(a). Some examples of Agents are attorneys, consultants, loan packagers, lender service providers, etc. Part 103 allows SBA to revoke an Agent's privilege to conduct business with SBA. In short, a Part 103 revocation is similar to a debarment, but limited to SBA instead of the entire federal government. Also, like debarment, Part 103 provides for suspension prior to revocation. However, aside from those similarities, revocation does not actually have any connections to debarment. It only excludes Agents from conducting business with SBA, not the rest of the federal government.

The current Part 103 regulations contain no procedures for suspension/revocation. Instead, SBA currently only has limited procedures regarding suspension and revocation, located in SBA's Standard Operating Procedure (SOP) 50 53 A and 13 CFR 124.4(c). These procedures apply only to a few types of Agents. SBA's Standard Operating Procedure (SOP) 50 53 A, Lender Supervision and Enforcement (June 2012) contains procedures only for the suspension and revocation of only certain Agents related to SBA loan programs. In addition, 13 CFR 124.4(c) contains procedures only for the suspension and revocation of only certain Agents related to SBA's 8(a) Business Development Program. The proposed rule would fill this gap by establishing procedures for all Part 103 suspensions and revocations; not just those of certain programs.

SBA is modeling its Part 103 suspension and revocation procedures after the Title 2 suspension and debarment procedures because the Title 2 procedures are detailed and clear, have been in use for over 25 years, and contain the standard tenets of due process—notice, opportunity to object, notification of decision, and opportunity to request reconsideration. Agents would benefit from the efficiency and consistency of a single set of procedures for Part 103 suspension and revocation, which would replace SBA's current various procedures at Standard Operating Procedure (SOP) 50 53 A and 13 CFR 124.4(c), and this single set of procedures would apply to all Agents, as defined in 13 CFR Part 103(a).

In summary, this proposed rule would centralize within Part 103 the procedures for suspension and revocation for all Agents, without regard to the particular SBA program, and would utilize the same procedural elements found in current government-wide procedures and in SBA's current practices.

II. The Proposal

A. In General

The proposed rule would be an adaptation of government-wide suspension/debarment procedures set forth in 2 CFR Parts 180 and 2700, which SBA already utilizes in practice when conducting Part 103 suspensions and revocations.

The proposed rule would also eliminate a set of procedures in Part 124. These are revocation procedures that were established just for Agents dealing with the 8(a) Program. Now that SBA is establishing procedures affecting Agents in all SBA programs, this section in Part 124 would be redundant and duplicative if left in place.

In addition, this proposed rule would remove Office of Hearings and Appeals jurisdiction over Part 103 suspensions and revocations and Title 2 suspensions and debarments. SBA is currently the only federal agency whose administrative judges review nonprocurement suspension and debarment. OHA review is a deviation from the government-wide debarment regulations, in Title 2 at Part 2700. By eliminating OHA review, SBA actually lessens its deviation from the government-wide debarment regulations. Another reason for SBA's decision to do this is that OHA does not review SBA's procurement debarments (debarments based in the Federal Acquisition Regulations), so eliminating OHA review of Title 2 debarments not only makes SBA consistent with the rest of the federal government, but also with SBA procedures for FAR debarments. Because revocation is so similar to debarment in function, SBA wishes to make the procedures for revocation consistent as well.

Finally, this proposed rule would make a number of clarifications in 13 CFR Part 103 and 2 CFR Part 2700.

B. Section-By-Section Analysis

Title 2, Sections 2700.765, 2700.890 and 2700.980. SBA is proposing to amend its nonprocurement suspension and debarment regulations at 2 CFR 2700.765 and 2700.890 to remove the Office of Hearings and Appeals' jurisdiction over nonprocurement suspension and debarment. SBA is currently the only government agency that provides for an appeal of nonprocurement suspension and debarment in an administrative court. Moreover, procurement suspensions and debarments under the Federal Acquisition Regulations do not provide for an appeal to an administrative court. SBA is therefore proposing this change in order to bring its own procedures into conformity with the rest of the government.

SBA is also proposing to add new section 2700.980 to supplement the definition of a ''Participant'' as used in the government-wide nonprocurement suspension and debarment regulations at 2 CFR § 180.980. Although it is SBA's position that all agents who conduct business with SBA are clearly included in the current definition of a ''Participant,'' the proposed rule would add supplemental language to clarify that Agents, as defined in 13 CFR Part 103, are Participants for the purposes of the nonprocurement suspension and debarment regulations at 2 CFR Part 180.

Title 13, Sections 103.1 through 103.4. SBA is proposing a number of changes to existing language of these sections for the purpose of clarification.

Title 13, Section 103.1. In subsection (a), SBA would clarify that the list of agents in the definition for Agents is not all-inclusive and is proposing to add the term ''loan agent'' into the non-comprehensive list of various representatives who are considered Agents for the purpose of the regulation.

In subsections (b)(1) and (b)(2), SBA is proposing to add the word ''assisting in the preparation of'' in order to eliminate any possible ambiguity in the use of the word ''preparing.'' This addition would clarify that preparing an application for federal assistance includes any assistance in such preparation.

SBA is also proposing to add a new subsection (b)(3) and redesignate subsections (b)(3), (b)(4), and (b)(5) as (b)(4), (b)(5), and (b)(6), respectively. The proposed new subsection (b)(3) would specify that actions taken as a Referral Agent are included in the definition of the term ''conduct business with SBA.''

In subsection (d), SBA is proposing to change the words ''a specific'' to ''an'' in order to prevent confusion as to whether there is a limiting factor regarding which documents the suspending official may examine. SBA knows of no such limitation.

In subsection (f), SBA is proposing to add the words, ''such as a broker'' in order to make clear that the term ''Referral Agent'' includes brokers.

In subsection (g), SBA is proposing to add the term ''procurement'' in order to make clear that a ''Participant'' as defined in this section includes persons or entities involved in all of SBA's programs, including those related to government procurement.

Title 13, Section 103.2. SBA is proposing to change the word ''may'' to the words ''have the privilege to'' in order to clarify that it is a privilege to conduct business with SBA and not a right. SBA is also proposing to change the words ''Applicant, Participant or lender'' to ''Applicant or Participant'' because the defined terms ''Applicant'' and ''Participant'' include by their definitions any lender that is participating or has applied to participate in an SBA program, including for example an SBA lender as defined in Title 13, Section 120.10.

Title 13, Section 103.3. SBA is proposing to remove language from section 103.3 that provides for an appeal to the Office of Hearings and Appeals (OHA) for suspension and revocation of Agents. SBA is proposing to also remove OHA's jurisdiction over nonprocurement suspension and debarment actions. These changes would conform SBA's suspension and revocation procedures to the government-wide procedures for nonprocurement suspension and debarment. In addition, SBA is proposing to add that the Agency may publish the names of agents subject to actions under this part in the System for Award Management (SAM), or any successor system, and on SBA's Web site.

Title 13, Section 103.4. In the introductory paragraph, SBA is proposing to add the words ''but is not limited to'' in order to make clear that the list of activities within the section that constitute ''good cause'' is not exclusive.

In subsections 103.4(b) and (d), SBA is proposing to add the words ''or Participant'' in order to make clear that the listed actions with regard to both Applicants and Participants constitute unlawful or unethical activity.

In subsection 103.4(d), SBA is also proposing to add language regarding an Agent's inaccurate representations of endorsement or approval by SBA. In so doing, SBA aims to make clear that an implication or statement of special influence with SBA also includes implications or statements of SBA's approval or endorsement where those implications or statements are not accurate (i.e., where an Agent has no such approval or endorsement).

In subsection 103.4(f), SBA is proposing to add the words ''but not limited to'' in order to make clear that the list of conduct within the subsection that constitutes ''conduct indicating a lack of business integrity'' is not exclusive. In addition, SBA is proposing to clarify the term ''false statements'' by changing it to ''making false or misleading statements or representations,'' which would make clear that the type of false statements at issue include misleading statements and representations. SBA is also proposing to move ''debarment, criminal conviction, or civil judgment within the last seven years'' to a separate sentence, stating that they, when based upon certain conduct, constitute evidence of certain conduct, because they are not actually ''conduct'' of an agent.

In subsection 103.4(g), SBA is proposing to replace the words ''Lender Service Provider or Referral Agent and a Packager for an Applicant'' with the words ''a Lender Service Provider and a Packager for an Applicant or acting as both a Referral Agent and a Packager for an Applicant'' in order to clearly state the specific relationships that constitute the ''two master'' prohibition set forth in the subsection. SBA is also proposing to add the word ''Participant'' before each instance of the word ''lender'' in order to clarify that a lender in this example is a Participant for whom the Agent is acting.

In subsection 103.4(h), SBA is proposing to change the citation ''103.5'' to ''103.39'' in order to conform to the redesignation of Section 103.5 as Section 103.39 in this proposed rule. In subsection 103.4(i), SBA is proposing to add the words ''Participant, or Agent'' in order to clarify that the section applies to any violations of which the Applicant, Participant, or Agent has been made aware.

In subsection 103.4(i), SBA is proposing to delete the words ''of which the Applicant, Participant or Agent has been made aware.'' This deletion would clarify the subsection in that the deleted words merely state a point of fact and not a requirement. An Applicant, Participant or Agent has constructive knowledge of SBA's regulations, policies, and procedures by nature of their publication and thus SBA is not required to prove such knowledge in taking a suspension or revocation action.

Title 13, Sections 103.5 through 103.38. SBA is proposing to redesignate the current Section 103.5 as Section 103.38 and add new Sections 103.5 through 103.37. These sections are similar in substance to the government-wide procedures for nonprocurement suspension and debarment set forth at 2 CFR Part 180. OMB guidance for implementing those procedures was first issued in 1987 [52 FR 20360, May 29, 1987]. OMB revised its guidance in 1988 [53 FR 19160, May 26, 1988] after agencies issued a common rule to implement the suspension and debarment guidance, and again in 1995 [60 FR 33036, June 26, 1995] and 2005 [70 FR 51863, August 31, 2005] to conform to agencies' updates to the common rule. [68 FR 66534, November 26, 2003]. In 2006 OMB codified final guidance in Title 2 of the CFR [71 FR 66431, November 15, 2006], which, among other things, required agencies to adopt the guidance as the government-wide nonprocurement debarment and suspension procedures instead of the common rule. SBA adopted those procedures in 2007 [72 FR 39728, July 20, 2007], including SBA-specific additions to those procedures as set forth in 2 CFR Part 2700.

In seeking to codify detailed procedures for Agent suspension and revocation, SBA notes that there are clear parallels between the suspension and revocation remedies at SBA and government-wide nonprocurement suspension and debarment remedies: both place a bar on one's privilege to conduct business with the federal government. Given these clear parallels and the 25-year history of the government-wide nonprocurement suspension and debarment procedures (which have been open to public comment on numerous occasions), SBA has determined that it is logical and appropriate to use the same suspension

and debarment procedures for Agent suspension and revocation. As such, the language and substance of the proposed procedures for Agent suspension and revocation are specifically adapted from those in 2 CFR Parts 180 and 2700 which address suspension and debarment.

Although the language in the proposed procedures is largely identical to those in 2 CFR Parts 180 and 2700, language has been changed to adapt debarment and debarment-specific standards and bases to revocation and revocation-specific standards and bases. A small number of other changes have been made for clarity.

Title 13, Section 103.5. Although not currently formalized in the CFR, SBA's suspending and revoking officials are the same as its suspending and debarring officials. This proposed rule would merely codify this role. Designating the Agency's suspending and debarring officials as the suspending and revoking officials makes sense in that the process and substance of suspension and revocation are similar to those for nonprocurement suspension and debarment.

Title 13, Sections 103.6 through 103.10. These sections of the proposed rule would set forth the process by which SBA determines to issue a suspension and the manner in which it issues the suspension. This includes the bases for suspension, considerations the suspending official must make, and the manner and form in which SBA provides notice of the suspension.

Title 13, Section 103.8. In adapting language from 2 CFR 180.705, SBA is proposing to remove the word ''basic,'' which may lead to confusion as to whether there is a limiting factor regarding which documents the suspending official may examine. Because SBA knows of no such limitation, SBA is not including the word.

Title 13, Sections 103.11 through 103.14. These sections of the proposed rule, which are modeled on comparable sections in Title 2, would set forth the procedures for challenging a suspension, including the time period in which to respond, and the information that must be submitted to respond to the Notice of Suspension.

Title 13, Sections 103.15 through 103.19. These sections of the proposed rule makes it clear that suspensions are not formal proceedings, describe the factors the suspending official will consider in reviewing submissions in opposition to the Notice of Suspension, and how he or she will conduct fact-finding, if necessary, and decide whether to continue or terminate the suspension.

Title 13, Section 103.16. In adapting language from 2 CFR 180.745, SBA is proposing to change the phrase ''If fact-finding is conducted'' to ''If the suspending official determines that fact-finding is necessary.'' This change would clarify the procedures for conducting fact-finding if an Agent receives an additional opportunity to challenge the facts on which the suspension is based by stating the circumstances under which fact-finding would occur.

Title 13, Section 103.19. In adapting language from 2 CFR 180.760, SBA is proposing to reword subsection (a) to clarify what is meant by ''legal or revocation proceedings.'' SBA aims to make clear that the time limitation is based upon (a) a revocation proceeding, or (b) legal action on behalf of the government, or if none, then no longer than 12 months. SBA also aims to make clear that the legal action referred to is an action taken by the government regarding the facts giving rise to the suspension, rather than any legal action without limitation. SBA is also proposing to add its Inspector General to those officials from whom SBA may consider a request to extend a suspension, because Part 103 suspension is an SBA-specific remedy, which is likely to not only be affected by ongoing investigation and prosecution by the Department of Justice but also ongoing investigation by SBA's Inspector General.

Title 13, Section 103.20. This section of the proposed rule, adapted from 2 CFR 2700.765, sets forth the right of the subject of a suspension to ask the suspending official to reconsider his or her determination to continue a suspension and the process to make such request. As with the changes to 2 CFR Part 2700, stated above, this section does not provide for an appeal to SBA's Office of Hearings and Appeals because jurisdiction over suspensions is proposed to be removed from the Office of Hearings and Appeals.

Title 13, Sections 103.21 through 103.22. These sections of the proposed rule, which are modeled on comparable sections in Title 2, set forth the process by which SBA would determine to issue a revocation and the manner in which it issues the revocation. This includes the manner and form in which SBA provides notice of the revocation and a statement of when revocation takes effect.

Title 13, Sections 103.23 through 103.26. These sections of the proposed rule, which are modeled on comparable sections in Title 2, set forth the procedures the subject of a revocation may use to challenge the revocation, including the time period in which to respond, as well as what information must be submitted to respond to the Notice of Proposed Revocation.

Title 13, Sections 103.27 through 103.34. These sections of the proposed rule, which are modeled on comparable sections in Title 2, provide for the procedure and manner in which the revoking official will consider submissions in opposition to the Notice of Proposed Revocation, conduct fact-finding, if necessary, and decide whether to revoke the privilege to conduct business with SBA and the revocation term, as well as how SBA sends notice of the revoking official's decision.

Title 13, Section 103.27. 2 CFR 180.835 states, ''Debarment proceedings are conducted in a fair and informal manner. The debarring official may use flexible procedures to allow you as a respondent to present matters in opposition. In so doing, the debarring official is not required to follow formal rules of evidence or procedure in creating an official record upon which the official will base the decision whether to debar.'' In adapting language from 2 CFR 180.835, SBA proposes to reword subsection (a) from the nonprocurement debarment regulations for the sake of clarity by utilizing more straightforward language.

Title 13, Section 103.28. In adapting language from 2 CFR 180.840, SBA would change the phrase ''If fact-finding is conducted'' to ''If the revoking official determines that fact-finding is necessary.'' This change would clarify the procedures for conducting fact-finding if an Agent receives an additional opportunity to challenge the facts on which the proposed revocation is based.

Title 13, Sections 103.35 through 103.36. These sections of the proposed rule, which are modeled on comparable sections in Title 2, set forth the procedures by which the subject of a revocation may request reconsideration from the revoking official, including the factors that may influence the revoking official's decision on reconsideration.

Title 13, Section 103.37. This section of the proposed rule sets forth the procedures by which a revoking official may extend a revocation.

Title 13, Section 103.38. This section of the proposed rule, which is modeled on a comparable section in Title 2, sets forth the Agency's ability to impute conduct between individuals and organizations, as well as between organizations.

Title 13, Section 134.102. SBA is proposing to remove jurisdiction over Part 103 suspension and revocation and Title 2 suspension and debarment from the Office and Hearings and Appeals. As such, the final agency decision of SBA with regard to such suspension or revocation and suspension or debarment would be from the debarring or revoking official. This change is being made to bring SBA's nonprocurement suspension and debarment procedures into conformity with the other federal agencies, which do not provide for an additional level of administrative review of suspension and debarment decisions, as well as maintain consistency between the procedures for suspension and revocation with nonprocurement suspension and debarment.

III. Comments Requested

Readers are encouraged to review closely the proposed rule to fully comprehend the extent of the rule and its changes. SBA invites comment on all aspects of this proposed rule, including the underlying policies.

Compliance With Executive Orders 12866, 12988, 13132, and 13563, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612) Executive Order 12866

The Office of Management and Budget (OMB) has determined that this proposed rule constitutes a significant regulatory action under the meaning of Executive Order 12866. This proposed rule is not a major rule under the Congressional Review Act. The Regulatory Impact Analysis is set forth below.

1. Necessity of Regulation

Currently, SBA utilizes procedures for Part 103 suspension and revocation for loan program Agents, as adopted in SBA's Standard Operating Procedure 50 53 A. Similar procedures for suspension or revocation of agents in SBA's 8(a) Business Development Program are codified in 13 CFR Part 124.

However, Part 103 suspension and revocation is not limited to Agents under particular SBA programs such as SBA loan programs or the 8(a) Business Development Program. Instead, these remedies, which have long existed, may be used against any Agent, as defined in the regulation. Agents may exist in many other contexts apart from SBA's loan programs or 8(a) Business Development Program but SBA does not currently have detailed written procedures for the suspension and revocation of such Agents.

The proposed changes would clearly codify the same procedures for *all* Agents who are subject to suspension or revocation regardless of the SBA program at issue. In addition, by making the suspension and revocation procedures consistent across programs, SBA intends to alleviate any possible public confusion.

2. Alternate Approaches to Regulation

SBA's alternate options to a single set of agency-wide procedures for Part 103 suspensions and revocations are limited and far less effective than setting forth the procedures in regulation. One alternate option would be to have no written procedures throughout the Agency. However, the proposed regulation is simpler and clearer for the public. Also, without written procedures for suspensions and revocations, those actions would be subjected to greater scrutiny by courts when evaluating them for due process, because due process is more readily achieved where the public is aware of a known and published set of procedures for such actions. As such, SBA finds that amending Part 103 to codify procedures for suspension and revocation avoids the drawbacks of proceeding with no written procedures.

Another alternative that SBA considered was providing a consistent set of procedures by enacting those same procedures through numerous Standard Operating Procedures and policy notices throughout SBA, relating to various SBA programs. However, this too proves to be an inadequate alternative to providing procedures by regulation. The process of identifying the numerous locations to publish such procedures and then publishing in those locations doing so would prove far more burdensome for SBA than placing the procedures in one location within the regulations—Part 103—where suspension and revocation themselves are set forth. This single location for the procedures would also reduce the burden on the public, who would not have to seek out which version of the procedures to follow. It is for these reasons that SBA has determined that the most sensible and appropriate means to provide procedures for Part 103 suspensions and revocations is to place those procedures within the Part 103 regulation itself.

3. Potential Benefits and Costs

By amending Part 103 to codify a standard set of procedures agency-wide, SBA will be poised to make full use of these remedies in combatting fraud, waste, and abuse against the Agency. SBA has already used a similar remedy, suspension and debarment under 2 CFR Part 180, as an enforcement measure against many types of wrongdoers. Part 103 suspension and revocation, however, provide a remedy against Agents in situations beyond the scope of 2 CFR Part 180 suspension and debarment. In fiscal years 2008 through 2011, SBA suspended 23 Participants (as defined in 2 CFR Part 180) and debarred 86 Participants. These Participants either defrauded the government or were not eligible for the contracts or benefits that they received. Hundreds of millions of dollars had been awarded or paid out by the government to these Participants prior to those suspension and debarment actions, and taking such actions has prevented such Participants from receiving further benefits and/or money. Thus, these actions have saved the government from potentially paying hundreds of millions of further government funds to those wrongdoers during their suspensions or subsequent to their debarments.

SBA expects to achieve similar results from Part 103 suspensions and revocations through the use of consistent procedures for such actions agency-wide. Agents are collectively paid hundreds of millions of dollars by the small business community each year to conduct business with SBA on behalf of Applicants and Participants in SBA programs. By having centralized, consistent procedures, SBA will be able to fully utilize these remedies to limit the proportion of those dollars that goes into the hands of wrongdoers who commit fraud, waste, and abuse of SBA programs and government funds.

Conversely, there are no costs to enacting these amendments to Part 103. No extra requirements are being placed upon those subjected to Part 103 suspensions and revocations. Rather, the codification of these procedures will enable such Agents to better understand their rights and the procedures by which SBA seeks to carry out those suspensions and revocations.

SBA notes that it is the sole agency subject to 2 CFR Part 180 suspensions and debarments that provides for appeals to go to an administrative court. Without being required to exhaust their administrative remedies through the Office of Hearings and Appeals, Agents will be able to receive a final determination by SBA more quickly and without the cost and delay of protracted administrative litigation. SBA believes that the ability to appeal directly to federal court constitutes a benefit to those subjected to suspension, debarment, and revocation.

These amendments to Part 103 also would pose no costs to SBA. The remedies of Part 103 suspension and revocation already exist. Because the proposed procedures are substantially similar to those of 2 CFR Part 180 suspension and debarment, SBA is capable of performing Part 103 suspension and revocation actions with the same resources as it already utilizes for suspension and debarment. Also, the centralization of those procedures also ensures that various elements within SBA are not exercising different versions of these procedures. In addition, by removing the review of the 2 CFR Part 180 suspension and debarment actions from the jurisdiction of Office of Hearings and Appeals, SBA would benefit from decreased burden on that Office.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

For purposes of Executive Order 13132, SBA has determined that the 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. Therefore, for the purpose of Executive Order 13132, Federalism, SBA has determined that this proposed rule has no federalism implications warranting preparation of a federalism assessment.

Executive Order 13563

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. We have developed this rule in a manner consistent with these requirements. Executive Order 13563 also emphasizes that the rulemaking process must allow for public participation and an open exchange of ideas. With regard to this proposed rule, the number and variety of individuals and entities affected is too broad and varied to allow for meaningful direct participation with the public regarding the procedures set forth in the proposed rule prior to its publication in the **Federal Register**. As such, SBA intends to use the publication of this proposed rule in the **Federal Register** as the primary medium for generating public dialogue on the standards proposed in the rule. Concurrent with publication in the **Federal Register**, SBA will also post a notice on its Web site, including specific program Web sites, to publicize the publication of the rule and to encourage the public to review it and provide comment through *www.regulations.gov.* After an analysis of any public comments, SBA will consider whether additional efforts are warranted.

Paperwork Reduction Act, 44 U.S.C., Ch. 35

SBA has determined that this proposed rule imposes no additional reporting or recordkeeping requirements under the Paperwork Reduction Act (PRA), 44 U.S.C., Chapter 35. Any information reported to SBA as a result of these regulations would be in the context of an administrative action involving the specific individuals facing possible suspension or revocation under these regulations. Information submitted in such proceedings is exempt from the requirements of the PRA.

Regulatory Flexibility Act, 5 U.S.C. 601–612

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, small non-profit enterprises, and small local governments. Pursuant to RFA, when an agency issues a rulemaking, the agency must prepare a regulatory flexibility analysis which describes the impact of the rule on small entities. However, section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. Within the meaning of RFA, SBA certifies that this rule will not have a significant economic impact on a substantial number of small entities. As this proposed rule merely sets forth procedures that SBA already substantively utilizes, including the basic elements of due process such as notice and the opportunity to respond, in conducting suspensions and revocations, no part of this proposed rule would impose any significant additional cost or burden.

List of Subjects

2 CFR Part 2700

Administrative practice and procedure, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements.

13 CFR Part 103

Administrative practice and procedure, Lawyers.

13 CFR Part 124

Administrative practice and procedure, Government procurement, Reporting and recordkeeping requirements, Technical assistance.

13 CFR Part 134

Administrative practice and procedure, Claims, Lawyers, Organization and functions (Government agencies).

For the reasons stated in the preamble, SBA proposes to amend 2 CFR Part 2700, and 13 CFR Parts 103, 124, and 134 as follows:

PART 2700—NONPROCUREMENT DEBARMENT AND SUSPENSION

■ 1. The authority citation for part 2700 is revised to read as follows:

Authority: 15 U.S.C. 634(b)(6); Sec 2455, Pub L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189; E.O. 12689. 54 FR 34131, 3 CFR, 1989 Comp., p. 235.

■ 2. Amend § 2700.765 by revising the section heading and paragraphs (a) and (c); and by removing paragraph (d) to read as follows:

§ 2700.765 May I ask the suspending official to reconsider a decision to continue my suspension?

(a) If the SBA suspending official issues a decision under § 180.755 to continue your suspension after you present information in opposition to that suspension under § 180.720, you may ask the suspending official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter.

* * * * *

(c) The SBA suspending official must notify you of the decision under this section, in writing, using the notice procedures set forth at §§ 180.615 and 180.975.

§ 2700.890 [Removed]

■ 3. Remove § 2700.890.

■ 4. Add new § 2700.980 to read as follows:

§ 2700.980 Participant (SBA supplement to governmentwide definition at 2 CFR 180.980).

Participant means, in addition to those individuals and entities listed at 2 CFR 180.980, any Agent as defined in 13 CFR part 103.

Title 13: Business Credit and Assistance

PART 103—STANDARDS FOR CONDUCTING BUSINESS WITH SBA

■ 5. The authority citation for part 103 is revised to read as follows:

Authority: 15 U.S.C. 634 and 642.

■ 6. Amend § 103.1 as follows:
■ a. Revise paragraphs (a), (b)(1) and (b)(2);
■ b. Redesignate paragraphs (b)(3) through (b)(5) as (b)(4) through (b)(6);
■ c. Add new paragraph (b)(3);
■ d. Revise paragraphs (d), (f), and (g).

The revisions and additions read as follows:

§ 103.1 Key Definitions.

(a) *Agent* means a representative authorized to conduct business on behalf of another, including but not limited to an attorney, accountant, consultant, loan agent (such as a packager, referral agent, or lender service provider), or any other person representing an Applicant or Participant by conducting business with SBA.

(b) * * *

(1) Preparing, assisting in the preparation of, or submitting on behalf of an applicant an application for financial assistance of any kind, assistance from the Investment Division of SBA, or assistance in procurement and technical matters;

(2) Preparing, assisting in the preparation of, or processing on behalf of a lender or a participant in any of SBA's programs an application for federal financial assistance;

(3) Acting as a Referral Agent, such as a broker, in connection with an applicant's efforts to obtain financial assistance of any kind, assistance from the Investment Division of SBA, or assistance in procurement and technical matters.

* * * * *

(d) *Lender Service Provider* means an Agent who carries out lender functions in originating, disbursing, servicing, or liquidating an SBA business loan or loan portfolio for compensation from the lender. SBA determines whether or not an Agent is a ''Lender Service Provider'' on a loan-by-loan basis.

* * * * *

(f) *Referral Agent* means a person or entity who identifies and refers an Applicant to a lender or a lender to an Applicant, such as a broker. The Referral Agent may be employed and compensated by either an Applicant or a lender.

(g) *Participant* means a person or entity that is participating in any of the financial, investment, procurement, or business development programs authorized by the Small Business Act or Small Business Investment Act of 1958.

■ 7. Amend § 103.2, by revising the first sentence of paragraph (b), to read as follows:

§ 103.2 Who may conduct business with SBA?

* * * * *

(b) If you are an Agent, you have the privilege to conduct business with SBA on behalf of an Applicant or Participant, unless representation is otherwise prohibited by law or the regulations in this part or any other part in this chapter. * * *

§ 103.3 [Amended]

■ 8. Revise § 103.3 to read as follows:

§ 103.3 May SBA suspend or revoke an Agent's privilege?

The Administrator of SBA or designee may, for good cause, suspend or revoke the privilege of any Agent to conduct business with SBA. SBA may publish the names of agents subject to actions under this part in the System for Award Management, or any successor system, and on SBA's Web site.

■ 9. Amend § 103.4 as follows:
■ a. Revise the introductory paragraph;
■ b. Revise paragraphs (b), (d), (f), (g), (h) and (i).

The revisions read as follows:

§ 103.4 What is ''good cause'' for suspension or revocation?

Any unlawful or unethical activity is good cause for suspension or revocation of the privilege to conduct business with SBA. This includes, but is not limited to:

* * * * *

(b) Soliciting for the provision of services to an Applicant or Participant by another entity when there is an undisclosed business relationship between the two parties.

* * * * *

(d) Implying or stating that the work to be performed for an Applicant or Participant will include use of political or other special influence with SBA or inaccurately representing SBA endorsement or approval. Examples include indicating that the entity is affiliated with or paid, endorsed, approved or employed by SBA, advertising or otherwise holding oneself out to the public using the words *Small Business Administration* or *SBA* in a manner that inaccurately implies SBA's endorsement, approval or sponsorship, use of SBA's seal or symbol, and giving a ''guaranty'' to an Applicant or Participant that the application will be approved.

* * * * *

(f) Engaging in any conduct indicating a lack of business integrity or business honesty, including but not limited to fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or misleading statements or representations, conspiracy, receiving stolen property, false claims, or obstruction of justice. Debarment, criminal conviction, or civil judgment within the last seven years for such conduct demonstrates evidence of that conduct.

(g) Acting as both a Lender Service Provider and a Packager for an Applicant or acting as both a Referral Agent and a Packager for an Applicant on the same SBA business loan, and receiving compensation for such activity from both the Applicant and Participant lender without full disclosure of compensation to both the Applicant and Participant lender. A limited exception to this ''two master'' prohibition exists when an Agent acts as a Packager and is compensated by the Applicant for packaging services, acts as a Referral Agent and is compensated by the Participant lender for those activities, discloses the referral activities to the Applicant, and discloses the packaging activities to the Participant lender.

(h) Violating materially the terms of any compensation agreement or Lender Service Provider agreement provided for in § 103.39.

(i) Violating or assisting in the violation of any SBA program requirement, including, without limitation, any requirement imposed by an SBA regulation, policy, procedure, notice, form, or agreement. Such violations include but are not limited to failure to disclose fees paid by an Applicants or Participant when required by SBA program requirements.10. Redesignate § 103.5 as § 103.39.

■ 11. Add new §§ 103.5 through 103.38 to part 103 to read as follows:

Sec.
103.5 Who are the suspending and revoking officials?
103.6 How does SBA provide notification of a suspension or revocation action?
103.7 When may the suspending official issue a suspension?
103.8 What does the suspending official consider in issuing a suspension?
103.9 When does a suspension take effect?

103.10 What notice does the suspending official give me if I am suspended?
103.11 How may I contest a suspension?
103.12 How much time do I have to contest a suspension?
103.13 What information must I provide to the suspending official if I contest the suspension?
103.14 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
103.15 Are suspension proceedings formal?
103.16 How is fact-finding conducted?
103.17 What does the suspending official consider in deciding whether to continue or terminate my suspension?
103.18 When will I know whether the suspension is continued or terminated?
103.19 How long may my suspension last?
103.20 May I ask the suspending official to reconsider a decision to continue my suspension?
103.21 What notice does the revoking official give me if I am proposed for revocation?
103.22 When does a revocation take effect?
103.23 How may I contest a proposed revocation?
103.24 How much time do I have to contest a proposed revocation?
103.25 What information must I provide to the revoking official if I contest the proposed revocation?
103.26 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed revocation is based?
103.27 Are revocation proceedings formal?
103.28 How is a fact-finding conducted?
103.29 What does the revoking official consider in deciding whether to revoke my privilege to conduct business with SBA?
103.30 What is the standard of proof in a revocation action?
103.31 Who has the burden of proof in a revocation action?
103.32 What factors may influence the revoking official's decision?
103.33 How long may my revocation last?
103.34 When do I know if the revoking official revokes my privilege to conduct business with SBA?
103.35 May I ask the revoking official to reconsider a decision to revoke my privilege to conduct business with SBA?
103.36 What factors may influence the revoking official during reconsideration?
103.37 May the revoking official extend a revocation?
103.38 May the Agency impute conduct of one person to another?

§ 103.5 Who are the suspending and revoking officials?

The suspending and revoking officials are those officials designated as suspending and debarring officials for SBA at 2 CFR § 180.930.

§ 103.6 How does SBA provide notification of a suspension or revocation action?

The suspending or revoking official sends a written notice to the last known street address, facsimile number, or email address of you or your identified counsel.

§ 103.7 When may the suspending official issue a suspension?

Suspension is a serious action. Using the procedures of this part, the suspending official may impose suspension only when that official determines that—

(a) There exists adequate evidence of any good cause under § 103.4; and

(b) Immediate action is necessary to protect the public interest.

§ 103.8 What does the suspending official consider in issuing a suspension?

(a) In determining whether there is adequate evidence to support the suspension, the suspending official considers how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. During this assessment, the suspending official may examine the documents, including grants, cooperative agreements, loan authorizations, contracts, and other relevant documents.

(b) An indictment, conviction, civil judgment, or other official findings by Federal, State, or local bodies that determine factual and/or legal matters, constitutes reasonable evidence for purposes of suspension actions.

(c) In deciding whether immediate action is needed to protect the public interest, the suspending official has wide discretion. For example, the suspending official may infer the necessity for immediate action to protect the public interest either from the nature of the circumstances giving rise to a cause for suspension or from potential business relationships or involvement with a program of the Federal Government.

§ 103.9 When does a suspension take effect?

A suspension is effective when the suspending official signs the decision to suspend.

§ 103.10 What notice does the suspending official give me if I am suspended?

After deciding to suspend you, the suspending official will promptly send you a Notice of Suspension advising you—

(a) That you have been suspended;

(b) Of the good cause upon which the suspending official relied under § 103.4 for imposing suspension;

(c) That your suspension is for a temporary period pending the completion of an investigation or resulting legal or revocation proceedings; and

(d) Of the applicable provisions of this part, and any other agency procedures governing suspension decision making, including appeals and appeal rights.

§ 103.11 How may I contest a suspension?

If you as a respondent wish to contest a suspension, you or your representative must provide the suspending official with information in opposition to the suspension. You may do this orally or in writing, but any information provided orally that you consider important must also be submitted in writing for the official record.

§ 103.12 How much time do I have to contest a suspension?

(a) As a respondent you or your representative must either send, or make arrangements to appear and present, the information and argument to the suspending official within 30 days after you receive the Notice of Suspension.

(b) SBA considers the notice to be received by you—

(1) When delivered, if the agency mails the notice to the last known street address, or five days after the agency sends it if the letter is undeliverable;

(2) When sent, if the agency sends the notice by facsimile or five days after the agency sends it if the facsimile is undeliverable; or

(3) When delivered, if the agency sends the notice by email or five days after the agency sends it if the email is undeliverable.

§ 103.13 What information must I provide to the suspending official if I contest the suspension?

(a) In addition to any information and argument in opposition, as a respondent your submission to the suspending official must identify specific facts that contradict the statements contained in the Notice of Suspension. A general denial is insufficient to raise a genuine dispute over facts material to the suspension.

(b) If you fail to disclose this information, or provide false information, SBA may seek further criminal, civil or administrative action against you, as appropriate.

§ 103.14 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?

(a) You as a respondent will have an opportunity to challenge the facts if the suspending official determines that your presentation in opposition raises a genuine dispute over facts material to the suspension.

(b) If you have an opportunity to challenge disputed material facts under this section, the suspending official or designee must conduct additional proceedings to resolve those facts.

§ 103.15 Are suspension proceedings formal?

(a) Suspension proceedings are not formal and formal rules of evidence do not apply. The suspending official will use flexible procedures to allow you to present matters in opposition. In so doing, the suspending official is not required to follow formal rules of evidence or procedure in creating an official record upon which the official will base a final suspension decision.

(b) You as a respondent or your representative must submit any documentary evidence you want the suspending official to consider.

§ 103.16 How is fact-finding conducted?

(a) If the suspending official determines that fact-finding is necessary—

(1) You may present witnesses and other evidence, and confront any witness presented; and

(2) The fact-finder must prepare written findings of fact for the record.

(b) A transcribed record of fact-finding proceedings must be made, unless you as a respondent and SBA agree to waive it in advance. If you want a copy of the transcribed record, you may purchase the record from the transcription service.

§ 103.17 What does the suspending official consider in deciding whether to continue or terminate my suspension?

(a) The suspending official bases the decision on all information contained in the official record. The record includes—

(1) All information in support of the suspending official's initial decision to suspend you;

(2) Any further information and argument presented in support of, or opposition to, the suspension; and

(3) Any transcribed record of fact-finding proceedings.

(b) The suspending official may refer disputed material facts to another official for findings of fact. The suspending official may reject any resulting findings, in whole or in part, only after specifically determining them to be arbitrary, capricious, or clearly erroneous.

§ 103.18 When will I know whether the suspension is continued or terminated?

The suspending official must make a written decision whether to continue, modify, or terminate your suspension within 45 days of closing the official record. The official record closes upon the suspending official's receipt of final submissions, information and findings of fact, if any. The suspending official may extend that period for good cause.

§ 103.19 How long may my suspension last?

(a) If revocation proceedings or legal action on behalf of the government regarding the facts giving rise to the suspension are initiated at the time of, or during, your suspension, the suspension may continue until the conclusion of those proceedings or legal action. However, if such proceedings or legal action are not initiated, a suspension may not exceed 12 months.

(b) The suspending official may extend the 12 month limit under paragraph (a) of this section for an additional 6 months if SBA's Inspector General or an office of a U.S. Assistant Attorney General, U.S. Attorney, or other responsible prosecuting official requests an extension in writing. In no event may a suspension exceed 18 months without initiating proceedings described under paragraph (a) of this section.

(c) The suspending official must notify the appropriate officials under paragraph (b) of this section of an impending termination of a suspension at least 30 days before the 12 month period expires to allow the officials an opportunity to request an extension.

§ 103.20 May I ask the suspending official to reconsider a decision to continue my suspension?

(a) If the SBA suspending official issues a decision under § 103.18 to continue your suspension after you present information in opposition to that suspension under § 103.11, you may ask the suspending official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter.

(b) A request for review under this section must be in writing; state the specific findings you believe to be in error; and include the reasons or legal bases for your position.

(c) The SBA suspending official must notify you of his or her decision under this section, in writing, using the notice procedures set forth at § 103.6.

§ 103.21 What notice does the revoking official give me if I am proposed for revocation?

After consideration of the causes in § 103.4, if the revoking official proposes to revoke your privilege to conduct business with SBA, the official sends you a Notice of Proposed Revocation, pursuant to § 103.6, advising you—

(a) That the revoking official is considering revoking your privilege to conduct business with SBA;

(b) Of the reasons for proposing to revoke your privilege to conduct business with SBA in terms sufficient to put you on notice of the conduct or transactions upon which the proposed revocation is based;

(c) Of the good cause under § 103.4 upon which the revoking official relied for proposing your revocation; and

(d) Of the applicable provisions of this part, and any other agency procedures governing revocation.

§ 103.22 When does a revocation take effect?

A revocation is not effective until the revoking official issues a decision. The revoking official does not issue a decision until the respondent has had an opportunity to contest the proposed revocation.

§ 103.23 How may I contest a proposed revocation?

If you as a respondent wish to contest a proposed revocation, you or your representative must provide the revoking official with information in opposition to the proposed revocation. You may do this orally or in writing, but any information provided orally that you consider important must also be submitted in writing for the official record.

§ 103.24 How much time do I have to contest a proposed revocation?

(a) As a respondent you or your representative must send the information and argument to the revoking official within 30 days after you receive the Notice of Proposed Revocation.

(b) SBA considers the Notice of Proposed Revocation to be received by you—

(1) When delivered, if the agency mails the notice to the last known street address, or five days after the agency sends it if the letter is undeliverable;

(2) When sent, if the agency sends the notice by facsimile or five days after the agency sends it if the facsimile is undeliverable; or

(3) When delivered, if the agency sends the notice by email or five days after the agency sends it if the email is undeliverable.

§ 103.25 What information must I provide to the revoking official if I contest the proposed revocation?

(a) In addition to any information and argument in opposition, as a respondent your submission to the revoking official must identify specific facts that contradict the statements contained in

the Notice of Proposed Revocation. Include any information about any of the factors listed in § 103.4. A general denial is insufficient to raise a genuine dispute over facts material to the revocation.

(b) If you fail to disclose this information, or provide false information, SBA may seek further criminal, civil or administrative action against you, as appropriate.

§ 103.26 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed revocation is based?

(a) You as a respondent will have an additional opportunity to challenge the facts if the revoking official determines that your presentation in opposition raises a genuine dispute over facts material to the proposed revocation.

(b) If you have an opportunity to challenge disputed material facts under this section, the revoking official or designee must conduct additional proceedings to resolve those facts.

§ 103.27 Are revocation proceedings formal?

(a) Revocation proceedings are not formal and formal rules of evidence do not apply. The revoking official will use flexible procedures in creating an official record upon which the official will base a final revocation decision.

(b) You or your representative must submit any documentary evidence you want the revoking official to consider.

§ 103.28 How is fact-finding conducted?

(a) If the revoking official determines that fact-finding is necessary—

(1) You may present witnesses and other evidence, and confront any witness presented; and

(2) The fact-finder must prepare written findings of fact for the record.

(b) A transcribed record of fact-finding proceedings must be made, unless you as a respondent and SBA agree to waive it in advance. If you want a copy of the transcribed record, you may purchase it.

§ 103.29 What does the revoking official consider in deciding whether to revoke my privilege to conduct business with SBA?

(a) The revoking official may revoke your privilege to conduct business with SBA for any of the causes in § 103.4. However, the official need not revoke your privilege to conduct business with SBA even if a cause for revocation exists. The official may consider the seriousness of your acts or omissions and the mitigating or aggravating factors set forth at § 103.32.

(b) The revoking official bases the decision on all information contained in the official record. The record includes—

(1) All information in support of the revoking official's proposed revocation;

(2) Any further information and argument presented in support of, or in opposition to, the proposed revocation; and

(3) Any transcribed record of fact-finding proceedings.

(c) The revoking official may refer disputed material facts to another official for findings of fact. The revoking official may reject any resultant findings, in whole or in part, only after specifically determining them to be arbitrary, capricious, or clearly erroneous.

§ 103.30 What is the standard of proof in a revocation action?

(a) In any revocation action, SBA must establish the cause for revocation by a preponderance of the evidence.

(b) If the proposed revocation is based upon a conviction or civil judgment, the standard of proof is met.

§ 103.31 Who has the burden of proof in a revocation action?

(a) SBA has the burden to prove that a cause for revocation exists.

(b) Once a cause for revocation is established, you as a respondent have the burden of demonstrating to the satisfaction of the revoking official that revocation is not necessary.

§ 103.32 What factors may influence the revoking official's decision?

This section lists the mitigating and aggravating factors that the revoking official may consider in determining whether to revoke your privilege to conduct business with SBA and the length of your revocation period. The revoking official may consider other factors if appropriate in light of the circumstances of a particular case. The existence or nonexistence of any factor, such as one of those set forth in this section, is not necessarily determinative of whether revocation is necessary. In making a revocation decision, the revoking official may consider the following factors:

(a) The actual or potential harm or impact that result or may result from the wrongdoing.

(b) The frequency of incidents and/or duration of the wrongdoing.

(c) Whether there is a pattern or prior history of wrongdoing. For example, if you have been found by another Federal agency or a State agency to have engaged in wrongdoing similar to that found in the revocation action, the existence of this fact may be used by the revoking official in determining that you have a pattern or prior history of wrongdoing.

(d) Whether you are or have been excluded or disqualified by an agency of the Federal Government or have not been allowed to participate in State or local contracts or assistance agreements on a basis of conduct similar to one or more of the causes for revocation specified in this part.

(e) Whether you have entered into an administrative agreement with a Federal agency or a State or local government that is based on conduct similar to one or more of the causes for revocation specified in this part.

(f) Whether and to what extent you planned, initiated, or carried out the wrongdoing.

(g) Whether you have accepted responsibility for the wrongdoing and recognize the seriousness of the misconduct that led to the cause for revocation.

(h) Whether you have paid or agreed to pay all criminal, civil and administrative liabilities for the improper activity, including any investigative or administrative costs incurred by the government, and have made or agreed to make full restitution.

(i) Whether you have cooperated fully with the government agencies during the investigation and any court or administrative action. In determining the extent of cooperation, the revoking official may consider when the cooperation began and whether you disclosed all pertinent information known to you.

(j) Whether you took appropriate corrective action or remedial measures to correct your wrongdoing.

(k) Other factors that are appropriate to the circumstances of a particular case.

§ 103.33 How long may my revocation last?

(a) If the revoking official decides to revoke your privilege to conduct business with SBA, your period of revocation will be based on the seriousness of the cause(s) upon which your revocation is based.

(b) In determining the period of revocation, the revoking official may consider the factors in § 103.32. If a suspension has preceded your revocation, the revoking official must consider the time you were suspended.

§ 103.34 When do I know if the revoking official revokes my privilege to conduct business with SBA?

(a) The revoking official must make a written decision within 45 days of closing the official record. The official record closes upon the revoking official's receipt of final submissions,

information and findings of fact, if any. The revoking official may extend that period for good cause.

(b) The revoking official sends you written notice, pursuant to § 103.6, that the official decided either—

(1) Not to revoke your privilege to conduct business with SBA; or

(2) To revoke your privilege to conduct business with SBA. In this event, the notice:

(i) Refers to the Notice of Proposed Revocation;

(ii) Specifies the reasons for your revocation; and

(iii) States the period of your revocation, including the effective dates.

§ 103.35 May I ask the revoking official to reconsider a decision to revoke my privilege to conduct business with SBA?

Yes, you may ask the revoking official to reconsider the revocation decision or to reduce the time period or scope of the revocation. However, you must put your request in writing and support it with documentation.

§ 103.36 What factors may influence the revoking official during reconsideration?

The revoking official may reduce or terminate your revocation based on—

(a) Newly discovered material evidence not previously available;

(b) A reversal of the conviction or civil judgment upon which your revocation was based;

(c) A bona fide change in ownership or management;

(d) Elimination of other causes for which the revocation was imposed; or

(e) Other reasons the revoking official finds appropriate.

§ 103.37 May the revoking official extend a revocation?

(a) Yes, the revoking official may extend a revocation for an additional period, if that official determines that an extension is necessary to protect the public interest.

(b) However, the revoking official may not extend a revocation solely on the basis of the facts and circumstances upon which the initial revocation action was based.

(c) If the revoking official decides that a revocation for an additional period is necessary, the revoking official must follow the applicable procedures in this part to extend the revocation, at §§ 103.21 through 103.36 of this part.

§ 103.38 May the Agency impute conduct of one person to another?

For purposes of actions taken under this rule, SBA may impute conduct as follows:

(a) Conduct imputed from an individual to an organization. SBA may impute the fraudulent, criminal, or other improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with an organization, to that organization when the improper conduct occurred in connection with the individual's performance of duties for or on behalf of that organization, or with the organization's knowledge, approval or acquiescence. The organization's acceptance of the benefits derived from the conduct is evidence of knowledge, approval or acquiescence.

(b) Conduct imputed from an organization to an individual, or between individuals. SBA may impute the fraudulent, criminal, or other improper conduct of any organization to an individual, or from one individual to another individual, if the individual to whom the improper conduct is imputed either participated in, had knowledge of, or reason to know of the improper conduct.

(c) Conduct imputed from one organization to another organization. SBA may impute the fraudulent, criminal, or other improper conduct of one organization to another organization when the improper conduct occurred in connection with a partnership, joint venture, joint application, association or similar arrangement, or when the organization to whom the improper conduct is imputed has the power to direct, manage, control or influence the activities of the organization responsible for the improper conduct. Acceptance of the benefits derived from the conduct is evidence of knowledge, approval or acquiescence.

PART 124—8(a) BUSINESS DEVELOPMENT/SMALL DISADVANTAGED BUSINESS STATUS DETERMINATIONS

■ 13. The authority citation for part 124 is revised to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(j), 637(a), 637(d); 42 U.S.C. 9815; Pub. L. 99–661; Pub L. 100–656; sec. 1207, Pub L. 101–37; Pub. L. 101–574; sec. 8021, Pub. L. 108–87.

§ 124.4 [Amended]

■ 14. Amend § 124.4 by removing paragraph (c) and redesignating paragraph (d) as paragraph (c).

PART 134—RULES OF PROCEDURE GOVERNING CASES BEFORE THE OFFICE OF HEARINGS AND APPEALS

■ 15. The authority citation for part 134 continues to read as follows:

Authority: 5 U.S.C. 504; 15 U.S.C. 632, 634(b)(6), 637(a), 648(l), 656(i), and 687(c); E.O. 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189.

§ 134.102 [Amended]

■ 16. Amend § 134.102 by removing and reserving paragraphs (c) and (p).

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2014–22521 Filed 10–14–14; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0751; Directorate Identifier 2013–NM–188–AD]

RIN 2120–AA64

Airworthiness Directives; Kidde Graviner

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Kidde Graviner hand-operated fire extinguishers as installed on, but not limited to, various transport and small airplanes. This proposed AD was prompted by a report that a fire extinguisher failed to operate when the activation lever was pressed. This proposed AD would require modifying the affected fire extinguishers. We are proposing this AD to prevent fire extinguishers from failing to operate in the event of a fire, which could jeopardize occupants' safety and continuation of safe flight and landing.

DATES: We must receive comments on this proposed AD by December 1, 2014.

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 Kidde

Graviner Limited, Mathisen Way, Colnbrook, Slough, Berkshire, SL3 0HB, United Kingdom; telephone +44 (0) 1753 583245; fax +44 (0) 1753 685040. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0751; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket 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: Caspar Wang, Aerospace Engineer, Boston Aircraft Certification Office (ACO), FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7799; fax: 781–238–7170; email: *caspar.wang@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0751; Directorate Identifier 2013–NM–188–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2012–0037, dated March 9, 2012 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Kidde Graviner hand-operated fire extinguishers as installed on, but not limited to, various transport and small airplanes. The MCAI states:

> An instance occurred where an operator tried to use the fire extinguisher, but the extinguisher failed to operate when the activation lever was pressed.
>
> This condition, if not detected and corrected, could lead, in case of need to use the device to extinguish a fire on an aircraft, to jeopardize the occupants' safety as well as the flight continuation and safe landing.
>
> The part manufacturer Kidde Graviner has introduced a design change to remove the root cause of the possible failure.
>
> This AD requires to modify all potentially defective fire extinguishers [including applying adhesive to the gland nut].

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2014–0751.

Relevant Service Information

Kidde Graviner has issued Alert Service Bulletin A26–081, Revision 1, dated January 31, 2012. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Costs of Compliance

We estimate that this proposed AD affects 400 appliances installed on, but not limited to, various transport and small airplanes of U.S. registry.

We also estimate that it would take about 25 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be up to $850,000, or $2,125 per appliance.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Kidde Graviner: Docket No. FAA–2014–0751; Directorate Identifier 2013–NM–188–AD.

(a) Comments Due Date

We must receive comments by December 1, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Kidde Graviner hand-operated fire extinguishers having part numbers 56412–001 (34H), 56411–001 (35H), and 56412–002 (38H). These fire extinguishers may be installed on, but not limited to, various transport and small airplanes, certificated in any category, specified in paragraphs (c)(1), (c)(2), (c)(3), (c)(4), (c)(5), and (c)(6) of this AD.

(1) BAE Systems (Operations) Limited Model ATP airplanes.

(2) BAE Systems (Operations) Limited Model 4101 airplanes.

(3) EADS CASA (Type Certificate previously held by Construcciones Aeronauticas, S.A.) Model C–212–CB, C–212–CC, C–212–CD, C–212–CE, C–212–CF, C–212–DE, and C–212–DF airplanes.

(4) Fokker Services B.V. Model F.27 Mark 050, 100, 200, 300, 400, 500, 600, and 700 airplanes.

(5) Short Brothers PLC Model SD3–60 SHERPA, SD3–SHERPA, SD3–30, and SD3–60 airplanes.

(6) SHORT BROTHERS & HARLAND LTD SC–7 Series 2 and SC–7 Series 3 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 26, Fire Protection.

(e) Reason

This AD was prompted by a report that a fire extinguisher failed to operate when the activation lever was pressed. We are issuing this AD to prevent fire extinguishers from failing to operate in the event of a fire, which could jeopardize occupants' safety and continuation of safe flight and landing.

(f) Compliance

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

(g) Modification

Within 6 months after the effective date of this AD, modify all Kidde Graviner hand-operated fire extinguishers having part numbers 56412–001 (34H), 56411–001 (35H), and 56412–002 (38H), in accordance with the Accomplishment Instructions of Kidde Graviner Alert Service Bulletin A26–081, Revision 1, dated January 31, 2012.

(h) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Kidde Graviner Alert Service Bulletin A26–081, dated August 23, 2011, which is not incorporated by reference in this AD.

(i) Parts Installation Prohibition

As of the effective date of this AD, no person may install any Kidde Graviner hand-operated fire extinguisher having part number 56412–001 (34H), 56411–001 (35H), or 56412–002 (38H) on any airplane unless the fire extinguisher has been modified as specified in paragraph (g) of this AD.

(j) Other FAA AD Provision

The following provision for Alternative Methods of Compliances (AMOCs) also applies to this AD: The manager of the office having certificate responsibility for the affected product 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. The Manager, Boston Aircraft Certification Office (ACO), FAA, will coordinate requests for approval of AMOCs with the manager of the appropriate office for the affected product. Send information to ATTN: Caspar Wang, Aerospace Engineer, Boston Aircraft Certification Office (ACO), FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7799; fax: 781–238–7170; email: *caspar.wang@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency (EASA) Airworthiness Directive 2012–0037, dated March 9, 2012, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2014–0751.

(2) For service information identified in this AD, contact Kidde Graviner Limited, Mathisen Way, Colnbrook, Slough, Berkshire, SL3 0HB, United Kingdom; telephone +44 (0) 1753 583245; fax +44 (0) 1753 685040. You may view this 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 September 23, 2014.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–24556 Filed 10–15–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0748; Directorate Identifier 2014–NM–013–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Airbus Model A318, A319, and A321 series airplanes; and Model A320–211, –212, –214, –231, –232, and –233 airplanes. This proposed AD was prompted by reports of wear of the trimmable horizontal stabilizer actuator (THSA). This proposed AD would require repetitive inspections of the THSA for damage, and replacement if necessary; and replacement of the THSA after reaching a certain life limit. We are proposing this AD to detect and correct wear on the THSA, which would reduce the remaining life of the THSA, possibly resulting in premature failure and consequent reduced control of the airplane.

DATES: We must receive comments on this proposed AD by December 1, 2014.

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

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

For service information identified in this proposed AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport

Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0748; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0748; Directorate Identifier 2014–NM–013–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2014–0011R1, dated January 17, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus Model A318, A319, and A321 series airplanes and Model A320–211, –212, –214, –231, –232, and –233 airplanes. The MCAI states:

> In the frame of the A320 Extended Service Goal (ESG) project and the study on the Trimmable Horizontal Stabilizer Actuator (THSA), a sampling programme of in-service units has been performed and several cases of wear at different THSA levels were reported.
>
> This condition, if not detected and corrected, would reduce the remaining life of the THSA, possibly resulting in premature failure and consequent reduced control of the aeroplane.
>
> Prompted by these findings, Airbus issued Service Bulletin (SB) A320–27–1227 to provide THSA inspection instructions.
>
> For the reasons described above, this [EASA] AD requires repetitive inspections of the THSA and introduces a life limit for the THSA.

The MCAI specifies a detailed inspection of the magnetic chip detector for metal particles, a spectrometric analysis of the oil drained from the THSA gearbox, a detailed inspection of the ballscrew and nut, and a detailed inspection of the upper and the lower attachments for damage. The corrective action is replacement of the THSA with a serviceable THSA. The compliance time for the THSA replacement ranges from before further flight to within 4 months from drainage of the oil sample. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0748.

Relevant Service Information

Airbus has issued Service Bulletin A320–27–1227, Revision 01, dated October 7, 2013. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

''Contacting the Manufacturer'' Paragraph in This Proposed AD

Since late 2006, we have included a standard paragraph titled ''Airworthy Product'' in all MCAI ADs in which the FAA develops an AD based on a foreign authority's AD.

The MCAI or referenced service information in an FAA AD often directs the owner/operator to contact the manufacturer for corrective actions, such as a repair. Briefly, the Airworthy Product paragraph allowed owners/operators to use corrective actions provided by the manufacturer if those actions were FAA-approved. In addition, the paragraph stated that any actions approved by the State of Design Authority (or its delegated agent) are considered to be FAA-approved.

In an NPRM having Directorate Identifier 2012–NM–101–AD (78 FR 78285, December 26, 2013), we proposed to prevent the use of repairs that were not specifically developed to correct the unsafe condition, by requiring that the repair approval provided by the State of Design Authority or its delegated agent specifically refer to the FAA AD. This change was intended to clarify the method of compliance and to provide operators with better visibility of repairs that are specifically developed and approved to correct the unsafe condition. In addition, we proposed to change the phrase ''its delegated agent'' to include a design approval holder (DAH) with State of Design Authority design organization approval (DOA), as applicable, to refer to a DAH authorized to approve required repairs for the proposed AD.

One commenter to the NPRM having Directorate Identifier 2012–NM–101–AD (78 FR 78285, December 26, 2013) stated the following: ''The proposed wording, being specific to repairs, eliminates the interpretation that Airbus messages are acceptable for approving minor deviations (corrective actions) needed during accomplishment of an AD mandated Airbus service bulletin.''

This comment has made the FAA aware that some operators have misunderstood or misinterpreted the Airworthy Product paragraph to allow the owner/operator to use messages provided by the manufacturer as approval of deviations during the accomplishment of an AD-mandated action. The Airworthy Product paragraph does not approve messages or other information provided by the manufacturer for deviations to the requirements of the AD-mandated actions. The Airworthy Product paragraph only addresses the requirement to contact the manufacturer for corrective actions for the identified unsafe condition and does not cover deviations from other AD requirements. However, deviations to AD-required actions are addressed in 14 CFR 39.17, and anyone may request the approval for an alternative method of compliance

to the AD-required actions using the procedures found in 14 CFR 39.19.

To address this misunderstanding and misinterpretation of the Airworthy Product paragraph, we have changed the paragraph and retitled it ''Contacting the Manufacturer.'' This paragraph now clarifies that for any requirement in this proposed AD to obtain corrective actions from a manufacturer, the actions must be accomplished using a method approved by the FAA, the European Aviation Safety Agency (EASA), or Airbus's EASA DOA.

The Contacting the Manufacturer paragraph also clarifies that, if approved by the DOA, the approval must include the DOA-authorized signature. The DOA signature indicates that the data and information contained in the document are EASA-approved, which is also FAA-approved. Messages and other information provided by the manufacturer that do not contain the DOA-authorized signature are not EASA-approved, unless EASA directly approves the manufacturer's message or other information.

This clarification does not remove flexibility previously afforded by the Airworthy Product paragraph. Consistent with long-standing FAA policy, such flexibility was never intended for required actions. This is also consistent with the recommendation of the Airworthiness Directive Implementation Aviation Rulemaking Committee to increase flexibility in complying with ADs by identifying those actions in manufacturers' service instructions that are ''Required for Compliance'' with ADs. We continue to work with manufacturers to implement this recommendation. But once we determine that an action is required, any deviation from the requirement must be approved as an alternative method of compliance.

We also have decided not to include a generic reference to either the ''delegated agent'' or ''design approval holder (DAH) with State of Design Authority design organization approval,'' but instead we have provided the specific delegation approval granted by the State of Design Authority for the DAH.

Costs of Compliance

We estimate that this proposed AD affects 851 airplanes of U.S. registry.

We also estimate that it would take about 6 work-hours per product to comply with the inspection requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost for the inspection specified in this proposed AD on U.S. operators to be $434,010, or $510 per product.

We estimate that it would take about 7 work-hours per product to comply with the actuator replacement requirements of this proposed AD. Required parts would cost about $240,000 per product. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost for the actuator replacement specified in this proposed AD on U.S. operators to be $204,746,345, or $240,595 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.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2014–0748; Directorate Identifier 2014–NM–013–AD.

(a) Comments Due Date

We must receive comments by December 1, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Airbus airplanes, certificated in any category, identified in paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this AD, all manufacturer serial numbers.

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Model A320–211, –212, –214, –231, –232, and –233 airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight Controls.

(e) Reason

This AD was prompted by reports of wear of the trimmable horizontal stabilizer actuator (THSA). We are issuing this AD to detect and correct wear on the THSA, which would reduce the remaining life of the THSA, possibly resulting in premature failure and consequent reduced control of the airplane.

(f) Compliance

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

(g) Initial Inspections

At the later of the times specified in paragraphs (g)(1) and (g)(2) of this AD: Do a detailed inspection of the magnetic chip detector for metal particles, a spectrometric analysis of the oil drained from the THSA gearbox, a detailed inspection of the ballscrew and nut for damage (including, but not limited to, cracks, dents, corrosion, and

unsatisfactory surface protection), and a detailed inspection of the upper and the lower attachments for damage (including, but not limited to, cracks, dents, corrosion, and unsatisfactory surface protection), in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–27–1227, Revision 01, dated October 7, 2013.

(1) Before the THSA accumulates 48,000 total flight hours or 30,000 total flight cycles, whichever occurs first since first installation on an airplane.

(2) Within 4 months after the effective date of this AD.

(h) Repetitive Inspections

Repeat the inspections required by paragraph (g) of this AD thereafter at intervals not to exceed the applicable time specified in paragraphs (h)(1) and (h)(2) of this AD.

(1) For a THSA that, as of the date of the most recent inspection required by paragraph (g) of this AD, has accumulated less than 67,500 total flight hours since first installation on an airplane: The repetitive inspection interval is 24 months.

(2) For a THSA that, as of the date of the most recent inspection required by paragraph (g) of this AD, has accumulated 67,500 total flight hours or more since first installation on an airplane: The repetitive inspection interval is 4 months.

(i) THSA Corrective Action

If, during any inspection required by paragraphs (g) and (h) of this AD, any finding as described in Airbus Service Bulletin A320–27–1227, Revision 01, dated October 7, 2013, is found: At the applicable compliance time (depending on the applicable findings) specified in paragraph 1.E., ''Compliance,'' of Airbus Service Bulletin A320–27–1227, Revision 01, dated October 7, 2013, replace the THSA with a serviceable THSA, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–27–1227, Revision 01, dated October 7, 2013. For the purposes of this AD, a serviceable THSA is a THSA that has accumulated less than 67,500 total flight hours since first installation on an airplane.

(j) THSA Replacement

Before a THSA accumulates 67,500 total flight hours since first installation on an airplane, or within 12 months after the effective date of this AD, whichever occurs later: Replace the THSA with a serviceable THSA, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–27–1227, Revision 01, dated October 7, 2013. Thereafter, before the accumulation of 67,500 total flight hours since first installation on an airplane on any THSA, replace it with a serviceable THSA.

(k) Replacement THSA: No Terminating Action

Replacement of a THSA on an airplane, as required by paragraph (i) or (j) of this AD, does not constitute terminating action for the repetitive inspections required by paragraphs (g) and (h) of this AD for that airplane. After THSA replacement: At the applicable compliance time specified in paragraphs (g)(1), (g)(2), (h)(1), and (h)(2) of this AD, do the inspections required by paragraph (g) of this AD.

(l) Replacement THSA Equivalency

Repairs of a THSA in shop, as described in United Technologies Corporation Aerospace Systems Component Maintenance Manual 27–44–51, are considered equivalent to having passed an inspection in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–27–1227, dated July 1, 2013; or Airbus Service Bulletin A320–27–1227, Revision 01, dated October 7, 2013. Depending on the flight hours or flight cycles accumulated by the repaired THSA: At the applicable compliance time specified in paragraphs (g)(1), (g)(2), (h)(1), and (h)(2) of this AD, do the inspections required by paragraph (g) of this AD.

(m) Parts Installation Limitation

As of the effective date of this AD, installation on an airplane of a THSA that has accumulated 67,500 or more total flight hours is allowed, provided that, prior to installation, the THSA has been modified or inspected using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA).

(n) Credit for Previous Actions

This paragraph provides credit for inspections required by paragraphs (g) and (h) of this AD, if those inspections were performed before the effective date of this AD using Airbus Service Bulletin A320–27–1227, dated July 1, 2013, which is not incorporated by reference in this AD.

(o) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) Contacting the Manufacturer: For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(p) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency Airworthiness Directive 2014–0011R1, dated January 17, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0748.

(2) For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this 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 September 23, 2014.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–24557 Filed 10–15–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0749; Directorate Identifier 2014–NM–051–AD]

RIN 2120–AA64

Airworthiness Directives; Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Model 382, 382B, 382E, 382F, and 382G airplanes. This proposed AD was prompted by an evaluation by the design approval holder (DAH) indicating that the upper and lower rainbow fittings on the outer wing are subject to widespread fatigue damage (WFD). This proposed AD would require repetitive inspections of the upper and lower rainbow fittings on the outer wing to detect cracks propagating from fasteners attaching the fittings to skin panels, and related investigative

and corrective actions if necessary; and replacement of the upper and lower rainbow fittings on the outer wing. We are proposing this AD to prevent fatigue cracking of the upper and lower rainbow fittings on the outer wing and skin-panel-to-fitting fastener holes, which could result in reduced structural integrity of the airplane and possible separation of the wing from the airplane.

DATES: We must receive comments on this proposed AD by December 1, 2014.

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

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

For service information identified in this proposed AD, contact Lockheed Martin Corporation/Lockheed Martin Aeronautics Company, Airworthiness Office, Dept. 6A0M, Zone 0252, Column P–58, 86 S. Cobb Drive, Marietta, GA 30063; telephone 770–494–5444; fax 770–494–5445; email *ams.portal@lmco.com;* Internet *http://www.lockheedmartin.com/ams/tools/TechPubs.html.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0749; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Carl Gray, Aerospace Engineer, Airframe Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office (ACO), 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5554; fax: 404–474–5606; email: *Carl.W.Gray@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0749; Directorate Identifier 2014–NM–051–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

Structural fatigue damage is progressive. It begins as minute cracks, and those cracks grow under the action of repeated stresses. This can happen because of normal operational conditions and design attributes, or because of isolated situations or incidents such as material defects, poor fabrication quality, or corrosion pits, dings, or scratches. Fatigue damage can occur locally, in small areas or structural design details, or globally. Global fatigue damage is general degradation of large areas of structure with similar structural details and stress levels. Multiple-site damage is global damage that occurs in a large structural element such as a single rivet line of a lap splice joining two large skin panels. Global damage can also occur in multiple elements such as adjacent frames or stringers. Multiple-site-damage and multiple-element-damage cracks are typically too small initially to be reliably detected with normal inspection methods. Without intervention, these cracks will grow, and eventually compromise the structural integrity of the airplane, in a condition known as WFD. As an airplane ages, WFD will likely occur, and will certainly occur if the airplane is operated long enough without any intervention.

The FAA's WFD final rule (75 FR 69746, November 15, 2010) became effective on January 14, 2011. The WFD rule requires certain actions to prevent structural failure due to WFD throughout the operational life of certain existing transport category airplanes and all of these airplanes that will be certificated in the future. For existing and future airplanes subject to the WFD rule, the rule requires that DAHs establish a limit of validity (LOV) of the engineering data that support the structural maintenance program. Operators affected by the WFD rule may not fly an airplane beyond its LOV, unless an extended LOV is approved.

The WFD rule (75 FR 69746, November 15, 2010) does not require identifying and developing maintenance actions if the DAHs can show that such actions are not necessary to prevent WFD before the airplane reaches the LOV. Many LOVs, however, do depend on accomplishment of future maintenance actions. As stated in the WFD rule, any maintenance actions necessary to reach the LOV will be mandated by airworthiness directives through separate rulemaking actions.

In the context of WFD, this action is necessary to enable DAHs to propose LOVs that allow operators the longest operational lives for their airplanes, and still ensure that WFD will not occur. This approach allows for an implementation strategy that provides flexibility to DAHs in determining the timing of service information development (with FAA approval), while providing operators with certainty regarding the LOV applicable to their airplanes.

This proposed AD was prompted by an evaluation by the DAH indicating that the upper and lower rainbow fittings of the outer wing are subject to WFD. Analysis of in-service cracking has shown that these fittings are susceptible to multiple site damage, and actions are required to ensure that cracking does not occur in the skin-panel-to-fitting fastener holes, resulting in an unacceptable reduction in residual strength. Fatigue cracking of the upper and lower rainbow fittings of the outer wing and skin-panel-to-fitting fastener holes could result in reduced structural integrity of the airplane and possible separation of the wing from the airplane.

Relevant Service Information

We reviewed Lockheed Service Bulletin 382–57–95, including Appendix A, dated December 16, 2013. This service bulletin describes procedures for repetitive inspections of the upper and lower rainbow fittings on the outer wing using an eddy current surface scan (ECSS) to detect cracks propagating from fasteners attaching the fittings to skin panels and a related

investigative action of an automated bolt hole eddy current inspection to confirm ECSS inspection crack findings if suspected; and corrective actions if necessary. Corrective actions include contacting the manufacturer for instructions if cracking is found.

Lockheed Service Bulletin 382–57–95, including Appendix A, dated December 16, 2013, also describes procedures for replacing the upper and lower rainbow fittings on the outer wing, which includes doing a detailed inspection of the wing faying structure for damage (e.g. damage includes pitting, and corrosion) and cracks; an automated bolt hole eddy current inspection on all open fastener holes in the mating structure, stiffeners, webs, and angles for cracking; and corrective actions if necessary. Corrective actions include repairing damage and cracking in accordance with Lockheed Service Bulletin 382–57–95, including Appendix A, dated December 16, 2013; or contacting the manufacturer for instructions.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between This Proposed AD and the Service Information.''

Differences Between This Proposed AD and the Service Information

Lockheed Service Bulletin 382–57–95, including Appendix A, dated December 16, 2013, specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Designated Engineering Representative (DER) whom we have authorized to make those findings.

Explanation of Compliance Time

The compliance time for the replacement specified in this proposed AD for addressing WFD was established to ensure that discrepant structure is replaced before WFD develops in airplanes. Standard inspection techniques cannot be relied on to detect WFD before it becomes a hazard to flight. We will not grant any extensions of the compliance time to complete any AD-mandated service bulletin related to WFD without extensive new data that would substantiate and clearly warrant such an extension.

Costs of Compliance

We estimate that this proposed AD affects 20 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
ECSS inspection	24 work-hours × $85 per hour = $2,040 per inspection cycle.	$0	$2,040 per inspection cycle.	$40,800 per inspection cycle.
Bolt hole inspection during rainbow fitting replacement.	24 work-hours × $85 per hour = $2,040	0	$2,040	$40,800.
Replacement of all four rainbow fittings.	2,060 work-hours × $85 per hour = $175,100	28,000	$203,100	$4,062,000.

We estimate the following costs to do any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement of one rainbow fitting	515 work-hours × $85 per hour = $43,775	$7,000	$50,775

We have received no definitive data that would enable us to provide cost estimates for on-condition actions for cracking of the skin-panel-to-fitting fastener holes specified in this proposed AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

responsibilities among the various levels of government.

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Lockheed Martin Corporation/Lockheed Martin Aeronautics Company: Docket No. FAA–2014–0749; Directorate Identifier 2014–NM–051–AD.

(a) Comments Due Date

We must receive comments by December 1, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Model 382, 382B, 382E, 382F, and 382G airplanes; certificated in any category; having any outer wing serial number 4542 and subsequent, or any manufacturing end product (MEP) replacement outer wing except 14Y series.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by an evaluation by the design approval holder (DAH) indicating that the upper and lower rainbow fittings on the outer wing are subject to widespread fatigue damage (WFD). We are issuing this AD to prevent fatigue cracking of the upper and lower rainbow fittings on the outer wing and skin-panel-to-fitting fastener holes, which could result in reduced structural integrity of the airplane and possible separation of the wing from the airplane.

(f) Compliance

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

(g) Repetitive Eddy Current Surface Scan (ECSS) Inspections

At the later of the times specified in paragraphs (g)(1) and (g)(2) of this AD: Do an ECSS inspection of the left and right outer wing upper and lower rainbow fitting-to-skin-panel attachments to detect cracks propagating from fasteners attaching the fittings to skin panels, and do all applicable related investigative actions, in accordance with the Accomplishment Instructions of Lockheed Service Bulletin 382–57–95, including Appendix A, dated December 16, 2013, except as provided by paragraph (j)(1) of this AD. Do all applicable related investigative actions before further flight. If any cracking is found during any inspection required by this paragraph, before further flight, repair the cracking, using a method approved in accordance with the procedures specified in paragraph (m) of this AD. Repeat the inspection of the left and right outer wing upper and lower rainbow fitting-to-skin-panel attachments thereafter at intervals not to exceed 2,000 flight hours, except as provided by paragraph (l) of this AD.

(1) Before the accumulation of 30,000 total flight hours on any wing.

(2) Within 365 days or 600 flight hours, whichever occurs first, after the effective date of this AD.

(h) Rainbow Fitting Replacement and Inspections

At the time specified in paragraph (i) of this AD, do the actions required by paragraph (h)(1) and (h)(2) of this AD.

(1) Do a detailed inspection of the wing faying structure for damage and cracks, and do an automated bolt hole eddy current inspection on all open fastener holes in the mating structure, stiffeners, webs and angles for cracking, in accordance with the Accomplishment Instructions of Lockheed Service Bulletin 382–57–95, including Appendix A, dated December 16, 2013, except as provided by paragraph (j)(1) of this AD.

(i) If any damage is found during any inspection required by paragraph (h)(1) of this AD, before further flight, repair the damage, using a method approved in accordance with the procedures specified in paragraph (m) of this AD.

(ii) If any cracking is found during any inspection required by paragraph (h)(1) of this AD, before further flight, repair the cracking, in accordance with the Accomplishment Instructions of Lockheed Service Bulletin 382–57–95, including Appendix A, dated December 16, 2013, except as provided by paragraphs (j)(1) and (j)(2) of this AD.

(2) Replace the left and right upper and lower rainbow fittings of the outer wing with new fittings, in accordance with the Accomplishment Instructions of Lockheed Service Bulletin 382–57–95, including Appendix A, dated December 16, 2013.

Note 1 to paragraph (h) of this AD: AD 2012–06–09, Amendment 39–16990 (77 FR 21404, April 10, 2012), is related to the rainbow fitting replacement. AD 2012–06–09 references the Lockheed Martin Model 382, 382B, 382E, 382F, and 382G Series Aircraft Service Manual Publication (SMP), Supplemental Structural Inspection Document (SSID), SMP 515–C–SSID, Change 1, dated September 10, 2010; which contains inspections for the entire Model 382B–H airframe, not just the outer wing. Since installing new rainbow fittings, as required by paragraph (g) of this AD, resets the accumulated service life on certain parts to zero, certain compliance times specified in Table 3 of this SSID would be affected by the installation of new outer wing fittings.

Note 2 to paragraph (h) of this AD: AD 2011–15–02, Amendment 39–16749 (76 FR 41647, July 15, 2011), has requirements for fuel system limitations (FSLs) and critical design configuration control limitations (CDCCLs) which might include configuration or parts limitations on areas affected by accomplishment of this AD.

(i) Compliance Times for Paragraph (h) of This AD

At the later of the times specified in paragraph (i)(1) and (i)(2) of this AD, do the actions required by paragraph (h) of this AD.

(1) Before the accumulation of 50,000 total flight hours on any wing.

(2) Within 60 days or 100 flight hours, whichever occurs first, after the effective date of this AD.

(j) Exceptions to Service Information Specifications

(1) Although Lockheed Service Bulletin 382–57–95, including Appendix A, dated December 16, 2013, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(2) Where Lockheed Service Bulletin 382–57–95, including Appendix A, dated December 16, 2013, specifies to contact Lockheed for repair instructions, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (m) of this AD.

(k) Parts Installation Limitation

After replacement of the left and right upper and lower rainbow fittings of the outer wing with new fittings as required by paragraph (h) of this AD, any subsequent rainbow fitting replacements must be done using a method approved in accordance with the procedures specified in paragraph (m) of this AD.

(l) Outer Wing Flight Hours Adjustment

For any wing on which the left or right upper and lower rainbow fittings of the outer wing have been replaced with new fittings as required by paragraph (h) of this AD: Before the accumulation of 30,000 flight hours after accomplishing the replacement, do the inspection required by paragraph (g) of this

AD and repeat thereafter at the times specified in paragraph (g) of this AD.

(m) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Atlanta ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (n)(1) of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Designated Engineering Representative (DER) that has been authorized by the Manager, Atlanta ACO to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(n) Related Information

(1) For more information about this AD, contact Carl Gray, Aerospace Engineer, Airframe Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office (ACO), 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5554; fax: 404–474–5606; email: *Carl.W.Gray@faa.gov.*

(2) For service information identified in this AD, contact Lockheed Martin Corporation/Lockheed Martin Aeronautics Company, Airworthiness Office, Dept. 6A0M, Zone 0252, Column P–58, 86 S. Cobb Drive, Marietta, GA 30063; telephone 770–494–5444; fax 770–494–5445; email *ams.portal@lmco.com;* Internet *http://www.lockheedmartin.com/ams/tools/TechPubs.html.* You may view this 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 September 23, 2014.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–24549 Filed 10–15–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2014–0601; Airspace Docket No. 14–ANE–7]

Proposed Amendment of Class E Airspace; Manchester, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E Airspace at Manchester, NH, as a new approach procedure has been developed, requiring airspace redesign at Manchester Airport. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport. This action also would update the geographic coordinates of airport.

DATES: Comments must be received on or before December 1, 2014.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2014–0601; Airspace Docket No. 14–ANE–7, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

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:

Comments Invited

Interested persons are invited to comment on this rule 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–2014–0601; Airspace Docket No. 14–ANE–7) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Persons 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 No. FAA–2014–0601; Airspace Docket No. 14–ANE–7.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. 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 from and comments submitted through *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for 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 between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory circular No. 11–2A, Notice of Proposed Rulemaking distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend Class E airspace as an extension to Class C surface area at Manchester Airport, Manchester, NH. Airspace reconfiguration extending from the 5-mile radius of the airport to 8.3-miles

northwest of the airport is necessary due to the developement of the RNAV (RNP) Z RWY 17 approach, and for continued safety and management of IFR operations at the airport. Also, the geographic coordinates of Manchester Airport would be adjusted to coincide with the FAA's aeronautical database.

Class E airspace designations are published in Paragraph 6003 of FAA Order 7400.9Y, dated August 6, 2014, and effective September 15, 2014, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, 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 proposed 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 proposed regulation is within the scope of that authority as it would amend Class E airspace at Manchester Airport, Manchester, NH.

This proposal would 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.

Lists 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 Federal Aviation Administration Order 7400.9Y, Airspace Designations and Reporting Points, dated August 6, 2014, effective September 15, 2014, is amended as follows:

Paragraph 6003 Class E Airspace Areas Designated as an Extension.

* * * * *

ANE NH E3 Manchester, NH [Amended]

Manchester Airport, NH
(Lat. 42°55′58″ N., long. 71°26′09″ W.)

That airspace extending upward from the surface within 3.3-miles each side of the 337° bearing of the airport extending from the 5-mile radius to 8.5-miles northwest of the airport.

Issued in College Park, Georgia, on October 7, 2014.

Myron A. Jenkins,

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

[FR Doc. 2014–24617 Filed 10–15–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–1055; Airspace Docket No. 13–ANM–27]

Proposed Establishment of Class E Airspace; Rogue Valley, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at the Rogue Valley VHF Omni-Directional Radio Range Tactical Air Navigation Aid (VORTAC), Rogue Valley, OR, to facilitate vectoring of Instrument Flight Rules (IFR) aircraft under control of Seattle and Oakland Air Route Traffic Control Centers (ARTCCs). The FAA is proposing this action to enhance the safety and management of aircraft operations within the National Airspace System.

DATES: Comments must be received on or before December 1, 2014.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2013–1055; Airspace Docket No. 13–ANM–27, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Steve Haga, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4563.

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 2013–1055 and Airspace Docket No. 13–ANM–27) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2013–1055 and Airspace Docket No. 13–ANM–27''. 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 NPRM's

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 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 Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E en route domestic airspace extending upward from 1,200 feet above the surface at the Rogue Valley VORTAC navigation aid, Rogue Valley, OR. This action would contain aircraft while in IFR conditions under control of Seattle and Oakland ARTCCs by vectoring aircraft from en route airspace to terminal areas.

Class E airspace designations are published in paragraph 6006, of FAA Order 7400.9Y, dated August 6, 2014, and effective September 15, 2014, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish controlled airspace at the Rogue Valley VORTAC, Rogue Valley, OR.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9Y, Airspace Designations and Reporting Points, dated August 6, 2014, and effective September 15, 2014 is amended as follows:

Paragraph 6006 En Route Domestic Airspace Areas.

* * * * *

ANM OR E6 Rogue Valley, OR [New]

Rogue Valley VORTAC, OR
(Lat. 42°28′47″ N., long. 122°54′47″ W.)

That airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 43°27′19″ N., long. 119°56′31″ W.; to lat. 42°39′54″ N., long. 119°42′02″ W.; to lat. 41°00′07″ N., long. 120°10′44″ W.; to lat. 40°45′47″ N., long. 120°14′45″ W.; to lat. 40°27′51″ N., long. 119°37′10″ W.; to lat. 39°33′53″ N., long. 120°19′02″ W.; to lat. 39°05′16″ N., long. 124°05′00″ W.; to lat. 39°42′30″ N., long. 124°25′58″ W.; to lat. 40°01′00″ N., long. 124°35′00″ W.; to lat. 40°25′25″ N., long. 124°40′06″ W.; to lat. 42°50′00″ N., long. 124°50′00″ W.; thence to the point of beginning.

Issued in Seattle, Washington, on October 8, 2014.

Clark Desing,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2014–24618 Filed 10–15–14; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1120

[CPSC Docket No. CPSC–2014–0024]

Substantial Product Hazard List: Seasonal and Decorative Lighting Products

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Consumer Product Safety Commission (CPSC or Commission) is proposing a rule to specify that seasonal and decorative lighting products that do not contain one or more of three readily observable characteristics (minimum wire size, sufficient strain relief, or overcurrent protection) constitute a substantial product hazard under the Consumer Product Safety Act (CPSA).

DATES: Written comments must be received by December 30, 2014.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2014–0024, 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.

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, 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 rulemaking. 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:

Arthur Lee, Office of Hazard Identification and Reduction, Consumer Product Safety Commission, National Product Testing and Evaluation Center, 5 Research Place, Rockville, MD 20850; telephone: 301–987–2008; *alee@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission proposes to issue a rule under section 15(j) of the CPSA, 15 U.S.C. 2064(j), that would amend the substantial product hazard list in 16 CFR part 1120 (part 1120). The substantial product hazard list in part 1120 would be amended to add three readily observable characteristics of seasonal and decorative lighting products: (1) Minimum wire size; (2) sufficient strain relief; and (3) overcurrent protection. If the amendment to part 1120 is finalized, seasonal and decorative lighting products that do not contain one or more of these characteristics would be deemed to create a substantial product hazard under section 15(a)(2) of the CPSA because such products pose a risk of electrical shock or fire. These three electrical safety characteristics for seasonal and decorative lighting products have been addressed in a voluntary standard, Underwriters Laboratories (UL), *Standard for Safety for Seasonal and Holiday Decorative Products,* UL 588, 18th Edition, approved on August 21, 2000 (UL 588).

As detailed in this notice, the Commission determines preliminarily that:

- Minimum wire size, sufficient strain relief, and overcurrent protection are all readily observable characteristics of seasonal and decorative lighting products;
- these three readily observable characteristics are addressed by a voluntary standard, UL 588;
- conformance to UL 588 has been effective in reducing the risk of injury from shock and fire associated with these readily observable characteristics; and
- seasonal and decorative lighting products sold in the United States substantially comply with UL 588.

A. Background and Statutory Authority

Section 223 of the Consumer Product Safety Improvement Act of 2008 (CPSIA), amended section 15 of the CPSA, 15 U.S.C. 2064, to add a new subsection (j). Section 15(j) of the CPSA provides the Commission with the authority to specify, by rule, for any consumer product or class of consumer products, characteristics whose existence or absence are deemed a substantial product hazard under section 15(a)(2) of the CPSA. Section 15(a)(2) of the CPSA defines a ''substantial product hazard,'' in relevant part, as a product defect which (because of the pattern of defect, the number of defective products distributed in commerce, the severity of the risk, or otherwise) creates a substantial risk of injury to the public. For the Commission to issue a rule under section 15(j) of the CPSA, the characteristics involved must be ''readily observable'' and have been addressed by a voluntary standard. Moreover, the voluntary standard must be effective in reducing the risk of injury associated with the consumer products, and there must be substantial compliance with the voluntary standard.

The Commission has issued two previous rules under section 15(j) of the CPSA involving drawstrings on children's upper outerwear (76 FR 42502, July 19, 2011) (drawstring rule) and integral immersion protection on handheld hair dryers (76 FR 37636, June 28, 2011) (hair dryer rule). The Commission did not define a ''readily observable'' characteristic in either rule. In the proposed drawstring rule (75 FR 27497, 27499, May 17, 2010), the Commission found that the requirements detailed in the relevant voluntary standard could be evaluated with ''simple manipulations of the garment, simple measurements of portions of the garments, and unimpeded visual observation.'' The Commission stated: ''more complicated or difficult actions to determine the presence or absence of defined product characteristics also may be consistent with 'readily observable.' '' Finally, the Commission stated its intent to evaluate ''readily observable'' characteristics on a case-by-case basis. 75 FR at 27499.

B. Seasonal and Decorative Lighting Products

1. Product Description

The proposed rule uses the phrase ''seasonal and decorative lighting products'' to identify the lighting products that are within the scope of the rule. The Commission proposes to define ''seasonal and decorative lighting products,'' consistent with the description of products subject to the applicable voluntary standard, as set forth in section 1 of UL 588, as portable, plug-connected, temporary-use lighting products and accessories that have a nominal 120 volt input voltage rating. Lighting products within the scope of the rule are factory-assembled with push-in, midget- or miniature-screw base lampholders connected in series or with candelabra- or intermediate-screw base lampholders connected in parallel, directly across the 120 volt input. Such lighting products include lighted decorative outfits, such as stars, wreathes, candles without shades, light sculptures, blow-molded (plastic) figures, and animated figures. Lighting products outside the scope of the rule include: Battery-operated products; products that operate from a transformer or low-voltage power supply; flexible tube lighting strings of lights intended for illumination; and portable electric lamps that are used to illuminate seasonal decorations.

This definition of ''seasonal and decorative lighting products'' is adapted from descriptions of lighting products defined in section 1 of UL 588. All in-scope products are covered by UL 588. Lighting products within the scope of the rule are typically used seasonally and provide only decorative lumination. The products typically are displayed for a relatively short period of time and then removed and stored until needed again. UL 588 section 2.43 defines the term ''seasonal (holiday) product'' as ''[a] product painted in colors to suggest a holiday theme or a snow covering, a figure in a holiday costume, or any decoration associated with a holiday or particular season of the year.'' UL 588

defines ''decorative light products'' (decorative outfits) as factory-assembled, electrically powered units providing a seasonal or holiday decorative display having illumination or other decorative effects. A decorative product may contain a lighting string as part of the decorative illumination. A lighting string provided with decorative covers over the lamps is a decorative outfit. If not constructed properly, lighting powered by 120 volts can be damaged easily and can pose a risk of electrical shock, electrocution, or fire.

Lighting products that are excluded from the scope of the rule are subject to different voluntary standards or do not present the same risk of injury. Table 1 provides a non-exhaustive list of examples of lighting products that fall within, and outside of, the scope of the proposed rule.

TABLE 1—SEASONAL AND DECORATIVE LIGHTING PRODUCTS WITHIN THE SCOPE OF THE DRAFT PROPOSED RULE

In Scope:
- Incandescent or LED light sets, 120 volts, cord-connected, either series or parallel wired, with either screw-in or mini-base push-in bulbs.
- Pre-lit artificial trees, wreaths, menorahs, lawn figures, light sculptures, and other decorative outfits and accessories incorporating light sets.

Out of Scope:
- Rope, tube, or tape lights without replaceable bulbs.
- Landscape lights or other permanent lighting devices, either assembled or unassembled.
- Battery-operated or transformer-connected light sets.
- Unlighted ornaments that replace a push-in mini-bulb.

2. Applicable Voluntary Standard

UL 588–2000 is the current voluntary standard applicable to seasonal and decorative lighting products. UL 588 has been updated over the years to address various safety issues to make seasonal and decorative lighting products safer, *see* Staff's Briefing Package on Seasonal and Decorative Lighting Products, dated October 1, 2014 (Staff Briefing Package), Tab B, Abbreviated History of Seasonal and Decorative Lighting Products and the Associated UL Standard, at *http://www.cpsc.gov/Global/Newsroom/FOIA/CommissionBriefingPackages/2015/ProposedRuletoAmendSubstantialProductHazardListtoIncludeSeasonalandDecorativeLightingProducts.pdf.* Specifically, UL 588 made effective on January 1, 1997, the current requirements for overcurrent protection and minimum wire size, and the current strain relief requirement has been in effect since 1994. Table 2 summarizes the relevant sections and technical requirements in UL 588 for each of the three readily observable characteristics.

TABLE 2—READILY OBSERVABLE CHARACTERISTICS FOR SEASONAL AND DECORATIVE LIGHTING PRODUCTS

Seasonal and decorative lighting products	Readily observable characteristics			
	Minimum wire size (AWG) *UL 588 Section 6*	Sufficient strain relief (load weight)		Overcurrent protection qty. *UL 588 Section 7*
		Plugs/load fittings *UL 588 Sections 15 and 71*	Lampholders *UL 588 Sections 79 and SB16*	
Series-connected lighting product:				
With Load Fitting	20 (Polarized Plug)	20 lbs. (smaller than 18 AWG).	24 lbs	1
	22 (Non-Polarized Plug)		8 lbs	2
Without Load Fitting	22 (Polarized Plug)		8 lbs	1
	22 (Non-Polarized Plug)		8 lbs	2
Parallel-connected light product:				
With or Without Load Fitting	20 (XTW)	20 lbs. (20 AWG)	24 lbs	1
	18 (all others)	30 lbs. (18 AWG)		
	All Polarized Plugs			

3. Electrocution and Fire Hazards

Consumers can be seriously injured or killed by electrical shocks or fires if seasonal and decorative lighting products are not made using minimum wire size, sufficient strain reliefs, or overcurrent protection. Lighting products that conform to the minimum wire size requirement in UL 588 will support the product's electrical load without causing overheating. Additionally, lighting products that conform to the minimum wire size requirement provide the necessary mechanical strength to endure handling and other forces imposed on a seasonal lighting product during expected use of the product. Likewise, lighting products that conform to the strain relief requirements in UL 588 will endure use, including pulling and twisting the product, without mechanical damage to the electrical connections. Damaged electrical connections, such as broken strands of copper conductor inside the insulated wiring, could cause overheating (leading to a fire), despite overcurrent protection, or separation of wires from their terminal connections, which could expose bare energized conductors leading to electrical shock. Finally, UL 588's requirements for overcurrent protection prevent products from overheating and melting due to faults, damage, or excessive loads. Such failures carry a potential risk of fire.

4. Risk of Injury

CPSC has been concerned with the number of fires and injuries resulting from seasonal and decorative lighting products for many years. From 1980 through 1997, CPSC received reports of 206 deaths and 808 nonfatal incidents involving seasonal and decorative lighting products that resulted in a fire and/or shock hazard. In a June 1995 report titled, ''Electrical Holiday Lighting,'' CPSC staff cited annual averages of 500 fire service-attended fires and 30 deaths involving Christmas trees and another 68 fire deaths and shocks specifically related to electrical decorations.

More recently, staff's evaluation of the shock and fire hazard data related to

seasonal and decorative lighting demonstrates that from 1980 through 2013, CPSC is aware of 132 fatal incidents, 256 deaths, and 1,255 non-fatal incidents associated with seasonal and decorative lighting products. Table 3 summarizes CPSC's injury data from 1980 through 2013, based on annual averages related to seasonal and decorative lighting products. Note that the average number of incidents and deaths has declined over the 33-year period represented in Table 3.

TABLE 3—SEASONAL AND DECORATIVE LIGHTING PRODUCT ANNUAL AVERAGE [1] OF FATAL INCIDENTS, DEATHS, AND NON-FATAL INCIDENTS FROM 1980–2013

Years	Fatal incidents	Deaths	Non-fatal incidents
1980–1986	6.7	12.6	54.1
1987–1993	6.3	13.6	40.9
1994–2000	2.9	5.9	37.4
2001–2007	2.1	3.6	32.6
2008–2013	1.0	1.2	16.7

5. Office of Compliance Efforts, to Date

In numerous instances, CPSC staff has considered the absence of one or more of the three readily observable characteristics (minimum wire size, sufficient strain relief, and overcurrent protection) to present a substantial product hazard and has sought appropriate corrective action to prevent injury to the public. Since 1974, CPSC staff has conducted 47 voluntary recalls of seasonal and decorative lighting products, involving a total of 3.6 million units. *See* Tab D of Staff's Briefing Package, Seasonal and Decorative Lighting Product Recalls and Import Stoppages. In addition to product recalls, CPSC staff has stopped noncompliant seasonal and decorative lighting products at the ports at least 127 times, involving 31 companies and a total of about 200,000 lighting units. *Id.* Tables 1 and 2 in Tab D of the Staff's Briefing Package provide details on both voluntary recalls and import stoppages. Note that where the information is available, most of the hazards identified by staff in recalling or stopping seasonal and decorative lighting products would be deemed a substantial product hazard under the proposed rule.

Additionally, the Office of Compliance sent a letter dated July 14, 2014, to manufacturers, importers, distributors, and retailers of holiday lights and decorative products, informing them that the Office of Compliance considers products that do not conform to UL 588 regarding minimum wire size, sufficient strain relief, and overcurrent protection to be defective and to present a substantial product hazard. *See* Tab A of Staff's Briefing Package, Office of Compliance July 14, 2014 Letter to Manufacturers, Importers, and Retailers of Holiday Lights and Decorative Outfits.

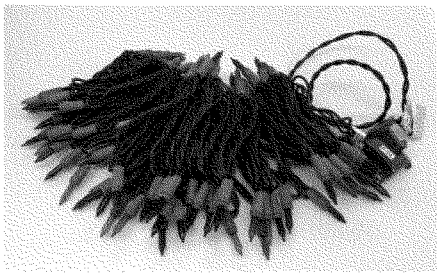
II. Preliminary Determination of Substantial Product Hazard

A. Defined Characteristics Are Readily Observable

Sections 6, 7, 15, 71, 79, and SB16 of UL 588 set forth the requirements for the three readily observable characteristics in the proposed rule: Minimum wire size, sufficient strain relief, and overcurrent protection. Table 2 in section I.B.2 of this Preamble summarizes the technical requirements for the three readily observable characteristics in UL 588. Additionally, Tab C of the Staff's Briefing Package, Readily Observable Safety Characteristics of Seasonal and Decorative Lighting Products, provides more detail on the information presented in Table 2. If finalized, the rule would deem the absence of any one or more of these characteristics to be a substantial product hazard under section 15(a)(2) of the CPSA.

1. Minimum Wire Size

Section 6 of UL 588 requires that series-connected lighting products have a minimum wire size of 20 or 22 AWG, depending on whether the lighting product has a load fitting, and whether the plug is polarized. Parallel-connected lighting products must have a minimum wire size of 18 or 20 AWG, depending on the type of wire used in constructing the product. Whether a lighting product is series or parallel constructed, contains a load fitting, or has a polarized plug are all visually observable characteristics of seasonal and decorative lighting products. Pictures 1 and 2 show examples of series-connected and parallel-connected lighting products.

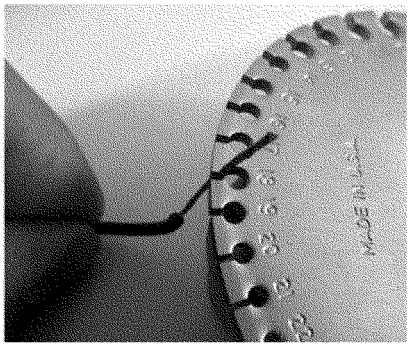


Picture 1: Series-connected miniature light string

Picture 2: Parallel-connected screw-base bulbs light string

[1] The numbers are given as annual averages instead of totals because there are four 7-year periods and one 6-year period.

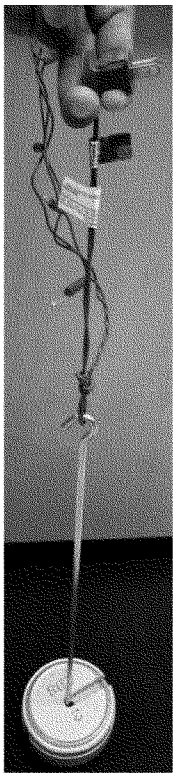
Wire size is observable by a simple measurement of the bare conductors. Before measuring the wire size, staff must expose the conductors within the wire. One method of measuring the exposed conductors is using a circular wire gauge, as shown in picture 3. In CPSC staff's experience, those lighting products that do not meet the minimum wire size requirement typically fail by using wiring that is substantially undersized for the product, for example, more than six wire sizes smaller than the minimum required. Moreover, the act of exposing and measuring the wire in a seasonal and decorative lighting product is quickly and easily done by using a small, handheld device to strip the electrical insulation from the wiring. Accordingly, the Commission concludes preliminarily that minimum wire size, as required in section 6 of UL 588, is a readily observable characteristic of seasonal and decorative lighting products that can be observed visually by taking a simple measurement of the product's bare wire.



Picture 3: Measuring Wire Size (AWG) of Seasonal Light String

2. Sufficient Strain Relief

Sections 15, 71, 79, and SB16 of UL 588 set forth the requirements for sufficient strain relief in seasonal and decorative lighting products. Strain relief is observed in several locations: At the plugs and load fittings, as well as at the lampholders. Pursuant to UL 588, sufficient strain relief is observed by suspending a gradually applied straight pull on the wiring by use of a suspended weight for 60 seconds. During that time, wires with sufficient strain relief will not pull loose or stretch from the lampholder, plug, or load fitting being tested. Picture 4 demonstrates observation of sufficient strain relief on a plug.



Picture 4: Observation of Strain Relief on a Plug

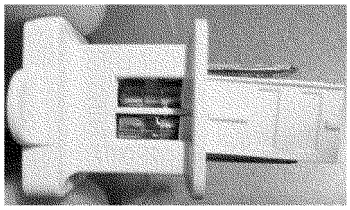
The applicable weight required in UL 588 to be suspended from the lighting product depends on its configuration. Section 15 of UL 588 describes the general requirements that strain relief must be provided on the electrical connection used in seasonal and decorative lighting products. Sections 71, 79, and SB16 of UL 588 describe the specific requirements. Section 71 of UL 588 requires that series-connected plugs and load fittings be subjected to a 20-lb. weight. For parallel-connected lighting products, plugs and load fittings for products with wires smaller than 18 AWG must be subjected to a 20-lb. weight, and products with wires 18 AWG or larger must be subjected to a 30-lb. weight. Similarly, sections 79 and SB16 of UL 588 specify applicable weights to observe sufficient strain relief in lampholders. For series-connected lighting products, if the wires are smaller than 20 AWG, the weight applied must be a minimum of 8 lbs., and if the wires are 20 AWG or larger, the weight applied must be a minimum of 24 lbs. For parallel-connected lampholders, if the wires are 20 AWG or larger, the weight applied must be a minimum of 24 lbs. The applicable weights are summarized in Table 2 in section I.B.2 of this Preamble.

The strain relief portion of UL 588 for seasonal and decorative lighting products is observable visually by hanging a weight on the light string for 60 seconds and observing whether the weight drops or stretches the wiring. In CPSC staff's experience, lighting products that fail the strain relief requirements in UL 588 do so immediately or within a few seconds of suspending the applicable weight. The Commission concludes preliminarily that sufficient strain relief, as required in sections 15, 71, 79, and SB16 of UL 588, is a readily observable characteristic of seasonal and decorative lighting products that can be determined by suspending the applicable weight from the plug, load fitting, or lampholder, and by observing visually whether the wire breaks or stretches.

3. Overcurrent Protection

Section 7 of UL 588 specifies overcurrent protection for every seasonal and decorative lighting product. Lighting products must contain at least one fuse if the plug is polarized (parallel-connected strings must have a polarized plug) or two fuses if the plug is not polarized.

A seasonal light string with overcurrent protection is readily observable by the presence of a fuse holder located in the plug or near the plug, and observing the presence of a fuse by opening the fuse holder. Picture 5 depicts a light string with a plug containing the fuses required by UL 588. The Commission concludes preliminarily that overcurrent protection, as required in section 7 of UL 588, is a readily observable characteristic of seasonal and decorative lighting products that can be determined by a visual observation of whether the lighting product has a fuse holder containing the correct number of fuses.



Picture 5: Fuse

B. Conformance to UL 588 Has Been Effective in Reducing the Risk of Injury

The Commission finds preliminarily that conformance to sections 6, 7, 15, 71, 79, and SB16 of UL 588, as summarized in Table 2 in section I.B.2 of this Preamble, has been effective in reducing the risk of injury from shock and fire associated with below-minimum wire size, insufficient strain relief, and lack of overcurrent protection. Additionally, CPSC's incident data suggest that conformance to UL 588 has contributed to a decline in the risk of injury associated with seasonal and decorative lighting products. *See* Tab E of Staff's Briefing Package, Seasonal Lighting and Decorative Products: Fire or Shock Incidents from 1980 to 2013.

If incandescent light strings last approximately three seasons of use,[2] then it can be expected that product changes made to conform to new requirements in UL 588 would be evident within a period of time thereafter. On January 1, 1997, UL 588's requirements for overcurrent protection and minimum wire size took effect; and the current strain relief requirement has been in effect since 1994. Table 4 lists the deaths associated with seasonal and decorative lighting products for the periods 1980–1996 and 2000–2013. The years from 1997 to 1999 would have been transitional years, where older products in consumer homes were being replaced with light strings incorporating the January 1, 1997 changes (minimum wire size and overcurrent protection) in the UL standard. The average number of deaths per year and the average number of nonfatal incidents per year were higher before 1997, and the numbers dropped after 1999.

TABLE 4—DEATHS ASSOCIATED WITH SEASONAL AND DECORATIVE LIGHTING PRODUCTS

Period	1980–1996	2000–2013
Deaths	202	43
Nonfatal Incidents	762	366
Average Deaths per year	11.88	3.07
Average Nonfatal Incidents per year	44.82	26.14

Figure 1 presents a 3-year moving average for deaths due to seasonal and decorative lighting products, by year, for the period 1980–2013 for data from the Potential Injury Database (IPII), National Electronic Injury Surveillance System (NEISS), and the Death Certificate Database (DTHS). Figure 1 shows that the number of deaths started to decline as early as 1990, and continued on a downward trend to 2013, with the exceptions of yearly fluctuations. This early decrease may be due to various factors, such as changes to UL 588, home building codes, and fire-prevention strategies. Since 2004, the continuation of low death rates is partially attributed to the construction and performance requirements in the current UL 588 standard.

[2] Incandescent light strings advertise that the products have a usual design life span of approximately 1,500 hours. Using an average of 12 hours per day for 40 days per year, incandescent light strings last approximately 3 years.

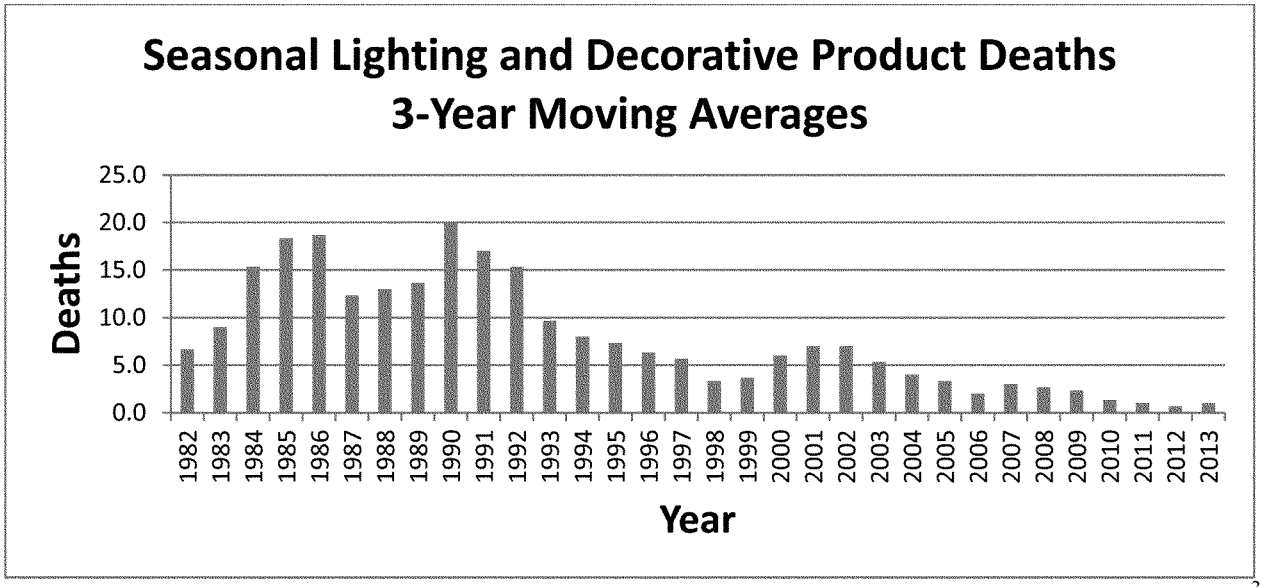


Figure 1. Three-Year Moving Averages of Seasonal Lighting and Decorative Product Deaths from 1980 to 2013[3]

Figure 2 presents a 3-year moving average for nonfatal incidents due to seasonal and decorative lighting products, by year, for the period 1980–2013 for data from IPII and NEISS. Figure 2 also demonstrates an overall downward trend to 2013, with the exceptions of yearly fluctuations. The decrease can be attributed to several factors, including: Changes to UL 588, home building code, and fire prevention strategies. However, the construction and performance requirements in the current UL 588 standard for seasonal and decorative lighting products with minimum wire size, sufficient strain relief, and overcurrent protection have made the products safer than products manufactured without these construction and performance requirements.

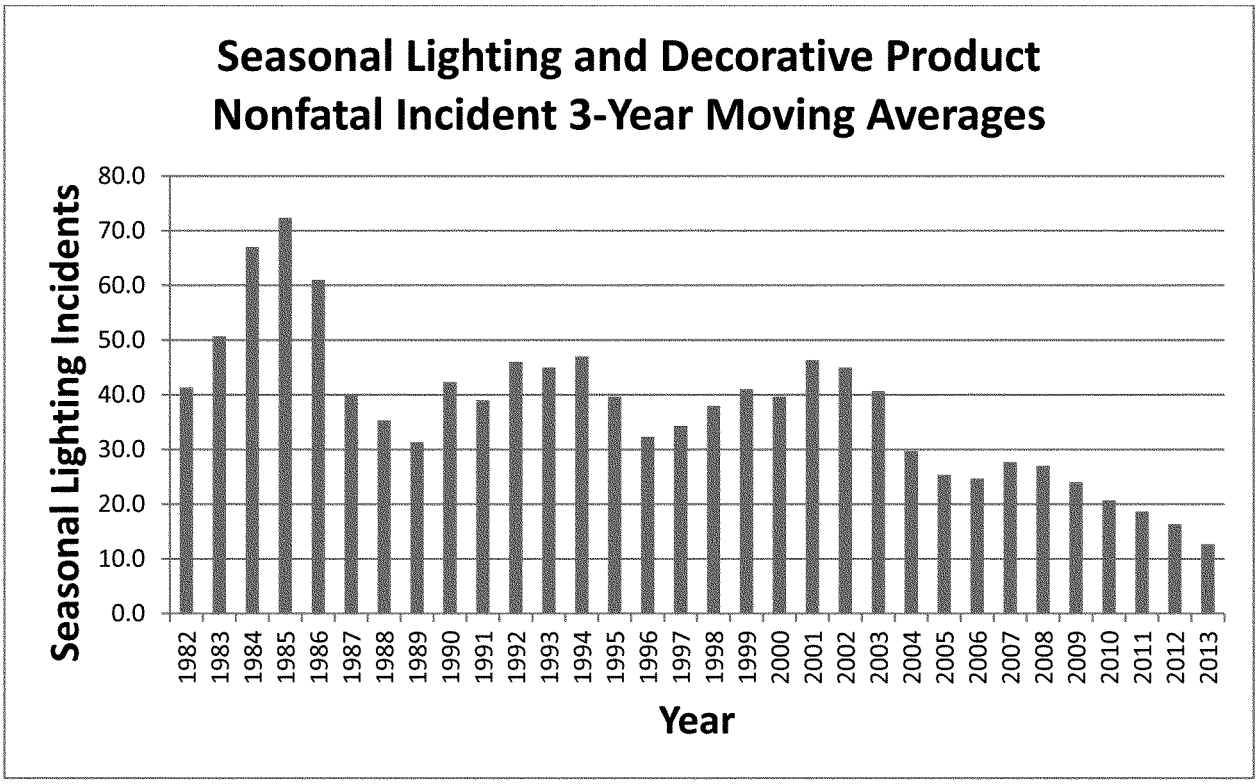


Figure 2. Three-Year Moving Averages of Seasonal Lighting and Decorative Product Nonfatal Incidents from 1980 to 2013[2]

[3] Incident data is from Potential Injury Database (IPII), National Electronic Injury Surveillance System (NEISS), and the Death Certificate Database (DTHS).

C. Lighting Products Substantially Comply With UL 588

The CPSA does not define ''substantial compliance'' with a voluntary standard. Legislative history of the CPSA regarding a finding of ''substantial compliance'' in the context of issuing a consumer product safety standard indicates that substantial compliance should be measured by considering the number of complying products, rather than the number of manufacturers of products that comply with a standard. H.R. Rep. No. 208, 97th Cong., 1st Sess. 871 (1981). This same legislative history indicates further that substantial compliance may be found when an unreasonable risk of injury associated with a product will be eliminated or adequately reduced ''in a timely fashion.'' *Id.* The Commission has not articulated a bright line rule for substantial compliance. Rather, in the rulemaking context, the Commission has stated that the determination of substantial compliance should be made on a case-by-case basis.

The Commission finds preliminarily that compliance with UL 588 is ''substantial'' as that term is used in section 15(j) of the CPSA. The Commission's preliminary finding is based on CPSC staff's review of market information and compliance activity, and staff's estimate that a majority of seasonal and decorative lighting products, well in excess of 90 percent, sold for consumer use in the United States, likely conforms to UL 588. S*ee* Tab F of Staff's Briefing Package, Conformance to UL Voluntary Standard for Seasonal and Decorative Lighting Products.

The U.S. Department of Homeland Security's Customs and Border Patrol (CBP) reported that in 2013, the import value of products that would be covered by the draft proposed rule was about $500 million, comprised of roughly 20,000 ''entries'' or product shipments. If the average import value per unit were $5.00 (based on the range of retail prices observed by staff), then the number of units imported annually may be up to 100 million. CBP also reported that about 550 firms were engaged in the importation of seasonal and decorative lighting products during 2013. Adjusting to exclude shipping companies and other third parties, the total number of firms importing seasonal and decorative lighting products into the United States was probably about 500, with the largest number of shipments originating from the People's Republic of China. An online, wholesale directory identified about 160 manufacturers and suppliers in China, Hong Kong, and Taiwan, with about 120 of these exporting products to the United States. Another online product directory identified more than 2,000 individual models of products from manufacturers located in China.

For purposes of this analysis, the Commission considers all seasonal and decorative lighting products carrying a listing or certification mark from UL, Intertek Company (ETL), or the CSA Group (CSA) to be in conformance with the requirements of UL 588. Staff's Internet search of online catalogs, demonstrates that all of the 20 to 30 major national brands, which probably account for a majority of all units sold, consist only of conforming products because they are labeled as UL, ETL, or CSA compliant. Major retailers also often specify conforming products. Although CPSC recalls and import stoppages involve a very small percentage of product units in commerce, available CPSC data on recalls and import stoppages over the past decade suggest a very low (less than 1 percent) incidence of defects and nonconformance. The Commission finds that all of these factors indicate that conformance with UL requirements is very high, and estimates that voluntary conformance with UL 588 is in excess of 90 percent of all units.

III. Description of the Proposed Rule

The proposed rule would create two new paragraphs in part 1120. Proposed § 1120.2(d) would define a ''seasonal and decorative lighting product'' as portable, plug-connected, temporary-use lighting products and accessories that have a nominal 120 volt input voltage rating. Lighting products within the scope of the rule are factory-assembled with push-in, midget- or miniature-screw base lampholders connected in series or with candelabra- or intermediate-screw base lampholders connected in parallel, directly across the 120 volt input. Such lighting products include lighted decorative outfits, such as stars, wreathes, candles without shades, light sculptures, blow-molded (plastic) figures, and animated figures. Lighting products outside the scope of the rule include: Battery-operated products; products that operate from a transformer or low-voltage power supply; flexible tube lighting strings of lights intended for illumination; and portable electric lamps that are used to illuminate seasonal decorations.

This definition is adapted from descriptions of lighting products defined in section 1 of UL 588. Lighting products within the scope of the rule are typically used seasonally (temporarily) and provide only decorative lumination. The products typically are displayed for a relatively short period of time and then removed and stored until needed again. Lighting products that are excluded from the scope of the rule are subject to different voluntary standards or do not present the same risk of injury.

Proposed § 1120.3(d) would state that seasonal and decorative lighting products that do not conform to one or more of the following characteristics required in sections 6, 7, 15, 71, 79, and SB16 of UL 588 (explained in more detail in sections I.B.2 (Table 2) and II.A of this Preamble) are deemed substantial product hazards under section 15(a)(2) of the CPSA:

(1) Minimum wire size requirements in section 6 of UL 588;

(2) sufficient strain relief requirements in sections 15, 71, 79, and SB16 of UL 588; or

(3) overcurrent protection requirements in section 7 of UL 588.

IV. Effect of the Proposed 15(j) Rule

Section 15(j) of the CPSA allows the Commission to issue a rule specifying that a consumer product or class of consumer products has characteristics whose presence or absence creates a substantial product hazard. If a final rule is issued under section 15(j) of the CPSA, such a rule would not be a consumer product safety rule, and thus, would not create a mandatory standard that triggers testing or certification requirements under section 14(a) of the CPSA.

Although a rule issued under section 15(j) of the CPSA is not a consumer product safety rule, placing a consumer product on the substantial product hazard list in 16 CFR part 1120 would have certain ramifications. A product that is or has a substantial product hazard is subject to the reporting requirements of section 15(b) of the CPSA, 15 U.S.C. 2064(b). A manufacturer, importer, distributor, or retailer that fails to report a substantial product hazard to the Commission is subject to civil penalties under section 20 of the CPSA, 15 U.S.C. 2069, and possibly to criminal penalties under section 21 of the CPSA, 15 U.S.C. 2070.

A product that is or contains a substantial product hazard is also subject to corrective action under sections 15(c) and (d) of the CPSA, 15 U.S.C. 2064(c) and (d). Thus, if a final rule is issued under section 15(j) for seasonal and decorative lighting, the Commission could order the manufacturer, importer, distributor, or retailer of lighting products that do not contain one or more of the three readily observable characteristics to offer to repair or replace the product, or to

refund the purchase price to the consumer.

A product that is offered for import into the United States and is or contains a substantial product hazard shall be refused admission into the United States under section 17(a) of the CPSA, 15 U.S.C. 2066(a). Additionally, CBP has the authority to seize certain products offered for import under the Tariff Act of 1930 (19 U.S.C. 1595a) (Tariff Act), and to assess civil penalties that CBP, by law, is authorized to impose. Section 1595a(c)(2)(A) of the Tariff Act states that CBP may seize merchandise, and such merchandize may be forfeited if: ''its importation or entry is subject to any restriction or prohibition which is imposed by law relating to health, safety, or conservation and the merchandise is not in compliance with the applicable rule, regulation, or statute.''

V. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) requires that proposed rules be reviewed for the potential economic impact on small entities, including small businesses. 5 U.S.C. 601–612. Section 603 of the RFA requires agencies to prepare and make available for public comment an Initial Regulatory Flexibility Analysis (IRFA), describing the impact of the proposed rule on small entities and identifying impact-reducing alternatives. For the reasons that follow, the Commission concludes that the proposed rule will not have a significant impact on a substantial number of small entities.

Based on staff's review of information on importers, of the roughly 500 companies that import seasonal and decorative lighting products in the United States, staff estimates that 400 to 450 would be considered small firms under the U.S. Small Business Administration's size guidelines. CPSC staff estimates that a very high percentage, probably well in excess of 90 percent of products that would be subject to a rule, already conform to UL 588. Importers, distributors, and retailers that market only UL 588-conforming products would not be affected. Staff has observed that small importers, distributors, and retailers of nonconforming light sets generally market other related products as well. The sales revenue of these small firms is not solely dependent on seasonal lighting products. Thus, income for these small firms would not be affected significantly, and, except for the nonconforming light sets, product lines would not be curtailed significantly. Furthermore, the draft proposed rule represents a continuation of the existing practice of the CPSC's Office of Compliance and Field Operations to designate nonconforming seasonal lighting products as a substantial product hazard.

VI. Environmental Considerations

Generally, the Commission's regulations are considered to have little or no potential for affecting the human environment, and environmental assessments and impact statements are not usually required. *See* 16 CFR 1021.5(a). The proposed rule to deem seasonal and decorative lighting products that do not contain one or more of three readily observable characteristics to be a substantial product hazard is not expected to have an adverse impact on the environment and is considered to fall within the ''categorical exclusion'' for the purposes of the National Environmental Policy Act. 16 CFR 1021.5(c).

VII. Paperwork Reduction Act

The proposed rule does not require any stakeholder to create, maintain, or disclose information. Thus, no paperwork burden is associated with the proposed rule, and the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) does not apply.

VIII. Preemption

The proposed rule under section 15(j) of the CPSA would not establish a consumer product safety rule. Accordingly, the preemption provisions in section 26(a) of the CPSA, 15 U.S.C. 2075(a), would not apply to this rule.

IX. Effective Date

The Administrative Procedure Act (APA) generally requires that the effective date of a rule be at least 30 days after publication of a final rule. 5 U.S.C. 553(d). The Commission proposes that any seasonal and decorative lighting product that does not conform to sections 6, 7, 15, 71, 79, and SB16 of UL 588 with regard to minimum wire size, sufficient strain relief, and overcurrent protection is deemed a substantial product hazard effective 30 days after publication of a final rule in the **Federal Register**. After that date, all seasonal and decorative lighting products that are subject to, but do not comply with, UL 588 with respect to minimum wire size, sufficient strain relief, or overcurrent protection, will be deemed to be a substantial product hazard, regardless of the date such products were manufactured or imported. The Commission believes that a 30-day effective date is appropriate because:

- Seasonal and decorative lighting products are already in substantial conformance with UL 588;
- the requirements for the readily observable characteristics from UL 588 in the proposed rule (wire size, strain relief, and overcurrent protection) have been in effect as a voluntary standard since the 1990s, and are well-known;
- the Office of Compliance sent a letter dated July 14, 2014, to manufacturers, importers, and retailers of holiday lights and decorative outfits, informing them that the Office of Compliance considers products that do not conform to UL 588, regarding minimum wire size, sufficient strain relief, and overcurrent protection, to be defective and present a substantial product hazard; and
- importers can substitute conforming products, if necessary, before a final rule becomes effective.

Based on the available information, the Commission concludes that a 30-day effective date would not likely result in significant impacts on industry or disrupt the supply of conforming products.

X. Request for Comments

The Commission invites interested persons to submit their comments to the Commission on any aspect of the proposed rule. Comments should be submitted as provided in the instructions in the **ADDRESSES** section at the beginning of this notice.

List of Subjects in 16 CFR Part 1120

Administrative practice and procedure, Clothing, Consumer protection, Household appliances, Lighting, Infants and children, Imports, Incorporation by reference.

For the reasons stated above, and under the authority of 15 U.S.C. 2064(j), 5 U.S.C. 553, and section 3 of Public Law 110–314, 122 Stat. 3016 (August 14, 2008), the Consumer Product Safety Commission proposes to amend 16 CFR part 1120 as follows:

PART 1120—SUBSTANTIAL PRODUCT HAZARD LIST

■ 1. The authority citation for part 1120 continues to read as follows:

Authority: 15 U.S.C. 2064(j).

■ 2. In § 1120.2, add paragraph (d) to read as follows:

§ 1120.2 Definitions.

* * * * *

(d) *Seasonal and decorative lighting product* means portable, plug-connected, temporary-use lighting products and accessories that have a nominal 120 volt input voltage rating.

Lighting products within the scope of the rule are factory-assembled with push-in, midget- or miniature-screw base lampholders connected in series or with candelabra- or intermediate-screw base lampholders connected in parallel, directly across the 120 volt input. Such lighting products include lighted decorative outfits, such as stars, wreathes, candles without shades, light sculptures, blow-molded (plastic) figures, and animated figures. Lighting products outside the scope of the rule include: Battery-operated products; products that operate from a transformer or low-voltage power supply; flexible tube lighting strings of lights intended for illumination; and portable electric lamps that are used to illuminate seasonal decorations.

■ 3. In § 1120.3, add paragraph (c) to read as follows:

§ 1120.3 Products deemed to be substantial product hazards.

* * * * *

(c)(1) Seasonal and decorative lighting products that lack one or more of the following characteristics in conformance with requirements in sections 6, 7, 15, 71, 79, and SB16 of Underwriters Laboratories (UL) *Standard for Safety for Seasonal and Holiday Decorative Products,* UL 588, 18th Edition, approved August 21, 2000 (UL 588):

(i) Minimum wire size requirements in section 6 of UL 588;

(ii) Sufficient strain relief requirements in sections 15, 71, 79, and SB16 of UL 588; or

(iii) Overcurrent protection requirements in section 7 of UL 588.

(2) The Director of the Federal Register approves the incorporations by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from UL, Inc., 333 Pfingsten Road, Northbrook, IL 60062. 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/cfr/ibr-locations.html.*

Dated: October 8, 2014.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2014–24378 Filed 10–15–14; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 573

[Docket No. FDA–2014–F–1509]

DSM Nutritional Products; Filing of Food Additive Petition (Animal Use)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of petition.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that we have filed a petition, submitted by DSM Nutritional Products, proposing that the food additive regulations be amended to provide for the safe use of *Schizochytrium* sp. dried algae as a source of docosahexaenoic acid for use in standard pelleted foods for adult dogs.

DATES: Submit either electronic or written comments on the petitioner's request for categorical exclusion from preparing an environmental assessment or environmental impact statement by November 17, 2014.

ADDRESSES: Submit electronic comments to: *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Isabel W. Pocurull, Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–453–6853.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5) (21 U.S.C. 348(b)(5))), we are giving notice that a food additive petition (FAP 2288) has been submitted by DSM Nutritional Products, 45 Waterview Blvd., Parsippany, NJ 07054. The petition proposes to amend Title 21 of the Code of Federal Regulations (CFR) in part 573 *Food Additives Permitted in Feed and Drinking Water of Animals* (21 CFR part 573) to provide for the safe use of *Schizochytrium* sp. dried algae as a source of docosahexaenoic acid for use in standard pelleted foods for adult dogs. The petitioner has requested a categorical exclusion from preparing an environmental assessment or environmental impact statement under 21 CFR 25.32(r).

Interested persons may submit either electronic or written comments regarding this request for categorical exclusion to the Division of Dockets Management (see **DATES** and **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Dated: October 10, 2014.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2014–24593 Filed 10–15–14; 8:45 am]

BILLING CODE 4164–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2014–0629; FRL–9917–68–Region-3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; State Boards Requirements

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania for the purpose of addressing the State Boards' requirements for all criteria pollutants of the National Ambient Air Quality Standards (NAAQS). In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by November 17, 2014.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2014–0629 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2014–0629, Cristina Fernandez, Associate Director, Office of Air Program Planning, Air Protection Division, 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–2014–0629. 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 Commonwealth's submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Ruth Knapp, (215) 814–2191, or by email at *knapp.ruth@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: September 23, 2014.

William C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2014–24346 Filed 10–15–14; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 79, No. 200

Thursday, October 16, 2014

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

Animal and Plant Health Inspection Service

[Docket No. APHIS–2014–0021]

Notice of Decision To Authorize the Importation of Chipilin Leaves and Edible Flowers of Chufle, Izote, and Pacaya From Guatemala Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our decision to authorize the importation of chipilin leaves and edible flowers of chufle, izote, and pacaya from Guatemala into the continental United States. Based on the findings of pest risk analyses, which we made available to the public to review and comment through a previous notice, we have concluded that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of chipilin leaves and edible flowers of chufle, izote, and pacaya from Guatemala.

DATES: *Effective Date:* October 16, 2014.

FOR FURTHER INFORMATION CONTACT: Ms. Claudia Ferguson, Senior Regulatory Policy Specialist, Regulations, Permits and Manuals, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 851–2352.

SUPPLEMENTARY INFORMATION: Under the regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–71, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into or disseminated within the United States.

Section 319.56–4 of the regulations contains a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis (PRA), can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section. Under that process, APHIS publishes a notice in the **Federal Register** announcing the availability of the PRA that evaluates the risks associated with the importation of a particular fruit or vegetable. Following the close of the 60-day comment period, APHIS may begin issuing permits for importation of the fruit or vegetable subject to the identified designated measures if: (1) No comments were received on the PRA; (2) the comments on the PRA revealed that no changes to the PRA were necessary; or (3) changes to the PRA were made in response to public comments, but the changes did not affect the overall conclusions of the analysis and the Administrator's determination of risk.

In accordance with that process, we published a notice [1] in the **Federal Register** on July 8, 2014 (79 FR 38484, Docket No. APHIS–2014–0021), in which we announced the availability, for review and comment, of pest risk assessments that evaluate the risks associated with the importation into the continental United States of chipilin leaves and edible flowers of chufle, izote, and pacaya from Guatemala and risk management documents prepared to identify phytosanitary measures that could be applied to the commodities to mitigate the pest risk.

We solicited comments on the pest risk assessments and risk management documents for 60 days ending on September 8, 2014. We did not receive any comments by that date.

Therefore, in accordance with § 319.56–4(c)(2)(ii), we are announcing our decision to authorize the importation of chipilin leaves and edible flowers of chufle, izote, and pacaya from Guatemala into the continental United States subject to the following phytosanitary measures:

- The commodities must be imported into the continental United States in commercial consignments only.
- Each consignment must be accompanied by a phytosanitary certificate issued by the national plant protection organization of Guatemala.
- Each consignment is subject to inspection upon arrival at the port of entry to the United States.

These conditions will be listed in the Fruits and Vegetables Import Requirements database (available at *http://www.aphis.usda.gov/favir*). In addition to these specific measures, chipilin leaves and edible flowers of chufle, izote, and pacaya from Guatemala will be subject to the general requirements listed in § 319.56–3 that are applicable to the importation of all fruits and vegetables.

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 9th day of October 2014.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2014–24634 Filed 10–15–14; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the notice and risk documents, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0021.*

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Notice of Emergency Approval of New Information Collection for Feasibility of Tribal Administration of Federal Nutrition Assistance Programs

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces FNS' intention to request emergency approval from the Office of Management and Budget (OMB) and invites the general public and other public agencies to comment on this proposed information collection. This is a new collection for the purpose of determining the interest among Indian Tribal Organizations (ITOs) in administering FNS programs, the capacity of ITOs to do so, and legislative and regulatory implications.

DATES: Written comments must be received on or before December 15, 2014.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to: Richard Lucas, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 1014, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Richard Lucas at 703–305–2576 or via email to *richard.lucas@fns.usda.gov*. Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All written comments will be available for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m. Monday through Friday) located at 3101 Park Center Drive, Room 1014, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Richard Lucas at 703–305–2119.

SUPPLEMENTARY INFORMATION:

Title: Feasibility of Tribal Administration of Federal Nutrition Assistance Programs.

Form Number: N/A.

OMB Number: 0584—NEW.

Expiration Date: Not Yet Determined.

Type of Request: New Collection.

Abstract: The Agricultural Act of 2014 (Pub. L. 113–79) calls for a study to determine the feasibility of Tribal administration of Federal nutrition assistance programs in lieu of State agencies or other administrative entities. Specifically, the primary objectives of the study are:

- Objective 1: Identify services, functions and activities associated with administering nutrition assistance programs.
- Objective 2: Consult with Tribes to determine the extent of their interest in administering the programs.
- Objective 3: Assess the capability of Indian Tribal Organizations (ITOs) to administer these programs based on the services, functions and activities associated with administering them and ITO interest in administering all or part of particular programs.
- Objective 4: Identify statutory or regulatory changes, waivers or special provisions that would be needed for ITOs to administer each nutrition program.

There are 15 nutrition assistance programs that are overseen by Food and Nutrition Service (FNS) and administered by States. While few of these programs are totally administered by an ITO, several are administered with varying levels of shared state/ITO responsibility. FNS requests clearance to conduct, through IMPAQ International, LLC, two principal research activities:

- A multi-modal survey of key administrative staff in all ITOs
- Interviews with Tribal leaders and administrative staff

This information collection is being conducted by the Food and Nutrition Service, Office of Policy Support, and is authorized by the Agricultural Act of 2014 (Pub. L. 113–79).

The Act calls for a study to determine the feasibility of Tribal administration of Federal nutrition assistance programs in lieu of State agencies or other administrative entities.

Affected Public: State, Local and Tribal Government. Respondent groups identified include: (a) Tribal Leaders; (b) Tribal members who play an administrative role in onsite federal human services programs.

Estimated Number of Respondents Example: The total estimated number of respondents is 1,228. This includes: 1,132 Tribal Leaders (two per Federally-recognized Tribe), 20 percent of whom will complete surveys, 32 (n) of whom will participate in site visit interviews; and 96 program administrators who will participate in site visit interviews. Table 1 shows respondent and burden information.

Estimated Number of Responses per Respondent: Tribal Leaders will be asked to complete one survey. Thirty-two of those Tribal Leaders will also be interviewed during site visits. All other respondents (96 Tribal program administrators) will participate in one site visit interview.

Estimated Total Annual Responses: The total of 354 responses includes 226 survey responses and 128 interview responses.

Estimated Time per Response: The survey will take 0.5 hours. Time spent on surveys that are not completed is estimated to be 0.03 hours (2 minutes). On-site interviews will take 1.5 hours each.

Estimated Total Annual Burden on Respondents: 332.18 hours.

Table 1: Response Burden for *Feasibility of Tribal Administration of Federal Nutrition Assistance Programs*

				Responses					Non-Repondents					Grand Total Burden Hours
Affected Public	Respondent Type	Instrument	Sample Size	Estimated # Respondents	Responses Annually per Respondent	Total Annual Responses (Col. exf)	Estimated Avg. # of Hours Per Response	Estimated Total Hours (Col. gxh)	Estimated # of Non-Respondents	Responses annually per Respondent	Total Annual Responses (Col. jxk)	Estimated Avg. # of Hours Per Response	Estimated Total Hours (Col. lxm)	
State, Local or Tribal Government	Tribal Leaders	Survey	1132	226	1	226	0.5	113	906	1	906	0.03	27.18	**140.18**
	Tribal Leaders (also represented in survey respondents)	Site Visit	32	32	1	32	1.5	48	0	1	0	1.5	0	**48**
	Tribal program administrators	Site Visit	96	96	1	96	1.5	144	0	1	0	0.25	0	**144**
	Total Reporting Burden		**1228**	**322**		**354**		**305**	**906**		**906**		**27.180**	**332.18**

Dated: October 6, 2014.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2014–24573 Filed 10–15–14; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Request for Information: Unpaid Meal Charges

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice; Request for Information.

SUMMARY: The National School Lunch and School Breakfast Programs play a critical role in ensuring that America's children have access to nutritious food. The Food and Nutrition Service (FNS) subsidizes all school meals in participating schools in various ways including reimbursement for meals served based on the eligibility of the child receiving the meal. FNS reimburses schools at higher rates for those meals served to children eligible for free meals and reduced price meals. Schools are responsible for establishing paid meal prices for children who do not receive free or reduced price meals and whose meals are thus reimbursed by FNS at lower rates. If children do not have the required payment for meals on the day of service, schools may extend credit to the child for the meal. Generally, this process entails the school allowing the child to ''charge'' the meal with the understanding that the child will reimburse or pay back the school for the meal provided. Since credit policies are usually established at the school district level, they vary across the nation and within States and are not monitored by FNS.

FNS considers access to healthy school meals including nutritious foods a critical function of the National School Lunch and School Breakfast Programs. Evidence shows that children who regularly eat healthy school meals perform better in the classroom and are less likely to be overweight. However, FNS also recognizes that allowing children to ''charge'' school meals can have financial impacts on individual schools and even school districts. This is especially true when meal charges are not subsequently paid, results in large unpaid meal charges and potential financial losses.

Section 143 of the Healthy, Hunger-Free Kids Act of 2010 (HHFKA) requires FNS—in conjunction with States and participating local educational agencies (LEAs)—to examine and report on the current policies and practices of State agencies and LEAs regarding extending credit to children by allowing them to ''charge'' the cost of school meals on the day of service.

As required by the HHFKA, this examination must include the feasibility of establishing national standards for extending credit to children by allowing meal charges, establishing national charges for alternate meals which might be served, and providing recommendations for implementing those standards. At this time, FNS is seeking information from all affected parties regarding State and LEA current policies regarding extending credit to children by allowing them to ''charge'' the cost of school meals on the day of service. Specifically, FNS is interested in commenters providing details of policies and procedures in their State or LEA and the advantages and challenges associated with those procedures.

DATES: To be assured of consideration, written information must be submitted or postmarked on or before January 14, 2015.

ADDRESSES: The Food and Nutrition Service, USDA, invites the submission of the requested information through one of the following methods:

- *Preferred method:* Submit information through the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the online instructions for submissions.
- *Mail:* Submissions should be addressed to Jessica Saracino, Program Analyst, School Programs Branch, Child Nutrition Programs, Food and Nutrition Service, P.O. Box 66740, Saint Louis, MO 63166–6740.

All information properly and timely submitted, using one of the two methods described above, in response to this request for information will be included in the record and will be made available to the public on the Internet at *http://www.regulations.gov.* Please be advised that the substance of the information provided and the identity of the individuals or entities submitting it will be subject to public disclosure.

FOR FURTHER INFORMATION CONTACT: Jessica Saracino, Program Analyst, Child Nutrition Programs, Food and Nutrition Service at (703) 305–2590.

SUPPLEMENTARY INFORMATION: Section 143 of the HHFKA (Pub. L. 111–296; December 13, 2010) requires USDA, in conjunction with States and participating LEAs, to examine the current policies and practices of States and LEAs regarding extending credit to children to pay the cost of their reimbursable school lunches and breakfasts. As part of this examination, FNS must prepare a report on the feasibility of establishing national standards for meal charges and alternate meals and provide recommendations for implementing those standards. As required by the HHFKA, when creating this report, FNS will take into account:

- The impact of overt identification on children; that is, the potential for children's eligibility or unpaid meal status to become apparent to other children, school staff, or others, as result of a school's implementation of the implementation of credit procedures;
- The manner in which the affected households (i.e., those which may incur debt) are provided with assistance in establishing eligibility for free or reduced price school meals; and
- The potential financial impact on LEAs.

The Special Nutrition Program Operations Study (SN–OPS) is a multiyear, nationally representative study designed to provide FNS with a snapshot of current State and LEA policies and practices, including information on school meal standards, competitive foods standards, school lunch pricing and accounting. The information in this first year study (School Year 2011–12) provides a baseline for observing the improvements resulting from the implementation of the HHFKA. As part of this study, FNS examined State and local meal charge policies. This study revealed that in School Year 2011–12, LEAs varied in their policies for serving meals to students who do not have funds to pay for meals. School policies range from denying a meal to serving a reimbursable meal or alternate meal to students.[1] Over 80% of schools served a meal to students that were unable to pay, either with reimbursable meals, or an alternative meal. Only 3 percent of school districts indicated that they did not serve meals at all to students who were unable to pay. In terms of revenue, on average, for all the LEAs that reported that they lost some revenue as a result of unpaid meals, the net revenue lost was less than 1 percent of total expenditures for the year. Despite this, for a small number of LEAs unpaid meal charges is a significant issue with very large debts associated with unpaid charges. For additional information on this study, go here: *http://www.fns.usda.gov/sites/default/files/SNOPSYear1.pdf.* While the SN–OPS study provides good background and a starting point for the required report on this issue, FNS would like to gather more detailed information on State and local meal charge policies and procedures to help inform FNS' recommendation on the feasibility of

[1] SN–OPS survey results did not provide detailed information regarding how schools vary their approach based on the duration of unpaid meal status. Among other areas, FNS requests in this RFI information regarding how schools modify their approach based on the duration of unpaid meal status.

establishing a national standard for meal charges and alternate meals and best practices guidance. While the FNS study showed that unpaid debt is not a systemic issue, for some schools and school districts unpaid debt has become a greater problem given other budgetary restraints. To assist these schools and school districts, FNS is seeking comments, concerns and suggestions on the extent of the problems and what has been done across the nation to address this issue of maintaining access to meals and also a school food service in strong financial standing.

FNS' objective is to receive input from a broad spectrum of parties that may be affected by policies on a number of topics relating to meal charges. These include students and their parents, school district officials, school food service staff, State agency officials, and the general public. FNS has an interest in working with States and school districts to ensure that schools are providing access to healthy meals to all children, but are also able to pay for the costs that they incur. FNS is particularly interested in learning if there is a relationship between a student who is extended ''credit'' and that child's eligibility for free and reduced priced meals.

FNS intends to use the information it receives to prepare a report on the feasibility of establishing national standards for meal charges and the provision of alternate meals and to provide recommendations for implementing those standards, as required by the HHFKA. Information submitted to FNS will also help to develop ''Best Practices'' guidance for meal charge policies and assist FNS in developing recommendations for Congressional review.

To assist in developing comments, FNS is seeking input regarding the following questions. FNS welcomes comments to all questions below.

1. Does your school district have a written policy on meal charges and/or when alternate meals may be provided? If so, please attach your policy or a link to a Web site containing the policy to your comment.

2. Which officials are responsible for developing the policies (e.g., school district business officials, the school food service director, school principals, etc.)?

3. Are there any grade level differences; for example, are only children below high school allowed to charge meals?

4. May children who do not have their payment or who have outstanding charges/unpaid balance select any reimbursable meal or are children offered alternate meals in lieu of the selection of reimbursable meals? If alternate meals are offered, what types of foods are offered in alternate meals?

5. Are reimbursable alternate meals available? If so, at what eligibility rate is your school district claiming these meals?

6. Does your school's unpaid meal charge policy include a modified approach for handling students based on the duration of unpaid meal status, and if so, how?

7. Are there any consequences outside the meal service for students who do not have their meal payment for the day (e.g., the student may not participate in extracurricular activities or report cards are not released, etc)?

8. How does the school ensure the children's eligibility status does not become apparent to other children or school staff as result of the school's implementation of the credit procedures?

9. Does a child's unpaid meal status become apparent to other children or school staff? If so, how? Are there measures you take to minimize the chances these children are identified and what do you find to be the most (or least) effective strategies?

10. Is any financial support to the school food service from the school district provided to offset costs related to the meal charges policy?

11. How are parents informed of the policies about charging meals, limits on charges, low account balances, outstanding balances, and methods of payment?

12. Have outstanding debts increased or decreased in your school district over the last 3 school years?

13. What steps does your school district provide to assist families with meal charges to apply for free or reduced price meals?

14. Are children with outstanding debts mostly those:

a. Eligible for reduced price meals;

b. Potentially eligible for free or reduced price but who have not applied or been certified; or

c. Who applied but were not eligible?

15. How do outstanding meal payments affect the ability of food service to meet the meal pattern requirements?

16. Does your school district have a la carte sales? If so, are children allowed to charge these items and how is repayment of any charges handled?

17. If your school district does not have a meal charge policy, how does that affect children who do not have their meal payment for the day?

When preparing information in response to this request, please keep in mind that FNS is seeking comments within the current statutory structure of the school meals programs. For example, while serving all meals at no cost to all students would eliminate the need for credit policies; this approach would require statutory change as currently, schools may only offer all students free meals if they are operating under a Special Provision, including the Community Eligibility Provision. This approach is beyond the scope of this information request. FNS appreciates your thoughtful and responsive comments.

Dated: October 8, 2014.

Jeffrey J. Tribiano,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 2014–24575 Filed 10–15–14; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Request for Information: Supplemental Nutrition Assistance Program (SNAP) Revision of the Program and Budget Summary Statement Part B—Program Activity Statement

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: Each year, Supplemental Nutrition Assistance Program (SNAP) State agencies are required to submit the Program and Budget Summary Statement Part B, Program Activity Statement (FNS–366B) to the Food Nutrition Service (FNS) per 7 CFR 272.2(c)(ii). Information collected on this form includes fraud activity for the reporting fiscal year such as a total number of fraud referrals, investigations, prosecutions, disqualification consent agreements (DCA), administrative disqualification hearings (ADH) and ADH waivers. This form further contains data on program dollars associated with pre-certification and post-certification fraud investigations, as well as program dollars that may be recovered resulting from an ADH or prosecution. This information is reported not later than 45 days after the end of the State agency's fiscal year, which is typically August 15th for most States. FNS is contemplating proposed changes to this form in order to improve the reliability and accuracy of State integrity reporting by revising data field definitions, such as what constitutes an investigation, for clarity and consistency. FNS is also considering an increase in the frequency

of reporting and would be interested in better understanding what impact increasing the reporting frequency may have on stakeholders. Furthermore, FNS is considering the addition of new data elements in order to better understand the impact and value returned to the taxpayer as a result of fraud prevention activities. Through this notice, FNS announces a request for information regarding the impacts for consideration in revising the Program Activity Statement (FNS–366B). FNS will consider all comments in the development of the new reporting form.

DATES: Written comments must be received on or before January 14, 2015.

ADDRESSES: Comments may be sent to Jane Duffield, Chief, State Administration Branch, Program Accountability and Administration Division, Food and Nutrition Service (FNS), U.S. Department of Agriculture, 3101 Park Center Drive, Room 818, Alexandria, VA 22302. Comments may also be emailed to *SNAPSAB@fns.usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov* and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the FNS office located at 3101 Park Center Drive, Alexandria, Virginia 22302, Room 800, during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday). All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this request for information should be directed to Kelly Stewart at (703) 305–2425.

SUPPLEMENTARY INFORMATION: State agencies report annually to FNS using the Program and Budget Summary Statement Part B—Program Activity Statement (FNS–366B) per 7 CFR 272.2(c)(ii) of the Federal regulations. FNS is considering changes to the form that could include changing the reporting frequency, adding new data elements, and changing or removing current data elements. FNS is also soliciting stakeholder suggestions for establishing with State data a national cost avoidance calculation methodology, as well as obtaining input on how best to clearly define all data elements and instructions to gain consistency among States.

FNS National and Regional Office staff developed a national standardized Recipient Integrity Management Evaluation (ME) protocol which provides a comprehensive assessment of how effectively States are managing recipient fraud prevention activities and provides an opportunity for communication between FNS and State agencies. Management evaluations have allowed FNS to discuss the FNS–366B with State and local officials, gathering information about its usefulness and ease of completing the form. Based on the results of management evaluations completed to date, it is apparent that State reporting lacks consistency and the FNS–366B does not have clearly defined data elements or instructions. Due to the lack of clarity in these instructions, responses are left open to interpretation, and can and do vary among States, leading to unreliable reported data.

Further, the FNS–366B lacks certain data elements that would increase its effectiveness and provide more accurate information on the types, as well as impact, of fraud prevention activities implemented by State Agencies. FNS is considering the addition of new data elements, such as those focusing on trafficking investigations and disqualifications, in order to gather better information that allows FNS to focus fraud prevention and detection strategies where they are most needed.

FNS is also considering changes to the frequency States report the information collected on the FNS–366B. An increase in reporting frequency would allow for greater and more timely access to program data. It would help States, FNS, and other stakeholders identify trends, inconsistencies and inefficiencies earlier in each fiscal year. With more current data, States and other interested parties would be able to identify gaps and areas in need of greater attention, and allow States to respond more quickly to those gaps.

FNS is proposing to add new reporting elements to better measure the effectiveness and impact of fraud prevention activities. FNS would like to define a standard national methodology for States to determine cost avoidance from their fraud prevention activities in order to quantify a return on investment for investigations or activities that result in a finding of fraud. A cost avoidance calculation methodology would attempt to quantify program dollars that a fraud determination outcome, such as a finding of an intentional program violation (IPV), prevented from being improperly used. For example, if an investigation finds that a recipient is guilty of trafficking, by establishing an IPV, how many program dollars might have been abused if the case was not investigated or prosecuted? Related to this, FNS would like to identify a methodology to measure how quickly disqualification takes place once recipient trafficking is identified. This methodology should allow FNS to assess how quickly States investigate and remove individuals that are guilty of trafficking, while ensuring FNS rules and regulations are upheld and clients receive due process.

Finally, FNS is always mindful of the importance of balancing integrity and access. The Agency does not tolerate any level of fraud and takes an aggressive stance to work with its partners to hold guilty individuals accountable for their actions.

However, those actions cannot be taken at the expense of discouraging eligible individuals from participating in the program or violating any individual's right to due process. FNS is interested in stakeholder input regarding the types of information that might be collected to help ensure that fraud prevention strategies are not resulting in any unintended consequences that adversely impact program access. Examples include failing to advise an individual of their rights, unlawfully withholding an eligible individual's access to benefits, or using coercion to obtain a signed disqualification consent agreement.

With these general interests in mind, FNS is seeking information from stakeholders on the following particular questions:

1. What new data elements should FNS consider adding to the FNS–366B that are not currently reported?

2. Do States currently utilize or possess performance measurement methods or tools to evaluate the new data elements being suggested? If not, what evaluation tools should be developed in order to collect and/or analyze new data elements?

3. What data elements should FNS remove or revise on the FNS–366B?

4. What, if any, barriers would States have to reporting trafficking fraud as a separate category from other types of fraud?

5. How are investigations currently defined? Should investigations be separated into pre-certification investigations and post-certification investigations for reporting purposes? Why or why not? What other distinctions should be considered?

6. What barriers, if any, keep States from accurately completing the form?

a. Are these concerns regarding the form and/or instructions?

b. Are there hurdles within State agencies that make reporting of data required on this form difficult?

7. Do States or stakeholders anticipate an increase in administrative expenditures or other impact if SNAP restructures the FNS–366B? If yes, please explain.

8. How much time would be required for State agencies to adjust their systems and reporting mechanisms in order to provide different or additional information on a revised FNS–366B?

9. How would increasing the frequency of reporting impact stakeholders? If additional costs would be part of this impact, please explain.

10. How is this data currently used by the State and what benefit(s) does it provide?

11. What data and methodology for calculating cost avoidance as a result of fraud prevention activities should FNS consider?

12. What data and methodology should be considered to measure how quickly recipient trafficking suspects are investigated and disqualified in accordance with FNS rules and regulations?

13. What data should FNS consider collecting to ensure that fraud prevention activities do not adversely impact program access?

Dated: October 8, 2014.

Jeffrey J. Tribiano,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 2014–24572 Filed 10–15–14; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Nez Perce-Clearwater National Forest; Idaho; Johnson Bar Fire Salvage

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service gives notice of its intent to prepare an Environmental Impact Statement for the Johnson Bar Fire Salvage Project. The Proposed action would utilize ground based (tractor and skyline) and helicopter logging systems to harvest trees killed by the Johnson Bar Fire. Harvested areas would be replanted with early seral species such as ponderosa pine, western white pine and western larch. Approximately 3 miles of roads would be decommissioned to reduce sediment related impacts to the watershed. The EIS will analyze the effects of the proposed action and alternatives. The Nez Perce-Clearwater Forests invites comments and suggestions on the issues to be addressed. The agency gives notice of the National Environmental Policy Act (NEPA) analysis and decision making process on the proposal so interested and affected members of the public may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis must be received by November 17, 2014. The draft environmental impact statement is expected in March 2015 and the final environmental impact statement is expected July 2015.

ADDRESSES: Send written comments to Mike Ward or Tam White, Interdisciplinary Team Leaders; 502 Lowry Street, Kooskia, Idaho 83539. Comments may also be sent via email to *comments-northern-nezperce-moose-creek@fs.fed.us*

FOR FURTHER INFORMATION CONTACT: Mike Ward, Interdisciplinary Team Leader, (208) 926–6413 or Tam White, Interdisciplinary Team Leader (208) 926–6416.

SUPPLEMENTARY INFORMATION: The objective of the Johnson Bar Fire Salvage Project would be to recover the economic value of the timber burned in the fire and move the area towards desired species compositions (ponderosa pine, western white pine and western larch) through reforestation as well as improve watershed conditions.

Purpose: Provide a sustained yield of resource outputs at a level that will help support the economic structure of local communities and provide for regional and national needs (Nez Perce Forest Plan, II–1)

Need: There is a need to utilize dead trees resulting from the fire in a timely manner to provide social and economic benefits before they lose commercial value and merchantability, which would contribute to the supply of timber for local, regional, and national needs.

Purpose: Reduce potential sediment inputs into the aquatic ecosystem.

Need: Sediment input from gravel and native surface roads can flow into streams, negatively affecting fish habitat and water quality. Improvement of watershed function and stream conditions can be accomplished by reducing road densities and repairing existing roads and culverts to reduce sediment and improve drainage.

The Proposed Action would: Salvage harvest approximately 4,000 acres of dead trees within the approximate 13,000 acre fire area. Harvesting operations would primarily utilize skyline and helicopter logging systems with a small component of ground based tractor skidding where appropriate. Openings are likely to exceed 40 acres.

Approximately 23 segments of temporary roads would be built to provide line machine access from existing system roads. These spurs generally average approximately 0.16 miles each and would be removed following harvest.

Fire killed or ''dead'' trees for the purposes of this project are determined using guidelines that determine mortality by the amount of scorch and fire severity surrounding the roots and lower trunk. Field validation of these guidelines indicates they are accurate for the forest types and fire severity in the project area. All live trees will be generally retained however incidental removal may occur to facilitate harvest operations.

Reforestation would plant long lived early seral tree species such as ponderosa pine, western white pine and western larch. This strategy would allow us to continue towards the goal of restoring more resilient tree species across the landscape. Seventeen to thirty-three tons per acre of standing and down large woody debris would be left across the treatment area to provide soil microclimate and habitat, long term nutrients, soil stability, and snag habitat. For safety reasons, retention would generally occur in clumps rather than individual snags distributed across the units. Retention would generally favor the largest snags. Approximately 3 miles of unneeded roads may be decommissioned by placing them in a hydrologically stable condition. This may involve a range of road decommissioning methods from culvert removal to full recontouring.

As they are developed, additional information and maps will be posted to ''NEPA Projects'' page on the Forests Web site: *http://data.ecosystem-management.org/nepaweb/project_list.php?forest=110117.*

Responsible Official and Lead Agency

The USDA Forest Service is the lead agency for this proposal. The Nez Perce-Clearwater Forest Supervisor is the responsible official.

The Decision To Be Made is whether to adopt the proposed action, in whole or in part, or another alternative; and what mitigation measures and management requirements will be implemented.

The Scoping Process for the EIS is being initiated with this notice. The scoping process will identify issues to be analyzed in detail and will lead to the development of alternatives to the proposal. The Forest Service is seeking

information and comments from other Federal, State, and local agencies; Tribal Governments; and organizations and individuals who may be interested in or affected by the proposed action. Comments received in response to this notice, including the names and addresses of those who comment, will be a part of the project record and available for public review.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The second major opportunity for public input will be when the draft EIS is published. The comment period for the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. The Draft EIS is anticipated to be available for public review in April 2015.

Dated: October 7, 2014.

Rick Brazell,

Forest Supervisor.

[FR Doc. 2014–24569 Filed 10–15–14; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–822]

Certain Frozen Warmwater Shrimp From Thailand: Notice of Correction to the Final Results of the 2012–2013 Antidumping Duty Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Dennis McClure, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5973.

SUPPLEMENTARY INFORMATION: On August 28, 2014, the Department of Commerce (the Department) published in the **Federal Register** the final results of the 2012–2013 administrative review of the antidumping duty order on certain frozen warmwater shrimp from Thailand.[1] The period of review is February 1, 2012, through January 31, 2013. Footnote 11 in the published **Federal Register** notice[2] contained an inadvertent error related to the order in which certain antidumping duty margins were stated; the correct antidumping duty margins in this footnote 11 were reversed. The footnote should read:

This cash deposit rate is based on the combined sales of Thai Union and Pakfood after the companies were collapsed (*i.e.,* sales made during the period April 23, 2012, through January 31, 2013). The rates calculated for Thai Union and Pakfood for the period February 1, 2012, through April 22, 2012, are 2.09 percent and zero percent, respectively. The calculations for the period February 1, 2012, through April 22, 2012, will be used for assessment purposes only, as noted in the ''Collapsing of Thai Union and Pakfood'' section of the Preliminary Decision Memorandum.

As a result, we now correct the final results of the 2012–2013 administrative review as noted above.

This correction to the final results of administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: October 8, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2014–24644 Filed 10–15–14; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Certain Frozen Warmwater Shrimp From Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review; 2012–2013,* 79 FR 51306 (August 28, 2014) (*Final Results*).

[2] *See id.,*79 FR at 51307 n.11.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–890]

Wooden Bedroom Furniture From the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On January 4, 2005, the Department of Commerce (Department) published in the **Federal Register** the antidumping duty order on wooden bedroom furniture from the People's Republic of China (PRC).[1] On February 28, 2014, the Department published in the **Federal Register** a notice of initiation of an administrative review of that order.[2] The review covers 127 companies. Based on timely withdrawals of all review requests for certain companies, we are now rescinding the administrative review with respect to 101 companies.

DATES: *Effective Date:* October 16, 2014.

FOR FURTHER INFORMATION CONTACT: Jeffrey Pedersen or Patrick O'Connor, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–2769 or (202) 482–0989, respectively.

Background

On January 2, 2014, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on wooden bedroom furniture from the PRC.[3] In January 2014, the Department received multiple timely requests to conduct an administrative review of the antidumping duty order on wooden bedroom furniture from the PRC. On February 28, 2014, in accordance with section 751(a) of Tariff Act of 1930, as amended (the Act), the Department published in the **Federal Register** a notice of the initiation of an administrative review of that order.[4] The administrative review was initiated with respect to 127 companies, and covers the period from January 1, 2013, through December 31, 2013. While a number of companies remain under review, the requesting parties have timely withdrawn all review requests for certain companies, as discussed below.

Rescission of Review, in Part

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if a party that requested the review withdraws its request within 90 days of the date of publication of the notice of initiation of the requested review. All

[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture From the People's Republic of China,* 70 FR 329 (January 4, 2005).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 79 FR 11401 (February 28, 2014) (*Initiation Notice*). The Department inadvertently excluded certain companies for which reviews had been requested from the list of companies for which it initiated an administrative review in the *Initiation Notice.* The Department listed those companies in a subsequent initiation notice (see *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 79 FR 18262 (April 1, 2014)).

[3] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 79 FR 103 (January 2, 2014).

[4] *See Initiation Notice.*

requesting parties withdrew their respective requests for an administrative review of the companies listed in the Appendix within 90 days of the date of publication of *Initiation Notice.* Accordingly, the Department is rescinding this review, in part, with respect to these companies, in accordance with 19 CFR 351.213(d)(1).[5]

Assessment

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. For the companies for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(l)(i). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Notification to Importers

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

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under an APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: October 3, 2014.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix

- Alexandre Furniture (Shenzhen) Co., Ltd.
- Alexandre International Corp.
- Balanza, Ltd.
- Best King International Ltd.
- Billy Wood Industrial (Dong Guan) Co., Ltd.
- BNBM Co. Ltd. (a.k.a. Beijing New Materials Co., Ltd.)
- Brother Furniture Manufacture Co., Ltd.
- C.F. Kent Co., Inc.
- C.F. Kent Hospitality, Inc.
- Changshu Htc Import & Export Co., Ltd.
- Chuan Fa Furniture Factory
- Classic Furniture Global Co., Ltd.
- Dalian Guangming Furniture Co., Ltd.
- Decca Furniture Ltd.
- Der Cheng Furniture Co., Ltd.
- Der Cheng Wooden Works Of Factory
- Dongguan Bon Ten Furniture Co., Ltd.
- Dongguan Grand Style Furniture Co., Ltd.
- Dongguan Huansheng Furniture Co., Ltd.
- Dongguan Kingstone Furniture Co., Ltd., Kingstone Furniture Co., Ltd.
- Dongguan Lung Dong Furniture Co., Ltd., Dongguan Dong He Furniture Co., Ltd.
- Dongguan Mingsheng Furniture Co., Ltd.
- Dongguan Mu Si Furniture Co., Ltd.
- Dongguan Sunrise Furniture Co., Ltd., Taicang Sunrise Wood Industry Co., Ltd., Taicang Fairmount Designs Furniture Co., Ltd., Meizhou Sunrise Furniture Co., Ltd.
- Dongguan Sunshine Furniture Co., Ltd.
- Dongying Huanghekou Furniture Industry Co., Ltd.
- Dorbest Ltd., Rui Feng Woodwork Co., Ltd. a.k.a. Rui Feng Woodwork (Dongguan) Co., Ltd., Rui Feng Lumber Development Co., Ltd. a.k.a. Rui Feng Lumber Development (Shenzhen) Co., Ltd.
- Dream Rooms Furniture (Shanghai) Co., Ltd.
- Fairmont Designs
- Fine Furniture (Shanghai) Ltd.
- Fleetwood Fine Furniture LP.
- Foliot Furniture Inc., a.k.a. Meubles Foliot Inc.
- Fortune Furniture Ltd., Dongguan Fortune Furniture Ltd.
- Fortune Glory Industrial Ltd. (H.K. Ltd.), Tradewinds Furniture Ltd.
- Fuijian Lianfu Forestry Co, Ltd. a.k.a. Fujian Wonder Pacific Inc., Fuzhou Huan Mei Furniture Co., Ltd. Jiangsu Dare Furniture Co., Ltd.
- Great Union Industrial (Dongguan) Co., Ltd.
- Guangdong New Four Seas Furniture Manufacturing Ltd.
- Guangzhou Lucky Furniture Co., Ltd.
- Guangzhou Maria Yee Furnishings Ltd., Pyla HK Ltd., Maria Yee, Inc.
- Hainan Jong Bao Lumber Co., Ltd.
- Hang Hai Woodcrafts Art Factory
- Hong Kong Da Zhi Furniture Co., Ltd.
- Huasen Furniture Co., Ltd.
- Hung Fai Wood Products Factory, Ltd.
- Jiangmen Kinwai Furniture Decoration Co., Ltd.
- Jiangmen Kinwai International Furniture Co., Ltd.
- Jiangsu Xiangsheng Bedtime Furniture Co., Ltd.
- Jiangsu Yuexing Furniture Group Co., Ltd.
- Jibbon Enterprise Co., Ltd.
- King Rich International, Ltd.
- King's Group Furniture (ENT) Co., Ltd.
- King's Way Furniture Industries Co., Ltd.
- Kingsyear Ltd.
- Kunshan Summit Furniture Co., Ltd.
- Leefu Wood (Dongguan) Co., Ltd.
- Nanhai Jiantai Woodwork Co., Ltd., Fortune Glory Industrial Ltd. (H.K. Ltd.)
- Nathan International Ltd., Nathan Rattan Factory
- Orient International Holding Shanghai Foreign Trade Co., Ltd.
- Passwell Corporation, Pleasant Wave Ltd.
- Perfect Line Furniture Co., Ltd.
- Putian Jinggong Furniture Co., Ltd.
- Qingdao Beiyuan Shengli Furniture Co., Ltd.
- Qingdao Liangmu Co., Ltd.
- Qingdao Shengchang Wooden Co., Ltd.
- Restonic (Dongguan) Furniture Ltd., Restonic Far East (Samoa) Ltd.
- Shanghai Jian Pu Export & Import Co., Ltd.
- Shanghai Maoji Imp & Exp Co., Ltd.
- Shanghai Sunrise Furniture Co., Ltd.
- Sheng Jing Wood Products (Beijing) Co., Ltd.
- Shenzhen Forest Furniture Co., Ltd.
- Shenzhen Jiafa High Grade Furniture Co., Ltd., Golden Lion International Trading Ltd.
- Shenzhen New Fudu Furniture Co., Ltd.
- Shenzhen Wonderful Furniture Co., Ltd.
- Shenzhen Xingli Furniture Co., Ltd.
- Shing Mark Enterprise Co., Ltd., Carven Industries Limited (BVI), Carven Industries Limited (Hk), Dongguan Zhenxin Furniture Co., Ltd., Dongguan Yongpeng Furniture Co., Ltd.
- Songgang Jasonwood Furniture Factory, Jasonwood Industrial Co., Ltd. S.A.
- Southern Art Development Ltd.
- Southern Art Furniture Factory
- Starwood Industries Ltd.
- Sunforce Furniture (Hui-Yang) Co., Ltd., Sun Fung Wooden Factory, Sun Fung Co., Shin Feng Furniture Co., Ltd., Stupendous International Co., Ltd.
- Superwood Co., Ltd., Lianjiang Zongyu Art Products Co., Ltd.
- Teamway Furniture (Dong Guan) Co., Ltd., Brittomart Inc
- Techniwood Industries Ltd., Ningbo Furniture Industries Limited, Ningbo Hengrun Furniture Co. Ltd.
- Telstar Enterprises Ltd.
- Tianjin Phu Shing Woodwork Enterprise Co., Ltd.
- Time Faith Ltd.
- Tube-Smith Enterprise (Zhangzhou) Co., Ltd., Tube-Smith Enterprise (Haimen) Co., Ltd., Billionworth Enterprises Ltd.
- U-Rich Furniture (Zhangzhou) Co., Ltd., U-Rich Furniture Ltd.

[5] *See* Appendix. As stated in *Change in Practice in NME Reviews,* the Department will no longer consider the non-market economy (''NME'') entity as an exporter conditionally subject to administrative reviews. *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013) (''*Change in Practice in NME Reviews*'').

- Wanvog Furniture (Kunshan) Co., Ltd.
- Woodworth Wooden Industries (Dong Guan) Co., Ltd.
- Xiamen Yongquan Sci-Tech Development Co., Ltd.
- Xilinmen Group Co. Ltd.
- Yichun Guangming Furniture Co. Ltd.
- Yihua Timber Industry Co., Ltd., Guangdong Yihua Timber Industry Co., Ltd.
- Zhangjiagang Daye Hotel Furniture Co., Ltd.
- Zhangjiang Sunwin Arts & Crafts Co., Ltd.
- Zhangzhou Guohui Industrial & Trade Co., Ltd.
- Zhong Shan Fullwin Furniture Co., Ltd.
- Zhongshan Fookyik Furniture Co., Ltd.
- Zhongshan Golden King Furniture Industrial Co., Ltd.
- Zhoushan For-Strong Wood Co., Ltd.

[FR Doc. 2014–24657 Filed 10–15–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–955]

Certain Magnesia Carbon Bricks From the People's Republic of China: Final Results and Final Rescission, in Part, of Countervailing Duty Administrative Review; 2012

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) conducted an administrative review of the countervailing duty order on certain magnesia carbon bricks (MCBs) from the People's Republic of China (PRC) covering the period of review (POR) January 1, 2012, through December 31, 2012. On June 2, 2014, the Department published the *Preliminary Results* for this administrative review and invited interested parties to comment on it.[1] Based on the analysis of the comments received, the Department has not made any changes to its *Preliminary Results.* The final subsidy rates are listed in the ''Final Results of Review'' section below.

DATED: *Effective Date:* October 16, 2014.

FOR FURTHER INFORMATION CONTACT: Gene Calvert, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–3586.

Background

On June 2, 2014, the Department published the *Preliminary Results.* The Department preliminarily determined to apply adverse facts available (AFA) to the sole mandatory respondent, Fengchi Imp. and Exp. Co., Ltd. of Haicheng City and Fengchi Refractories Co., of Haicheng City (collectively, Fengchi), and the Government of the PRC (GOC), because these parties failed to cooperate to the best of their ability in this review.[2] The Department also stated its preliminary intent to rescind the review for the following companies that timely certified that they had no shipments of subject merchandise to the United States during the POR: RHI AG and its affiliates Liaoning RHI Jinding Magnesia Co.; RHI Refractories (Dalian) Co. Ltd.; RHI Refractories Liaoning Co., Ltd.; RHI Trading Shanghai Branch; and RHI Trading (Dalian) Co., Ltd. (collectively, the RHI companies).[3] The Department invited interested parties to comment on the *Preliminary Results.*

On July 9, 2014, the Department received a timely filed joint case brief from Resco Products, Inc. (Petitioner) and a domestic producer of MCBs, Magnesita Refractories Company (Magnesita).[4] No other party filed an administrative case or rebuttal brief.

Scope of the Order

The scope of the order includes certain MCBs. Certain MCBs that are the subject of this order are currently classifiable under the following subheadings of the Harmonized Tariff Schedule of the United States (HTSUS): 6902.10.1000, 6902.10.5000, 66815.91.0000, 6815.99.2000, and 6815.99.4000. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description remains dispositive. A full description of the scope of the order is contained in the memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Issues and Decision Memorandum for Certain Magnesia Carbon Bricks from the People's Republic of China: Final Results of the 2012 Administrative Review'' (Issues and Decision Memorandum), which is dated concurrently with and hereby adopted by this notice. The Issues and Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *https://iaaccess.trade.gov* and to all parties in the Central Records Unit, Room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html.* The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Methodology

The Department conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For a full description of the methodology underlying our conclusions, including our decision to apply facts otherwise available with an adverse inference to Fengchi and the PRC, *see* the Issues and Decision Memorandum.

With respect to the companies for which we initiated reviews and that did not file a no-shipments certification,[5] consistent with the *Preliminary Results,* we assigned to entries made by these companies the all-others rate from the investigation.[6]

Analysis of Comments Received

All issues raised in the case brief filed are addressed in the Issues and Decision Memorandum. A list of the issues raised is attached to this notice at Appendix I.

Final Rescission, in Part, of the Administrative Review

In the *Preliminary Results,* we stated that a final decision regarding whether to rescind this review with respect to the RHI companies would be made in the final results of this review.[7] We continue to find no evidence on the record indicating that the RHI companies had sales of subject merchandise to the United States during the POR. Accordingly, and pursuant to 19 CFR 351.213(d)(3), the Department is rescinding this review with respect to the RHI companies for these final results.

[1] *See Certain Magnesia Carbon Bricks From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2012,* 79 FR 32915 (June 9, 2014) (*Preliminary Results*).

[2] *Id.,* and accompanying Preliminary Decision Memorandum (PDM) at 3–4.

[3] *Id.,* 79 FR at 32915.

[4] *See* the July 9, 2014, submission from Petitioner and Magnesita, ''Petitioner's Case Brief'' (Case Brief).

[5] *See* Appendix II.

[6] *See Preliminary Results,* 79 FR at 32915; *see also* the Issues and Decision Memorandum for a description of our methodology underlying our conclusions.

[7] *See Preliminary Results,* 79 FR at 32915.

Final Results of Review

We determine the countervailable subsidy rates for the POR are as follows:

Company	*Ad valorem* net countervailable subsidy rate (percent)
Fengchi Imp. and Exp. Co., Ltd. of Haicheng City and Fengchi Refractories Co., of Haicheng City (collectively, Fengchi)	66.27
Rate Applicable to the Remaining Companies Under Review [8]	24.24

Assessment Rates

Pursuant to 19 CFR 351.212(b), the Department intends to issue appropriate instructions to U.S. Customs and Border Protection (CBP) 15 days after the publication of these final results of review in the **Federal Register**. The Department will instruct CBP to assess countervailing duties on POR entries in the amounts shown above.

Cash Deposit Requirements

The Department also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown above for entries of the subject merchandise entered, or withdrawn from warehouse for consumption, on or after the date of publication of these final results in the **Federal Register**. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the all others rate established in the investigation. Accordingly, the cash deposit rates that will be applied to companies covered by the order, but not examined in this review, are those established in the most recently completed segment of the proceeding for each company. These cash deposit rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested and completed. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Administrative Protective Order

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

[8] *See* Appendix II.

These final results are issued and published in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: October 7, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Issues Discussed in the Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of the Methodology
V. Discussion of the Issues
  Comment 1: Whether the Department Should Apply AFA to the Non-Mandatory Respondents
  Comment 2: Whether the Department Also Should Apply the AFA Rate to the Non-Mandatory Respondents Because the GOC Failed to Respond in this Administrative Review
VI. Recommendation

Appendix II

List of Remaining Companies Under Review

ANH (Xinyi) Refractories Co. Ltd
Anyang Rongzhu Silicon Industry Co., Ltd
Bayuquan Refractories Co., Ltd
Beijing Tianxing Ceramic Fiber Composite Materials Corp
Changxing Magnesium Furnace Charge Co., Ltd
Changxing Wangfa Architectural & Metallurgical Materials Co., Ltd
Changzing Zhicheng Refractory Material Factory
China Metallurgical Raw Material Beijing Company
China Quantai Metallurgical (Beijing) Engineering & Science Co., Ltd
Cimm Group of China
CNBM International Corporation
Dalian Dalmond Trading Co., Ltd
Dalian F.T.Z. Huaxin International
Dalian F.T.Z. Maylong Resources Co., Ltd
Dalian Huayu Refractories International Co., Ltd
Dalian LST Metallurgy Co., Ltd
Dalian Masoo International Trading
Dalian Mayerton Refractories Ltd
Dalian Morgan Refractories Ltd
Dashiqiao Bozhong Mineral Products Co., Ltd
Dashiqiao City Guangcheng Refractory Co., Ltd
Dashiqiao Jia Sheng Mining Co., Ltd
Dashiqiao RongXing Refractory Material Co., Ltd
Dashiqiao Sanqiang Refractory Material Co., Ltd
Dashiqiao Yutong Packing Factory
Dengfeng Desheng Refractory Co., Ltd
DFL Minmet Refractories Corp
Duferco BarInvest SA Beijing Office
Duferco Ironet Shanghai Representative Office
Eastern Industries & Trading Co., Ltd
Fengchi Mining Co., Ltd of Haicheng City
Fengchi Refractories Corp
Haicheng City Qunli Mining Co., Ltd
Haicheng City Xiyang Import & Export Corporation
Haicheng Donghe Taidi Refractory Co., Ltd
Haicheng Ruitong Mining Co., Ltd
Haiyuan Talc Powder Manufacture Factory
Henan Boma Co. Ltd
Henan Kingway Chemicals Co., Ltd
Henan Tagore Refractories Co., Ltd
Henan Xinmi Changzxing Refractories, Co., Ltd
Hebei Qinghe Refractory Group Co. Ltd
Huailin Refractories (Dashiqiao) Pte. Ltd
Hualude Hardware Products Co. Ltd
Jiangsu Sujia Group New Materials Co., Ltd
Jiangsu Sujia Joint-Stock Co., Ltd
Jinan Forever Imp. & Exp. Trading Co., Ltd
Jinan Linquan Imp. & Exp. Co. Ltd
Jinan Ludong Refractory Co., Ltd
Kosmokraft Refractory Limited
Kuehne & Nagel Ltd. Dalian Branch Office
Lechang City Guangdong Province SongXin Refractories Co., Ltd
Liaoning Fucheng Refractories Group Co., Ltd
Liaoning Fucheng Special Refractory Co., Ltd
Liaoning Jiayi Metals & Minerals Ltd
Liaoning Jinding Magnesite Group
Liaoning Mayerton Refractories Co., Ltd
Liaoning Mineral & Metallurgy Group Co., Ltd
Liaoning Qunyi Group Refractories Co., Ltd
Liaoning Qunyi Trade Co., Ltd
Liaoning RHI Jinding Magnesis Co., Ltd
LiShuang Refractory Industrial Co., Ltd
Lithomelt Co., Ltd
Luheng Refractory Co., Ltd
Luoyang Refractory Group Co., Ltd
Mayerton Refractories
Minsource International Ltd
Minteq International Inc
National Minerals Co., Ltd
North Refractories Co., Ltd
Orestar Metals & Minerals Co., Ltd
Oreworld Trade (Tangshan) Co., Ltd
Puyang Refractories Co., Ltd
Qingdao Almatis Co., Ltd. (HQ)
Qingdao Almatis Co., Ltd. (Manufacturing)
Qingdao Almatis Trading Co., Ltd. (Sales Office)

Qingdao Blueshell Import & Export Corp
Qingdao Fujing Group Co., Ltd
Qingdao Huierde International Trade Co., Ltd
RHI Refractories (Dalian) Co., Ltd
RHI Refractories Liaoning Co., Ltd
RHI Trading Shanghai Branch
RHI Trading (Dalian) Co., Ltd
Rongyuan Magnesite Co., Ltd. of Dashiqiao City
Shandong Cambridge International Trade Inc
Shandong Lunai Kiln Refractories Co., Ltd
Shandong Refractories Corp
Shanxi Dajin International (Group) Co., Ltd
Shanxi Xinrong International Trade Co. Ltd
Shenyang Yi Xin Sheng Lai Refractory Materials Co., Ltd
Shinagawa Rongyuan Refractories Co., Ltd
Sinosteel Corporation
SMMC Group Co., Ltd
Tangshan Success Import & Export Trading Co., Ltd
Tianjin New Century Refractories, Ltd
Tianjin New World Import & Export Trading Co., Ltd
Tianjin Weiyuan Refractory Co., Ltd
Vesuvius Advanced Ceramics (Suzhou) Co. Ltd
Wonjin Refractories Co., Ltd
Xiyuan Xingquan Forsterite Co., Ltd
Yanshi City Guangming High-Tech Refractories Products Co., Ltd
YHS Minerals Co., Ltd
Yingkou Bayuquan Refractories Co., Ltd
Yingkou Dalmond Refractories Co., Ltd
Yingkou Guangyang Refractories Co., Ltd
Yingkou Guangyang Refractories Co., Ltd. (YGR)
Yingkou Heping Samwha Minerals Co., Ltd
Yingkou Jiahe Refractories Co., Ltd
Yingkou Jinlong Refractories Group
Yingkou Kyushu Refractories Co., Ltd
Yingkou New Century Refractories Ltd
Yingkou Qinghua Group Imp. & Exp. Co., Ltd
Yingkou Qinghua Refractories Co., Ltd
Yingkou Sanhua Refractory Materials Co., Ltd
Yingkou Tianrun Refractory Co., Ltd
Yingkou Wonjin Refractory Material Co., Ltd
Yingkou Yongji Mag Refractory, Ltd
Yixing Runlong Trade Co., Ltd
Yixing Xinwei Leeshing Refractory Materials Co., Ltd
Yixing Zhenqiu Charging Ltd
Zhejiang Changxing Guangming Special Refractory Material Foundry, Co., Ltd
Zhejiang Deqing Jinlei Refractory Co., Ltd
Zhejiang Huzhou Fuzilin Refractory Metals Group Co., Ltd
Zhengzhou Annec Industrial Co., Ltd
Zhengzhou Huachen Refractory Co., Ltd
Zhengzhou Huawei Refractories Co., Ltd
Zibo Lianzhu Refractory Materials Co., Ltd

[FR Doc. 2014–24659 Filed 10–15–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Final Results of the Semiannual Antidumping Duty New Shipper Review of Jinxiang Merry Vegetable Co., Ltd. and Cangshan Qingshui Vegetable Foods Co., Ltd.; 2012–2013

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On May 20, 2014, the Department of Commerce (Department) published its preliminary results of the 2012–2013 semiannual new shipper review of the antidumping duty order on fresh garlic from the People's Republic of China (PRC).[1] This review covers two companies: Jinxiang Merry Vegetable Co., Ltd. (Merry) and Cangshan Qingshui Vegetable Foods Co., Ltd. (Qingshui). We invited interested parties to comment. Based on our analysis of the comments received, we made no changes to the margin calculations for these final results. We continue to find that each of these companies sold subject merchandise at less than normal value.

DATED: *Effective Date:* October 16, 2014.

FOR FURTHER INFORMATION CONTACT: Sean Carey and Hilary E. Sadler, Esq., AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3964 and (202) 482–4340, respectively.

Background

On May 20, 2014, the Department published the *Preliminary Results* of this new shipper review.[2] The review covers two new shippers, Merry and Qingshui. The period of review (POR) is November 1, 2012, through April 30, 2013. On June 19, 2014, the respondents requested a hearing and submitted a joint case brief. Petitioners [3] did not file a case brief. On June 24, 2014, petitioners submitted rebuttal comments. On June 30, petitioners submitted timely comments on the calculations of the preliminary results.[4] On July 23, 2014, the Department extended the deadline for these final results to October 10, 2014, in accordance with section 751(a)(2)(B) of Tariff Act of 1930, as amended (the Act) and 19 CFR 351.214(i)(2).[5] On September 4, 2014, the Department held a public hearing regarding this review.

Scope of the Order

The products subject to this antidumping duty order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. Fresh garlic that are subject to the order are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) 0703.20.0010, 0703.200020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description remains dispositive. A full description of the scope of the order is contained in the Issues and Decision Memorandum dated concurrently with, and hereby adopted by, this notice.[6]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs are addressed in the Issues and Decision Memorandum. A list of the issues that are raised in the briefs and addressed in the Issues and Decision Memorandum is in the appendix of this notice. The Issues and Decision Memorandum is a public

[1] *See Fresh Garlic From the People's Republic of China: Preliminary Results of the New Shipper Review of Jinxiang Merry Vegetable Co., Ltd. and Cangshan Qingshui Vegetable Foods Co., Ltd.,* 79 FR 28895 (May 20, 2014) and its accompanying Issues and Decision Memorandum (*Preliminary Results*).

[2] *Id.*

[3] Petitioners in this new shipper review are the Fresh Garlic Producers Association and its individual members: Christopher Ranch L.L.C., The Garlic Company, Valley Garlic, and Vessey and Company, Inc.

[4] *See* Letter from petitioners, ''21st New Shipper Review of Fresh Garlic from the People 's Republic of China—Petitioners' Comments on Surrogate Value Workbook,'' dated June 30, 2014.

[5] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations from Hilary E. Sadler, Esq., Senior International Trade Compliance Analyst, Office VII, Antidumping and Countervailing Duty Operations, ''Fresh Garlic from the People's Republic of China: Extension of Deadline for the Final Results of the Reviews of Cangshan Qingshui Vegetable Foods Co., Ltd. and Jinxiang Merry Vegetable Foods Co., Ltd.'' dated July 23, 2014.

[6] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, regarding ''Issues and Decision Memorandum for the Final Results of 2011–2012 Antidumping Duty Administrative Review of Fresh Garlic from the People's Republic of China,'' issued concurrently with this notice (Issues and Decision Memorandum).

document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *https://iaaccess.trade.gov,* and is available to all parties in the Department's Central Records Unit, located in Room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be found at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

The Department made no changes to the margin calculations since the *Preliminary Results.*

Final Results of Review

The Department determines that the following weighted-average dumping margins exist for the POR:

Exporter/producer	Weighted average margin (dollars per kilogram)
Jinxiang Merry Vegetable Co., Ltd	$3.33
Cangshan Qingshui Vegetable Foods Co., Ltd	3.06

Disclosure and Public Comment

Normally, the Department discloses to interested parties the calculations performed in connection with the final results of review within five days after the date of publication of the notice of final results in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because the Department made no changes to the margin calculations for either respondent, in accordance with section 776 of the Act, there are no calculations to disclose. Accordingly, the issues pertaining to the rates assigned in these final results are discussed in the *Preliminary Results* and the Issues and Decision Memorandum.

Assessment Rates

The Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b)(1). The Department intends to issue assessment instructions to CBP 15 days after the publication date of these final results of review. For Merry and Qingshui, we are calculating importer- (or customer-) specific assessment rates for the merchandise subject to this review. For any individually-examined respondent whose weighted-average dumping margin is above *de minimis,* the Department will calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales and the total entered value of sales.[7] For Merry and Qingshui, we will instruct CBP to assess an antidumping duty assessment rate of $3.33 per kilogram and $3.06 per kilogram, respectively, on all entries of subject merchandise that entered the United States during the POR.

The Department recently announced a refinement to its assessment practice in NME cases.[8] Pursuant to this refinement in practice, for entries that were not reported in the U.S. sales databases submitted by companies individually examined during this review, but that entered under the case number of that exporter (*i.e.,* at the individually-examined exporter's cash deposit rate), the Department will instruct CBP to liquidate such entries at the PRC-wide rate. In addition, if the Department determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the PRC-wide rate of $4.71 per kilogram.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for shipments of subject merchandise from Merry and Qingshui entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For subject merchandise produced and exported by the companies listed above, the cash deposit rate will be the rate established in these final results of review for each company as listed above; and (2) for subject merchandise exported by one of the companies listed above that was not produced by that company, the cash deposit rate will be that for the PRC-wide entity. These deposit requirements shall remain in effect until further notice.

Notification to Importers

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

Return or Destruction of Proprietary Information

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of business proprietary information disclosed under the APO in accordance with 19 CFR 351.305(a)(3). We request timely written notification of return or destruction of APO materials or conversion to judicial protective order. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is issued and published this notice in accordance with sections 751(a)(2)(B) and 777(i) of the Act, and 19 CFR 351.214.

Dated: October 8, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

Summary
Background
Scope of the Order
Discussion of the Issues
Comment 1: Selection of the Surrogate Country
A. Three-Prong Analysis to the Surrogate Country Selection
1. Economic Comparability

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

[8] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

2. Significant Producer of Comparable Merchandise
3. Quality and Public Availability of Data
B. General Challenge to the Surrogate Country Selection in the Preliminary Results
Comment 2: Adjusting Surrogate Values to Reflect Direct Packing Materials
Recommendation

[FR Doc. 2014–24653 Filed 10–15–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: The Judges Panel of the Malcolm Baldrige National Quality Award (Judges Panel) will meet in closed session Monday through Friday, November 3–7, 2014, from 8:30 a.m. until 5:30 p.m. Eastern Time each day. The purpose of this meeting is to review recommendations from site visits, and recommend 2014 Malcolm Baldrige National Quality Award recipients. The meeting is closed to the public in order to protect the proprietary data to be examined and discussed at the meeting.

DATES: The meeting will be held Monday through Friday, November 3–7, 2014, from 8:30 a.m. until 5:30 p.m. Eastern Time each day. The entire meeting will be closed to the public.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Robert Fangmeyer, Director, Baldrige Performance Excellence Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–4781, email *robert.fangmeyer@nist.gov*.

SUPPLEMENTARY INFORMATION:

Authority: 15 U.S.C. 3711a(d)(1) and the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. app., notice is hereby given that the Judges Panel will meet on Monday through Friday, November 3–7, 2014, from 8:30 a.m. until 5:30 p.m. Eastern Time each day. The Judges Panel is composed of twelve members, appointed by the Secretary of Commerce, chosen for their familiarity with quality improvement operations and competitiveness issues of manufacturing companies, service companies, small businesses, health care providers, and educational institutions. Members are also chosen who have broad experience in for-profit and nonprofit areas. The purpose of this meeting is to review recommendations from site visits, and recommend 2014 Malcolm Baldrige National Quality Award recipients. The meeting is closed to the public in order to protect the proprietary data to be examined and discussed at the meeting.

The Chief Financial Officer and Assistant Secretary for Administration, with the concurrence of the Assistant General Counsel for Administration, formally determined on March 25, 2014, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government in Sunshine Act, Public Law 94–409, that the meeting of the Judges Panel may be closed to the public in accordance with 5 U.S.C. 552b(c)(4) because the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person which is privileged or confidential; and 5 U.S.C. 552b(c)(9)(b [*sic*]) because for a government agency the meeting is likely to disclose information that could significantly frustrate implementation of a proposed agency action. The meeting, which involves examination of current Award applicant data from U.S. organizations and a discussion of these data as compared to the Award criteria in order to recommend Award recipients, will be closed to the public.

Dated: October 8, 2014.

Philip Singerman,

Associate Director for Innovation and Industry Services.

[FR Doc. 2014–24647 Filed 10–15–14; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD269

Taking of Threatened or Endangered Marine Mammals Incidental to Commercial Fishing Operations; Issuance of Permit

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

ACTION: Notice.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), NMFS hereby issues a permit for a period of three years to authorize the incidental, but not intentional, taking of individuals of three stocks of marine mammals listed as threatened or endangered under the Endangered Species Act (ESA) by vessels involved in the Hawaii deep-set and shallow-set longline fisheries: the endangered humpback whale, (*Megaptera novaeangliae),* Central North Pacific stock; sperm whale, (*Physeter macrocephalus),* Hawaii stock; and false killer whale, (*Pseudorca crassidens*), Main Hawaiian Islands insular false killer whale (MHI IFKW) stock.

DATES: This permit is effective for a three-year period beginning October 16, 2014.

ADDRESSES: Reference material for this permit, including the negligible impact determination (NID) and a list of references cited in this notice, is available on the Internet at the following address: *http://www.fpir.noaa.gov/DIR/dir_public_documents.html.* Recovery plans for these species are available on the Internet at the following address: *http://www.nmfs.noaa.gov/pr/recovery/plans.htm#mammals.* Information on the False Killer Whale Take Reduction Plan is available on the Internet at the following address: *http://www.fpir.noaa.gov/PRD/prd_FKW_take_reduction_team.html.* Copies of the reference materials may also be obtained from the NMFS Pacific Islands Regional Office, Protected Resources Division, 1845 Wasp Blvd., Building 176, Honolulu, HI 96818.

FOR FURTHER INFORMATION CONTACT: Dawn Golden, NMFS Pacific Islands Region, (808) 725–5144, or Shannon Bettridge, NMFS Office of Protected Resources, (301) 427–8402.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(E) of the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361 *et seq.,* states that NOAA's National Marine Fisheries Service (NMFS), as delegated by the Secretary of Commerce, shall for a period of up to three years allow the incidental taking of marine mammal species listed under the Endangered Species Act (ESA), 16 U.S.C. 1531 *et seq.,* by persons using vessels of the United States and those vessels which have valid fishing permits issued by the Secretary in accordance with section 204(b) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1824(b), while engaging in commercial fishing operations, if NMFS makes certain determinations. NMFS must determine, after notice and opportunity for public

comment, that: (1) Incidental mortality and serious injury (M&SI) will have a negligible impact on the affected species or stock; (2) a recovery plan has been developed or is being developed for such species or stock under the ESA; and (3) where required under section 118 of the MMPA, a monitoring program has been established, vessels engaged in such fisheries are registered in accordance with section 118 of the MMPA, and a take reduction plan has been developed or is being developed for such species or stock. NMFS has made a determination that incidental taking from commercial fishing will have a negligible impact on the endangered humpback whale, (*Megaptera novaeangliae),* Central North Pacific (CNP) stock; sperm whale, (*Physeter macrocephalus),* Hawaii stock; and false killer whale, (*Pseudorca crassidens*), MHI IFKW stock. Recovery plans have been completed for humpback and sperm whales, and a recovery plan has been initiated for MHI IFKW.

On June 12, 2014 (79 FR 33726), NMFS proposed to issue a permit under MMPA section 101(a)(5)(E) to vessels registered in the Hawaii deep-set longline fishery to incidentally take individuals from three stocks of threatened or endangered marine mammals: The CNP stock of humpback whales, the Hawaii stock of sperm whales, and the MHI IFKW; and to vessels registered in the Hawaii shallow-set longline fishery to incidentally take individuals from the CNP stock of humpback whales. The data for considering these authorizations were reviewed coincident with the preparation of the 2014 MMPA List of Fisheries (LOF or List) (79 FR 14418, March 14, 2014), the 2013 marine mammal stock assessment reports (SARs) (Carretta et al. 2014; Allen and Angliss 2014), recovery plans for humpback and sperm whales, the False Killer Whale Take Reduction Plan (FKWTRP), and other relevant sources. In addition, we have also considered more recent data for false killer whales that have not yet been incorporated into the marine mammal SARs, and a predictive model that seeks to anticipate future fisheries interactions based on recent changes to the fishery (the modified longline exclusion zone, and gear modifications) that were implemented through the FKWTRP.

The vessels operating in the Hawaii deep-set and the shallow-set longline fisheries are in the ranges of affected stocks and are currently considered for authorization. A detailed description of these fisheries can be found below. The Hawaii deep-set longline fishery is the only Category I fishery under the MMPA operating around Hawaii. The Hawaii shallow-set longline fishery is a Category II fishery; all other Category II fisheries that may interact with the marine mammal stocks observed off the coast of Hawaii are state-managed and are not considered for authorization under this permit. Participants in Category III fisheries are not required to obtain incidental take permits under MMPA section 101(a)(5)(E) but are required to report injuries or mortalities of marine mammals incidental to their operations.

Basis for Determining Negligible Impact

As described above, prior to issuing a permit to take ESA-listed marine mammals incidental to commercial fishing, NMFS must determine if M&SI incidental to commercial fisheries will have a negligible impact on the affected species or stocks of marine mammals. NMFS satisfied this requirement through completion of a negligible impact determination (see **ADDRESSES**). NMFS clarifies that incidental M&SI from commercial fisheries includes M&SI from entanglement or hooking in fishing gear. See the NID for more detailed information.

Although the MMPA does not define ''negligible impact,'' NMFS has issued regulations providing a qualitative definition of ''negligible impact'' for small take authorizations as defined in 50 CFR 216.103 and, through scientific analysis, peer review, and public notice, developed a quantitative approach applied here, as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival'' (50 CFR 216.103). The development of the approach and process was outlined in detail in the final NID and was included in previous notices for other permits to take threatened or endangered marine mammals incidental to commercial fishing (72 FR 60814, October 26, 2010 for the CNP stock of humpback whales).

Criteria for Determining Negligible Impact

In 1999, NMFS adopted criteria for making negligible impact determinations for MMPA 101(a)(5)(E) permits (64 FR 28800; May 27, 1999). The 1999 negligible impact criteria are non-binding guidance and do not limit NMFS' discretion to take into account additional relevant information in determining a fishery's expected impacts on a particular marine mammal stock. In applying the 1999 criteria to determine whether M&SI incidental to commercial fisheries will have a negligible impact on a listed marine mammal stock, Criterion 1 (total human-related M&SI is less than 10% of the potential biological removal level (PBR)) is the starting point for analysis. If this criterion is satisfied (*i.e.,* total human-related M&SI is less than 10% of PBR), the analysis would be concluded, and the impact would be determined to be negligible. If Criterion 1 is not satisfied, NMFS may use one of the other criteria as appropriate. Criterion 2 is satisfied if the total human-related M&SI is greater than PBR, but fisheries-related M&SI is less than 10% of PBR. If Criterion 2 is satisfied, vessels operating in individual fisheries may be permitted if management measures are being taken to address non-fisheries-related M&SI. Criterion 3 is satisfied if total fisheries-related M&SI is greater than 10% of PBR and less than 100% PBR, and the population is stable or increasing. Fisheries may then be permitted subject to individual review and certainty of data. Criterion 4 stipulates that if the population abundance of a stock is declining, the threshold level of 10% of PBR will continue to be used. Under Criterion 5, if total fisheries-related M&SI is greater than PBR, there is no negligible impact finding.

The time frame for this analysis primarily includes the most recent 5-year period for which available data have been processed and incorporated into a SAR (January 1, 2007 through December 31, 2011). The NMFS Guidelines for Assessing Marine Mammal Stocks (GAMMS) and the subsequent GAMMS II provide guidance that, when available, the most recent 5-year time frame of commercial fishery incidental serious injury and mortality data is an appropriate measure of effects of fishing operations on marine mammals (Wade and Angliss 1997). A 5-year time frame generally provides enough data to adequately capture year-to-year variations in take levels, while reflecting current environmental and fishing conditions as they may change over time.

Negligible Impact Determinations

The final NID provides a complete analysis of the criteria for determining whether commercial fisheries off Hawaii are having a negligible impact on the stocks of CNP humpback whales, Hawaii sperm whales, and MHI IFKW. A summary of the analysis and subsequent negligible impact determinations follows.

Criterion 1 Analysis

Criterion 1 would be satisfied if the total human-related M&SI is less than 10% of PBR. The 5-year (2007–2011) annual average M&SI to the Hawaii stock of sperm whales from all human-caused sources is 0.7 animals, which is 6.89% of this stock's PBR of 10.2 (i.e., below the 10% of PBR threshold). Since the beginning of the NMFS Hawaii longline observer program in 1995, no deaths of sperm whales have been attributed to the Hawaii deep-set or shallow-set longline fishery. However, in 2011 a sperm whale was reported seriously injured (prorated as 0.75 serious injury) after interacting with the Hawaii deep-set longline fishery. Two other interactions with sperm whales in 1999 and 2002 were considered non-serious injuries. Based on this low likelihood of interactions, considered together with the lack of impacts of other commercial fisheries and other human-caused impacts, Criterion 1 has been met for the Hawaii stock of sperm whales. Therefore, NMFS determines that M&SI incidental to commercial fisheries will have a negligible impact on the Hawaii stock of sperm whales.

The 5-year (2007–2011) annual average M&SI of the CNP stock of humpback whales from all human-caused sources is 16.2 animals, which is 26.74% of this stock's PBR of 61.2 (i.e., above the 10% of PBR threshold). The total annual human-related M&SI for this stock of humpback whales is not less than 10% of PBR for the time frame considered.

The 5-year (2007–2011) annual average M&SI of the MHI IFKW stock from all human-caused sources is estimated to be 0.1 animals, which is 33.3% of this stock's PBR of 0.3 (i.e., above the 10% of PBR threshold). The total annual human-related M&SI for this stock of false killer whales is not less than 10% of PBR for the time frame considered.

Therefore, Criterion 1 was not satisfied for the CNP humpback and MHI IFKW because the total annual human-related M&SI for each of these two stocks is not less than 10% of PBR for each stock for the time frame considered. As a result, other criteria must be examined for the CNP humpback and MHI IFKW stocks.

Criterion 2 Analysis

Criterion 2 would be satisfied if the total human-related M&SI is greater than PBR, but fisheries-related M&SI is less than 10% of PBR. This criterion was not satisfied for either the CNP humpback or the MHI IFKW because while total human-related M&SI (detailed above) is believed to be less than 100% PBR for each stock, total fisheries-related M&SI (detailed below) is greater than 10% PBR for each stock for the time frame analyzed.

Criterion 3 Analysis

Unlike Criteria 1 and 2, which examine total human-caused M&SI relative to PBR, Criterion 3 compares total fisheries-related M&SI to PBR. Criterion 3 would be satisfied if the total commercial fisheries-related M&SI (including state and federal fisheries) is greater than 10% of PBR and less than 100% PBR for each stock for the time frame considered, and the populations of these stocks are considered to be stable or increasing. Additionally, Criterion 3 acknowledges that there are reasons for individually reviewing fisheries if M&SI are above PBR, including considering information regarding any increases in permitted M&SI and any uncertainties with regard to population size, reproductive rates, and fisheries-related mortalities. If Criterion 3 is met, permits may be issued subject to review and certainty of data.

The total fishery-related M&SI from all commercial fisheries for the CNP humpback stock is estimated at 9.35 animals, or 15.3% of the PBR (of 61.2) for the 5-year average from 2007–2011. This is greater than 10% of PBR (6.1 animals) and less than 100% PBR (61.2 animals). The CNP humpback whale stock has a minimum population size of 7,469 and is estimated to be growing at a rate of up to 7% per year. A total of 0.75 humpback whales (prorated, based on NMFS' 2012 Policy on Distinguishing Serious from Non-serious Injuries) were observed, estimated, or assumed to have been either killed or seriously injured in the two fisheries considered in this authorization during the 2007–2011 time period. Accordingly, Criterion 3 is satisfied for the time frame analyzed (2007–2011). Therefore, we determine that M&SI of the CNP humpback whale stock incidental to commercial fishing is having a negligible impact on the stock because of individual review of data regarding the stock, including increased growth rate of the stock, limited increases in M&SI due to the relevant fisheries, and the level of fisheries-related M&SI is below the calculated PBR.

With regard to false killer whales, NMFS recognizes three stocks of false killer whales (Hawaii pelagic, MHI insular, and Northwestern Hawaiian Islands stocks) to be at risk of interacting with Hawaii longline gear. Of the three stocks, only the MHI IFKW is ESA-listed. For the Hawaii longline fisheries considered in this analysis, no MHI IFKW deaths have been observed since the NMFS Hawaii longline observer program began in 1995. From 2004–2012, observers recorded three false killer whale interactions in the deep-set longline fishery and no false killer whale interactions in the shallow-set longline fishery in the MHI IFKW range. In the deep-set longline fishery, observers also recorded three interactions with unidentified blackfish, which are unidentified cetaceans known to be either a false killer whale or a short-finned pilot whale. Genetic sampling and photo identification are currently the only ways to distinguish MHI IFKWs from the other stocks, and these data were not collected from the animals involved in these interactions. In certain locations, the ranges of the MHI IFKW and pelagic false killer whales overlap. When the stock identity of a false killer whale hooked or entangled by the longline fisheries within the MHI IFKW/pelagic stock overlap zone cannot be determined, NMFS prorates the interaction to either the pelagic or MHI insular stock using a model that assumes that densities of MHI insular stock animals decrease and pelagic stock densities increase with increasing distance from shore (McCracken 2010).

Based on an analysis conducted for this NID, including the expansion from observed interactions to an estimate of fleet-wide interactions based on the fishery's total effort and the proration of blackfish and false killer whales of unknown stock identity (MHI IFKW versus pelagic), we estimate that a total of 8.73 interactions occurred with MHI IFKWs in the deep-set longline fishery from 2004–2013, including both serious and non-serious injuries. This estimate potentially overestimates the fishery's actual impact on MHI IFKW, since the proration model does not account for the Northwestern Hawaiian Islands false killer whale stock that was identified in 2011. For example, in 2012 two observed false killer whale interactions occurred in the area where all three Hawaiian false killer whales stocks overlap, but at this time they can only be attributed (prorated) to the pelagic or MHI insular stocks. In addition, earlier interaction estimates are based on a much smaller abundance estimate for the pelagic false killer whale stock which influences the proration model and values.

Criterion 3 states that, where total fisheries-related M&SI are greater than 10% PBR and less than 100% PBR, and the population is stable or increasing, a permit may be issued subject to

individual review and certainty of data. As described below, NMFS considered multiple data sets and other information in conducting this analysis and applying Criterion 3. First, the current PBR for the MHI IFKW is 0.3, and M&SI is estimated to be 0.1 based upon data from 2007–2011. These data underwent NMFS and Pacific Scientific Review Group (PSRG) review, were made available for public review and comment, and are available in the published 2013 final SAR (Caretta *et al.* 2014). In April, 2014 NMFS provided more recent data estimating abundance, calculating a PBR, and estimating M&SI for MHI IFKW in the deep-set fishery (the 2008–2012 timeframe) to the PSRG for review; they are described in the final NID (see **ADDRESSES**). Although the 2008–2012 analyses consider more recent data with regard to MHI IFKW and previous interactions with the fishery (compared to the 2007–2011 data presented in the 2013 SAR), they do not take into account recent changes in the fishery required by the FKWTRP (or Plan) regulations, nor are they intended to anticipate future interactions in a changed fishery. In 2010, NMFS convened the False Killer Whale Take Reduction Team (FKWTRT or Team), composed of commercial fishery representatives, conservation groups, scientists, the Marine Mammal Commission, state and federal officials, and other interested stakeholders, to prepare and propose a consensus take reduction plan that, when implemented by regulations, is expected to reduce longline fishery impacts on pelagic and MHI IFKWs to levels below PBR within six months and to insignificant levels approaching a zero M&SI rate (10% of PBR) over five years.

NMFS published the FKWTRP on November 29, 2012 (77 FR 71260) to reduce the M&SI of Hawaii pelagic and MHI IFKWs in Hawaii's longline fisheries. Measures within the Plan include gear modifications in the deep-set longline fishery to reduce the seriousness and frequency of injuries, reporting and captain training requirements, and area closures, including the closure of the IFKW stock's core range to longline fishing year-round. Specifically, the FKWTRP includes regulatory and non-regulatory measures, including: The required use of weak circle hooks, a minimum diameter for monofilament leaders and branch lines, extension of the Main Hawaiian Islands Longline Fishing Prohibited Area, annual training in mitigation techniques, establishment of a Southern Exclusion Zone and triggers for closure, and monitoring and reporting requirements. Most of the FKWTRP's regulations went into effect on December 31, 2012, but gear requirements for the deep-set longline fishery went into effect on February 27, 2013. The measures have been in place for less than two years, and their effectiveness is still being evaluated.

The Team is expected to meet at least annually to review the effectiveness of the Plan and may recommend to NMFS additional measures or changes to the Plan when warranted. NMFS anticipates that continued implementation of the FKWTRP regulations will ensure that reduced rates of fisheries-related M&SI of MHI IFKWs are maintained in the deep-set longline fishery. Monitoring and reporting requirements under the FKWTRP provide NMFS with the information necessary to prevent and respond to any unexpected impacts. Moreover, NMFS retains its authority under MMPA section 118(g) to issue emergency regulations and approve amendments to the FKWTRP, in consultation with the Team, where M&SI is having an immediate and significant adverse impact. If it is determined that the anticipated reductions in M&SI are not being met, data indicate that the population trajectory is declining, or the FKWTRP is otherwise not meeting its objectives, NMFS, in consultation with the False Killer Whale Take Reduction Team, will utilize its authority to amend the FKWTRP regulations as necessary to ensure that the requirements of the MMPA are met. Additionally, under such circumstance, the NID would be re-evaluated pursuant to section 101(a)(5)(E)(iii), (iv), and (v) of the MMPA (16 U.S.C. 1371(a)(5)(E)(iii), (iv), and (v)).

While estimates of M&SI of MHI IFKW from longline fishing in the 2013 SARs (0.1 for 2007–2011) are currently below PBR (0.3), NMFS recognizes that more recent data estimating M&SI for MHI IFKW in this fishery (the 2008–2012 timeframe), although not yet publically reviewed, preliminarily indicate that M&SI of MHI IFKW in this fishery may be exceeding PBR. However, as explained above, these data do not contemplate the significant measures taken within the Plan, which are anticipated to reduce the deep-set longline fishery's impacts, one of the major, known historical threats to this population, to reduce M&SI to levels below PBR within six months and to insignificant levels approaching a zero M&SI rate (*i.e.,* 10% of PBR) over five years.

With these measures in mind, NMFS conducted a more recent analysis of the likely effects of the Plan in reducing M&SI of MHI IFKW (McCracken 2014). Aware that interactions with the deep-set longline fishery within the range of the MHI IFKW stock were observed in 2012, NMFS considered the 2008–2012 data in the NID analysis and included these data in its analysis used to predict future levels of take in this fishery. This analysis indicates that future annual M&SI for the MHI IFKWs will remain at or below the stock's PBR level, based on expected levels of longline fishing effort and upon implementation of the measures within the Plan (McCracken 2014).

Regarding the population trend, although MHI IFKW abundance is believed to have declined markedly during the 1990s, at this time, the current population trajectory is unknown (Oleson et al. 2010). Nevertheless, NMFS acknowledges the need for more reliable information regarding stock trajectory, but notes that this uncertainty, along with the presence of substantial observer coverage in this fishery, was considered in the Team's deliberations and in the adoption of the specific measures for minimizing the impact of the fishery on IFKWs. As such, NMFS believes that the measures in place, coupled with the FKWTRT process, provide a meaningful, adaptive management tool with which to quickly monitor, identify, and respond to any unanticipated longline fishery impacts to the MHI IFKW population.

NMFS acknowledges that interactions with non-longline fisheries may be occurring, and continues to work cooperatively with the State of Hawaii and other partners to assess marine mammal interactions in state-managed fisheries. NMFS will continue to consult with the Hawaii Department of Land and Natural Resources to improve data collection in these fisheries.

To summarize, Criterion 3 is satisfied if total fisheries related M&SI is greater than 10% of PBR and less than 100% PBR, and the population is stable or increasing. Fisheries may then be permitted subject to individual review and certainty of data. The current PBR for the MHI IFKW is 0.3, while estimates of M&SI from longline fishing are a fraction below PBR (i.e., between 10% and 100% of PBR). While estimates of M&SI of MHI IFKW from longline fishing in the 2013 SAR (2007–2011) are currently below PBR, NMFS recognizes that more recent data estimating M&SI for MHI IFKW in this fishery (the 2008–2012 timeframe), although not yet publically reviewed, preliminarily indicate that M&SI of MHI IFKW in this fishery may be exceeding PBR. NMFS considered the 2008–2012 data in the

NID and included these data in its analysis used to predict future levels of take in this fishery. This analysis indicates that future annual M&SI for the MHI IFKW will remain at or below the stock's PBR level, based on expected levels of longline fishing effort and upon implementation of the measures within the Plan. Although NMFS has historic information of a larger IFKW population, it does not currently have sufficient information with which to reliably determine whether the current population is stable or increasing. NMFS acknowledges the need for more reliable information regarding stock trajectory, but notes that this uncertainty, along with the presence of substantial observer coverage in this fishery, was considered in the FKWTRT's deliberations and in the adoption of the specific measures for minimizing the impact of the fishery on IFKWs. NMFS retains its authority under MMPA section 118(g) to issue emergency regulations and approve amendments to the FKWTRP, in consultation with the FKWTRT, where M&SI is having an immediate and significant adverse impact. Additionally, under such circumstance, the NID would be re-evaluated pursuant to section 101(a)(5)(E)(iii), (iv), and (v) of the MMPA (16 U.S.C. 1371(a)(5)(E)(iii), (iv), and (v)). Accordingly, NMFS is satisfied that under the FKWTRT process, the longline fishery will have a negligible impact on the MHI IFKW.

In conclusion, based on the negligible impact criteria outlined in 1999 (64 FR 28800), the 2013 Alaska and Pacific SARs (Allen and Angliss 2014; Carretta *et al.* 2014), the FKWTRP, the predictive model, and the best scientific information and data available, NMFS has determined that for a period of up to three years, M&SI incidental to the Hawaii deep-set longline fishery and Hawaii shallow-set longline fishery will have a negligible impact on the CNP stock of humpback whales, the Hawaii stock of sperm whales, and the MHI insular stock of false killer whales. Therefore, vessels operating in these identified commercial fisheries within the range of the CNP humpback, Hawaii sperm whale, and MHI IFKW stocks may be permitted subject to their individual review and the certainty of relevant data, and provided that the other provisions of section 101(a)(5)(E) are met.

Description of Fisheries

The Hawaii deep-set and shallow-set longline fisheries are the Federally-authorized fisheries classified as Category I and II in the 2014 LOF (NMFS 2014) that are known to seriously injure or kill ESA-listed marine mammals incidental to commercial fishing operations. Detailed descriptions of those fisheries can be found in the Final Biological Opinion on the continued operation of the Shallow-set Longline Swordfish fishery, dated January 30, 2012 (NMFS 2012a); the 2013SARs (Carretta *et al.* 2014, Allen and Angliss 2014); and the final NID.

In accordance with MMPA section 118(c), only those vessels in the Hawaii deep-set and shallow-set longline fisheries that have registered for a Marine Mammal Authorization Permit are authorized to take marine mammals incidental to their fishing operations. Vessels holding this permit must comply with the FKWTRP and implementing regulations. The longline fisheries are limited access fisheries, with 164 transferable permits of which approximately 130 are currently active. Vessels active in these fisheries are limited to 101 ft in length. Hawaii-based longline vessels vary their fishing grounds depending on their target species. Most effort is to the north and south of the Hawaiian Islands between the equator and 40° N and longitudes 140° and 180° W; however, the majority of deep-set fishing occurs south of 20° N and the majority of shallow-set fishing occurs north of 20° N. The number of active vessels in the combined Hawaii-based deep-set and shallow-set longline fishery increased dramatically in the late 1980s and peaked at 141 vessels in 1991. The number of vessels in the combined longline fisheries has since ranged from 101 to 130. In 2011, 129 Hawaii-based longline vessels were active in the deep-set longline fishery. The deep-set longline fishery operates year-round, although vessel activity increases during the fall and is greatest during the winter and spring months. The annual number of trips for the Hawaii-based longline fisheries has remained relatively stable, but there was a shift from mixed-target and swordfish-target trips to tuna-target trips from the early 1990s up to 2002. In the years 2000–2003, this shift reflected the regulatory closure of the shallow-set and mixed-target fisheries. In 2004, the shallow-set longline fishery was reopened but participation was limited to only six trips. In 2011, there were 1,388 combined longline trips (1,306 deep-set and 182 shallow-set), which resulted in a combined total of 18,623 sets (17,155 deep-set and 1,468 shallow-set). Effort in the combined longline fishery, measured by the number of hooks set, has ranged from approximately 39 to 42 million hooks per year from 2007–2011.

Conclusions for Permit

Based on the above assessment and as described in the accompanying NID, NMFS concludes that the incidental M&SI from vessels engaged in the Hawaii deep-set and shallow-set fisheries will have a negligible impact on the CNP stock of humpback whales, the Hawaii stock of sperm whales, and the MHI insular stock of false killer whales. The National Environmental Policy Act (NEPA) requires Federal agencies to evaluate the impacts of alternatives for their actions on the human environment. The impacts on the human environment of continuing the Hawaii deep-set and shallow-set longline fisheries, including the taking of threatened and endangered species of marine mammals, were analyzed in the Regulatory Amendment to the Western Pacific Pelagic Fishery Ecosystem Plan: Revised Swordfish Trip Limits in the Hawaii Deep-set Longline Fishery to Reduce Regulatory Discards with an Environmental Assessment (NMFS and WPFMC 2012); the False Killer Whale Take Reduction Plan Environmental Assessment (NMFS 2012b); Amendment 18 to the Pelagics FMP and Final SEIS (NMFS and WPFMC 2009); Amendment 7 to the Pelagics FEP and Environmental Assessment (NMFS 2014a), and in the Final Biological Opinion prepared for the Hawaii shallow-set longline fishery (NMFS 2012a) and the Final Biological Opinion for the Hawaii deep-set longline fishery (NMFS 2014b), pursuant to the ESA. NMFS has prepared a record of environmental consideration that concludes that because this proposed permit would not modify any fishery operation and the effects of the fishery operations have been evaluated fully in accordance with NEPA, no additional NEPA analysis is required for this permit. Issuing the proposed permit would have no additional impact to the human environment or effects on threatened or endangered species beyond those analyzed in these documents.

Recovery Plans

Recovery Plans for humpback whales and sperm whales have been completed (see *http://www.nmfs.noaa.gov/pr/recovery/plans.htm#mammals*). A Recovery Plan has been initiated for the MHI IFKW (78 FR 60850, October 2, 2013). Accordingly, the requirement to have recovery plans in place or being developed is satisfied.

Vessel Registration

MMPA section 118(c) requires that vessels participating in Category I and II fisheries register to obtain an authorization to take marine mammals incidental to fishing activities. Further, section 118(c)(5)(A) provides that registration of vessels in fisheries should, after appropriate consultations, be integrated and coordinated to the maximum extent feasible with existing fisher licenses, registrations, and related programs. Registration for the Hawaii longline fisheries has been integrated into the existing permit process, and all permitted participants in the Hawaii deep-set and shallow-set longline fisheries are issued annual Marine Mammal Authorization Program certificates with their new or renewed permits. Therefore, vessel registration for an MMPA authorization is integrated through those programs in accordance with MMPA section 118.

Monitoring Program

The Hawaii longline fisheries have been observed by NMFS observers since the mid-1990s. Levels of observer coverage vary over time but are adequate to produce reliable estimates of M&SI of ESA-listed species. From 2002–2013, observer coverage was greater than 20% in the deep-set longline fishery and has been 100% in the shallow-set longline fishery since 2004. Accordingly, as required by MMPA section 118, a monitoring program is in place for both fisheries.

Take Reduction Plans

Subject to available funding, MMPA section 118 requires the development and implementation of a Take Reduction Plan (TRP) when a strategic stock interacts with a Category I or II fishery. The three stocks considered for this permit are currently designated as strategic stocks under the MMPA because they are listed as endangered under the ESA (MMPA section 3(19)(C)).

In 2010, NMFS established the FKWTRT to develop a TRP to address the incidental M&SI of Hawaii pelagic and MHI IFKWs in the Hawaii-based deep-set and shallow-set longline fisheries. The FKWTRP was implemented, through regulations, in November 2012 (77 FR 71260). The short- and long-term goals of a TRP are to reduce M&SI of marine mammals incidental to commercial fishing to levels below PBR within six months and to insignificant levels approaching a zero M&SI rate (i.e., 10% of PBR) within five years. MMPA section 118(b)(2) states that fisheries maintaining insignificant levels of M&SI are not required to further reduce their M&SI rates.

The CNP stock of humpback whales and the Hawaii stock of sperm whales are also strategic stocks that interact with the Hawaii longline fisheries. However, the obligations to develop and implement a TRP are subject to the availability of funding. MMPA section 118(f)(3) (16 U.S.C. 1387(f)(3)) contains specific priorities for developing TRPs when funding is insufficient to develop and implement TRPs for all strategic stocks and Category I and II fisheries. NMFS has insufficient funding available to simultaneously develop and implement TRPs for all stocks that interact with Category I or Category II fisheries. NMFS used the most recent SARs and LOF as the basis to determine its priorities for establishing TRTs and developing TRPs. Through this process, NMFS evaluated the Hawaii stock of sperm whales and the CNP stock of humpback whales and the Hawaii longline fisheries and identified these as lower priorities compared to other marine mammal stocks and fisheries for establishing TRTs, based on M&SI levels incidental to those fisheries and population levels and trends. Accordingly, given these factors and NMFS' priorities, further developing TRPs for the Hawaii stock of sperm whale and the CNP stock of humpback whales in the Hawaii longline fishery will be deferred under section 118 as other stocks/fisheries are a higher priority for any available funding for establishing new TRTs.

As noted in the summary above, all of the requirements to issue a permit to vessels that operate in the Federally-authorized Hawaii deep-set and shallow-set longline fisheries have been satisfied. Accordingly, NMFS hereby issues a permit to participants in the Category I Hawaii deep-set longline fishery for the taking of CNP humpback whales, Hawaii sperm whales, and MHI IFKWs, and to the Category II Hawaii shallow-set longline fishery for the taking of CNP humpback whales incidental to the fisheries' operations. As noted under MMPA section 101(a)(5)(E)(ii), no permit is required for vessels in Category III fisheries. For incidental taking of marine mammals to be authorized in Category III fisheries, any injuries or mortality must be reported to NMFS. If NMFS determines at a later date that incidental mortality and serious injury from commercial fishing is having more than a negligible impact on the CNP humpback whales, Hawaii sperm whales, or MHI IFKW stocks, NMFS may use its emergency authority under MMPA to protect the stock and may modify the permit issued herein, and re-evaluate the NID.

MMPA section 101(a)(5)(E) requires NMFS to publish in the **Federal Register** a list of fisheries that have been authorized to take threatened or endangered marine mammals. A list of such fisheries was most recently published on September 4, 2013 (78 FR 54553), which authorized the taking of threatened or endangered marine mammals incidental to the California thresher shark/swordfish drift gillnet fishery and the Washington/Oregon/California sablefish pot fishery. With issuance of the current permit, NMFS is not adding any fisheries to this list (Table 1).

TABLE 1—LIST OF FISHERIES AUTHORIZED TO TAKE SPECIFIC THREATENED AND ENDANGERED MARINE MAMMALS INCIDENTAL TO COMMERCIAL FISHING OPERATIONS

Fishery	Category	Marine mammal stock
HI deep-set (tuna target) longline	I	Humpback whale, CNP stock. Sperm whale, Hawaii stock. MHI IFKW stock.
CA thresher shark/swordfish drift gillnet fishery (≥14 in mesh)	I	Fin whale, CA/OR/WA stock. Humpback whale, CA/OR/WA stock. Sperm whale, CA/OR/WA stock.
HI shallow-set (swordfish target) longline/set line	II	Humpback whale, CNP stock.
AK Bering Sea/Aleutian Islands flatfish trawl	II	Steller sea lion, Western stock.
AK Bering Sea/Aleutian Island pollock trawl	II	Fin whale, NEP stock. Steller sea lion, Western stock.
AK Bering Sea sablefish pot	II	Humpback whale, WNP stock. Humpback whale, CNP stock.

TABLE 1—LIST OF FISHERIES AUTHORIZED TO TAKE SPECIFIC THREATENED AND ENDANGERED MARINE MAMMALS INCIDENTAL TO COMMERCIAL FISHING OPERATIONS—Continued

Fishery	Category	Marine mammal stock
AK Bering Sea/Aleutian Islands Pacific cod longline fisheries	II	Steller sea lion, Western stock.
WA/OR/CA sablefish pot fishery	II	Humpback whale, CA/OR/WA stock.
AK miscellaneous finfish set gillnet	III	Steller sea lion, Western stock.
AK Gulf of Alaska sablefish longline	III	Sperm whale, NP stock. Steller sea lion, Eastern stock.
AK halibut longline/set line (State and Federal waters)	III	Steller sea lion, Western stock.
AK Bering Sea/Aleutian Islands Atka mackerel trawl	III	Steller sea lion, Western stock.
AK Bering Sea/Aleutian Islands Pacific cod trawl	III	Steller sea lion, Western stock.
AK Gulf of Alaska Pacific cod trawl	III	Steller sea lion, Western stock.
AK Gulf of Alaska pollock trawl	III	Fin whale, NEP stock. Steller sea lion, Western stock.
CA set gill net	III	None documented.
CA/OR/WA salmon troll	III	None documented.
WA/OR/CA groundfish, bottomfish longline/set line	III	None documented.
WA/OR North Pacific halibut longline/set line	III	None documented.
CA halibut bottom trawl	III	None documented.
WA/OR/CA shrimp trawl	III	None documented.

Comments and Responses

On June 12, 2014 (79 FR 33726), NMFS proposed to issue a permit under MMPA section 101(a)(5)(E) to vessels registered in the Hawaii deep-set longline fishery to incidentally take individuals from three stocks of threatened or endangered marine mammals: The CNP stock of humpback whales, the Hawaii stock of sperm whales, and the MHI insular stock of false killer whales; and to vessels registered in the Hawaii shallow-set longline fishery to incidentally take individuals from the CNP stock of humpback whales. NMFS solicited comments on the proposal to issue a permit and the negligible impact determination and received comments from the Marine Mammal Commission (Commission); non-governmental organizations (The Humane Society of the United States (HSUS) on behalf of themselves and the National Resources Defense Council (NRDC); Earthjustice on behalf of the Center for Biological Diversity and Turtle Island Restoration Network; Cascadia Research Collective (CRC); the Hawaii Longline Association (HLA)); the Western Pacific Regional Fisheries Management Council (Council); and three individuals. Most letters contained multiple comments. NMFS received comments both in support of and in opposition to the negligible impact determination and proposed permit. Two commenters supported the determinations for all three species, while several other commenters supported the determinations only for humpback whales and sperm whales. There were no comments in opposition to the negligible impact determinations or issuance of a permit for the incidental take of individual CNP humpback whales and Hawaii sperm whales. All comments in opposition to the issuance of a permit were specific to the deep-set fishery and MHI IFKW. These comments are addressed in detail below.

Comment 1: HLA asked NMFS to clarify how the agency has applied the 1999 negligible impact determination criteria, specifically to the MHI IFKW stock. HLA also recommended that NMFS explain its consideration of future M&SI impacts for MHI IFKW in light of the enactment of the FKWTRP regulations.

Response: NMFS believes that the rate of MHI IFKW M&SI is expected to decrease in response to the FKWTRP regulations, based upon a predictive model to account for the expected impact of the longline fishery on marine mammals. There is only one complete year of data since the FKWTRP regulations went into effect, and much of the data that have been collected have not yet been fully analyzed (e.g., injury determinations, bycatch estimates, etc.). When evaluating the deep-set longline fishery's expected impacts on the IFKW, we relied on historical M&SI since it represents the best available information, recognizing that the data were collected prior to the implementation of FKWTRP measures intended to mitigate the fishery's impacts on false killer whales. For example, the recently discovered NWHI stock of IFKW was not accounted for in historic M&SI estimates, which were necessarily prorated only between the MHI insular and pelagic false killer whale stocks.

In preparing its analysis in the predictive model, NMFS took several steps to account for the changes under the FKWTRP regulations. For example, the predictive model incorporated the revised boundary of the MHI Longline Fishing Prohibited Area, and described our expectation of further reductions in M&SI due to other FKWTRP measures (gear regulations requiring the use of weak circle hooks and strong branchlines to allow for the release of the animal with reduced trailing gear and risk of injury). We also noted that the model's predicted level of M&SI was based on historical interactions that occurred in an area that, under the FKWTRP regulations, is now closed to longline fishing year-round. At this time, given the defined range of the IFKW stock, NMFS cannot conclude that the closure of this seasonal boundary will eliminate all risk of future fisheries-related M&SI to the stock, but we do believe that future M&SI will be extremely rare, on the order of only one animal every four years.

With regard to NMFS consideration of the 1999 negligible impact determination criteria, NMFS utilized Criterion 3 for MHI IFKW. Criterion 3 states that, where total fisheries-related M&SI are greater than 10% PBR and less than 100% PBR, and the population is stable or increasing, fisheries may be permitted subject to individual review and certainty of data. NMFS considered multiple data sets and other information in conducting this analysis and applying Criterion 3 in the case of the MHI IFKW. The 1999 criteria were intended to guide NMFS in its evaluation of fishery impacts on marine mammal stocks, while allowing NMFS to exercise discretion, through the use of notice and comment in the permitting process and to take into account additional relevant information in

determining a fishery's expected impacts on a particular marine mammal stock. In this case, NMFS convened the FKWTRT, composed of commercial fishery representatives, conservation groups, scientists, state and federal fishery resource management officials, the Commission, and other interested stakeholders, to prepare a consensus FKWTRP that, when implemented by regulations, would be expected to reduce longline fishery impacts on pelagic and MHI IFKWs to less than PBR within six months and to insignificant levels approaching a zero mortality and serious injury rate (*i.e.,* less than ten percent) of their respective PBR levels within five years of the plan implementation. As noted above, measures addressing the MHI IFKW include gear modifications to reduce the seriousness and frequency of injuries, reporting and captain training requirements, and area closures, including the closure of the MHI IFKW stock's core range. This Team is expected to meet at least annually to review the effectiveness of the Plan, and may recommend to NMFS additional measures or changes to the Plan when warranted.

The current PBR for the MHI IFKW is 0.3; estimates of M&SI from longline fishing are a fraction below PBR. Both PBR and M&SI are extremely small numbers, indicative of both the IFKW's small population size, as well as the fishery's low impact rate. Although NMFS has historic information of a larger IFKW population, it does not currently have sufficient information with which to reliably determine whether the current population is stable or increasing. NMFS acknowledges the need for more reliable information regarding stock trajectory, but notes that this uncertainty, along with the presence of substantial observer coverage in this fishery, was considered in the FKWTRT's deliberations and in the adoption of the specific measures for minimizing the impact of the fishery on IFKWs. Nevertheless, NMFS does have reliable information regarding the longline fishery's impacts on that stock and believes that the FKWTRT process provides a useful adaptive management tool with which to quickly monitor, identify, and respond to unanticipated longline fishery impacts to the IFKW population. Moreover, NMFS retains its authority under MMPA section 118(g) to issue emergency regulations and approve amendments to the FKWTRP, in consultation with the FKWTRT, where M&SI is having an immediate and significant adverse impact. Additionally, should it be determined that M&SI of MHI IFKW are having an adverse impact on the stock, the negligible impact determination would be re-evaluated pursuant to section 101(a)(5)(E)(iii), (iv), and (v) of the MMPA (16 U.S.C. 1371(a)(5)(E)(iii), (iv), and (v)).

Comment 2: HSUS and Earthjustice commented that although the 2007–2011 data (in the 2013 SAR) indicate that MHI IFKW M&SI is less than PBR, the preliminary data for 2008–2012 (contained in the draft 2014 SAR, currently under internal agency review) indicate that M&SI exceeds PBR. Earthjustice emphasized that because M&SI of MHI IFKW were observed in 2011 and 2012, and NMFS reports bycatch estimates as 5-year running averages, PBR will continue to be exceeded in future SARs, rather than below PBR, as NMFS predicted in the draft NID and proposed permit.

Response: The NID analysis relies primarily on data from 2007–2011 because they are the most recent data that have gone through the MMPA review process and are available in a published SAR (the 2013 SAR). More recent data (the 2008–2012 timeframe) have been provided to the Pacific Scientific Review Group for review but have not yet been made available for public review and comment as a draft SAR. We recognize that interactions with the deep-set longline fishery within the range of the MHI IFKW stock were observed in 2012 and will be reported in the draft 2014 SAR, and the 5-year average M&SI rate calculated in the SAR will account for those interactions. We considered the 2008–2012 data in the NID analysis and incorporated those data into the model to predict future levels of take (McCracken 2014); this model indicates that future annual M&SI for the MHI IFKWs will remain at or below the stock's PBR level, based on expected levels of longline fishing effort and upon implementation of the measures within the Plan.

Consistent with the application of the 1999 negligible impact determination criteria, NMFS may exercise our discretion under MMPA to take into account other relevant information, including the predictive model, when deciding whether to issue the permit. The M&SI referred to by the commenter occurred in an area to the north of the MHI, which is now closed to longline fishing year-round under the expanded MHI Longline Prohibited Area, as unanimously recommended by the FKWTRT and implemented by NMFS through the FKWTRP regulations. Moreover, as more fully described in the NID, M&SI for MHI IFKWs is expected to be further reduced in response to a suite of mitigation measures contained in the FKWTRP, including gear requirements, the Southern Exclusion Zone trigger/closure, and captain training and reporting requirements, which went into effect in early 2013. Finally, preliminary observer data indicate there were no false killer whale interactions observed within range of the MHI IFKW stock in 2013 or in 2014 to date, which is consistent with the results of the predictive model. Accordingly, NMFS believes that the predictive model, which better accounts for these changes to the fishery, provides the more reliable estimate of fisheries-related M&SI. NMFS expects the implementation of consensus measures that are specifically intended to address impacts on MHI IFKW, with the commitment to re-evaluate the NID, if warranted, is sufficient to support issuance of the NID.

Comment 3: HLA asserted that there has never been a documented interaction between the Hawaii longline fisheries and MHI IFKWs, despite high observer coverage and substantial genetic sampling of incidentally taken false killer whales. In addition, HLA cites NMFS' statement that there are ''no documented serious injuries or mortalities of [MHI IFKW stock] animals incidental to Hawaii's longline fisheries'' (75 FR 2853, January 19, 2010).

Response: The draft NID and its conclusions regarding M&SI of MHI IFKW are based on the final 2013 and preliminary draft 2014 Pacific SARs (which document past M&SI) and predictive modeling (which evaluates expected future M&SI by the fishery). The SARs, the predictive model, and the references cited therein provide information on the data and methods used in assessing and estimating M&SI of MHI IFKW, including the associated assumptions and uncertainties.

In evaluating potential impacts to MHI IFKW, NMFS accounted for uncertainty in stock identification when interactions occur, as well as data limitations based on observer coverage rates (generally 20% in the deep-set longline fishery). NMFS recognizes that although the FKWTRP regulations are expected to reduce the potential for impacts to the MHI IFKW to less than PBR within six months and to insignificant levels approaching a zero mortality and serious injury rate (*i.e.,* less than ten percent) of their respective PBR levels within five years of the plan implementation, we cannot eliminate all risk of M&SI to the stock. MHI IFKW and pelagic false killer whales cohabit a considerable area referred to as the

''overlap zone''. As noted in the SARs and the NID, interactions between the deep-set longline fishery and false killer whales and blackfish (unidentified cetaceans known to be either false killer whales or short-finned pilot whales) have been observed within the MHI insular/pelagic stock overlap zone. Genetic sampling and photo identification are currently the only ways to distinguish MHI insular from pelagic false killer whales; and, because of challenging sampling conditions, these data were not collected from the animals involved in the interactions observed within the MHI insular/pelagic stock overlap zone.

When takes cannot be affirmatively identified to a particular stock, they are subject to proration using peer-reviewed criteria that account for each stock's population and relative density. Takes of unidentified blackfish are prorated to each species, and false killer whales of unknown stock in the MHI insular/pelagic stock overlap zone are prorated to one stock or the other, based on various models (McCracken 2010). The assignment of take within the MHI insular/pelagic overlap zone is supported by GAMMS II. NMFS believes that proration is currently the best method for determining impacts among different stocks, given the challenges associated with making positive identifications of stock, and in accounting for impacts to all stocks.

Finally, the reference to the NMFS statement, ''no documented serious injuries or mortalities of [MHI IFKW stock] animals incidental to Hawaii's longline fisheries,'' omits an entire sentence from the **Federal Register** notice, which states that the provided information comes from the 2008 and 2009 SARs. These SARs became final prior to reevaluation of the insular stock boundary and the establishment of the MHI insular/pelagic overlap zone and do not always necessarily represent the best available scientific and commercial information.

Comment 4: HLA and the Council commented that the current MHI IFKW stock boundary (uniform 140 km from the MHI) is overinflated, given satellite tagging data that indicate different movement patterns between leeward and windward sides of the MHI, and a maximum distance from shore of 51.4 km on the windward side. HLA stated that additional analysis by NMFS has led the agency to conclude that the currently defined range is overbroad.

Response: In the draft NID, NMFS identified the satellite tagging information suggestive of a reduced range of the MHI IFKW (from shore of 51.4 km) on the windward side of the MHI. In our analysis, we applied this information qualitatively along with other relevant information to support our conclusion that the predictive model represents the maximum impact of the longline fishery that is reasonably likely to occur, and that actual impacts likely would be less. However, the data referred to by HLA represent an incomplete subset of available information on the MHI IFKW movements, and they are currently being reviewed to help inform the decision whether to revise the boundaries for several Hawaii false killer whale stocks. At this time, NMFS has not yet completed this review as part of the stock assessment process, and revised boundaries, if any, have not yet been determined. Accordingly, NMFS will continue to rely on the established stock boundaries for this NID analysis, while taking into account new satellite tagging information where relevant to our management decisions.

Comment 5: HLA recommended that NMFS reevaluate the historical (pre-2013) M&SI data in light of the new information on the MHI IFKW stock's range (described in Comment 4). HLA and the Council noted that all historical M&SI attributed to the MHI IFKW stock occurred on the windward side of the MHI beyond where MHI IFKWs have been observed or tracked. Given this information, HLA argues that the retrospective M&SI rate would be zero.

Response: As explained in the response to Comment 4, NMFS took into account the new satellite tagging information, along with other relevant information, in determining that the predictive model represents the maximum impact of the longline fishery that is reasonably likely to occur. This information is currently being reviewed to help inform the decision whether to revise the boundaries for several Hawaii false killer whale stocks.

Comment 6: HLA and the Council commented that the FKWTRP modified the existing MHI longline fishing prohibited area to eliminate the spatial overlap between MHI IFWKs and the longline fisheries, thereby eliminating the potential for MHI IFKW interactions with the longline fisheries. They note that modified year-round closure encompasses the locations of all false killer whale interactions assigned to the MHI IFKW stock, as well as all areas where MHI IFKWs have been observed or tracked. Therefore, the fishery is not likely to adversely affect the MHI IFKW.

Response: The revision to the longline closure area is an important conservation measure to protect MHI IFKWs. However, as noted in FKWTRP final rule (77 FR 71260, November 29, 2012; comment/response 39) and IFKW ESA listing final rule (77 FR 70915, November 28, 2012; comment/response 13), the Plan's revision to the longline exclusion zone is expected to substantially reduce but not eliminate the risk of interactions between MHI IFKWs and the longline fisheries. MHI IFKWs, like all small cetaceans, are highly mobile and do not confine their movements within precise boundaries. Because a portion of the MHI insular/pelagic stock overlap zone, as it is currently defined, remains open to longline fishing, NMFS must account for the potential for future M&SI in its management decisions, rare as those interactions are expected to be. Although NMFS does not agree that the MHI longline fishing prohibited area eliminates all risk to the MHI IFKW, we believe that M&SI for MHI IFKW will occur at very low levels as determined in the NID, and therefore is not likely to jeopardize the continued existence of MHI IFKW as defined under the ESA (see Comment 11, below). We have accounted for the revision to the MHI longline fishing prohibited area and its associated conservation benefits in our predictive model.

Comment 7: CRC, HSUS, Earthjustice, and the Commission commented that the NID does not account for M&SI in fisheries other than the longline fisheries. The commenters assert that MHI IFKW interactions with non-longline fisheries may be occurring at a rate that exceeds PBR. Commenters provided the following arguments or information: (a) Interactions with commercial fisheries were identified as a main threat to the MHI IFWK population in NMFS's 2010 status review; (b) non-longline fisheries are unmonitored, so marine mammal interactions are unreported or under-reported; (c) marine mammal depredation has been reported in nearshore (non-longline) fisheries; (d) a stranded MHI IFKW was shown to have ingested fishing hooks not used by the longline fisheries; (e) MHI IFKWs have scarring and fin disfigurements consistent with fisheries interactions, and the individual rate of fisheries interactions (based on scarring) for MHI IFKWs may exceed that for pelagic false killer whales, where M&SI is known to exceed PBR; (f) the apparent sex bias in the animals with fisheries-related scarring (all females) suggests that M&SI estimates may be negatively biased and may have a disproportionate impact on population dynamics; and (g) fisheries-related scarring does not occur with equal frequency in the three MHI IFKW social clusters, and there are coincident

differences in survival rates for each cluster, so impacts by social cluster could have greater or lesser impact on the stock.

Response: NMFS recognizes that the NID may not account for all potential sources of M&SI, including unreported takes in fisheries other than Hawaii longline fisheries. However, the Hawaii longline fishery currently operates under a consensus FKWTRP that was specifically designed to reduce the longline fisheries' M&SI for pelagic and MHI IFKW to less than PBR within six months and to insignificant levels approaching a zero mortality and serious injury rate (i.e., less than ten percent) of their respective PBR levels within five years of the plan implementation in the Hawaii longline fisheries. Other coastal fisheries, including state-managed pelagic troll, kaka line, and short-line, as well as recreational fisheries, are not currently observed, and NMFS has received no self-reports from these fisheries of interactions with marine mammals. At present, the impacts of these fisheries on MHI IFKW have not been reliably documented. The State of Hawaii currently collects commercial fishing information on depredation but not marine mammal interactions (i.e. hooking and entanglements). This information has limited usefulness for evaluating impacts to marine mammals. However, NMFS continues to consult with the State of Hawaii and other partners to assess and address marine mammal interactions in state-managed fisheries. Data collection on marine mammal interactions in state fisheries has been identified as a research priority by the Team. NMFS and the State of Hawaii have updated their existing ESA Section 6 Cooperative Agreement to include the MHI IFKW. Additionally, the State of Hawaii intends to submit a proposal for federal funding in response to the recent ESA Section 6 Federal Funding Opportunity that would address priority recovery actions for the MHI IFKW. NMFS will continue to work with the Hawaii Department of Land and Natural Resources within available budget and resource constraints to improve data collection in these fisheries.

With regard to the commenters pointing to specific examples of fin disfigurement, scarring, and hook ingestion to support an argument that fisheries impacts are occurring above and beyond those occurring from longline fishing, NMFS considered this information in its decision to list the MHI IFKW distinct population segment as an endangered species under the ESA. While NMFS shares the commenters' concerns as to what these incidents may mean to the species, it remains undetermined as to whether the observations of fin scarring would be deemed serious injuries, and if so, whether fishing hook ingestion caused M&SI of MHI IFKW.

In summary, in the absence of available information regarding the potential impacts of other fisheries on MHI IFKW, NMFS cannot determine their contribution to total fisheries-related M&SI. NMFS is basing its decision to issue the permit under Criterion 3, where known longline fishing M&SI is between 10% and 100% of PBR, and due to the fact that the longline fishery is subject to management under a consensus FKWTRP that is intended to reduce longline impacts on MHI IFKW to levels below PBR within six months and to insignificant levels approaching a zero mortality and serious injury rate (i.e., less than ten percent) of their respective PBR level within five years of the plan implementation. NMFS remains concerned about the anecdotal evidence that MHI IFKW are interacting with other fisheries, and, therefore, NMFS is committed to working with the State of Hawaii and others to assess the frequency and severity of marine mammal interactions in state-managed fisheries, as well as the distribution of these interactions and how they may disproportionately affect different sexes or social clusters. Further, NMFS commits to working with the State of Hawaii and other partners at further reducing impacts to IFKW as appropriate.

Comment 8: CRC and one individual commented that NMFS did not account for contaminants as a source of human-caused M&SI in MHI IFKWs. CRC cited several papers and provided data showing that concentrations of persistent organic pollutants in individual MHI IFKWs exceed safe threshold concentrations, and suggested that high levels of persistent organic pollutants may have health impacts and thus potentially contribute to mortality.

Response: NMFS recognizes that contaminants may present a non-fisheries related threat to MHI IFKWs (e.g., Oleson *et al.,* 2010). NMFS is concerned about MHI IFKW exposure to persistent organic pollutants in particular; however, at present it is difficult to determine the contribution of contaminants on M&SI in MHI IFKWs. Within the timeframe analyzed for this NID, no mortalities of MHI IFKWs were attributed to acute contaminants exposure (Carretta *et al.* 2014). At this time, it remains unclear what effect chronic exposure to contaminants may be having on IFKW individuals and population health. Frequently, however, marine mammals are exposed to chronic low levels of contaminants and these chronic exposures can be extremely difficult to correlate to risks of M&SI or reproductive health and population survival.

Comment 9: CRC, HSUS, Earthjustice, and the Commission commented that the MHI IFKW M&SI data are uncertain, specifically in the prediction of M&SI in the longline fisheries and in accounting for M&SI in non-longline fisheries. The Commission suggested that the level of uncertainty in M&SI data, particularly for a stock with a PBR less than one animal per year, should be grounds for withholding issuance of the permit.

Response: NMFS acknowledges the uncertainty associated with the data. As more fully discussed above, NMFS' predictions account for data uncertainty by applying precautionary assumptions at various levels of the NID analysis. Although PBR for this stock is quite small, so is quantifiable M&SI from the longline fishery, and M&SI from longline fishing is based on prorated interactions that occurred in an area that is now permanently closed to longlining. Moreover, as more fully discussed in response to Comment 2, M&SI for the longline fishing is based on historical interaction data, collected prior to implementation of consensus FKWTRP measures that are specifically intended to reduce longline impacts on false killer whales to less than PBR within six months and to insignificant levels approaching a zero mortality and serious injury rate (i.e., less than ten percent of their respective PBR levels) within five years of the plan implementation. In addition, preliminary data indicate no M&SI for MHI IFKW in 2013 or in 2014 to date. Finally, under the adaptive management provisions of the FKWTRP and MMPA section 118(g), NMFS retains authority to amend the Plan, and implement emergency measures, should unanticipated impacts from the deep-set fishery threaten the conservation status of the MHI IFKW. Additionally, the negligible impact determination would be re-evaluated pursuant to section 101(a)(5)(E)(iii), (iv), and (v) of the MMPA (16 U.S.C. 1371(a)(5)(E)(iii), (iv), and (v)). Based on these considerations, NMFS believes that it is appropriate to issue the permit, notwithstanding the existence of some uncertainty in fishery-related M&SI.

Comment 10: Earthjustice stated that NMFS provides no justification for its claim that the use of new gear under the

FKWTRP would reduce false killer whale M&SI by 6%.

Response: The FKWTRT, which consisted of conservation organization representatives, biologists, federal and state officials, the Commission, and fishing industry representatives, unanimously recommended the requirement for weak circle hooks based on their collective professional judgment that these hooks would reduce both the frequency and severity of incidental interactions with false killer whales. The NID considers Forney et al. (2011) as the source of the predicted 6% reduction in false killer whale M&SI associated with the exclusive use of circle hooks in the deep-set fishery. This estimate is the best available information regarding the expected benefits of these hooks.

Comment 11: The HSUS stated that a 2013 analysis of the biological impacts of the deep-set longline fishery by the Sustainable Fisheries Division of the NMFS Pacific Islands Regional Office concluded that the prorated level of M&SI of the MHI IFKW population incidental to the deep-set fishery (0.5 animals per year) exceeds the stock's PBR level of 0.3 animals per year, and that the longline fishery alone ''may affect and is likely to adversely affect'' the insular stock of false killer whales.

Response: The analysis cited by HSUS appears in the Biological Evaluation that was submitted to the NMFS Pacific Islands Regional Office Protected Resources Division from the Sustainable Fisheries Division in order to initiate formal consultation under Section 7 of the ESA on the continued authorization of the Hawaii deep-set longline fishery. The Sustainable Fisheries Division included information from the most recent SAR available to the public at that time (2012 SAR, which included data from 2006–2010) to be incorporated into the ESA Section 7 Biological Opinion analysis. During the consultation period and the analysis for the NID, more recent data, including the predictive model, became available and were used in both the MMPA and ESA analyses.

As more fully discussed in the response to Comment 1, the M&SI estimates cited by the commenter are based on historical data that preceded implementation of the FKWTRP regulations. To reach this NID NMFS believed it appropriate to consider not only historical M&SI information, but also other information that may affect the conservation status of the stock, such as the measures included in the FKWTRP, and the predictive model.

The Sustainable Fisheries Division's analysis that the fishery ''may affect and is likely to adversely affect'' the MHI IFKW population was conducted per the specific requirements and standards of the ESA regarding whether to conduct formal, rather than informal, consultation under ESA section 7. This finding under the authority of the ESA does not foreclose the issuance of a NID under MMPA; rather, it means that some level of take is anticipated requiring formal consultation under the ESA.

Comment 12: CRC, HSUS, and Earthjustice commented that the results presented by McCracken (2014) indicate that M&SI in the longline fisheries likely exceed PBR. They argue that effort is likely to be closer to 1,000,000 hooks set in the ''open area'' than to the 600,000 hooks analyzed in the model, because effort will shift from the area that was previously (pre-FKWTRP) open seasonally to the area just outside the now-closed (post-FKWTRP) area. They claim the effort will not be redistributed evenly, as is analyzed in the model, but that it will cluster closer to shore and within the MHI IFKW stock range, creating pockets of higher effort which the model does not capture.

Response: NMFS completed a predictive model that, among other things, evenly redistributed an equal number of hooks that were removed from the area now closed to longlining under the FKWTRP to offshore areas in the action area that remain open to longlining. NMFS does not anticipate that this redistributed effort will be close to or over 1,000,000 hooks in the ''open area'' or that redistributed effort will cluster along the boundaries of the expanded closure due to the nature of the fishery and the actual effort that was observed in 2013. Longline gear is typically set across 30–40 miles of water, and while some vessels will likely fish in the open area along the edge of the expanded longline closure, redistributed effort is most likely to occur where pelagic fishery resources are being caught at any given time. Since NMFS cannot predict where the fish will be found at any given time, we believe it was appropriate to assume an even redistribution of that effort throughout the action area.

In addition, logbook effort data were plotted to determine if there were clusters of effort just outside the boundary of the closed area, as indicated by the commenters. This an important consideration because false killer whale bycatch within the MHI insular/pelagic stock overlap zone is prorated to stock based on distance from shore, so interactions closer to shore have a higher probability of being assigned to the insular stock. The logbook data show that in 2013, proportionally less effort was concentrated on the inner boundary of the open area in 2013 than in previous years (McCracken, pers. comm.), indicating that the clustering effect suggested by the commenters is not occurring.

In 2008, just over a million hooks were set in the ''open area'' but effort has remained well below since that time (see Table 1 in McCracken 2014). In 2013 (the first year after the implementation of the FKWTRP), logbook data indicate that there were 98 sets and 344,808 hooks set in the open area, below the 600,000 hooks that were analyzed in the model (McCracken, pers. comm.). NMFS believes that effort may vary in the open area but will not likely reach levels of 1,000,000 hooks based on the last several years of data and current regulatory measures in place for false killer whales under the FKWTRP. However, NMFS will continue to monitor fishing effort to identify any changes in the operation of the fishery that may warrant adjustments to its models and the effects on the NID analysis.

Comment 13: Earthjustice and HSUS argued that it is premature to rely on the FKWTRP to ensure that the deep-set fishery has a negligible impact to MHI IFKWs because it has not yet been shown to be effective. The commenters cite false killer whale takes that have been observed since the FKWTRP went into effect, including one for which the required gear did not perform as expected to straighten and release the hooked animal. One commenter expressed concern that NMFS is relying on a sample size of only one event to show that the new gear can straighten effectively and release a hooked animal.

Response: NMFS notes that, although the Plan has been in place for less than two years, its required measures represent the consensus effort of a diverse team of conservationists, scientists, and federal and state officials, to put in place conservation and management measures they believe will be effective in meaningfully reducing impacts on MHI IFKW. The FKWTRP has been in effect since December 31, 2012, and its gear regulations for the deep-set fishery in effect since February 27, 2013. Through the FKWTRP, NMFS has a tool with which to monitor and respond to impacts to MHI IFKW if M&SI should exceed PBR. The FKWTRP and the FKWTRT process provide an important adaptive management framework with which to identify, through reporting and monitoring, unanticipated impacts to the stock, and to develop additional remedial

measures, such as through amendment of the FKWTRP, or through emergency rulemaking, to ensure any future impacts do not result in significant adverse impacts.

The FKWTRP is expected to reduce interactions with MHI IFKWs, primarily as a result of the revision to the existing longline prohibited area surrounding the MHI. The Team's recommended revision implemented by NMFS eliminated the seasonal change in the boundary on the windward side of the MHI, thereby prohibiting longlining year-round within a large majority of the MHI IFWK's stock range. Since the FKWTRP and the revised longline prohibited area went into effect, there have been no observed false killer whale interactions within the range of the insular stock. The observed interactions noted by the commenters that occurred since the FKWTRP went into effect involved pelagic false killer whales and were not within the range of the insular stock.

In addition, the FKWTRP includes gear modifications that are expected to reduce the number and severity of false killer whale hookings. This expectation is supported by NMFS's analysis (e.g., bootstrap simulations detailed in Forney *et al.* 2011) and an experiment that demonstrated that the required hooks are capable of straightening and releasing a hooked false killer whale (Bigelow *et al.* 2012). There are now three observations of false killer whales straightening hooks that meet the FKWTRP's requirements and releasing the whales with no gear attached. NMFS, in consultation with the Team, will continue to monitor the effectiveness of the FKWTRP's gear and other requirements.

While NMFS cannot yet fully evaluate the impact of the Plan on false killer whale M&SI, since the implementation of the Plan there have been no observed false killer whale or blackfish interactions in the range of the MHI IFKW, and where interactions have occurred, the gear performed in a manner that the Plan intended, which means the hook straightened and the animal was released from the gear.

Comment 14: The HSUS, CRC, the Commission, and Earthjustice state that Criterion 3 is not met because the population trend is not stable or increasing and they point to the SARs, the 2010 status review, and Silva *et al.* (2013), as evidence that the population is declining.

Response: Although MHI IFKW are believed to have declined markedly during the 1990s, at this time, their current population trajectory is unknown (Oleson et al. 2010). Nevertheless, NMFS acknowledges the need for more reliable information regarding stock trajectory, but notes that this uncertainty, along with the presence of substantial observer coverage in this fishery, was considered in the Team's deliberations and in the adoption of the specific measures for minimizing the impact of the fishery on IFKWs. As such, NMFS believes that the measures in place, coupled with the FKWTRT process, provide a meaningful, adaptive management tool with which to quickly monitor, identify, and respond to any unanticipated longline fishery impacts to the MHI IFKW population. NMFS will continue to conduct and support research on the MHI IFKW population and trends.

Comment 15: CRC and the Commission recommended that NMFS work with State of Hawaii to collect data on and monitor marine mammal interactions in non-longline fisheries (e.g., via an observer program).

Response: NMFS recognizes the need for additional collection of information on marine mammal interactions in non-longline fisheries around Hawaii and that the State currently has minimal reporting requirements for marine mammal interactions with state-managed fisheries. NMFS continues to consult with the State of Hawaii and other partners to assess and address marine mammal interactions in state-managed fisheries. Data collection in state fisheries has been identified as a research priority by the FKWTRT. NMFS and the State of Hawaii have updated their existing ESA Section 6 Cooperative Agreement to include support for research and bycatch reduction for the Hawaiian insular false killer whale. Additionally, as indicted in the response to Comment 7, the State of Hawaii intends to submit a proposal for federal funding in response to the recent ESA Section 6 Federal Funding Opportunity that intends to address priority recovery actions for the MHI IFKW. NMFS will continue to work with the Hawaii Department of Land and Natural Resources within available budget and resource constraints to improve data collection in these fisheries.

Comment 16: The HSUS stated that there is no recovery plan in place for the MHI IFKW stock, and that without a recovery plan to address the all anthropogenic impacts, permitting take in the deep-set fishery would violate the precautionary principle. The HSUS also stated that no take should be authorized in the absence of a recovery plan for this stock.

Response: Section 101(a)(5)(E) allows for the incidental taking of depleted marine mammal stocks by commercial fisheries, subject to certain findings and requirements. One such finding is that ''a recovery plan has been developed or is being developed for such species or stock pursuant to the Endangered Species Act of 1973'' (16 U.S.C. 1371(a)(5)(E)(i)(II)). NMFS acknowledges that a recovery plan has not yet been finalized, but the process to develop a recovery plan has been initiated (78 FR 60850, October 2, 2013).

Comment 17: The HSUS noted that making a NID triggers the requirement to reinitiate consultation and to issue an incidental take statement (ITS) under the ESA. They state that the 2012 Biological Opinion for the shallow-set longline fishery will need to be reinitiated due to the negligible impact determination. They state that the Biological Opinion being prepared for the deep-set fishery will require an ITS for the take of listed species and that the ITS must specify reasonable and prudent measures to mitigate the impact of take on the species and the individual animals to be taken, as well as a trigger for reiniation of consultation. The HSUS argues that reliance on the FKWTRP is risk-prone, given the on-going false killer whale interactions, so additional mitigation measures must be adopted. They also state that a single take would/should trigger emergency suspension of the fishery, as it would exceed the PBR for the three-year authorization.

Response: Because the MMPA 101(a)(5)(E) permit process analyzes impacts of the fishery as it is currently managed under existing fishery management plan regulations, reinitiation of consultation is only required if one or more of the triggers in 50 CFR 402.16 are met. Because NMFS has determined that there has been no take of MHI IFKW or sperm whales by the shallow-set fishery, the permit does not cover the shallow set fishery for those stocks. Moreover, issuance of the permit will not result in impacts to CNP humpback whales that were not already analyzed in the 2012 biological opinion; accordingly, reinitiation of consultation is not required.

With respect to the deep-set fishery, NMFS completed a Biological Opinion on September 19, 2014, consistent with ESA section 7, which considered information in the NID analysis. An ITS specifies reasonable and prudent measures and terms and conditions for mitigating the impact of take of protected species, as well as specify terms for reinitiation of consultation, and will become valid for cetaceans once this permit is finalized. This MMPA permit, although related to the

Biological Opinion, is a separate determination that considers those factors specified in MMPA section 101(a)(5)(E).

NMFS disagrees that it is premature to rely on the FKWTRP to ensure that M&SI is less than PBR in the deep-set fishery which is described in greater detail in comment 13. We also disagree that a single take in the overlap zone should trigger an emergency suspension of the fishery because such take would exceed PBR. Based on the best available science, after an expansion factor (5) is applied to account for observer coverage (20%) and a proration factor (15%) is applied to account for the probability that an interaction in the overlap zone involves a MHI IFKW, a single take in the overlap area would be the equivalent of 0.75 MHI IFKW. As a term and condition of the September 19, 2014 Biological Opinion on the deep-set fishery (NMFS 2014), two M&SI in the overlap area during any three-year period would trigger reinitiation of consultation and require the immediate convening of the FKWTRT to provide recommendations regarding possible emergency measures.

Comment 18: Earthjustice stated that NMFS should close off the entire 140 km range to eliminate the risk of longline fishery interactions with the MHI IFKW.

Response: This action is limited to determining whether to issue a permit under MMPA section 101(a)(5)(E), which would allow the Hawaii-based longline fisheries, as currently managed and operated, to incidentally take individuals from certain ESA-listed marine mammal stocks. Potential future measures to expand the range of the MHI longline fishing prohibited area, either through emergency rulemaking or amendment of the FKWTRP, are beyond the scope of this decision.

With regard to the commenter's suggestion of excluding longline fishing form the entire known range of the stock, the FKWTRP regulations prohibit longline fishing within the entire core range and a large portion of the ''extended'' range of the MHI IFKW stock (which extends out to 140 km from shore), which NMFS determined would substantially reduce the risk of MHI IFKW interactions in the longline fisheries. The FKWTRT unanimously concluded that by permanently extending the seasonal boundary of the MHI longline prohibited area to include all overlap areas where prorated interactions with MHI IFKW and pelagic false killer whales have occurred, the risk to MHI IFKW would be significantly reduced. NMFS emphasizes that like all small cetaceans, MHI IFKW do not confine their movements to precise areas. Nevertheless, while we cannot eliminate all risk to the MHI IFKW from longline fishing, predictive modeling based on precautionary assumptions projects no more than one M&SI every four years. Under these circumstances, NMFS does not believe a further increase in the longline closure area is necessary to protect MHI IFKWs. However, if the FKWTRP is not effective in protecting the stock, (i.e., if M&SI should exceed PBR), then NMFS, in consultation with the FKWTRT, will develop and implement additional measures to meet the MMPA take reduction goals and will re-evaluate the NID.

Comment 19: CRC states that given the small PBR for MHI IFKW and the relatively small overlap between the fishery and the population's range, there is insufficient observer coverage within the ''open area'' to produce reliable estimates of longline M&SI for the MHI IFKW and that an analysis to determine the sample size of observer coverage is required within the area to have a reasonable probability of detecting bycatch that may approach or exceed PBR.

Response: NMFS acknowledges CRC's concern regarding the adequacy of observer coverage levels to detect take levels that could exceed PBR, given the stock's small PBR level and the small area of overlap between the fisheries and the stock. NMFS's Hawaii Longline Observer Program is designed to provide representative coverage of fishing effort by the fleet, but is not designed to cover specific areas of operation. However, in considering CRC's comment, we evaluated the level of observer coverage in the ''open area'' (the area of overlap between the longline fisheries and MHI IFKWs). We calculated this as the number of trips observed within the area divided by the number of trips recorded as fishing within the area. We note that these coverage levels do not imply a random sample, a representative sample, or that coverage was constant throughout the year. Despite these caveats, in recent years, coverage in the open area has been as follows: 2008, 13.6%; 2009, 16.1%; 2010, 25.4%; 2011, 18.8%; 2012, 26.1%; 2013, 22.4%, which is 20.4% for a six-year average. An analysis described in the report from NMFS's 2011 workshop on revising the GAMMS (Moore and Merrick, 2011) indicates that for a stock with a PBR of 1.0 and observer coverage of 20%, data pooled across four or more years would achieve an approximately unbiased estimate of M&SI. NMFS regularly pools M&SI estimates across five years to produce average annual estimate for comparison to PBR and believes that this level of observer coverage in the open area, combined with the pooling of M&SI data provide sufficiently reliable information with which to assess IFKW bycatch in the deep-set longline fishery.

Dated: October 10, 2014.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2014–24567 Filed 10–15–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD543

Appointments to the Climate and Aquaculture Task Forces by the Marine Fisheries Advisory Committee

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

ACTION: Notice; Request for Nominations.

SUMMARY: Nominations are being sought for appointment to two new task forces of the Marine Fisheries Advisory Committee (MAFAC) to support its advisory work for the Secretary of Commerce on living marine resource matters. One task force will focus on climate and marine resources issues and the other on aquaculture issues. The members will be appointed by NMFS in consultation with MAFAC and will serve for an initial term of one or two years. The terms would begin in November or December 2014. Nominees should possess demonstrable knowledge or expertise in the areas described under Supplemental Information for each task force.

DATES: Nominations must be postmarked or have an email date stamp on or before November 17, 2014.

ADDRESSES: Nominations should be sent to Heidi Lovett, Office of Policy, NMFS F–14438, 1315 East-West Highway, Silver Spring, MD 20910 or to *heidi.lovett@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Heidi Lovett, (301) 427–8004; email: *heidi.lovett@noaa.gov.*

SUPPLEMENTARY INFORMATION: MAFAC is the only Federal advisory committee with the responsibility to advise the Secretary of Commerce (Secretary) on all matters concerning living marine resources that are the responsibility of the Department of Commerce. MAFAC

is establishing a Climate and Marine Resources Task Force and an Aquaculture Task Force to assist it in the development of recommendations to the Secretary on policies, programs, and regulations critical to the mission and goals of the NMFS.

Climate and Marine Resources Task Force

This Climate and Marine Resources Task Force is being created as a communication conduit for stakeholder input to MAFAC and NOAA Leadership on the production, delivery, and use of climate-related information in fulfilling NOAA Fisheries mission activities. NOAA's marine stewardship mandates include consideration of changing environmental conditions and other factors on marine resources and the industries that depend on these resources. The Task Force will provide review and input on the NOAA Fisheries Climate Science Strategy (pending later this year), regional implementation plans, identification of community impacts related to climate change and fisheries, and other topics as needed.

This Task Force will consist of 12 to 15 individuals. MAFAC is seeking individuals that have experience with the production, delivery and/or use of climate-related information in marine resource management or have familiarity with how science, data, and information influences policy and regulatory decision making. It is not intended that all nominees be scientists or researchers. Individuals should represent the diverse constituent groups or partners from across U.S. regions and territories that interact with NOAA Fisheries: Commercial, recreational, or subsistence fisheries; aquaculture; seafood industries; academia; tribes; environmental, protected resources, marine habitat, and consumer groups; and/or other related national interests.

It is intended that the Task Force be established for an initial period of 3 years with a possibility of extending that term if deemed necessary by NOAA Fisheries and MAFAC. Task Force members will be appointed for 2-year terms and should be able to fulfill the time commitments required for periodic meetings (mostly by webinar or teleconference, and potentially in-person).

Aquaculture Task Force

MAFAC has a longstanding history of engagement on aquaculture issues. The Aquaculture Task Force is being created to expand the aquaculture expertise of MAFAC and to help MAFAC provide advice and input to NOAA Leadership on the NOAA Aquaculture Program and its future activities. The Task Force will assist NOAA in fulfilling its central role in developing and implementing policies that enable marine aquaculture and work to ensure that aquaculture complies with existing Federal laws and regulations that NOAA enforces under its marine stewardship mission.

Some example tasks of the new Task Force will include review of: NOAA's progress on implementing the agency's 10-Year Plan for Marine Aquaculture (from 2007), priorities to include in strategic planning for the aquaculture program, and tasks to support NOAA's work with the Regulatory Task Force of the Interagency Working Group on Aquaculture.

This Task Force will consist of no more than 10 individuals who have expertise in all aspects of marine aquaculture; the science, research, and development to advance aquaculture; and the management and permitting of aquaculture at the Federal, state, and local levels. It is intended that Task Force members will come from across all U.S. regions and territories.

This Task Force will be established for an initial period of 1 year with a possibility of extending that term if deemed necessary by NOAA Fisheries and MAFAC. Task Force members will be appointed for 1-year terms and should be able to fulfill the time commitments required for periodic meetings (mostly by webinar or teleconference, and potentially in-person).

Nomination Materials

Each nomination submission should identify which Task Force the nominee is applying to and include: a cover letter describing the nominee's qualifications and interest in serving on the specific task force, resume or curriculum vitae of the nominee, and up to two recommendation letters describing the nominee's qualifications and interest. Self-nominations are acceptable. The following contact information should accompany each nominee's submission: full name, address, telephone number, fax number, and email address.

Nominations should be sent to (see **ADDRESSES**) and must be received by November 17, 2014. Information about MAFAC, its Committee Charter, current membership, and activities can be viewed at the NMFS' Web page at *www.nmfs.noaa.gov/mafac.htm.*

Dated: October 9, 2014.

Eileen Sobeck,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2014–24627 Filed 10–15–14; 8:45 am]

BILLING CODE 3510–22–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2014–0025]

Policy On No-Action Letters

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of proposed policy and proposed information collection; request for comment.

SUMMARY: The Consumer Financial Protection Bureau (Bureau) invites the public to take this opportunity to comment on its proposed Policy on No-Action Letters (Policy), which is intended to further its objectives under section 1021 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), and also a proposed information collection associated with applications submitted by applicants requesting no-action letters under the proposed Policy as required by the Paperwork Reduction Act of 1995.

DATES: Written comments are encouraged and must be received on or before December 15, 2014 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the proposal's title, ''Policy on No-Action Letters,'' and docket number (see above), by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Consumer Financial Protection Bureau, Office of the Executive Secretary, 1700 G Street NW., Washington, DC 20552.
- *Hand Delivery/Courier:* Consumer Financial Protection Bureau, Office of the Executive Secretary, 1275 First Street NE., Washington, DC 20002.

Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Comments will be available for public inspection and copying at 1275 First Street NE., Washington, DC 20002 between the hours of 10:00 a.m. and 5 p.m. eastern standard time. In general, all comments received will be posted without change to regulations.gov, including any personal information provided. Sensitive personal information, such as account

numbers or social security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: For additional information about the proposed Policy please contact Dan Quan, Senior Advisor to the Director, Consumer Financial Protection Bureau, (202) 435–7678. Documentation prepared in support of the information collection request is available at *www.regulations.gov.*

Requests for additional information on the proposed information collection should be directed to the Consumer Financial Protection Bureau, Attention: PRA Office, 1700 G Street NW., Washington, DC 20552, (202) 435–9575, or email: *PRA@cfpb.gov. Please do not submit comments to this mailbox.*

SUPPLEMENTARY INFORMATION:

I. Policy on No-Action Letters

Abstract. In specifying the purposes, objectives, and functions of the Bureau in section 1021 of the Dodd-Frank Act, Congress authorized the Bureau to exercise its authorities for the purpose of ensuring that markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.[1] In line with the Bureau's authority, it is proposing the Policy that is laid out in in the next section below. Under the proposed Policy, Bureau staff would, in its discretion, issue no-action letters (NALs) to specific applicants in instances involving innovative financial products or services that promise substantial consumer benefit where there is substantial uncertainty whether or how specific provisions of statutes or regulations implemented by the Bureau would be applied (for example if, because of intervening technological developments, the application of statutes and regulations to a new project is novel and complicated). The Policy is also designed to enhance compliance with applicable federal consumer financial laws. A NAL would advise the recipient that, subject to its stated limitations, the staff has no present intention to recommend initiation of an enforcement or supervisory action against the requester with respect to a specified matter. NALs would be subject to modification or revocation at any time in the sole discretion of the staff, and may be conditioned on particular undertakings by the applicant with respect to product or service usage and data-sharing with the Bureau. Issued NALs would be publicly disclosed. NALs would be non-binding on the Bureau, and would not bind courts or other actors who might challenge a NAL-recipient's product or service, such as other regulators or parties in litigation. The Bureau believes that there may be significant opportunities to facilitate innovation and access, and otherwise substantially enhance consumer benefits, through the proposed Policy.

II. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies are generally required to seek approval from the Office of Management and Budget (OMB) for information collection requirements prior to implementation. Further, the Bureau may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and it displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number. The final policy will display the control number assigned by OMB.

As part of its continuing effort to reduce paperwork and respondent burden, the Bureau conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on the new information collection requirements in accordance with the PRA (See 44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Bureau's requirements or instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Bureau can properly assess the impact of collection requirements on respondents.

The proposed Policy contains a new information collection requirement, consisting of the information that should be submitted to demonstrate eligibility for a NAL as described further below. This has been deemed to be a collection of information for purposes of the PRA. Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information and comments regarding this proposed collection of information should be submitted as described in the **ADDRESSES** section of this Notice.

Title of Collection: Policy on No-Action Letters.

OMB Control Number: 3170–XXXX.

Type of Review: New Collection (Request for a new OMB control number).

Affected Public: Private Sector (Certain businesses offering consumer financial products or services that meet the definition of ''covered person'' under section 1002(6) of the Dodd-Frank Act).

Estimated Number of Respondents: 1–3.

Estimated Total Annual Burden Hours: 50–300.

III. Request for Comments

Comments are invited with respect to any aspect of the proposed Policy and/or the related information collection effected by the application process for no-action letters. Comments related to the proposed information collection will be summarized and/or included in the Bureau's request for OMB approval. With respect to the collection, comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

IV. Procedural Requirements

The Bureau concludes that the proposed Policy constitutes an agency general statement of policy and/or a rule of agency organization, procedure, or practice exempt pursuant to 5 U.S.C. 553(b). Notwithstanding this conclusion, the Bureau invites public comment on the proposed Policy. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. Chapter 6) do not apply.

[1] Section 1022(b)(1) of the Dodd-Frank Act authorizes the Director to prescribe rules and issue orders and guidance, as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.

Policy On No-Action Letters

Under Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the Bureau's objectives include ''facilitating [consumer] access'' to and ''innovation'' in markets for consumer financial products.[2] The Bureau recognizes that, in certain circumstances, some may perceive that the current regulatory framework may hinder the development of innovative financial products that promise substantial consumer benefit because, for example, existing laws and rules did not contemplate such products. In such circumstances, it may be substantially uncertain whether or how specific provisions of certain statutes and regulations should be applied to such a product—and thus whether the federal agency tasked with administering those portions of a statute or regulation may bring an enforcement or supervisory action against the developer of the product for failure to comply with those laws. Such regulatory uncertainty may discourage innovators from entering a market, or make it difficult for them to develop suitable products or attract sufficient investment or other support.

Federal agencies can reduce such regulatory uncertainty in a variety of ways. For example, an agency may clarify the application of its statutes and regulations to the type of product in question—by rulemaking or by the issuance of less formal guidance. Alternatively, an agency may provide some form of notification that it does not intend to recommend initiation of an enforcement or supervisory action against an entity based on the application of specific identified provisions of statutes or regulations to its offering of a particular product. This proposal is concerned with the latter means of reducing regulatory uncertainty in limited circumstances.

Pursuant to its authorities under the Dodd-Frank Act, the Bureau is today releasing its Proposed Policy on No-Action Letters (Proposed Policy). Under the Proposed Policy, in the circumstances described above an entity may submit a request for a No-Action Letter from Bureau staff (staff). A No-Action Letter would be a statement that the staff has no present intention to recommend initiation of an enforcement or supervisory action against the requester with respect to particular aspects of its product, under specific identified provisions of statutes or regulations. Such a letter may be limited as to time, volume of transactions, or otherwise, and may be subject to potential renewal. Whether and how to provide a No-Action Letter or otherwise respond to such requests, including any limitations or conditions on acceptance, will be within the sole discretion of the staff.

The Proposed Policy is intended to facilitate consumer access to innovative financial products that promise substantial benefit to consumers, taking into account other marketplace offerings, and also to enhance compliance with applicable federal consumer financial laws.[3] By furnishing a dedicated mechanism through which substantial regulatory uncertainty can be reduced, the Proposed Policy is also intended to discourage the offering of innovative consumer-*harmful* financial products in such circumstances. In addition, because No-Action Letters often will be conditioned on specified consumer protection conditions designed to satisfy—or even exceed—applicable disclosure requirements and substantive protections, the Bureau expects the Proposed Policy, if adopted, to benefit consumers in further ways. The Bureau also expects the Proposed Policy to help further its consumer protection functions and objectives, including market monitoring and rulemaking, when a No-Action Letter is conditioned on a commitment by the requester to share data about the product with the Bureau, or to engage in other consultation that may help inform Bureau decisions regarding whether to take further action in connection with the financial product in question.

The Proposed Policy has five sections:

- Section A describes information that should be included in requests for a No-Action Letter.
- Section B describes types of responses the staff may provide to requests for a No-Action Letter.
- Section C lists factors the staff may consider in deciding whether to provide a No-Action Letter.
- Section D describes the general content and limitations of No-Action Letters.
- Section E describes disclosure of data received from entities whose requests for No-Action Letters are granted.

A. Submitting Requests for No-Action Letters

Requests for a No-Action Letter should be submitted in writing via email to *ProjectCatalyst@cfpb.gov*.[4] Submitted requests may be withdrawn by the requester at any time.

Requests should include the following:

1. The name(s) of the entity or entities and individual(s) requesting the No-Action Letter. The staff will not accept requests for No-Action Letters that fail to identify the entity or entities and individuals providing the product.

2. A description of the consumer financial product involved, including:

a. How the product functions, and the terms on which the product will be offered;

b. The roles and relationships of all parties to transactions involving the product; and

c. The manner in which it is offered to and used by consumers, including any consumer disclosures.

3. The timetable on which the product is expected to be offered. No-Action Letters are not intended for either well-established products or purely hypothetical products that are not close to being able to be offered.

4. An explanation of how the product is likely to provide substantial benefit to consumers differently from the present marketplace, and suggested metrics for evaluating whether such benefits are realized.

5. A candid explanation of potential consumer risks posed by the product—particularly as compared to other products available in the marketplace—and undertakings by the requester to address and minimize such risks.

6. A showing of why the requested No-Action Letter is necessary and appropriate to remove substantial regulatory uncertainty hindering the development of the product, including:

a. Identification of each of the specific provisions of the statutes and regulations regarding which a No-Action Letter is being requested, and a showing how each of these specific provisions of the statute(s) and regulation(s) should be applied to the

[2] 12 U.S.C. 5511(b)(5). As used in this Proposed Policy, the term ''product(s)'' means ''product(s) and services'' or ''products or service(s),'' as appropriate.

[3] The Proposed Policy and any No-Action Letter is not intended to, nor should it be construed to: (1) Restrict or limit in any way the Bureau's discretion in exercising its authorities, including the provision of no-action or similar relief other than pursuant to the Proposed Policy; (2) constitute an interpretation of law; or (3) create or confer upon any covered person (including one who is the subject of the Bureau supervisory, investigation, or enforcement activity) or consumer, any substantive or procedural rights or defenses that are enforceable in any manner.

[4] The email subject line should begin ''Request for No-Action Letter.'' The Proposed Policy is one component of the Bureau's Project Catalyst initiative, which invites organizations to bring innovation-related concerns to the Bureau's attention at *ProjectCatalyst@cfpb.gov*. Innovators are advised to use the same Project Catalyst point of contact to initiate a preliminary discussion of a potential No-Action Letter. There are no formal submission requirements to request such a preliminary discussion.

product is substantially uncertain, including analysis of the relevant legal authorities and policy considerations.

b. A showing of why the product's aspects in question should not be treated as subject to or precluded by the specific identified statute(s) and regulation(s), and/or how the proposed compliance of the product's aspects in question with the specific identified statute(s) and regulation(s) is appropriate.

c. A showing of the product's compliance with other relevant federal and state regulatory requirements.

d. A showing of why the substantial regulatory uncertainty that is the subject of the request cannot be effectively addressed through means other than the requested No-Action Letter, such as modification of the product.

7. An affirmation that the facts and representations in the request are true and accurate.

8. An undertaking by the requester to provide information requested by the staff in its evaluation of the request.

9. A description of data that the requester possesses, and data it intends to develop, pertaining to the factual bases cited in support of the request and an undertaking, if the request is granted, to share appropriate data regarding the product with the Bureau, including data regarding the impact of the product on consumers. This description should also address the requester's intentions regarding consultation with the Bureau in its plans for development of additional data.

10. Undertakings that, if the request is granted, the requester will not represent that the Bureau or its staff has: (i) Licensed, authorized or endorsed the product, or its permissibility or appropriateness, in any way; (ii) determined, or provided an interpretation, that the product is or is not in compliance with legal or other requirements, or has been granted an exception, waiver, safe harbor, or comparable treatment; or (iii) granted No-Action Letter treatment with respect to any aspect of the requester's offerings or any provision of law other than those expressly addressed in the No-Action Letter.

11. An affirmation that, to the requester's knowledge (except as specifically disclosed in the request), neither the requester nor any other party with substantial ties to transactions involving the product is the subject of an ongoing, imminent, or threatened governmental investigation, supervisory review, enforcement action, or private civil action respecting the product, or any related or similar product; and an undertaking promptly to notify the Bureau (unless the request for a No-Action Letter has been denied) of any such governmental investigation, supervisory review, enforcement action, or private civil action that is initiated or threatened.

12. An affirmation that (except as specifically disclosed in the request) the principals of the requester have not been subject to license discipline, adverse supervisory action, or enforcement action with respect to any financial product, license, or transaction within the past ten years.

13. A statement specifying whether the request is limited to a particular time period, to a particular volume of transactions, or to other limitations.

14. A description of any particular consumer safeguards the requester will employ, although they may not be required by law, if a No-Action Letter is issued, including any mitigation of potential for or consequences of consumer injury. The description should specify the requester's basis for asserting and considering that such safeguards are effective. The description should also address any future study the requester will undertake to further evaluate the effectiveness of such safeguards.

15. If a request for confidential treatment is made, this request and the basis therefor should be included in a separate letter and submitted with the request for a No-Action Letter.

B. Staff Response to Requests for No-Action Letters

The decision whether to respond to a request for a No-Action Letter, and the nature of any response, is within the staff's sole discretion. Depending on the circumstances, the staff may: (i) Grant the request (which grant may be partial, or may be subject to limitations or conditions); (ii) deny the request; (iii) specifically decline to either grant or deny the request, with an explanation; or (iv) specifically decline to either grant or deny the request, without explanation. The staff may communicate with the requester before making any decision regarding whether and how to respond to the request to seek clarification or for other purposes. The staff may permit requests to be modified in the course of such communications. No-Action Letters are subject to immediate modification and/or revocation upon notice.

Type (i) responses, and a version or summary of the request, will be published on the Bureau's Web site.[5] Type (ii) responses will be provided to the requester but generally will not be published on the Bureau's Web site.[6] Type (iii) and (iv) responses may be published on the Bureau's Web site, particularly if the staff believes that the information will be in the public interest.

Non-exclusive examples of circumstances under which the staff presumptively will not answer the request or will likely provide, at most, a response of type (iii) or (iv) include:

1. The requester or its principals are the subject of ongoing governmental law enforcement investigation, supervisory review, or enforcement action respecting the product or a related or similar product.[7]

2. The request concerns an area in which the Bureau is engaged in ongoing or anticipated rulemaking, supervisory, enforcement, or other initiatives.

3. The request concerns a legal or product environment which the staff considers to be inappropriate for no-action treatment. At the present time, for example, the staff does not anticipate no-action treatment of UDAAP matters.

4. The staff has determined that the request does not warrant investment of the Bureau resources that are likely necessary to address the request adequately.

No-Action Letters will not be routinely available. The Bureau anticipates that No-Action Letters will be provided only rarely and on the basis of exceptional circumstances and a thorough and persuasive demonstration of the appropriateness of such treatment. Requesters do not have a legal entitlement to no-action treatment of regulatory uncertainties, and Bureau resources available for consideration of No-Action Letter requests are limited in light of other Bureau priorities. Requesters may wish to include in their submissions any particular reasons why their request should be considered by the Bureau to be a matter of special importance.

C. Staff Assessment of Requests for No-Action Letters

In deciding whether to provide a No-Action Letter,[8] the staff will consider a variety of factors, including:

1. The extent to which the requester's product structure, terms and conditions, and disclosures to and agreements with

[5] Type (i) responses are further discussed in Section D below.

[6] The Bureau may publish a denial on its Web site if it believes that doing so is in the public interest.

[7] If the staff decides to provide a Type (iii) response to the entity in such circumstances, the response will not be published on the Bureau's Web site.

[8] The decision whether to provide a No-Action Letter, and the terms on which it may be provided, are within the staff's sole discretion.

consumers enable consumers to meaningfully understand and appreciate the terms, characteristics, costs, benefits, and risks associated with the product, and to act effectively to protect themselves from unnecessary cost and risk.

2. The extent to which evidence, including the requester's own testing, indicates that the product's aspects in question may provide substantial benefits to consumers.

3. The extent to which the asserted benefits to consumers are available in the marketplace from other products.

4. The extent to which the requester controls for and effectively addresses and mitigates risks to consumers.[9]

5. The extent to which granting the request is necessary in order to reduce regulatory uncertainty for the requester with respect to the requester's product.

6. The extent to which the regulatory uncertainty identified by the requester may be better addressed through other regulatory means, such as Bureau rulemaking, other Bureau guidance, or provision of a waiver under the Bureau's Policy to Encourage Trial Disclosure Programs.[10]

7. Whether the entity is demonstrably in compliance with other relevant federal and state regulatory requirements.

8. The extent to which the request is sufficiently limited in time, volume of transactions, or otherwise, to allow the Bureau to learn about the product and the aspects in question while minimizing any consumer risk.

9. The extent to which any data that the entity has provided and agrees to provide to the Bureau regarding the operation of the product's aspects in question will be expected to further consumer protection.

10. The extent to which public disclosure of relevant data may be permitted.

D. Staff Provision of No-Action Letters

When the staff decides to provide a No-Action Letter, it will publish the letter, along with the request, on its Web site. The No-Action Letter will include the following:

1. A statement that, subject to the conditions and limitations set forth, the staff has no present intention to recommend initiation of an enforcement or supervisory action against the requester in respect to the particular aspects of its product, and under specific identified provisions and applications of statutes or regulations that are the subject of the No-Action Letter. The statement that the staff has no present intention to recommend initiation of an enforcement or supervisory action does not mean that the Bureau will not conduct supervisory activities or engage in enforcement investigation to evaluate the requester's compliance with the terms of the No-Action Letter or to evaluate other matters.

2. A statement that the no-action treatment is limited to the requester's offering of the product's aspects in question in the manner described, and that it does not pertain to (i) the requester for offering the product in a different manner; (ii) the requester for offering different products, or with respect to other provisions or applications of these or other statutes and regulations, or with respect to other aspects of the product; or (iii) any other person.

3. A statement that the No-Action Letter is based on the facts and factual representations made in the request, and is contingent on the correctness of such facts and factual representations.

4. A statement (a) disclaiming any intention by the Bureau or its staff to have reached a determination about, or to provide an interpretation of, or to grant any exception, waiver, safe harbor, or similar treatment respecting the statutes and rules identified in the request, or their application to the product's aspects in question, or otherwise to make an official expression of the Bureau's views, and that any explanatory discussion should not be interpreted as such an interpretation, waiver, safe harbor, or the like, that is binding on the Bureau, and (b) that the staff are not necessarily in agreement with any legal or policy analysis, any interpretation of data, or any other matter, set forth in the request.

5. A description of any conditions or limitation attending the staff's recommendation, such as the requester's commitment to provide additional safeguards to consumers, or to share certain types of data with the Bureau, as well as any limitations as to time period or quantity of transactions.

6. A statement that the No-Action Letter is subject to modification or revocation at any time at the discretion of the staff for any reason, including that: the facts and representations in the request appear to be materially inaccurate or uncertain; the requester fails to satisfy conditions or violates limitations specified in the No-Action Letter; the product or any of its material features, terms, or conditions, is altered; or the staff determines that such modification or revocation is appropriate to protect consumers or is otherwise in the public interest. Revocation or modification may be immediate upon notice. To the extent that the facts and representations in the request are materially inaccurate, or the requester fails to satisfy conditions or violates limitations specified in the No-Action letter, and in other similar circumstances, the No-Action Letter is by its own terms inapplicable (even without modification or revocation) and the staff may recommend initiating a retrospective enforcement or supervisory action if appropriate.

7. A statement that the No-Action Letter is not issued by or on behalf of any other government agency or any other person and, so far as the Bureau is concerned, no other government agency or person, and no court, has any obligation to honor or defer to it in any way.

8. A statement of any expiration date, or volume limitation, applicable to the No-Action letter (and whether or not it may be sought to be renewed).

9. A statement that the No-Action letter becomes inapplicable upon failure to adhere to the affirmations or undertakings made in the request or stated as conditions of the issuance of the letter.

E. Bureau Disclosure of Entity Data

The Bureau's disclosure of the request and any data received from the requester in connection with a request for a No-Action Letter is governed by the Bureau's rule regarding Disclosure of Records and Information.[11] For example, the rule generally requires the Bureau to make available records requested by the public unless they are subject to a FOIA exemption or exclusion.[12] To the extent the Bureau affirmatively wishes to disclose such data, the terms of such disclosure will be consistent with applicable law and the Bureau's own rules and may be specified in a separate agreement with the requester. Consistent with applicable law and its own rules, the Bureau will not seek to disclose data that would conflict with consumers' privacy interests.

Dated: October 9, 2014.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2014–24645 Filed 10–15–14; 8:45 am]

BILLING CODE 4810–AM–P

[9] This factor includes the extent to which the requester has plans in place for addressing unanticipated consumer harms caused by the product and the extent to which the entity possesses the resources to compensate injured consumers.

[10] 78 FR 64389 (Oct. 29, 2013).

[11] *See* 12 CFR part 1070.

[12] *See* 12 CFR 1070.14.

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–00XX; Docket 2014–0055; Sequence 6]

Federal Acquisition Regulation; Submission to OMB for Review; Public Voucher for Purchases and Services Other Than Personal

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding a new OMB information collection.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Regulatory Secretariat Division (MVCB) will be submitting to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement regarding Public Voucher for Purchases and Services other than Personal. A notice was published in the **Federal Register** at 79 FR 39395 on July 10, 2014. No comments were received.

DATES: Submit comments on or before November 17, 2014.

ADDRESSES: Submit comments identified by Information Collection 9000–00XX, Public Voucher for Purchases and Services other than Personal by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by searching the OMB control number 9000–00XX. Select the link ''Comment Now'' that corresponds with ''Information Collection 9000–00XX, Public Voucher for Purchases and Services other than Personal. Follow the instructions provided on the screen. Please include your name, company name (if any), and ''Information Collection 9000–00XX, Public Voucher for Purchases and Services other than Personal'', on your attached document.

- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000–00XX, Public Voucher for Purchases and Services other than Personal.

Instructions: Please submit comments only and cite Information Collection 9000–00XX, Public Voucher for Purchases and Services other than Personal, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis E. Glover, Sr., Procurement Analyst, Acquistion Policy Division, via telephone 202–501–1448 or via email *curtis.glover@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Standard Form (SF) 1034, Public Voucher for Purchases and Services Other than Personal, is used by the agencies for regular payments to vendors under cost-reimbursement contracts, and for terminations.

Cost type contracts provide for interim payment for costs vouchered on SF 1034. This is applicable to all cost-reimbursement type contracts, including cost-reimbursement portions of fixed price contracts, letter contracts which provide for reimbursement of costs, time and materials contracts and labor-hour contracts. Vouchers may be submitted at the beginning of each billing period for costs incurred during the preceding billing period. Vouchers should not be submitted more than once a month unless such arrangements are made with the Contracting Officer.

Termination clauses for cost-reimbursement contracts (see FAR 49.503(a)) provide for the settlement of costs and fee, if any, in cases of termination by convenience. The contract clauses governing costs shall determine what costs are allowable. When the contract has been completely terminated, the contractor shall not use SF 1034 after the last day of the sixth month following the month in which the termination is effective. The contractor may elect to stop using vouchers at any time during the 6-month period. When the contractor has vouchered out all costs within the 6-month period, a proposal for fee, if any, may be submitted on the SF 1437, Settlement Proposal for Cost-Reimbursement Type Contracts, (see FAR 49.602–1) or by letter appropriately certified. The contractor must submit a substantiated proposal for fee to the Termination Contracting Officer (TCO) within 1 year from the effective date of termination, unless the period is extended by the TCO. When the use of vouchers is discontinued, the contractor shall submit all unvouchered costs and the proposed fee, if any, as specified in FAR 49.303. When the contract is partially terminated, FAR 49.304 shall apply.

In consultation with subject matter experts at the Department of Defense, the number of responses per year was verified as being within an acceptable range, as was the average time required to read and prepare information which was estimated at 1 hour per response.

B. Annual Reporting Burden

Respondents: 75,636.
Responses per Respondent: 12.
Total Responses: 907,632.
Hours per Response: 1.
Total Burden Hours: 907,632.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–00XX, in all correspondence.

Dated: September 8, 2014.

Edward Loeb,

Acting Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2014–24485 Filed 10–15–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Inland Waterways Users Board Meeting Notice

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of open Federal advisory committee meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the following Federal advisory

committee meeting of the U.S. Army Corps of Engineers, Inland Waterways Users Board (Board). This meeting is open to the public. For additional information about the Board, please visit the committee's Web site at *http://www.iwr.usace.army.mil/Missions/Navigation/InlandWaterwaysUsersBoard.aspx.*

DATES: The Army Corps of Engineers, Inland Waterways Users Board will meet from 9:00 a.m. to 1:00 p.m. on November 18, 2014. Public registration will begin at 8:30 a.m.

ADDRESSES: The Board meeting will be conducted at the Conference Center at the Maritime Institute at 692 Maritime Boulevard, Linthicum Heights, Maryland 21090 (near Baltimore) at 410–859–5700, or *http://www.ccmit.org.*

FOR FURTHER INFORMATION CONTACT: Ms. Mindy M. Simmons, the Designated Federal Officer (DFO) for the committee, in writing at Headquarters, U.S. Army Corps of Engineers, ATTN: CECW–IP, 441 G Street NW., Washington, DC 20314–1000; by telephone at 202–761–1934; and by email at *Mindy.M.Simmons@usace.army.mil.* In the alternative, contact Mr. Mark R. Pointon, the Alternate Designated Federal Officer (ADFO), in writing at the Institute for Water Resources, U.S. Army Corps of Engineers, ATTN: CEIWR–GM, 7701 Telegraph Road, Casey Building, Alexandria, Virginia 22315–3868; by telephone at 703–428–6438; and by email at *Mark.Pointon@usace.army.mil.*

SUPPLEMENTARY INFORMATION: The committee meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150.

Purpose of the Meeting: The Board is chartered to provide independent advice and recommendations to the Secretary of the Army on construction and rehabilitation project investments on the commercial navigation features of the inland waterways system of the United States. At this meeting, the Board will receive briefings and presentations regarding the investments, projects and status of the inland waterways system of the United States and conduct discussions and deliberations on those matters. The Board is interested in written and verbal comments from the public relevant to these purposes.

Proposed Agenda: At this meeting the agenda will include the status of funding for inland navigation projects and studies, the status of the Inland Waterways Trust Fund, the status and path forward for the Olmsted Locks and Dam Project, status and path forward for the Locks and Dams 2, 3, and 4 Monongahela River Project, an update on the Inland Marine Transportation System (IMTS) Investment Program (Capital Projects Business Model) Revisions, presentation of updated traffic trends, and a discussion of the Board's 2014 Annual Report.

Availability of Materials for the Meeting. A copy of the agenda or any updates to the agenda for the November 18, 2014 meeting. The final version will be provided at the meeting. All materials will be posted to the Web site after the meeting.

Public Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.1 65, and subject to the availability of space, this meeting is open to the public. Registration of members of the public who wish to attend the meeting will begin at 8:30 a.m. on the day of the meeting. Seating is limited and is on a first-to-arrive basis. Attendees will be asked to provide their name, title, affiliation, and contact information to include email address and daytime telephone number at registration. Any interested person may attend the meeting, file written comments or statements with the committee, or make verbal comments from the floor during the public meeting, at the times, and in the manner, permitted by the committee, as set forth below.

Special Accommodations: The meeting venue is fully handicap accessible, with wheelchair access. Individuals requiring special accommodations to access the public meeting or seeking additional information about public access procedures, should contact Ms. Simmons, the committee DFO, or Mr. Pointon, the ADFO, at the email addresses or telephone numbers listed in the **FOR FURTHER INFORMATION CONTACT** section, at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Written Comments or Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the Board about its mission and/or the topics to be addressed in this public meeting. Written comments or statements should be submitted to Ms. Simmons, the committee DFO, or Mr. Pointon, the committee ADFO, via electronic mail, the preferred mode of submission, at the addresses listed in the **FOR FURTHER INFORMATION CONTACT** section in the following formats: Adobe Acrobat or Microsoft Word. The comment or statement must include the author's name, title, affiliation, address, and daytime telephone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the committee DFO or ADFO at least five (5) business days prior to the meeting so that they may be made available to the Board for its consideration prior to the meeting. Written comments or statements received after this date may not be provided to the Board until its next meeting. Please note that because the Board operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection.

Verbal Comments: Members of the public will be permitted to make verbal comments during the Board meeting only at the time and in the manner allowed herein. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least three business (3) days in advance to the committee DFO or ADFO, via electronic mail, the preferred mode of submission, at the addresses listed in the **FOR FURTHER INFORMATION CONTACT** section. The committee DFO and ADFO will log each request to make a comment, in the order received, and determine whether the subject matter of each comment is relevant to the Board's mission and/or the topics to be addressed in this public meeting. A 15-minute period near the end of meeting will be available for verbal public comments. Members of the public who have requested to make a verbal comment and whose comments have been deemed relevant under the process described above, will be allotted no more than three (3) minutes during this period, and will be invited to speak in the order in which their requests were received by the DFO and ADFO.

Dated: October 10, 2014.

David B. Olson,

Federal Register Liaison Officer, U.S. Army Corps of Engineers.

[FR Doc. 2014–24614 Filed 10–15–14; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Army Corps of Engineers

Federal Interagency Steering Committee on Multimedia Environmental Modeling

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of open meeting.

SUMMARY: The annual public meeting of the Federal Interagency Steering Committee on Multimedia Environmental Modeling (ISCMEM) will convene to discuss some of the latest developments in environmental modeling applications, tools and frameworks, as well as new operational initiatives for FY 2015 among the participating agencies. The meeting this year will emphasize environmental modeling challenges in the Chesapeake Bay Watershed and receiving waters.

DATES: October 21–22, 2014, from 8:00 a.m. to 5:00 p.m.

ADDRESSES: U.S. Army Engineer Baltimore District, 10 S. Howard Street, Baltimore, MD 21201.

FOR FURTHER INFORMATION CONTACT: Inquiries and notice of intent to attend the meeting may be emailed to: Patrick Deliman, ISCMEM Chair, U.S. Army Corps of Engineers, Engineering Research and Development Center, CEERD–EZT, 3909 Halls Ferry Road, Vicksburg, MS 39046. TEL 601–634–3623. *Patrick.N.Deliman@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

Background: Nine Federal agencies have been cooperating under a Memorandum of Understanding (MOU) on the research and development of multimedia environmental models. The MOU, which was revised in 2012, continues an effort that began in 2001. It establishes a framework for facilitating cooperation and coordination among the following agencies (the specific research organization within the agency is in parentheses): National Science Foundation; U.S. Army Corps of Engineers (Engineer Research and Development Center); U.S. Department of Agriculture (Natural Resources Conservation Service); U.S. Department of Energy (Office of Biological and Environmental Research); U.S. Environmental Protection Agency; U.S. Geological Survey; U.S. National Oceanographic and Atmosphere Administration; U.S. Nuclear Regulatory Commission (Office of Nuclear Regulatory Research); and U.S. Bureau of Reclamation. These agencies are cooperating and coordinating in the research and development (R&D) of multimedia environmental models, software and related databases, including development, enhancements, applications and assessments of site specific, generic, and process-oriented multimedia environmental models as they pertain to human and environmental health risk assessment. Multimedia model development and simulation supports interagency interests in risk assessment, uncertainty analyses, water supply issues and contaminant transport.

Purpose of the Public Meeting: The annual public meeting and workshop provides an opportunity for the scientific community, other Federal and State agencies, and the public to be briefed on ISCMEM activities and their initiatives for the upcoming year, and to discuss technological advancements in multimedia environmental modeling.

Proposed Agenda: The ISCMEM Chair will open the meeting with a brief overview of the goals of the MOU and an update on current activities of ISCMEM. This introduction will be followed by a series of invited presentations starting on Tuesday morning, Oct. 21, and ending on Wednesday afternoon, Oct. 22.

Meeting Access: The meeting will be available through Web Meeting Services. To obtain web access to the ISCMEM October 21–22 meeting and workshop, all interested attendees will need to pre-register by emailing Martha Newman (Martha *Newman@usace.army.mil*) and Patrick Deliman (*Patrick.N.Deliman@usace.army.mil*), indicating their intent to participate in the meeting and providing their full contact information and affiliation.

Dated: October 9, 2014.

Patrick N. Deliman,

Chair, Federal Interagency Steering, Committee on Multimedia Environmental Modeling.

[FR Doc. 2014–24635 Filed 10–15–14; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2014–ICCD–0142]

Agency Information Collection Activities; Comment Request; Impacts of a Detailed Checklist on Formative Feedback to Teachers

AGENCY: Institute of Education Sciences/National Center for Education Statistics (IES), Department of Education (ED).

ACTION: Notice.

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

DATES: Interested persons are invited to submit comments on or before December 15, 2014.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2014–ICCD–0142 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW, LBJ, Mailstop L–OM–2–2E319, Room 2E115, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Christopher Boccanfuso, 202–219–1674.

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

respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Impacts of a Detailed Checklist on Formative Feedback to Teachers.

OMB Control Number: 1850—NEW.

Type of Review: A new information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 10,800.

Total Estimated Number of Annual Burden Hours: 1784.

Abstract: The Department of Education, in consultation with SEDL, is planning a clustered randomized evaluation in New Mexico to test the effectiveness of materials intended to improve the feedback that principals provide in one-on-one conferences to their teachers about their classroom instruction. New Mexico Public Education Department (NM PED) staff has identified the topic of principal feedback to teachers as an area where New Mexico needs assistance. It has limited resources and time to focus on the post-observation conference step in the teacher evaluation cycle. This impact study will examine whether an enhanced feedback guide relative to business-as-usual guidance to principals and teachers improves the structure and content of the principal-teacher feedback conversation, improves quality of teacher instruction as measured by subsequent formal observation ratings, and increases student achievement and state standardized tests.

Dated: October 9, 2014.

Tomakie Washington,

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

[FR Doc. 2014–24536 Filed 10–15–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2014–ICCD–0143]

Agency Information Collection Activities; Comment Request; 2015–16 National Postsecondary Student Aid Study (NPSAS:16) Field Test Student Data Collection

AGENCY: Institute of Education Sciences/ National Center for Education Statistics (IES), Department of Education (ED).

ACTION: Notice.

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

DATES: Interested persons are invited to submit comments on or before December 15, 2014.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2014–ICCD–0143 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Mailstop L–OM–2–2E319, Room 2E103, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kashka Kubzdela, 202–502–7411.

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

Title of Collection: 2015–16 National Postsecondary Student Aid Study (NPSAS:16) Field Test Student Data Collection.

OMB Control Number: 1850–0666.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 4,818.

Total Estimated Number of Annual Burden Hours: 4,422.

Abstract: The National Postsecondary Student Aid Study (NPSAS), a nationally representative study of how students and their families finance postsecondary education, was first implemented by the National Center for Education Statistics (NCES) in 1987 and has been fielded every 3 to 4 years since. The next major data collection will occur in 2016, with a field test collection in 2015. This submission is for the ninth cycle in the series, NPSAS:16, which will also serve as the base year study for the 2016 Baccalaureate and Beyond Longitudinal Study (B&B) which provides data on the various paths of recent college graduates into employment and additional education. The NPSAS:16 field test sample will include about 300 institutions (full-scale sample about 1,680) and about 4,500 students (126,000 full-scale). Institution contacting for the field test began in September 2014 and student data collection (interviews and institution record data) will be conducted from March through June 2015 (full-scale institution contacting will begin in October 2015 and student data will be collected January through October 2016). Packages to request clearance for the full-scale data collection effort (institution list collection, cognitive testing, student interview, and institution record collection) will be submitted beginning in 2015. This submission for the 2015 field test includes facsimiles of the student interview and student records abstraction instruments as well as student and institution contacting materials.

Dated: October 10, 2014.

Kate Mullan,

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

[FR Doc. 2014–24583 Filed 10–15–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Open Meeting: Environmental Management Site-Specific Advisory Board, Hanford

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), Hanford. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, November 5, 2014; 9 a.m.–5 p.m. Thursday, November 6, 2014; 8:30 a.m.–3 p.m.

ADDRESSES: Red Lion Hotel, 802 George Washington Way, Richland, WA 99352.

FOR FURTHER INFORMATION CONTACT: Kristen Skopeck, Federal Coordinator, Department of Energy Richland Operations Office, 825 Jadwin Avenue, P.O. Box 550, A7–75, Richland, WA 99352; Phone: (509) 376–5803; or Email: *kristen.skopeck@rl.doe.gov.*

SUPPLEMENTARY INFORMATION:

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

Tentative Agenda:

- Potential Draft Advice
  - Environmental Restoration Disposal Facility Record of Decision Amendment
- Discussion Topics
  - Annual Tri-Party Agreement Agencies' Updates
  - Annual Hanford Advisory Board Committee Reports
  - Central Plateau Cleanup Principles

Public Participation: The meeting is open to the public. The EM SSAB, Hanford, 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 Kristen Skopeck 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 agenda items should contact Kristen Skopeck 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 Kristen Skopeck's office at the address or phone number listed above. Minutes will also be available at the following Web site: *http://www.hanford.gov/page.cfm/hab.*

Issued at Washington, DC, on October 7, 2014.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2014–24459 Filed 10–15–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP14–553–000]

Texas Gas Transmission, LLC; Notice of Application

Take notice that on September 25, 2014, Texas Gas Transmission, LLC (Texas Gas), 9 Greenway Plaza, Suite 2800, Houston Texas 77046, filed an application pursuant to section 7(c) of the Natural Gas Act and the Commission's regulations seeking authorization for the construction and operation of facilities in order to accommodate customers who are seeking access to new supplies on the northern end of the Texas Gas system with an ultimate destination to serve new markets in the Midwest and South (Ohio-Louisiana Access Project), all as more fully described in the application which is on file with the Commission and open to public inspection.

The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to J. Kyle Stephens, Vice-President Regulatory Affairs, Texas Gas Transmission, LLC, 9 Greenway Plaza, Suite 2800, Houston, Texas 77046, or call (713) 479–8033, or fax (713) 479–1846 or by email *kyle.stephens@bwpmlp.com,* or to Kathy D. Fort, Manager, Certificates and Tariffs, Texas Gas Transmission, LLC, 610 West Second Street, Owensboro, Kentucky 42301, or call (270) 688–6825 or fax (270) 688–6896 or by email *kathy.fort@bwpmlp.com.*

Specifically, the Ohio-Louisiana Access Project proposed by Texas Gas consists of the construction of a new 10,915 horsepower compressor station (Bosco Compressor Station) in Ouachita Parish, Louisiana and modification of the existing interconnect between Texas Gas and Gulf South Pipeline Company, LP at the Bosco Compressor Station location. Texas Gas also seeks authorization for the modification of yard and station piping at four existing compressor stations located in Dearborn County, Indiana, and in Caldwell Parish, Rapides Parish, and Acadia Parish, Louisiana.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the

proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Comment Date: 5:00 p.m. Eastern Time on October 30, 2014.

Dated: October 9, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–24610 Filed 10–15–14; 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 corporate filings:

Docket Numbers: EC15–3–000.
Applicants: Sabine Cogen, LP.
Description: Application for Authorization under FPA Section 203 of Sabine Cogen, LP.
Filed Date: 10/7/14.
Accession Number: 20141007–5035.
Comments Due: 5 p.m. ET 10/28/14.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1511–005*; ER10–2231–004; ER10–1714–005; ER10–2011–005*.
Applicants: Louisville Gas & Electric Company, Kentucky Utilities Company, LG&E Energy Marketing Inc., PPL EnergyPlus LLC.
Description: Supplement to June 30, 2014 Triennial Market Power Update of the PPL Southeast Companies.
Filed Date: 10/2/14.
Accession Number: 20141002–5180.
Comments Due: 5 p.m. ET 10/23/14.

Docket Numbers: ER10–1942–008*; ER10–2042–011; ER10–1941–004; ER11–3840–002; ER10–1938–006; ER10–1937–004; ER13–1407–001; ER10–1898–005; ER10–1934–005; ER10–1893–005; ER10–1888–004; ER10–1885–004; ER10–1884–004; ER10–1883–004; ER10–1878–004; ER10–1876–004; ER10–1875–004; ER10–1873–004; ER12–1987–002; ER10–1947–004; ER10–1864–004; ER10–1867–004; ER10–1862–005; ER12–2261–002; ER10–1865–004.*
Applicants: Calpine Construction Finance Company, LP, Calpine Energy Services, L.P., Calpine Gilroy Cogen, L.P., Calpine Greenleaf, Inc., Calpine Power America—CA, LLC, Calpine Power America—OR, LLC,CCFC Sutter Energy, LLC,CES Marketing V, L.P.,CES Marketing X, LLC, Creed Energy Center, LLC, Goose Haven Energy Center, LLC, Gilroy Energy Center, LLC, Los Medanos Energy Center, LLC, Metcalf Energy Center, LLC, Geysers Power Company LLC, Otay Mesa Energy Center, LLC, Pastoria Energy Center, LLC,PCF2, LLC, Delta Energy Center, LLC,OLS ENERGY AGNEWS, South Point Energy Center, LLC, Los Esteros Critical Energy Facility LLC,POWER CONTRACT FINANCE, LLC, Russell City Energy Company, LLC.
Description: Supplement to July 1, 2013 Updated Market Power Analysis for the Southwest Region of the Calpine Corporation subsidiaries.
Filed Date: 10/7/14.
Accession Number: 20141007–5018.
Comments Due: 5 p.m. ET 10/28/14.

Docket Numbers: ER13–342–005.
Applicants: CPV Shore, LLC.
Description: Supplement to September 10, 2014 Notice of Non-Material Change in Status of CPV Shore, LLC [only].
Filed Date: 10/6/14.
Accession Number: 20141006–5098.
Comments Due: 5 p.m. ET 10/27/14.

Docket Numbers: ER13–343–003.
Applicants: CPV Maryland, LLC.
Description: Supplement to September 8, 2014 Notice of Change in Status of CPV Maryland, LLC.
Filed Date: 10/6/14.
Accession Number: 20141006–5138.
Comments Due: 5 p.m. ET 10/27/14.

Docket Numbers: ER14–2977–000.
Applicants: TC Ravenswood, LLC.
Description: Supplement to September 30, 2014 TC Ravenswood, LLC tariff filing.
Filed Date: 10/3/14.
Accession Number: 20141003–5242.
Comments Due: 5 p.m. ET 10/24/14.

Docket Numbers: ER15–48–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Original Service Agreement No. 3968; Queue T94 to be effective 9/5/2014.
Filed Date: 10/6/14.
Accession Number: 20141006–5142.
Comments Due: 5 p.m. ET 10/27/14.

Docket Numbers: ER15–49–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): First Revised Service Agreement No. 3644; Queue No. Y2–018 to be effective 9/5/2014.
Filed Date: 10/6/14.
Accession Number: 20141006–5145.
Comments Due: 5 p.m. ET 10/27/14.

Docket Numbers: ER15–50–000.
Applicants: California Independent System Operator Corporation.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): 2014–10–06_FlexiRampConstraintParameter to be effective 1/15/2015.
Filed Date: 10/6/14.
Accession Number: 20141006–5150.
Comments Due: 5 p.m. ET 10/27/14.

Docket Numbers: ER15–51–000.
Applicants: Sierra Pacific Power Company.
Description: § 205(d) rate filing per 35.13(a)(2)(i): Rate Schedule No. 27—Annual BPA–GTA Update 2014 to be effective 10/31/2014.

Filed Date: 10/6/14.
Accession Number: 20141006–5169.
Comments Due: 5 p.m. ET 10/27/14.
Docket Numbers: ER15–52–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): 2014–10–03_GVTC Clean up filing to be effective 12/6/2014.
Filed Date: 10/6/14.
Accession Number: 20141006–5173.
Comments Due: 5 p.m. ET 10/27/14.
Docket Numbers: ER15–53–000.
Applicants: Southern California Edison Company.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Letter Agreement with RE Garland, LLC to be effective 10/1/2014.
Filed Date: 10/7/14.
Accession Number: 20141007–5002.
Comments Due: 5 p.m. ET 10/28/14.

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: October 7, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–24561 Filed 10–15–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1437–002.
Applicants: Tampa Electric Company.
Description: Supplement to June 30, 2014 Triennial Market Power Update of Tampa Electric Company.
Filed Date: 10/7/14.
Accession Number: 20141007–5234.
Comments Due: 5 p.m. ET 10/28/14.
Docket Numbers: ER14–1711–005.
Applicants: TC Ravenswood, LLC.
Description: Tariff Amendment per 35.17(b): Oil Burn Rate Schedule to be effective 10/7/2014.
Filed Date: 10/7/14.
Accession Number: 20141007–5162.
Comments Due: 5 p.m. ET 10/28/14.
Docket Numbers: ER14–1711–006.
Applicants: TC Ravenswood, LLC.
Description: Tariff Amendment per 35.17(b): Clarification of 10/7/14 Amendment to Restart 60 day clock effective 5/1/14 to be effective 5/1/2014.
Filed Date: 10/8/14.
Accession Number: 20141008–5092.
Comments Due: 5 p.m. ET 10/29/14.
Docket Numbers: ER14–1822–003.
Applicants: New York Independent System Operator, Inc.
Description: Tariff Amendment per 35.17(b): Amendment Unexecuted TCR Minimum Oil Burn Agreement to be effective 5/1/2014.
Filed Date: 10/7/14.
Accession Number: 20141007–5168.
Comments Due: 5 p.m. ET 10/28/14.
Docket Numbers: ER14–2469–001.
Applicants: NorthWestern Corporation.
Description: Compliance filing per 35: Additional Changes to Pending Order No 792 Compliance Filing (Montana) to be effective 7/22/2014.
Filed Date: 10/8/14.
Accession Number: 20141008–5083.
Comments Due: 5 p.m. ET 10/29/14.
Docket Numbers: ER14–2532–001.
Applicants: Tampa Electric Company.
Description: Compliance filing per 35: Amendment of Compliance Filing Under Order No. 792 to be effective 8/1/2014.
Filed Date: 10/7/14.
Accession Number: 20141007–5220.
Comments Due: 5 p.m. ET 10/28/14.
Docket Numbers: ER14–2544–001.
Applicants: PacifiCorp.
Description: Compliance filing per 35: OATT EIM Attachment T Revisions Compliance Filing to be effective 10/1/2014.
Filed Date: 10/8/14.
Accession Number: 20141008–5094.
Comments Due: 5 p.m. ET 10/29/14.
Docket Numbers: ER14–2548–003.
Applicants: Ocean State Power.
Description: Tariff Amendment per 35.17(b): Third Amendment to Notice of Succession to be effective 7/1/2014.
Filed Date: 10/8/14.
Accession Number: 20141008–5093.
Comments Due: 5 p.m. ET 10/29/14.
Docket Numbers: ER15–58–000.
Applicants: Palo Duro Wind Interconnection Services, LLC.
Description: Baseline eTariff Filing per 35.1: Palo Duro Wind Interconnection Services, LLC MBR Application to be effective 12/6/2014.
Filed Date: 10/7/14.
Accession Number: 20141007–5209.
Comments Due: 5 p.m. ET 10/28/14.
Docket Numbers: ER15–59–000.
Applicants: ITC Midwest LLC.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): CIAC Agreement with CIPCO to be effective 12/8/2014.
Filed Date: 10/7/14.
Accession Number: 20141007–5210.
Comments Due: 5 p.m. ET 10/28/14.
Docket Numbers: ER15–60–000.
Applicants: Footprint Power Salem Harbor Development LP.
Description: Application for Deferral of Capacity Supply Obligation of Footprint Power Salem Harbor Development LP.
Filed Date: 10/7/14.
Accession Number: 20141007–5242.
Comments Due: 5 p.m. ET 10/28/14.
Docket Numbers: ER15–61–000.
Applicants: PJM Interconnection, L.L.C., American Transmission Systems, Incorporated.
Description: Compliance filing per 35: per 35.13(a)(2)(iii): Opinion No. 533 Compliance Filing—ATSI under EL11–54–002 to be effective 1/1/2015.
Filed Date: 10/8/14.
Accession Number: 20141008–5091.
Comments Due: 5 p.m. ET 10/29/14.
Docket Numbers: ER15–62–000.
Applicants: PacifiCorp.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Tri-State NITSA Rev 5 to be effective 10/1/2014.
Filed Date: 10/8/14.
Accession Number: 20141008–5096.
Comments Due: 5 p.m. ET 10/29/14.

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: October 8, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–24580 Filed 10–15–14; 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 exempt wholesale generator filings:

Docket Numbers: EG15–2–000.
Applicants: Lost Hills Solar, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Lost Hills Solar, LLC.
Filed Date: 10/7/14.
Accession Number: 20141007–5057.
Comments Due: 5 p.m. ET 10/28/14.

Docket Numbers: EG15–3–000.
Applicants: Blackwell Solar, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Blackwell Solar, LLC.
Filed Date: 10/7/14.
Accession Number: 20141007–5058.
Comments Due: 5 p.m. ET 10/28/14.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER14–2468–001.
Applicants: NorthWestern Corporation.
Description: Compliance filing per 35: Additional Changes to Pending Order No 792 Compliance Filing (South Dakota) to be effective 7/22/2014.
Filed Date: 10/7/14.
Accession Number: 20141007–5078.
Comments Due: 5 p.m. ET 10/28/14.

Docket Numbers: ER14–2715–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Tariff Amendment per 35.17(b): 2014–10–07_SA 2690 Amended Big Stone Plant T–T IA to be effective 8/28/2014.
Filed Date: 10/7/14.
Accession Number: 20141007–5138.
Comments Due: 5 p.m. ET 10/28/14.

Docket Numbers: ER14–2719–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Tariff Amendment per 35.17(b): 2014–10–07_SA 2692 Amended Big Stone South-Brookings T–T to be effective 8/28/2014.
Filed Date: 10/7/14.
Accession Number: 20141007–5144.
Comments Due: 5 p.m. ET 10/28/14.

Docket Numbers: ER14–2921–001.
Applicants: Southwestern Public Service Company.
Description: Tariff Amendment per 35.17(b): 10–7–14_RS135 FCA–SPP IM Anc Srvc Amend to be effective 3/1/2014.
Filed Date: 10/7/14.
Accession Number: 20141007–5134.
Comments Due: 5 p.m. ET 10/28/14.

Docket Numbers: ER14–2923–001.
Applicants: Southwestern Public Service Company.
Description: Tariff Amendment per 35.17(b): 10–7–14_RS114–117, 137 FCA–SPP IM Anc Srvc Amend to be effective 3/1/2014.
Filed Date: 10/7/14.
Accession Number: 20141007–5136.
Comments Due: 5 p.m. ET 10/28/14.

Docket Numbers: ER14–2970–000.
Applicants: TransCanada Hydro Northeast Inc.
Description: Supplement to September 30, 2014 TransCanada Hydro Northeast Inc. tariff filing.
Filed Date: 10/3/14.
Accession Number: 20141003–5240.
Comments Due: 5 p.m. ET 10/24/14.

Docket Numbers: ER15–54–000.
Applicants: Lost Hills Solar, LLC.
Description: Initial rate filing per 35.12 Application for Initial Market-Based Rate Tariff and Granting Certain Waivers to be effective 12/1/2014.
Filed Date: 10/7/14.
Accession Number: 20141007–5040.
Comments Due: 5 p.m. ET 10/28/14.

Docket Numbers: ER15–55–000.
Applicants: Blackwell Solar, LLC.
Description: Initial rate filing per 35.12 Application for Initial Market-Based Rate Tariff and Granting Certain Waivers to be effective 12/6/2014.
Filed Date: 10/7/14.
Accession Number: 20141007–5043.
Comments Due: 5 p.m. ET 10/28/14.

Docket Numbers: ER15–56–000.
Applicants: AEP Texas Central Company.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): TCC-Sendero Wind Energy IA to be effective 9/19/2014.
Filed Date: 10/7/14.
Accession Number: 20141007–5102.
Comments Due: 5 p.m. ET 10/28/14.

Docket Numbers: ER15–57–000.
Applicants: AEP Texas Central Company.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): TCC-La Paloma Energy Center IA to be effective 9/19/2014.
Filed Date: 10/7/14.
Accession Number: 20141007–5113.
Comments Due: 5 p.m. ET 10/28/14.

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: October 7, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–24564 Filed 10–15–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–507–000; Docket No. CP12–508–000]

Corpus Christi Liquefaction, LLC, Cheniere Corpus Christi Pipeline, LP; Notice of Availability of the Final Environmental Impact Statement for the Proposed Corpus Christi Lng Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a final environmental impact statement (EIS) for the Corpus Christi LNG Project (Project), proposed by Corpus Christi Liquefaction, LLC and Cheniere Corpus Christi Pipeline, LP (collectively Cheniere) in the above-referenced dockets. Cheniere requests authorization to construct and operate the facilities necessary to import, export, store, vaporize, and liquefy natural gas and deliver the resulting product either into existing interstate and intrastate natural gas pipelines in the Corpus Christi area, or export liquefied natural gas (LNG) elsewhere. The Project liquefaction facilities would enable Cheniere to export LNG equivalent to approximately 2.1 billion standard cubic feet (Bscf) per day of natural gas, and the vaporization facilities would enable Cheniere to sendout approximately 400 million standard cubic feet (MMscf) per day of natural gas into its proposed pipeline system.

The final EIS assesses the potential environmental effects of the construction and operation of the Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed Project, with the mitigation measures recommended in the EIS, would ensure that impacts in the Project area would be avoided or minimized and would not be significant. Construction and operation of the Project would result in mostly temporary and short-term environmental impacts; however, some long-term and permanent environmental impacts would occur.

The U.S. Army Corps of Engineers (COE), U.S. Coast Guard, U.S. Department of Energy (DOE), U.S. Environmental Protection Agency (EPA), and U.S. Department of Transportation (DOT) participated as cooperating agencies in the preparation of the EIS. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis. The U.S. Coast Guard, EPA, and DOT cooperated in the preparation of this EIS because of their special expertise with respect to resources potentially affected by the proposal.

Although the cooperating agencies provide input to the conclusions and recommendations presented in the final EIS, the agencies will present their own conclusions and recommendations in their respective Records of Decision or determinations for the Project.

The final EIS addresses the potential environmental effects of the construction and operation of the following Project facilities:

- Liquefaction facilities, including three liquefaction trains each capable of liquefying approximately 700 MMscf per day of natural gas;
- vaporization facilities, including two trains of ambient air vaporizers and send out pumps each capable of vaporizing sufficient LNG volume for each to send out approximately 200 MMscf per day of natural gas;
- LNG storage facilities, including three LNG storage tanks each capable of storing LNG equivalent to approximately 3.4 Bscf of natural gas;
- marine terminal with two LNG carrier berths;
- 23 miles of 48-inch-diameter pipeline;
- one 41,000 horsepower compressor station and one 12,260 horsepower compressor station; and
- ancillary facilities.

The FERC staff mailed copies of the final EIS to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; newspapers and libraries in the Project area; and parties to this proceeding. Everyone on our environmental mailing list will receive a CD version of the final EIS. In addition, the final EIS is available for public viewing on the FERC's Web site (*www.ferc.gov*) using the eLibrary link. A limited number of copies are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Questions?

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search,'' and enter the docket number excluding the last three digits in the Docket Number field (i.e., CP12–507 and CP12–508). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnline *Support@ferc.gov* or toll free at (866) 208–3676; for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *http://www.ferc.gov/docs-filing/esubscription.asp.*

Dated: October 8, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–24550 Filed 10–15–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL03–3–009]

Price Discovery in Natural Gas and Electric Markets; Notice of Filing

Take notice that on September 15, 2014, Canadian Enerdata Ltd. filed supplemental information to its June 10, 2014 filing, providing clarification of respective index methodologies for Enerdata NGX Canadian natural gas indices and Enerdata U.S. natural gas indices.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on October 20, 2014.

Dated: October 8, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–24551 Filed 10–15–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER15–58–000]

Palo Duro Wind Interconnection Services, 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 Palo Duro Wind Interconnection Services, 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 October 28, 2014.

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 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(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: October 8, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–24563 Filed 10–15–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER15–55–000]

Blackwell Solar, 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 Blackwell Solar, 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 October 28, 2014.

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 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(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: October 8, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–24562 Filed 10–15–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER15–54–000]

Lost Hills Solar, 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 Lost Hills Solar, 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 October 28, 2014.

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 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(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: October 8, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–24565 Filed 10–15–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission or Commission Staff Attendance at MISO Meetings

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission and Commission staff may attend the following MISO-related meetings:

- Advisory Committee (10:00 a.m.–1:00 p.m., Local Time)
  - October 22
  - November 19
  - December 10
- Board of Directors Audit & Finance Committee
  - October 22 (3:30 p.m.–5:00 p.m.)
  - November 19 (10:30 a.m.–12:30 a.m.)
- Board of Directors (8:30 a.m.–10:00 a.m., Local Time)
  - October 23
  - December 11
- Board of Directors Markets Committee (8:00 a.m.–10:00 a.m., Local Time)
  - October 22
  - November 19
  - December 10
- Board of Directors System Planning Committee
  - October 15 (11:00 a.m.–12:30 p.m.)
  - November 19 (2:00 p.m.–4:00 p.m.)
  - December 10 (3:30–5:30 p.m.)
- MISO Informational Forum (3:00 p.m.–5:00 p.m., Local Time)
  - October 21
  - November 18
  - December 16
- MISO Market Subcommittee (9:00 a.m.–4:00 p.m., Local Time)
  - October 28
  - December 2
- MISO Supply Adequacy Working Group (9:00 a.m.–5:00 p.m., Local Time)
  - October 30
  - December 4
- MISO Regional Expansion Criteria and Benefits Task Force (9:00 a.m.–5:00 p.m., Local Time)
  - October 16
  - November 13
  - December 18
- MISO Planning Advisory Committee (9:00 a.m.–5:00 p.m., Local Time)
  - October 15
  - November 12
  - December 17
- Organization of MISO States Annual Meeting (9:00 a.m.–2:30 p.m., Local Time)
  - October 21

All of the meetings above will be held at: MISO Headquarters, 701 City Center Drive, 720 City Center Drive, and Carmel, IN 46032.

Further information may be found at *www.misoenergy.org.*

The above-referenced meetings are open to the public.

The discussions at each of the meetings described above may address matters at issue in the following proceedings:

Docket No. EL14–21, *Southwest Power Pool, Inc.* v. *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–1174, *Southwest Power Pool, Inc.*
Docket No. ER14–2850, *Southwest Power Pool, Inc.*
Docket No. EL11–34, *Midwest Independent Transmission System Operator, Inc. v. Southwest Power Pool, Inc.*
Docket Nos. ER04–691, EL04–104 and ER04–106, *et al., Midwest Independent Transmission System Operator, Inc., et al.*
Order No. 890, *Preventing Undue Discrimination and Preference in Transmission Service*
Docket Nos. ER06–18, *et al., Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–1431, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–1791, *Midwest Independent Transmission System Operator, Inc. and the Midwest ISO Transmission Owners*
Docket No. ER10–2283, *Midwest Independent Transmission System Operator, Inc.*
Docket No. RM10–23 and Order No. 1000, *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*
Docket No. ER11–2275, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER11–3279, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER11–4081, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–678, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–2302, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–2706, *Midwest Independent Transmission System Operator, Inc.*
Docket No. EL13–13, *ITC Midwest, LLC*
Docket No. ER13–187, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER13–186, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER13–101, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER13–89, *MidAmerican Energy Company*
Docket No. ER12–1266, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–1265, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–1564, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–1194, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–971, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER08–925, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–309, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–480, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–2682, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER13–984, *Midcontinent Independent System Operator, Inc.*

Docket No. ER13–1923, *Midcontinent Independent System Operator, Inc.*
Docket No. ER13–1695, *Midcontinent Independent System Operator, Inc.*
Docket No. ER13–1924, *Midcontinent Independent System Operator, Inc.*
Docket No. ER13–1943, *Midcontinent Independent System Operator, Inc.*
Docket No. ER13–1944, *Midcontinent Independent System Operator, Inc.*
Docket No. ER13–1945, *Midcontinent Independent System Operator, Inc.*
Docket No. ER13–692, *Midcontinent Independent System Operator, Inc.*
Docket No. ER13–2156, *Midcontinent Independent System Operator, Inc.*
Docket No. ER13–2375, *Midcontinent Independent System Operator, Inc.*
Docket No. ER13–2376, *Midcontinent Independent System Operator, Inc.*
Docket No. ER13–2379, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–862, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–859, *Midcontinent Independent System Operator, Inc.*
Docket No. ER13–2233, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–836, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–801, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–790, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–503, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–721, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–706, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–684, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–705, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–698, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–689, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–684, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–681, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–659, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–649, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–421, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–422, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–624, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–256, *Midcontinent Independent System Operator, Inc.*
Docket No. ER13–2124, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–102, *Midcontinent Independent System Operator, Inc.*
Docket No. ER13–2295, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–603, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–114, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–115, *Midcontinent Independent System Operator, Inc.*
Docket No. ER13–2378, *Midcontinent Independent System Operator, Inc.*
Docket No. ER13–2337, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–542, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–170, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–516, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–206, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–202, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–83, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–960, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–698, *Midcontinent Independent System Operator, Inc.*
Docket No. EL13–88, *Northern Indiana Public Service Corp.* v *Midcontinent Independent System Operator, Inc., et al.*
Docket No. EL14–12, *ABATE et al.* v *Midcontinent Independent System Operator, Inc., et al.*
Docket No. AD12–16, *Capacity Deliverability across the MISO/PJM Seam*
Docket No. AD14–3, *Coordination of Energy and Capacity across the MISO/PJM Seam*
Docket No. ER13–1938, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–990, *Midcontinent Independent System Operator, Inc.*
Docket No. ER13–2468, *Midcontinent Independent System Operator, Inc.*
Docket No. ER13–2124, *Midcontinent Independent System Operator, Inc.*
Docket No. ER11–2059, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER14–2154, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–2156, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–2368, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–1713, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–1736, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–1725, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–2445, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–2562, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–2566, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–2599, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–1243, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–2747, *Midcontinent Independent System Operator, Inc.*

For more information, contact Patrick Clarey, Office of Energy Markets Regulation, Federal Energy Regulatory Commission at (317) 249–5937 or *patrick.clarey@ferc.gov,* or Christopher Miller, Office of Energy Markets Regulation, Federal Energy Regulatory Commission at (317) 249–5936 or *christopher.miller@ferc.gov.*

Dated: October 9, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–24611 Filed 10–15–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[,, QF14–659–001, et al]

Notice of Petition for Declaratory Order

	Docket Nos.
Minwind I, LLC, Minwind II, LLC, Minwind III, LLC, Minwind IV, LLC, Minwind V, LLC, Minwind VI, LLC, Minwind VII, LLC, Minwind VIII, LLC, Minwind IX, LLC.	EL15–5–000
Minwind I, LLC	QF14–658–001
Minwind II, LLC	QF14–659–001
Minwind III, LLC	QF14–660–001
Minwind IV, LLC	QF14–661–001
Minwind V, LLC	QF14–662–001
Minwind VI, LLC	QF14–663–001
Minwind VII, LLC	QF14–664–001
Minwind VIII, LLC	QF14–665–001

	Docket Nos.
Minwind IX, LLC	QF14–666–001

Take notice that on October 8, 2014, pursuant to Rule 207(a)(2) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207(a)(2) and section 292.203(d)(2) of the Commission's Regulations, 18 CFR 292.203(d)(2) Minwind I, LLC, Minwind II, LLC, Minwind III, LLC, Minwind IV, LLC, Minwind V, LLC, Minwind VI, LLC, Minwind VII, LLC, Minwind VIII, LLC, and Minwind IX, LLC (collectively, Petitioners) filed a petition for declaratory order requesting that the Commission provide for a limited waiver from the QF filing requirement of section 292.203(a)(3) of the Commission's Regulations for the period from April 15, 2006 to July 14, 2014, as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on October 20, 2014.

Dated: October 9, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–24581 Filed 10–15–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL15–4–000]

Trans-Allegheny Interstate Line Company; Notice of Petition for Declaratory Order

Take notice that on October 7, 2014, pursuant to Rule 207 of the Federal Energy Regulatory Commission's (FERC or Commission) Rules of Practice and Procedure, 18 CFR 385.207 (2014), Trans-Allegheny Interstate Line Company (TrAILCo) filed a petition for declaratory order requesting that the Commission declare that the periodic payment by TrAILCo of dividends out of paid-in capital to its parent FirstEnergy Transmission, LLC (FET) will not violate section 305(a) of the Federal Power Act.[1] In addition, TrAILCo states that granting the declaratory order will provide TrAILCo with the needed flexibility to declare and pay periodic dividends to FET out of paid-in capital from time to time as needed to maintain a balanced capital structure within the range of capital structures approved by the Commission.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on November 6, 2014.

Dated: October 8, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–24552 Filed 10–15–14; 8:45 am]

BILLING CODE 6717–01–P

[1] 16 U.S.C. 825d (2014).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9917–97–OAR]

Meeting of the Mobile Sources Technical Review Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Mobile Sources Technical Review Subcommittee (MSTRS) will meet on December 9, 2014. The MSTRS is a subcommittee under the Clean Air Act Advisory Committee. This is an open meeting. The meeting will include discussion of current topics and presentations about activities being conducted by EPA's Office of Transportation and Air Quality. The preliminary agenda for the meeting and any notices about change in venue will be posted on the Subcommittee's Web site: *http://www.epa.gov/air/caaac/mobile_sources.html.* MSTRS listserver subscribers will receive notification when the agenda is available on the Subcommittee Web site. To subscribe to

the MSTRS listserver, send an email to *Etchells.elizabeth@epa.gov.*

DATES: Tuesday, December 9, 2014 from 9:00 a.m. to 4:30 p.m. Registration begins at 8:30 a.m.

ADDRESSES: The meeting is currently scheduled to be held at New Orleans Marriott at 555 Canal St., New Orleans, LA 70130. However, this date and location are subject to change and interested parties should monitor the Subcommittee Web site (above) for the latest logistical information.

FOR FURTHER INFORMATION CONTACT: Elizabeth Etchells, Designated Federal Officer, Transportation and Climate Division, Mailcode 6406A, U.S. EPA, 1200 Pennsylvania Ave. NW., Washington, DC 20460; Ph: 202–343–9231; email: *Etchells.elizabeth@epa.gov.* Background on the work of the Subcommittee is available at: *http://www.epa.gov/air/caaac/mobile_sources.html.* Individuals or organizations wishing to provide comments to the Subcommittee should submit them to Ms. Etchells at the address above by November 21, 2014. The Subcommittee expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

SUPPLEMENTARY INFORMATION: During the meeting, the Subcommittee may also hear progress reports from some of its workgroups as well as updates and announcements on activities of general interest to attendees.

For Individuals with Disabilities: For information on access or services for individuals with disabilities, please contact Ms. Etchells (see above). To request accommodation of a disability, please contact Ms. Etchells, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: October 8, 2014.

Christopher Grundler,

Director, Office of Transportation and Air Quality.

[FR Doc. 2014–24651 Filed 10–15–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9918–01–Region 3]

Delegation of Authority to the State of West Virginia To Implement and Enforce Additional or Revised National Emission Standards for Hazardous Air Pollutants and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation of authority.

SUMMARY: On July 21, 2014, the Environmental Protection Agency (EPA) sent the State of West Virginia (West Virginia) a letter acknowledging that West Virginia's delegation of authority to implement and enforce National Emissions Standards for Hazardous Air Pollutants (NESHAP) and New Source Performance Standards (NSPS) had been updated, as provided for under previously approved delegation mechanisms. To inform regulated facilities and the public of West Virginia's updated delegation of authority to implement and enforce NESHAP and NSPS, EPA is making available a copy of EPA's letter to West Virginia through this notice.

DATES: On July 21, 2014, EPA sent West Virginia a letter acknowledging that West Virginia's delegation of authority to implement and enforce NESHAP and NSPS had been updated.

ADDRESSES: Copies of documents pertaining to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029. Copies of West Virginia's submittal are also available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE., Charleston, West Virginia 25304. Copies of West Virginia's notice to EPA that West Virginia has updated its incorporation by reference of Federal NESHAP and NSPS, and of EPA's response, may also be found posted on EPA Region III's Web site at: *http://www.epa.gov/reg3artd/airregulations/delegate/wvdelegation.htm.*

FOR FURTHER INFORMATION CONTACT: Ray Chalmers, (215) 814–2061, or by email at *chalmers.ray@epa.gov.*

SUPPLEMENTARY INFORMATION: On June 11, 2014, West Virginia notified EPA that West Virginia had updated its incorporation by reference of Federal NESHAP and NSPS to include many such standards, as found in the Code of Federal Regulations (CFR), parts 60, 61, and 63, as of June 1, 2013. On July 21, 2014, EPA sent West Virginia a letter acknowledging that West Virginia now has the authority to implement and enforce the NESHAP and NSPS as specified by West Virginia in its notice to EPA, as provided for under previously approved automatic delegation mechanisms. All notifications, applications, reports and other correspondence required pursuant to the delegated NESHAP and NSPS must be submitted to both the U.S. EPA Region III and to the West Virginia Department of Environmental Protection, unless the delegated standard specifically provides that such submittals may be sent to EPA or a delegated State. In such cases, the submittals should be sent only to the West Virginia Department of Environmental Protection. A copy of EPA's letter to West Virginia follows:

''Mr. William F. Durham, Acting Director
Division of Air Quality
West Virginia Department of Environmental Protection
601 57th Street
Charleston, West Virginia 25304

Dear Mr. Durham:

The United States Environmental Protection Agency (EPA) has previously delegated to the State of West Virginia (West Virginia) the authority to implement and enforce various federal National Emissions Standards for Hazardous Air Pollutants (NESHAP) and New Source Performance Standards (NSPS), which are found at 40 C.F.R. Parts 60, 61 and 63.[1] In those actions EPA also delegated to West Virginia the authority to implement and enforce any future EPA NESHAP or NSPS on the condition that West Virginia legally adopt the future standards, make only allowed wording changes, and provide specified notice to EPA.

In a letter dated June 11, 2014, West Virginia informed EPA that West Virginia had updated its incorporation by reference of federal NESHAP and NSPS to include many such standards as found in 40 C.F.R. Parts 60, 61, and 63 as of June 1, 2013. West Virginia noted that it understood that it was automatically delegated the authority to implement these standards. West Virginia committed to enforcing the standards in conformance with the terms of EPA's previous delegations of authority. West Virginia made only allowed wording changes.

West Virginia provided copies of the revised West Virginia Legislative Rules which specify the NESHAP and NSPS which West Virginia has adopted by reference. These revised Legislative Rules are entitled 45 CSR 34—''Emission Standards for Hazardous Air Pollutants,'' and 45 CSR 16—''Standards of Performance for New Stationary Sources.'' These revised Rules have an effective date of June 1, 2014.

Accordingly, EPA acknowledges that West Virginia now has the authority, as provided for under the terms of EPA's previous delegation actions, to implement and enforce the NESHAP and NSPS standards which West Virginia has adopted by reference in West Virginia's revised Legislative Rules 45 CSR 34 and 45 CSR 16, both effective on June 1, 2014.

[1] EPA has posted copies of these actions at: *http://www.epa.gov/reg3artd/airregulations/delegate/wvdelegation.htm.*

Please note that on December 19, 2008 in *Sierra Club vs. EPA,*[2] the United States Court of Appeals for the District of Columbia Circuit vacated certain provisions of the General Provisions of 40 C.F.R. Part 63 relating to exemptions for startup, shutdown, and malfunction (SSM). On October 16, 2009, the Court issued the mandate vacating these SSM exemption provisions, which are found at 40 C.F.R. Part 63, § 63.6(f)(1) and (h)(1).

Accordingly, EPA no longer allows sources the SSM exemption as provided for in the vacated provisions at 40 C.F.R. Part 63, § 63.6(f)(1) and (h)(1), even though EPA has not yet formally removed the SSM exemption provisions from the General Provisions of 40 C.F.R. Part 63. Because West Virginia incorporated 40 C.F.R. Part 63 by reference, West Virginia should also no longer allow sources to use the former SSM exemption from the General Provisions of 40 C.F.R. Part 63 due to the Court's ruling in *Sierra Club vs. EPA.*

EPA appreciates West Virginia's continuing NESHAP and NSPS enforcement efforts, and also West Virginia's decision to take automatic delegation of additional and more recent NESHAP and NSPS by adopting them by reference.

If you have any questions, please contact me or Mr. Brian Rehn, Acting Associate Director, Office of Permits and Air Toxics, at 215–814–2176.

Sincerely,

Diana Esher, Director
Air Protection Division''

This notice acknowledges the update of West Virginia's delegation of authority to implement and enforce NESHAP and NSPS.

Dated: October 1, 2014.

David Arnold,

Acting Director, Air Protection Division, Region III.

[FR Doc. 2014–24648 Filed 10–15–14; 8:45 am]

BILLING CODE 6560–50–P

[2] *Sierra Club v. EPA,* 551 F.3rd 1019 (D.C. Cir. 2008).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9918–02–Region 3]

Delegation of Authority to the Commonwealth of Virginia To Implement and Enforce Additional or Revised National Emission Standards for Hazardous Air Pollutants and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation of authority.

SUMMARY: On July 29, 2014, the Environmental Protection Agency (EPA) sent the Commonwealth of Virginia (Virginia) a letter acknowledging that Virginia's delegation of authority to implement and enforce National Emissions Standards for Hazardous Air Pollutants (NESHAP) and New Source Performance Standards (NSPS) had been updated, as provided for under previously approved delegation mechanisms. To inform regulated facilities and the public of Virginia's updated delegation of authority to implement and enforce NESHAP and NSPS, EPA is making available a copy of EPA's letter to Virginia through this notice.

DATES: On July 29, 2014, EPA sent Virginia a letter acknowledging that Virginia's delegation of authority to implement and enforce NESHAP and NSPS had been updated.

ADDRESSES: Copies of documents pertaining to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029. Copies of Virginia's submittal are also available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219. Copies of Virginia's notice to EPA that Virginia has updated its incorporation by reference of Federal NESHAP and NSPS, and of EPA's response, may also be found posted on EPA Region III's Web site at: *http://www.epa.gov/reg3artd/airregulations/delegate/vadelegation.htm.*

FOR FURTHER INFORMATION CONTACT: Ray Chalmers, (215) 814–2061, or by email at *chalmers.ray@epa.gov.*

SUPPLEMENTARY INFORMATION: On July 16, 2014, Virginia notified EPA that Virginia had updated its incorporation by reference of Federal NESHAP and NSPS to include many such standards, as they were published in final form in the Code of Federal Regulations dated July 1, 2013. On July 29, 2014, EPA sent Virginia a letter acknowledging that Virginia now has the authority to implement and enforce the NESHAP and NSPS as specified by Virginia in its notice to EPA, as provided for under previously approved automatic delegation mechanisms. All notifications, applications, reports and other correspondence required pursuant to the delegated NESHAP and NSPS must be submitted to both the US EPA Region III and to the Virginia Department of Environmental Quality, unless the delegated standard specifically provides that such submittals may be sent to EPA or a delegated State. In such cases, the submittals should be sent only to the Virginia Department of Environmental Quality. A copy of EPA's letter to Virginia follows:

''Michael G. Dowd, Director
Air Division
Virginia Department of
Environmental Quality
629 East Main Street
P.O. Box 1105
Richmond, Virginia 23218

Dear Mr. Dowd:

The United States Environmental Protection Agency (EPA) has previously delegated to the Commonwealth of Virginia (Virginia) the authority to implement and enforce various federal National Emissions Standards for Hazardous Air Pollutants (NESHAP) and New Source Performance Standards (NSPS), which are found at 40 CFR Parts 60, 61 and 63.[1] In those actions, EPA also delegated to Virginia the authority to implement and enforce any future EPA NESHAP or NSPS on the condition that Virginia legally adopt the future standards, make only allowed wording changes, and provide specified notice to EPA.

In a letter dated July 16, 2014, Virginia informed EPA that Virginia had updated its incorporation by reference of federal NESHAP and NSPS to include many such standards, as they were published in final form in the Code of Federal Regulations dated July 1, 2013. Virginia noted that its intent in updating its incorporation by reference of the NESHAP and NSPS was to retain the authority to enforce all standards included in the revisions, as per the provisions of EPA's previous delegation actions. Virginia committed to enforcing the federal standards in conformance with the terms of EPA's previous delegations of authority. Virginia made only allowed wording changes.

Virginia provided copies of its revised regulations specifying the NESHAP and NSPS which Virginia has adopted by reference. These revised regulations are entitled 9 VAC 5–50 ''New and Modified Stationary Sources,'' and 9 VAC 5–60 ''Hazardous Air Pollutant Sources.'' These revised regulations have an effective date of July 1, 2014.

Accordingly, EPA acknowledges that Virginia now has the authority, as provided for under the terms of EPA's previous delegation actions, to implement and enforce the NESHAP and NSPS standards which Virginia has adopted by reference in Virginia's revised regulations 9 VAC 5–50 and 9 VAC 5–60, both effective on July 1, 2014.

Please note that on December 19, 2008, in *Sierra Club v. EPA,*[2] the United States Court of Appeals for the District of Columbia Circuit vacated certain provisions of the General Provisions of 40 CFR Part 63 relating to exemptions for startup, shutdown, and malfunction (SSM). On October 16, 2009, the Court issued a mandate vacating these SSM

[1] EPA has posted copies of these actions at: *http://www.epa.gov/reg3artd/airregulations/delegate/vadelegation.htm.*

[2] *Sierra Club* v. *EPA*, 551 F.3rd 1019 (D.C. Cir. 2008).

exemption provisions, which are found at 40 CFR § 63.6(f)(1) and (h)(1).

Accordingly, EPA no longer allows sources the SSM exemption as provided for in the vacated provisions at 40 CFR § 63.6(f)(1) and (h)(1), even though EPA has not yet formally removed these SSM exemption provisions from the General Provisions of 40 CFR Part 63. Because Virginia incorporated 40 CFR Part 63 by reference, Virginia should also no longer allow sources to use the former SSM exemption from the General Provisions of 40 CFR Part 63 due to the Court's ruling in *Sierra Club vs. EPA.*

EPA appreciates Virginia's continuing NESHAP and NSPS enforcement efforts, and also Virginia's decision to take automatic delegation of additional and more recent NESHAP and NSPS by adopting them by reference.

Sincerely,

Diana Esher, Director

Air Protection Division''

This notice acknowledges the update of Virginia's delegation of authority to implement and enforce NESHAP and NSPS.

Dated: October 1, 2014.

David Arnold,

Acting Director, Air Protection Division, Region III.

[FR Doc. 2014–24641 Filed 10–15–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0798]

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: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. 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 OMB 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 OMB control number.

DATES: Written comments should be submitted on or before November 17, 2014. 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 email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *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 No.: 3060–0798.

Title: FCC Application for Radio Service Authorization; Wireless Telecommunications Bureau; Public Safety and Homeland Security Bureau.

Form No.: FCC Form 601.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals and households; Business or other for-profit entities; Not-for-profit institutions; and State, local or tribal government.

Number of Respondents and Responses: 253,320 respondents and 253,320 responses.

Estimated Time per Response: 0.5–1.25 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement, every ten year reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in 47 U.S.C. 151, 152, 154, 154(i), 155(c), 157, 201, 202, 208, 214, 301, 302a, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 331, 332, 333, 336, 534, 535 and 554.

Total Annual Burden: 221,955 hours.

Total Annual Cost: $71,306,250.

Privacy Act Impact Assessment: Yes.

Nature and Extent of Confidentiality: In general there is no need for confidentiality with this collection of information.

Needs and Uses: FCC Form 601 is a consolidated, multi-part application form that is used for market-based and site-based licensing for wireless telecommunications services, including public safety licenses, which are filed through the Commission's Universal Licensing System (ULS). FCC Form 601 is composed of a main form that contains administrative information and a series of schedules used for filing technical and other information. This form is used to apply for a new license, to amend or withdraw a pending application, to modify or renew an existing license, cancel a license, request a duplicate license, submit required notifications, request an extension of time to satisfy construction requirements, or request an administrative update to an existing license (such as mailing address change), request a Special Temporary Authority or Developmental License. Respondents are encouraged to submit FCC Form 601 electronically and are required to do so when submitting FCC Form 601 to apply for an authorization for which the applicant was the winning bidder in a spectrum auction.

The data collected on FCC Form 601 includes the FCC Registration Number (FRN), which serves as a ''common link'' for all filings an entity has with the FCC. The Debt Collection Improvement Act of 1996 requires entities filing with the Commission use an FRN.

On June 2, 2014, the Commission released a Second Report and Order FCC 14–62, WT Docket Nos. 08–166 and 08–167 and ET Docket No. 10–24,

''Revisions to Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698–806 MHz Band.'' This order expanded eligibility for low power auxiliary station licenses under Part 74 by adding two new categories of eligible entities: ''Large venue owner or operator'' and ''professional sound company.'' To accommodate these changes we are revising Schedule H of Form 601 to add two new categories of eligible entities: ''Large venue owner or operator'' and ''professional sound company.'' In order to be eligible for a Part 74 license, a large venue owner or operator and a professional sound company must routinely use 50 or more low power auxiliary station devices, where the use of such devices is an integral part of major events or productions. We also increased the number of respondents by 200 responses to include these new applicants.

The Commission therefore seeks approval for a revision to its currently approved information collection on FCC Form 601 to revise Schedule H accordingly and increase the total number of respondents by 200 and the number of responses by 200.

Federal Communications Commission.

Marlene H. Dortch,

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

[FR Doc. 2014–24534 Filed 10–15–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[GN Docket No. 14–28; DA 14–1410]

Panelist Information for Open Internet Roundtables; Correction

AGENCY: Federal Communications Commission.

ACTION: Notice; correction.

SUMMARY: The Commission submitted a document on September 29, 2014 for publication in the **Federal Register** concerning a public notice announcing panelist names and other information for a series of roundtables. The intended effect of this document was to make the public aware of the event and the agenda for the roundtables. The document contained incorrect times.

FOR FURTHER INFORMATION CONTACT: Andrew Erber, Office of General Counsel at (202) 418–0678 or by email at *Andrew.Erber@fcc.gov.*

Correction

In the **Federal Register** summary published on October 3, 2014 at 79 FR 59770 correct the ''Proposed Agenda'' caption to read:

Proposed Agenda:

The Office of General Counsel of the Federal Communications Commission (FCC) provides panelist names and other information about the final event in the Open Internet roundtable series: ''Internet Openness and the Law,'' which will take place on October 7, 2014. This roundtable was previously announced in a Public Notice. At that time, it was unclear whether the roundtable would be a ''meeting'' of the Commission. As such, that Notice was not published in the **Federal Register**. This Notice shall serve as notice that a quorum of Commissioners may be present at the roundtable, in compliance with part 0, subpart F of the Commission's rules. This Notice does not, however, change the ''permit-but-disclose'' status of the *Open Internet* proceeding under the Commission's *ex parte* rules.

Internet Openness and the Law

9:30–9:45 a.m. Welcome and Opening Remarks

9:45–11:15 a.m. Roundtable 1: Sources of Legal Authority

This roundtable will discuss the sources of authority on which the Commission could ground Open Internet rules, including a range of approaches relying on Section 706, Title II, and other possible sources of authority.

Panelists:

Mark Cooper, Director of Research, Consumer Federation of America
Gus Hurwitz, Assistant Professor of Law, Nebraska College of Law
Pantelis Michalopoulos, Partner, Steptoe & Johnson LLP
Thomas Navin, Partner, Wiley Rein LLP
Nuala O'Connor, President and CEO, Center for Democracy and Technology
Tim Wu, Professor of Law, Columbia Law School

Moderators:

Jonathan Sallet, General Counsel, FCC
Stephanie Weiner, Special Advisor to the Chairman on Internet Law and Policy & Associate General Counsel, FCC

11:30 a.m.–1:00 p.m. Roundtable 2: Construction of Legally Sustainable Rules

This roundtable will consider additional legal issues, including constitutional considerations, the nature of common-carriage regulation, and approaches to agency rulemaking and adjudication using tools like prescriptive rules, legal standards, prohibitions, and presumptions to protect and promote Internet openness.

Panelists:

Marvin Ammori, Fellow, New America Foundation
Anne Boyle, Commissioner, Nebraska Public Service Commission
Fred Campbell, Director, Center for Boundless Innovation in Technology
Julia Johnson, Chair, Minority Media & Telecommunications Council
Tejas Narechania, Julius Silver Research Fellow, Columbia Law School
John Windhausen, Jr., President, Telepoly Consulting

Federal Communications Commission.

Dated: October 3, 2014.

Stephanie Weiner,

Associate General Counsel.

[FR Doc. 2014–24202 Filed 10–15–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission

DATE & TIME: Tuesday, October 21, 2014 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 52 U.S.C. 30109 (formerly 2 U.S.C. 437g). Matters concerning participation in civil actions or proceedings or arbitration.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shelley E. Garr,

Deputy Secretary of the Commission.

[FR Doc. 2014–24736 Filed 10–14–14; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 010071–041.

Title: Cruise Lines International Association Agreement.

Parties: AMA Waterways; American Cruise Lines, Inc.; Avalon Waterways; Azamara Cruises; Carnival Cruise Lines; Celebrity Cruises, Inc.; Costa Cruise Lines; Crystal Cruises; Cunard Line; Disney Cruise Line; Holland America Line; Hurtigruten, Inc.; Louis Cruises; MSC Cruises; NCL Corporation; Oceania Cruises; Paul Gauguin Cruises; Pearl Seas Cruises; Princess Cruises; Regent Seven Seas Cruises; Royal Caribbean International; Seabourn Cruise Line; SeaDream Yacht Club; Silversea Cruises, Ltd.; Uniworld River Cruises, Inc.; and Windstar Cruises.

Filing Party: Andre Picciurro, Esq. Kaye, Rose & Partners, LLP; Emerald Plaza, 402 West Broadway, Suite 1300; San Diego, CA 92101–3542.

Synopsis: The amendment updates the agreement membership and revises Appendix A to reflect changes to the Agreement's Affiliated Seller of Travel program.

Agreement No.: 011223–050.

Title: Transpacific Stabilization Agreement.

Parties: American President Lines, Ltd. and APL Co. PTE Ltd.; (operating as a single carrier); A.P. Moller-Maersk A/S trading as Maersk Line; China Shipping Container Lines (Hong Kong) Company Limited and China Shipping Container Lines Company Limited (operating as a single carrier); CMA CGM, S.A.; COSCO Container Lines Company Ltd; Evergreen Line Joint Service Agreement; Hanjin Shipping Co., Ltd.; Hapag-Lloyd AG; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha Ltd.; Mediterranean Shipping Company; Nippon Yusen Kaisha; Orient Overseas Container Line Limited; Yangming Marine Transport Corp.; and Zim Integrated Shipping Services, Ltd.

Filing Party: David F. Smith, Esq.; Cozen O'Connor; 6271 I Street NW.; Suite 1100; Washington, DC 20006.

Synopsis: The amendment would revise the geographic scope of the Agreement to delete the two-year time limitation for the inclusion of the U.S. export trade in the Agreement.

Agreement No.: 012197–001.

Title: CMA CGM/HLAG U.S.-West Med Slot Exchange Agreement.

Parties: CMA CGM S.A. and Hapag-Lloyd AG.

Filing Party: Wayne Rohde, Esq.; Cozen O'Connor; 6271 I Street NW.; Suite 1100; Washington, DC 20006.

Synopsis: The Amendment would delete the authority of the parties to share vessels and makes changes throughout the Agreement necessary to reflect the removal of that authority.

Agreement No.: 012299.

Title: CSCL/UASC/CMA CGM Vessel Sharing and Slot Exchange Agreement, Asia—U.S. West/East/Gulf Coasts.

Parties: China Shipping Container Lines Co. Ltd. and China Shipping Container Lines (Hong Kong) Co., Ltd. (collectively known as China Shipping); United Arab Shipping Company S.A.G.; and CMA CGM S.A.

Filing Party: Heather M. Spring, Esq.; CMA CGM (America) LLC; 5701 Lake Wright Drive; Norfolk, VA 23502.

Synopsis: The agreement authorizes the parties to cooperate on routes between Asia and the U.S. East, West, and Gulf Coasts through a combination of vessel sharing and slot exchange/charter arrangements.

By Order of the Federal Maritime Commission.

Dated: October 9, 2014.

Karen V. Gregory,

Secretary.

[FR Doc. 2014–24504 Filed 10–15–14; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

The Commission gives notice that the following Ocean Transportation Intermediary licenses have been reissued pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101).

License No.: 019710N.

Name: Menuet Maritime Services, Inc. dba U-Box Worldwide.

Address: 14027 Memorial Drive, Houston, TX 77079.

Date Reissued: August 29, 2014.

License No.: 022930NF.

Name: Sea Horse Express Inc.

Address: 69 Le Fante Way, Bayonne, NJ 07002.

Date Reissued: September 5, 2014.

License No.: 022985N.

Name: Ruky International Shipping Line LLC.

Address: 100 Menlo Park Drive, Suite 204, Edison, NJ 08837.

Date Reissued: September 12, 2014.

Sandra L. Kusumoto.

Director, Bureau of Certification and Licensing.

Pursuant to the Commission's direct rule (79 FR 56522), beginning October 20, 2014, these notices will no longer be posted in the **Federal Register**. After October 20, 2014, this information will be available on the Commission's Web site at *http://www.fmc.gov,* see *OTI Licensing Updates.*

[FR Doc. 2014–24578 Filed 10–15–14; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations and Surrenders

The Commission gives notice that the following Ocean Transportation Intermediary licenses have been revoked or surrendered for the reason indicated pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101) effective on the date shown.

License No.: 018234N.

Name: Savant International Logistics Ltd.

Address: 11 Broadway, Suite 1063, New York, NY 10004.

Date Surrendered: September 26, 2014.

Reason: Voluntary surrender of license.

License No.: 019917NF.

Name: TSL Express, Inc.

Address: 1005 East Las Tunas Drive, Suite 615, San Gabriel, CA 91776.

Date Revoked: September 14, 2014.

Reason: Failed to maintain valid bonds.

License No.: 019595F.

Name: Transnuclear, Inc.

Address: 7135 Minstrel Way, Suite 300, Columbia, MD 21045.

Date Revoked: September 29, 2014.

Reason: Failed to maintain a valid bond.

License No.: 021882N.

Name: Intransia LLC.

Address: 168 Madison Avenue, Suite 600, New York, NY 10016.

Date Surrendered: September 29, 2014.

Reason: Voluntary surrender of license.

License No.: 023396F.

Name: Sterling Relocation Americas Inc.

Address: 187 Danbury Road, Wilton, CT 06897.

Date Revoked: September 22, 2014.

Reason: Failed to maintain a valid bond.

License No.: 023464NF.

Name: Away International USA, LLC.

Address: 1207 NW 93rd Court, Miami, FL 33172.

Date Revoked: September 30, 2014.

Reason: Failed to maintain valid bonds.

License No.: 023569F.

Name: Fachel International LLC dba Fachel Shipping and Logistics.

Address: 6331 Belair Road, Baltimore, MD 21206.

Date Revoked: September 30, 2014.

Reason: Failed to maintain a valid bond.

License No.: 024605F.

Name: Global Trade Associates, Inc.

Address: 5 Mount Royal Avenue, Suite 150, Marlborough, MA 01752.

Date Revoked: September 29, 2014.

Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

Pursuant to the Commission's direct rule (79 FR 56522), beginning October 20, 2014, these notices will no longer be posted in the **Federal Register**. After October 20, 2014, this information will be available on the Commission's Web site at *http://www.fmc.gov,* see *OTI Licensing Updates.*

[FR Doc. 2014–24576 Filed 10–15–14; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting Notice

October 10, 2014.

TIME AND DATE: 10:00 a.m., Wednesday, October 22, 2014.

PLACE: The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW., Washington, DC 20004 (entry from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor* v. *DQ Fire and Explosion Consultants,* Docket Nos. WEVA 2011–357–R, et al. (Issues include whether the Administrative Law Judge erred in ruling that the Secretary provided adequate notice of his interpretation of certain training regulations.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Emogene Johnson,

Administrative Assistant.

[FR Doc. 2014–24694 Filed 10–14–14; 11:15 am]

BILLING CODE 6735–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting Notice

October 10, 2014.

TIME AND DATE: 2:00 p.m., Wednesday, October 22, 2014.

PLACE: The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW., Washington, DC 20004 (entry from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor* v. *DQ Fire and Explosion Consultants,* Docket Nos. WEVA 2011–952–R, et al. (Issues include whether the Administrative Law Judge erred in ruling that the violation of the order in question was the result of high negligence.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Emogene Johnson,

Administrative Assistant.

[FR Doc. 2014–24695 Filed 10–14–14; 11:15 am]

BILLING CODE 6735–01–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 November 10, 2014.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *BB&T Corporation,* Winston-Salem, North Carolina; to merge with The Bank of Kentucky Financial Corporation, and thereby indirectly acquire The Bank of Kentucky, Incorporated, both in Crestview Hills, Kentucky.

Board of Governors of the Federal Reserve System, October 10, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–24579 Filed 10–15–14; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–CECANF–2014–06; Docket No. 2014–0006; Sequence No. 6]

Commission To Eliminate Child Abuse and Neglect Fatalities; Announcement of Meeting

AGENCY: Commission To Eliminate Child Abuse and Neglect Fatalities.

ACTION: Meeting Notice.

SUMMARY: The Commission to Eliminate Child Abuse and Neglect Fatalities (CECANF), a Federal Advisory Committee established by the Protect Our Kids Act of 2012, Public Law 112–275, will hold a meeting open to the public on Thursday, October 23 and Friday, October 24 in Burlington, Vermont.

DATES: The meeting will be held on Thursday, October 23, 2014, from 8:00 a.m. to 5:00 p.m., and Friday, October 24 from 12:30 p.m.–3:00 p.m. Eastern Time.

ADDRESSES: CECANF will convene its meeting at the Sheraton, Burlington, 870 Williston Rd., Burlington VT 05403. This site is accessible to individuals with disabilities. The meeting will also be made available via teleconference. Submit comments identified by

''Notice–CECANF–2014–06'', by either of the following methods:

• *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by searching for ''Notice–CECANF–2014–06''. Select the link ''Comment Now'' that corresponds with ''Notice–CECANF–2014–06''. Follow the instructions provided at screen. Please include your name, organization name (if any), and ''Notice–CECANF–2014–06'' on your attached document.

• *Mail:* Commission to Eliminate Child Abuse and Neglect Fatalities, c/o General Services Administration, Agency Liaison Division, 1800 F St. NW., Room 7003D, Washington, DC 20006.

Instructions: Please submit comments only and cite ''Notice–CECANF–2014–06'' in all correspondence related to this notice. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Visit the CECANF Web site at *https://eliminatechildabuse fatalities.sites.usa.gov/* or contact Ms. Patricia Brincefield, Communications Director, at 202–818–9596, 1800 F St. NW., Room 7003D, Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

Background: CECANF was established to develop a national strategy and recommendations for reducing fatalities resulting from child abuse and neglect.

Agenda: The purpose of the meeting being held on October 23, 2014 is for Commission members to gather national and state-specific information regarding child abuse and neglect fatalities. The Commission will hear from researchers and issue experts regarding child abuse and neglect fatalities among tribes, the state of the art of safety decision making in child welfare; how child safety is considered by law enforcement and in mental health, domestic violence and substance abuse treatment services; what is known about near fatalities; and, what a public health based child abuse and neglect fatality prevention infrastructure might look like. On October 24, 2014 the Commissioners will be discussing issues related to defining and counting child abuse and neglect fatalities and issues regarding confidentiality.

Attendance at the Meeting: Individuals interested in attending the meeting in person or participating by webinar and teleconference line must register in advance. To register to attend in person or by webinar/phone, please go to *https://attendee.gotowebinar.com/register/4698443344955798018* and follow the prompts. You will receive a confirmation email once you register with the webinar login and teleconference number. Detailed meeting minutes will be posted within 90 days of the meeting. Members of the public will not have the opportunity to ask questions or otherwise participate in the meeting.

However, members of the public wishing to comment should follow the steps detailed under the heading **ADDRESSES** in this publication or contact us via the CECANF Web site at *https://eliminatechildabusefatalities.sites.usa.gov/contact-us/.*

Dated: October 6, 2014.

Karen White,

Executive Assistant.

[FR Doc. 2014–24484 Filed 10–15–14; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Statement of Organization, Functions, and Delegations of Authority; Administration for Community Living

AGENCY: Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) was created in order to achieve several important objectives: to reduce the fragmentation that currently exists in Federal programs addressing the community living service and support needs of both the aging and disability populations; to enhance access to quality health care and long-term services and supports for all individuals; to promote consistency in community living policy across other areas of the Federal government; and to complement the community infrastructure, as supported by both Medicaid and other Federal programs, in order to better respond to the full spectrum of needs of seniors and persons with disabilities. This reorganization will further advance these objectives by establishing a Center for Consumer Access and Self-Determination to serve as the locus for programs that assist older Americans and people with disabilities to access both health care services and long-term services and supports, as well as initiatives to expand the use of self-directed and person-center service models; and by establishing a Center for Policy and Evaluation to provide a strategic focal point for the development and implementation of policies to improve access to long-term services and supports and enhance opportunities for both populations to live in their communities.

FOR FURTHER INFORMATION CONTACT: Dan Berger, Administration for Community Living, 1 Massachusetts Avenue NW., Washington, DC 20201, 202–357–3419.

SUPPLEMENTARY INFORMATION: This notice amends Part B of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (HHS), Administration for Community Living, as last amended at 77 FR 23250–23260, dated April 18, 2012, as follows:

I. Delete Part B, ''The Administration for Community Living''; in its entirety and replace with the following:

B.00 Mission
B.10 Organization
B.20 Functions

B.00 Mission. The Administration for Community Living's (ACL) mission is to maximize the independence, well-being, and health of older adults, people with disabilities across the lifespan, and their families and caregivers. ACL provides national leadership and direction to plan, manage, develop, and raise awareness of comprehensive and coordinated systems of long-term services and supports that enable older Americans and individuals with disabilities, including intellectual, developmental, and physical disabilities, to maintain their health and independence in their homes and communities. ACL programs support strong State, Tribal, and local community networks designed to respond to the needs of persons with disabilities, older Americans, and their families through advocacy, systems change and capacity building to ensure access to needed community services, individualized supports, and other forms of assistance that promote self-determination, independence, productivity, and integration and inclusion in all facets of community life.

ACL advises the Secretary, Departmental components and other Federal departments and agencies on the development and implementation of policies to improve access to community living services and supports and enhance opportunities for persons with disabilities and older Americans, while retaining discrete policy and programmatic operations that respond to the unique needs of these populations. ACL's visibility within the Department of Health and Human

Services and with other Federal agencies helps ensure that Federal policies and programs allow all individuals across the lifespan to live with respect and dignity as full members of their communities.

B.10 Organization. ACL is an Operating Division of the Department of Health and Human Services. ACL is headed by an Administrator, who reports directly to the Secretary. The Administrator is also the Assistant Secretary for Aging. In addition to the Administrator, the ACL consists of the Principal Deputy Administrator, who also serves as the senior advisor to the Secretary on HHS activities relating to disabilities, and Staff and Program Offices. ACL is organized as follows:

Office of the Administrator (BA)
Administration on Aging (BB)
Administration on Intellectual and Developmental Disabilities (BC)
Center for Consumer Access and Self-Determination (BD)
Center for Management and Budget (BE)
Center for Policy and Evaluation (BF)

B.20 Functions. ACL is the principal agency designated to lead aging and disability programs. More specifically, the provisions of the Older Americans Act (OAA) of 1965 are carried out by its subcomponent, the Administration on Aging; and the provisions of the Developmental Disabilities Assistance and Bill of Rights Act (DD Act) of 2000 are carried out by its subcomponent, the Administration on Intellectual and Developmental Disabilities. ACL also administers programs authorized under Title III, Title XVII and Title XXIX of the Public Health Service Act (PHSA), Section 262 and 292 of the Help America Vote Act (HAVA), section 119 of the Medicare Improvements for Patients and Providers Act (MIPPA) of 2008, Section 6021(d) of the Deficit Reduction Act (DRA) of 2005, section 4360 of the Omnibus Budget Reconciliation Act (OBRA) of 1990, and the Elder Justice Act (EJA) of 2010 (Subtitle B of Title XX of the Social Security Act); and provides continuing support for the administration of the President's Committee for People with Intellectual Disabilities.

Develops, recommends and issues regulations, policies, procedures, standards and guidelines to provide direction for the programs it administers. Approves or disapproves plans and funding applications for national programs providing community-based long-term services and supports. Administers programs for training, research, demonstration, evaluation and information dissemination. Administers programs related to advocacy, systems change and capacity building. Administers national centers for service development and provides technical assistance to States, Tribal Organizations, local communities and service providers. Serves as the lead Federal agency for adult protection services.

Assists the Secretary in all matters pertaining to opportunities and challenges of persons with disabilities, older Americans, and Americans of all ages about their current and potential future need for information and access to long-term services and supports. Advocates for the needs of these constituencies in program planning and policy development within the Department and in other Federal agencies. Advises the Secretary, Departmental components and other Federal departments and agencies on the characteristics, circumstances and needs of these populations and develops policies, plans and programs designed to promote their welfare.

The functions of the organizational units of ACL are described in detail in the succeeding Chapters.

A. Office of the Administrator (BA):

BA.00 Mission
BA.10 Organization
BA.20 Functions

BA.00 Mission. The Office of the Administrator provides executive direction, leadership, and guidance for ACL programs, and serves as the focal point for the development, coordination and administration of those programs nationwide. The Office advises the Secretary on issues affecting seniors and persons with disabilities.

BA.10 Organization. The Office of the Administrator is headed by the Administrator, who reports directly to the Secretary. The Office of the Administrator includes the Principal Deputy Administrator, who also serves as an advisor to the Secretary on HHS activities relating to disabilities, and the following components:

Immediate Office of the Administrator (BAA)
Office of External Affairs (BAB)
Office of Regional Operations (BAC1–BACX)

BA.20 Functions.

1. Immediate Office of the Administrator (BAA). The Immediate Office of the Administrator (IOA) is responsible to the Secretary for carrying out ACL's mission and provides executive supervision to the major components of ACL. The Administrator and Principal Deputy both serve as members of the Secretary's senior leadership team, ensuring that Federal policies and programs support the goal of enabling all individuals to live with respect and dignity as fully participating members of their communities.

Sets national policies, establishes national priorities, ensures policy consistency, and directs plans and programs conducted by ACL. Advises the Secretary, HHS Operating Divisions, and other Federal agencies on the characteristics, circumstances, and needs of persons with disabilities, older Americans, and their families and on policies, plans and programs designed to promote their welfare.

Coordinates the development of legislative proposals, testimony, background statements, and other policy documents in activities related to legislation. In coordination with the HHS Office of the Assistant Secretary for Legislation, analyzes proposed and enacted legislation related directly or indirectly to older people and persons with disabilities, including legislation directly affecting ACL programs.

In collaboration with other Federal agencies, develops and implements interagency agreements to advance the concerns and interests of persons with disabilities, older adults, and families of such individuals. Provides liaison to Federal advisory committees. Works with national organizations, professional societies, and academic organizations to identify mutual interests and plan voluntary and funded approaches to enhance opportunities for community living.

Receives, assesses, and controls incoming correspondence and makes assignments to the appropriate ACL component(s) for response and action; provides assistance and advice to ACL staff on the development of responses to correspondence; and tracks development of periodic reports and facilitates departmental clearance. Maintains official copies of all policy and information issuances, ensuring adherence to requirements for records management and disposition and Freedom of Information Act.

2. Office of External Affairs (BAB). The Office of External Affairs (OEA) supports the Immediate Office of the Administrator in the effective communication of ACL policies, goals, and objectives. In coordination with the Department, manages ACL's media relations and external outreach activities.

Coordinates with the HHS Office of the Assistant Secretary for Public Affairs, including planning and implementing strategy for relations with the news and other information media. Initiates media outreach activities; responds to all media inquiries

concerning ACL programs and related issues; develops news releases, feature articles for magazines and other publications on ACL programs and initiatives; and manages preparation and clearance of speeches and official statements on ACL programs.

Implements public education activities to support the achievement of program objectives; develops and distributes publications and audiovisual materials about older people and persons with disabilities and prepares and issues brochures, fact sheets, and exhibits on their needs and concerns and measures to improve the circumstances, available services, and environment for the older population. Develops special information campaigns to inform the general public about issues, problems and benefits important to persons with disabilities and older people. Fosters, plans and coordinates ceremonies and celebrations. Manages the content of ACL Web sites and oversees the development of other social media tools used to inform the public about ACL policies, programs and services. Implements the National Clearinghouse for Long-Term Care Information authorized under Section 6021(d) of the DRA of 2005.

3. Office of Regional Operations (BAC1–BACX). The Office of Regional Operations (ORO) includes a coordinating central office liaison and ten Regional Support Centers. The central office regional liaison coordinates the operations of the Regional Support Centers, each of which is headed by a Regional Administrator (RA).

The Regional Support Centers serve as the focal point for the development and coordination of ACL programs within the designated HHS region. Represent the Administrator within the region, providing information for, and contributing to the development of, national programs serving with the elderly and persons with disabilities. Serve as the effective and visible advocate to other Federal agencies in their geographic jurisdiction; advise, consult and cooperate with each Federal agency proposing or administering programs or services; coordinate and assist in the planning and development by public (including Federal, State, Tribal and local agencies) and private organizations of comprehensive and coordinated services and opportunities in each community of the nation; and conduct active public education of government officials and the public to ensure broad understanding of the need for community-based services and supports.

Monitor, assist and evaluate State Agencies and Tribal Organizations administering programs supported under the OAA and other authorizing legislation as directed. Participates in the review of State Plans and recommend approval or disapproval, as appropriate. Participates in the review of applications for Tribal Programs and recommend approval or disapproval applications. Review grantee financial and program reports and provide technical assistance to recipients on fiscal operations. Oversees disaster assistance and reimbursement activities pursuant to Section 310 of the OAA.

Advise the Administrator on problems and progress of programs; evaluate the effectiveness of programs and services in the Regions and recommend changes that would improve program operations and enhance effectiveness; and provide guidance to agencies and grantees in applications of policy to specific operational issues requiring resolution. Facilitate interagency cooperation at the Federal, Regional, State and Tribal levels to enhance resources and assistance available to the elderly and persons with disabilities. Disseminate and provide technical assistance regarding program guidelines and developments to States Agencies, Tribal Organizations, and local community service providers.

B. Administration on Aging (BB)

BB.00 Mission
BB.10 Organization
BB.20 Functions

BB.00 Mission. The Administration on Aging (AoA) carries out programs operated under the OAA, Section 398 and Title XVII of the PHSA, and the EJA (Subtitle B of Title XX of the Social Security), including, but not limited to, those concerning the Elder Justice Coordinating Council and Adult Protective Services. The Administration on Aging helps elderly individuals maintain their dignity and independence in their homes and communities through comprehensive, coordinated, and cost effective systems of long-term care, and livable communities across the United States.

BB.10 Organization. The Administration on Aging is headed by the Assistant Secretary, who is also the Administrator. The Deputy Assistant Secretary for Aging supports the Assistant Secretary in overseeing the Administration on Aging. The Administration on Aging includes the following components:

Office of the Assistant Secretary on Aging (BBA)
Office of Supportive and Caregiver Services (BBB)
Office of Nutrition and Health Promotion Programs (BBC)
Office of Elder Justice and Adult Protective Services (BBD)
Office of American Indian, Alaskan Native, and Native Hawaiian Programs (BBE)
Office of Long-Term Care Ombudsman Programs (BBF)

BF.20 Functions

1. Office of the Assistant Secretary on Aging (BBA). The Office of the Assistant Secretary on Aging (OASA) advises and supports the Administrator, the Secretary, and other elements of the Department in serving as the visible and effective advocate for older people within the Federal Government. Provides leadership and expertise on program development, advocacy and initiatives affecting seniors and their caregivers. Plans and directs grant programs designed to provide planning, coordination and services to older Americans as authorized under the OAA and other legislation.

Performs functions under Title II of the OAA related to consultation with other Federal agencies and the provision of information about aging services, programs and policies in order to enhance coordination and delivery. Supports the Administrator in implementing Section 203(1) of the OAA by coordinating, advising, consulting with and cooperating with the head of each department, agency and instrumentality of the Federal Government proposing or administering programs or services substantially related to the objectives of the OAA. Oversees the consultation process by which agency heads must consult with AoA before establishing programs or services related to the OAA. Plans and implements the process for the collaboration of all Federal agencies with AoA in the execution by those agencies of programs and services related to the OAA.

Consults with and provides technical assistance to and education for State and Area Agencies on Aging, Tribal grantees, and local community service providers in the development of plans, goals, and system development activities. Ensures that statutory requirements, regulations, policies, and instructions are implemented for mandatory grant programs under Titles III, VI and VII of the OAA, and for the discretionary grant programs under Title II and Title IV of the OAA, as well as Section 398 and Title XVII of the PHSA and the EJA.

Provides oversight and leadership to the Nutrition Officer established in Title

II of the OAA who provides technical assistance and guidance to Regional Support Centers, States, Area Agencies on Aging and community service providers. Provides technical guidance to the Regional Support Centers as they implement the national programs of the OAA and ensures that clear and consistent guidance is given on program and policy directives. Issues substantive operating procedures to guide Central Office and Regional staff in the conduct of their programmatic responsibilities.

At all levels, from national to the local service delivery level, develops methods and collaborations to articulate the problems and concerns of the elderly to organizations beyond the traditional network of agencies and works with these organizations to be more sensitive and responsive to age-related needs and issues. Oversees the international liaison functions of AoA, coordinating AoA international activities with Departmental as well as other Federal agencies, States and national organizations concerned with international aging matters.

2. Office of Supportive and Caregiver Services (BBB). The Office of Supportive and Caregiver Services (OSCS) serves as the focal point for the operation, administration, and assessment of the programs authorized under Titles III–B and III–E of the OAA and Section 398 of the PHSA, as well as activities under Titles II and IV of the OAA that are designed to provide information and referral services to seniors and caregivers, and to support technical assistance, outreach, and information dissemination that are culturally and linguistically appropriate in order to meet the needs of diverse populations of older individuals. In addition, the Office performs the functions under Title II of the OAA related to consultation with other Federal agencies and the provision of information about supportive and caregiver services in order to enhance service coordination and delivery.

Implements Titles III–B and III–E of the OAA through the development of regulations, policies and guidance governing the development and enhancement by State and Area Agencies on Aging of comprehensive and coordinated systems of home and community-based supportive and caregiver services. This includes implementing and enhancing systems for home and community-based supportive services, the operation of multi-purpose senior centers, and caregiver support and assistance services.

In coordination with the Office of Nutrition and Health Promotion Programs, provides guidance regarding State Plan processing and approval, the process and criteria for approval of States' Intrastate Funding Formulas for the allocation and targeting of resources within States, and implementation of the Interstate Funding Formula for distribution of Title III–B and III–E funds among States. Through the analysis of State Plans, evaluation findings and other relevant material, identifies potential program and management issues and develops recommendations on possible solutions.

Fosters, oversees, and ensures accountability for the implementation of programs by States and Area Agencies through guidance and direction to Regional staff regarding program reviews and system development and enhancements. Designs and provides training and technical assistance for program compliance, effectiveness, and enhancement. Provides technical and subject matter expertise targeted at enhancing the capabilities of State and Area Agencies and local communities to improve service delivery to older people.

Directs and assesses the development of State-administered home and community-based long-term care systems providing supportive services for the elderly and caregivers. Initiates and encourages expansion of the capacities of home and community-based supportive and caregiver services to deliver comprehensive services to the elderly.

Implements programs under Section 398 of the PHSA, as well as activities under Titles II and IV of the OAA, through the development of demonstrations designed to test the efficacy of new and innovative models in improving the delivery and effectiveness of community-based supportive services for seniors and caregivers. Prepares the planning documents for and develops discretionary grant program announcements. Evaluates demonstration grant and contract proposals; and recommends approval/disapproval. Monitors progress, gives technical guidance to, and evaluates the performance of grantees and contractors.

Promotes the coordination of innovation and demonstration activities with other national, field and local programs related to aging. Develops standards and identifies successful service and systems development strategies and best practice models for use by the Aging Network. Provides technical assistance to Aging Network partners in utilizing the findings from program demonstrations to inform policy and program development and enhance service delivery and coordination at the Federal, State and local level.

3. Office of Nutrition and Health Promotion Programs (BBC). The Office of Nutrition and Health Promotion Programs (ONHPP) serves as the focal point for the operation, administration, and assessment of the programs authorized under Titles III–C and III–D of the OAA and Title XVII of the PHSA, as well as activities under Titles II and IV of the OAA designed to promote healthy behaviors and improved health status for older people. In addition, the Office performs the functions under Title II of the OAA related to consultation with other Federal agencies and the provision of information about nutrition and preventive health services in order to enhance service coordination and delivery.

Implements Titles III–C and III–D of the OAA through the development of regulations, policies and guidance governing the development and enhancement by State and Area Agencies on Aging of comprehensive and coordinated systems of home and community-based nutrition and preventive health services. Carries out the functions of the designated Nutrition Officer, who coordinates nutritional services under the OAA, develops the regulations and guidelines, and provides technical assistance regarding nutrition to State and Area Agencies, nutrition service providers, and other organizations. Serves as the liaison to the Department of Agriculture and other Federal agencies and organizations related to nutrition policy and program issues.

In coordination with the Office of Supportive and Caregiver Services, provides guidance regarding State Plan processing and approval, the process and criteria for approval of States' Intrastate Funding Formulas for the allocation and targeting of resources within States, and implementation of the Interstate Funding Formula for distribution of Title III–C and III–D funds among States. Through the analysis of State Plans, evaluation findings and other relevant material, identifies potential program and management issues and develops recommendations on possible solutions.

Fosters, oversees, and ensures accountability for the implementation of programs by States and Area Agencies through guidance and direction to Regional staff regarding program reviews and system development and enhancements. Designs and provides training and technical assistance for program compliance, effectiveness, and enhancement. Provides technical and

subject matter expertise targeted at enhancing the capabilities of State and Area Agencies and local communities to improve service delivery to older people.

Directs and assesses the development of State-administered home and community-based long-term care systems providing nutrition and preventive health services for the elderly and caregivers. Initiates and encourages expansion of the capacities of home and community-based nutrition and preventive health services to deliver comprehensive services to the elderly.

Implements programs under Title XVII of the PHSA, as well as other activities under Titles II and IV of the OAA, through the development of demonstrations designed to test the efficacy of new and innovative models in improving the delivery and effectiveness of community-based nutrition, health promotion, and evidenced-based disease prevention. Prepares the planning documents for and develops discretionary grant program announcements. Evaluates demonstration grant and contract proposals; and recommends approval/disapproval. Monitors progress, gives technical guidance to, and evaluates the performance of grantees and contractors.

Promotes the coordination of innovation and demonstration activities with other national, field and local programs related to aging. Develops standards and identifies successful service and systems development strategies and best practice models for use by the Aging Network. Provides technical assistance to Aging Network partners in utilizing the findings from program demonstrations to inform policy and program development and enhance service delivery and coordination at the Federal, State and local level.

4. Office of Elder Justice and Adult Protective Services (BBD). The Office of Elder Justice and Adult Protective Services (OEJAPS) serves as the focal point for the operation, administration, and assessment of the elder abuse prevention, legal assistance development, and pension counseling programs under Titles II and VII of the OAA, and for Adult Protective Services and related activities carried out under the EJA. The Office also coordinates with the Office of the National Long-Term Care Ombudsman which oversees the Long-Term Care Ombudsman Program and the National Ombudsman Resource Center.

Reviews State Plans to determine eligibility for funding under the OAA and recommends approval or disapproval. Implements Title VII in the field, in coordination with the National Long-Term Care Ombudsman, through the provision to Regional Support Centers of guidance and information, and the development and interpretation of Title VII program regulations and policy. Ensures the implementation of guidance and instructions concerning prevention of elder abuse, elder rights and legal assistance development programs. Provides guidance and leadership in the development of the pension counseling program and effective models for nationwide replication.

Fosters, coordinates, and ensures accountability for the implementation of Title VII by States through guidance and direction to Regional staff regarding program reviews, and program and system development and enhancements. Designs and provides training and technical assistance for program compliance, effectiveness, and enhancement. Develops program plans and instructions for Regional Support Centers and State and Area Agencies to improve the Title VII protection and representational programs funded under the OAA.

Implements demonstration activities under Titles II and IV of the OAA and the EJA designed to test the efficacy of new and innovative models in improving the delivery and effectiveness of elder rights activities. Prepares the planning documents for and develops discretionary grant program announcements. Evaluates demonstration grant and contract proposals; and recommends approval/disapproval. Monitors progress, gives technical guidance to, and evaluates the performance of grantees and contractors.

Promotes the coordination of innovation and demonstration activities with other national, field and local programs related to aging. Develops standards and identifies successful service and systems development strategies and best practice models for use by the Aging Network. Provides technical assistance to Aging Network partners in utilizing the findings from program demonstrations to inform policy and program development and enhance service delivery and coordination at the Federal, State and local level.

Provides Federal leadership for the development and implementation of comprehensive Adult Protective Services systems in order to provide a coordinated and seamless response for helping adult victims of abuse and to prevent abuse before it happens. Develops national Adult Protective Services data systems and standards, and provides technical assistance to states on using and interfacing with the system. Develops model Adult Protective Services program standards that help states improve the quality and consistency of programs. Advances a coordinated Federal research strategy to fill the gaps in knowledge and develop evidence-based interventions to prevent, identify and report, and respond to elder abuse, neglect and exploitation. Provides support for the Elder Justice Coordinating Council.

5. Office for American Indian, Alaskan Native, and Native Hawaiian Programs (BBE). The Office for American Indian, Alaskan Native, and Native Hawaiian Programs (OAIANNHP) serves as the effective and visible advocate within the Department of Health and Human Services and with other departments and agencies of the Federal Government regarding all Federal policies affecting older individuals who are Native Americans. Works with State, local and Tribal governments providing leadership and coordination of activities, services and policies affecting American Indians, Alaskan Natives and Native Hawaiian elders. Promotes linkages among national Indian organizations, national aging organizations, and national provider organizations with the goal of enhancing the interests of and services to Native American elders. Recommends policies and priorities with respect to the development and operation of programs and activities relating to individuals who are older Native Americans. The Office coordinates activities among other Federal departments and agencies to ensure a continuum of improved services through memoranda of agreements or through other appropriate means of coordination.

Evaluates outreach under Title III and Title VI of the OAA and recommends necessary action to improve service delivery, outreach, and coordination between Title III and Title VI services. Encourages and assists with the provision of information to older Native Americans to assure a continuum of services. Develops research plans, conducts and arranges for research in the field of Native American aging; collects, analyzes, and disseminates information related to problems experienced by older Native Americans, including information on health status of older individuals who are Native Americans, elder abuse, in-home care, and other problems unique to Native Americans. Develops, implements, and oversees the uniform data collection procedures for Tribal and Native Hawaiian Organizations; and implements and oversees the

consultation requirements of Title II as they apply to Native American issues.

Serves as the AoA focal point for the administration of the programs authorized under Title VI and the Native American Organization provisions of Title VII–B of the OAA, including administering grants, cooperative agreements and contracts. Coordinates with the Regional Support Centers to provide program guidance, policy direction, training, technical assistance, and monitoring of Title VI grantees. Oversees the development and operation of Resource Centers on Native American Elders under Title IV of the OAA, which gather information, perform research, provide for dissemination of results, and provide technical assistance and training to those who provide services to Native American elders. Arranges for and manages ongoing training and technical assistance for Title VI grantees. Coordinates additional training and technical assistance related to diversity and national minority aging organizations and coalitions with other projects managed by other components of the agency.

6. Office of Long-Term Care Ombudsman Programs (BBF). The Office of the Long-Term Care Ombudsman Programs (OLTCOP) carries out the functions established in Section 201(d)(1) of the OAA, serving as the effective and visible advocate regarding Federal policies and laws that may adversely affect the health, safety, welfare, or rights of residents of long-term care facilities.

Reviews Federal legislation, regulations, and policies regarding long-term care ombudsman programs and makes recommendations to the Assistant Secretary for Aging. Coordinates the activities of ACL with other Federal, State and local entities relating to long-term care ombudsman programs; prepares an annual report to Congress on the effectiveness of services provided by State long-term care ombudsman programs; and establishes standards for the training of State long-term care ombudsman staff.

Coordinates with the Office of Elder Justice and Adult Protective Services on the administration of the Long-Term Care Ombudsman Program and the National Ombudsman Resource Center to ensure alignment with agency initiatives related to elder rights and adult protective services. Makes recommendations to the Administrator regarding the operation of the National Ombudsman Resource Center, and the review and approval of the provisions in State plans submitted under section 307(a) of the OAA that relate to State Long-Term Care Ombudsman programs.

C. Administration on Intellectual and Developmental Disabilities (BC)

BC.00 Mission
BC.10 Organization
BC.20 Functions

BC.00 Mission. The Administration on Intellectual and Developmental Disabilities (AIDD) advises the Secretary, through the Administrator on Community Living, on matters relating to individuals with intellectual and developmental disabilities and serves as the focal point in the Department to support and encourage the provision of quality services to individuals with developmental disabilities and their families. The Administration on Intellectual and Developmental Disabilities supports States and communities in increasing the independence, productivity and community inclusion of individuals with intellectual and developmental disabilities and ensuring that the rights of all individuals with intellectual and developmental disabilities are protected. Carries out programs operated under the DD Act, Section 262 and 292 of the HAVA, and Title III of the PHSA.

BC.10 Organization. The Administration on Intellectual and Developmental Disabilities is headed by a Commissioner, who reports directly to the Administrator. The Administration on Intellectual and Developmental Disabilities includes the following components:

Office of the Commissioner on Intellectual and Developmental Disabilities (BCA)

President's Committee for People with Intellectual Disabilities (BCA1)

Office of Program Support (BCB)

Office of Innovation (BCC)

BC.20 Functions

1. Office of the Commissioner on Intellectual and Developmental Disabilities (BCA). The Office of the Commissioner on Intellectual and Developmental Disabilities (OCIDD) provides executive leadership and management strategies for all components of the Administration on Intellectual and Developmental Disabilities, and serves as the principal advisor to the Administrator, the Secretary, and other elements of the Department for individuals with intellectual and developmental disabilities and their families. Plans, coordinates and controls AIDD policy, planning and management activities which include the development of legislative proposals, regulations and policy issuances for AIDD.

Provides executive direction to AIDD's components and establishes goals and objectives for AIDD programs. Assists states, through the design and implementation of a comprehensive and continuing state plan, in making optimal use of existing Federal and state resources for the provision of services and supports to individuals with intellectual and developmental disabilities and their families to achieve these outcomes.

In concert with other components of ACL as well as other public, private, and voluntary sector partners, develops and implements research, demonstration and evaluation strategies for discretionary funding of activities designed to improve and enrich the lives of individuals with intellectual and developmental disabilities. Serves as a resource in the development of policies and programs to reduce or eliminate barriers experienced by individuals with intellectual and developmental disabilities through the identification of promising practices and dissemination of information. Supports and encourages programs or services and manages initiatives, involving the private and voluntary sectors, that benefit individuals with intellectual, developmental, and other disabilities and their families.

Initiates, executes and supports the development of interagency, intergovernmental and public-private sector agreements, committees, task forces, commissions or joint-funding efforts as appropriate. In coordination with the Office of External Affairs, develops strategies for increasing public awareness of the needs of individuals with intellectual and developmental disabilities, their families, and programs designed to address them.

Provides general staff support for the President's Committee for People with Intellectual Disabilities (PCPID) a Presidential-level advisory body. Coordinates all meetings and Congressional hearing arrangements; provides such advice and assistance in the areas of intellectual disabilities as the President or the Secretary may request; and prepares and issues an annual report to the President concerning intellectual disabilities and such additional reports or recommendations as the President may require or as PCPID may deem appropriate.

2. Office of Program Support (BCB). The Office of Program Support (OPS) is responsible for the coordination, oversight, management and evaluation of the State Councils on Developmental

Disabilities, the Protection and Advocacy Systems, and the University Centers for Excellence in Developmental Disabilities grant programs as authorized by the DD Act. The Office is responsible for the development of procedures and performance standards that ensure compliance with the DD Act and that improve the outcomes of the programs in increasing the independence, productivity and community inclusion of persons with developmental disabilities as well as program outreach activities.

Conducts routine and special analyses of state plans of State Councils on Developmental Disabilities, statement of goals and objectives of State Protection and Advocacy Systems, and five-year plans of the University Centers for Excellence in Developmental Disabilities, to assure consistent application of AIDD program goals and objectives. Provides program development services, develops and initiates guidelines, policy issuances and actions with team participation by other components of AIDD, ACL, HHS and other government agencies to fulfill the mission and goals of the DD Act, as amended.

Ensures the dissemination of grantee results, including project results and information produced by AIDD grantees, by coordinating with the Office of Innovation and the Office of the Commissioner on Intellectual and Developmental Disabilities for information sharing. Manages cross-cutting initiatives with other components of AIDD, ACL, HHS and other government agencies to promote and integrate the grant programs into cross-agency and cross-disability efforts.

3. Office of Innovation (BCC). The Office of Innovation is responsible for the coordination, oversight, management and evaluation of the Projects of National Significance, Family Support, and the Direct Support Workers grant programs as authorized by the DD Act. The Office is responsible for the development of procedures that ensure compliance with the DD Act and that improve the outcomes of the programs, grants and contracts in increasing the independence, productivity and community inclusion of persons with intellectual and developmental disabilities. Ensures the dissemination of project results and information produced by AIDD grantees.

Administers programs under the HAVA that improve accessibility for individuals with the full range of disabilities, including the blind and visually impaired, to polling places, including the path of travel, entrances, exits and voting facilities. Administers a training and technical assistance grant program under the HAVA that provides technical assistance to Protection and Advocacy Systems in their mission to promote the full participation in the electoral process for individuals with the full range of disabilities, including registering to vote, casting vote, and accessing polling places. Also carries out activities under Title III of the PHSA that promote the health and well-being of people living with paralysis and supports their families and caregivers by providing comprehensive information and referral services.

Originates and manages cross-cutting research, demonstration and evaluation initiatives with other components of AIDD, ACL, HHS and other government agencies. Coordinates information sharing and other activities related to national program trends with other ACL programs and HHS agencies and studies, reviews and analyzes other federal programs providing services applicable to persons with developmental disabilities for the purpose of integrating and coordinating program efforts.

D. Center for Consumer Access and Self-Determination (BD):

BD.00 Mission
BD.10 Organization
BD.20 Functions

BD.00 Mission. The Center for Consumer Access and Self-Determination serves as the locus within ACL for the administration of consumer access and protection programs, as well as programs and initiatives that promote the use of self-directed and person-centered service models, for all individuals, caregivers, and families. The Center carries out programs authorized under Titles II and IV of the OAA, Title XXIX of the PHSA, section 119 of the MIPPA, and section 4360 of the OBRA of 1990 that focus on helping states make their health care and long-term service and support systems more person-centered and consistent with the values of self-determination, full participation in community, integration and independence.

BD.10 Organization. The Center for Consumer Access and Self-Determination is headed by a Deputy Administrator, who reports directly to the Administrator. The Center for Consumer Access and Self-Determination includes the following components:

Office of the Deputy Administrator for Consumer Access and Self-Determination (BDA)
Office of Healthcare Information and Counseling (BDB)
Office of Managed Care Consumer Information and Assistance (BDC)
Office of Integrated Programs (BDD)

BD.20 Functions.

1. Office of the Deputy Administrator for Consumer Access and Self-Determination (BDA). The Office of the Deputy Administrator for Consumer Access and Self-Determination (ODACASD) supports the Administrator and the Principal Deputy Administrator in advancing systemic changes to make state health and long-term services and supports systems more person-centered and responsive to the needs and preferences of older Americans, people with disabilities, their families, and caregivers. Works with Federal partners and key external stakeholder groups to engage the multiple state agencies involved in long-term services and supports in developing high performing, consumer-oriented, and responsive systems of care for all populations.

Provides leadership and strategic direction to guide the administration of ACL programs that assist consumers in understanding their health care and long-term services and supports options, improve access, and prevent fraud and abuse. Consults with, provides technical assistance to, and supports the education of States and local community service providers in the development of plans, goals, and system development activities. Supports the coordination of programs within HHS and with Federal, state, community and private sector partners.

Works closely with AoA and AIDD to facilitate the coordination across ACL of multiple consumer protection and family support programs to fully optimize the potential synergies of these investments which, viewed as a whole, represent two of ACL's signature assets. Provides guidance to the Regional Support Centers to ensure clear and consistent direction in program implementation.

2. Office of Healthcare Information and Counseling (BDB). The Office of Healthcare Information and Counseling (OHIC) oversees the operation and administration of the State Health Insurance Assistance Program, authorized under the section 4360 of the OBRA of 1990, and the Senior Medicare Patrol Program, authorized under Title IV of the OAA, that help Medicare and Medicaid beneficiaries as well as coming-of-agers navigate the complexities of health and long-term care systems and educate them on how to prevent fraud, waste, and abuse. The office also manages related activities

funded under section 119 of the MIPPA that focus on outreach to help beneficiaries understand and apply for their Medicare benefits including the Low Income Subsidy program (LIS), Medicare Savings Program (MSP), and Medicare Prescription Drug Coverage (Part D).

Coordinates, implements, monitors, and promotes efforts to provide consumer information and education designed to increase access to, and detect, prevent and report error, fraud and abuse in, the Medicare and Medicaid programs. Works with the ACL Regional Support Centers to provides in-depth expertise, information, leadership and technical assistance to assist the State Health Insurance Assistance Program and Senior Medicare Patrol networks, and serves as a reliable clearinghouse of information for older persons, people with disabilities, and their families and caregivers.

Develops funding opportunities and monitors grants to ensure all necessary activities are completed. Manages the full spectrum of contract requirements including identifying contractual needs, developing statements of work and necessary planning documents, and ensuring that contractors are completing assigned tasks. Ensures that grantees and their volunteers have the necessary information and training to carry out program functions. Develops and refines the performance management systems and provides specialized guidance and technical assistance to help grantees improve their performance. Coordinates with the Centers for Medicare & Medicaid Services and other national partnerships to advance program objectives.

3. Office of Managed Care Consumer Information and Assistance (BDC). The Office of Managed Care Consumer Information and Assistance (OMCCIA) oversees the management and execution of technical assistance activities, including the identification and dissemination of best practices and program models, for the Duals Demonstration Ombudsman Program, which supports grantees serving beneficiaries of state demonstrations to integrate care for Medicare-Medicaid enrollees associated with the Centers for Medicare & Medicaid Services Financial Alignment Initiative. Works with grantees to ensure that the beneficiaries participating in these demonstrations, as well as their caregivers and authorized representatives, have access to person-centered assistance in resolving problems related to their health plans and providers.

Coordinates with CMS in the development of funding opportunities for the Dual Demonstration Ombudsman grants program and in tracking the progress of the state programs. Ensures that grantees and their volunteers have the necessary information and training to carry out program functions. Coordinates with CMS and the state grantees in developing and refining performance management systems and provides specialized guidance and technical assistance to help grantees improve their performance. Analyzes program reports, including consumer feedback and complaints, and makes recommendations to CMS for improving the Ombudsman Program and the Financial Alignment Initiative.

4. Office of Integrated Programs (BDD). The Office of Integrated Programs (OIP) plans and directs the implementation of programs designed to enhance access to integrated services and person-centered programs and systems that support community living. Serves as the focal point for the administration the Lifespan Respite Care Program authorized under Title XXIX of the PHSA, Aging and Disability Resource Center program authorized under Title II of the OAA, the Veteran's-Directed Home and Community-Based Services program, and other activities as deemed appropriate.

OIP provides leadership and a central strategic focus for ACL's efforts to develop single entry point/no wrong door systems of access to long-term services and supports for both seniors, persons with disabilities, and their families and caregivers, in coordination with CMS and other Federal agencies. Promotes initiatives to expand access to services and the development of more responsive service systems, including person-centered planning and self-directed service models. Implements partnerships with external stakeholder organizations to enhance access to integrated systems of services that support both older Americans and persons of all ages with disabilities. Coordinates with the Veteran's Administration on the development and implementation of their long term services and support programs, including the Veteran's-Directed Home and Community-Based Services program and caregiver supports.

Administers grants, cooperative agreements and contracts and provides technical assistance and training in support of these activities. Coordinates with the Regional Support Centers to provide program guidance, policy direction, training, technical assistance, and monitoring of grantees. Prepares the planning documents for and develops discretionary grant program announcements. Evaluates demonstration grant and contract proposals; and recommends approval/disapproval. Monitors progress, gives technical guidance to, and evaluates the performance of grantees and contractors.

E. Center for Management and Budget (BE):

BE.00 Mission
BE.10 Organization
BE.20 Functions

BE.00 Mission. The Center for Management and Budget advises the Administrator on the budget, financial, grants, information resources, procurement, administrative and human resources management activities of ACL.

BE.10 Organization. The Center for Management and Budget is headed by a Deputy Administrator, who reports directly to the Administrator. The Center for Management and Budget includes the following components:

Office of the Deputy Administrator for Management and Budget (BEA)
Office of Budget and Finance (BEB)
Office of Administration and Personnel (BEC)
Office of Grants Management (BED)
Office of Information Resources Management (BEE)

BE.20 Functions.

1. Office of the Deputy Administrator for Management and Budget (BEA). The Office of the Deputy Administrator for Management and Budget (ODAMB) directs and coordinates all administrative and resource management activities for ACL. The Deputy Administrator for Management and Budget serves as the Executive Officer and Chief Financial Officer (CFO) and is the principal advisor and counselor to the Administrator on all aspects of the internal administration of ACL.

Serves as the ACL liaison with the Office of the Assistant Secretary for Administration (ASA), the Office of the Assistant Secretary for Financial Resources (ASFR), the Office of General Counsel (OGC), the Office of the Inspector General (OIG), and the Office of Management and Budget (OMB) for all budget and administrative management issues. Develops, administers, and coordinates financial, operational, and budgetary policies, processes, and controls necessary to administer ACL programs and financial resources; directs discretionary and mandatory grants activities; oversees the utilization of information resources, information technology systems and telecommunications; provides leadership for human capital

development; and coordinates ACL's internal control activities.

Coordinates with other components to carry out reviews of program activities and management practices required under the Chief Financial Officers Act, the Federal Managers Financial Integrity Act, the Improper Payments Information Act, the Federal Information Security Management Act, and other legislation. Monitors legislation related to administrative management and provides analysis of the impact on ACL programs and resources. Conducts annual reviews and assessments of internal controls required under the Federal Managers Financial Integrity Act and ensures compliance with the GAO and OMB standards. Plans, organizes and conducts studies of organizational structures, functional statements, job structures, staffing patterns, and management and administrative information systems; and identifies and resolves problems of organization and administrative management. Prepares and maintains organizational and functional statements and delegations and designations of authority for ACL.

2. Office of Budget and Finance (BEB). The Office of Budget and Finance (OBF) supports the Deputy Administrator for Management and Budget in fulfilling ACL's Chief Financial Officer responsibilities. The OBF Director serves as the Deputy Chief Financial Officer, Budget Officer, and Senior Travel Official and oversees and coordinates ACL's budget formulation, budget execution, and financial management activities. OBF serves as the primary liaison with the Program Support Center's Division of Financial Management Services, which provides accounting, audit, and financial management services to AoA.

In coordination with the program offices, formulates and presents budget estimates; executes apportionment documents; and plans, directs, and coordinates financial and budgetary programs of ACL. Provides guidance to program offices in preparing budgets, justifications, and other supporting budgetary materials. Solicits, obtains and consolidates information and data from other offices, and prepares budget documents on behalf of the Administrator for presentation to the Department, OMB, and the Congress.

Analyzes the budget as approved by the Congress and apportioned by OMB, obtains input from program offices and recommends for the Administrator's approval a financial plan for its execution. Makes allowances to ACL offices within the guidelines of the approved financial plan. Develops and maintains an overall system of budgetary controls to ensure observance of established ceilings on both program—including all mandatory and discretionary grant accounts—and Salaries and Expense funds; maintains administrative control of funds against allotments and allowances; certifies funds availability for all accounts; and coordinates the management of interagency agreement activities. Prepares requests for apportionment of appropriated funds; and prepares spending plans and status-of-funds reports for the Administrator.

Develops financial operating procedures and manuals; coordinates financial audits; and provides analysis on financial issues. Ensures that internal controls are in place for administrative and programmatic activities that provide reasonable assurance of the effectiveness and efficiency of operations and compliance with applicable laws and regulations. Serves as the liaison with the Office of the Secretary and OMB on all budgetary and financial matters.

Coordinates all travel management activities. Provides technical assistance and oversight on the use of the GovTrip system; manages employee participation in the Travel Charge Card program, and coordinates the provision of Travel Management Center services.

3. Office of Administration and Personnel (BEC). The Office of Administration and Personnel (OAP) provides support to ACL in the areas of human capital development, personnel, facilities, acquisitions, and other administrative services. The OAP Director serves as the Chief Human Capital Officer and provides leadership for the strategic planning and operational management of human capital resources. OAP serves as the primary liaison to the Program Support Center's Division of Acquisition Management Services, which provides procurement services to ACL; and the National Capital Region Human Resources Center, which provides personnel support services.

Develops and implements human capital strategies and strategic workforce plans; directs the development and creation of strategies to attract diverse talent and develop a highly skilled workforce; and provides leadership in the development of plans for achieving short- and long-range human capital goals. Provides leadership and guidance to meet the human resource management needs and coordinates internal and external resources to provide staff with personnel services including position management, performance management, employee recognition, staffing, recruitment, employee and labor relations, employee assistance, payroll liaison, staff development and training, and special hiring and placement programs.

Provides oversight and direction to meet the administrative needs of ACL components. Prepares, coordinates and disseminates information, policy and procedural guidance on human resource and administrative management issues on an agency-wide basis. Serves as liaison with the Program Support Center's Division of Real Property Management Services and the General Services Administration (GSA) to plan, develop and coordinate space and facilities services. Serves as the lead for coordination and liaison with Departmental, GSA, Federal Protective Service, and other Federal agencies for planning and executing the agency's environmental health, safety and physical security programs. Provides coordination and direction for Continuity-of-Operations activities.

Assists other ACL components in securing contractor assistance by advising on appropriate acquisition vehicles, developing statements of work and independent cost estimates, and managing the technical aspects of contracts. Coordinates with the Office of Information Resources Management to develop and implement procurement strategies for information technology support services and review all information technology acquisition documentation for compliance with applicable laws and regulations. Monitors the use of credit cards for small purchases and establishes and manages contracts and/or blanket purchase agreements for administrative support and facilities management services.

4. Office of Grants Management (BED). The Office of Grants Management (OGM) serves as ACL's focal point for the management, leadership and administration of grants, and cooperative agreements. The OGM Director serves as the Chief Grants Management Officer and provides national policy oversight and development for grants management and administration matters. The Office ensures that all grant awards conform to applicable statutory, regulatory, and administrative policy requirements, both before and following award. Maintains liaison and coordination with appropriate ACL and HHS organizations to ensure consistency between discretionary and mandatory grant award activities, including the Program Support Center's Division of Payment Management Services, which provides payment system services for grants.

Ensures that the administrative, business and financial management aspects of grants administration are carried out and grantee performance is monitored. Performs cost analysis/budget analysis for all discretionary grant award documents and negotiates grant budgets, executing all awards. Advises management and program officials in developing, implementing and evaluating program plans, strategies, regulations, announcements, guidelines and procedures. Only the Office of Grants Management has the authority to obligate the Government to the expenditure of funds for grants and cooperative agreements. Serves as liaison with other Departmental offices for grants policy and administration.

Issues grant awards pursuant to requirement established in authorizing legislation, and makes adjustments to previously issued mandatory grant awards. In coordination with all Central Office and Regional Support Centers, reviews and assesses grant award procedures; directs and/or coordinates management initiatives to improve grant programs in financial areas; develops proposals for improving the efficiency in awarding grants and coordinating financial operations among grant programs; establishes priorities and develops procedures for grantee financial monitoring; and reviews activities at the field level for all grant programs.

For grant activities, develops financial management standards and provides guidance on and interpretation of applicable Federal regulations. Based on grants management policies and procedures approved by the Department, reprograms grant funds as required under authoring legislation. Following consultation with all Central Office and Regional Support Centers having grant administrative responsibilities, and with the approval of the Administrator, develops instructions and procedures for the administration of the business aspects of all grants.

Provides training, technical assistance, overall guidance, monitoring and assistance to ACL staff in all areas of administrative and financial management of grants. Has primary responsibility for developing grants management policy issuances, and ensuring consistent policy interpretation within ACL concerning grants management. Serves as the liaison with the GAO and the HHS OIG on grant matters. Assists at grant hearings, before the Departmental Appeals Board, in response to disallowances and other financial claims. Responds to Departmental and OIG audit reviews, ensuring proper analysis and resolution of audit findings by Regional Support Centers for final action by the Administrator. Coordinates receipt and processing of all grants and related materials.

5. Office of Information Resources Management (BEE). The Office of Information Resources Management (OIRM) oversees and coordinates the provision of information technology services for ACL. The OIRM Director serves as the Chief Information Officer and Privacy Officer and prepares, coordinates and disseminates information, policies, standards, guidelines, and procedures on information technology management issues. OIRM serves as the primary liaison to the HHS Office of Information Technology Infrastructure Operations, which provides for the management, maintenance and operation of ACL's information technology systems infrastructure, including the LAN, personal computers, software, hosting, and support services.

Manages the development of ACL custom applications, systems, and Web sites; oversees training and technical assistance for all systems, hardware and software; and coordinates the preparation of manuals and policy issuances required to meet the instructional and informational needs of users of the systems. Directs and coordinates ACL's systems security and privacy responsibilities, including protection, security and integrity of data; and is responsible for establishing and maintaining a secure Inter- and intranet presence. Coordinates mandated OMB approvals required for data collection activities under the Paperwork Reduction Act of 1980, as amended. Represents ACL on the Department's Chief Information Officer's Council and other Departmental information technology policy and planning boards, teams, and workgroups.

In coordination with the Office of Administration and Personnel, develops and implements procurement strategies for information technology support services. Reviews all information technology acquisition documentation for compliance with applicable laws and regulations and defines the specifications for procurement of all hardware and software. Identifies opportunities to share information technology services through inter-governmental, inter-departmental and inter-agency agreements.

Serves as liaison with the Office of the Secretary, GSA, and outside vendors to plan, develop and coordinate guidelines and activities for telecommunications services. Provides telecommunications planning and management, including procurement, installation, and maintenance of telecommunications equipment and services such as telephones, cellular phone service, cable TV service, and audio and video conferencing equipment and services.

F. Center for Policy and Evaluation (BF):

BF.00 Mission
BF.10 Organization
BF.20 Functions

BF.00 Mission. The Center for Policy and Evaluation advises and supports the Administrator and the Principal Deputy Administrator in developing effective Federal policies to address the needs of older individuals and individuals with disabilities. The Center collects and analyzes data on populations and services, develops strategic goals and objectives, evaluates the effectiveness of programs, and plans and coordinates the development of policies designed to overcome barriers that prevent older Americans and persons with disabilities from fully participating and contributing in an inclusive community life.

BF.10 Organization. The Center for Policy and Evaluation is headed by a Director, who reports directly to the Administrator. The Center for Policy and Evaluation includes the following components:

Office of the Director for Policy and Evaluation (BFA)
Office of Policy Analysis and Development (BFB)
Office of Performance and Evaluation (BFC)

BF.20 Functions.

1. Office of the Director for Policy and Evaluation (BFA). The Office of the Director for Policy and Evaluation (ODPE) advises the Administrator, the Principal Deputy Administrator, and the Secretary on matters relating to implementation and coordination of policies, regulations, and special initiatives within the Department and with other Federal agencies focused on disability and aging. Serves as the focal point within ACL and the Department for the analysis of, and development of recommendations related to, disability and aging issues, including policies, regulations, and special initiatives. Supports the coordination of policies within HHS and with Federal, state, community and private sector partners.

Leads the agency's strategic planning, policy analysis, and evaluation functions, including the formulation of short- and long-term strategies for advancing ACL policy and program priorities. Coordinates the development

and implementation of the agency's strategic plan that establishes long and short-range goals, objectives, strategies and action plans for advancing the agency's policy and program agenda. Reviews and coordinates all policy and program development documents, regulations and activities to ensure consistency with ACL's strategic plan; and adjusts goals and strategies as appropriate. Coordinates the identification and analysis of emerging policy issues and trends and appropriate Federal responses. Formulates an agency-wide policy and program development strategy consistent with the priorities established by the Administrator and the Principal Deputy Administrator.

Plans and directs the evaluation of ACL programs designed to provide planning, coordination and services to older Americans and people with disabilities. The Director serves as the Performance Improvement Officer and is the primary liaison with the Office of the Assistant Secretary for Planning and Evaluation (ASPE), the Office of the Assistant Secretary for Financial Resources (ASFR), and the Office of Management and Budget (OMB) for program performance and evaluation activities.

2. Office of Policy Analysis and Development (BFB). The Office of Policy Analysis and Development (OPAD) analyzes trends in demographics, service needs, public policies and program development, and translates those trends into new policies and initiatives in long-term services and supports and health care that assist people with disabilities and older individuals to remain in their own homes and communities.

Directs intergovernmental activities as they relate to the agency's policy and program development agenda, and develops and maintains effective relationships with other governmental departments and agencies. Plans, negotiates, facilitates and updates, as appropriate, memoranda of understanding with other departments and agencies to promote agreements and cooperative relationships. Maintains information on, and pursues collaborative opportunities with, other Federal agencies, non-profit organizations and private corporations that have the potential to contribute to the agency's policy and program development priorities.

Provides technical, program and policy development input on legislative activities and the annual budget. Participates in Departmental and inter-departmental activities that concern health and long-term care; reviews and comments on Departmental regulations and policies regarding health programs, institutional and non-institutional long-term care services, and those designed to enhance community living.

Conducts relevant policy research, carries out periodic reviews of needs and resources in the fields of aging and disability, and undertakes qualitative and quantitative analyses to develop policy options and recommendations for the Administrator and the Principal Deputy Administrator. Develops policy reports based on the needs and circumstances of older people, their family members and the aging population. Develops and coordinates initiatives with other Federal agencies, national aging organizations, national disability organizations, and universities to fill gaps in information in the field of aging and disability.

3. Office of Performance and Evaluation (BDC). The Office of Performance and Evaluation (OPE), in collaboration with the respective ACL program offices, implements, oversees and manages ACL's program performance responsibilities, data collection systems, and program evaluation activities. Develops plans and priorities for evaluation of ACL programs, with subject matter input from appropriate units. Manages contracts for mandated evaluation projects and performs intramural evaluation studies. Prepares reports of the results of program and impact evaluations conducted by and for ACL, with technical input from other ACL units. Provides technical guidance on evaluation activities conducted as part of ACL's discretionary grants programs.

Implements the requirements of the Government Performance and Results Act of 1993 (GPRA) and the GPRA Modernization Act of 2010. Interprets ACL goals, priorities, and strategies for consistency with ACL long-range GPRA goals and strategies, and adjusts GPRA goals and strategies accordingly. Provides guidance and technical assistance to ACL organizational units in developing operational plans, particularly in developing measurable objectives and indicators reflecting program and organizational performance. Prepares annual GPRA plans and reports and coordinates with the Office of Budget and Finance on the development of the ACL performance budget.

Coordinates ACL activities related to the collection, analysis, and dissemination of national and program data on older individuals and individuals with disabilities. Develops and manages data requirements; designs the criteria for collecting, analyzing and disseminating program performance data; and prepares the data for reporting to Congress and the public. Designs, implements and provides guidance and technical assistance to funding recipients on data collection and analysis. Works with the Office of Information Resources Management to coordinate mandated Office of Management and Budget (OMB) approvals required under the Paperwork Reduction Act of 1980, as amended.

Compiles, publishes, and disseminates information on demographic data and data from other Federal agencies on the health, social and economic status of older persons and persons with disabilities. Performs routine and special statistical analyses of data for ACL offices, other Federal and non-Federal organizations, and the general public.

II. Delegations of Authority: All delegations and re-delegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further re-delegations.

III. Funds, Personnel and Equipment: Transfer of organizations and functions affected by this reorganization shall be accompanied in each instance by direct and support funds, positions, personnel, records, equipment, supplies and other resources.

Dated: August 29, 2014.

Sylvia M. Burwell,

Secretary.

[FR Doc. 2014–24639 Filed 10–15–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''Care Coordination Quality Measure for Patients in the Primary Care Setting.'' In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on July 30th, 2014 and allowed 60 days for public comment. AHRQ received and responded to comments from two members of the public. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by November 17, 2014.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by email at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Care Coordination Quality Measure for Patients in the Primary Care Setting

Proposed Project

''Care Coordination Measure Development—Phase III''

This project is Task Order #11 under the Agency for Healthcare Research and Quality (AHRQ) Prevention and Care Management Technical Assistance Center Indefinite Delivery Indefinite Quantity contract. The project, entitled ''Care Coordination Measure Development—Phase III'', will develop a patient survey of the quality of care coordination for adults in primary care settings, i.e., the Care Coordination Quality. Measure for Primary Care (CCQM–PC). The project will update the Care Coordination Measures Atlas (*http://www.ahrq.gov/professionals/systems/long-termcare/resources/coordination/atlas/index.html*). In combination with primary research, the project will use the Atlas and prior work that identified gaps in the measurement of care coordination to develop and pilot test a rigorous and psychometrically sound patient assessment (from the perspective of patient and family) of the quality of care coordination for adults within primary care settings—the CCQM–PC. The survey will address key care coordination domains; be appropriate for research; will set the stage for the future development of measures for quality reporting, accountability, and payment purposes; and be consistent with Consumer Assessment of Healthcare Providers and Systems (CAMPS) 0 principles. The instrument is to be developed, cognitively tested, revised and pilot tested. A stakeholder panel will provide input throughout the phases of the project.

There are five explicit objectives for our analysis of the pilot-test data:

- Evaluate the quality of the responses to the CCQM–PC survey (through item functioning analysis).
- Determine how the items that ask for reports of patient experiences could be summarized into a smaller set of composite measures (through factor analysis).
- Evaluate the measurement properties of the composite scales (assessment of reliability, validity, and variability of the measure).
- Identify information (i.e., case mix adjusters) that should be used to adjust scores to ensure valid comparisons among primary care practices (PCPs).
- Determine how CCQM–PC scores vary among practices that self-report processes of care that are more or less aligned with a medical home model.

This study is being conducted by AHRQ through its contractor, American Institutes for Research (AIR), pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities with respect to quality measurement and improvement. 42 U.S.C. 299a(a)(1) and (2).

Method of Collection

Thirty primary care practices of different types and ownership configurations will be recruited to provide a patient sample to AIR for the purpose of establishing the psychometrics of the CCQM–PC and understanding the relation of its domains to a practice-level measure of processes of care, the Medical Home Index (Long Version, MHI–LV). The CCQM–PC will be conducted by mail with phone follow-up for nonrespondents. Survey operations for the CCQM–PC will follow standard CAHPS practice:

- Mail the questionnaire package, including a personalized letter introducing the study and explaining the respondent's rights as a research participant. Include a postage-paid envelope to encourage participation.
- Send a postcard reminder to nonrespondents 10 days after sending the questionnaire.
- Send a second questionnaire with a reminder letter to those who have still not responded thirty days after the first mailing.
- Begin follow-up by telephone with nonrespondents three weeks after sending the second questionnaire. Interviewers will attempt to locate respondents who have not responded to the mailed survey.
- Verify telephone numbers for sample respondents prior to calling.
- Make a maximum of 9 attempts by phone.
- Include a toll-free number in the cards and letters for respondents to call if they have questions about the survey. The firm responsible for fielding the survey will establish a helpdesk that will start operating at the first mailing and that will remain open until close of fieldwork.
- Answer incoming calls live during business hours and a recording machine will capture after hours calls. The after-hours calls will be returned next business day.
- Ask two clinicians from each participating practice complete the MHI–LV by paper-and-pencil jointly and return the form to the AHRQ contractor.

The information collected in the pilot survey will be used to test and improve the draft survey. The pilot design will support the standard suite of psychometric analyses conducted to identify and develop composite scoring algorithms as well as to provide evidence of the reliability and construct validity of the composite scores and any scores based on individual items. Additionally, the variations in composite scores and total CCQM–PC scores will be examined for any differences that may be correlated with variations in the practice's self-assessment of its engagement in processes of care that are consistent with the medical home model. The analyses will include the following components:

- Item functioning analysis
- Confirmatory Factor Analysis
- Exploratory Factor Analysis
- Evaluation of the reliability, validity, and variability of composite and single-item scores
- Case mix adjustment (if the data indicate this is needed).

Because the survey items are being developed to measure specific aspects of care coordination in accordance with the domain framework developed through previous phases of AHRQ's Care Coordination Measure Development portfolio, the factor structure of the survey items will be evaluated through multilevel confirmatory factor analysis. On the basis of the data analyses, items or factors may be dropped. Exploratory factor analysis is also planned.

Data from the pilot survey will be used to make final adjustments to the CCQM–PC. The final survey instrument

will be made publicly available, at no charge, to prospective users, for use in research projects that aim to assess care coordination as it relates to quality care and healthcare outcomes, thereby helping to expand the evidence base for the care coordination construct and its associated processes. There is value, given where the field is now, in developing a survey of reasonable length that can be used for research purposes, but also can serve as the ''parent'' survey from which a smaller subset of items appropriate for quality improvement could be drawn.

A well-developed, psychometrically sound, practical survey of adult patients' experiences of care coordination in primary care settings, that covers key conceptual domains articulated through AHRQ's past work in this area, will help generate evidence that is needed to understand the relationship between care coordination processes and health outcomes, in addition to offering a way to explore other critical questions regarding care coordination.

The development of this research-focused survey is a critical step in moving toward the future development of measures of care coordination in primary care settings that can be used for accountability purposes, including those submitted for consideration of endorsement by the National Quality Forum. This will ensure that the measures or measure set is useful from a public reporting perspective to a variety of potential stakeholders, including patients seeking providers that engage in care coordination practices supported by the evidence base. The key target audiences for the use of the survey are researchers and, ultimately, payers (including health insurance plans, employers, and entities such as the Centers for Medicare & Medicaid Services), although use by health systems and individual primary care practices is also envisioned.

Estimated Annual Respondent Burden

Exhibit 1 shows the total estimated annualized burden hours for the CCQM–PC pilot survey (2,022 hours), including burden for survey respondents (1,890 hours) and practice staff (132 hours). With respect to the burden on CCQM–PC survey respondents, thirty practices will be sampled, with the survey sent to 375 prospective respondents per sample. A 40% response rate (in keeping with response rates on other CAHPS II+ and CAHPSS-like surveys of similar length and mode) will yield 150 respondents per practice. Total respondents were calculated by multiplying the number of practices by the respondents per practice, for a total of 4,500 (i.e., 150 × 30 = 4,500). The survey has 102 items (79 assessment items, 4 items about healthcare services sought in the past 12 months, and 19 items that assess participant characteristics such as demographics), with an estimated completion time of 25 minutes (.42 hours) per survey response. This estimate is based on the length of previous CAHPS® surveys of comparable length that have been administered to similar populations.

Burden hours for participating practices are calculated based on the total burden to one physician/administrator and one other clinician to complete the MHI–LV. The measure author recommends that both physician and non-physician viewpoints are considered in the PCP's response, thus the estimate is based on an assumption that two clinicians per practice will complete the MHI–LV process of care items together, with only one of the clinicians (i.e., the physician/administrator) completing the items on practice characteristics. Contract staff from AIR will ensure that practices realize there is no burden to them on the MHI–LV other than the time required to fill out the MHI–LV tool (i.e., they can ignore the measure author's reference in the instructions to a companion patient tool associated with the MHI–LV).

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS FOR CCQM–PC SURVEY PILOT TEST BY ENTITY

CCQM–PC survey	4,500	1	0.42	1,890
MHI–LV: [1] Physician/administrator	30	1	2.33	70
MHI–LV: Non-physician clinician	30	1	2.08	62
Total				2,022

[1] The Instructions for completing the MHI–LV recommend that a physician/administrator and a non-physician clinician each fill out the index separately. So, even though it is one form as reproduced in Appendix B, we have two rows in the table to describe the burden of the two individuals. There are a series of questions on the first two pages of the index which simply require administrative information and would only need to be completed once. We assume that the administrator would complete these and so the time required for the administrator to

Exhibit 2 shows the estimated annualized cost burden associated with the pilot survey administration. The total cost burden is estimated to be $51,228 for the one-time survey pilot.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN FOR CCQM–PC SURVEY PILOT TEST BY ENTITY

Survey Respondents	1,890	[1] $22.33	$42,204
Physician/Administrator	70	[2] 88.43	190
Non-physician Clinician	62	[3] 45.71	2,834
Total Overall	2022	n/a	51,228

[1] Average wage for civilian workers, *http://www.bls.gov/news.release/ocwage.htm.*
[2] Average wage for family and general practitioners, *http://www.bls.gov/news.release/ocwage.htm.*
[3] Average wage for nurse practitioners, *http://www.bls.gov/news.release/ocwage.htm.*

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed

collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: October 6, 2014.

Richard Kronick,

Director.

[FR Doc. 2014–24513 Filed 10–15–14; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''Continuing Education for Comparative Effectiveness Research Survey.'' In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on August 4th, 2014 and allowed 60 days for public comment. AHRQ did not receive any substantive comments. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by November 17, 2014.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by email at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Continuing Education for Comparative Effectiveness Research Survey

Patient-centered outcomes research (PCOR) is an area that has seen increased focus from research agencies and other government entities. Also known as comparative effectiveness research, PCOR is the focus of AHRQ's Effective Health Care (EHC) program, which has the mission of providing health care decisionmakers (e.g., patients, health care providers, purchasers, and policymakers) with recent evidence-based information about the harms, benefits, and effectiveness of various treatment options by comparing medical devices, surgeries, tests, drugs, or ways to deliver health care.

The EHC program was created in response to Section 1013 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 and became the first federal program to conduct PCOR and disseminate those findings to the public. AHRQ works with researchers, academic organizations, and research centers through the EHC program on work relating to methods, training, and dissemination of products to a variety of stakeholders to help spread awareness and knowledge about PCOR. It is important for AHRQ to be able to measure the effectiveness of these products, which include training modules and publications, specifically around how they are affecting health care professionals' understanding, awareness, and use of PCOR and its related concepts. It is also important for AHRQ to be able to identify ways to improve how this information is being disseminated to the medical community.

The Continuing Education for Comparative Effectiveness Research Project is designed to provide online continuing education materials that inform physicians and other health care providers about patient-centered health research from the EHC Program, specifically comparative effectiveness research reports, and other government-funded comparative clinical effectiveness research. Online multimedia continuing education modules based on the Effective Health Care Program *http://www.effectivehealthcare.ahrq.gov/tools-and-resources/cmece-activities/* comparative effectiveness research reports will be planned, developed, disseminated, and promoted. In addition, data will be collected on the modules to assess their effectiveness and impact.

This study is being conducted by AHRQ through its contractor, Hayes Inc. (Hayes) and Hayes' subcontractors, Deloitte Consulting LLP (Deloitte), pursuant to AHRQ's statutory authority to support the agency's dissemination of comparative clinical effectiveness research findings. 42 U.S.C. 299b–37(a)–(c).

Method of Collection

To achieve the goals of this project, the following data collection will be implemented: (1) Each training module will involve one follow-up questionnaire that would be administered six months after the completion of the course for the purposes of tracking the longer-term effectiveness of the modules.

This data collection will help to meet AHRQ's objectives to:

1. Understand the extent to which these online continuing education modules based on the EHC Program comparative effectiveness research reports improve knowledge of each topic and change participants' awareness of, attitude towards, and/or confidence to apply CER in their clinical practice.
2. Track information about the dissemination efforts employed for CE/CER information specific to the modules, and the uptake of AHRQ's other EHC Program materials as a result of the project, including the Clinician and Consumer Summaries when available.
3. Determine implementation practices (e.g. changes in practice behavior or implementation of the information conveyed in the modules) that occur as a result of the learning.
4. Identify opportunities for improving the presentation and delivery of CE modules by gathering information on the participants' reactions to the modules and to the faculty presenters through the post-event evaluation assessment.

AHRQ will use the information collected through this Information Collection Request to assess the short- and long-term progress in achieving the dissemination and implementation aims of the Continuing Education project.

Estimated Total Respondent Burden

Exhibit 1 provides information on the estimated time to complete the data collection survey. These educational activities are enduring training modules and will be available for a 2-year period. The AHRQ Continuing Education for Comparative Effectiveness Research

Survey will be administered to each individual 6 months after completing the module. On average, respondents will spend 5 minutes completing the survey. As many as 4,400 health care professionals are expected to complete the surveys, based on an average of 2,000 health care providers taking each module with a 10% response rate, or 200; 200 × 22 modules = 4,400. On average, respondents will spend 5 minutes completing the survey. The total burden is estimated to be 367 hours.

EXHIBIT 1—ESTIMATED RESPONDENT BURDEN

Estimated number of respondents A	Average burden per respondent (minutes) B	Total burden (minutes) C (A*B)	Number of responses per respondent D	Total respondent burden (minutes) E (C*D)	Total burden per respondent (minutes) F (B*D)	Total respondent burden (hours) G (E/60)
4400	5	22,000	1	22,000	5	367

EXHIBIT 2—ESTIMATED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate *	Total cost burden
AHRQ Online CME/CE 6-Month Evaluation	4,400	367	$49.83	$18,288
Total	4,400	367	N/A	18,288

* Based upon the mean of the average hourly wages for Physicians (29–1069; $92.25), Pharmacists (29–1051; $56.01), Physician Assistants (29–1071; $45.36), Nurse Practitioners (29–1171; $45.71), Registered Nurses (29–1111; $33.13), and Healthcare Practitioners (29–9099; $26.54), May 2013 National Occupational Employment and Wage Estimates, United States, U.S. Department of Labor, Bureau of Labor Statistics. *http://www.bls.gov/oes/current/oes_nat.htm#29-0000* viewed May 5, 2014.

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: October 9, 2014.

Richard Kronick,

AHRQ Director.

[FR Doc. 2014–24509 Filed 10–15–14; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Scientific Information Request on Management and Outcomes of Binge Eating Disorder (BED)

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Request for scientific information submissions.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is seeking scientific information submissions from the public. Scientific information is being solicited to inform our review of Management and Outcomes of Binge Eating Disorder, which is currently being conducted by AHRQ's Evidence-based Practice Center (EPC) Program. Access to published and unpublished pertinent scientific information will improve the quality of this review. AHRQ is conducting this systematic review pursuant to Section 902(a) of the Public Health Service Act, 42 U.S.C. 299a(a).

DATES: Submission deadline on or before November 17, 2014.

ADDRESSES:

Online submissions: http://effectivehealthcare.AHRQ.gov/index.cfm/submit-scientific-information-packets/. Please select the study for which you are submitting information from the list to upload your documents.

Email submissions: SIPS@epc-src.org.

Print submissions:

Mailing Address: Portland VA Research Foundation, Scientific Resource Center, ATTN: Scientific Information Packet Coordinator P.O. Box 69539, Portland, OR 97239.

Shipping Address (FedEx, UPS, etc.): Portland VA Research Foundation, Scientific Resource Center, ATTN: Scientific Information Packet Coordinator, 37105W U.S. Veterans Hospital Road, Mail Code: R&D 71, Portland, OR 97239.

FOR FURTHER INFORMATION CONTACT: Ryan McKenna, Telephone: 503–220–8262 ext. 58653 or Email: *SIPS@epc-src.org.*

SUPPLEMENTARY INFORMATION: The Agency for Healthcare Research and Quality has commissioned the Evidence-based Practice Center (EPC) Program to complete a review of the evidence for Management and Outcomes of Binge Eating Disorder.

The EPC Program is dedicated to identifying as many studies as possible that are relevant to the questions for each of its reviews. In order to do so, we are supplementing the usual manual and electronic database searches of the literature by requesting information from the public (e.g., details of studies conducted). We are looking for studies that report on Management and

Outcomes of Binge Eating Disorder, including those that describe adverse events. The entire research protocol, including the key questions is also available online at: *http://effectivehealthcare.ahrq.gov/search-for-guides-reviews-and-reports/?pageaction=displayproduct&productID=1942.*

This notice is to notify the public that the EPC Program would find the following information on Management and Outcome of Binge Eating Disorder helpful:

- A list of completed studies that your organization has sponsored for this indication. In the list, please indicate whether results are available on ClinicalTrials.gov along with the ClinicalTrials.gov trial number.
- For completed studies that do not have results on ClinicalTrials.gov, please provide a summary, including the following elements: Study number, study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, primary and secondary outcomes, baseline characteristics, number of patients screened/eligible/enrolled/lost to follow-up/withdrawn/analyzed, effectiveness/efficacy, and safety results.
- A list of ongoing studies that your organization has sponsored for this indication. In the list, please provide the ClinicalTrials.gov trial number or, if the trial is not registered, the protocol for the study including a study number, the study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, and primary and secondary outcomes.
- Description of whether the above studies constitute ALL Phase II and above clinical trials sponsored by your organization for this indication and an index outlining the relevant information in each submitted file.

Your contribution will be very beneficial to the EPC Program. The contents of all submissions will be made available to the public upon request. Materials submitted must be publicly available or can be made public. Materials that are considered confidential; marketing materials; study types not included in the review; or information on indications not included in the review cannot be used by the EPC Program. This is a voluntary request for information, and all costs for complying with this request must be borne by the submitter.

The draft of this review will be posted on AHRQ's EPC Program Web site and available for public comment for a period of 4 weeks. If you would like to be notified when the draft is posted, please sign up for the email list at: *http://effectivehealthcare.AHRQ.gov/index.cfm/join-the-email-list1/.*

The systematic review will answer the following questions. This information is provided as background. AHRQ is not requesting that the public provide answers to these questions. The entire research protocol is available online at: *http://effectivehealthcare.ahrq.govi search-for-guides-reviews-and-reports/?pageaction=displayproduct &productID=1942.*

The Key Questions

KQ 1: What is the evidence for the effectiveness of treatments or combinations of treatments for binge eating disorder?

KQ 2: What is the evidence for harms associated with treatments for binge eating disorder?

KQ 3: Does the effectiveness of treatments for binge eating disorder differ by age, sex, race, ethnicity, initial body mass index, duration of illness, or coexisting conditions?

KQ 4: What is the course of illness of binge eating disorder?

KQ 5: Does the course of illness of binge eating disorder differ by age, sex, race, ethnicity, sexual orientation, body mass index, duration of illness, or coexisting conditions?

KQ 6: What is the evidence for the effectiveness of treatments or combinations of treatments for loss-of-control eating among bariatric surgery patients?

KQ 7: What is the evidence for harms associated with treatments for loss-of-control eating among bariatric surgery patients?

KQ 8: Does the effectiveness of treatments for loss-of-control eating among bariatric surgery patients differ by age, sex, race, ethnicity, initial body mass index, duration of illness, or coexisting conditions?

KQ 9: What is the course of illness of loss-of-control eating among bariatric surgery patients?

KQ 10: Does the course of illness of loss-of-control eating among bariatric surgery patients differ by age, sex, race, ethnicity, sexual orientation, initial body mass index, duration of illness, or coexisting conditions?

KQ 11: What is the evidence for the effectiveness of treatments or combinations of treatments for loss-of-control eating among children?

KQ 12: What is the evidence for harms associated with treatments for loss-of-control eating among children?

KQ 13: Does the effectiveness of treatments for loss-of-control eating among children differ by age, sex, race, ethnicity, initial body mass index, duration of illness, or coexisting conditions?

KQ 14: What is the course of illness of loss-of-control eating among children?

KQ 15: Does the course of illness of loss-of-control eating among children differ by age, sex, race, ethnicity, initial body mass index, duration of illness, or coexisting conditions?

PICOTS (Population(s), Intervention(s), Comparator(s), Outcome(s), Timing, Setting)

Population(s)

- Individuals meeting either DSM–IV or DSM–5 criteria for binge eating disorder (BED)
- Post-bariatric surgery patients meeting criteria for loss-of-control (LOC) eating after surgery [1]
- Children (6 years of age and older) meeting criteria for LOC eating [2]

Interventions

Applies only to KQs on effectiveness and harms of BED treatment in adults (KQs 1, 2, and 3), LOG treatment in bariatric patients (KQs 6, 7, and 8), and LOG treatment in children (KQs 11, 12, and 13).

- Pharmacological interventions
  - Antidepressants, including: (1) Selective serotonin reuptake inhibitors (SSRIs); (2) serotonin-norepinephrine reuptake inhibitors (SNRIs, excluding Sibutramine because it is unavailable in the United States); (3) norepinephrine reuptake inhibitors (NRIs); and (4) tricyclic antidepressants
  - Anticonvulsants (antiepileptics)
  - Weight loss drugs (orlistat)
  - Appetite suppressants (excluding rimonabant because it is unavailable in the United States)
  - Gamma-aminobutyric acid agonists
  - Mixed gamma-aminobutyric acid agonist/glutamate antagonists
  - Central nervous system stimulants
- Psychological or behavioral interventions
  - Cognitive behavioral therapy (CBT)
  - Interpersonal psychotherapy (IPT)
  - Dialectical behavior therapy (DBT)
  - Family-based therapy (for LOC eating in children and adolescents)

[1] Bariatric surgery patients may have had either BED or LOC eating diagnoses before surgery, but after surgery they are typically diagnosed only with LOC eating (i.e., loss-of-control eating behaviors without having consumed an unusually large amount of food).

[2] Children, especially those who are preadolescent, tend to be diagnosed only with LOC eating, not BED, in part because parents or others may limit the quantity of food they are permitted to consume.

- ○ Parent training (for LOC eating in children and adolescents)
- ○ Behavioral weight loss interventions
- ○ Virtual reality therapy
- ○ Nutritional counseling or low-calorie diet (or both)
- ○ Exercise
- ○ Health education
- • Complementary and alternative medicine (CAM) interventions
- ○ Nutraceuticals and dietary supplements
- ○ Acupuncture
- • Combinations of pharmacotherapies; combinations of psychological interventions; combinations of CAM interventions; combinations of pharmacotherapy, psychological, behavioral, and/or CAM interventions
- • Characteristics of interventions
- ○ Pharmacotherapy and CAM: Dosages, duration of treatment
- ○ Psychological or behavioral: Format (e.g., individual or group, therapist-led or self-help), frequency, duration of treatment

Comparators

Applies only to KQs on effectiveness and harms of BED treatment in adults (KQs 1, 2, and 3), LOC treatment in bariatric patients (KQs 6, 7, and 8), and LOC treatment in children (KQs 11, 12, and 13).

- • Placebo or usual care
- • Any active intervention or combination of active interventions from among those listed above

Outcomes

- • Intermediate outcomes
- ○ Change in weight or body mass index (BMI) (or both)
- ○ Appetite-regulating peptide hormones
- ○ Blood lipids (cholesterol, triglycerides)
- ○ Blood glucose, hemoglobin Alc
- ○ Blood pressure
- • Final health outcomes
- ○ Behavioral
- • Binge eating: Frequency of binge episodes, frequency of binge days, binge abstinence
- • LOC eating: Frequency of LOC eating episodes, LOC eating abstinence
- ○ Psychological
- • Shape and weight concerns, restraint, hunger, disinhibition
- • Depressive disorders and symptoms
- • Anxiety
- • Substance abuse
- ○ Physical health and functioning
- • BMI, weight status or stabilization
- • Hypertension
- • Type 2 diabetes, impaired glucose tolerance, insulin resistance
- • Dyslipidemia
- • Heart disease
- • Gastric reflux (gastroesophageal reflux disorder), gastroparesis, other gastrointestinal diagnoses or problems
- • Irritable bowel syndrome
- • Menstrual problems (female), hormonal problems (male or female)
- • Reproductive function
- ○ Social and occupational functioning
- • Work or school days lost
- • Marital or partner status
- • Quality of life: Health-related quality of life or patient-reported outcomes not otherwise listed above
- • Harms: Applies only to harms of treatment (KQs 2, 7, and 12)
- ○ Pharmacotherapy and CAM: Sedation, dry mouth, headache, nausea, insomnia, diarrhea, fatigue, increased urinary frequency, sexual dysfunction, abnormal dreams, sweating, palpitations, arrhythmia, cramping, diffuse pain, weight gain
- ○ Psychological or behavioral therapy: Negative effects of disclosing symptoms during initial evaluation or therapy
- ○ Worsening of BED or LOC eating (or associated symptoms)
- • Health care use and costs
- ○ Use of health care services: Emergency room visits, hospitalizations (psychiatric hospitals, residential institutions, general hospitals), ambulatory physician visits (medical care, psychiatric care), ambulatory visits to other health care professionals (e.g., clinical psychologists), nutritional counseling
- ○ Costs of services: Emergency room visits, hospitalizations (psychiatric hospitals, residential institutions, general hospitals), ambulatory physician visits (medical care, psychiatric care), ambulatory visits to other health care professionals, pharmacotherapies, and treatment costs for any harms

Timing

- • Treatment studies: No minimum duration
- • Course of illness studies: 1-year minimum followup

Settings

- • Inpatient, including hospitals and residential treatment centers
- • Outpatient, including schools and homes

The relationship between the patient population, interventions, comparators, outcomes and timing of outcomes assessment (PICOTs) is depicted for each of the treatment KQs (Figure 1 in *http://effectivehealthcare.ahrq.gov/search-for-guides-reviews-and-reqorts/?pageaction=displayproduct&productID=1942#9028*) and each of the course of illness KQs (Figure 2 in *http://effectivehealthcare.ahrq.gov/search-for-guides-reviews-and-reports/?pageaction=displayproduct&productID=1942#9028*).

Dated: October 6, 2014.

Richard Kronick,

AHRQ Director.

[FR Doc. 2014–24507 Filed 10–15–14; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA Number: 93.508]

Announcing the Award of Four Single-Source Expansion Supplement Grants Under the Tribal Maternal, Infant, and Early Childhood Home Visiting (MIECHV) Program for the Tribal Early Learning Initiative

AGENCY: Office of Child Care, ACF, HHS.

ACTION: Notice of the award of four single-source program expansion supplement grants to Tribal Maternal, Infant, and Early Childhood Home Visiting (MIECHV) grantee participants in the Tribal Early Learning Initiative.

SUMMARY: This announces the award of single-source program expansion supplement grants to the following Tribal Maternal, Infant, and Early Childhood Home Visiting (MIECHV) grantees to support their ongoing participation in the Tribal Early Learning Initiative, by the Office of Child Care, in the Administration for Children and Families (ACF): Choctaw Nation of Oklahoma in Durant, OK, Pueblo of San Felipe in San Felipe Pueblo, NM, Confederated Salish and Kootenai Tribes in Pablo, MT, and White Earth Band of Chippewa Indians in White Earth, MN.

The program expansion supplement awards will support expanded efforts by the grantees to identify and analyze systems to improve their effectiveness and efficiency as models for use across early childhood programs; to share their action plans to improve outcomes; to continue the implementation of, and expand the development of, concrete community plans; and to develop peer learning relationships.

DATES: The period of support is September 30, 2014–September 29, 2015.

FOR FURTHER INFORMATION CONTACT: Shannon Rudisill, Director, Office of Child Care, 901 D Street SW., Washington, DC 20447. Telephone:

(202) 401–6984; Email: *shannon.rudisill@acf.hhs.gov*.

SUPPLEMENTARY INFORMATION: One of the stated goals of the Tribal MIECHV program is to support and strengthen cooperation and coordination, and promote linkages among various programs that serve pregnant women, expectant fathers, young children, and families, resulting in the establishment of coordinated and comprehensive early childhood systems in grantee communities. The Tribal MIECHV program expansion supplements for the Tribal Early Learning Initiative will allow for more integrated and efficient activities among the four grantees who currently receive grants from the 3 early learning programs administered by ACF (American Indian/Alaska Native Head Start/Early Head Start, Tribal Child Care and Development Fund, and Tribal MIECHV).

The continued activities of the four grantees are expected to result in models for tribal early learning systems that can be replicated in other tribal communities. In addition, the supplements will expand the reach and impact of technical assistance efforts by supporting and strengthening existing coordination and collaboration activities and expanding the scope of additional such activities in tribal communities.

A supplemental award of $45,000 is made to White Earth Band of Chippewa Indians in White Earth, MN, to support the building of an early childhood system and their focused efforts in implementing a cross-tribe care coordination data system, known as WE–CARE (White Earth Coordinated Assessment, Resources, and Education).

A supplemental award of $35,000 is made to Choctaw Nation of Oklahoma in Durant, OK, to support the building of connections across tribal early childhood programs, including the development of a tribal resource directory for families, and the very large service area they are attempting to reach.

Supplemental awards of $25,000 each are made to the Confederated Salish and Kootenai Tribes in Pablo, MT, and to Pueblo of San Felipe in San Felipe, NM, to support their continuing efforts to build early childhood systems. These efforts have included joint professional development activities, community events to highlight the importance of early childhood and the available programming, and strong relationship-building across Head Start, child care, and home visiting programs.

Statutory Authority: Awards are supported by section 511(h)(2)(A) of Title V of the Social Security Act, as added by Section 2951 of the Patient Protection and Affordable Care Act, Pub. L. 111–148, also known as the Affordable Care Act (ACA).

Melody Wayland,

Senior Grants Policy Specialist, Office of Administration, Office of Financial Services, Division of Grants Policy.

[FR Doc. 2014–24554 Filed 10–15–14; 8:45 am]

BILLING CODE 4184–43–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA Number: 93.676]

Announcement of the Award of Two Single-Source Program Expansion Supplement Grants To Support Legal Services to Refugees Under the Unaccompanied Alien Children's Program

AGENCY: Office of Refugee Resettlement, ACF, HHS.

ACTION: The Administration for Children and Families (ACF), Office of Refugee Resettlement (ORR), announces the award of two single-source program expansion supplement grants to the United States Conference of Catholic Bishops in Washington, DC, and to the U.S. Committee for Refugees and Immigrants in Arlington, VA, under the Unaccompanied Alien Children's (UAC) Program to support post-release legal services.

SUMMARY: The Administration for Children and Families (ACF), Office of Refugee Resettlement (ORR) announces the award of two single-source program expansion supplement grants totaling of $4,261,268. The expansion supplement grants will support the need for legal services by unaccompanied alien children released from the custody of ORR.

FOR FURTHER INFORMATION CONTACT: Jallyn Sualog, Director, Division of Children's Services, Office of Refugee Resettlement, 901 D Street SW., Washington, DC 20447, Telephone (202) 401–4997. Email: *jallyn.sualog@acf.hhs.gov*

SUPPLEMENTARY INFORMATION: The Unaccompanied Alien Children's program ensures the appropriate placement of all Department of Homeland Security (DHS) UAC referrals within specified timeframes and requires that a range of custodial/residential shelter care and services are provided to the minor detainees and, in certain cases, continued services are authorized after a child is released from ORR residential shelter care. The supplemental awards will support and expand direct legal representation services for unaccompanied minor children after their release from ORR custody.

As part of this administration-wide effort, HHS is proposing a $9 million direct legal representation project that will provide representation to 2,600 unaccompanied children throughout their immigration proceedings. In order to implement this Departmental priority, ORR is awarding supplemental funds totaling $4,261,268 in FY 2014 to provide direct representation to 1,222 children and plans to provide the remaining funds for this project in FY 2015. The initial program will address legal services to post-release alien minor children in Los Angeles, CA; Houston, TX; Miami, FL; Baltimore, MD; Arlington, VA; Dallas, TX; Memphis, TN; New Orleans, LA; and Phoenix, AZ. Recognizing that this will cover only a portion of children released to sponsors in these cities, HHS is committed to continuing to work with DHS and the Department of Justice (DOJ) to determine how best to prioritize the use of these 2,600 slots in the provision of legal services to this vulnerable population.

Under the FY 2014 supplemental awards, the United States Conference of Catholic Bishops in Washington, DC, will receive a supplemental award of $2,226,513 and to the U.S. Committee for Refugees and Immigrants in Arlington, VA, will receive a supplemental award of $2,034,755.

DATES: Supplemental award funds will support activities from September 30, 2014 through September 29, 2015.

Statutory Authority: This program is authorized by—

(A) Section 462 of the Homeland Security Act of 2002, which in March 2003, transferred responsibility for the care and custody of Unaccompanied Alien Children from the Commissioner of the former Immigration and Naturalization Service (INS) to the Director of ORR of the Department of Health and Human Services (HHS).

(B) The Flores Settlement Agreement, Case No. CV85–4544RJK (C. D. Cal. 1996), as well as the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (Pub. L. 110–457), which authorizes post release services under certain conditions to eligible children. All programs must comply with the Flores Settlement Agreement, Case No. CV85–4544–RJK (C.D. Cal. 1996), pertinent

regulations and ORR policies and procedures.

Melody Wayland,

Senior Grants Policy Specialist, Office of Administration, Office of Financial Services, Division of Grants Policy.

[FR Doc. 2014–24555 Filed 10–15–14; 8:45 am]

BILLING CODE 4184–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–1533]

Agency Information Collection Activities; Proposed Collection; Comment Request; Establishment of a Tobacco User Panel

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) 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 and to allow 60 days for public comment in response to the notice. This notice solicits comments on the establishment of a probability-based panel of tobacco users.

DATES: Submit either electronic or written comments on the collection of information by December 15, 2014.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.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 requests 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 collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA'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.

Establishment of a Tobacco User Panel—(OMB Control Number 0910–NEW)

The Food and Drug Administration's Center for Tobacco Products (CTP) proposes to establish a high quality, probability-based, primarily Web-based panel of 4,000 tobacco users. The panel will include individuals who can participate in up to 8 studies over a 3-year period to assess consumers' responses to tobacco marketing, warning statements, product labels, and other communications about tobacco products. CTP proposed the establishment of the panel of consumers because currently existing Web-based panels have a number of significant limitations. First, most existing consumer panels are drawn from convenience samples that limit the generalizability of study findings (Baker et al., 2010). Second, although at least two probability-based panels of consumers exist in the United States, there is a concern that responses to the studies using tobacco users in these panels may be biased due to panel conditioning effects (e.g., Coen, Lorch and Piekarski, 2005; Nancarrow and Catwright, 2007). That is, consumers in these panels complete surveys so frequently that their responses may not adequately represent the population as a whole. Panel conditioning has been associated with repeated measurement on the same topic (e.g., Kruse et al., 2009), panel tenure (e.g., Coen, Lorch and Piekarski, 2005), and frequency of the survey request (e.g., Nancarrow and Catwright, 2007). This issue is of particular concern for tobacco users who represent a minority of the members in the panels, and so may be more likely to be selected for participation in experiments and/or surveys related to tobacco products. Third, a key benefit of the Web panel approach is that the surveys can include multimedia, such as images of tobacco product packages, tobacco advertising, new and existing warning statements and labels, and potential reduced harm claims in the form of labels and print advertisements. Establishing a primarily Web-based panel of tobacco users through in-person probability-based recruitment of eligible adults and limiting the number of times individuals participate in tobacco-related studies will result in nationally representative and unbiased data collection on matters of importance for FDA.

With this submission, the FDA seeks approval from OMB to establish the Tobacco User Panel, a nationally representative, primarily web-based panel of 4,000 current tobacco users. Data collection activities will involve pilot testing of panel recruitment and management procedures and systems, mail and in-person household screening, in-person recruitment of tobacco users, enrollment of selected household members, administration of a baseline survey, and panel maintenance surveys, following all required informed consent procedures for panel members. Once the panel is established, panel members will be asked to participate in up to eight experimental and observational studies over the 3-year panel commitment period. The first of these studies (Study 1) is included in this information collection request; approval for the remainder of the studies will be appear in future requests. The current request also seeks approval to conduct up to two rounds of cognitive testing of new survey items and up to two focus groups to further refine study protocols, as needed. With this clearance, study investigators will be able to use the OMB approved data collection methods where appropriate to plan and implement the national panel.

The overall purpose of the proposed data collection is to collect information from a representative sample of tobacco users to provide data that may be used

to develop and support FDA's policies related to tobacco products, including their labels, labeling, and advertising. Data will be collected from the panel primarily through the use of randomized experimental designs, however, there may be data collected through the use of other methods, such as surveys, interviews, or online group discussions. Given the limitations on the existing Web-based panels, it is important to develop a new panel of tobacco users that balances the need to conduct experiments while limiting the number of tobacco-related studies per year so as to not bias study results.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity or type of respondent	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Household Screening Respondent	29,385	0.33	9,697	0.16 (10 minutes)	1,552
Panel Member Enrollment Survey	4,000	0.33	1,320	0.25 (15 minutes)	330
Panel Member Baseline Survey		0.33	1,320	0.25 (15 minutes)	330
Panel Maintenance/Bi-annual Update Surveys		3.0	12,000	0.08 (5 minutes)	960
Experimental/Observational Studies *		2.7	10,800	0.33 (20 minutes)	3,564
Panel Replenishment Screening Respondent	10,285	0.50	5,143	0.16 (10 minutes)	823
Panel Replenishment Enrollment Survey **	2,800	0.33	924	0.25 (15 minutes)	231
Panel Replenishment Baseline Survey **	2,800	0.33	924	0.25 (15 minutes)	231
Cognitive Interview Subjects	20	0.33	7	1.0	7
Focus Group Subjects	20	0.33	7	1.5	10
Total	49,310				8,038

[1] There are no capital or operating and maintenance costs or associated with this collection of information.

* Includes a total of 8 experimental or observational studies over a 3-year period for each of the 4,000 panel members who are active at the time of each study. The first study (Study 1) is included in this clearance request; the remaining studies will be funded under separate task orders but are included in this table to present an overall estimate of the burden for each participating panel member.

** Assumes 1,400 additional panel members will be recruited annually (2,800 total) as part of the panel replenishment effort.

The burden above was estimated using data from timed-readings of each instrument, including the mail and field screeners, enrollment survey, baseline survey, panel maintenance questionnaires, and Study 1 questionnaire.

Dated: October 9, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–24538 Filed 10–15–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0555]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Medical Devices; Device Tracking

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by November 17, 2014.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0442. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Medical Devices; Device Tracking—21 CFR part 821 (OMB Control Number 0910–0442)—Extension

Section 211 of the Food and Drug Administration Modernization Act (FDAMA) (Pub. L. 105–115) became effective on February 19, 1998. FDAMA amended the previous medical device tracking provisions under section 519(e)(1) and (e)(2) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360i(e)(1) and (e)(2)) that were added by the Safe Medical Devices Act of 1990 (SMDA) (Pub. L. 101–629). Unlike the tracking provisions under SMDA, which required tracking of any medical device meeting certain criteria, FDAMA allows FDA discretion in applying tracking provisions to medical devices meeting certain criteria and provides that tracking requirements for medical devices can be imposed only after FDA issues an order. In the **Federal Register** of February 8, 2002 (67 FR 5943), FDA issued a final rule that conformed existing tracking regulations to changes in tracking provisions effected by FDAMA under part 821 (21 CFR part 821).

Section 519(e)(1) of the FD&C Act, as amended by FDAMA, provides that FDA may require by order that a manufacturer adopt a method for tracking a class II or III medical device, if the device meets one of the three following criteria: (1) The failure of the device would be reasonably likely to have serious adverse health consequences, (2) the device is intended to be implanted in the human body for more than 1 year (referred to as a ''tracked implant''), or (3) the device is life-sustaining or life-supporting (referred to as a ''tracked l/s-l/s device'') and is used outside a device user facility.

Tracked device information is collected to facilitate identifying the current location of medical devices and

patients possessing those devices, to the extent that patients permit the collection of identifying information. Manufacturers and FDA (where necessary) use the data to: (1) Expedite the recall of distributed medical devices that are dangerous or defective and (2) facilitate the timely notification of patients or licensed practitioners of the risks associated with the medical device.

In addition, the regulations include provisions for: (1) Exemptions and variances; (2) system and content requirements for tracking; (3) obligations of persons other than device manufacturers, e.g., distributors; (4) records and inspection requirements; (5) confidentiality; and (6) record retention requirements.

Respondents for this collection of information are medical device manufacturers, importers, and distributors of tracked implants or tracked l/s-l/s devices used outside a device user facility. Distributors include multiple and final distributors, including hospitals.

The annual hourly burden for respondents involved with medical device tracking is estimated to be 615,380 hours per year. The burden estimates cited in tables 1 to 3 of this document are based on the number of device tracking orders issued in the last 3 years.

This regulation also refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget under the PRA (44 U.S.C. 3501–3520). The collections of information found in §§ 821.2(b), 821.25(e), and 821.30(e) have been approved under OMB control number 0910–0183.

In the **Federal Register** of April 25, 2014 (79 FR 22991), FDA published a 60-day notice requesting public comment on the proposed collection of information. Although one comment was received, it was not responsive to the four collection of information topics solicited and therefore will not be discussed in this document.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity/21 CFR part	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Discontinuation of business—821.1(d)	1	1	1	1	1
Exemption or variance—821.2 and 821.30(e)	1	1	1	1	1
Notification of failure to comply—821.25(d)	1	1	1	1	1
Multiple distributor data—821.30(c)(2)	1	1	1	1	1
Total					4

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Activity/21 CFR part	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Tracking information—821.25(a)	12	1	12	76	912
Record of tracking data—821.25(b)	12	46,260	555,120	1	555,120
Standard operating procedures—821.25(c) [2]	12	1	12	63	756
Manufacturer data audit—821.25(c)(3)	12	1,124	13,488	1	13,488
Multiple distributor data and distributor tracking records—821.30(c)(2) and (d)	22,000	1	22,000	1	22,000
Total					592,276

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] One-time burden.

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

Activity/21 CFR part	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Acquisition of tracked devices and final distributor data—821.30(a) and (b)	22,000	1	22,000	1	22,000
Multiple distributor data and distributor tracking records—821.30(c)(2) and (d)	1,100	1	1,100	1	1,100
Total					23,100

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: October 9, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–24599 Filed 10–15–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–1675]

New Chemical Entity Exclusivity Determinations for Certain Fixed-Combination Drug Products; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''New Chemical Entity Exclusivity Determinations for Certain Fixed-Combination Drug Products.'' This guidance sets forth a change in the Agency's interpretation of the 5-year new chemical entity (NCE) exclusivity statutory and regulatory provisions as they apply to certain fixed-combination drug products (fixed combinations). As described in the guidance, a drug product will be eligible for 5-year NCE exclusivity if it contains a drug substance that meets the definition of ''new chemical entity,'' regardless of whether that drug substance is approved in a single-ingredient drug product or in certain fixed-combinations. This guidance finalizes the draft guidance issued in February 2014.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Bldg., 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Nisha Shah, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6222, Silver Spring, MD 20993–0002, 301–796–4455; or Jay Sitlani, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6272, Silver Spring, MD 20993–0002, 301–796–5202.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''New Chemical Entity Exclusivity Determinations for Certain Fixed-Combination Drug Products.'' This guidance sets forth a change in the Agency's interpretation of the 5-year NCE exclusivity provisions as they apply to certain fixed-combinations. Section 505(c)(3)(E)(ii) and (j)(5)(F)(ii) of the Food, Drug, and Cosmetic Act and 21 CFR 314.108, among other provisions, establish the scheme under which a drug product is eligible for 5-year NCE exclusivity. The Agency historically interpreted the term ''drug'' as it appears in the first sub-clause of the statutory provisions and in the definition of ''new chemical entity'' in its regulation to mean ''drug product.'' This resulted in a fixed-combination not being eligible for 5-year NCE exclusivity if it contained any drug substance that contained an active moiety that had been previously approved by the Agency, even if the fixed-combination also contained another drug substance that contained a previously unapproved active moiety.

The Agency recognizes, however, that fixed-combinations have become increasingly prevalent in certain therapeutic areas and that these products play an important role in optimizing adherence to dosing regimens and improving patient outcomes. Therefore, to further incentivize the development of fixed-combinations containing previously unapproved active moieties, the guidance sets forth the Agency's revised interpretation regarding the eligibility for 5-year NCE exclusivity of certain fixed-combinations. Under the revised interpretation, the term ''drug'' in the relevant provisions is interpreted to mean ''drug substance'' or ''active ingredient,'' and not ''drug product.'' Accordingly, a drug product is eligible for 5-year NCE exclusivity provided that it contains a drug substance that contains no active moiety that has been previously approved. This will permit a drug substance that meets the definition of new chemical entity (i.e., one that contains no previously approved active moiety) to be eligible for 5-year NCE exclusivity, regardless of whether it is approved in a single-ingredient drug product, in a fixed-combination with another drug substance that contains no other previously approved active moiety, or in a fixed-combination with another drug substance that contains a previously approved active moiety.

In the **Federal Register** of February 24, 2014 (79 FR 10167), this guidance was published as a draft guidance. We have carefully reviewed and considered the comments that were received on the draft guidance. We have made editorial changes primarily for clarification.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on 5-year NCE exclusivity for certain fixed-combinations. 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 statutes and regulations.

II. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

III. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that 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 collection of information in 21 CFR parts 314 have been approved under OMB control number 0910–0001.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: October 9, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–24597 Filed 10–15–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Public Conference—Vitamin D: Moving Toward Evidence-Based Decision Making for Primary Care

SUMMARY: A conference to identify issues surrounding evidence-based decision making for vitamin D in primary care will be held December 2–3, 2014, on the main campus of the National Institutes of Health (NIH) in Bethesda, Maryland. It will also be broadcast as a webinar. The conference discussions will serve to highlight research gaps as well as data and methodological needs relevant to reducing uncertainties surrounding vitamin D in primary care practice. All persons are invited to attend, especially clinical educators, those who develop clinical recommendations, health care providers and researchers. Persons wishing to attend are required to register in advance of the conference.

DATES: December 2–3, 2014; 8:00 to 5:00 p.m. (Eastern Time) on first day and 8:00 to noon on second day.

ADDRESSES: National Institutes of Health, William H. Natcher Building; Natcher Conference Center, Building 45. Bethesda, Maryland, 20892.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Rooney, Office of Dietary Supplements, National Institutes of Health, 6100 Executive Boulevard, Room 3B01, Bethesda, MD 20892–7523, Email: *rooneyc@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: The conference is sponsored by the NIH Office of Dietary Supplements along with co-sponsors from 10 federal agencies. Information about the conference agenda, registration procedures, and webinar arrangements can be found at: *https://events-support.com/events/Vitamin_D_Primary_Care.*

Through its Vitamin D Initiative, the National Institutes of Health (NIH) Office of Dietary Supplements (ODS) leads several efforts to advance scientific understanding of vitamin D and health: *http://ods.od.nih.gov/Research/VitaminD.aspx.*

Dated: October 8, 2014.

Lawrence A. Tabak,

Principal Deputy Director, NIH.

[FR Doc. 2014–24455 Filed 10–15–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Nephrology.

Date: October 27, 2014.

Time: 11:00 a.m. to 3:00 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: Mushtaq A Khan, DVM, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2176, MSC 7818, Bethesda, MD 20892, 301–435–1778, *khanm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Pain.

Date: November 4–5, 2014.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: John Bishop, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, (301) 408–9664, *bishopj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business PAR Panel: Safe and Effective Instruments and Devices for Use in Neonatal and Pediatric Care Settings.

Date: November 6, 2014.

Time: 11:00 a.m. to 5:00 p.m..

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: John Firrell, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, 301–435–2598, *firrellj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Surgical Sciences, Biomedical Imaging and Bioengineering.

Date: November 7, 2014.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Weihua Luo, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, 301–435–1170, *luow@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Respiratory Sciences.

Date: November 13–14, 2014.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Yuanna Cheng, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7814, Bethesda, MD 20892, (301) 435–1195, *Chengy5@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Molecular and Therapeutic Genetics.

Date: November 13, 2014.

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: Ronald Adkins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC 7890, Bethesda, MD 20892, 301–435–4511, *ronald.adkins@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Digestive Sciences.

Date: November 14, 2014.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion,4300 Military Road NW., Washington, DC 20015.

Contact Person: Martha Garcia, Ph.D., Scientific Reviewer Officer, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 2186, MSC 7818, Bethesda, MD 20892, 301–435–1243, *garciamc@nih.gov*.

Name of Committee: AIDS and Related Research Integrated Review Group; AIDS-associated Opportunistic Infections and Cancer Study Section.

Date: November 14, 2014.

Time: 8:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Fairmont Hotel San Francisco, 950 Mason Street, San Francisco, CA 94108.

Contact Person: Robert Freund, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7852, Bethesda, MD 20892, 301–435–1050, *freundr@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Enabling Bioanalytical and Imaging Technologies.

Date: November 14, 2014.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Dennis Hlasta, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6190, MSC 7892, Bethesda, MD 20892, 301–435–1047, *dennis.hlasta@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Endocrinology and Metabolic Processes.

Date: November 14, 2014.

Time: 1:00 p.m. to 3:30 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: Gregory S Shelness, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, RKL2 BG RM 6156, 6701 Rockledge Dr., Bethesda, MD 20892–7892, (301)435–0492, *shelnessgs@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: October 9, 2014.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–24600 Filed 10–15–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PAR12–265 Ancillary Clinical Studies in Liver and Kidney Disease.

Date: November 20, 2014.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ann A. Jerkins, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 759, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, 301–594–2242, *jerkinsa@niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 10, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–24607 Filed 10–15–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Clinical Trial Implementation Cooperative Agreement (U01).

Date: November 6, 2014.

Time: 2:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, DEA/NIAID/NIH, Room 3E70B, 5601 Fisher Lane, MSC 9823, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Vasundhara Varthakavi, Ph.D., DVM, Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, Room 2217, 6700–B Rockledge Drive, Bethesda, MD 20892–7616, 301–496–2550, *varthakaviv@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 10, 2014.

David Clary,

Office of Federal Advisory Committee Policy.

[FR Doc. 2014–24606 Filed 10–15–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, November 7, 2014, 12:00 p.m. to November 7, 2014, 02:00 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on October 10, 2014, 79 FR 61325.

The meeting title was changed to Child Psychopathology and Developmental Disabilities AREA Review. The meeting date, time and location remain the same. The meeting is closed to the public.

Dated: October 10, 2014.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–24603 Filed 10–15–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Initial Review Group, Training and Workforce Development Subcommittee–D

Date: November 6–7, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: DoubleTree by Hilton, Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.

Contact Person: Rebecca H. Johnson, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.18C, Bethesda, MD 20892, 301–594–2771, *johnsonrh@nigms.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: October 9, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–24500 Filed 10–15–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Musculoskeletal Cell Biology.

Date: October 23, 2014.

Time: 7:15 a.m. to 7:45 a.m.

Agenda: To review and evaluate grant applications.

Place: Admiral Fell Inn, 888 South Broadway, Baltimore, MD 21231.

Contact Person: Daniel F McDonald, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7814, Bethesda, MD 20892, (301) 435–1215, *mcdonald@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Behavioral Genetics and Epidemiology.

Date: November 5, 2014.

Time: 3:00 p.m. to 5:30 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: Suzanne Ryan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, (301) 435–1712, *ryansj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Special Topics: Behavioral Genetics and Epidemiology.

Date: November 5, 2014.

Time: 3:00 p.m. to 5:30 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: Heidi B Friedman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1012A, MSC 7770, Bethesda, MD 20892, 301–379–5632, *hfriedman@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Urological Applications.

Date: November 11, 2014.

Time: 2:00 p.m. to 3:00 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: Ryan G Morris, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4205, MSC 7814, Bethesda, MD 20892, 301–435–1501, *morrisr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Immunity in Disease and Autoimmune States.

Date: November 14, 2014.

Time: 8:00 a.m. to 6:00 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: David B Winter, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, 301–435–1152, *dwinter@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Societal and Ethical Issues in Research.

Date: November 14, 2014.

Time: 2:00 p.m. to 4:00 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: Lisa Steele, Ph.D., Scientific Review Officer, PSE IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, 301–594–6594, *steeleln@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: October 10, 2014.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–24602 Filed 10–15–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Peer Review of Support of Competitive Research (SCORE) Grant Applications.

Date: November 6–7, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Shinako Takada, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.18B, Bethesda, MD 20892, 301–402–9448, *shinako.takada@nih.gov.*

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Review of P20 Grant Applications.

Date: November 6–7, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Margaret J. Weidman, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.18B, Bethesda, MD 20892, 301–594–3663, *weidmanma@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: October 9, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–24499 Filed 10–15–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Review of the Synchrotron Structural Biology Resource.

Date: November 12–14, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Palo Alto Hotel, 325 El Camino Real, Palo Alto, CA 94301.

Contact Person: Nuria E Assa-Munt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4164, MSC 7806, Bethesda, MD 20892, (301) 451–1323, *assamunu@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Skeletal Biology and Tissue Engineering.

Date: November 12–13, 2014.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Yanming Bi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, 301–451–0996, *ybi@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group; AIDS Discovery and Development of Therapeutics Study Section.

Date: November 13, 2014.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Handlery Union Square Hotel, 351 Geary Street, San Francisco, CA 94102.

Contact Person: Shiv A Prasad, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, 301–443–5779, *prasads@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: October 10, 2014.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–24604 Filed 10–15–14; 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; Integrative and Clinical Endocrinology and Reproduction Study Section.

Date: October 14, 2014.

Time: 4:00 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: Dianne Hardy, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6175, MSC 7892, Bethesda, MD 20892, 301–435–1154, *dianne.hardy@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(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: October 9, 2014.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–24601 Filed 10–15–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Inherited Disease Research Access Committee.

Date: October 29, 2014.

Time: 10:00 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ken Nakamura, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, 301–402–0838.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: October 10, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–24605 Filed 10–15–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive Option License: The Development of a Single Domain Human Anti-Mesothelin Monoclonal Antibody for the Treatment of Human Cancers

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209 and 37 CFR part 404, that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive start-up option license to practice the inventions embodied in U.S. Patent Application 61/706,396 entitled ''Mesothelin Antibodies And Methods For Eliciting Potent Antitumor Activity'' [HHS Ref. E–236–2012/0–US–01], PCT Application PCT/US2013/059883 entitled ''Mesothelin Antibodies And Methods For Eliciting Potent Antitumor Activity'' [HHS Ref. E–236–2012/0–PCT–02], and all related continuing and foreign patents/patent applications for the technology family, to H2Bio, Inc. The patent rights in these inventions have been assigned to and/or exclusively licensed to the Government of the United States of America.

The prospective exclusive start-up option licensed territory may be worldwide, and the field of use may be limited to:

The use of SD1-serine protease immunoconjugates for the treatment of mesothelioma, pancreatic cancer, ovarian cancer and lung adenocarcinoma, including combination therapies using the SD1-serine protease immunoconjugate, wherein the serine protease is Granzyme B (GrB) or a Derivative thereof.

Upon the expiration or termination of the exclusive start-up option license, H2Bio, Inc. will have the exclusive right to execute an exclusive commercialization license which will supersede and replace the exclusive start-up option license with no greater field of use and territory than granted in the exclusive start-up option license.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before October 31, 2014 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: David A. Lambertson, Ph.D., Senior Licensing and Patenting Manager, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–4632; Facsimile: (301) 402–0220; Email: *lambertsond@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: This invention concerns a monoclonal antibody and methods of using the antibody for the treatment of mesothelin-expressing cancers, including mesothelioma, lung cancer, ovarian cancer and pancreatic cancer. The specific antibody covered by this technology is designated SD1, which is a single domain, fully human monoclonal antibody against mesothelin.

Mesothelin is a cell surface antigen that is preferentially expressed on certain types of cancer cells. The SD1 antibody can selectively bind to these cancer cells and induce cell death while leaving healthy, essential cells unharmed. This can result in an effective therapeutic strategy with fewer side effects due to less non-specific killing of cells.

The prospective exclusive start-up option license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR Part 404. The prospective exclusive start-up option license may be granted unless the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR Part 404 within fifteen (15) days from the date of this published notice.

Complete applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive start-up option license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: October 8, 2014.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2014–24501 Filed 10–15–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Development of T Cell Receptors for Adoptive Transfer in Humans To Treat Cancer

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209 and 37 CFR 404, that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to Kite Pharma, Inc., which is located in Los Angeles, California to practice the inventions embodied in the following patent applications and applications claiming priority to these applications:

1. U.S. Provisional Patent Application No. 61/701,056 filed September 14, 2012 entitled ''T Cell Receptors Recognizing MCH Class II-Restricted Mage-A3'' (HHS Ref No. E–230–2012/0–US–01) and
2. PCT Application No. PCT/US13/059608 filed September 13, 2013 entitled ''T Cell Receptors Recognizing MCH Class II-Restricted Mage-A3'' (HHS Ref No. E–230–2012/0–PCT–02).
3. US Provisional Patent Application no. 61/535,086 filed September 15 2011, entitled ''T cell receptors recognizing HLA-A1 or HLA-Cw7 restricted MAGE'' (HHS Ref No. E–266–2011/0–US–01).
4. PCT Application No. PCT/US2012/054623 filed September 11 2012, entitled ''T cell receptors recognizing HLA-A1 or HLA-Cw7 restricted MAGE'' (HHS Ref No. E–266–2011).

The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory may be worldwide and the field of use may be limited to the development, manufacture and commercialization of melanoma antigen family (MAGE) A3 and A6-specific T cell receptor (TCR)-based autologous peripheral blood T cell therapy products as set forth in the Licensed Patent Rights for the treatment of MAGE A3 and A6 expressing cancers.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before November 17, 2014 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: Whitney A. Hastings, Ph.D., Licensing and Patenting Manager, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 451–7337; Facsimile: (301) 402–0220; Email: *hastingw@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: There are twelve melanoma antigen family antigens (MAGE–A) designated A1–A12. Their normal function is not well defined, but in cancer cells they block the functions of tumor suppressor proteins to mediate tumor growth and spreading. The MAGE–A proteins are some of the most widely expressed cancer testis antigens expressed on human tumors. Other than non-MHC expressing germ cells of the testis, normal cells do not express these antigens, which make them ideal targets for cancer immunotherapies anticipated to generate less toxic side effects than conventional cancer treatments. These TCRs deliver a robust immune response against MAGE–A3 or A6 expressing cancerous cells and could prove to be a powerful approach for selectively attacking tumors without generating toxicity against healthy cells.

The instant technology describes T cell receptors (TCRs) against the MAGE–A3 and A6 tumor antigens in the context of major histocompatibility complex (MHC) class II molecule HLA-DP-beta1*04, and against MAGE–A3 antigen in context of the HLA-A*0101. They comprise the first HLA class II restricted MAGE–A3/A6-specific TCRs developed for use in adoptive immunotherapy. Since approximately 80% of patients express the HLA-DP-beta1*04 class II HLA allele, this TCR greatly expands the population pool treatable with MAGE–A3/A6 TCRs to include the majority of patients with an amenable target expression profile. Cancer immunotherapy with these new HLA class II TCRs could yield a robust and effective CD8+ and CD4+ T cell immune response and selectively target MAGE–A3/A6 expressing tumors without generating toxicity against healthy cells. Finally, they complement TCRs that are restricted to MHC class I molecules such as HLA-A*01, expanding the population of patients beyond HLA-DP-beta1*04 MHC class II positive.

The prospective exclusive license may be granted unless within thirty (30) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR Part 404.

Complete applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive evaluation option license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: October 8, 2014.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2014–24502 Filed 10–15–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0018; OMB No. 1660–0039]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; National Fire Academy Long-Term Evaluation Form for Supervisors and National Fire Academy Long-Term Evaluation for Students/Trainees

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (i.e., the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before November 17, 2014.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or

copies of the information collection should be made to Director, Records Management Division, 500 C Street SW., Room 7NE, Washington, DC 20472–3100, facsimile number (202) 212–4701, or email address *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: National Fire Academy Long-Term Evaluation Form for Supervisors and National Fire Academy Long-Term Evaluation for Students/Trainees.

Type of information collection: Revision of a currently approved information collection.

Form Titles and Numbers: FEMA Form 078–0–2A, National Fire Academy Long-Term Evaluation Student/Trainee; FEMA Form 078–0–2, National Fire Academy Long-Term Evaluation Supervisors.

Abstract: The National Fire Academy Long-Term Evaluation Forms will be used to evaluate all National Fire Academy (NFA) on-campus resident training courses. Course graduates and their supervisors will be asked to evaluate the impact of the training on both individual job performance and the performance of the fire and emergency response department where the student works. The data provided by students and supervisors is used to update existing NFA course materials and to develop new courses that reflect the emerging issues/needs of the Nation's fire service.

Affected Public: State, local or Tribal government.

Estimated Number of Respondents: 3,000.

Estimated Total Annual Burden Hours: 405.

Estimated Cost: There are no record keeping, capital, startup or maintenance costs associated with this information collection.

Dated: October 8, 2014.

Charlene D. Myrthil,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2014–24486 Filed 10–15–14; 8:45 am]

BILLING CODE 9111–45–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0024; OMB No. 1660–0057]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Chemical Stockpile Emergency Preparedness Program (CSEPP) Evaluation and Customer Satisfaction Survey

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (i.e., the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before November 17, 2014.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 500 C Street SW., Room 7NE, Washington, DC 20472–3100, facsimile number (202) 212–4701, or email address *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: Chemical Stockpile Emergency Preparedness Program (CSEPP) Evaluation and Customer Satisfaction Survey.

Type of Information Collection: Revision of a currently approved information collection.

FEMA Forms: FEMA Form 008–0–3, Pueblo EPZ Residential Survey; FEMA Form 008–0–3INT, Pueblo EPZ Residential Survey; FEMA Form 008–0–4, Pueblo City Residential Survey; FEMA Form 008–0–5, Pueblo EPZ Business Survey; and FEMA Form 008–0–7, Blue Grass EPZ Residential Survey.

Abstract: To support the development of public outreach and education efforts that will improve emergency preparedness, DHS/FEMA's Chemical Stockpile Emergency Preparedness Program (CSEPP) will collect data from the citizens living in the Immediate Response Zones and Protective Action Zones surrounding stockpile sites. Program managers use survey data findings to evaluate public awareness of protective actions at CSEPP sites, and identify outreach weaknesses and strengths to develop effective outreach and education campaigns. Results from this information collection are shared with State, local, Tribal, and other FEMA officials for subsequent action plans addressing program-wide and stockpile site-specific issues. Results are also shared with other Federal agencies that lend expertise in specific areas of the program.

Affected Public: Individuals or households, business or other for-profit.

Estimated Number of Respondents: 2,078.

Estimated Number of Responses: 2,078.

Estimated Total Annual Burden Hours: 490 hours.

Estimated Cost: There are no record keeping, capital, startup or maintenance costs associated with this information collection.

Dated: October 8, 2014.

Charlene D. Myrthil,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2014–24483 Filed 10–15–14; 8:45 am]

BILLING CODE 9111–46–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2543–14; DHS Docket No. USCIS–2014–0007]

RIN 1615–ZB28

Extension of the Designation of Honduras for Temporary Protected Status

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Through this Notice, the Department of Homeland Security (DHS) announces that the Secretary of Homeland Security (Secretary) is extending the designation of Honduras for Temporary Protected Status (TPS) for 18 months from January 6, 2015 through July 5, 2016.

The extension allows currently eligible TPS beneficiaries to retain TPS through July 5, 2016, so long as they otherwise continue to meet the eligibility requirements for TPS. The Secretary has determined that an extension is warranted because the conditions in Honduras that prompted the TPS designation continue to be met. There continues to be a substantial, but temporary, disruption of living conditions in Honduras resulting from Hurricane Mitch, and Honduras remains unable, temporarily, to handle adequately the return of its nationals.

Through this Notice, DHS also sets forth procedures necessary for nationals of Honduras (or aliens having no nationality who last habitually resided in Honduras) to re-register for TPS and to apply for renewal of their Employment Authorization Documents (EADs) with U.S. Citizenship and Immigration Services (USCIS). Re-registration is limited to persons who have previously registered for TPS under the designation of Honduras and whose applications have been granted. Certain nationals of Honduras (or aliens having no nationality who last habitually resided in Honduras) who have not previously applied for TPS may be eligible to apply under the late initial registration provisions, if they meet: (1) At least one of the late initial filing criteria; and, (2) all TPS eligibility criteria (including continuous residence in the United States since December 30, 1998, and continuous physical presence in the United States since January 5, 1999).

For individuals who have already been granted TPS under the Honduras designation, the 60-day re-registration period runs from October 16, 2014 through December 15, 2014. USCIS will issue new EADs with a July 5, 2016 expiration date to eligible Honduras TPS beneficiaries who timely re-register and apply for EADs under this extension. Given the timeframes involved with processing TPS re-registration applications, DHS recognizes that not all re-registrants will receive new EADs before their current EADs expire on January 5, 2015. Accordingly, through this Notice, DHS automatically extends the validity of EADs issued under the TPS designation of Honduras for 6 months, through July 5, 2015, and explains how TPS beneficiaries and their employers may determine which EADs are automatically extended and their impact on Employment Eligibility Verification (Form I–9) and the E-Verify processes.

DATES: The 18-month extension of the TPS designation of Honduras is effective January 6, 2015, and will remain in effect through July 5, 2016. The 60-day re-registration period runs from October 16, 2014 through December 15, 2014. (Note: It is important for re-registrants to timely re-register during this 60-day re-registration period, and not to wait until their EADs expire.)

FOR FURTHER INFORMATION CONTACT:

- For further information on TPS, including guidance on the application process and additional information on eligibility, please visit the USCIS TPS Web page at *http://www.uscis.gov/tps.*

You can find specific information about this extension of Honduras for TPS by selecting ''TPS Designated Country: Honduras'' from the menu on the left of the TPS Web page.

- You can also contact the TPS Operations Program Manager at the Family and Status Branch, Service Center Operations Directorate, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529–2060; or by phone at (202) 272–1533 (this is not a toll-free number). *Note:* The phone number provided here is solely for questions regarding this TPS Notice. It is not for individual case status inquires.
- Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833). Service is available in English and Spanish.
- Further information will also be available at local USCIS offices upon publication of this Notice.

SUPPLEMENTARY INFORMATION:

Table of Abbreviations

BIA—Board of Immigration Appeals
DHS—Department of Homeland Security
DOS—Department of State
EAD—Employment Authorization Document
FNC—Final Nonconfirmation
Government—U.S. Government
IJ—Immigration Judge
INA—Immigration and Nationality Act
OSC—U.S. Department of Justice, Office of Special Counsel for Immigration-Related Unfair Employment Practices
SAVE—USCIS Systematic Alien Verification for Entitlements Program
Secretary—Secretary of Homeland Security
TNC—Tentative Nonconfirmation
TPS—Temporary Protected Status
TTY—Text Telephone
USCIS—U.S. Citizenship and Immigration Services

What is temporary protected status (TPS)?

- TPS is a temporary immigration status granted to eligible nationals of a country designated for TPS under the Immigration and Nationality Act (INA), or to persons without nationality who last habitually resided in the designated country.
- During the TPS designation period, TPS beneficiaries are eligible to remain in the United States, may not be removed, and may obtain work authorization, so long as they continue to meet the requirements of TPS.
- TPS beneficiaries may also be granted travel authorization as a matter of discretion.
- The granting of TPS does not result in or lead to permanent resident status.
- When the Secretary terminates a country's TPS designation, beneficiaries return to the same immigration status they maintained before TPS, if any (unless that status has since expired or been terminated), or to any other lawfully obtained immigration status they received while registered for TPS.

When was Honduras designated for TPS?

On January 5, 1999, the Attorney General designated Honduras for TPS based on an environmental disaster within that country, specifically the devastation resulting from Hurricane Mitch. *See Designation of Honduras Under Temporary Protected Status,* 64 FR 524 (Jan. 5, 1999). The Secretary last announced the extension of the Honduras TPS designation on April 3, 2013 based on the determination that the conditions warranting the designation continued to be met. *See* Extension of the Designation of Honduras for Temporary Protected Status, 78 FR 20123 (Apr. 3, 2013). This announcement is the twelfth extension of TPS for Honduras since the original designation in 1999.

What authority does the Secretary of Homeland Security have to extend the designation of Honduras for TPS?

Section 244(b)(1) of the INA, 8 U.S.C. 1254a(b)(1), authorizes the Secretary, after consultation with appropriate U.S. Government (Government) agencies, to designate a foreign state (or part thereof) for TPS if the Secretary finds that

certain country conditions exist.[1] The Secretary may then grant TPS to eligible nationals of that foreign state (or aliens having no nationality who last habitually resided in that state). *See* INA section 244(a)(1)(A), 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of a country's TPS designation or extension, the Secretary, after consultation with appropriate Government agencies, must review the conditions in a foreign state designated for TPS to determine whether the conditions for the TPS designation continue to be met. *See* INA section 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). If the Secretary determines that a foreign state continues to meet the conditions for TPS designation, the designation may be extended for an additional period of 6, 12, or 18 months. *See* INA section 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C). If the Secretary determines that the foreign state no longer meets the conditions for TPS designation, the Secretary must terminate the designation. *See* INA section 244(b)(3)(B), 8 U.S.C. 1254a(b)(3)(B).

Why is the Secretary extending the TPS designation for Honduras through July 5, 2016?

Over the past year, DHS and the Department of State (DOS) have continued to review conditions in Honduras. Based on this review and after consulting with DOS, the Secretary has determined that an 18-month extension is warranted because the disruption in living conditions in affected areas of Honduras resulting from the environmental disaster that prompted the January 5, 1999 designation persists.

Hurricane Mitch devastated Honduras in October 1998, killing 5,657 people and injuring 12,272 people. Hurricane Mitch destroyed tens of thousands of homes and a large portion of Honduras's infrastructure, as well as causing outbreaks of disease. All 18 of Honduras's departments suffered damage from the storm. The effects of Hurricane Mitch are still being felt in Honduras, causing continued disruption of living conditions.

Natural disasters have occurred frequently since Hurricane Mitch in 1998. Over the last 5 years, Honduras has continued to suffer a series of environmental events that have significantly impeded economic development and recovery, compounding the disruption in living conditions caused by Hurricane Mitch. In 2014, Honduras is experiencing a drought that has caused crop failures and shortages of staple food items, contributing to food insecurity, similar to a drought experienced in 2012. In 2013, 25 percent of the country's coffee crops were affected by climate-related rust fungus, which resulted in a significant reduction in producer incomes and employment opportunities in rural areas. In 2011, flooding killed 29 people and affected nearly 70,000 others across the country, and caused severe damage to infrastructure, housing, and agricultural crops, including the destruction of more than 60 percent of basic grain plantings in some southern areas of the country. In 2010, Tropical Storm Agatha killed 14 people and damaged nearly 1,000 houses, 44 roads, and 25 bridges. In 2009, a strong earthquake damaged houses, buildings, roads, bridges, and water systems. Globally, Honduras is considered to be among the countries that are the most vulnerable to natural disasters, including those related to extreme weather events. Although recovery efforts have been implemented, the United Nations Development Programme states that Mitch economically and socially set-back Honduras by twenty years. Consequently, reconstruction efforts in Honduras are ongoing.

Estimates of damaged or destroyed dwellings and the resulting homelessness vary. Local government and non-governmental organization figures indicate the destruction of homes by Hurricane Mitch ranges between approximately 35,000 and 66,000. Reports also indicate that between 44,150 and 285,000 individuals were left homeless as a result of Hurricane Mitch. Housing losses were estimated at $344 million, with repairs and reconstruction expected to cost $485 million due to inflation. People who were internally relocated reportedly lacked employment opportunities and access to health and educational services.

Hurricane Mitch destroyed an estimated 60 to 70 percent of transportation infrastructure, including as many as 189 bridges. It is estimated that over 11 kilometers of bridges were partially or completely destroyed. In May 2009, the World Bank approved a $25-million loan for road rehabilitation and improvement, a project that remained active as of April 2014.

In 2011, the Economic Commission for Latin America and the Caribbean estimated that Honduras sustained approximately $205 million in material losses as a result of floods and landslides, which most heavily affected houses, agriculture, and infrastructure in southern Honduras. The floods resulted in damages to the shrimp business, the main industry along the Pacific region, and losses to the melon and cantaloupe crop in Valle and Choluteca, where most large export plantations are located. The Economic Commission for Latin America and the Caribbean (ECLAC) estimates that in 2011 Honduras sustained approximately US$205 million in material losses as a result of floods and landslides, which most heavily affected houses, agriculture, and infrastructure in southern Honduras. For example, the floods resulted in damages to the shrimp business, the main industry along the Pacific region, and losses to the first melon and cantaloupe crop cycle in Valle and Choluteca, where most large export plantations are located. Landslides and floods caused by Hurricane Mitch damaged both the potable water distribution systems and sewage treatment facilities in urban and rural Honduras. This posed serious health risks to the population. The international community funds water and sanitation projects, such as a 2007 World Bank project for a $35-million loan for water supply and sanitation services improvement projects. The projects are scheduled to be completed in December 2016.

Based upon this review and after consultation with appropriate Government agencies, the Secretary finds that:

- The conditions that prompted the January 5, 1999 designation of Honduras for TPS continue to be met. *See* INA sections 244(b)(3)(A) and (C), 8 U.S.C. 1254a(b)(3)(A) and (C).
- There continues to be a substantial, but temporary, disruption in living conditions in Honduras as a result of an environmental disaster. *See* INA section 244(b)(1)(B), 8 U.S.C. 1254a(b)(1)(B),
- Honduras continues to be unable, temporarily, to handle adequately the return of its nationals (or aliens having no nationality who last habitually resided in Honduras). *See* section 244(b)(1)(B) of the Act, 8 U.S.C. 1254a(b)(1)(B).
- The designation of Honduras for TPS should be extended for an additional 18-month period from January 6, 2015 through July 5, 2016.

[1] As of March 1, 2003, in accordance with section 1517 of title XV of the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135, any reference to the Attorney General in a provision of the INA describing functions transferred from the Department of Justice to DHS ''shall be deemed to refer to the Secretary'' of Homeland Security. *See* 6 U.S.C. 557 (codifying the Homeland Security Act of 2002, tit. XV, section 1517).

See INA section 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C).

• There are approximately 61,000 current Honduras TPS beneficiaries who are expected to file for re-registration and may be eligible to retain their TPS under the extension.

Notice of Extension of the TPS Designation of Honduras

By the authority vested in me as Secretary under INA section 244, 8 U.S.C. 1254a, I have determined, after consultation with the appropriate Government agencies, that the conditions that prompted the designation of Honduras for TPS in 1999 continue to be met. *See* INA section 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). On the basis of this determination, I am extending the existing TPS designation of Honduras for 18 months from January 6, 2015 through July 5, 2016. *See* INA section 244(b)(2) and (b)(3), 8 U.S.C. 1254a(b)(2) and (b)(3).

Jeh Charles Johnson,

Secretary.

Required Application Forms and Application Fees To Register or Re-Register for TPS

To register or re-register for TPS for Honduras, an applicant must submit each of the following two applications:

1. Application for Temporary Protected Status (Form I–821).

• If you are filing an application for late initial registration, you must pay the fee for the Application for Temporary Protected Status (Form I–821). *See* 8 CFR 244.2(f)(2) and 244.6 and information on late initial filing on the USCIS TPS Web page at *http://www.uscis.gov/tps.*

• If you are filing an application for re-registration, you do not need to pay the fee for the Application for Temporary Protected Status (Form I–821). *See* 8 CFR 244.17.

and

2. Application for Employment Authorization (Form I–765).

• If you are applying for late initial registration and want an EAD, you must pay the fee for the Application for Employment Authorization (Form I–765) only if you are age 14 through 65. No fee for the Application for Employment Authorization (Form I–765) is required if you are under the age of 14 or are 66 and older and applying for late initial registration.

• If you are applying for re-registration, you must pay the fee for the Application for Employment Authorization (Form I–765) only if you want an EAD, regardless of age.

• You do not pay the fee for the Application for Employment Authorization (Form I–765) if you are not requesting an EAD, regardless of whether you are applying for late initial registration or re-registration.

You must submit both completed application forms together. If you are unable to pay for the Application for Employment Authorization (Form I–765) and/or biometrics fee, you may apply for a fee waiver by completing a Request for Fee Waiver (Form I–912) or submitting a personal letter requesting a fee waiver, and by providing satisfactory supporting documentation. For more information on the application forms and fees for TPS, please visit the USCIS TPS Web page at *http://www.uscis.gov/tps.* Fees for the Application for Temporary Protected Status (Form I–821), the Application for Employment Authorization (Form I–765), and biometric services are also described in 8 CFR 103.7(b)(1)(i).

Biometric Services Fee

Biometrics (such as fingerprints) are required for all applicants 14 years of age or older. Those applicants must submit a biometric services fee. As previously stated, if you are unable to pay for the biometric services fee, you may apply for a fee waiver by completing a Request for Fee Waiver (Form I–912) or by submitting a personal letter requesting a fee waiver, and providing satisfactory supporting documentation. For more information on the biometric services fee, please visit the USCIS Web site at *http://www.uscis.gov.* If necessary, you may be required to visit an Application Support Center to have your biometrics captured.

Re-Filing a Re-Registration TPS Application After Receiving a Denial of a Fee Waiver Request

USCIS urges all re-registering applicants to file as soon as possible within the 60-day re-registration period so that USCIS can process the applications and issue EADs promptly. Filing early will also allow those applicants who may receive denials of their fee waiver requests to have time to re-file their applications before the re-registration deadline. If, however, an applicant receives a denial of his or her fee waiver request and is unable to re-file by the re-registration deadline, the applicant may still re-file his or her application. This situation will be reviewed to determine whether the applicant has established good cause for late re-registration. However, applicants are urged to re-file within 45 days of the date on their USCIS fee waiver denial notice, if at all possible. *See* INA section 244(c)(3)(C); 8 U.S.C. 1254a(c)(3)(C); 8 CFR 244.17(c). For more information on good cause for late re-registration, visit the USCIS TPS Web page at *http://www.uscis.gov/tps.* **Note:** As previously stated, although a re-registering TPS beneficiary age 14 and older must pay the biometric services fee (but not the initial TPS application fee) when filing a TPS re-registration application, the applicant may decide to wait to request an EAD, and therefore not pay the Application for Employment Authorization (Form I–765) fee, until after USCIS has approved the individual's TPS re-registration, if he or she is eligible. If you choose to do this, you would file the Application for Temporary Protected Status (Form I–821) with the fee and the Application for Employment Authorization (Form I–765) without the fee and without requesting an EAD.

Mailing Information

Mail your application for TPS to the proper address in Table 1.

TABLE 1—MAILING ADDRESSES

If . . .	Mail to . . .
You are re-registering for TPS through the U.S. Postal Service	U.S. Citizenship and Immigration Services; Attn: TPS Honduras; P.O. Box 6943; Chicago, IL 60680–6943.
or	
You were granted TPS by an Immigration Judge (IJ) or the Board of Immigration Appeals (BIA), and you wish to request an EAD,	
or	
You are re-registering for the first time following a grant of TPS by an IJ or BIA and you are mailing through the U.S. Postal Service	

TABLE 1—MAILING ADDRESSES—Continued

If . . .	Mail to . . .
You are registering late for the first time with a late initial filing through the U.S. Postal Service.	U.S. Citizenship and Immigration Services; Attn: TPS Honduras; P.O. Box 6943; Chicago, IL 60680–6943.
You would like to send your application using a non-U.S. Postal Service delivery service (for re-registrations AND late initial filings).	U.S. Citizenship and Immigration Services; Attn: TPS Honduras; 131 S. Dearborn—3rd Floor; Chicago, IL 60603–5517.

If you were granted TPS by an Immigration Judge (IJ) or the Board of Immigration Appeals (BIA), and you wish to request an EAD, or are re-registering for the first time following a grant of TPS by an IJ or the BIA, please mail your application to the appropriate address in Table 1. Upon receiving a Notice of Action (Form I–797) from USCIS, please send an email to the appropriate USCIS Service Center handling your application providing the receipt number and stating that you submitted a re-registration and/or request for an EAD based on an IJ/BIA grant of TPS. If your USCIS receipt number begins with the letters ''LIN,'' please email the Nebraska Service Center at *TPSijgrant.nsc@uscis.dhs.gov.* If your USCIS receipt number begins with the letters ''WAC,'' please email the California Service Center at *TPSijgrant.csc@uscis.dhs.gov.* You can find detailed information on what further information you need to email and the email addresses on the USCIS TPS Web page at *http://www.uscis.gov/tps.*

E-Filing

If you are re-registering for TPS during the re-registration period and you do not need to submit any supporting documents or evidence, you are eligible to file your applications electronically. For more information on e-filing, please visit *http://www.uscis.gov/e-filing.*

Employment Authorization Document (EAD)

May I request an interim EAD at my local USCIS office?

No. USCIS will not issue interim EADs to TPS applicants and re-registrants at local offices.

Am I eligible to receive an automatic 6-month extension of my current EAD through July 5, 2015?

Provided that you currently have TPS under the Honduras designation, this notice automatically extends your EAD by 6 months if you:

- Are a national of Honduras (or an alien having no nationality who last habitually resided in Honduras);
- Received an EAD under the last extension of TPS for Honduras; and
- Have an EAD with a marked expiration date of January 5, 2015, bearing the notation ''A–12'' or ''C–19'' on the face of the card under ''Category.''

Although this Notice automatically extends your EAD through July 5, 2015, you must re-register timely for TPS in accordance with the procedures described in this Notice if you would like to maintain your TPS.

When hired, what documentation may I show to my employer as proof of employment authorization and identity when completing Employment Eligibility Verification (Form I–9)?

You can find a list of acceptable document choices on the ''Lists of Acceptable Documents'' for Employment Eligibility Verification (Form I–9). You can find additional detailed information on the USCIS I–9 Central Web page at *http://www.uscis.gov/I-9Central.* Employers are required to verify the identity and employment authorization of all new employees by using Employment Eligibility Verification (Form I–9). Within 3 days of hire, an employee must present proof of identity and employment authorization to his or her employer.

You may present any document from List A (reflecting both your identity and employment authorization), or one document from List B (reflecting identity) together with one document from List C (reflecting employment authorization). You may present an acceptable receipt for List A, List B, or List C documents as described in the Form I–9 Instructions. An EAD is an acceptable document under ''List A.'' Employers may not reject a document based on a future expiration date.

If your EAD has an expiration date of January 5, 2015, and states ''A–12'' or ''C–19'' under ''Category,'' it has been extended automatically for 6 months by virtue of this **Federal Register** Notice, and you may choose to present your EAD to your employer as proof of identity and employment authorization for Employment Eligibility Verification (Form I–9) through July 5, 2015 (see the subsection titled ''*How do my employer and I complete the Employment Eligibility Verification (Form I–9) using an automatically extended EAD for a new job?''* for further information). To minimize confusion over this extension at the time of hire, you may also show your employer a copy of this **Federal Register** Notice confirming the automatic extension of employment authorization through July 5, 2015. As an alternative to presenting your automatically extended EAD, you may choose to present any other acceptable document from List A, or a combination of one selection from List B and one selection from List C.

What documentation may I show my employer if I am already employed but my current TPS-related EAD is set to expire?

Even though EADs with an expiration date of January 5, 2015 that state ''A–12'' or ''C–19'' under ''Category'' have been automatically extended for 6 months by this **Federal Register** Notice, your employer will need to ask you about your continued employment authorization once January 5, 2015 is reached to meet its responsibilities for Employment Eligibility Verification (Form I–9). However, your employer does not need a new document to reverify your employment authorization until July 5, 2015, the expiration date of the automatic extension. Instead, you and your employer must make corrections to the employment authorization expiration dates in Section 1 and Section 2 of Employment Eligibility Verification (Form I–9) (see the subsection titled ''*What corrections should my current employer and I make to Employment Eligibility Verification (Form I–9) if my EAD has been automatically extended?''* for further information). In addition, you may also show this **Federal Register** Notice to your employer to explain what to do for Employment Eligibility Verification (Form I–9).

By July 5, 2015, the expiration date of the automatic extension, your employer must reverify your employment authorization. At that time, you must present any document from List A or any document from List C on Employment Eligibility Verification (Form I–9) to reverify employment authorization, or an acceptable List A or List C receipt described in the Form I–

9 Instructions. Your employer should complete either Section 3 of the Employment Eligibility Verification (Form I–9) originally completed for the employee or, if this Section has already been completed or if the version of Employment Eligibility Verification (Form I–9) has expired (check the date in the upper right-hand corner of the form), complete Section 3 of a new Employment Eligibility Verification (Form I–9) using the most current version. Note that your employer may not specify which List A or List C document employees must present, and cannot reject an acceptable receipt.

Can my employer require that I produce any other documentation to prove my status, such as proof of my Honduran citizenship?

No. When completing Employment Eligibility Verification (Form I–9), including re-verifying employment authorization, employers must accept any documentation that appears on the ''Lists of Acceptable Documents'' for Employment Eligibility Verification (Form I–9) that reasonably appears to be genuine and that relates to you or an acceptable List A, List B, or List C receipt. Employers may not request documentation that does not appear on the ''Lists of Acceptable Documents.'' Therefore, employers may not request proof of Honduran citizenship when completing Employment Eligibility Verification (Form I–9) for new hires or reverifying the employment authorization of current employees. If presented with EADs that have been automatically extended, employers should accept such EADs as valid List A documents so long as the EADs reasonably appear to be genuine and to relate to the employee. Refer to the Note to Employees section of this Notice for important information about your rights if your employer rejects lawful documentation, requires additional documentation, or otherwise discriminates against you based on your citizenship or immigration status, or your national origin.

What happens after July 5, 2015 for purposes of employment authorization?

After July 5, 2015, employers may no longer accept the EADs that this **Federal Register** Notice automatically extended. Before that time, however, USCIS will endeavor to issue new EADs to eligible TPS re-registrants who request them. These new EADs will have an expiration date of July 5, 2016 and can be presented to your employer for completion of Employment Eligibility Verification (Form I–9). Alternatively, you may choose to present any other legally acceptable document or combination of documents listed on the Employment Eligibility Verification (Form I–9).

How do my employer and I complete Employment Eligibility Verification (Form I–9) using an automatically extended EAD for a new job?

When using an automatically extended EAD to complete Employment Eligibility Verification (Form I–9) for a new job prior to January 5, 2015, you and your employer should do the following:

1. For Section 1, you should:

a. Check ''An alien authorized to work;''

b. Write your alien number (USCIS number or A-number) in the first space (your EAD or other document from DHS will have your USCIS number or A-number printed on it; the USCIS number is the same as your A-number without the A prefix); and

c. Write the automatically extended EAD expiration date (July 5, 2015) in the second space.

2. For Section 2, employers should record the:

a. Document title;

b. Document number; and

c. Automatically extended EAD expiration date (July 5, 2015).

No later than July 5, 2015, employers must reverify the employee's employment authorization in Section 3 of the Employment Eligibility Verification (Form I–9).

What corrections should my current employer and I make to Employment Eligibility Verification (Form I–9) if my EAD has been automatically extended?

If you are an existing employee who presented a TPS-related EAD that was valid when you first started your job, but that EAD has now been automatically extended, you and your employer should correct your previously completed Employment Eligibility Verification (Form I–9) as follows:

1. For Section 1, you should:

a. Draw a line through the expiration date in the second space;

b. Write ''July 5, 2015'' above the previous date;

c. Write ''TPS Ext.'' in the margin of Section 1; and

d. Initial and date the correction in the margin of Section 1.

2. For Section 2, employers should:

a. Draw a line through the expiration date written in Section 2;

b. Write ''July 5, 2015'' above the previous date;

c. Write ''TPS Ext.'' in the margin of Section 2; and

d. Initial and date the correction in the margin of Section 2.

By July 5, 2015, when the automatic extension of EADs expires, employers must reverify the employee's employment authorization in Section 3.

If I am an employer enrolled in E-Verify, what do I do when I receive a ''Work Authorization Documents Expiration'' alert for an automatically extended EAD?

If you are an employer who participates in E-Verify and you have an employee who is a TPS beneficiary who provided a TPS-related EAD when he or she first started working for you, you will receive a ''Work Authorization Documents Expiring'' case alert when this EAD is about to expire. Usually, this message is an alert to complete Section 3 of the Employment Eligibility Verification (Form I–9) to reverify an employee's employment authorization. For existing employees with TPS-related EADs that have been automatically extended, employers should dismiss this alert by clicking the red ''X'' in the ''dismiss alert'' column and follow the instructions above explaining how to correct the Employment Eligibility Verification (Form I–9). By July 5, 2015, employment authorization must be reverified in Section 3. Employers should never use E-Verify for reverification.

Note to All Employers

Employers are reminded that the laws requiring proper employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This Notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth reverification requirements. For general questions about the employment eligibility verification process, employers may call USCIS at 888–464–4218 (TTY 877–875–6028) or email USCIS at *I-9Central@dhs.gov.* Calls and emails are accepted in English and many other languages. For questions about avoiding discrimination during the employment eligibility verification process, employers may also call the U.S. Department of Justice, Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) Employer Hotline at 800–255–8155 (TTY 800–237–2515), which offers language interpretation in numerous languages, or email OSC at *osccrt@usdoj.gov.*

Note to Employees

For general questions about the employment eligibility verification process, employees may call USCIS at 888–897–7781 (TTY 877–875–6028) or email at *I-9Central@dhs.gov*. Calls are accepted in English and many other languages. Employees or applicants may also call the U.S. Department of Justice, Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) Worker Information Hotline at 800–255–7688 (TTY 800–237–2515) for information regarding employment discrimination based upon citizenship, immigration status, or national origin, or for information regarding discrimination related to Employment Eligibility Verification (Form I–9) and E-Verify. The OSC Worker Information Hotline provides language interpretation in numerous languages.

To comply with the law, employers must accept any document or combination of documents from the Lists of Acceptable Documents if the documentation reasonably appears to be genuine and to relate to the employee, or an acceptable List A, List B, or List C receipt described in the Employment Eligibility Verification (Form I–9) Instructions. Employers may not require extra or additional documentation beyond what is required for Employment Eligibility Verification (Form I–9) completion. Further, employers participating in E-Verify who receive an E-Verify case result of ''Tentative Nonconfirmation'' (TNC) must promptly inform employees of the TNC and give such employees an opportunity to contest the TNC. A TNC case result means that the information entered into E-Verify from Employment Eligibility Verification (Form I–9) differs from the Social Security Administration, DHS, or DOS records.

Employers may not terminate, suspend, delay training, withhold pay, lower pay or take any adverse action against an employee based on the employee's decision to contest a TNC or because the case is still pending with E-Verify. A Final Nonconfirmation (FNC) case result is received when E-Verify cannot verify an employee's employment eligibility. An employer may terminate employment based on a case result of FNC. Work-authorized employees who receive an FNC may call USCIS for assistance at 888–897–7781 (TTY 877–875–6028). An employee that believes he or she was discriminated against by an employer in the E-Verify process based on citizenship or immigration status, or based on national origin, may contact OSC's Worker Information Hotline at 800–255–7688 (TTY 800–237–2515). Additional information about proper nondiscriminatory Employment Eligibility Verification (Form I–9) and E-Verify procedures is available on the OSC Web site at *http://www.justice.gov/crt/about/osc/* and the USCIS Web site at *http://www.dhs.gov/E-verify.*

Note Regarding Federal, State, and Local Government Agencies (Such as Departments of Motor Vehicles)

While Federal Government agencies must follow the guidelines laid out by the Federal Government, State and local government agencies establish their own rules and guidelines when granting certain benefits. Each State may have different laws, requirements, and determinations about what documents you need to provide to prove eligibility for certain benefits. Whether you are applying for a Federal, State, or local government benefit, you may need to provide the government agency with documents that show you are a TPS beneficiary and/or show you are authorized to work based on TPS. Examples are:

(1) Your unexpired EAD that has been automatically extended, or your EAD that has not expired;

(2) A copy of this **Federal Register** Notice if your EAD is automatically extended under this Notice;

(3) A copy of your Application for Temporary Protected Status Notice of Action (Form I–797) for this re-registration;

(4) A copy of your past or current Application for Temporary Protected Status Notice of Action (Form I–797), if you received one from USCIS; and/or

(5) If there is an automatic extension of work authorization, a copy of the fact sheet from the USCIS TPS Web site that provides information on the automatic extension.

Check with the government agency regarding which document(s) the agency will accept. You may also provide the agency with a copy of this **Federal Register** Notice.

Some benefit-granting agencies use the USCIS Systematic Alien Verification for Entitlements Program (SAVE) to verify the current immigration status of applicants for public benefits. If such an agency has denied your application based solely or in part on a SAVE response, the agency must offer you the opportunity to appeal the decision in accordance with the agency's procedures. If the agency has received and acted upon or will act upon a SAVE verification and you do not believe the response is correct, you may make an InfoPass appointment for an in-person interview at a local USCIS office. Detailed information on how to make corrections, make an appointment, or submit a written request can be found at the SAVE Web site at *http://www.uscis.gov/save,* then by choosing ''How to Correct Your Records'' from the menu on the right.

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DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2544–14; DHS Docket No. USCIS–2014–0006]

RIN 1615–ZB29

Extension of the Designation of Nicaragua for Temporary Protected Status

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Through this Notice, the Department of Homeland Security (DHS) announces that the Secretary of Homeland Security (Secretary) is extending the designation of Nicaragua for Temporary Protected Status (TPS) for 18 months from January 6, 2015 through July 5, 2016.

The extension allows currently eligible TPS beneficiaries to retain TPS through July 5, 2016 so long as they otherwise continue to meet the eligibility requirements for TPS. The Secretary has determined that an extension is warranted because the conditions in Nicaragua that prompted the TPS designation continue to be met. There continues to be a substantial, but temporary, disruption of living conditions in Nicaragua resulting from Hurricane Mitch, and Nicaragua remains unable, temporarily, to handle adequately the return of its nationals.

Through this Notice, DHS also sets forth procedures necessary for nationals of Nicaragua (or aliens having no nationality who last habitually resided in Nicaragua) to re-register for TPS and to apply for renewal of their Employment Authorization Documents (EADs) with U.S. Citizenship and Immigration Services (USCIS). Re-registration is limited to persons who have previously registered for TPS under the designation of Nicaragua and whose applications have been granted. Certain nationals of Nicaragua (or aliens having no nationality who last

habitually resided in Nicaragua) who have not previously applied for TPS may be eligible to apply under the late initial registration provisions, if they meet: (1) At least one of the late initial filing criteria; and, (2) all TPS eligibility criteria (including continuous residence in the United States since December 30, 1998, and continuous physical presence in the United States since January 5, 1999).

For individuals who have already been granted TPS under the Nicaraguan designation, the 60-day re-registration period runs from October 16, 2014 through December 15, 2014. USCIS will issue new EADs with a July 5, 2016 expiration date to eligible Nicaragua TPS beneficiaries who timely re-register and apply for EADs under this extension. Given the timeframes involved with processing TPS re-registration applications, DHS recognizes that not all re-registrants will receive new EADs before their current EADs expire on January 5, 2015. Accordingly, through this Notice, DHS automatically extends the validity of EADs issued under the TPS designation of Nicaragua for 6 months, through July 5, 2015, and explains how TPS beneficiaries and their employers may determine which EADs are automatically extended and their impact on Employment Eligibility Verification (Form I–9) and the E-Verify processes.

DATES: The 18-month extension of the TPS designation of Nicaragua is effective January 6, 2015, and will remain in effect through July 5, 2016. The 60-day re-registration period runs from October 16, 2014 through December 15, 2014. (**Note:** It is important for re-registrants to timely re-register during this 60-day re-registration period, and not to wait until their EADs expire.)

FOR FURTHER INFORMATION CONTACT:

- For further information on TPS, including guidance on the application process and additional information on eligibility, please visit the USCIS TPS Web page at *http://www.uscis.gov/tps.* You can find specific information about this extension of Nicaragua for TPS by selecting ''TPS Designated Country: Nicaragua'' from the menu on the left of the TPS Web page.
- You can also contact the TPS Operations Program Manager at the Family and Status Branch, Service Center Operations Directorate, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529–2060; or by phone at (202) 272–1533 (this is not a toll-free number). **Note:** The phone number provided here is solely for questions regarding this TPS Notice. It is not for individual case status inquires.
- Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833). Service is available in English and Spanish.
- Further information will also be available at local USCIS offices upon publication of this Notice.

SUPPLEMENTARY INFORMATION:

Table of Abbreviations

BIA—Board of Immigration Appeals
DHS—Department of Homeland Security
DOS—Department of State
EAD—Employment Authorization Document
FNC—Final Nonconfirmation
Government—U.S. Government
IJ—Immigration Judge
INA—Immigration and Nationality Act
OSC—U.S. Department of Justice, Office of Special Counsel for Immigration-Related Unfair Employment Practices
SAVE—USCIS Systematic Alien Verification for Entitlements Program
Secretary—Secretary of Homeland Security
TNC—Tentative Nonconfirmation
TPS—Temporary Protected Status
TTY—Text Telephone
USAID—U.S. Agency for International Development
USCIS—U.S. Citizenship and Immigration Services

What is Temporary Protected Status (TPS)?

- TPS is a temporary immigration status granted to eligible nationals of a country designated for TPS under the Immigration and Nationality Act (INA), or to persons without nationality who last habitually resided in the designated country.
- During the TPS designation period, TPS beneficiaries are eligible to remain in the United States, may not be removed, and may obtain work authorization, so long as they continue to meet the requirements of TPS.
- TPS beneficiaries may also be granted travel authorization as a matter of discretion.
- The granting of TPS does not result in or lead to permanent resident status.
- When the Secretary terminates a country's TPS designation, beneficiaries return to the same immigration status they maintained before TPS, if any (unless that status has since expired or been terminated), or to any other lawfully obtained immigration status they received while registered for TPS.

When was Nicaragua designated for TPS?

On January 5, 1999, the Attorney General designated Nicaragua for TPS based on an environmental disaster within that country, specifically the devastation resulting from Hurricane Mitch. *See Designation of Nicaragua Under Temporary Protected Status,* 64 FR 526 (Jan. 5, 1999). The Secretary last announced an extension of the Nicaragua TPS designation on April 3, 2013, based on her determination that the conditions warranting the designation continued to be met. *See Extension of the Designation of Nicaragua for Temporary Protected Status,* 78 FR 20128 (Apr. 3, 2014). This announcement is the twelfth extension of TPS for Nicaragua since the original designation in 1999.

What authority does the Secretary of Homeland Security have to extend the designation of Nicaragua for TPS?

Section 244(b)(1) of the INA, 8 U.S.C. 1254a(b)(1), authorizes the Secretary, after consultation with appropriate U.S. Government agencies, to designate a foreign state (or part thereof) for TPS if the Secretary finds that certain country conditions exist.[1] The Secretary may then grant TPS to eligible nationals of that foreign state (or aliens having no nationality who last habitually resided in that state). *See* INA section 244(a)(1)(A), 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of a country's TPS designation or extension, the Secretary, after consultation with appropriate Government agencies, must review the conditions in a foreign state designated for TPS to determine whether the conditions for the TPS designation continue to be met. *See* INA section 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). If the Secretary determines that a foreign state continues to meet the conditions for a TPS designation, the designation may be extended for an additional period of 6, 12, or 18 months. *See* INA section 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C). If the Secretary determines that the foreign state no longer meets the conditions for TPS designation, the Secretary must terminate the designation. *See* INA section 244(b)(3)(B), 8 U.S.C. 1254a(b)(3)(B).

[1] As of March 1, 2003, in accordance with section 1517 of title XV of the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135, any reference to the Attorney General in a provision of the INA describing functions transferred from the Department of Justice to DHS ''shall be deemed to refer to the Secretary'' of Homeland Security. *See* 6 U.S.C. 557 (codifying the Homeland Security Act of 2002, tit. XV, section 1517).

Why is the Secretary extending the TPS designation for Nicaragua through July 5, 2016?

Over the past year, DHS and the Department of State (DOS) have continued to review conditions in Nicaragua. Based on this review and after consulting with DOS, the Secretary has determined that an 18-month extension is warranted because the disruption in living conditions in affected areas of Nicaragua resulting from the environmental disaster that prompted the January 5, 1999 designation persists.

Hurricane Mitch made landfall in Nicaragua in October 1998. The storm killed 3,045 people and 885 were reported missing. The devastation of Hurricane Mitch affected nearly 868,000 people. Landslides and floods destroyed entire villages and caused extensive damages to the transportation network, housing, medical and educational facilities, water supply and sanitation facilities, and the agricultural sector. Overall damage estimates ranged between $1.3–1.5 billion. Hurricane Mitch caused critical food and potable water shortages. Agricultural difficulties have continued, such as a significant shortage in the production of beans, a staple crop, as well as a struggling coffee sector. These events have contributed to an environment in which there are continual disruptions to living conditions.

Estimates of houses destroyed by Hurricane Mitch ranged as high as 145,000. Housing reconstruction costs were estimated at $143.7 million. Damages to roads and bridges accounted for approximately 60 percent of Mitch-related reconstruction costs. Approximately 1,500 kilometers of paved and 6,500 kilometers of unpaved roads were damaged and 71 bridges were destroyed. The infrastructure damage resulted in the country's main cities being physically disconnected from smaller towns and communities. Managua, for example, was left disconnected from cities in the northern, central, and western regions of the country, compromising communication and the movement of people and commercial goods. Road and bridge reconstruction and repair costs were estimated at $804 million.

The international community continues to assist the government of Nicaragua to repair the damage and destruction left behind by Hurricane Mitch; the European Union's Regional Programme for the Reconstruction of Central America constructed and rehabilitated 1,050 homes, the Canadian Red Cross and the United Nations Development Programme collaborated to build 1,300 homes, and local authorities with the assistance of various small Spanish Non-Governmental Organizations built 300 homes in the municipality of Ocotal. Despite the effort of these programs, there currently still is a net housing deficit in Nicaragua.

A significant amount of aid was dedicated to repairing and improving road infrastructure. The Inter-American Development Bank authorized two loans totaling $85 million for rehabilitation of the Pan-American Highway and the San Lorenzo to Muhan road. In 2004, the Inter-American Development Bank granted an additional $40 million for road improvement projects. The World Bank contributed funds to rehabilitation and maintenance projects for third and fourth roads, which are typically rural and unpaved. Although these projects have been completed, only 12 percent of Nicaragua's roads are paved, representing the lowest percentage in Central America. Most rural roads in the northern mountainous region and the Atlantic coast have not been properly repaired since Hurricane Mitch and have suffered additional damage due to frequent flooding.

By the end of 2001, the United States Agency for International Development (USAID) had completed a multi-year project to construct or repair 50 health units and 20 schools. USAID provided these institutions with medical and school supplies. Similarly, the European Union's Regional Programme for the Reconstruction of Central America constructed or rehabilitated five health centers and 139 schools.

Significant improvements have been made to water and sanitation systems. In 1999, the Inter-American Development Bank authorized a loan for $13.9 million to modernize potable water and sanitation systems. In 2000, the Inter-American Development Bank followed up with a $15 million loan to implement sanitation programs in Lake Managua. By 2001, the USAID contractor Environmental Health Project reported that 2,692 water supply systems, 7,226 household latrines, and 295 wells had been constructed. In 2001, the Nicaraguan Aqueducts and Sewage Company reported that 46 percent of the rural population had access to safe water. In 2006, the Inter-American Development Bank approved a loan in the amount of $30 million to provide potable water service to an additional 80,000 people and to strengthen the maintenance capacity of the national water and sanitation company. The Inter-American Development Bank has continued to fund potable water and sanitation improvement projects, most recently a 2010 loan in the amount of $30 million, to increase coverage of potable water and sanitation services. Projects funded by this loan are currently being implemented.

Following Mitch, various hurricanes, tropical depressions, and tropical storms have made landfall in Nicaragua. These ensuing natural disasters have hampered recovery and compounded the devastation and substantial disruption in living conditions resulting from Hurricane Mitch. In November 2001, Hurricane Michelle damaged or destroyed 3,349 houses, seven bridges, and 7,000 hectares of staple crops which is equivalent to 80 percent of crop production. In September 2007, Hurricane Felix, a category 5 storm, killed more than 100 people and damaged or destroyed 16,400 houses. In May 2008, Tropical Storm Alma damaged seven Pacific coast departments, leaving more than 25,000 people homeless. In October 2008, a tropical depression brought intense rains that affected 10,633 people in eight departments. In November 2009, Hurricane Ida brought heavy rains and winds to the northern coast of Nicaragua causing damage to 875 homes, contaminating 300 wells and affecting more than 13,000 people.

More recently, in October 2011, heavy rains associated with a tropical depression caused flooding and landslides throughout Nicaragua. An assessment carried out by the Nicaraguan government concluded that 87 of 153 municipalities in the country were damaged and nearly 149,000 people suffered losses to their property, agricultural crops, and other livelihoods. A total of 8,924 homes were flooded; 1,235 were partially destroyed and 335 completely destroyed. Damages and losses totaled $445 million or 6.8 percent of the gross domestic product in 2010. The year 2013 was also a harsh period for the region, as heavy rains from Hurricane Barbara in May resulted in almost 600 homes being flooded, and over 3,000 people affected. During June and July of the same year, tropical storms and heavy seasonal rain resulted in fifteen deaths, widespread flooding, and 12,000 people affected. According to an August 12, 2014, Famine Early Warning System report, a lengthy drought in 2014 prevented many farmers, especially in the northern region, from planting food crops during the normal spring planting cycle, thus contributing to food insecurity. Nicaragua also continues to suffer from an infestation of coffee rust that reduces yields, especially for poorer coffee

farmers, and thereby cuts back on opportunities for coffee harvesters.

Nicaragua's poor economy has slowed down reconstruction efforts, undermining Nicaragua's capacity to absorb additional Nicaraguan nationals. The regions of Nicaragua most devastated by Hurricane Mitch continue to be the poorest and least developed in the country. Weak global commodity prices and decreased profits for Nicaraguan exports will negatively impact the country's gross domestic product. Nicaragua lies in a region vulnerable to hurricanes, tropical storms, seasonal rains, volcanoes and earthquakes, all of which have occurred in the years since Mitch. Consequently, the need for reconstruction, infrastructure improvement, and disaster preparedness projects remains ongoing.

Based upon this review and after consultation with appropriate Government agencies, the Secretary finds that:

- The conditions that prompted the January 5, 1999 designation of Nicaragua for TPS continue to be met. *See* INA section 244(b)(3)(A) and (C), 8 U.S.C. 1254a(b)(3)(A) and (C).
- There continues to be a substantial, but temporary, disruption in living conditions in Nicaragua as a result of an environmental disaster. *See* section 244(b)(1)(B) of the INA, 8 U.S.C. 1254a(b)(1)(B).
- Nicaragua continues to be unable, temporarily, to handle adequately the return of its nationals (or aliens having no nationality who last habitually resided in Nicaragua). *See* section 244(b)(1)(B) of the Act, 8 U.S.C. 1254a(b)(1)(B).
- The designation of Nicaragua for TPS should be extended for an additional 18-month period from January 6, 2015 through July 5, 2016. *See* INA section 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C).
- There are approximately 2,800 current Nicaraguan beneficiaries who are expected to file for re-registration and may be eligible to retain their TPS under the extension.

Notice of Extension of the TPS Designation of Nicaragua

By the authority vested in me as Secretary under INA section 244, 8 U.S.C. 1254a, I have determined, after consultation with the appropriate Government agencies, that the conditions that prompted the designation of Nicaragua for TPS in 1999 continue to be met. *See* INA section 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). On the basis of this determination, I am extending the existing TPS designation of Nicaragua for 18 months from January 6, 2015 through July 5, 2016. *See* INA section 244(b)(2) and (b)(3), 8 U.S.C. 1254a(b)(2) and (b)(3).

Jeh Charles Johnson,

Secretary.

Required Application Forms and Application Fees To Register or Re-Register for TPS

To register or re-register for TPS for Nicaragua, an applicant must submit each of the following two applications:

1. Application for Temporary Protected Status (Form I–821).

- If you are filing an application for late initial registration, you must pay the fee for the Application for Temporary Protected Status (Form I–821). *See* 8 CFR 244.2(f)(2) and 244.6 and information on late initial filing on the USCIS TPS Web page at *http://www.uscis.gov/tps.*
- If you are filing an application for re-registration, you do not need to pay the fee for the Application for Temporary Protected Status (Form I–821). *See* 8 CFR 244.17. and

2. Application for Employment Authorization (Form I–765).

- If you are applying for late initial registration and want an EAD, you must pay the fee for the Application for Employment Authorization (Form I–765) only if you are age 14 through 65. No fee for the Application for Employment Authorization (Form I–765) is required if you are under the age of 14 or are 66 and older and applying for late initial registration.
- If you are applying for re-registration, you must pay the fee for the Application for Employment Authorization (Form I–765) only if you want an EAD, regardless of age.
- You do not pay the fee for the Application for Employment Authorization (Form I–765) if you are not requesting an EAD, regardless of whether you are applying for late initial registration or re-registration.

You must submit both completed application forms together. If you are unable to pay for the Application for Employment Authorization (Form I–765) and/or biometrics fee, you may apply for a fee waiver by completing a Request for Fee Waiver (Form I–912) or submitting a personal letter requesting a fee waiver, and by providing satisfactory supporting documentation. For more information on the application forms and fees for TPS, please visit the USCIS TPS Web page at *http://www.uscis.gov/tps.* Fees for the Application for Temporary Protected Status (Form I–821), the Application for Employment Authorization (Form I–765), and biometric services are also described in 8 CFR 103.7(b)(1)(i).

Biometric Services Fee

Biometrics (such as fingerprints) are required for all applicants 14 years of age or older. Those applicants must submit a biometric services fee. As previously stated, if you are unable to pay for the biometric services fee, you may apply for a fee waiver by completing a Request for Fee Waiver (Form I–912) or by submitting a personal letter requesting a fee waiver, and providing satisfactory supporting documentation. For more information on the biometric services fee, please visit the USCIS Web site at *http://www.uscis.gov.* If necessary, you may be required to visit an Application Support Center to have your biometrics captured.

Re-Filing a Re-Registration TPS Application After Receiving a Denial of a Fee Waiver Request

USCIS urges all re-registering applicants to file as soon as possible within the 60-day re-registration period so that USCIS can process the applications and issue EADs promptly. Filing early will also allow those applicants who may receive denials of their fee waiver requests to have time to re-file their applications *before* the re-registration deadline. If, however, an applicant receives a denial of his or her fee waiver request and is unable to re-file by the re-registration deadline, the applicant may still re-file his or her application. This situation will be reviewed to determine whether the applicant has established good cause for late re-registration. However, applicants are urged to re-file within 45 days of the date on their USCIS fee waiver denial notice, if at all possible. *See* INA section 244(c)(3)(C); 8 U.S.C. 1254a(c)(3)(C); 8 CFR 244.17(c). For more information on good cause for late re-registration, visit the USCIS TPS Web page at *http://www.uscis.gov/tps.* Note: As previously stated, although a re-registering TPS beneficiary age 14 and older must pay the biometric services fee (but not the initial TPS application fee) when filing a TPS re-registration application, the applicant may decide to wait to request an EAD, and therefore not pay the Application for Employment Authorization (Form I–765) fee, until after USCIS has approved the individual's TPS re-registration, if he or she is eligible. If you choose to do this, you would file the Application for Temporary Protected Status (Form I–821) with the fee and the Application

for Employment Authorization (Form I–765) without the fee and without requesting an EAD.

Mailing Information

Mail your application for TPS to the proper address in Table 1.

TABLE 1—MAILING ADDRESSES

If . . .	Mail to . . .
You are re-registering for TPS through the U.S. Postal Service	U.S. Citizenship and Immigration Services; Attn: TPS Nicaragua; P.O. Box 6943; Chicago, IL 60680–6943.
or	
You were granted TPS by an Immigration Judge (IJ) or the Board of Immigration Appeals (BIA), and you wish to request an EAD,	
or	
You are re-registering for the first time following a grant of TPS by an IJ or BIA and you are mailing through the U.S. Postal Service	
You are registering late for a late initial filing through the U.S. Postal Service.	U.S. Citizenship and Immigration Services; Attn: TPS Nicaragua; P.O. Box 6943; Chicago, IL 60680–6943.
You would like to send your application using a non-U.S. Postal Service delivery service (for re-registrations AND late initial filings).	U.S. Citizenship and Immigration Services; Attn: TPS—Nicaragua; 131 S. Dearborn—3rd Floor; Chicago, IL 60603–5517.

If you were granted TPS by an IJ or the BIA, and you wish to request an EAD, or are re-registering for the first time following a grant of TPS by an IJ or the BIA, please mail your application to the appropriate address in Table 1. Upon receiving a Notice of Action (Form I–797) from USCIS, please send an email to the appropriate USCIS Service Center handling your application providing the receipt number and stating that you submitted a re-registration and/or request for an EAD based on an IJ/BIA grant of TPS. If your USCIS receipt number begins with the letters ''LIN,'' please email the Nebraska Service Center at *TPSijgrant.nsc@uscis.dhs.gov.* If your USCIS receipt number begins with the letters ''WAC,'' please email the California Service Center at *TPSijgrant.csc@uscis.dhs.gov.* You can find detailed information on what further information you need to email and the email addresses on the USCIS TPS Web page at *http://www.uscis.gov/tps.*

E-Filing

If you are re-registering for TPS during the re-registration period and you do not need to submit any supporting documents or evidence, you are eligible to file your applications electronically. For more information on e-filing, please visit *http://www.uscis.gov/e-filing.*

Employment Authorization Document (EAD)

May I request an interim EAD at my local USCIS office?

No. USCIS will not issue interim EADs to TPS applicants and re-registrants at local offices.

Am I eligible to receive an automatic 6-month extension of my current EAD through July 5, 2015?

Provided that you currently have TPS under the Nicaragua designation, this notice automatically extends your EAD by 6 months if you:

- Are a national of Nicaragua (or an alien having no nationality who last habitually resided in Nicaragua);
- Received an EAD under the last extension of TPS for Nicaragua; and
- Have an EAD with a marked validity date of January 5, 2015, bearing the notation ''A–12'' or ''C–19'' on the face of the card under ''Category.''

Although this Notice automatically extends your EAD through July 5, 2015, you must re-register timely for TPS in accordance with the procedures described in this Notice if you would like to maintain your TPS.

When hired, what documentation may I show to my employer as proof of employment authorization and identity when completing Employment Eligibility Verification (Form I–9)?

You can find a list of acceptable document choices on the ''Lists of Acceptable Documents'' for Employment Eligibility Verification (Form I–9). You can find additional detailed information on the USCIS I–9 Central Web page at *http://www.uscis.gov/I-9Central.* Employers are required to verify the identity and employment authorization of all new employees by using Employment Eligibility Verification (Form I–9). Within 3 days of hire, an employee must present proof of identity and employment authorization to his or her employer.

You may present any document from List A (reflecting both your identity and employment authorization), or one document from List B (reflecting identity) together with one document from List C (reflecting employment authorization). You may present an acceptable receipt for List A, List B, or List C documents as described in the Form I–9 Instructions. An EAD is an acceptable document under ''List A.'' Employers may not reject a document based on a future expiration date.

If your EAD has an expiration date of January 5, 2015, and states ''A–12'' or ''C–19'' under ''Category,'' it has been extended automatically for 6 months by virtue of this **Federal Register** Notice, and you may choose to present your EAD to your employer as proof of identity and employment authorization for Employment Eligibility Verification (Form I–9) through July 5, 2015 (see the subsection titled ''*How do my employer and I complete the Employment Eligibility Verification (Form I–9) using an automatically extended EAD for a new job?''* for further information). To minimize confusion over this extension at the time of hire, you may also show your employer a copy of this **Federal Register** Notice confirming the automatic extension of employment authorization through July 5, 2015. As an alternative to presenting your automatically extended EAD, you may choose to present any other acceptable document from List A, or a combination of one selection from List B and one selection from List C.

What documentation may I show my employer if I am already employed but my current TPS-related EAD is set to expire?

Even though EADs with an expiration date of January 5, 2015 that state ''A–12'' or ''C–19'' under ''Category'' have been automatically extended for 6 months by this **Federal Register** Notice,

your employer will need to ask you about your continued employment authorization once July 5, 2015 is reached to meet its responsibilities for Employment Eligibility Verification (Form I–9). However, your employer does not need a new document to reverify your employment authorization until July 5, 2015, the expiration date of the automatic extension. Instead, you and your employer must make corrections to the employment authorization expiration dates in Section 1 and Section 2 of Employment Eligibility Verification (Form I–9) (see the subsection titled ''*What corrections should my current employer and I make to Employment Eligibility Verification (Form I–9) if my EAD has been automatically extended?''* for further information). In addition, you may also show this **Federal Register** Notice to your employer to explain what to do for Employment Eligibility Verification (Form I–9).

By July 5, 2015, the expiration date of the automatic extension, your employer must reverify your employment authorization. At that time, you must present any document from List A or any document from List C on Employment Eligibility Verification (Form I–9) to reverify employment authorization, or an acceptable List A or List C receipt described in the Form I–9 Instructions. Your employer should complete either Section 3 of the Employment Eligibility Verification (Form I–9) originally completed for the employee or, if this Section has already been completed or if the version of Employment Eligibility Verification (Form I–9) has expired (check the date in the upper right-hand corner of the form), complete Section 3 of a new Employment Eligibility Verification (Form I–9) using the most current version. Note that your employer may not specify which List A or List C document employees must present, and cannot reject an acceptable receipt.

Can my employer require that I produce any other documentation to prove my status, such as proof of my Nicaraguan citizenship?

No. When completing Employment Eligibility Verification (Form I–9), including re-verifying employment authorization, employers must accept any documentation that appears on the ''Lists of Acceptable Documents'' for Employment Eligibility Verification (Form I–9) that reasonably appears to be genuine and that relates to you or an acceptable List A, List B, or List C receipt. Employers may not request documentation that does not appear on the ''Lists of Acceptable Documents.'' Therefore, employers may not request proof of Nicaraguan citizenship when completing Employment Eligibility Verification (Form I–9) for new hires or reverifying the employment authorization of current employees. If presented with EADs that have been automatically extended, employers should accept such EADs as valid List A documents so long as the EADs reasonably appear to be genuine and to relate to the employee. Refer to the Note to Employees section of this Notice for important information about your rights if your employer rejects lawful documentation, requires additional documentation, or otherwise discriminates against you based on your citizenship or immigration status, or your national origin.

What happens after July 5, 2015 for purposes of employment authorization?

After July 5, 2015, employers may no longer accept the EADs that this **Federal Register** Notice automatically extended. Before that time, however, USCIS will endeavor to issue new EADs to eligible TPS re-registrants who request them. These new EADs will have an expiration date of July 5, 2016 and can be presented to your employer for completion of Employment Eligibility Verification (Form I–9). Alternatively, you may choose to present any other legally acceptable document or combination of documents listed on the Employment Eligibility Verification (Form I–9).

How do my employer and I complete Employment Eligibility Verification (Form I–9) using an automatically extended EAD for a new job?

When using an automatically extended EAD to complete Employment Eligibility Verification (Form I–9) for a new job prior to July 5, 2015, you and your employer should do the following:

1. For Section 1, you should:

a. Check ''An alien authorized to work;''

b. Write your alien number (USCIS number or A-number) in the first space (your EAD or other document from DHS will have your USCIS number or A-number printed on it; the USCIS number is the same as your A-number without the A prefix); and

c. Write the automatically extended EAD expiration date (July 5, 2015) in the second space.

2. For Section 2, employers should record the:

a. Document title;

b. Document number; and

c. Automatically extended EAD expiration date (July 5, 2015).

No later than July 5, 2015, employers must reverify the employee's employment authorization in Section 3 of the Employment Eligibility Verification (Form I–9).

What corrections should my current employer and I make to Employment Eligibility Verification (Form I–9) if my EAD has been automatically extended?

If you are an existing employee who presented a TPS-related EAD that was valid when you first started your job, but that EAD has now been automatically extended, you and your employer should correct your previously completed Employment Eligibility Verification (Form I–9) as follows:

1. For Section 1, you should:

a. Draw a line through the expiration date in the second space;

b. Write ''July 5, 2015'' above the previous date;

c. Write ''TPS Ext.'' in the margin of Section 1; and

d. Initial and date the correction in the margin of Section 1.

2. For Section 2, employers should:

a. Draw a line through the expiration date written in Section 2;

b. Write ''July 5, 2015'' above the previous date;

c. Write ''TPS Ext.'' in the margin of Section 2; and

d. Initial and date the correction in the margin of Section 2.

By July 5, 2015, when the automatic extension of EADs expires, employers must reverify the employee's employment authorization in Section 3.

If I am an employer enrolled in E-Verify, what do I do when I receive a ''Work Authorization Documents Expiration'' alert for an automatically extended EAD?

If you are an employer who participates in E-Verify and you have an employee who is a TPS beneficiary who provided a TPS-related EAD when he or she first started working for you, you will receive a ''Work Authorization Documents Expiring'' case alert when this EAD is about to expire. Usually, this message is an alert to complete Section 3 of the Employment Eligibility Verification (Form I–9) to reverify an employee's employment authorization. For existing employees with TPS-related EADs that have been automatically extended, employers should dismiss this alert by clicking the red ''X'' in the ''dismiss alert'' column and follow the instructions above explaining how to correct the Employment Eligibility Verification (Form I–9). By July 5, 2015, employment authorization must be reverified in Section 3. Employers

should never use E-Verify for reverification.

Note to All Employers

Employers are reminded that the laws requiring proper employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This Notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth reverification requirements. For general questions about the employment eligibility verification process, employers may call USCIS at 888–464–4218 (TTY 877–875–6028) or email USCIS at *I-9Central@dhs.gov.* Calls and emails are accepted in English and many other languages. For questions about avoiding discrimination during the employment eligibility verification process, employers may also call the U.S. Department of Justice, Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) Employer Hotline at 800–255–8155 (TTY 800–237–2515), which offers language interpretation in numerous languages, or email OSC at *osccrt@usdoj.gov.*

Note to Employees

For general questions about the employment eligibility verification process, employees may call USCIS at 888–897–7781 (TTY 877–875–6028) or email at *I-9Central@dhs.gov.* Calls are accepted in English and many other languages. Employees or applicants may also call the U.S. Department of Justice, Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) Worker Information Hotline at 800–255–7688 (TTY 800–237–2515) for information regarding employment discrimination based upon citizenship, immigration status, or national origin, or for information regarding discrimination related to Employment Eligibility Verification (Form I–9) and E-Verify. The OSC Worker Information Hotline provides language interpretation in numerous languages.

To comply with the law, employers must accept any document or combination of documents from the Lists of Acceptable Documents if the documentation reasonably appears to be genuine and to relate to the employee, or an acceptable List A, List B, or List C receipt described in the Employment Eligibility Verification (Form I–9) Instructions. Employers may not require extra or additional documentation beyond what is required for Employment Eligibility Verification (Form I–9) completion. Further, employers participating in E-Verify who receive an E-Verify case result of ''Tentative Nonconfirmation'' (TNC) must promptly inform employees of the TNC and give such employees an opportunity to contest the TNC. A TNC case result means that the information entered into E-Verify from Employment Eligibility Verification (Form I–9) differs from the Social Security Administration, DHS, or DOS records. Employers may not terminate, suspend, delay training, withhold pay, lower pay or take any adverse action against an employee based on the employee's decision to contest a TNC or because the case is still pending with E-Verify. A Final Nonconfirmation (FNC) case result is received when E-Verify cannot verify an employee's employment eligibility. An employer may terminate employment based on a case result of FNC. Work-authorized employees who receive an FNC may call USCIS for assistance at 888–897–7781 (TTY 877–875–6028). An employee that believes he or she was discriminated against by an employer in the E-Verify process based on citizenship or immigration status, or based on national origin, may contact OSC's Worker Information Hotline at 800–255–7688 (TTY 800–237–2515).. Additional information about proper nondiscriminatory Employment Eligibility Verification (Form I–9) and E-Verify procedures is available on the OSC Web site at *http://www.justice.gov/crt/about/osc/* and the USCIS Web site at *http://www.dhs.gov/E-verify.*

Note Regarding Federal, State, and Local Government Agencies (Such as Departments of Motor Vehicles)

While Federal government agencies must follow the guidelines laid out by the Federal government, state and local government agencies establish their own rules and guidelines when granting certain benefits. Each state may have different laws, requirements, and determinations about what documents you need to provide to prove eligibility for certain benefits. Whether you are applying for a Federal, state, or local government benefit, you may need to provide the government agency with documents that show you are a TPS beneficiary and/or show you are authorized to work based on TPS. Examples are:

(1) Your unexpired EAD that has been automatically extended, or your EAD that has not expired;

(2) A copy of this **Federal Register** Notice if your EAD is automatically extended under this Notice;

(3) A copy of your Application for Temporary Protected Status Notice of Action (Form I–797) for this re-registration;

(4) A copy of your past or current Application for Temporary Protected Status Notice of Action (Form I–797), if you received one from USCIS; and/or

(5) If there is an automatic extension of work authorization, a copy of the fact sheet from the USCIS TPS Web site that provides information on the automatic extension.

Check with the government agency regarding which document(s) the agency will accept. You may also provide the agency with a copy of this **Federal Register** Notice.

Some benefit-granting agencies use the USCIS Systematic Alien Verification for Entitlements Program (SAVE) to verify the current immigration status of applicants for public benefits. If such an agency has denied your application based solely or in part on a SAVE response, the agency must offer you the opportunity to appeal the decision in accordance with the agency's procedures. If the agency has received and acted upon or will act upon a SAVE verification and you do not believe the response is correct, you may make an InfoPass appointment for an in-person interview at a local USCIS office. Detailed information on how to make corrections, make an appointment, or submit a written request can be found at the SAVE Web site at *http://www.uscis.gov/save,* then by choosing ''How to Correct Your Records'' from the menu on the right.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5696–N–11]

Third Allocation, Waivers, and Alternative Requirements for Grantees Receiving Community Development Block Grant (CDBG) Disaster Recovery Funds in Response to Hurricane Sandy

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice advises the public of a third allocation of Community Development Block Grant disaster recovery (CDBG–DR) funds appropriated by the Disaster Relief Appropriations Act, 2013 (Pub. L. 113–2) for the purpose of assisting recovery in the most impacted and distressed

areas identified in major disaster declarations due to Hurricane Sandy and other eligible events in calendar years 2011, 2012 and 2013. This allocation provides $2,504,017,000 to assist Hurricane Sandy recovery. Included in this allocation is $930,000,000 to implement projects from the HUD-sponsored Rebuild by Design competition, described in **Federal Register** Notices 78 FR 45551 (July 29, 2013), and 78 FR 52560 (August 23, 2013). The first and second allocations for recovery from Hurricane Sandy totaling $10,509,000,000 were published, together with program requirements, at 78 FR 14329 (March 5, 2013) and 78 FR 69104 (November 18, 2013). Additional notices at 78 FR 23578, 78 FR 46999, 79 FR 17173, and 79 FR 40133 have provided clarifying guidance, additional waivers, and alternative requirements. This third allocation brings total funding to recover from the impacts of Hurricane Sandy and other eligible events in the Sandy-affected region to $13,013,017,000. The Notice also establishes requirements governing the use of these funds.

DATES: *Effective Date:* October 21, 2014.

FOR FURTHER INFORMATION CONTACT: Stan Gimont, Director, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street SW., Room 7286, Washington, DC 20410, telephone number 202–708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339. Facsimile inquiries may be sent to Mr. Gimont at 202–401–2044. (Except for the ''800'' number, these telephone numbers are not toll-free.) Email inquiries may be sent to *disaster_recovery@hud.gov.*

SUPPLEMENTARY INFORMATION:

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Appendix A: Allocation Methodology

I. Allocation and Related Information

The Disaster Relief Appropriations Act, 2013 (Pub. L. 113–2, approved January 29, 2013) (Appropriations Act) made available $16 billion in Community Development Block Grant (CDBG) funds for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a major disaster declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 *et seq.*) (Stafford Act), due to Hurricane Sandy and other eligible events in calendar years 2011, 2012, and 2013. The law provides that funds shall be awarded directly to a State or unit of general local government (hereafter local government) at the discretion of the Secretary. Unless noted otherwise, the term ''grantee'' refers to any jurisdiction receiving a direct award from HUD under this Notice.

On March 1, 2013, the President issued a sequestration order pursuant to section 251A of the Balanced Budget and Emergency Deficit Control Act, as amended (2 U.S.C. 901a), and reduced funding for CDBG–DR grants under the Appropriations Act to $15.18 billion. Through a **Federal Register** Notice published March 5, 2013, the Department allocated $5.4 billion for the areas most impacted by Hurricane Sandy (78 FR 14329). On November 18, 2013, HUD allocated an additional $5.1 billion to further assist in recovery from Hurricane Sandy (78 FR 69104). Other Notices have also allocated funds from the Appropriations Act for other major disasters occurring in 2011, 2012 and 2013.

To comply with statutory direction that funds be used for disaster-related expenses in the most impacted and distressed areas, HUD makes allocations based on the best available data that cover all the eligible affected areas. The initial allocation to Hurricane Sandy grantees was based on unmet housing and economic revitalization needs, while the second allocation also included data on unmet infrastructure restoration needs. This Notice provides the following Round 3 awards totaling $1.574 billion to address unmet recovery needs (See Appendix A for allocation methodology) and allocates $930 million toward proposals developed through the Rebuild by Design competition. The awards for all grantees are as follows:

TABLE 1—HURRICANE SANDY ALLOCATIONS

Grantee	First allocation	Second allocation	Third allocation	Rebuild by design	Total funding To date
Connecticut	$71,820,000	$66,000,000	$11,459,000	$10,000,000	$159,279,000
New Jersey	1,829,520,000	1,463,000,000	501,909,000	380,000,000	4,174,429,000
New York	1,713,960,000	2,097,000,000	420,922,000	185,000,000	4,416,882,000
New York City	1,772,820,000	1,447,000,000	639,056,000	355,000,000	4,213,876,000
Rhode Island	3,240,000	16,000,000	671,000	N/A	19,911,000
Maryland	8,640,000	20,000,000	N/A	N/A	28,640,000
Total	5,400,000,000	5,109,000,000	1,574,017,000	930,000,000	13,013,017,000

New York City must expend all funds within New York City. State grantees may expend funds in any county that received a Presidential disaster declaration in 2011, 2012, or 2013 subject to the limitations described in Table 2.

Table 2 identifies a minimum percentage of the third allocation, inclusive of the Rebuild by Design allocation that must be spent in the HUD-identified Hurricane Sandy Most Impacted and Distressed counties. All selected RBD proposals are located in counties previously identified by the Department as the most impacted and distressed pursuant to the **Federal Register** Notice published on March 5, 2013 (78 FR 14329). The opportunity for certain grantees to expend 20 percent of their allocations outside the most impacted and distressed counties identified by HUD enables those grantees to respond to highly localized distress identified via their own data for most impacted and distressed areas.

TABLE 2—MOST IMPACTED AND DISTRESSED COUNTIES WITHIN WHICH FUNDS MAY BE EXPENDED

Grantee	Counties from the following major declared disasters are eligible for CDBG–DR funds (FEMA declaration number)	Hurricane Sandy Most Impacted and Distressed counties	Minimum percentage that must be expended in Hurricane Sandy most impacted and distressed counties
New York City	All Counties	All Counties	100
New York	1957, 1993, 4020, 4031, 4085, 4111, 4129	Nassau, Rockland, Suffolk, Westchester, and all Counties in New York City (Bronx, Kings, New York, Queens, Richmond).	80
New Jersey	1954, 4021, 4033, 4039, 4048, 4070, 4086	Atlantic, Bergen, Cape May, Essex, Hudson, Middlesex, Monmouth, Ocean, Union.	80
Connecticut	1958, 4023, 4046, 4087, 4106	Fairfield, New Haven	80
Rhode Island	4027, 4089, 4107	Washington	80

This Notice builds upon the requirements of the **Federal Register** Notices published by the Department on March 5, 2013 (78 FR 14329), April 19, 2013 (78 FR 23578), August 2, 2013 (78 FR 46999), November 18, 2013 (78 FR 69104), March 27, 2014 (79 FR 17173), and July 11, 2014 (79 FR 40133) referred to collectively in this Notice as the ''Prior Notices.'' The Prior Notices are available at:

http://www.gpo.gov/fdsys/pkg/FR-2013-03-05/pdf/2013-05170.pdf
http://www.gpo.gov/fdsys/pkg/FR-2013-04-19/pdf/2013-09228.pdf
http://www.gpo.gov/fdsys/pkg/FR-2013-08-02/pdf/2013-18643.pdf
http://www.gpo.gov/fdsys/pkg/FR-2013-11-18/pdf/2013-27506.pdf
http://www.gpo.gov/fdsys/pkg/FR-2014-03-27/pdf/2014-06850.pdf
http://www.gpo.gov/fdsys/pkg/FR-2014-07-11/pdf/2014-16316.pdf

Executive Order 13632, published at 77 FR 74341, established the Hurricane Sandy Rebuilding Task Force, to ensure government- and region-wide coordination to help communities as they are making decisions about long-term rebuilding and to develop a comprehensive rebuilding strategy. Section 5(b) of Executive Order 13632 requires that HUD, ''as appropriate and to the extent permitted by law, align [the Department's] relevant programs and authorities'' with the Hurricane Sandy Rebuilding Strategy (the Rebuilding Strategy). Accordingly, this Notice is informed by both the Rebuilding Strategy released by the Task Force on August 19, 2013 and Rebuild by Design (RBD), an initiative of the Hurricane Sandy Rebuilding Task Force and HUD and part of the Rebuilding Strategy's recommendation to promote resilience rebuilding through innovation. RBD addresses structural and environmental vulnerabilities that Hurricane Sandy exposed in communities throughout the region and developed fundable solutions to better protect residents from future disasters. The Rebuilding Strategy and information about RBD can be found, respectively, at:

http://portal.hud.gov/hudportal/documents/huddoc?id=HSRebuildingStrategy.pdf
http://www.rebuildbydesign.org

II. Use of Funds

The Appropriations Act requires funds to be used only for specific disaster recovery related purposes. Consistent with the Rebuilding Strategy, it is essential to build communities back stronger and more resilient. This allocation provides additional funds to Sandy-impacted grantees to support investments in resilient recovery.

The Appropriations Act requires that prior to the obligation of CDBG–DR funds, a grantee must submit a plan detailing the proposed use of funds, including criteria for eligibility and how the use of these funds will address disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas. In an Action Plan for Disaster Recovery (Action Plan), grantees must describe uses and activities that: (1) Are authorized under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*) (HCD Act) or allowed by a waiver or alternative requirement published in this Notice and the Prior Notices; and (2) respond to a disaster-related impact. HUD has previously approved an Action Plan for each grantee receiving an allocation of funds in this Notice. Grantees are now directed to submit substantial Action Plan Amendments in order to access funds provided in this Notice. RBD and formula allocations may be included together or in separate Action Plan Amendments. For more information on requirements for substantial Action Plan Amendments, please see Sections IV and VI of this Notice.

As provided by the HCD Act, funds may be used as a matching requirement, share, or contribution for any other federal program when used to carry out an eligible CDBG–DR activity. However, pursuant to the requirements of the Appropriations Act, CDBG–DR funds may not be used for expenses reimbursable by, or for which funds are made available by, FEMA or the United States Army Corps of Engineers (USACE).

The Notice published November 18, 2013 (78 FR 69104) imposes additional requirements on certain grantees. The grantees must update the needs assessment component of their Action Plan amendments to reflect current unmet needs, as applicable. The State of New York must either: (1) Ensure that a portion of its allocation is used to address resiliency and local cost share requirements for damage to both the Metropolitan Transportation Authority infrastructure in New York City and the Port Authority of New York and New Jersey; or (2) demonstrate that such resiliency needs and local cost share has otherwise been met. The State of New Jersey must undertake one of these same actions with regard to the Port Authority. In order to demonstrate that resiliency and local cost share requirements have otherwise been met, the substantial Action Plan Amendments submitted by State of New York and the State of New Jersey must include evidence of consultation with the Metropolitan Transportation Authority and the Port Authority of New York and New Jersey, as applicable. New York City must ensure that a portion of its allocation is used to address the recovery and resilience needs of the New York City Housing Authority (NYCHA), or demonstrate that such resiliency needs have otherwise been met.

III. Timely Expenditure of Funds

To ensure the timely expenditure of funds the Appropriations Act requires that funds be expended within two years of the date HUD obligates funds to a grantee. Funds are obligated to a grantee upon HUD's signing of a grantee's CDBG–DR grant agreement. In its Action Plan, a grantee must demonstrate how funds will be fully expended within two years of obligation and HUD must obligate all funds not later than September 30, 2017. For any funds that the grantee believes will not be expended by the deadline and that it desires to retain, the grantee must submit a letter to HUD not less than 30 days in advance of the deadline justifying why it is necessary to extend the deadline for a specific portion of funds. The letter must detail the compelling legal, policy, or operational challenges necessitating any such waiver, and must also identify the date by when the specified portion of funds will be expended. The Office of Management and Budget (OMB) has provided HUD with authority to act on grantee waiver requests but grantees are cautioned that such waivers may not be approved. If granted, waivers will be published in the **Federal Register**. Funds remaining in the grantee's line of credit at the time of its expenditure deadlines will be recaptured by HUD.

IV. Grant Amendment Process

To access funds allocated by this Notice grantees must submit a substantial Action Plan Amendment to their approved Action Plan. Submission to and review by HUD must follow the process outlined below. HUD approves the Amendment according to criteria identified in the Prior Notices and this Notice.

- Before submitting a substantial Action Plan Amendment, a grantee must consult with affected citizens, stakeholders, local governments and public housing authorities to determine updates to its needs assessment, and as necessary, update its comprehensive risk analysis;
- Grantee amends its citizen participation plan to reflect the requirements of this Notice, as described in Section VII.3;
- Grantee publishes the proposed substantial amendment to its previously approved Action Plan for Disaster Recovery on the grantee's official Web site for no less than 30 calendar days and holds at least one public hearing to solicit public comment;
- Grantee responds to public comment and submits its substantial Action Plan Amendment to HUD (with any additional certifications required by this Notice) no later than 120 days after the effective date of this Notice;
- HUD reviews the substantial Action Plan Amendment within 60 days from date of receipt and approves the Amendment according to criteria identified in the Prior Notices and this Notice;
- HUD sends an Action Plan Amendment approval letter. The Secretary may disapprove of the Action Plan Amendment if it is determined that it does not meet the requirements of this Notice or relevant prior Notices. If the substantial Amendment is not approved, a letter will be sent identifying its deficiencies; the grantee must then re-submit the Amendment within 45 days of the notification letter;
- Grantee ensures that the HUD-approved substantial Action Plan Amendment (and updated Action Plan) is posted on its official Web site;
- HUD sends an amended unsigned grant agreement with revised grant conditions to the grantee; and the grantee signs and returns the amended grant agreement;
- HUD signs the grant agreement amendment and revises the grantee's line of credit amount (this triggers the two year expenditure deadline for any funds obligated by this amended grant agreement) and provides a copy of the executed grant agreement to the grantee;
- If it has not already done so, grantee enters the activities from its published Action Plan Amendment into the Disaster Recovery Grant Reporting (DRGR) system and submits it to HUD within the system;
- The grantee may draw down funds from the line of credit after the Responsible Entity completes applicable environmental review(s) pursuant to *24 CFR part 58* (or paragraph A.20 under Section VI of the March 5, 2013 Notice) and, as applicable, receives from HUD or the state an approved Request for Release of Funds and certification;
- Grantee amends its published Action Plan to include its projection of expenditures and outcomes within 90 days of the Action Plan Amendment approval as provided for in paragraph VII.2.f of this Notice; and
- Grantee updates its full consolidated plan to reflect disaster-related needs no later than its Fiscal Year 2015 consolidated plan update if it has not already completed the update.

V. Authority To Grant Waivers

The Appropriations Act authorizes the Secretary to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with HUD's obligation or use by the recipient of these funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment). Waivers and alternative requirements are based upon a determination by the Secretary that good cause exists and that the waiver or alternative requirement is not inconsistent with the overall purposes of title I of the HCD Act. Regulatory waiver authority is also provided by *24 CFR 5.110, 91.600,* and *570.5.*

VI. Rebuild by Design Allocations, Purpose, and Requirements

Rebuild by Design (RBD) was a planning and design competition to increase resilience in the Sandy-affected region as part of recovery from the storm. The Department conducted the competition under the authority of § 105 of the America COMPETES Reauthorization Act of 2010 (15 U.S.C. 3719). Administered in partnership with philanthropic, academic, and nonprofit organizations, HUD solicited the best talents and ideas from around the world to seek innovative solutions for how communities rebuild and adapt in response to the damage from a disaster and future risks presented by natural hazards and climate change. More regarding the history of the competition can be found in the **Federal Register** at 78 FR 45551, published July 29, 2013, and 78 FR 52560, published August 23, 2013.

The competition resulted in the selection of ten interdisciplinary design teams as finalists to participate in an in-depth process. Ultimately, six proposals were announced as winning proposals in June 2014, representing an award of distinction for the respective design teams.

1. Rebuild by Design Allocations

Under this Notice, the Department is providing $930 million in funds for use toward the implementation of proposals developed through the RBD competition. Unless otherwise provided for in the Prior Notices or in this Notice, the allocated RBD funds are subject to all applicable CDBG requirements. For example, RBD expenditures must be included in each grantee's overall benefit requirement. The specified uses and additional requirements on these allocations are outlined later in this Notice. Grantees are prohibited from spending the funds provided by this allocation for RBD on non-RBD purposes, including other disaster recovery activities.

Allocations for RBD are identified in Table 3 below by proposal:

TABLE 3—REBUILD BY DESIGN ALLOCATIONS BY PROPOSAL

Grantee	Proposal	Location	RBD CDBG–DR Allocation
State of New Jersey	New Meadowlands	Meadowlands	$150,000,000
State of New Jersey	Resist, Delay, Store, Discharge	Weehawken/Hoboken/Jersey City	230,000,000
State of New York	Living with the Bay	Nassau County	125,000,000
State of New York	Living Breakwaters	Staten Island	60,000,000
New York City	The Big U	Manhattan/Lower East Side	335,000,000
New York City	Hunts Point Lifelines	South Bronx/Hunts Point	20,000,000
State of Connecticut	Resilient Bridgeport	Bridgeport	10,000,000

As part of the RBD competition process, each design team worked closely with each respective grantee to ensure that design solutions within the proposals were consistent with the grantee's recovery goals and priorities.

2. Purpose of RBD Allocations and Required Actions

Each selected proposal from the RBD competition is comprised of multiple phases, which collectively represent a larger master plan. For each selection, the multiple phases collectively are referred to in this Notice as the selected RBD proposal. For purposes of the RBD-related sections of this Notice, HUD is referring to the first phase, portion of a phase, or pilot project of each selected proposal as an ''RBD Project.'' Each of these RBD Projects can be implemented to provide independent, meaningful risk reduction and assist in recovery. Successful implementation of RBD Projects will require collaboration within and among various levels of government (including, but not limited to, the environmental review and permitting process). In addition, implementation of RBD Projects may require engagement with private-sector, nonprofit, and philanthropic entities as part of an overall financing strategy.

At a minimum, grantees must use the specific allocation for each selected RBD proposal to undertake the following actions:

a. Implement each RBD Project identified in Section VI.3 consistent with the proposal selected through the RBD competition process, to the greatest extent practicable and appropriate, considering the technical, fiscal, environmental, legal, and other constraints or opportunities that may be encountered. CDBG–DR funds must be used to implement the RBD Project, including research, study, analysis, planning, citizen participation, design, and engineering activities or other activities (i.e., pre-development activities) that are necessary and reasonable to achieve RBD Project implementation as well as site work and RBD Project construction (i.e. development activities). The Department recognizes that the amount of CDBG–DR allocated to each proposal may not be sufficient to fully build-out the RBD Project. Accordingly, grantees must describe the major or primary RBD Project elements that they will develop further for implementation according to the total amount of funding (HUD and non-HUD funds) that can be reasonably anticipated as part of the RBD Action Plan Amendment process described in Section VI.4. In order to meet the requirements of this Notice, the RBD Project, when completed, must achieve independent utility.

b. Undertake planning activities necessary at the RBD Project- and selected RBD proposal-level. Planning at the RBD Project level is necessary for the continued design and ultimate construction of the RBD Project activities. Planning at the selected RBD proposal level is necessary to ensure that the completed RBD Project will have appropriate continuity and connection to implementation of subsequent phases of the selected RBD proposal or other resilience plans and strategies. Selected RBD proposal-level planning must include development of an implementation strategy, including identification of potential funding sources and financing mechanisms, to continue the subsequent phase or phases of the selected RBD proposal. RBD Project-level planning should examine potential displacement of residents, businesses, and other entities due to potentially increasing costs of rent and property ownership in the years following the completion of the RBD Project (e.g., gentrification). Consideration should also be given to actions for mitigating the impacts of such displacement.

c. Develop an implementation case study and lessons learned document, recording the implementation process for each RBD Project, to be submitted to HUD prior to grant close-out. The Department anticipates that new and creative coordination structures, partnerships, and decision-making processes may be developed during the implementation process and will use these case studies and lessons learned documents to inform future recovery efforts. Grantees must develop this document using a scope and methodology acceptable to the Department. HUD will work with grantees to develop an acceptable format for this document.

The Department also encourages grantees to secure additional funding to implement other phases or portions of the selected RBD proposals and to consider increasing the scale, effectiveness, impact, or scope of the RBD Projects identified in this Notice. If the allocated RBD funding permits a grantee to implement additional phases or portions of the selected RBD proposal beyond the RBD Project identified in the grantee's approved Action Plan Amendment, the grantee must, again, seek HUD approval through the substantial RBD Action Plan Amendment Process described in Section VI.4 below.

3. RBD Project Descriptions

Descriptions of the RBD Projects to be funded with these allocations can be found on the RBD Web site (*www.rebuildbydesign.org*) according to the names below:

a. State of New Jersey: Meadowlands

CDBG–DR funds are provided to assist in the implementation of the first phase (''Pilot 1'') of the proposal titled ''New Meadowlands.'' Pilot 1 includes Little Ferry, Moonachie, Carlstadt, Teterboro, and a portion of South Hackensack.

b. State of New Jersey: Weehawken/Hoboken/Jersey City

CDBG–DR funds are provided to assist in the implementation of the first phase (''Phase 1'') of the proposal titled ''Resist, Delay, Store, Discharge.''

c. State of New York: Nassau County

CDBG–DR funds are provided to assist in the implementation of the first phase (''Slow Streams'') of the proposal titled ''Living with the Bay.'' Slow Streams runs along the Mill River and through Rockville Centre.

d. State of New York: Staten Island

CDBG–DR funds are provided to assist in the implementation of the first phase (''Tottenville Pilot'') of the proposal titled ''Living Breakwaters.'' Tottenville Pilot is located along the South Shore.

e. New York City: Manhattan/Lower East Side

CDBG–DR funds are provided to assist in the implementation of the first phase (''Compartment 1: East River Park'') of the proposal titled ''BIG U.''

f. New York City: South Bronx/Hunts Point

CDBG–DR funds are provided to assist in implementation of the proposal titled ''Hunts Point Lifelines.'' The amount of CDBG–DR funds allocated pursuant to this Notice is not sufficient to fully fund the first phase of the proposal. Therefore, funding is to be used for continued study, analysis, planning, and community engagement as well as for design, engineering, and construction of a pilot project, as yet undefined. For purposes of this allocation, this pilot project will be considered the RBD Project for this selected RBD proposal. In order to allow the time necessary for engagement of community stakeholders regarding selection of a pilot project, the pilot project does not need to be identified in the initial Action Plan Amendment submitted in response to this Notice; however the grantee must describe the planning activity and certify that it will complete the pilot project in its initial Action Plan Amendment. Once the pilot project is identified by the City, the City must then submit a substantial Action Plan Amendment that incorporates the pilot project in order for project-related funds to be obligated.

g. State of Connecticut: Bridgeport

CDBG–DR funds are provided to assist in implementation of the finalist proposal titled ''Resilient Bridgeport.'' Although the proposal for Bridgeport was not selected as a winning proposal, funds are being allocated to reduce flood risk for the most vulnerable public housing stock in the city and to leverage significant match funding from the State of Connecticut and other local funds. The Department recognizes that additional planning is required to re-assess and re-scope one or more elements of the proposal to identify a pilot project that can be implemented and that the forthcoming project may require greater deviation from the proposal as submitted relative to that of winning proposals. Funding allocated pursuant to this Notice is to be used for continued study, analysis, planning, and community engagement as well as for design, engineering, and construction of a pilot project, as yet undefined. For purposes of this allocation, this pilot project will be considered the RBD Project for this selected proposal. At a minimum, the pilot project must reduce flood risk to public housing in the City's South End/Black Rock Harbor area. In order to allow the time necessary for engagement of community stakeholders regarding selection of a pilot project, the pilot project does not need to be identified in the initial Action Plan Amendment submitted in response to this Notice; however, the grantee must describe the planning activity and certify that it will complete the pilot project in its initial Action Plan Amendment. Once the pilot project is identified, the State of Connecticut must then submit a substantial Action Plan Amendment that incorporates the pilot project in order for project-related funds to be obligated.

4. RBD Action Plan Amendment Process

The RBD Action Plan Amendment process, as described below, is designed to ensure that as specific plans for the RBD Project are developed, the RBD Project remains consistent with the selected RBD proposal and the RBD Project approved by HUD as an eligible CDBG activity as described in Section VII.4.c of this Notice. Before a grantee can access its RBD Allocation to carry out the RBD Project described in Section VI.2. of this Notice (or other phases of the selected RBD Proposal as permitted by this Notice), the grantee must complete the Grant Amendment process described in Section IV of this Notice as well as the RBD Amendment process described here:

a. Following announcement of RBD allocations on May 30, 2014, grantee proceeds with additional planning, outreach, design, engineering, and other pre-development activities necessary to develop the RBD Project to the level of detail necessary for purposes of environmental review, permitting, and construction. Grantees are strongly encouraged to integrate project planning with the environmental review process.

b. Grantees may charge to the grant the costs of CDBG eligible, RBD Project planning and pre-development activities incurred on or after May 30, 2014, by temporarily reprograming previously awarded CDBG–DR funds already identified for planning away from such planning activities for purposes of funding RBD Project planning and pre-development activities under the alternative requirements described in Section VII.4.a. and b. of this Notice.

c. No later than 120 days after the effective date of this Notice, grantee must submit its initial RBD Action Plan Amendment. The required elements of this Amendment are further described in Section VI.6.a.

d. HUD approves the initial RBD Action Plan Amendment. Following HUD approval, grantee identifies the amount it wishes to obligate in consideration of the expenditure timeframes identified in Section III of this Notice and engages residents and community stakeholders in fully developing the RBD Project. Grantee also begins to take actions necessary for the environmental review process.

e. *For RBD Projects not requiring an Environmental Impact Statement (EIS) pursuant to the requirements of 24 CFR part 58:* Grantee submits a subsequent substantial Action Plan Amendment to reflect the final RBD Project, as described in Section VI.6.b. This Amendment must include a detailed description of the final RBD Project as permitted and approved from the environmental review process. This Amendment may be submitted prior to or concurrent with grantee's submission of its Request for Release of Funds and Certifications (RROF). Following approval of the Action Plan Amendment and RROF, funds from the grantee's line of credit will be made available for construction (proceed to Section VI.4.g).

f. *For RBD Projects requiring an EIS:*

i. Following completion of the Draft EIS, grantee submits a subsequent substantial Action Plan Amendment to reflect the final RBD Project, as described in Section VI.6.b. This Amendment must identify the RBD Project scope and design as it exists at that point. Grantees are not prohibited from proceeding with the EIS process. HUD approval of this Action Plan Amendment is contingent upon whether the RBD Project is as consistent with the conceptual proposal as practicable and appropriate. HUD will provide clarifying guidance as to the content and format of materials that will help ensure timely approval of the Action Plan Amendment under the criteria for approval of Action Plan Amendments containing RBD Projects described in this Notice. If the Action Plan is not approved, RBD Project-related costs will not be eligible following the date of disapproval until the RBD Project is brought back into alignment with the RBD Project as proposed in the previously approved Action Plan.

ii. Grantee successfully stewards the RBD Project through the environmental review process pursuant to 24 CFR part 58 and any permitting processes required to implement the RBD Project.

iii. HUD anticipates that the final EIS or other project plan development may result in material changes to the project after grantee submits the subsequent substantial Action Plan Amendment described in Section VI.4.f.i. If no material changes have occurred since the previous RBD Project design and scope approved by HUD in the grantee's Action Plan Amendment, no additional amendment is necessary. If the RBD Project has undergone a material change, then the grantee must submit a

substantial Action Plan Amendment in order to describe the final RBD Project as permitted and approved from the environmental review process. A grantee may submit its RROF concurrent with this Action Plan Amendment, if applicable, and its Record of Decision for the project. Following approval of the Action Plan Amendment, if applicable, and RROF, funds from the grantee's line of credit will be made available for construction.

g. Grantee begins drawing funds for construction. HUD staff will continue to routinely monitor each grantee for continued consistency of RBD Projects with its approved Action Plan.

5. RBD Environmental Review Requirements

Grantees will conduct environmental reviews pursuant to 24 CFR part 58 and are strongly encouraged to integrate RBD Project planning with the environmental review process to the fullest extent possible by, for instance, aligning scoping and public comment periods required as part of environmental reviews with those required for RBD Action Plan Amendments. It is expected that grantees will undertake action that contributes to the environmental review process as soon as RBD Project planning commences. To expedite environmental review and permitting and to ensure that the most complex projects are delivered as efficiently as possible, grantees shall submit all RBD Projects to the Sandy Regional Team for Federal Review and Permitting as provided for in Section VII.1 of the Notice published on November 18, 2013 (78 FR 69104). Grantees must group together and evaluate as a single project all individual activities which are related either on a geographical or functional basis, or are logical parts of a composite of contemplated actions. Furthermore, grantees must analyze the reasonably foreseeable direct, indirect and cumulative effects of the RBD Project. See 40 CFR 1508.7 and 1508.8. If the RBD Project is anticipated to require an EIS, grantees are encouraged to undertake the scoping process as early as possible consistent with 24 CFR part 58 and 40 CFR parts 1500–1508.

6. RBD Action Plan Requirements

a. Initial Action Plan Amendment for Proposed RBD Project

Grantees in receipt of an RBD allocation must submit an initial substantial Action Plan Amendment that includes the following elements:

(i) RBD Project Description

A general description of the proposed RBD Project to be designed and implemented (*e.g.,* through narrative, maps, and conceptual project renderings). This description must also identify the CDBG national objective(s) that will be met by the funded RBD Project. The grantee must describe the use of all funds dedicated for planning, pre-development, and project construction costs and must breakout estimated amounts for such costs. The description must demonstrate the RBD Project's feasibility and effectiveness in providing protection against current and future threats and hazards, including future risks associated with climate change. Additionally, the grantee must include in its description any applicable infrastructure requirements of the November 18, 2013 Notice as described in Section VI.7.a of this Notice.

(ii) Implementation Partnership for RBD Project

A description of the implementation partnership responsible for RBD Project completion. The description must identify the grantee agency responsible for managing the implementation of the RBD Project. The Action Plan Amendment must demonstrate that the implementing agency has the capacity to successfully implement the RBD Project in a timely, cost-effective, and compliant manner. If adequate capacity does not currently exist, the grantee must identify how it will provide this capacity. Adequate demonstration of capacity is typically reflected by, but is not limited to: Staffing levels; management structure; operational authority; experience; established controls, policies, and procedures; and history or ability to work collaboratively with other city, county, state, and federal agencies as required.

The description of the implementation partnership must identify the entities that will comprise the partnership as well as the nature and role of each entity of the partnership (*e.g.,* type of agreement, responsibilities, authorities, etc.). The description should include identification of any agreements that have been executed or that will need to be signed (such as contracts, subrecipient agreements, memoranda of understanding, etc.) for the partnership to effectively function and meet the requirements in this Notice. State grantees must include a description of the roles and responsibilities of the incorporated municipalities in which the projects are located.

(iii) Citizen Participation Plan for RBD Project

A description of the citizen participation plan specifically related to the prospective planning and implementation of RBD Projects. The competition process through which the proposals were developed involved transparent and inclusive community outreach and public participation surrounding each proposal. Grantees must demonstrate to the satisfaction of the Department that they will continue to similarly engage community stakeholders through the planning, design, and development process related to each RBD Project and selected RBD proposal in their Action Plan. HUD encourages grantees to align citizen participation plan requirements with environmental review public participation processes to the fullest extent possible to gain efficiencies. For example, if the project requires an EIS, then the required public comment period following the publication of a Draft EIS should run, to the fullest extent possible, concurrently with the comment period for the substantial Action Plan Amendment. Grantees must take steps to ensure that vulnerable and underserved populations, including racial and ethnic minorities, persons with disabilities, and persons with limited English proficiency, are involved in the planning and decision-making processes throughout the RBD Project.

(iv) RBD Project Timeline

A description of the general timeline for RBD Project development until completion. Grantees should identify the general timeframe for activities such as additional study/research, planning, design/engineering, environmental review and permitting, site development, and construction. The timeline must be revised to reflect more accurate expectations once the final RBD Project design is approved by HUD. The timeline should reflect a critical path approach to RBD Project completion that illustrates the milestones to the completion of the RBD Project and estimates the resources required for accomplishment of each milestone.

(v) Identification of Leveraged or Reasonably Anticipated Funds for RBD Project

A description of funds that are anticipated to be generated or secured in leveraging the CDBG–DR allocation for RBD Project completion as well as any additional CDBG–DR funds the grantee anticipates dedicating to the RBD

Project beyond the funds allocated to the RBD Project in this Notice. Accordingly, the description must identify any potential gap or shortfall in RBD Project funding (relative to what is being proposed) and identify the strategy(ies) that will be pursued to secure such funds. While RBD Projects must be implemented as consistent with the winning proposals as practicable and appropriate, it is understood that modifications may be necessary in response to the amount of funding ultimately secured.

b. Subsequent Action Plan Amendment to Reflect Final RBD Project

As described under Section VI.4.e. and f. of this Notice, the Department is requiring grantees to submit an Action Plan Amendment as a condition for the release of funds for RBD Project-related construction activities. HUD will provide clarifying guidance as to the format of materials for approval of Action Plan Amendments containing the final RBD Project descriptions described in this Notice. Grantees are advised that the Amendment submission must detail a final RBD Project that comports with the selected RBD proposal to the greatest extent practicable and appropriate and must update the required RBD Action Plan Amendment elements described in Section VI.6.a.

Submissions will need to include an examination of the RBD Project through a Benefit-Cost Analysis, using methodologies and approaches acceptable to HUD. In its submission, the grantee must demonstrate the degree to which the project reduces flood risk and the respective geography that it will benefit. In its submission, the grantee must also certify to adequately fund the long-term operation and maintenance of the RBD Project from reasonably anticipated revenue, recognizing that operation and maintenance costs must be provided from sources other than CDBG and CDBG–DR funds. Approval of the Action Plan Amendment is contingent upon this certification.

Grantees are also responsible for demonstrating that the RBD Project is feasible, including having an appropriate design that will result in the benefits proposed. In order to demonstrate that the engineering design for the RBD Project is feasible, a registered Professional Engineer (or other design professional) must certify that the design meets the appropriate code, or industry design and construction standards. HUD, when approving the RBD Action Plan Amendment, may impose special conditions on the grants to address high risk factors that HUD identifies in its review.

HUD expects the grantee or a subrecipient, contractor, or subgrantee to take responsibility for operating and maintaining any levee, floodwall, or other flood control structure or system funded under the RBD allocation. Grantees must identify the entity(ies) that will own, operate, and maintain any levee or levee/breakwater system. Any levee or levee/breakwater system funded under the RBD allocation must be technically sound. The grantee must certify in its Action Plan Amendment that it, or the local authority assuming ownership of a levee, will take action to ensure the levee is certified and meets FEMA standards at 44 CFR 65.10 and is subsequently accredited by FEMA, which allows for floodmaps to be re-drawn accordingly.

7. Applicability of Prior Notice Requirements to RBD Projects

a. Infrastructure requirements of Prior Notices

As a result of the RBD competition process, RBD Projects are considered as having met:

(i) The definition of infrastructure projects and related infrastructure projects under Section VI.b.1 of the November 18, 2013 Notice;

(ii) The requirement for impact and unmet needs assessments and the comprehensive risk analysis under Section VI.c and VI.d of the November 18, 2013 Notice;

(iii) The process required for the selection and design of green infrastructure projects or activities under Section VI.f of the November 18, 2013 Notice; and

(iv) The additional requirements for major infrastructure projects (''Covered Projects'') under Section VI.g of the November 18, 2013, Notice. However, the Initial RBD Action Plan Amendment as described in Section VI.6.a of this Notice must still include a description of how the grantee plans to monitor and evaluate the efficacy and sustainability of RBD Projects, and meet the resilience performance standards requirement as outlined at Section VI.2.e of the November 18, 2013 Notice. Each RBD Project has been introduced to the Sandy Regional Infrastructure Resilience Coordination (SRIRC) Group. Grantees are expected to continue to work in consultation with SRIRC as this state and federal interagency group can help facilitate coordination of project scopes to best align and integrate with other recovery projects in the area. In addition, funded RBD Projects will be submitted to the Sandy Regional Team for Federal Review and Permitting for enhanced coordination that can expedite the implementation process, as provided for in Section VII.1 of the Notice published on November 18, 2013 (78 FR 69104).

b. Eligible Activity

Under the waiver and alternative requirements imposed by this Notice, RBD Projects are CDBG-eligible activities subject to a determination by the Department that the RBD Project remains as consistent with the selected RBD proposal as practicable and appropriate, and meets all other requirements in this Notice.

HUD has previously provided for the eligibility of large complex projects that are composed of multiple activities that, in and of themselves, would be eligible and contribute to long-term recovery. The Department has determined that the projects resulting from the RBD process are a critical component of the region's long-term recovery and resilience to future weather events. To accomplish the initiative's stated intention, each grantee will fund additional strategic planning and public outreach followed by an RBD Project that successfully implements an initial phase of the design. At HUD's request, grantees have agreed that the RBD Projects will be implemented and contribute to their respective disaster recovery process. At this stage of development, it may be difficult for grantees to categorize RBD Projects into discrete categories of CDBG eligibility. HUD has determined that the activities that comprise the RBD Project, including the implementation case study and lessons learned document, are necessarily eligible CDBG activities under this Notice. Therefore, to streamline implementation of RBD Projects, HUD is providing an alternative requirement, as described in Section VII.4.c of this Notice, to create an eligible activity referred to as 'Rebuild by Design,' to include all pre-development and construction activities carried out in accordance with identified RBD Projects referenced in this Notice. As a criterion for approval of an Action Plan Amendment containing an RBD Project, HUD must determine that the description of the RBD Project, as included in a grantee Action Plan, is consistent with the eligible activity described in this Notice. Grantees must consider any portion of their RBD allocations expended on planning and general administrative costs as planning and general administrative expenditures for purposes of calculating compliance with the 20 percent cap on planning and general administration costs and 5

percent cap on general administration costs of their total CDBG–DR grant (i.e., the sum total of all CDBG–DR funds received under the Appropriations Act) as outlined in the March 5, 2013 Notice.

c. National Objective Classification

In the initial RBD Action Plan Amendment submitted in response to this Notice, as described in Section VI.6.a of this Notice, grantees must identify the CDBG national objective(s) associated with each RBD Project. Each RBD Project must meet the national objective requirements applicable to other CDBG–DR activities. Grantees may attribute a single national objective that covers the complete RBD Project activity; however grantees may also choose to categorize the project into multiple activities in order to distinguish and classify expenditures as benefiting low- and moderate-income populations, as a means of meeting the overall benefit requirement. Grantees must establish appropriate methods by which an RBD Project may be attributable to multiple national objectives through consultation with the Department. In addition, through the research and analysis conducted as part of the competition, RBD Projects have demonstrated an acceptable connection to recovery from the direct and indirect impacts of Hurricane Sandy.

d. Procurement of Consultants Supporting Project Design

Grantees should ensure that individuals with a strong working knowledge of both the RBD Project to be implemented and the overall proposal are among the consultants hired to advance the project. Given the unique knowledge and understanding that each RBD design team possesses regarding their respective proposal, grantees should consider how it may procure design team members noncompetitively. The RBD design teams and their members represent a collection of some of the best planning, design, and engineering talent in the world as they were selected by the President's Hurricane Sandy Rebuilding Task Force out of a universe of 148 teams from more than 15 different countries. The teams also bring interdisciplinary expertise such as economists, sociologists, hydrologists, and climate scientists.

If a grantee has adopted or is required to use 24 CFR part 85, the grantee is reminded of the provisions of 24 CFR 85.36, which set forth the conditions under which a grantee may engage in a non-competitive, single source procurement (§ 85.36(d)(4)). Grantees operating under part 85 are granted the authorization referenced under § 85.36 (d)(4)(i)(C) only regarding procurement of the design teams (or members of the design teams) that participated in the development of selected RBD proposals through the HUD-sponsored RBD competition. The grantee will be responsible for ensuring compliance with requirements that all costs be necessary and reasonable. (In many cases, this will entail the grantee undertaking a cost analysis prior to hiring consultants.) Grantees that have not adopted part 85 should review state or local requirements associated with single source procurement to ensure continued consistency with § 85.36 and are advised to follow all applicable procurement requirements as well as those identified by HUD regulations and Notices.

VII. Applicable Rules, Statutes, Waivers, and Alternative Requirements

This section of the Notice describes requirements imposed by the Appropriations Act, as well as applicable waivers and alternative requirements. For each waiver and alternative requirement described in this Notice, the Secretary has determined that good cause exists and the action is not inconsistent with the overall purpose of the HCD Act. The following requirements apply only to the CDBG–DR funds appropriated in the Appropriations Act.

Grantees may request additional waivers and alternative requirements to address specific needs related to their recovery activities. Except where noted, waivers and alternative requirements described below apply to all grantees under this Notice. Under the requirements of the Appropriations Act, waivers are effective five days after publication in the **Federal Register**.

1. Incorporation of General Requirements, Waivers, Alternative Requirements, and Statutory Requirements Previously Described

Grantees are advised that general requirements, waivers and alternative requirements provided for and subsequently clarified or modified in the Prior Notices, apply to all funds under this Notice, except as modified herein. These waivers and alternative requirements provide additional flexibility in program design and implementation to support resilient recovery following Hurricane Sandy, while also ensuring that statutory requirements unique to the Appropriations Act are met. Waivers or alternative requirements previously issued pursuant to specific grantee requests remain in effect under their terms.

2. Action Plan for Disaster Recovery Waiver and Alternative Requirements

a. Infrastructure Programs and Projects. The infrastructure requirements described in in Section VI.2 of the Notice published on November 18, 2013 (78 FR 69106) apply to infrastructure programs and projects funded through the allocation provided by this Notice except as otherwise noted for RBD Projects in Section VI of this Notice. In evaluating infrastructure programs and projects included in a substantial Action Plan Amendment submitted in response to this Notice, HUD will assess the adequacy of a grantee's response to each of the elements outlined in Section VI.2 of the November 18, 2013 Notice or as qualified in this Notice regarding RBD Projects as a basis for the approval of the amendment. However, grantees need not resubmit responses to elements approved by HUD unless warranted by changing conditions or if project-specific analysis is required.

b. *Identification/Description of Covered Projects.* For any Covered Project held to the requirements of the Notice published on November 18, 2013, Section VI.2.g.1 of that Notice (''Action Plan for Disaster Recovery waiver and alternative requirement—Infrastructure Programs and Projects, Additional Requirements for Major Infrastructure Projects, Identification/Description''), as amended by the March 27, 2014 Notice, is modified to require: A description of the Covered Project, including: total project cost estimate (illustrating both the CDBG–DR award as well as other federal resources for the project, such as funding provided by the Department of Transportation or FEMA), CDBG eligibility (i.e., a citation to the HCD Act, applicable **Federal Register** notice, or a CDBG regulation), how it will meet a national objective, and the project's connection to Hurricane Sandy or other disasters cited in this Notice. The Department recognizes that grantees often finance large scale infrastructure projects by leveraging several sources of funds that may shift over time. Therefore, the Department may elect to approve projects based on estimates of total project cost and of other funding sources as well as the CDBG–DR contribution amount. Grantees are expected to provide the best estimates available and the expected timeline for determining the exact costs. Grantees must submit an Action Plan Amendment to reflect any material adjustments to the cost estimate. As

described in Section VII.3 of this Notice, where an adjustment of the CDBG–DR contribution to a Covered Project triggers the substantial amendment criteria described in the March 5, 2013 Notice (78 FR 14329) at Section VI.A.3.a., grantees must submit a Substantial Action Plan Amendment subject to the requirements of the Notice, which requires no less than 7 calendar days to solicit public comment. The Covered Project itself is subject to the 30-day comment period and public hearing required by the November 18, 2013 Notice. However, HUD will consider resubmissions of Covered Projects submitted to HUD prior to the effective date of this Notice and revised in accordance with these amended requirements, subject to all non-substantial Action Plan Amendment requirements.

c. *Certification of proficient controls, processes and procedures.* The Appropriations Act requires the Secretary to certify, in advance of signing a grant agreement, that the grantee has in place proficient financial controls and procurement processes and has established adequate procedures to prevent any duplication of benefits as defined by Section 312 of the Stafford Act, ensure timely expenditure of funds, maintain comprehensive Web sites regarding all disaster recovery activities assisted with these funds, detect and prevent waste, fraud, and abuse of funds. Grantees submitted documentation for the Secretary's certification pursuant to paragraph VI.E.42.q of the March 5, 2013 Notice and updated them in accordance with 78 FR 691014 (November 18, 2013). In any Action Plan Amendment submitted after the effective date of this Notice, grantees are required to identify any material changes in its processes or procedures that could potentially impact the Secretary's or the grantee's prior certification. Grantees are advised that HUD may revisit any prior certification based on a review of an Action Plan Amendment submitted for this allocation of funds, as well as monitoring reports, audits by HUD's Office of the Inspector General, citizen complaints or other sources of information. As a result of HUD's review, the grantee may be required to submit additional documentation or take appropriate actions to sustain the certification.

d. *Amending the Action Plan.* Except as otherwise provided for in this Notice, Section VI.A.1.k at 78 FR 14337 of the March 5, 2013 Notice is amended, as necessary, to require each grantee to submit a substantial Action Plan Amendment to HUD within 120 days of the effective date of this Notice. All Action Plan Amendments submitted after the effective date of this Notice must be prepared in accordance with the Prior Notices, as modified by this Notice. In addition, they must budget all, or a portion, of the funds allocated under this Notice. Grantees are reminded that an Action Plan may be amended one or more times until it describes uses for 100 percent of the grantee's CDBG–DR award. The last date that grantees may submit an Action Plan Amendment is June 1, 2017 given that HUD must obligate all CDBG–DR funds not later than September 30, 2017. The requirement to expend funds within two years of the date of obligation will be enforced relative to the activities funded under each obligation, as applicable.

e. *HUD Review/Approval.* Consistent with the requirements of section 105(c) of the Cranston-Gonzalez National Affordable Housing Act, HUD will reject or approve each grantee's substantial Action Plan Amendment within 60 days from the date of receipt. This timeframe allows HUD's federal partners to view the Amendment and provide feedback. The Secretary may disapprove an Amendment if it is determined that it does not meet the requirements of the Prior Notices, as amended by this Notice.

f. *Projection of expenditures and outcomes.* Section VI.A.1.l. at 78 FR 14337 of the March 5, 2013 Notice is amended, as necessary, to require each grantee to amend its Action Plan to update its projection of expenditures and outcomes within 90 days of its Action Plan Amendment approval. The projections must be based on each quarter's expected performance—beginning the quarter funds are available to the grantee and continuing each quarter until all funds are expended. Projections should include the entire amount allocated by this Notice. Amending the Action Plan to accommodate these changes is not considered a substantial amendment. Guidance on preparing the projections is available on HUD's Web site at: *http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/communitydevelopment/programs/drsi/afwa.*

3. Citizen Participation Waiver and Alternative Requirement

78 FR 69104 (November 18, 2013) modified paragraph 3 at 78 FR 14338 of the March 5, 2013 Notice to require grantees to publish substantial Action Plan Amendments for comment for 30 days prior to submission to HUD. Covered Projects are subject to the 30-day comment period and public hearing required by the November 18, 2013 Notice. However, as described in paragraph VII.2.b. of this Notice, this paragraph modifies paragraph 4 at 78 FR 69109 of the November 18, 2013 Notice by imposing a 7-day public comment period *only* when a grantee proposes adjustments of CDBG–DR contributions to a Covered Project that would trigger a substantial amendment by exceeding the $1 million threshold. Action Plan amendments must include full project descriptions for Covered Projects. Grantees are reminded of both the citizen participation requirements of that Notice and that HUD will monitor grantee compliance with those requirements and the alternative requirements of this Notice. Grantees are strongly encouraged to align citizen participation plan requirements with environmental review public participation processes to the fullest extent possible to gain efficiencies. Grantees are encouraged to conduct outreach to community groups, including those that serve minority populations, persons with limited English proficiency, and persons with disabilities, to encourage public attendance at the hearings and the submission of written comments concerning the Action Plan Amendment.

The grantee must continue to make the Action Plan, any amendments, and all performance reports available to the public on its Web site and on request. The grantee must also make these documents available in a form accessible to persons with disabilities and persons of limited English proficiency, in accordance with the requirements of the March 5, 2013 Notice. Grantees are also encouraged to conduct outreach to local nonprofit and civic organizations to disseminate draft substantial Action Plan Amendments for public comment. Until the grant is closed the grantee must provide citizens, affected local governments, and other interested parties with reasonable and timely access to information and records relating to the Action Plan and to the grantee's use of grant funds. This objective should be achieved through effective use of the grantee's comprehensive Web site mandated by the Appropriations Act.

4. Waivers and Alternative Requirements for Rebuild by Design Allocations

a. Interim funding for RBD planning and RBD Project-related pre-development costs. Without providing a waiver and alternative requirement, HUD would be required to make the RBD eligible activity determination

described in Section VI.7.b prior to a grantee's use of funds made available by the RBD Allocation for RBD Project pre-development costs. However, this eligibility determination will not be made until the grantee has completed the RBD Action Plan Amendment Process as described in Section VI.4. To ensure timely progress and prevent gaps in continuity regarding design development and community engagement for implementation of RBD Projects, HUD is providing this waiver and alternative requirement to permit grantees to temporarily reprogram CDBG–DR funds previously identified for planning in an Action Plan governing earlier CDBG–DR allocations under the Appropriations Act. This alternative requirement will allow grantees to move funds temporarily from planning activities for purposes of funding RBD Project planning and pre-development costs. In order to undertake this action, grantees must submit a non-substantial Action Plan Amendment to identify any amounts reprogrammed, with the exception of general planning activities that are eligible under 24 CFR 570.205 (including planning activities under 570.205 undertaken by states pursuant to the waiver for planning-only activities in the March 5, 2013 Notice), which would not require an amendment. Under the terms of this alternative requirement, when funds become available under the grantee's line of credit for the RBD Project, the grantee must set aside funds from the RBD allocation in the amount reprogrammed for the RBD Project under this alternative requirement for the original planning purpose for which these funds were designated. Use of existing CDBG–DR funding for RBD Project planning and pre-development activities is allowed for such expenditures incurred following the announcement of RBD allocations by the Secretary on May 30, 2014.

b. Citizen participation waiver and alternative requirement—Interim funding for RBD Project planning and pre-development costs. Modifications to a grantee's Action Plan to reflect the temporary reprogramming of funds for RBD Project planning and pre-development costs, as outlined in subparagraph a above, are not subject to the substantial amendment criteria described in the March 5, 2013 Notice (78 FR 14329); however, these modifications are subject to all non-substantial Action Plan Amendment requirements.

c. Rebuild by Design as an eligible CDBG activity. As described in Section VI.7.b of this Notice, the Department is waiving 42 U.S.C. 5305(a) only to the extent necessary to create a new eligible activity, the 'Rebuild by Design' eligible activity, that includes:

- *RBD Pre-development and Construction Costs:* This waiver and alternative requirement permits grantees receiving an RBD allocation to designate all necessary pre-development and construction costs carried out in accordance with the selected RBD proposal described in a HUD-approved Action Plan as an eligible activity; and
- *RBD Implementation case study and lessons learned document:* This waiver and alternative requirement allows grantees to classify costs expended on the preparation of the case study and lessons learned document required in Section VI of this Notice as eligible CDBG activity costs (not planning costs) of the 'Rebuild by Design' eligible activity.

5. Reimbursement of Disaster Recovery Expenses

In addition to pre-award requirements described in the March 5, 2013 Notice, grantees are subject to HUD's guidance issued July 30, 2013—''Guidance for Charging Pre-Award Costs of Homeowners, Businesses, and Other Qualifying Entities to CDBG Disaster Recovery Grants'' (CPD Notice 2013–05), as may be amended. The CPD Notice is available on the CPD Disaster Recovery Web site at: *http://portal.hud.gov/hudportal/documents/huddoc?id=cdbg_preaward_notice.pdf.*

6. Duplication of Benefits

Grantees are reminded that the March 5, 2013 Notice, at 78 FR 14344, imposes a requirement that grantees, in administering grant funds, adhere to the guidance in the **Federal Register** Notice published November 16, 2011 (76 FR 71060), ''Guidance on Duplication of Benefit Requirements and Provision of CDBG–DR Assistance''. This requirement continues to apply to funds made available under this Notice. The Duplication of Benefits Notice is available on the CPD Disaster Recovery Web site at: *http://portal.hud.gov/hudportal/HUD?src=/programoffices/administration/hudclips/notices/cpd*

7. Eligibility of Needs Assessment and Comprehensive Risk Analysis Costs

Grantees may use CDBG–DR funds to update their impact and unmet needs assessments as well as their comprehensive risk analyses for infrastructure projects as required by November 18, 2013 Notice, consistent with the overall 20 percent limitation on the use of funds for planning, management, and administrative costs.

VIII. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for the disaster recovery grants under this Notice is as follows: 14.269.

IX. Finding of No Significant 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 FONSI is available for public inspection between 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, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

Dated: October 9, 2014.

Clifford Taffet,

General Deputy Assistant Secretary.

Appendix A—Allocation Methodology

May 2014 CDBG–DR Allocation Methodology

This allocation is calculated based on relative share of needs HUD has estimated are required to rebuild to a higher standard consistent with CDBG program requirements and the goals set forth in the Hurricane Sandy Rebuilding Strategy. HUD's analysis shows that when calculating both unmet repair costs and resiliency needs, there is adequate funding allocated to address the critical housing and small business repair needs of each grantee, but grantees will continue to need to make careful choices about prioritizing the limited resources for those most impacted and distressed, most particularly in consideration of infrastructure and non-critical resiliency investments. In addition to ensuring adequate amounts of funds have been allocated for addressing critical housing and business needs, HUD has allocated funds estimated to support development of at least one phase of Sandy Rebuild by Design (RBD) award winning projects and one final project. This allocation methodology applies only to the formula allocation and not to the RBD allocation.

HUD calculates the cost to rebuild the most impacted and distressed homes, businesses, and infrastructure back to pre-disaster conditions. From this base calculation, HUD calculates both the amount not covered by insurance and other federal sources to rebuild back to pre-disaster conditions as

well as a ''resiliency'' amount which is calculated at 30 percent of the total basic cost to rebuild back the most distressed homes, businesses, and infrastructure to pre-disaster conditions. The estimated cost to repair unmet needs are combined with the resiliency needs to calculate the total severe unmet needs estimated to achieve long-term recovery. This calculation of housing, business, and infrastructure needs is used to determine the relative share of funding for this Sandy state allocation versus other eligible disasters of 2011, 2012, and 2013. Consistent with HUD's intent to prioritize critical housing and business needs with this final allocation, the formula sub-allocation among Sandy states is made proportional to the calculated severe unmet needs for estimated remaining housing and business needs (excluding infrastructure).

Statutory Language for the Allocation

Public Law 113–2 (January 29, 2013) provides the following language on how the Secretary shall allocate the funds: ''For an additional amount for ''Community Development Fund'', $16,000,000,000, to remain available until September 30, 2017, for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a major disaster declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) due to Hurricane Sandy and other eligible events in calendar years 2011, 2012, and 2013, for activities authorized under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.): Provided, That funds shall be awarded directly to the State or unit of general local government as a grantee at the discretion of the Secretary of Housing and Urban Development: Provided further, That the Secretary shall allocate to grantees not less than 33 percent of the funds provided under this heading within 60 days after the enactment of this division based on the best available data:''

Available Data

The ''best available'' data HUD staff have identified as being available to calculate unmet needs at this time for all disasters in 2011, 2012, and 2013 meeting HUD's Most Impacted and Distressed threshold comes from the following data sources:

- FEMA Individual Assistance program data on housing unit damage;
- SBA for management of its disaster assistance loan program for housing repair and replacement;
- SBA for management of its disaster assistance loan program for business real estate repair and replacement as well as content loss; and
- FEMA Public Assistance, Department of Transportation Federal Transit Administration and Federal Highway Administration, Corps of Engineers, and US Department of Agriculture Emergency Watershed Restoration data on infrastructure

These funds are only allocated toward disasters in 2011, 2012, and 2013 determined by HUD to be most impacted and distressed disasters.[1]

Calculating Unmet Housing Needs

The core data on housing damage for both the unmet housing needs calculation and the concentrated damage are based on home inspection data for FEMA's Individual Assistance program (extracted January 2014). For unmet housing needs, the FEMA data are supplemented by Small Business Administration data from its Disaster Loan Program (extracted January 2014). HUD calculates ''unmet housing needs'' as the number of housing units with unmet needs times the estimated cost to repair those units less repair funds already provided by FEMA, where:

- Each of the FEMA inspected owner units are categorized by HUD into one of five categories:
  - Minor-Low: Less than $3,000 of FEMA inspected real property damage.
  - Minor-High: $3,000 to $7,999 of FEMA inspected real property damage.
  - Major-Low: $8,000 to $14,999 of FEMA inspected real property damage (if basement flooding only, damage categorization is capped at major-low).
  - Major-High: $15,000 to $28,800 of FEMA inspected real property damage and/or 4 to 6 feet of flooding on the first floor.
  - Severe: Greater than $28,800 of FEMA inspected real property damage or determined destroyed and/or 6 or more feet of flooding on the first floor.

To meet the statutory requirement of ''most impacted and distressed'' in this legislative language, homes are determined to have a high level of damage if they have damage of ''major-low'' or higher. That is, they have a real property FEMA inspected damage of $8,000 or flooding over 4 foot. Furthermore, a homeowner is determined to have unmet needs if they have received a FEMA grant to make home repairs. For homeowners with a FEMA grant and insurance for the covered event, HUD assumes that the unmet need ''gap'' is 20 percent of the difference between total damage and the FEMA grant.

- FEMA does not inspect rental units for real property damage so personal property damage is used as a proxy for unit damage. Each of the FEMA inspected renter units are categorized by HUD into one of five categories:
  - Minor-Low: Less than $1,000 of FEMA inspected personal property damage.
  - Minor-High: $1,000 to $1,999 of FEMA inspected personal property damage.
  - Major-Low: $2,000 to $3,499 of FEMA inspected personal property damage (if basement flooding only, damage categorization is capped at major-low).
  - Major-High: $3,500 to $7,499 of FEMA inspected personal property damage or 4 to 6 feet of flooding on the first floor.
  - Severe: Greater than $7,500 of FEMA inspected personal property damage or determined destroyed and/or 6 or more feet of flooding on the first floor.

For rental properties, to meet the statutory requirement of ''most impacted and distressed'' in this legislative language, homes are determined to have a high level of damage if they have damage of ''major-low'' or higher. That is, they have a FEMA personal property damage assessment of $2,000 or greater or flooding over 4 feet. Furthermore, landlords are presumed to have adequate insurance coverage unless the unit is occupied by a renter with income of $30,000 or less. Units are occupied by a tenant with income less than $30,000 are used to calculate likely unmet needs for affordable rental housing. For those units occupied by tenants with incomes under $30,000, HUD estimates unmet needs as 75 percent of the estimated repair cost.

- The median cost to fully repair a home for a specific disaster to code within each of the damage categories noted above is calculated using the average real property damage repair costs determined by the Small Business Administration for its disaster loan program for the subset of homes inspected by both SBA and FEMA. Because SBA is inspecting for full repair costs, it is presumed to reflect the full cost to repair the home, which is generally more than the FEMA estimates on the cost to make the home habitable. If fewer than 100 SBA inspections are made for homes within a FEMA damage category, the estimated damage amount in the category for that disaster has a cap applied at the 75th percentile of all damaged units for that category for all disasters and has a floor applied at the 25th percentile.

Calculating Unmet Infrastructure Needs

- To proxy unmet infrastructure needs, HUD uses data from FEMA's Public Assistance program on the state match requirement (extracted January 2014). This allocation uses only a subset of the Public Assistance damage estimates reflecting the categories of activities most likely to require CDBG funding above the Public Assistance and state match requirement. Those activities are categories: C-Roads and Bridges; D-Water Control Facilities; E-Public Buildings; F-Public Utilities; and G-Recreational-Other. Categories A (Debris Removal) and B (Protective Measures) are largely expended immediately after a disaster and reflect interim recovery measures rather than the long-term recovery measures for which CDBG funds are generally used. Because Public Assistance damage estimates are available only statewide (and not county), CDBG funding allocated by the estimate of unmet infrastructure needs are sub-allocated to New York City from the New York State total based on the distribution of initial project-level estimates obtained from FEMA (69 percent New York City, 31 percent New York state). Note, that due to most states' large private electric utilities being ineligible for FEMA Public Assistance, HUD does not include the estimated repair costs for the Long Island Power Authority (LIPA) in New York.

[1] For Hurricane Sandy, a most impacted disaster is any state that received a FEMA Individual Assistance declaration. For other disasters a Most Impacted disaster is a disaster where the severe housing and business unmet needs (excluding resiliency) exceed $25 million from counties with greater than $10 million in unmet housing and business severe needs (excluding resiliency and area construction cost adjustment).

• For the third round of CDBG–DR funding for Sandy recovery, HUD includes four additional sources of information:

1. US Army Corps of Engineers (USACE) Infrastructure Resilience Coordination (extracted June 2013). Many USACE Sandy projects require very high local cost shares. However, Federal requirements only allow grantees to no more than $250,000 of CDBG–DR funding towards local match requirements for these projects. As such, this calculation only includes $250,000 per USACE project where local match is higher than that amount.

2. DOT, Federal Highway Administration (FHWA) Sandy Recovery Grants—Emergency Relief (ER) (extracted June 2013). We include an estimate of the local cost share from this program. To calculate this estimate, we only include 20% of non-quick release Sandy ER project estimates as of July 2013.

3. DOT, Federal Transit Administration (FTA) Transit Emergency Relief (ER) (extracted June 2013). We include the 10% local cost share for these transit projects. Note, since much of the New York City transit damage is owned by a state organization, the Metropolitan Transportation Authority, New York State receives the vast majority of need from this grant. Also note that the State of New Jersey receives 66% of the local match requirement from the Port Authority's match requirement; New York State receives 34% of the Authority's match requirement.

4. USDA Emergency Watershed Repair Program (extracted May 2014). For most impacted disasters in 2011, 2012, and 2013 that have not received supplemental funding to address watershed repairs, HUD includes the estimated unmet repair costs calculated by USDA in the unmet repair needs calculation.

Calculating Economic Revitalization (Small Business) Needs

• Based on SBA disaster loans to businesses (extracted January 2014), HUD used the sum of real property and real content loss of small businesses not receiving an SBA disaster loan. This is adjusted upward by the proportion of applications that were received for a disaster that content and real property loss were not calculated because the applicant had inadequate credit or income. For example, if a state had 160 applications for assistance, 150 had calculated needs and 10 were denied in the pre-processing stage for not enough income or poor credit, the estimated unmet need calculation would be increased as (1 + 10/160) * calculated unmet real content loss.

• Because applications denied for poor credit or income are the most likely measure of needs requiring the type of assistance available with CDBG–DR funds, the calculated unmet business needs for each state are adjusted upwards by the proportion of total applications that were denied at the pre-process stage because of poor credit or inability to show repayment ability. Similar to housing, estimated damage is used to determine what unmet needs will be counted as severe unmet needs. Only properties with total real estate and content loss in excess of $30,000 are considered severe damage for purposes of identifying the most impacted and distressed areas.

- Category 1: real estate + content loss = below $12,000
- Category 2: real estate + content loss = $12,000 to $30,000
- Category 3: real estate + content loss = $30,000 to $65,000
- Category 4: real estate + content loss = $65,000 to $150,000
- Category 5: real estate + content loss = above $150,000

To obtain unmet business needs, the amount for approved SBA loans is subtracted out of the total estimated damage.

Resiliency Needs

CDBG Disaster Recovery Funds are often used to not only support rebuilding to pre-storm conditions, but also to build back much stronger. For the disasters covered by this Notice, HUD has required that grantees use their funds in a way that results in rebuilding back stronger so that future disasters do less damage and recovery can happen faster. To calculate these resiliency costs, HUD multiplied it estimates of total repair costs for seriously damaged homes, small businesses, and infrastructure by 30 percent. Total repair costs are the repair costs including costs covered by insurance, SBA, FEMA, and other federal agencies. The resiliency estimate at 30 percent of damage is intended to reflect some of the unmet needs associated with building to higher standards such as elevating homes, voluntary buyouts, hardening, and other costs in excess of normal repair costs. Note that because FEMA Public Assistance does not include the estimated cost to repair Public Housing that is covered by private insurance, HUD adds to its resiliency calculation 30 percent times the insurance payment for Public Housing repairs.

Housing and Small Business Construction Cost Adjustment

Prior to making this final allocation, HUD staff carefully reviewed the housing programs being operated by New York City and New Jersey. Out of this analysis came the observation that higher construction costs in New York and New Jersey were not being adequately accounted for in HUD's base formula for determining relative share of funding among the 2011, 2012, and 2013 disasters. As a result, for this allocation, HUD has increased its estimate of severe unmet housing and business repair and resiliency needs to account for these higher construction costs. To do this, HUD used the same Marshall & Swift regional cost adjustment multipliers used for HUD's annual calculation of Total Development Costs developed for HUD's public housing repair programs. The specific construction cost multiplier used for adjusting the above calculations of unmet housing and business needs for each grantee was as follows:

Connecticut: 1.19
Maryland: 1.00
New York State: 1.44
New York City: 1.45
New Jersey: 1.34
Rhode Island: 1.00

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BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Invasive Species Advisory Committee

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of Public Meetings of the Invasive Species Advisory Committee.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of meetings of the Invasive Species Advisory Committee (ISAC). Comprised of 30 nonfederal invasive species experts and stakeholders from across the nation, the purpose of ISAC is to provide advice to the National Invasive Species Council (Council), as authorized by Executive Order 13112, on a broad array of issues related to preventing the introduction of invasive species and providing for their control and minimizing the economic, ecological, and human health impacts that invasive species cause. The Council is co-chaired by the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce. The duty of the Council is to provide national leadership regarding invasive species issues.

Purpose of Meeting: The meeting will be held on November 12–14, 2014 in San Antonio, Texas, and will focus primarily on the management of invasive species in urban areas, particularly: (1) On-the-ground efforts in the Austin, San Marcos, and San Antonio areas of Texas, which are experiencing rapid growth and developing new ways of addressing the problems invasive species cause to buildings and homes, as well as parks and other public spaces; and, (2) Trans-border cooperation between the U.S. and Mexico on invasive species issues. A copy of the meeting agenda is available on the Web site, *www.doi.gov/invasivespecies.*

DATES: Meeting of the Invasive Species Advisory Committee: Wednesday, November 12, 2014 and Friday, November 14, 2014; beginning at approximately 8:00 a.m., and ending at approximately 5:00 p.m. each day. Members will be participating in an off-site field tour on Thursday, November 13, 2014. *The field tour is closed to the public.*

ADDRESSES: Holiday Inn Riverwalk, 217 North Saint Mary's Street, San Antonio, Texas 78205. The general session on November 12, 2014 and November 14,

2014 will be held in the Tango Ballroom.

FOR FURTHER INFORMATION CONTACT: Kelsey Brantley, National Invasive Species Council Program Specialist and ISAC Coordinator, (202) 208–4122; Fax: (202) 208–4118, email: *Kelsey_Brantley@ios.doi.gov.*

Dated: October 8, 2014.

Christopher P. Dionigi,

Acting Executive Director, National Invasive Species Council.

[FR Doc. 2014–24625 Filed 10–15–14; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNMP00000 L13110000.PP0000 15XL1109PF]

Notice of Public Meeting, Pecos District Resource Advisory Council Meeting, Lesser Prairie-Chicken Habitat Preservation Area of Critical Environmental Concern (LPC ACEC) Livestock Grazing Subcommittee New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act, Bureau of Land Management's (BLM) Pecos District Resource Advisory Council's (RAC) Lesser Prairie-Chicken (LPC) Habitat Preservation Area of Critical Environmental Concerns (ACEC) Livestock Grazing Subcommittee will meet as indicated below.

DATES: The RAC LPC ACEC Subcommittee will meet on November 4, 2014, at the Milnesand Community Center, 4605 NM 206, Milnesand, New Mexico 88125, at 9 a.m. to tour the Nature Conservancy's Milnesand Prairie Preserve and the Grasslands Charitable Foundation's Weaver Ranch. The public may send written comments to the Subcommittee at the BLM Pecos District Office, 2909 West 2nd Street, Roswell, New Mexico 88201.

FOR FURTHER INFORMATION CONTACT: Adam Ortega, Range Management Specialist, Roswell Field Office, Bureau of Land Management, 2909 West 2nd Street, Roswell, New Mexico 88201, 575–627–0204. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8229 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 10-member Pecos District RAC elected to create a subcommittee to advise the Secretary of the Interior, through the BLM, on zing plan and LPC ACEC. Planned agenda items management issues associated with the LPC ACEC. Planned agenda items include: A tour of the cow/calf operation on the Milnesand Prairie Preserve, and the restored native grasslands on the Weaver Ranch.

Mary A. Uhl,

Acting Deputy State Director, Lands and Resources.

[FR Doc. 2014–24570 Filed 10–15–14; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO956000 L14200000.BJ0000]

Notice of Filing of Plats of Survey; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plats of Survey; Colorado.

SUMMARY: The Bureau of Land Management (BLM) Colorado State Office is publishing this notice to inform the public of the intent to officially file the survey plat listed below and afford a proper period of time to protest this action prior to the plat filing. During this time, the plat will be available for review in the BLM Colorado State Office.

DATES: Unless there are protests of this action, the filing of the plat described in this notice will happen on November 17, 2014.

ADDRESSES: BLM Colorado State Office, Cadastral Survey, 2850 Youngfield Street, Lakewood, CO 80215–7093.

FOR FURTHER INFORMATION CONTACT: Randy Bloom, Chief Cadastral Surveyor for Colorado, (303) 239–3856.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The plat and field notes of the dependent resurvey and survey in Township 51 North, Range 13 West, New Mexico Principal Meridian, Colorado, were accepted on October 2, 2014.

Randy Bloom,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 2014–24571 Filed 10–15–14; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–16663]

Notice of Inventory Completion: Tennessee Valley Authority and the University of Tennessee McClung Museum, Knoxville, TN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Tennessee Valley Authority (TVA) and the University of Tennessee McClung Museum (McClung Museum) have completed an inventory of human remains, in consultation with the appropriate Federally recognized Indian tribes, and have determined that there is a cultural affiliation between the human remains and a present-day Federally recognized Indian tribe. Lineal descendants or representatives of any Federally recognized Indian tribe not identified in this notice that wish to request transfer of control of these human remains should submit a written request to TVA. If no additional requestors come forward, transfer of control of the human remains to the Federally recognized Indian tribe stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Federally recognized Indian tribe not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to TVA at the address in this notice by November 17, 2014.

ADDRESSES: Dr. Thomas O. Maher, TVA, 400 West Summit Hill Drive, WT11D, Knoxville, TN 37902–1401, telephone (865) 632–7458, email *tomaher@tva.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of TVA and in the custody of the McClung Museum. The human remains were removed from the Westmoreland-Barber site in Marion County, TN.

This notice is published as part of the National Park Service's administrative

responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by TVA and McClung Museum professional staff in consultation with the Absentee-Shawnee Tribe of Oklahoma; Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas); Alabama-Quassarte Tribal Town; Cherokee Nation; Eastern Band of Cherokee Indians; Eastern Shawnee Tribe of Oklahoma; Kialegee Tribal Town; Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama); Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)); Shawnee Tribe; The Chickasaw Nation; The Muscogee (Creek) Nation; The Seminole Nation of Oklahoma; Thlopthlocco Tribal Town; and the United Keetoowah Band of Cherokee Indians in Oklahoma.

History and Description of the Remains

In the summer of 1965, human remains were removed from burial unit 8 at the Westmoreland-Barber site, 40MI11, in Marion County, TN. The Westmoreland-Barber site is located at river mile 429 on the Tennessee River. Archeological excavations at Westmoreland-Barber were stimulated by the TVA's construction of the Nickajack Dam and the impending inundation of the resulting reservoir. In August 1964, the University of Tennessee (UT) under the direction of J.B. Graham and under contract with the National Park Service (NPS), excavated sites located within the confines of the proposed Nickajack Reservoir, including site 40MI11. A second season of excavations by UT took place from June 29 to August 18, 1965, at the Westmoreland-Barber site, under a contract with the NPS. The excavation of burial units 5 through 17 took place after the TVA completed the process of purchasing the land tracts where the burial units are located.

One historic burial, burial unit 8, was excavated during the second season. Although disturbed by agricultural plowing, UT archeologists concluded at the time that the individual in the burial was laid to rest around 1775, and the remains were likely associated with the historically known 18th century Cherokee Lower Town occupation in this area. The human remains from burial unit 8 represent one adult male. No known individuals were identified.

Determinations Made by the TVA and the McClung Museum

Officials of TVA and the McClung Museum have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Cherokee Nation of Oklahoma; Eastern Band of Cherokee Indians of North Carolina; and the United Keetowah Band of Cherokee Indians in Oklahoma.

Additional Requestors and Disposition

Lineal descendants or representatives of any Federally recognized Indian tribe not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Dr. Thomas O. Maher, TVA, 400 West Summit Hill Drive, WT11D, Knoxville, TN 37902–1401, telephone (865) 632–7458, email *tomaher@tva.gov,* by November 17, 2014. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Cherokee Nation of Oklahoma; Eastern Band of Cherokee Indians of North Carolina; and the United Keetowah Band of Cherokee Indians in Oklahoma may proceed.

TVA is responsible for notifying the Absentee-Shawnee Tribe of Oklahoma; Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas); Alabama-Quassarte Tribal Town; Cherokee Nation; Eastern Band of Cherokee Indians; Eastern Shawnee Tribe of Oklahoma; Kialegee Tribal Town; Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama); Shawnee Tribe; The Chickasaw Nation; The Muscogee (Creek) Nation; The Seminole Nation of Oklahoma; Thlopthlocco Tribal Town; and the United Keetoowah Band of Cherokee Indians in Oklahoma, that this notice has been published.

Dated: September 10, 2014.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2014–24522 Filed 10–15–14; 8:45 am]

BILLING CODE 4310–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–16767; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Michigan, Ann Arbor, MI; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The University of Michigan has corrected an inventory of human remains and associated funerary objects, published in a Notice of Inventory Completion in the **Federal Register** on October 31, 2013. This notice corrects the minimum number of individuals. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the University of Michigan. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the University of Michigan at the address in this notice by November 17, 2014.

ADDRESSES: Dr. Ben Secunda, NAGPRA Project Manager, University of Michigan, Office of Research, 4080 Fleming Building, 503 S. Thompson St., Ann Arbor, MI 48109–1340, telephone (734) 647–9085, email *bsecunda@umich.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the correction of an inventory of human remains under the control of the University of Michigan, Ann Arbor, MI. The human remains were removed from Berrien County, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the minimum number of individuals published in a Notice of Inventory Completion in the **Federal Register** (78 FR 65367, October 31, 2013). A re-inventory has identified additional human remains from the Moccasin Bluff site collection (20BE8) referenced in the previously published Notice of Inventory Completion. Transfer of control of the items in this correction notice has not occurred.

Correction

In the **Federal Register** (78 FR 65367, October 31, 2013), paragraph 11, sentence 1 is corrected by substituting the following sentence:

On various dates, human remains representing, at minimum, 9 individuals were removed from the Moccasin Bluff site (20BE8) in Berrien County, MI.

In the **Federal Register** (78 FR 65367, October 31, 2013), paragraph 11, sentence 4 is corrected by substituting the following sentence:

In 1947, he donated the remains of five adults and two juveniles to the UMMA.

In the **Federal Register** (78 FR 65367, October 31, 2013), paragraph 14, sentence 1 is corrected by substituting the following sentence:

Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 12 individuals of Native American ancestry.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Dr. Ben Secunda, NAGPRA Project Manager, University of Michigan, Office of Research, 4080 Fleming Building, 503 S. Thompson St., Ann Arbor, MI 48109–1340, telephone (734) 647–9085, email *bsecunda@umich.edu,* by November 17, 2014. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Bay Mills Indian Community, Michigan; Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.); Pokagon Band of Potawatomi Indians, Michigan and Indiana; Saginaw Chippewa Indian Tribe of Michigan; and the Sault Ste. Marie Tribe of Chippewa Indians, Michigan may proceed.

The University of Michigan is responsible for notifying the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota; Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana; Citizen Potawatomi Nation, Oklahoma; Fond du Lac Band of the Minnesota Chippewa Tribe, Minnesota; Forest County Potawatomi Community, Wisconsin; Grand Portage Band of the Minnesota Chippewa Tribe, Minnesota; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Miami Tribe of Oklahoma; Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.); Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band Potawatomi Nation (previously listed as the Prairie Band of Potawatomi Nation, Kansas); Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Turtle Mountain Band of Chippewa Indians of North Dakota; and the White Earth Band of the Minnesota Chippewa Tribe, Minnesota that this notice has been published.

Dated: September 22, 2014.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2014–24515 Filed 10–15–14; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–16769; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Robert S. Peabody Museum of Archaeology has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Robert S. Peabody Museum of Archaeology. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Robert S. Peabody Museum of Archaeology at the address in this notice by November 17, 2014.

ADDRESSES: Dr. Ryan J. Wheeler, Robert S. Peabody Museum of Archaeology, Phillips Academy, 180 Main Street, Andover, MA 01810, telephone (978) 749–4490, email *rwheeler@andover.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA. The human remains and associated funerary objects were removed from McCain's site at Mattawamkeag in Penobscot County, ME.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains and associated funerary objects was made by the Robert S. Peabody Museum of Archaeology professional staff in consultation with representatives of the Aroostook Band of Micmacs (previously listed as the Aroostook Band of Micmac Indians); Houlton Band of Maliseet Indians; Passamaquoddy Tribe; and the Penobscot Nation (previously listed as the Penobscot Tribe of Maine).

History and Description of the Remains

In 1912, human remains representing, at minimum, three individuals were removed from McCain's site in Mattawamkeag, Penobscot County, ME. McCain's site is located at the confluence of the Mattawamkeag and Penobscot Rivers, on the northeastern side of the two rivers. The site was investigated by Warren K. Moorehead as part of his extensive study of archeological sites in Maine; the human remains and associated funerary objects have been curated at the Robert S. Peabody Museum of Archaeology since their discovery by Moorehead's survey. The fragmentary remains of three individuals—one adult, one subadult, and one juvenile to subadult—were identified. The human remains consist of calcined cranial and long bone fragments. No known individuals were identified. The 14 associated funerary objects are 8 lithic flakes, 3 pebbles, 1 animal tooth (cervid), and 2 animal bone fragments (cervid).

Information about McCain's site is found in Moorehead's *A Report on the Archaeology of Maine* (1922), in the fieldnotes of F.B. Manning from the survey on file at the Robert S. Peabody Museum of Archaeology, and in the files of the Maine Historic Preservation Commission, Maine Archaeological Survey (site #123.6). The written sources on the site describe test excavations in a number of sites located at the juncture of the two rivers, including the discovery of Native American burials and habitation sites, at least some of which date to the period of European contact. F.B. Manning's fieldnotes attribute some of the burials discovered at Mattawamkeag to the ''red ochre people,'' likely a reference to what is now called the Moorehead Burial Tradition; Moorehead, however, discounts that any of the discoveries at Mattawamkeag were ''Red Paint'' cemeteries. Cremation burials are described by archeologists as characteristic of the Susquehanna Tradition, circa 3700 to 3000 BP in Maine. Specific descriptions of the burials described here are not found in the written sources on the site, though it seems likely that they date to the Late Archaic.

Oral history narratives that place the origins of the Penobscot, Passamaquoddy, and Maliseet in Maine are often tied to specific places, landscape features, and ecological zones characteristic of Maine. These oral history narratives are significant in affiliating the Penobscot, Passamaquoddy, and Maliseet with the McCain's site, especially as archeological evidence is equivocal regarding connections. Mattawamkeag is significant to the Wabanaki, and figures in the seventeenth through nineteenth century histories of the tribes, as supported by oral narrative, archeological evidence, and written documents. Continuous occupation and reoccupation of places, like Mattawamkeag, along with the significance of place-names, canoe and trail routes, and landscape features reaffirm Wabanaki connections and may reflect more ancient traditions of aggregation in certain places. Continuity between ancient and contemporary indigenous people is supported by the long temporal occupation of the Mattawamkeag area during Archaic, Woodland and more recent times. The use of red ochre in graves, well-known in the Late Archaic Maine cemeteries, continues to be significant to contemporary Wabanaki people. Anthropological perspectives regarding affiliation of the Wabanaki peoples with the cultures of the Late Archaic are consistent with the contemporary viewpoint of the Wabanaki.

Determinations Made by the Robert S. Peabody Museum of Archaeology

Officials of the Robert S. Peabody Museum of Archaeology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 14 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Aroostook Band of Micmacs (previously listed as the Aroostook Band of Micmac Indians); Houlton Band of Maliseet Indians; Passamaquoddy Tribe; and the Penobscot Nation (previously listed as the Penobscot Tribe of Maine).

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Dr. Ryan J. Wheeler, Robert S. Peabody Museum of Archaeology, Phillips Academy, 180 Main Street, Andover, MA 01810, telephone (978) 749–4490, email *rwheeler@andover.edu,* by November 17, 2014. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Aroostook Band of Micmacs (previously listed as the Aroostook Band of Micmac Indians); Houlton Band of Maliseet Indians; Passamaquoddy Tribe; and the Penobscot Nation (previously listed as the Penobscot Tribe of Maine) may proceed.

The Robert S. Peabody Museum of Archaeology is responsible for notifying the Aroostook Band of Micmacs (previously listed as the Aroostook Band of Micmac Indians); Houlton Band of Maliseet Indians; Passamaquoddy Tribe; and the Penobscot Nation (previously listed as the Penobscot Tribe of Maine) that this notice has been published.

Dated: September 22, 2014.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2014–24518 Filed 10–15–14; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–16764; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of Agriculture, Forest Service, Medicine Bow-Routt National Forest and Thunder Basin National Grassland, Laramie, WY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture (USDA), Forest Service, Medicine Bow-Routt National Forest and Thunder Basin National Grassland (MBRTB) has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the USDA Forest Service MBRTB. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the USDA Forest Service MBRTB at the address in this notice by November 17, 2014.

ADDRESSES: Thomas Whitford, District Ranger, MBRTB, 2468 Jackson Street, Laramie, WY 82070–6535, telephone (307) 745–2300.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the USDA Forest Service MBRTB, Laramie, WY. The human remains and associated funerary objects were removed from a burial site southwest of Upton, Weston County, WY.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the USDA Forest Service MBRTB professional staff in consultation with representatives of the Arapaho Tribe of the Wind River Reservation, Wyoming; Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma); Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana; Comanche Nation, Oklahoma; Crow Tribe of Montana; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; and the Pawnee Nation of Oklahoma.

History and Description of the Remains

In 1981, human remains representing, at minimum, four individuals were removed from the Frog Creek oil field lands in Weston County, WY. This site is on Federal land, within the boundaries of the Medicine Bow-Routt National Forest and Thunder Basin National Grassland. Oil company workers discovered some human remains under rocks near their worksite approximately 64 kilometers southwest of Upton, Wyoming. The burial had previously been disturbed and the rocks originally used to cover the individuals had been moved. The Weston and Converse County Sheriff's departments were notified at the time of discovery and the human remains were sent to Dr. George Gill at the University of Wyoming for biological analysis. On October 12, 1982, Dr. Gill, George Darlington, David McKee, and David Darlington (USDA Forest Service) conducted follow-up excavations at the discovery site and collected additional human remains. The human remains were found in sand deposits on top of a butte overlooking the valley below. They appeared not to have been buried but simply covered with large flat stones.

The human remains were analyzed for Native American heritage, age, and sex by the professional staff of the University of Wyoming. The remains consist of four American Indian individuals. They are fragmented, and many bone elements were not present. The most complete individual is an adult female who was 50–65 years of age. The second set of remains is an adult male represented by only a few bone fragments. A third set of remains is of a child 6–7 years of age. An infant child is represented by a fourth set of fragmentary remains. No known individuals were identified. The two associated funerary objects are two small and partial damaged tubular non-human (canid) bone beads

Determinations Made by the USDA Forest Service Medicine Bow-Routt National Forests and Thunder Basin National Grassland

Officials of the USDA Forest Service MBRTB have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on archaeological evidence.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of four individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the two objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Arapaho Tribe of the Wind River Reservation, Wyoming; Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma); Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana; Crow Tribe of Montana; and the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to the Arapaho Tribe of the Wind River Reservation, Wyoming; Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma); Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana; Crow Tribe of Montana; and

the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana.

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Thomas Whitford, District Ranger, USDA Forest Service MBRTB, 2468 Jackson Street, Laramie, WY, telephone (307) 745–2443, by November 17, 2014. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Arapaho Tribe of the Wind River Reservation, Wyoming; Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma); Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana; Crow Tribe of Montana; and the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana, may proceed.

The USDA Forest Service MBRTB is responsible for notifying the of the Arapaho Tribe of the Wind River Reservation, Wyoming; Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma); Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana; Comanche Nation, Oklahoma; Crow Tribe of Montana; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; and the Pawnee Nation of Oklahoma that this notice has been published.

Dated: September 22, 2014.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2014–24514 Filed 10–15–14; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–16686; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Spurlock Museum, University of Illinois at Urbana-Champaign, Urbana, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Spurlock Museum University of Illinois at Urbana-Champaign has completed an inventory of human remains and associated funerary object, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary object and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary object should submit a written request to the Spurlock Museum. If no additional requestors come forward, transfer of control of the human remains and associated funerary object to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary object should submit a written request with information in support of the request to the Spurlock Museum at the address in this notice by November 17, 2014.

ADDRESSES: Jennifer White, Registrar, Spurlock Museum University of Illinois at Urbana-Champaign, 600 South Gregory Street, Urbana, IL 61801, telephone (217) 244–3353, email *Jenwhite@illinois.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary object under the control of the Spurlock Museum University of Illinois at Urbana-Champaign. The human remains and associated funerary object were removed from Point Barrow Headland, AK.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary object. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains and associated funerary object was made by the Spurlock Museum professional staff in consultation with representatives of the Native Village of Barrow Inupiat Traditional Government.

History and Description of the Remains

Between 1913 and 1917, human remains representing, at minimum, 21 individuals were removed from Point Barrow Headland, AK. The human remains are 21 teeth acquired by the Museum of Natural History at the University of Illinois at Urbana-Champaign and later transferred to the Spurlock Museum. The human remains were identified as ''possibly from grave site'' from the Point Barrow Headlands and were acquired on the ''Alaskan Expedition.'' Original ledgers from the Museum of Natural History are missing and no additional information has been uncovered regarding further details of the provenance of these items. The teeth appear to include ten adult teeth, nine teeth that are likely to be adult teeth, and two teeth of a child. No known individuals were identified. The associated funerary object is one canid tooth.

Determinations Made by the Spurlock Museum

Officials of the Spurlock Museum have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 21 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the one object described in this notice is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary object and the Native Village of Barrow Inupiat Traditional Government.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary object should submit a written request with information in support of the request to Jennifer White, Registrar, Spurlock Museum University of Illinois at Urbana-Champaign, 600 South Gregory Street, Urbana, IL 61801, telephone (217) 244–3353, email

Jenwhite@illinois.edu, by November 17, 2014. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary object to Native Village of Barrow Inupiat Traditional Government may proceed.

The Spurlock Museum is responsible for notifying the Native Village of Barrow Inupiat Traditional Government that this notice has been published.

Dated: September 12, 2014.

Melanie O'Brien,

Acting Manager, National NAGPRA Program.

[FR Doc. 2014–24519 Filed 10–15–14; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–16761; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Organ Pipe Cactus National Monument, Ajo, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, National Park Service, Organ Pipe Cactus National Monument has completed an inventory of human remains, in consultation with the appropriate Indian tribe or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to Organ Pipe Cactus National Monument. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Organ Pipe Cactus National Monument at the address in this notice by November 17, 2014.

ADDRESSES: Brent K. Range, Superintendent, Organ Pipe Cactus National Monument, 10 Organ Pipe Drive, Ajo, AZ 85321–9626, telephone (520) 387–6849, email *brent_range@nps.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the U.S. Department of the Interior, National Park Service, Organ Pipe Cactus National Monument, Ajo, AZ, and in the physical custody of the Arizona State Museum, University of Arizona, Tucson, AZ. The human remains were removed from the vicinity of the Bates Well Ranch Site, Pima County, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the Superintendent, Organ Pipe Cactus National Monument.

Consultation

A detailed assessment of the human remains was made by Organ Pipe Cactus National Monument and Arizona State Museum professional staff in consultation with representatives of the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; and Tohono O'odham Nation of Arizona (hereafter referred to as ''The Consulted Tribes'').

The following tribes were invited to consult but did not participate: Cocopah Tribe of Arizona; Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California; Fort Mohave Indian Tribe of Arizona, California & Nevada; Pascua Yaqui Tribe of Arizona; Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico (hereafter referred to as ''The Invited Tribes'').

History and Description of the Remains

Between 1951–1952, human remains representing, at minimum, one individual were removed from the vicinity of the Bates Well Ranch Site in Pima County, AZ, during a cooperative archeological project between Arizona State Museum and Organ Pipe Cactus National Monument under the direction of Paul H. Ezell. No known individuals were identified. No associated funerary objects are present.

Based upon the archeological context, Ezell's field notes, and osteological analysis, the cremated human remains have been determined to be Native American dating to A.D. 500–1500. This time range in southern Arizona is commonly known to the archeological community as the Pioneer, Colonial, Sedentary, and Classic Hohokam periods.

A relationship of shared group identity can reasonably be traced between members of the Hohokam culture and the four southern O'odham tribes of Arizona. The O'odham people comprise four Federally recognized Indian tribes (the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and Tohono O'odham Nation of Arizona) and one Indian group that is not Federally recognized, the Hia C-ed O'odham. An O'odham association with lands lying directly to the west of the Ajo Mountains, including Organ Pipe Cactus National Monument, is documented throughout the historic period and into the 20th century.

O'odham oral histories describe the end time of the Hohokam, when armies gathered and marched on the Great House communities (e.g., Casa Grande, Pueblo Grande) and cast out the Hohokam societies there. The armies then occupied the conquered lands, intermarrying with the remnants of the Hohokam and ultimately becoming the O'odham people. Other evidence of the O'odham-Hohokam connection includes similar settlement patterns, irrigation systems, residence styles, and a possible relationship between modern O'odham kickball games and formal Hohokam ball courts.

A relationship of shared group identity can also reasonably be traced between members of the Hohokam culture and the Hopi Tribe of Arizona. Hopi history is based, in large part, on clan migration narratives. The Hopi consider all of Arizona to be within traditional Hopi lands, i.e., areas in and through which Hopi clans are believed to have migrated in the past. Hopi oral history and the anthropological record show that some clans originated in the Salt-Gila region and were descended from the Hohokam. After the fall of the Great House communities, Hohokam refugees were absorbed into the Hopi culture.

A relationship of shared group identity can also reasonably be traced between members of the Hohokam culture and the Zuni Tribe of the Zuni

Reservation, New Mexico. Zuni oral history tells of ancestral migrations and settling throughout this region in their search for the Middle Place of the World (present day Pueblo of Zuni). Elders have identified features in the area, including shrines and petroglyphs, as Zuni. Zuni ancestors left many markers of their passing including trails, habitation sites, campsites, burials, sacred shrines, and rock art.

Determinations Made by Organ Pipe Cactus National Monument

Officials of Organ Pipe Cactus National Monument have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Brent K. Range, Superintendent, Organ Pipe Cactus National Monument, 10 Organ Pipe Drive, Ajo, AZ 85321–9626, telephone (520) 387–6849, email *brent_range@nps.gov,* by November 17, 2014. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico may proceed.

Organ Pipe Cactus National Monument is responsible for notifying The Consulted Tribes and The Invited Tribes that this notice has been published.

Dated: September 22, 2014.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2014–24526 Filed 10–15–14; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–16766; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Michigan, Ann Arbor, MI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of Michigan has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the University of Michigan. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the University of Michigan at the address in this notice by November 17, 2014.

ADDRESSES: Dr. Ben Secunda, NAGPRA Project Manager, University of Michigan Office of Research, 4080 Fleming Building, 503 S. Thompson St., Ann Arbor, MI 48109–1340, telephone (734) 647–9085, email *bsecunda@umich.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the University of Michigan, Ann Arbor, MI. The human remains and associated funerary objects were removed from private land in Lapeer County, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by University of Michigan officials in consultation with representatives of the Bay Mills Indian Community, Michigan; Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Nottawaseppi Huron Band of the Potawatomi, Michigan (formerly the Huron Potawatomi, Inc.); Pokagon Band of Potawatomi Indians, Michigan and Indiana; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians of Michigan; and the Wyandotte Nation, Oklahoma.

Additional requests for consultation were sent to the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota; Citizen Potawatomi Nation, Oklahoma; Fond du Lac Band of the Minnesota Chippewa Tribe, Minnesota; Forest County Potawatomi Community, Wisconsin; Grand Portage Band of the Minnesota Chippewa Tribe, Minnesota; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; Ottawa Tribe of Oklahoma; Prairie Band of Potawatomi Nation, Kansas; Quechan Tribe of the Fort Yuma Indian Reservation, California and Arizona; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red

Lake Band of Chippewa Indians, Minnesota; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Turtle Mountain Band of Chippewa Indians of North Dakota; and the White Earth Band of the Minnesota Chippewa Tribe, Minnesota.

Hereafter, all tribes listed in this section are referred to as ''The Tribes.''

History and Description of the Remains

From 1923 to 1935, human remains representing, at minimum, 94 individuals were removed from the Younge site (20LP1) in Lapeer County, MI. The site is located on farmland north of Imlay City and had been plowed over for years. Between 1923 and 1935, amateur archaeologist Carman Baggerly collected at the site with the landowner's permission. Baggerly donated many of the human remains and objects to the University of Michigan Museum of Anthropological Archaeology (UMMAA) over that period. These donations prompted a UMMAA excavation of the site that occurred from July 19 to November 5, 1935, under the direction of Wilbert Hinsdale and Emerson Greenman.

UMMAA's excavation found 2 distinct structures at the site based on the presence of post molds. These structures were recorded as Enclosures 1 and 2. The structures were described as successively re-built longhouses standing parallel to one another with walls approximately 5–6 feet thick. All of the burials were found within or near Enclosure 1, which was only partially excavated. Archaeologists found hearths and pits filled with a mixture of ashes, charcoal, faunal bones, and tobacco pipe fragments above the burials throughout Enclosure 1. Excavations found 57 distinct burial features, with 16 additional site features having human remains. The individuals included both males and females, ages ranging from infants to older adults. No known individuals were identified. A variety of burial types were found at the site including extended burials, bundle burials, torso burials, and cremations. One burial was noted as containing red ochre. Many of the human remains found within Enclosure 1 show considerable evidence of post-mortem modifications. Post-mortem modifications included cutting, shaving and drilling of the ends of long bones; drilled perforations, smaller than 3cm diameter, at the top of crania and 1 manubrium; and plaque disc removals, larger than 3cm diameter, cut from either the top or back of crania. Some remains were noted as found rearticulated, with the modified heads of femora inserted into the obturator foramen of the pelvis. Between 1996 and 2006, 1 lot of DNA extractions was taken from human remains in this site collection.

The human remains date to the Late Woodland Period (900–1300 A.D.) based on objects found at the site. The 812 associated funerary objects present are 789 ceramic sherds, 20 black bear bone fragments, 1 stone celt, 1 ceramic elbow pipe, and 1 lot of red ochre and soil.

Determinations Made by the University of Michigan

Officials of the University of Michigan have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on cranial morphology, dental traits, accession documentation, and archeological context.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 94 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 812 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission, the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Saginaw Chippewa Indian Tribe of Michigan.
- Treaties, Acts of Congress, and Executive Orders indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of The Tribes.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to The Tribes.

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects, should submit a written request with information in support of the request to Dr. Ben Secunda, NAGPRA Project Manager, University of Michigan Office of Research, 4080 Fleming Building, 503 S. Thompson St., Ann Arbor, MI 48109–1340, telephone (734) 647–9085, email *bsecunda@umich.edu,* by November 17, 2014. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed.

The University of Michigan's Office of Research is responsible for notifying The Tribes that this notice has been published.

Dated: September 22, 2014.

Melanie O'Brien,

Acting Manager, National NAGPRA Program.

[FR Doc. 2014–24516 Filed 10–15–14; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–16699; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: U.S. Department of the Interior, National Park Service, Wupatki National Monument, Flagstaff, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, National Park Service, Wupatki National Monument, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of unassociated funerary objects. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to Wupatki National Monument. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Wupatki National Monument at the address in this notice by November 17, 2014.

ADDRESSES: Kayci Cook Collins, Superintendent, Flagstaff Area National Monuments, National Park Service, 6400 N. Hwy 89, Flagstaff, AZ 86004, (928) 526–1157 ext. 227, email *Kayci_Cook@nps.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the U.S. Department of the Interior, National Park Service, Wupatki National Monument, Flagstaff, AZ, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the Superintendent, Wupatki National Monument.

History and Description of the Cultural Item(s)

In 1933, 730 cultural items were removed from Wupatki Pueblo, within Wupatki National Monument in Coconino County, AZ, during an authorized excavation conducted by the Museum of Northern Arizona. Records indicate that all of the items were recovered from burials and that the human remains were not collected. All of the items are in the physical custody of the Museum of Northern Arizona in Flagstaff, AZ. The 730 unassociated funerary objects are 2 knotted twig fragments, 534 pottery sherds, 1 stone flake, 1 bag rotted wood, 4 pieces rotted wood, 2 shell bracelets, 2 fragments painted wood, 1 worked stone, 2 stone cylinders, 2 projectile points, 23 pendants, 1 Black Mesa black-on-white bowl, 1 Black Mesa black-on-white miniature pitcher, 1 Tusayan black-on-white bowl fragment, 1 turquoise figurine, 63 shell beads, 2 Sunset red jars, 1 Lino gray jar, 1 Lino black-on-gray bowl, 1 Youngs red smudged bowl, 1 Elden corrugated jar, 3 Sunset red bowls, 1 bone awl, 4 Sunset smudged bowls, 2 Flagstaff black-on-white bowl fragments, 5 Walnut black-on-white bowl fragments, 1 Chevelon black-on-white bowl fragment, 1 Tusayan polychrome bowl fragment, 1 Kana-a gray jar fragment, 1 Flagstaff black-on-white miniature jar, 1 Tusayan corrugated jar, 2 Tusayan black-on-red jars, 3 cocoons, 1 shell necklace, 1 Mogollon brownware bowl, and 56 basket fragments.

In 1934, 18 cultural items were removed from Nalakihu Pueblo, within Wupatki National Monument in Coconino County, AZ, during an authorized excavation conducted by the Museum of Northern Arizona. Records indicate that all of the items were recovered from burials and that the human remains were not collected. All of the items are in the physical custody of the Museum of Northern Arizona in Flagstaff, AZ. The 18 unassociated funerary objects are 17 pottery sherds and 1 Sunset red bowl.

In 1952, one cultural item was removed from Wupatki Pueblo, within Wupatki National Monument in Coconino County, AZ, during authorized excavations incidental to stabilization of the pueblo. Records indicate that the item was recovered from a burial and that the human remains were not collected. The item is in the physical custody of the Museum of Northern Arizona in Flagstaff, AZ. The one unassociated funerary object is a stone necklace.

In 1965, six cultural items were removed from Wupatki Pueblo, within Wupatki National Monument in Coconino County, AZ, by a National Park Service archeologist. Records indicate that the items were recovered from a burial and that the human remains were not collected. The items are in the physical custody of the Museum of Northern Arizona in Flagstaff, AZ. The six unassociated funerary objects are painted wooden staff fragments.

In 1986, one cultural item was removed from site WS 1953, within Wupatki National Monument in Coconino County, AZ, during an authorized survey of the monument. Records indicate that the item was recovered from a burial and that the human remains were not collected. The one unassociated funerary object is a Tusayan polychrome bowl.

On the basis of architecture and artifacts, Wupatki Pueblo is dated to A.D. 900–1300 and Nalakihu Pueblo is dated to A.D. 1150–1300. On the basis of artifacts, WS 1953 is dated to A.D. 1050–1250.

Evidence demonstrating continuity between the people of Wupatki Pueblo, Nalakihu Pueblo, and WS 1953 from A.D. 900–1300 and the Hopi Tribe of Arizona includes similarities in material culture, architecture, mortuary practices, settlement patterns, and agricultural methods. Hopi oral history indicates connections to the people of Wupatki and Nalakihu Pueblos and numerous Hopi clans can be traced to Wupatki Pueblo.

Determinations Made by Wupatki National Monument

Officials of Wupatki National Monument have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the 756 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Hopi Tribe of Arizona.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Kayci Cook Collins, Superintendent, Wupatki National Monument, 6400 N. Hwy 89, Flagstaff, AZ 86004, (928) 526–1157 ext. 227, email *Kayci_Cook@nps.gov,* by November 17, 2014. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects to the Hopi Tribe of Arizona may proceed.

Wupatki National Monument is responsible for notifying the Hopi Tribe of Arizona that this notice has been published.

Dated: September 24, 2014.

Melanie O'Brien,

Acting Manager, National NAGPRA Program.

[FR Doc. 2014–24524 Filed 10–15–14; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–16662; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: School for Advanced Research, Indian Arts Research Center, Santa Fe, NM

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The School for Advanced Research, Indian Arts Research Center, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of sacred objects. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the School for Advanced Research, Indian Arts Research Center. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian tribes, or Native

Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the School for Advanced Research, Indian Arts Research Center at the address in this notice by November 17, 2014.

ADDRESSES: Laura Elliff, Acting Director/Collections Manager, School for Advanced Research, Indian Arts Research Center, P.O. Box 2188, Santa Fe, NM 87504–2188, telephone (505) 954–7205, email *elliff@sarsf.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the School for Advanced Research, Indian Arts Research Center, Santa Fe, NM, that meet the definition of sacred objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

At unknown dates between 1951 and 1952, Julia K. Shishkin purchased eight cultural items from a member of the Pueblo of Nambe in Santa Fe County, NM. On April 30, 1964, Mrs. Shishkin offered to sell the eight items to the School of American Research for two-hundred dollars. On May 14, 1964, the Executive Committee of the School of American Research (School for Advanced Research was formerly School of American Research until 2007) examined the eight items from the Pueblo of Nambe and subsequently purchased them on May 15, 1964. The eight cultural items are 1 large stone figure (SAR.1964–3A); 1 set of black feathers tied together with string (SAR.1964–3BC), which are to be attached to the SAR.1964–3A stone figure; 5 stone figures with leather carrying pouches (SAR.1964–4AB, SAR.1964–5AB, SAR.1964–6AB, SAR.1964–7AB, SAR.1964–8AB); and 1 small stone with rough surface on one side, and polished opaque surface on the other (SAR.1964–9).

On November 15, 1993, the School of American Research, Indian Arts Research Center sent a summary of objects to the Pueblo of Nambe in accordance to the reporting requirements of NAGPRA. On January 20, 2012, a representative from the Pueblo of Nambe contacted the School for Advanced Research, Indian Arts Research Center via phone requesting another report of objects in the School's collection. On January 23, 2012, a report of Nambe objects with photos was sent via email to the Pueblo of Nambe representative. Correspondence and consultation followed thereafter regarding the eight cultural items listed in this notice. The review of the School for Advanced Research's documentation, in addition to physical inspections by Pueblo of Nambe representatives, has resulted in confirmation from the Pueblo of Nambe traditional leaders that the eight items are of Pueblo of Nambe origin, supporting cultural affiliation as well as determining that the eight items are sacred objects. The School for Advanced Research, Indian Arts Research Center records, including catalog cards and other provenance information indicate these items to be of Pueblo of Nambe origin, further supporting the claim by the Pueblo of Nambe. On December 3, 2013, the Pueblo of Nambe submitted a repatriation request from the Lieutenant Governor for the eight sacred objects.

Determinations Made by the School for Advanced Research, Indian Arts Research Center

Officials of the Indian Arts Research Center at the School for Advanced Research have determined that:

- Pursuant to 25 U.S.C. 3001(3)(C), the eight cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the sacred objects and Pueblo of Nambe, New Mexico.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Laura Elliff, Acting Director/Collections Manager, School for Advanced Research, Indian Arts Research Center, P.O. Box 2188, Santa Fe, NM 87504, telephone (505) 954–7205, email *elliff@sarsf.org,* by November 17, 2014. After that date, if no additional claimants have come forward, transfer of control of the sacred objects to the Pueblo of Nambe may proceed.

The School for Advanced Research, Indian Arts Research Center is responsible for notifying the Pueblo of Nambe, New Mexico that this notice has been published.

Dated: September 10, 2014.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2014–24520 Filed 10–15–14; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2005–0022]

TÜV SÜD Product Services GmbH: Grant of Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces its final decision to expand the scope of recognition for TÜV SÜD Product Services GmbH, as a Nationally Recognized Testing Laboratory (NRTL).

DATES: The expansion of the scope of recognition becomes effective on October 16, 2014.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3647, Washington, DC 20210; telephone: (202) 693–1999; email: *Meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3655, Washington, DC 20210; telephone: (202) 693–2110; email: *robinson.kevin@dol.gov.* OSHA's Web page includes information about the NRTL Program (see *http://www.osha.gov/dts/otpca/nrtl/index.html*).

SUPPLEMENTARY INFORMATION:

I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition of TÜV SÜD Product Services GmbH (TUVPSG), as an NRTL. TUVPSG's expansion covers the addition of one recognized testing and certification site to its NRTL scope of recognition.

OSHA recognition of an NRTL signifies that the organization meets the requirements specified by 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition, and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition, or for expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational Web page for each NRTL that details its scope of recognition. These pages are available from the Agency's Web site at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

TUVPSG submitted an application, dated February 5, 2013 (OSHA–2005–0022–0007), to expand its recognition to include the addition of one recognized testing and certification site located at: TUVPSG Garching, Daimlerstrasse 11, D–85748 Garching, Germany. OSHA staff performed a detailed analysis of the application and other pertinent information. OSHA staff also performed an on-site review of TUVPSG's Garching testing and certification facility on April 26, 2013, and recommended expansion of TUVPSG's recognition to include this one site.

OSHA published the preliminary notice announcing TUVPSG's expansion application in the **Federal Register** on May 27, 2014 (79 FR 30181). The Agency requested comments by June 11, 2014. OSHA received three comments regarding TUVPSG's request to expand its scope of recognition (OSHA–2005–0022–0008, OSHA–2005–0022–0009, and OSHA–2005–0022–0010).

The first anonymous comment (OSHA–2005–0022–0008) asked whether the decision to expand TUVPSG's scope was good for a local trade union of construction workers. However, the comment offers no information about the issue on which OSHA sought comment—TUVPSG's request to expand its recognition, and OSHA does not consider it further.

The remaining comments from the National Electrical Manufacturers Association (NEMA) and the Information Technology Industry Council (ITI) (OSHA–2005–0022–0009 and OSHA–2005–0022–0010, respectively) assert that German law requires German conformity assessment bodies, authorized as GS Bodies, to reside within Germany, and that this requirement does not provide ''equal treatment'' as outlined in OSHA's NRTL regulations and policies.

OSHA's NRTL regulations (29 CFR 1910.7—Appendix A I.A.1.b) require OSHA to consider, prior to granting initial recognition of organizations located outside of the United States, ''the policy of the foreign government regarding both the acceptance in that country of testing data, equipment acceptances, and listings, and labeling, which are provided through nationally recognized testing laboratories.., and the accessibility to government recognition or a similar system in that country by U.S.-based safety-related testing agencies.'' OSHA conducted a review of Germany's policies toward U.S.-based testing and certification organizations in 2001, when TUVPSG was initially recognized by OSHA as an NRTL. At that time, U.S.-based organizations were treated no less favorably than other testing and certification organizations seeking accreditation in Germany. OSHA regulations require a review of foreign government practices for initial recognition, and not for renewal or expansion applications, as requested by TUVPSG. As this is an application for expansion, there is no basis in OSHA regulations to reconsider how German law treats U.S.-based testing and certification organizations. However, the information provided by NEMA and ITI raises questions with respect to the provision of equal treatment of foreign conformity assessment bodies. As such, OSHA has requested the Office of the U.S. Trade Representative (USTR) to review this matter.

To obtain or review copies of all public documents pertaining to TUVPSG's application, go to *www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–2625, Washington, DC 20210. Docket No. OSHA–2005–0022 contains all materials in the record concerning TUVPSG's recognition.

II. Final Decision and Order

OSHA staff examined TUVPSG's expansion application, conducted a detailed on-site assessment, and examined other pertinent information. Based on its review of this evidence, OSHA finds that TUVPSG meets the requirements of 29 CFR 1910.7 for expansion of its recognition, subject to the limitation and conditions listed below. OSHA, therefore, is proceeding with this final notice to grant TUVPSG's scope of recognition. OSHA limits the expansion of TUVPSG's recognition to include the site at TUVPSG Garching (Garching, Germany), as listed above. OSHA's recognition of this site limits TUVPSG to performing product testing and certifications only to the test standards for which the site has the proper capability and programs, and for the test standards in TUVPSG's scope of recognition. This limitation is consistent with the recognition that OSHA grants to other NRTLs that operate multiple sites.

A. Conditions

In addition to those conditions already required by 29 CFR 1910.7, TUVPSG must abide by the following conditions of the recognition:

1. TUVPSG must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as an NRTL, and provide details of the change(s);
2. TUVPSG must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and
3. TUVPSG must continue to meet the requirements for recognition, including all previously published conditions on TUVPSG's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the recognition of TUVPSG, subject to the limitation and conditions specified above.

III. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on October 10, 2014.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2014–24584 Filed 10–15–14; 8:45 am]

BILLING CODE 4510–26–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 14–07]

Notice of Entering Into a Compact With the Republic of Ghana; Correction

AGENCY: Millennium Challenge Corporation.

ACTION: Notice; correction.

SUMMARY: The Millennium Challenge Corporation (MCC) published a document in the **Federal Register** of August 14, 2014, providing notice of entering into a compact with the Republic of Ghana. The document contained an incomplete Uniform Resource Locator for the text of the Compact posted on the MCC Web site.

FOR FURTHER INFORMATION CONTACT: John C. Mantini, 202–521–3863.

Correction

In the **Federal Register** of August 14, 2014, in FR Doc. 2014–19196, on page 47684, in the second column, correct the **SUMMARY** caption to read:

SUMMARY:

In accordance with Section 610(b)(2) of the Millennium Challenge Act of 2003 (22 U.S.C. 7701–7718), the Millennium Challenge Corporation (MCC) is publishing a summary of the Millennium Challenge Compact between the United States of America, acting through the Millennium Challenge Corporation, and the Republic of Ghana. Representatives of the United States Government and Ghana executed the Compact documents on August 5, 2014. The complete text of the Compact has been posted at *http://www.mcc.gov/documents/agreements/compact-ghana-power.pdf.*

Dated: October 9, 2014.

John C. Mantini,

Assistant General Counsel, Millennium Challenge Corporation.

[FR Doc. 2014–24587 Filed 10–15–14; 8:45 am]

BILLING CODE 9211–03–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2015–003]

National Archives Digitization Strategy; Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of proposed revisions to the National Archives Digitization Strategy.

SUMMARY: The National Archives and Records Administration (NARA) is revising our digitization strategy and we are soliciting public comments on the proposed draft. You may access the draft strategy document at *http://www.archives.gov/digitization/strategy.html.*

NARA identifies, preserves, and provides access to the Federal Government's vast holdings of over 12 billion pages of archival materials, the majority of which currently exist only in analog or paper form. We previously issued a digitization strategy in May 2008, and it helped facilitate public access to more than 230 million digital images of analog records. We're proposing changes to that strategy to enable more digitization going forward.

DATES: Submit comments on or before November 17, 2014 to be assured of consideration.

ADDRESSES: Send comments by email to *digitization@nara.gov, regulations_comments@nara.gov,* or post comments on the NARA blog post at *http://blogs.archives.gov/online-public-access/?p=9283.*

FOR FURTHER INFORMATION CONTACT: For information on NARA's digitization strategy, contact Markus Most by telephone at 301–837–1643, by email at *Markus.Most@nara.gov,* or by mail to Markus Most, Digitization Division Director, Office of Innovation, Room 3200; National Archives and Records Administration; 8601 Adelphi Rd; College Park, MD 20740. For information on this notice, contact Kimberly Keravuori by email at *regulation_comments@nara.gov,* or by mail to Kimberly Keravuori, Regulatory Program Manager, Strategy Division; National Archives and Records Administration; Suite 4100; 8601 Adelphi Road; College Park, MD 20740.

SUPPLEMENTARY INFORMATION: NARA is updating its digitization strategy, last issued in 2008, for several reasons. Since 2008, there have been rapid developments in areas of technology and collaboration that have changed the landscape of what is possible, expanding our options for collaboration with other organizations and for faster or more accessible digitization techniques for sometimes-delicate archival documents. These developments have also changed how people make use of documents and information, and their expectations about how they should be able to access them. In recognition of these changes and the need to make even more of NARA's vast and diverse range of permanent records available to people across the country, we issued a new agency Strategic Plan in March 2014, with an even greater emphasis on digitization. As a result of the rapid developments, changes in peoples' use and access expectations, and NARA's increased emphasis on digitization, we need to revise the 2008 digitization strategy. The proposed revisions signal key shifts in approach to digitization at NARA, including expansion of the variety and types of partnerships with institutions and organizations, greater emphasis on public access throughout internal agency digitization work processes, and promotion of public engagement in the digitization of NARA records. We welcome your comments on the proposed strategy.

Dated: October 9, 2014.

David S. Ferriero,

Archivist of the United States.

[FR Doc. 2014–24595 Filed 10–15–14; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel; Correction

AGENCY: National Endowment for the Humanities.

ACTION: Notice of Meetings; correction.

SUMMARY: The National Endowment for the Humanities published a document in the **Federal Register** of September 15, 2014, concerning notice of meetings of the Humanities Panel during the month of October 2014. Three meetings were added to the schedule after the notice was posted. All other information remains the same.

FOR FURTHER INFORMATION CONTACT: Lisette Voyatzis, (202) 606–8322.

Correction

In the **Federal Register** of September 15, 2014, in FR Doc. 2014–21962, on page 55018, in the third column, replace the ''Summary'' caption with:

SUMMARY: The National Endowment for the Humanities will hold seventeen meetings of the Humanities Panel, a federal advisory committee, during October, 2014. The purpose of the meetings is for panel review, discussion, evaluation, and recommendation of applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965.

In the **Federal Register** of September 15, 2014, in FR Doc. 2014–21962, on

page 55019, in the second column after line thirty-seven (37) add:

15. DATE: October 28, 2014

TIME: 8:30 a.m. to 5:00 p.m.

ROOM: Conference Call

This meeting will discuss applications for the Enduring Questions: Pilot Course Grants program, submitted to the Division of Education Programs.

16. DATE: October 29, 2014

TIME: 8:30 a.m. to 5:00 p.m.

ROOM: Conference Call

This meeting will discuss applications for the Enduring Questions: Pilot Course Grants program, submitted to the Division of Education Programs.

17. DATE: October 30, 2014

TIME: 8:30 a.m. to 5:00 p.m.

ROOM: Conference Call

This meeting will discuss applications for the Enduring Questions: Pilot Course Grants program, submitted to the Division of Education Programs.

Dated: October 10, 2014.

Lisette Voyatzis,

Committee Management Officer.

[FR Doc. 2014–24594 Filed 10–15–14; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Li Ling Hamady, ACA Permit Officer, Division of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Or by email: *ACApermits@nsf.gov*

SUPPLEMENTARY INFORMATION: On September 10, 2014 the National Science Foundation published a notice in the **Federal Register** of a permit application received. The permit was issued on October 9, 2014 to: Dr. Kenneth W. Sims Permit No. 2015–007.

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2014–24568 Filed 10–15–14; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2014–0145]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on June 20, 2014.

1. *Type of submission, new, revision, or extension:* New.

2. *The title of the information collection:* Request for Information Related to the Filtering Strategies and Severe Accident Management of Boiling Water Reactors (BWR) with Mark I and Mark II Containments Rulemaking.

3. *Current OMB approval number:* 3150–XXXX.

4. *The form number if applicable:* N/A.

5. *How often the collection is required:* Once.

6. *Who will be required or asked to report:* The Nuclear Energy Institute (NEI) has been asked to respond for the industry. All BWR with Mark I and Mark II containments are expected to provide information to NEI.

7. *An estimate of the number of annual responses:* 34.

8. *The estimated number of annual respondents:* 34; the NEI is collecting information that will be submitted to the NRC. The NRC estimates that there are 30 nuclear power plants that will be affected and one organization (NEI).

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* The NRC estimates the one-time burden associated with the filtering strategies rulemaking request for information will be 2,140 hours and 34 responses. This represents an average annual burden of 713.3 hours and 11.33 responses. The estimated annual cost is $193,018 (713.3 hours × $272/hr.).

10. *Abstract:* The Information being collected is for the Filtering Strategies and Severe Accident Management of BWR with Mark I and Mark II Containment rulemaking. The NRC is requesting specific information, including detailed cost estimates of alternatives, general assumptions from proprietary documents being made public and plant-specific information on BWR with Mark I and Mark II containments.

The public may examine and have copied, for a fee, publicly-available documents, including the final supporting statement at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/.* The document will be available on the NRC's home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by November 17, 2014. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Vlad Dorjets, Desk Officer, Office of Information and Regulatory Affairs (3150–XXXX), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be emailed to *Vladik_Dorjets@omb.eop.gov* or submitted by telephone at 202–395–7315.

The Acting NRC Clearance Officer is Brenda Miles, telephone: 301–415–7884.

Dated at Rockville, Maryland, this 10th day of October 2014.

For the Nuclear Regulatory Commission.

Brenda Miles,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. 2014–24590 Filed 10–15–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2014–0148]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on July 2, 2014.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR part 100 ''Reactor Site Criteria.''

3. *Current OMB approval number:* 3150–0093.

4. *The form number if applicable:* Not applicable.

5. *How often the collection is required:* As necessary in order for the NRC to assess the adequacy of proposed seismic design bases and the design bases for other site hazards for nuclear power and test reactors constructed and licensed in accordance with parts 50 and 52 of Title 10 of the *Code of Federal Regulations* (10 CFR), and the Atomic Energy Act of 1954, as amended.

6. *Who will be required or asked to report:* Applicants and licensees for nuclear power and test reactors.

7. *An estimate of the number of annual responses:* 2.3.

8. *The estimated number of annual respondents:* 2.3.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* Annually, 167,900 hours (73,000 per application × 2.3 applications).

10. *Abstract:* Part 100, A Reactor Site Criteria, establishes approval requirements for proposed sites for the purpose of constructing and operating stationary power and testing reactors pursuant to the provisions of 10 CFR parts 50 and 52. These reactors are required to be sited, designed, constructed, and maintained to withstand geologic hazards, such as faulting, seismic hazards, and the maximum credible earthquake, to protect the health and safety of the public and the environment. Non-seismic siting criteria must also be evaluated. Non-seismic siting criteria include such factors as population density, the proximity of man-related hazards, and site atmospheric dispersion characteristics. The NRC uses the information required by 10 CFR part 100 to evaluate whether natural phenomena and potential man-made hazards will be appropriately accounted for in the design of nuclear power and test reactors.

The public may examine and have copied for a fee publicly-available documents, including the final supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/.* The document will be available on the NRC's home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by November 17, 2014. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Vlad Dorjets, Desk Officer, Office of Information and Regulatory Affairs (3150–0093), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be emailed to *Vladik_Dorjets@omb.eop.gov* or submitted by telephone at 202–395–7315.

The Acting NRC's Clearance Officer is Brenda Miles, 301–415–7884.

Dated at Rockville, Maryland, this 10th day of October 2014.

For the Nuclear Regulatory Commission.

Brenda Miles,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. 2014–24589 Filed 10–15–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2014–0226]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* Assessment of Cyber Security for Byproduct Materials Licensees.

2. *Current OMB approval number:* 3150–XXXX.

3. *How often the collection is required:* One-time.

4. *Who is asked to report:* All medical, industrial, and academic users of Category 1 and 2 radioactive materials.

5. *The number of respondents:* 720.

6. *The number of hours needed to complete the request:* 1,800.

7. *Abstract:* The NRC is seeking to better understand the cyber security threats confronting medical, industrial, and academic users of Category 1 and 2 radioactive materials. This information will be gathered utilizing a questionnaire or set of questionnaires issued to the different types of byproduct materials licensees. This is a voluntary information request.

Submit by December 15, 2014, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

The public may examine and have copied for a fee publicly-available documents, including the draft supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/.* The document will be available on the NRC's home page site for 60 days after the signature date of this notice.

Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that

you do not want to be publicly disclosed. Comments submitted should reference Docket No. NRC–2014–0226. You may submit your comments by any of the following methods: Electronic comments go to *http://www.regulations.gov* and search for Docket No. NRC–2014–0226. Mail comments to the NRC's Acting Clearance Officer, Brenda Miles (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Questions about the information collection requirements may be directed to the NRC's Acting Clearance Officer, Brenda Miles (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–7884, or by email to *INFOCOLLECTS.Resource@NRC.GOV.*

Dated at Rockville, Maryland, this 10th day of October, 2014.

For the Nuclear Regulatory Commission.

Brenda Miles,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. 2014–24592 Filed 10–15–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2014–0105]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on July 2, 2014.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* NRC Form 445, ''Request for Approval of Official Foreign Travel.''

3. *Current OMB approval number:* 3150–0193.

4. *The form number if applicable:* NRC Form 445.

5. *How often the collection is required:* On occasion.

6. *Who will be required or asked to report:* Non-Federal consultants, contractors and NRC invited travelers (i.e., non-NRC employees).

7. *An estimate of the number of annual responses:* 20.

8. *The estimated number of annual respondents:* 20.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 40 hours (2 hours per response).

10. *Abstract:* Form 445, ''Request for Approval of Foreign Travel,'' is supplied by consultants, contractors, and NRC invited travelers who must travel to foreign countries in the course of conducting business for the NRC. In accordance with 48 CFR 20, ''NRC Acquisition Regulation,'' contractors traveling to foreign countries are required to complete this form. The information requested includes the name of the Office Director/Regional Administrator or Chairman, as appropriate, the traveler's identifying information, purpose of travel, listing of the trip coordinators, other NRC travelers and contractors attending the same meeting, and a proposed itinerary.

The public may examine and have copied for a fee publicly-available documents, including the final supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/.* The document will be available on the NRC's home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by November 17, 2014. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Vlad Dorjets, Desk Officer, Office of Information and Regulatory Affairs (3150–0193), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be emailed to *Vladik_Dorjets@omb.eop.gov* or submitted by telephone at 202–395–7315.

The Acting NRC's Clearance Officer is Brenda Miles, telephone: 301–415–7884.

Dated at Rockville, Maryland, this 10th day of October, 2014.

For the Nuclear Regulatory Commission.

Brenda Miles,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. 2014–24588 Filed 10–15–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2014–0130]

Agency Information Collection Activities: Submission for the Office of Management and Budget Review; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget (OMB) review of information collection and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on July 21, 2014.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* 10 CFR Part 74—Material Control and Accounting of Special Nuclear Material.

3. *Current OMB approval number:* 3150–0123.

4. *The form number if applicable:* N/A.

5. *How often the collection is required:* Submission of fundamental material control plans is a one-time requirement which has been completed by all current licensees as required. However, licensees may submit amendments or revisions to the plans as necessary. In addition, specified inventory and material status reports are required annually or semi-annually. Other reports are submitted as events occur.

6. *Who will be required or asked to report:* Persons licensed under part 70 of Title 10 of the *Code of Federal Regulations* (10 CFR) who possess and use certain forms and quantities of Special Nuclear Material (SNM).

7. *An estimate of the number of annual responses:* 170.

8. *The estimated number of annual respondents:* 18.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* The total number of annual burden hours is 9,914 hours (9,005 hours for recordkeeping and 909 hours for reporting).

10. *Abstract:* Part 74 establishes requirements for material control and accounting of SNM, and specific performance-based regulations for licensees authorized to possess, use, and produce strategic SNM, and SNM of moderate strategic significance and low strategic significance. The information is used by the NRC to make licensing and regulatory determinations concerning material accounting of SNM and to satisfy obligations of the United States to the International Atomic Energy Agency. Submission or retention of the information is mandatory for persons subject to the requirements.

The public may examine and have copied for a fee publicly-available documents, including the final supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/.* The document will be available on the NRC's home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by November 17, 2014. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Vlad Dorjets, Desk Officer, Office of Information and Regulatory Affairs (3150–0123), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be emailed to *Vladik_Dorjets@omb.eop.gov* or submitted by telephone at 202–395–7315.

The Acting NRC's Clearance Officer is Brenda Miles, 301–415–7884.

Dated at Rockville, Maryland, this 10th day of October 2014.

For the Nuclear Regulatory Commission.

Brenda Miles,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2014–24591 Filed 10–15–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–295, 50–304 and 72–1037; NRC–2014–0199]

Zion Solutions, LLC; Zion Nuclear Power Station, Units 1 and 2; Independent Spent Fuel Storage Installation

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuing an exemption to the spent fuel storage requirements applicable to Zion *Solutions,* LLC. (hereafter, ZS or the applicant), general license to operate an Independent Spent Fuel Storage Installation (ISFSI) at the Zion Nuclear Power Station (ZNPS). ZS seeks approval to load MAGNASTOR storage casks (Certificate of Compliance (CoC) No. 72–1031) in a different manner than permitted by any amendment to the MAGNASTOR CoC, but which the NRC has previously reviewed as a proposed amendment to that CoC. The applicant is currently loading storage casks and maintains that relief from requirements provides flexibility in operations, minimizes equipment runtime and repair, and minimizes personnel dose.

ADDRESSES: Please refer to Docket ID NRC–2014–0199 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0199. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection 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.* For the convenience of the reader, the ADAMS accession numbers are provided in a table in the ''Availability of Documents'' section of this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Pamela Longmire, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–287–0829, email: *Pamela.Longmire@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering issuing an exemption to the spent fuel storage requirements applicable to ZS to operate an ISFSI at the ZNPS located in Zion Illinois. Therefore, as required by section 51.30 of Title 10 of the *Code of Federal Regulations* (10 CFR), the NRC performed an environmental assessment. Based on the results of the environmental assessment that follows, the NRC has determined not to prepare an environmental impact statement for the exemption, and is issuing a finding of no significant impact.

Zion *Solutions,* LLC. is a general licensee under 10 CFR Part 72 for the storage of spent fuel in its ISFSI. The applicant is subject to 10 CFR 72.212, which provides in part that [t]he general license is limited to storage of spent fuel in casks approved under the provisions of 10 CFR Part 72. The general licensee must ensure that each cask used conforms to the terms, conditions, and specifications of a CoC, or an amended CoC, listed in Section 72.214.

The applicant seeks approval to load casks in a different manner than permitted by its current CoC, but which the NRC has previously reviewed as a proposed amendment to that CoC, but not issued as a final rule. NAC, the cask vendor, by application dated June 18, 2013, submitted an amendment request, as supplemented September 6, 2013, and September 19, 2013, to change limiting condition operation (LCO) 3.1.1. The NRC technical review of the NAC CoC amendment request is documented in the safety evaluation report. The NRC staff in the safety evaluation report concludes that the revised time limits of helium backfill and transportable storage canister (TSC) transfer time of technical specification (TS) LCO 3.1.1 are in compliance with 10 CFR Part 72. The evaluation of the thermal design provides reasonable assurance that the resulting values

proposed will allow safe storage of the spent fuel. The applicant's exemption request for modified transfer time when a canister's thermal output is less than or equal to twenty (20) kilowatts, ≤20 kW, relies, as the basis for approval, on the NAC CoC amendment request review performed by the NRC staff.

II. Environmental Assessment

Description of the Proposed Action

The proposed action would exemption ZS from specific portions of the requirements of 10 CFR 72.212 ''Conditions of general license issued under § 72.210,'' specifically 10 CFR 72.212(a)(2), 72.212(b)(3), 72.212(b)(5)(i), 72.212(b)(11) and 10 CFR 72.214 ''List of approved spent fuel storage casks,'' for the ZNPS ISFSI. The proposed exemption request pertains to the requirements of technical specification LCO 3.1.1, TSC, Section 1, first table, regarding allowed transfer time from loading of a TSC inside the MAGNASTOR transfer cask (MTC) to placement into the vertical concrete cask (VCC) following the completion of helium backfill. The proposed exemption is to modify the allowable transfer time from eight (8) hours to six hundred (600) hours. The transfer time is for the movement of a TSC, with heat load ≤20 kW, from the decontamination pit to the VCC.

The proposed exemption is in accordance with the ZS application dated June 25, 2014,

Need for the Proposed Action

The proposed action would relieve the applicant from requirements of 72.212(a)(2), 72.212(b)(3), 72.212(b)(5)(i), 72.212(b)(11), and 10 CFR 72.214 and requests to use a LCO submitted by the cask vendor, NAC, as ''Amendment No. 4'' to NAC MAGNASTOR, CoC No. 1031. CoC No. 1031, Amendment No. 4 increases the transfer time for a canister with a heat load ≤20 kW from 8 hours, as required by LCO 3.1.1 under Amendment No. 3, to 600 hours. The applicant maintains that extending the period for the operator to complete the transfer provides the operator the opportunity to conclude the activity, provides flexibility in operations, minimizes equipment runtime and repair, and minimizes personnel dose.

Environmental Impacts of the Proposed Action

The NRC staff has determined that issuance of the proposed exemption will have no significant environmental impact.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). This alternative would have the same environmental impacts as the proposed action. In the event the NRC were to deny the requested exemption, ZS would continue to operate under the requirements of the current MAGNASTOR® CoC, which has previously been determined to have no significant impacts. The potential environmental impact of using the MAGNASTOR® system was initially analyzed in the environmental assessment for the final rule to add the MAGNASTOR® system to the list of approved spent fuel storage casks in 10 CFR 72.214 (73 FR 70587; November 21, 2008). The environmental assessment for the November 21, 2008, final rule concluded that there would be no significant environmental impact for adding the MAGNASTOR® system, and therefore, the NRC issued a finding of no significant impact.

Alternative Use of Resources

This action does not impact any resource implications discussed in previous environmental reviews.

Agencies and Persons Consulted

In accordance with its stated policy, on August 21, 2014, the staff consulted with Mr. Joseph Klinger, Assistant Director of the Illinois Emergency Management Agency (IEMA) by email, regarding the environmental impact of the proposed action. The state's response was received by email dated August 28, 2014. The email response states that IEMA reviewed the draft environmental assessment and had no comments. The state official concurred with the environmental assessment and finding of no significant impact.

The NRC staff has determined that a consultation under Section 7 of the Endangered Species Act is not required because the proposed action will not affect listed species or critical habitat. The NRC staff has also determined that the proposed action is not a type of activity that has the potential to impact historic properties because the proposed action would occur within the established ZNPS site boundary. Therefore, no consultation is required under Section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

In the preparation of this Environmental Assessment, the staff used guidance in NUREG–1748, ''Environmental Review Guidance for Licensing Actions Associated with NMSS Programs.''

The proposed action will not increase the probability or consequences of accidents. No changes are being made in the types or quantities of effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action. The proposed action does not affect non-radiological effluents and has no other environmental impacts. Thus, there are no significant non-radiological impacts associated with the proposed action. Therefore, the proposed action will not have a significant effect on the quality of the human environment. Based on these findings, the NRC concludes that there are no significant environmental impacts associated with the approval of the requested exemption.

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

IV. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS Accession No.
NAC application dated June 18, 2013	ML13171A031.
NAC supplement dated September 6, 2013	ML13261A278.
NAC supplement dated September 19, 2013	ML13268A049.
NRC safety evaluation report	ML14010A495.
ZS exemption request	ML14182A474.

Document	ADAMS Accession No.
NRC e-mail dated August 21, 2014, to Illinois Emergency Management Agency forwarding draft environmental assessment and Illinois Emergency Management Agency response dated August 28, 2014, to draft environmental assessment.	ML14246A464.
NUREG–1748, ''Environmental Review Guidance for Licensing Actions Associated with NMSS Programs''	ML032450279.

Dated at Rockville, Maryland, this 3rd day of October, 2014.

For the Nuclear Regulatory Commission.

Michele Sampson,

Chief, Licensing Branch, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2014–24640 Filed 10–15–14; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 73331; File No. SR–NYSEArca–2014–104]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Use of Derivative Instruments by Certain PIMCO Exchange-Traded Funds

October 9, 2014.

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 September 29, 2014, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') 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 change the description of the means of achieving the investment objective applicable to the following funds relating to each fund's use of derivative instruments: PIMCO Build America Bond Exchange-Traded Fund, PIMCO Diversified Income Exchange-Traded Fund, PIMCO Foreign Currency Strategy Exchange-Traded Fund, PIMCO Global Advantage® Inflation-Linked Bond Strategy Exchange-Traded Fund, PIMCO Intermediate Municipal Bond Exchange-Traded Fund, PIMCO Low Duration Exchange-Traded Fund, PIMCO Real Return Exchange-Traded Fund, PIMCO Short-Term Municipal Bond Exchange-Traded Fund and PIMCO Total Return Exchange-Traded Fund (each a ''Fund'' and collectively, the ''Funds''). In addition, the Exchange proposes changes to certain representations regarding (1) the limitation on each Fund's holdings in illiquid assets, and (2) each Fund's holdings of securities and financial instruments whose principal market is not a member of the Intermarket Surveillance Group (''ISG'') or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. The Funds have been approved by the Securities and Exchange Commission (''Commission'') for listing and trading on the Exchange and are currently listed and traded on the Exchange under NYSE Arca Equities Rule 8.600, except for PIMCO Real Return Exchange-Traded Fund, which has not yet commenced operations. 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 Commission has approved the listing and trading on the Exchange of shares (''Shares'') of the PIMCO Build America Bond Exchange-Traded Fund, PIMCO Diversified Income Exchange-Traded Fund, PIMCO Foreign Currency Strategy Exchange-Traded Fund, PIMCO Global Advantage® Inflation-Linked Bond Strategy Exchange-Traded Fund, PIMCO Intermediate Municipal Bond Exchange-Traded Fund, PIMCO Low Duration Exchange-Traded Fund, PIMCO Real Return Exchange-Traded Fund, PIMCO Short-Term Municipal Bond Exchange-Traded Fund, and PIMCO Total Return Exchange-Traded Fund [4] under NYSE Arca Equities Rule

[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 Nos. 71125 (December 18, 2013), 78 FR 77743 (December 24, 2013) (SR–NYSEArca-2013–106) (order approving listing and trading of PIMCO Diversified Income Exchange-Traded Fund, PIMCO Low Duration Exchange-Traded Fund and PIMCO Real Return Exchange-Traded Fund); 68871 (February 8, 2013), 78 FR 11238 (February 15, 2013) (SR–NYSEArca-2012–138) (order approving listing and trading of PIMCO Foreign Currency Strategy Exchange-Traded Fund); 66670 (March 28, 2012), 77 FR 20087 (April 3, 2013) (SR–NYSEArca-2012–09) (order approving listing and trading of PIMCO Global Advantage® Inflation-Linked Bond Strategy Exchange-Traded Fund); 62856 (September 7, 2010), 75 FR 55840 (September 14, 2010) (SR–NYSEArca-2010–68) (order approving listing and trading of PIMCO Build America Bond Exchange-Traded Fund); 60981 (November 10, 2009) 74 FR 59594 (November 18, 2009) (SR–NYSEArca-2009–79) (order approving listing and trading of PIMCO Intermediate Municipal Bond Exchange-Traded Fund; PIMCO Short-Term Municipal Bond Exchange-Traded Fund) (each a ''Prior Order'' and collectively, the ''Prior Orders''). *See* also, Securities Exchange Act Release No. 66321 (February 3, 2012), 77 FR 6850 (February 9, 2012) (SR–NYSEArca-2011–95) (order approving listing and trading of shares of the PIMCO Total Return Exchange-Traded Fund) (''First PIMCO Total Return Order''). *See also* Securities Exchange Act Release No. 70774 (October 29, 2013), 78 FR 66396 (November 5, 2013) (SR–NYSEArca-2013–106) (notice of filing of proposal relating to PIMCO Diversified Income Exchange-Traded Fund, PIMCO Low Duration Exchange-Traded Fund and PIMCO Real Return Exchange-Traded Fund); Securities Exchange Act Release No. 68476 (December 19, 2012), 77 FR 76121 (December 26, 2012) (SR–NYSEArca-2012–138) (notice of filing of proposal relating to PIMCO Foreign Currency Strategy Exchange-Traded Fund); Securities Exchange Act Release No. 66381 (February 10, 2012), 77 FR 9281 (February 16, 2012) (SR–NYSEArca-2012–09) (notice of filing of proposal relating to PIMCO Global Advantage® Inflation-Linked Bond Strategy Exchange-Traded Fund); Securities Exchange Act Release No. 62585 (July 28, 2010), 75 FR 47045 (August 4, 2010) (SR–NYSEArca-2010–68) (notice of filing of proposal relating to PIMCO Build America Bond Exchange-Traded Fund); Securities Exchange Act Release No. 60619, (September 3, 2009), 74 FR 46820 (September 11, 2009) (SR–NYSEArca-2009–79) (notice of filing of proposal relating to PIMCO Intermediate Municipal Bond Strategy Exchange-Traded Fund and PIMCO Short-

Continued

8.600, which governs the listing and trading of Managed Fund Shares. The Shares are offered by PIMCO ETF Trust (the ''Trust''), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[5] The investment manager to the Funds is Pacific Investment Management Company LLC (''PIMCO'' or the ''Adviser'').

In this proposed rule change, the Exchange proposes changing the description of each Fund's use of derivative instruments, as described below. The portions of this proposed rule change that relate to the Funds' proposed use of derivative instruments are identical to the portion of the proposed rule change approved by the Commission with respect to the continued listing and trading of the PIMCO Total Return Exchange-Traded Fund, that permitted it to use derivative instruments.[6] Accordingly, this proposed rule change seeks to permit the Funds (other than the PIMCO Total Return Exchange-Traded Fund) to use derivative instruments on the same basis, and subject to the same conditions, as provided in the Second PIMCO Total Return Release, provided, however, that the Exchange also proposes to explicitly include options on swap agreements as derivative instruments in which the PIMCO Total Return Exchange-Traded Fund and all other Funds may invest, as described further below. In addition, the Exchange proposes changes to certain representations in the Prior Releases and the First PIMCO Total Return Release regarding (1) the limitation on each Fund's holdings in illiquid assets, and (2) each Fund's holdings of securities and financial instruments whose principal market is not a member of the ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement, as described further below.

The Funds' Use of Derivatives

On December 6, 2012, the staff of the Commission's Division of Investment Management (''Division'') issued a no-action letter (''No-Action Letter'') relating to the use of derivatives by actively-managed exchange traded funds (''ETFs'').[7] The No-Action Letter noted that, in March of 2010, the Commission announced in a press release that the staff was conducting a review to evaluate the use of derivatives by mutual funds, ETFs, and other investment companies and that, pending completion of this review, the staff would defer consideration of exemptive requests under the 1940 Act relating to, among others, actively-managed ETFs that would make significant investments in derivatives.

The No-Action Letter stated that Division staff will no longer defer consideration of exemptive requests under the 1940 Act relating to actively-managed ETFs that make use of derivatives provided that they include representations to address some of the concerns expressed in the Commission's March 2010 press release. These representations are: (i) That the ETF's board periodically will review and approve the ETF's use of derivatives and how the ETF's investment adviser assesses and manages risk with respect to the ETF's use of derivatives; and (ii) that the ETF's disclosure of its use of derivatives in its offering documents and periodic reports is consistent with relevant Commission and staff guidance. The No-Action Letter stated that the Division would not recommend enforcement action to the Commission under sections 2(a)(32), 5(a)(1), 17(a), 22(d), and 22(e) of the 1940 Act, or rule 22c–1 under the 1940 Act if actively-managed ETFs operating in reliance on specified orders (which include the Trust's Exemptive Order[8]) invest in options contracts, futures contracts or swap agreements provided that they comply with the representations stated in the No-Action Letter, as noted above.

In the Prior Releases for the PIMCO Diversified Income Exchange-Traded Fund, PIMCO Foreign Currency Strategy Exchange-Traded Fund, PIMCO Global Advantage® Inflation-Linked Bond Exchange-Traded Fund, PIMCO Low Duration Exchange-Traded Fund, and PIMCO Real Return Exchange-Traded Fund) [sic], the Exchange stated that such Funds would not invest in options contracts, futures contracts or swap agreements. In the Prior Release for the PIMCO Build America Bond Exchange-Traded Fund, the Exchange stated such Fund is restricted from investing in derivative instruments such as options contracts, futures contracts, and swap agreements. The Prior Releases for the PIMCO Intermediate Municipal Bond Exchange-Traded Fund, and PIMCO Short-Term Municipal Bond Exchange-Traded Fund made no statement with respect to such Funds' use of derivatives. Going forward, in view of the No-Action Letter, the Exchange is proposing to permit the Funds to use derivative instruments, as described below.[9]

As summarized in the following table, the Prior Releases stated that the applicable Funds will invest under normal circumstances at least a certain percentage of their assets in certain instruments (as applicable to each such Fund, the ''Primary Investment Strategy'').[10]

Term Municipal Bond Strategy Exchange-Traded Fund) (each a ''Prior Notice'' and collectively, the ''Prior Notices'', and together with the Prior Orders, the ''Prior Releases'').'' In addition, see Securities Exchange Act Release No. 65988 (December 16, 2011), 76 FR 79741 (December 22, 2011) (SR–NYSEArca-2011–95) (notice of filing of proposal relating to PIMCO Total Return Exchange-Traded Fund) (''First PIMCO Total Return Notice'').

[5] The Trust is registered under the Investment Company Act of 1940 (''1940 Act''). On October 24, 2013 the Trust filed with the Commission the most recent post-effective amendment to its registration statement under the Securities Act of 1933 (15 U.S.C. 77a) (''1933 Act'') and under the 1940 Act relating to the Funds (File Nos. 333–155395 and 811–22250), which took effect on October 31, 2013 (the ''Registration Statement''). The description of the operation of the Trust and the Funds herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 28993 (November 10, 2009) (File No. 812–13571) (''Exemptive Order'').

[6] *See* Securities Exchange Act Release Nos. 72666 (July, 24, 2014), 79 FR 44224 (July 30, 2014) (SR–NYSEArca–2013–122) (order approving use of derivative instruments by the PIMCO Total Return Exchange-Traded Fund) (''Second PIMCO Total Return Order''); 70905 (November 20, 2013), 78 FR 70610 (November 26, 2013) (SR–NYSEArca–2013–122) (notice of proposal relating to use of derivatives by PIMCO Total Return Exchange-Traded Fund) (''Second PIMCO Total Return Notice'' and, together with the Second PIMCO Total Return Order, the ''Second PIMCO Total Return Release'').

[7] *See* No-Action Letter dated December 6, 2012 from Elizabeth G. Osterman, Associate Director, Office of Exemptive Applications, Division of Investment Management.

[8] *See* note 5, *supra.*

[9] The Adviser represents that each Fund, in connection with its use of derivative instruments, will comply with the representations stated in the No-Action Letter, as noted above, namely: (i) That the Trust's Board of Trustees (''Board'') periodically will review and approve each Fund's use of derivatives and how the Adviser assesses and manages risk with respect to a Fund's use of derivatives; and (ii) that each Fund's disclosure of its use of derivatives in its offering documents and periodic reports is consistent with relevant Commission and staff guidance.

[10] As used in the Prior Releases (except for the Prior Notices and Prior Orders for the PIMCO Intermediate Municipal Bond Strategy Exchange-Traded Fund and the PIMCO Build America Bond Exchange-Traded Fund), the term ''under normal circumstances'' includes, but is not limited to, the absence of extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

Fund	Primary investment strategy
PIMCO Build America Bond Exchange-Traded Fund.	The Fund will invest under normal circumstances at least 80% of its assets in taxable municipal debt securities publicly issued under the Build America Bond program.
PIMCO Diversified Income Exchange-Traded Fund.	The Fund will invest under normal circumstances at least 65% of its total assets in a diversified portfolio of ''Fixed Income Instruments'' (as defined below) of varying maturities and forward contracts on such Fixed Income Instruments.
PIMCO Foreign Currency Strategy Exchange-Traded Fund.	The Fund will invest under normal circumstances at least 80% of its assets in currencies of, or Fixed Income Instruments denominated in the currencies of, foreign (non-U.S.) countries, including, but not limited to, a combination of short-term Fixed Income Instruments, money market securities, and currency forwards backed by high quality, low duration securities.
PIMCO Global Advantage® Inflation-Linked Bond Exchange-Traded Fund.	The Fund will invest under normal circumstances at least 80% of its assets in a portfolio of inflation-linked bonds that is economically tied to at least three developed and/or emerging market countries (one of which may be the United States).
PIMCO Intermediate Municipal Bond Exchange-Traded Fund.	The Fund will invest under normal circumstances at least 80% of its assets in a diversified portfolio of debt securities whose interest is, in the opinion of bond counsel for the issuer at the time of issuance, exempt from federal income tax (''Municipal Bonds'').
PIMCO Low Duration Exchange-Traded Fund.	The Fund will invest under normal circumstances at least 65% of its total assets in a diversified portfolio of Fixed Income Instruments of varying maturities and forward contracts on such Fixed Income Instruments.
PIMCO Real Return Exchange-Traded Fund.	The Fund will invest under normal circumstances at least 80% of its net assets in inflation-indexed bonds of varying maturities issued by U.S. and non-U.S. governments, their agencies or instrumentalities, and corporations, and forward contracts on such Fixed Income Instruments.
PIMCO Short-Term Municipal Bond Exchange-Traded Fund.	The Fund will invest under normal circumstances at least 80% of its assets in a diversified portfolio of Municipal Bonds.

''Fixed Income Instruments'' include bonds, debt securities and other similar instruments issued by various U.S. and non-U.S. public- or private-sector entities.[11] The Exchange proposes to revise each Fund's Primary Investment Strategy as set forth in the applicable Prior Release to provide that a Fund's Primary Investment Strategy may be represented by derivatives based on the instruments that are the subject of the Primary Investment Strategy.

With respect to each Fund, derivative instruments will be forwards;[12] exchange-traded and over-the-counter (''OTC'') options contracts; exchange-traded futures contracts; exchange-traded and OTC swap agreements; exchange-traded options on futures contracts; and OTC options on swap agreements.[13] Generally, derivatives are financial contracts whose value [sic] depends upon, or is derived from, the value of an underlying asset, reference rate or index, and may relate to stocks, bonds, interest rates, currencies or currency exchange rates, commodities, and related indexes. Each Fund may, but will not be required to, use derivative instruments for risk management purposes or as part of its investment strategies.[14]

The Exchange notes that the Second PIMCO Total Return Release did not explicitly reference options on swap agreements, which are a form of OTC option contracts, as derivative instruments in which such Fund may invest. The Exchange, therefore, also proposes to explicitly include options on swap agreements as derivative instruments in which the PIMCO Total Return Exchange-Traded Fund (as well as all other Funds) may invest.

Investments in derivative instruments will be made in accordance with the 1940 Act and consistent with the applicable Fund's investment objective and policies. As described further below, each Fund will typically use derivative instruments as a substitute for taking a position in the underlying asset and/or as part of a strategy designed to reduce exposure to other risks, such as interest rate or currency risk. Each Fund may also use derivative instruments to enhance returns. To limit the potential risk associated with such transactions, each Fund will segregate or ''earmark'' assets determined to be liquid by PIMCO in accordance with procedures established by the Trust's Board of Trustees and in accordance with the 1940 Act (or, as permitted by applicable regulation, enter into certain offsetting positions) to cover its obligations under derivative instruments. These procedures have been adopted consistent with Section 18 of the 1940 Act and related Commission guidance. In addition, each Fund will include appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of a Fund,

[11] The term ''Fixed Income Instruments'' is defined with respect to each Fund as set forth in the Prior Releases and the Second PIMCO Total Return Release (*see* notes 4 and 6, *supra*). Examples include: debt securities issued or guaranteed by the U.S. Government, its agencies or government-sponsored enterprises (''U.S. Government Securities''); corporate debt securities of U.S. and non-U.S. issuers, including convertible securities and corporate commercial paper; mortgage-backed and other asset-backed securities; inflation-indexed bonds issued both by governments and corporations; structured notes, including hybrid or ''indexed'' securities and event-linked bonds; bank capital and trust preferred securities; loan participations and assignments; delayed funding loans and revolving credit facilities; bank certificates of deposit, fixed time deposits and bankers' acceptances; repurchase agreements on Fixed Income Instruments and reverse repurchase agreements on Fixed Income Instruments; debt securities issued by states or local governments and their agencies, authorities and other government-sponsored enterprises; obligations of non-U.S. governments or their subdivisions, agencies and government-sponsored enterprises; and obligations of international agencies or supranational entities. Securities issued by U.S. Government agencies or government-sponsored enterprises may not be guaranteed by the U.S. Treasury.

[12] Forwards are contracts to purchase or sell securities for a fixed price at a future date beyond normal settlement time (forward commitments).

[13] In the future, in the event that there are exchange-traded options on swaps, a Fund may invest in these instruments.

[14] Each Fund will seek, where possible, to use counterparties whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. PIMCO's Counterparty Risk Committee evaluates the creditworthiness of counterparties on an ongoing basis. In addition to information provided by credit agencies, PIMCO credit analysts evaluate each approved counterparty using various methods of analysis, including company visits, earnings updates, the broker-dealer's reputation, PIMCO's past experience with the broker-dealer, market levels for the counterparty's debt and equity, the counterparty's liquidity and its share of market participation.

including a Fund's use of derivatives, may give rise to leverage, causing a Fund to be more volatile than if it had not been leveraged.[15] Because the markets for certain securities, or the securities themselves, may be unavailable or cost prohibitive as compared to derivative instruments, suitable derivative transactions may be an efficient alternative for a Fund to obtain the desired asset exposure.

The Adviser believes that derivatives can be an economically attractive substitute for an underlying physical security that a Fund would otherwise purchase. For example, a Fund could purchase Treasury futures contracts instead of physical Treasuries or could sell credit default protection on a corporate bond instead of buying a physical bond. Economic benefits include potentially lower transaction costs or attractive relative valuation of a derivative versus a physical bond (*e.g.,* differences in yields).

The Adviser further believes that derivatives can be used as a more liquid means of adjusting portfolio duration as well as targeting specific areas of yield curve exposure, with potentially lower transaction costs than the underlying securities (*e.g.,* interest rate swaps may have lower transaction costs than physical bonds). Similarly, money market futures can be used to gain exposure to short-term interest rates in order to express views on anticipated changes in central bank policy rates. In addition, derivatives can be used to protect client assets through selectively hedging downside (or ''tail risks'') in a Fund.

A Fund also can use derivatives to increase or decrease credit exposure. Index credit default swaps (CDX) can be used to gain exposure to a basket of credit risk by ''selling protection'' against default or other credit events, or to hedge broad market credit risk by ''buying protection.'' Single name credit default swaps (CDS) can be used to allow a Fund to increase or decrease exposure to specific issuers, saving investor capital through lower trading costs. A Fund can use total return swap contracts to obtain the total return of a reference asset or index in exchange for paying a financing cost. A total return swap may be much more efficient than buying underlying securities of an index, potentially lowering transaction costs.

The Adviser believes that the use of derivatives will allow a Fund to selectively add diversifying sources of return from selling options. Option purchases and sales can also be used to hedge specific exposures in the portfolio, and can provide access to return streams available to long-term investors such as the persistent difference between implied and realized volatility. Option strategies can generate income or improve execution prices (*i.e.,* covered calls).

In view of the Exchange's proposal to permit the Funds (other than the PIMCO Total Return Exchange-Traded Fund) to use derivative instruments, as described above, each Fund's investments in derivative instruments may be used to enhance leverage. However, the Funds' investments will not be used to seek performance that is the multiple or inverse multiple (*e.g.,* 2Xs and 3Xs) of a Fund's broad-based securities market index.[16]

Other Investments

In addition to a Fund's use of derivatives in connection with its Primary Investment Strategy as described above, under the proposal each Fund may seek to invest in derivative instruments apart from a Fund's Primary Investment Strategy, consistent with a Fund's investment restrictions relating to exposure to other asset classes not related to a Fund's Primary Investment Strategy.

The Prior Releases relating to the PIMCO Foreign Currency Strategy Exchange-Traded Fund and PIMCO Global Advantage® Inflation-Linked Bond Exchange-Traded Fund also stated that those Funds may invest in debt securities and instruments that are economically tied to foreign (non-U.S.) countries. The Prior Releases for those Funds stated further that PIMCO generally considers an instrument to be economically tied to a non-U.S. country if the issuer is a foreign government (or any political subdivision, agency, authority or instrumentality of such government), or if the issuer is organized under the laws of a non-U.S. country. In the case of applicable money market instruments, such instruments will be considered economically tied to a non-U.S. country if either the issuer or the guarantor of such money market instrument is organized under the laws of a non-U.S. country.

The Exchange proposes to add to this representation that, with respect to derivative instruments, as proposed to be used, PIMCO generally will consider such instruments to be economically tied to non-U.S. countries if the underlying assets are foreign currencies (or baskets or indexes of such currencies), or instruments or securities that are issued by foreign governments (or any political subdivision, agency, authority or instrumentality of such governments) or issuers organized under the laws of a non-U.S. country (or if the underlying assets are money market instruments, as applicable, if either the issuer or the guarantor of such money market instruments is organized under the laws of a non-U.S. country).

Derivatives Valuation Methodology for Purposes of Determining Net Asset Value

According to the Registration Statement, the net asset value (''NAV'') of each Fund's Shares is determined by dividing the total value of a Fund's portfolio investments and other assets, less any liabilities, by the total number of Shares outstanding. Each Fund's Shares are valued as of the close of regular trading of the New York Stock Exchange (''NYSE'') (normally 4:00 p.m., Eastern time (''E.T.'')) (the ''NYSE Close'') on each day NYSE Arca is open (''Business Day''). Information that becomes known to the applicable Fund or its agents after the NAV has been calculated on a particular day will not generally be used to retroactively adjust the price of a portfolio asset or the NAV determined earlier that day. Each Fund reserves the right to change the time its NAV is calculated if a Fund closes earlier, or as permitted by the Commission. For purposes of calculating NAV, portfolio securities and other assets for which market quotes are readily available are valued at market value. Market value is generally determined on the basis of last reported sales prices, or if no sales are reported, based on quotes obtained from a quotation reporting system, established market makers, or pricing services. Non-exchange-traded derivatives will normally be valued on the basis of quotes obtained from brokers and dealers or third party pricing services using data reflecting the earlier closing of the principal markets for those assets. Prices obtained from independent pricing services use information provided by market makers or estimates of market values obtained from yield data relating to investments or securities with similar characteristics. Exchange-traded options, futures and options on futures will generally be valued at the settlement price determined by the applicable exchange.

Derivatives for which market quotes are readily available will be valued at

[15] To mitigate leveraging risk, the Adviser will segregate or ''earmark'' liquid assets or otherwise cover the transactions that may give rise to such risk.

[16] Each Fund's broad-based securities market index is identified in a Fund's Registration Statement following a Fund's first full calendar year of performance.

market value. Local closing prices will be used for all instrument valuation purposes. For a Fund's 4:00 p.m. E.T. futures holdings, estimated prices from Reuters will be used if any cumulative futures margin impact is greater than $0.005 to the NAV due to futures movement after the fixed income futures market closes (3:00 p.m. E.T.) and up to the NYSE close (generally 4:00 p.m. E.T.). Swaps traded on exchanges such as the Chicago Mercantile Exchange (''CME'') or the Intercontinental Exchange (''ICE–US'') will use the applicable exchange closing price where available.

Derivatives Valuation Methodology for Purposes of Determining Intra-Day Indicative Value

On each Business Day, before commencement of trading in a Fund's Shares on NYSE Arca, each Fund discloses on its Web site the identities and quantities of the portfolio instruments and other assets held by a Fund that will form the basis for a Fund's calculation of NAV at the end of the Business Day.

In order to provide additional information regarding the intra-day value of Shares of a Fund, the NYSE Arca or a market data vendor disseminates every 15 seconds through the facilities of the Consolidated Tape Association or other widely disseminated means an updated Intra-day Indicative Value (''IIV'') for a Fund as calculated by an information provider or market data vendor.

A third party market data provider is currently calculating the IIV for the Funds that have commenced operations. For the purposes of determining the IIV, the third party market data provider's valuation of derivatives is expected to be similar to their valuation of all securities. The third party market data provider may use market quotes if available or may fair value securities against proxies (such as swap or yield curves).

Price information for the debt securities and other financial instruments held by each of the Funds, including the intra-day, closing settlement price for the Fixed Income Instruments and derivatives thereon, and other financial instruments held by each of the Funds, will be available through major market data vendors.

With respect to specific derivatives:

- Foreign currency derivatives may be valued intraday using market quotes, or another proxy as determined to be appropriate by the third party market data provider.
- Futures may be valued intraday using the relevant futures exchange data, or another proxy as determined to be appropriate by the third party market data provider.
- Interest rate swaps may be mapped to a swap curve and valued intraday based on changes of the swap curve, or another proxy as determined to be appropriate by the third party market data provider.
- CDX/CDS may be valued using intraday data from market vendors, or based on underlying asset price, or another proxy as determined to be appropriate by the third party market data provider.
- Total return swaps may be valued intraday using the underlying asset price, or another proxy as determined to be appropriate by the third party market data provider.
- Exchange listed options may be valued intraday using the relevant exchange data, or another proxy as determined to be appropriate by the third party market data provider.
- OTC options, including options on swaps, may be valued intraday through option valuation models (*e.g.,* Black-Scholes) or using exchange traded options as a proxy, or another proxy as determined to be appropriate by the third party market data provider.
- A third party market data provider's valuation of forwards will be similar to its valuation of the underlying securities, or another proxy as determined to be appropriate by the third party market data provider. The third party market data provider will generally use market quotes if available. Where market quotes are not available, they may fair value securities against proxies (such as swap or yield curves). Each Fund's disclosure of forward positions will include information that market participants can use to value these positions intraday.

Disclosed Portfolio

Each Fund's disclosure of derivative positions in the Disclosed Portfolio will include information that market participants can use to value these positions intraday. On a daily basis, each Fund will disclose on each Fund's Web site the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, commodity, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in each Fund's portfolio.

Impact on Arbitrage Mechanism

The Adviser believes there will be minimal, if any, impact to the arbitrage mechanism as a result of the use of derivatives. Market makers and participants should be able to value derivatives as long as the positions are disclosed with relevant information. The Adviser believes that the price at which Shares trade will continue to be disciplined by arbitrage opportunities created by the ability to purchase or redeem creation units of Shares at their NAV, which should ensure that Shares will not trade at a material discount or premium in relation to their NAV.

The Adviser does not believe there will be any significant impacts to the settlement or operational aspects of a Fund's arbitrage mechanism due to the use of derivatives. Because derivatives generally are not eligible for in-kind transfer, they will typically be substituted with a ''cash in lieu'' amount when a Fund processes purchases or redemptions of creation units in-kind.

Illiquid Securities

The Exchange proposes to amend the representations in certain of the Prior Releases [17] relating to holdings of the Funds in illiquid assets to conform such representations to those made in the Prior Releases for the PIMCO Diversified Income Exchange-Traded Fund, PIMCO Low Duration Exchange-Traded Fund, PIMCO Real Return Exchange-Traded Fund, and the Second PIMCO Total Return Release, as described below.

In the respective Prior Releases for the PIMCO Build America Bond Exchange-Traded [sic], PIMCO Intermediate Municipal Bond Exchange-Traded Fund and PIMCO Short-Term Municipal Bond Exchange-Traded Fund and the First PIMCO Total Return Prior Release, the Exchange stated that each such Fund may invest up to 15% of its net assets in illiquid securities. In the Prior Release for the PIMCO Foreign Currency Strategy Exchange-Traded Fund, the Exchange stated that the Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), and that certain financial instruments, including, but not limited to, Rule 144A securities, loan participations and assignments, delayed funding loans, revolving credit facilities, and fixed- and floating-rate loans will be included

[17] *See* note 4, *supra.*

in the 15% limitation on illiquid securities. In the Prior Release for the PIMCO Global Advantage® Inflation-Linked Bond Strategy Exchange-Traded Fund, the Exchange stated that the Fund may hold in the aggregate up to 15% of its net assets in: (1) Illiquid securities, which include delayed funding loans, revolving credit facilities, fixed- and floating-rate loans and loan participations and assignments, and (2) Rule 144A securities.

The Exchange proposes that each of such representations in such Prior Releases be replaced and superseded by the representation in the respective Prior Releases for the PIMCO Diversified Income Exchange-Traded Fund, PIMCO Low Duration Exchange-Traded Fund, PIMCO Real Return Exchange-Traded Fund and the Second PIMCO Total Return Release relating to investments in illiquid assets,[18] namely, that each Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser,[19] consistent with Commission guidance.[20] Such illiquid assets, therefore, could include, in addition to Rule 144A securities, financial instruments such as delayed funding loans, revolving credit facilities, fixed- and floating-rate loans and loan participations and assignments deemed illiquid by the Adviser, consistent with Commission guidance.

The Exchange notes that each Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of a Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.[21]

Fund Holdings in Non-U.S. Equity Securities and Other Financial Instruments

The Exchange proposes to amend the representations made in the Prior Releases regarding holdings by the Funds in non-U.S. equity securities, as described below. In the Prior Release for the PIMCO Diversified Income Exchange-Traded Fund, PIMCO Low Duration Exchange-Traded Fund and PIMCO Real Return Exchange-Traded Fund, the Exchange stated that such Funds will invest only in U.S. and non-U.S. equity securities that trade in markets that are members of the ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange. In the Prior Releases for the PIMCO Intermediate Municipal Bond Strategy Exchange-Traded Fund, PIMCO Short-Term Municipal Bond Strategy Exchange-Traded Fund and PIMCO Build America Bond Exchange-Traded Fund, the Exchange stated that such Funds will not invest in non-U.S. equity securities. In the Prior Release for the PIMCO Foreign Currency Strategy Exchange-Traded Fund and First PIMCO Total Return Notice,[22] the Exchange stated that such Funds will not invest in any non-U.S. registered equity securities, except if such securities are traded on exchanges that are members of the ISG. In the Prior Release for the PIMCO Global Advantage® Inflation-Linked Bond Strategy Exchange-Traded Fund, the Exchange stated that, with respect to its equity securities investments, the Fund will invest only in U.S. registered equity securities and non-U.S.-registered equity securities that trade in markets that are members of the ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.[23] The Exchange proposes to amend such statements in the Prior Releases to provide that not more than 10% of the net assets of a Fund in the aggregate invested in equity securities (excluding non-exchange-traded investment company securities) shall consist of equity securities, including stocks into which a convertible security is converted, whose principal market is not a member of the ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. Furthermore, the Exchange proposes that not more than 10% of the net assets of a Fund in the aggregate invested in futures contracts or exchange-traded options contracts shall consist of futures contracts or exchange-traded options contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

The Exchange notes that the Commission has previously approved similar percentage limitations for other funds listed on the Exchange under NYSE Arca Equities Rule 8.600.[24] Such a representation assures that most applicable exchange-traded assets of a Fund will be assets whose principal market is an ISG member or a market with which the Exchange has a comprehensive surveillance sharing agreement.

The changes described herein will be effective upon (i) the effectiveness of an amendment to the Trust's Registration Statement disclosing the Funds' intended use of derivative instruments and (ii) when this proposed rule change has become operative. The Adviser represents that the Adviser has managed and will continue to manage those Funds that have commenced operations in the manner described in the applicable Prior Release, and will not implement the changes described herein until this proposed rule change is operative.

[18] *See* notes 4 and 6, *supra.*

[19] In reaching liquidity decisions with respect to Rule 144A securities, the Adviser may consider the following factors: the frequency of trades and quotes for the security; the number of dealers willing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

[20] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also,* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the 1933 Act).

[21] *See* note 20, *supra.*

[22] *See* note 4, *supra.*

[23] *See* note 26, *infra.*

[24] *See* Securities Exchange Act Release Nos. 69915 (July 2, 2013), 78 FR 41145 (July 9, 2013) (SR–NYSEArca–2013–56) (order approving listing and trading of shares of the PowerShares China A-Share Portfolio under NYSE Arca Equities Rule 8.600); 72665 (July 24, 2014), 79 FR 44236 (July 30, 2014) (SR–NYSEArca–2014–59) (order approving listing and trading of shares of the AdvisorShares Athena High Dividend ETF under NYSE Arca Equities Rule 8.600; 72882 (August 20, 2014) (SR–NYSEArca–2014–58) (order approving listing and trading of shares of PIMCO Short-Term Exchange-Traded Fund and PIMCO Municipal Bond Exchange-Traded Fund under NYSE Arca Equities Rule 8.600); 72853 (August 15, 2014) (SR–NYSEArca–2014–57) (order approving listing and trading of shares of the PIMCO Foreign Bond Exchange-Traded Fund (U.S. Dollar-Hedged), PIMCO Foreign Bond Exchange-Traded Fund (Unhedged), PIMCO Global Advantage Bond Exchange-Traded Fund, and PIMCO International Advantage Bond Exchange-Traded Fund under NYSE Arca Equities Rule 8.600).

The Adviser represents that there is no change to each Fund's investment objective. Each Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600, as applicable.

Except for the changes noted in this filing, all other facts presented and representations made in the Prior Releases remain unchanged.

All terms referenced but not defined herein are defined in the Prior Releases.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[25] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, exchange traded equities, options, futures, options on futures and other exchange-traded assets with other markets or other entities that are members of the Intermarket Surveillance Group (''ISG''), and FINRA may obtain trading information regarding trading in the Shares, exchange traded equities, options, futures, options on futures and other exchange-traded assets from such markets or entities. In addition, the Exchange may obtain information regarding trading in the Shares, exchange traded equities, options, futures, options on futures and other exchange-traded assets from markets or other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[26] In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by a Fund reported to FINRA's Trade Reporting and Compliance Engine (''TRACE''). FINRA also can access data obtained from the Municipal Securities Rulemaking Board relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

2. Statutory Basis

The basis under the Act[27] for this proposed rule change is the requirement under Section 6(b)(5)[28] that an exchange have rules that are 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, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will continue to be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. Each Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600, as applicable. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, exchange traded equities, options, futures, options on futures and other exchange-traded assets with other markets or other entities that are members of the ISG, and FINRA may obtain trading information regarding trading in the Shares, exchange traded equities, options, futures, options on futures and other exchange-traded assets from such markets or entities. In addition, the Exchange may obtain information regarding trading in the Shares, exchange traded equities, options, futures, options on futures and other exchange-traded assets from markets or other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by a Fund reported to FINRA's TRACE. FINRA also can access data obtained from the Municipal Securities Rulemaking Board relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares.

Each Fund's investments will be consistent with its investment objective, which remains unchanged. The proposed amendments permitting the Funds to invest in derivative instruments, such as options contracts, futures contracts and swap agreements, promotes just and equitable principals of trade and furthers the protection of investors and the public interest. Each Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*e.g.,* 2Xs and 3Xs) of a Fund's broad-based securities market index.[29]

Permitting the use of derivatives will provide additional flexibility to the Adviser in seeking to achieve each Fund's investment objective. For example, because the markets for certain securities, or the securities themselves, may be unavailable or cost prohibitive as compared to derivative instruments, suitable derivative transactions may be an efficient alternative for a Fund to obtain the desired asset exposure. Additionally, derivatives allow parties to replicate desired returns while eliminating the costs associated with acquiring or holding the underlying asset. As such, the increased flexibility afforded by the ability to use derivatives may enhance investor returns by facilitating a Fund's ability to more economically seek its investment objectively, thereby reducing the costs—actual, opportunity or otherwise—incurred by a Fund.

With respect to the representation above that the Exchange proposes to explicitly include options on swap agreements as derivative instruments in which the PIMCO Total Return Exchange-Traded Fund and all other Funds may invest, the Exchange believes such inclusion will not adversely impact investors and serves to protect investors and the public interest for the following reasons. The proposed revised representations are similar to

[25] FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[26] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio for a Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[27] 15 U.S.C. 78a.

[28] 15 U.S.C. 78f(b)(5).

[29] *See* note 16, *supra.*

those previously approved by the Commission for other exchange-traded funds listed and traded on the Exchange pursuant to NYSE Arca Equities Rule 8.600.[30] In the case of OTC swaps and OTC options, the Adviser represents that it has implemented policies and procedures which govern the selection of counterparties to reduce the risks associated with swaps, including, but not limited to, counterparty risk and concentration risk. In addition, as described further below, a Fund's investments in derivative instruments will be made in accordance with the 1940 Act and consistent with a Fund's investment objectives and policies. To limit the potential risk associated with transactions in derivative instruments, each Fund will segregate or ''earmark'' assets determined to be liquid by PIMCO in accordance with procedures established by the Trust's Board of Trustees and in accordance with the 1940 Act.

With respect to the representation above that, with respect to derivative instruments, as proposed to be used, PIMCO generally will consider such instruments to be economically tied to non-U.S. countries if the underlying assets are foreign currencies, or instruments or securities that are issued by foreign governments or issuers organized under the laws of a non-U.S. country (or if the underlying assets are money market instruments, as applicable, if either the issuer or the guarantor of such money market instruments is organized under the laws of a non-U.S. country), the Exchange believes such consideration will not adversely impact investors and serves to protect investors and the public interest for the following reasons. The proposed revised representations are similar to those previously approved by the Commission for other exchange-traded funds listed and traded on the Exchange pursuant to NYSE Arca Equities Rule 8.600.[31] In addition, as described further below, a Fund's investments in derivative instruments will be made in accordance with the 1940 Act and consistent with a Fund's investment objectives and policies. To limit the potential risk associated with transactions in derivative instruments, each Fund will segregate or ''earmark'' assets determined to be liquid by PIMCO in accordance with procedures established by the Trust's Board of Trustees and in accordance with the 1940 Act.

With respect to the representation in ''Surveillance'' above that (1) not more than 10% of the net assets of a Fund in the aggregate invested in equity securities (excluding non-exchange-traded investment company securities) shall consist of equity securities, including stocks into which a convertible security is converted, whose principal market is not a member of the ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement, and (2) not more than 10% of the net assets of a Fund in the aggregate invested in futures contracts or exchange-traded options contracts shall consist of futures contracts or exchange-traded options contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement, the Exchange believes such limitation of assets will not adversely impact investors and serves to protect investors and the public interest for the following reasons. The Commission has previously approved such limitations for other funds listed on the Exchange under NYSE Arca Equities Rule 8.600.[32] Such a representation assures that most applicable exchange-traded assets of a Fund will be assets whose principal market is an ISG member or a market with which the Exchange has a comprehensive surveillance sharing agreement.

With respect to the proposed changes to certain representations in the Prior Releases and the Second PIMCO Total Return Release, relating to limitations on investments in illiquid assets, the Exchange believes such limitation of assets will not adversely impact investors and serves to protect investors and the public interest for the following reasons. The Exchange notes that the proposed revised representations are similar to those previously approved by the Commission in the Prior Releases for the PIMCO Diversified Income Exchange-Traded Fund, PIMCO Low Duration Exchange-Traded Fund, PIMCO Real Return Exchange-Traded Fund and the Second PIMCO Total Return Release relating to investments in illiquid assets.[33] In addition, the Exchange notes that each Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of a Fund's net assets are held in illiquid assets.

Investor protection and the public interest are further advanced as a result of the following factors:

- Each Fund's compliance with the requirements of the federal securities laws, in particular, the restrictions under the 1940 Act regarding limitation on investments in illiquid securities;
- The central clearing of U.S. exchange-traded futures and options contracts and certain swaps;
- In the case of OTC swaps and OTC options, the Adviser represents that it has implemented policies and procedures which govern the selection of counterparties to reduce the risks associated with swaps, including, but not limited to, counterparty risk and concentration risk.
- The Adviser represents that each Fund will comply with the representations stated in the No-Action Letter, as stated above. In addition, all other representations in the Prior Releases and the Total Return Release, with the exceptions noted above, remain as stated therein and no other changes are being made.
- Investments in derivative instruments will be made in accordance with the 1940 Act and consistent with a Fund's investment objectives and policies. To limit the potential risk associated with transactions in derivative instruments, each Fund will segregate or ''earmark'' assets determined to be liquid by PIMCO in accordance with procedures established by the Trust's Board of Trustees and in accordance with the 1940 Act (or, as permitted by applicable regulation, enter into certain offsetting positions) to cover its obligations under derivative

[30] *See, e.g.,* Securities Exchange Act Release Nos. [sic] 7882 (August 20, 2014) (SR–NYSEArca–2014–58) (order approving listing and trading on the Exchange of shares of the PIMCO Short-Term Exchange-Traded Fund and the PIMCO Municipal Bond Exchange-Traded Fund under NYSE Arca Equities Rule 8.600).

[31] *See* note 30, *supra.*

[32] *See* Securities Exchange Act Release Nos. 69915 (July 2, 2013), 78 FR 41145 (July 9,2013) (SR–NYSEArca-2013–56) (order approving listing and trading of shares of the PowerShares China A-Share Portfolio under NYSE Arca Equities Rule 8.600); 72665 (July 24, 2014), 79 FR 44236 (July 30, 2014) (SR–NYSEArca–2014–59) (order approving listing and trading of shares of the AdvisorShares Athena High Dividend ETF under NYSE Arca Equities Rule 8.600 [sic]; 72882 (August 20, 2014) (SR–NYSEArca-2014–58) (order approving listing and trading of shares of PIMCO Short-Term Exchange-Traded Fund and PIMCO Municipal Bond Exchange-Traded Fund under NYSE Arca Equities Rule 8.600); 72853 (August 15, 2014) (SR–NYSEArca–2014–57) (order approving listing and trading of shares of the PIMCO Foreign Bond Exchange-Traded Fund (U.S. Dollar-Hedged), PIMCO Foreign Bond Exchange-Traded Fund (Unhedged), PIMCO Global Advantage Bond Exchange-Traded Fund, and PIMCO International Advantage Bond Exchange-Traded Fund under NYSE Arca Equities Rule 8.600).

[33] *See* notes 4 and 6, *supra.*

instruments. These procedures have been adopted consistent with Section 18 of the 1940 Act and related Commission guidance. In addition, each Fund will include appropriate risk disclosure in its offering documents, including leveraging risk.

• The listing and trading of Shares of a Fund is governed by Exchange initial and continued listing rules as approved by the Commission, including NYSE Arca Equities Rule 8.600.

• As described in the Prior Releases under ''Availability of Information'', the Funds' Web site discloses specified quantitative information updated on a daily basis, as well as the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) that will form the basis for a Fund's calculation of NAV at the end of the business day. On a daily basis, each Fund will disclose on each Fund's Web site the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, commodity, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in each Fund's portfolio.

• The proposed rule change helps to perfect the mechanism of a free and open market by enhancing investor choice and providing investors a cost effective and efficient means to access an asset class through a diversified vehicle that is listed and traded on an exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change will allow each Fund to use derivative instruments as a more efficient substitute for taking a position in the underlying asset and/or as part of a strategy designed to reduce exposure to risks (such as interest rate or currency risk) or to enhance investment returns. The proposed change, therefore, will provide additional flexibility to the Adviser to seek each Fund's investment objective and will enhance each Fund's ability to compete with other actively managed exchange-traded funds and mutual funds.

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, 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 [34] and Rule 19b–4(f)(6)(iii) thereunder.[35]

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–2014–104 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2014–104. 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 will also 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–2014–104 and should be submitted on or before November 6, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–24545 Filed 10–15–14; 8:45 am]

BILLING CODE 8011–01–P

[34] 15 U.S.C. 78s(b)(3)(A).

[35] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[36] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73332 ; File No. SR–FINRA–2014–043]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt as Permanent the Limited Fee Waiver Pilot Program Pursuant to FINRA Rule 7730

October 9, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 3, 2014, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as ''establishing or changing a due, fee or other charge'' under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 7730(c)(1)(A) to adopt as permanent the limited fee waiver pilot program, which provides a one month waiver of the Professional Real-Time Data Display Fee, permitting professionals to access real-time Trade Reporting and Compliance Engine (''TRACE'') transaction data on a trial basis.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

1. Purpose

On November 7, 2012, FINRA filed an immediately effective rule change to implement, as a one-year pilot, a limited fee waiver to permit certain market participants to access real-time TRACE transaction data for an initial trial period of one month under specified conditions.[5]

Specifically, the Pilot provides that, where a member, vendor or other redistributor (collectively, ''vendors'') offers a professional a free trial of a data product that includes access to real-time TRACE transaction data, FINRA will waive the Professional Real-Time Data Display Fee that normally would be assessed pursuant to FINRA Rule 7730(c)(1)(A) for a period of no longer than 31 days, concurrent with a free trial of the vendor's product.[6] Under the Pilot, up to four professionals associated with, employed by, or otherwise affiliated with a member, employer or other person may receive the FINRA fee waiver during the free trial.[7]

The Pilot originally was scheduled to operate for a period of one year, but was extended for an additional year and currently is scheduled to expire on November 7, 2014.[8] FINRA proposes to adopt as permanent the Free Trial Pilot program subject to the same terms and conditions that applied during the pilot period. Thus, the fee waiver would continue to: (1) Be limited to a period not longer than 31 days; (2) be available to not more than four professionals associated with, employed by, or otherwise affiliated with a member, employer or other person during the free trial period;[9] and provide that, once the real-time data display fee has been waived, a professional and the member, employer or other person whom the professional is associated with, employed by, or otherwise affiliated with, would not be eligible for the FINRA fee waiver again in connection with another free trial offered by the same vendor until 12 months had lapsed from the last day of the prior fee waiver.[10]

However, a professional and the member, employer or other person with whom the professional is associated or otherwise affiliated would be eligible for the FINRA fee waiver in connection with a free trial offered by a different vendor regarding such vendor's data products.

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date will be the date of filing.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[11] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 15A(b)(5) of the Act,[12] which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls.

FINRA believes that adopting the Free Trial Pilot as a permanent program, which encourages additional professionals to test and use real-time TRACE transaction data, may promote more accurate and timely pricing and valuations of debt securities by members, and may prevent fraudulent and manipulative acts and practices regarding pricing and valuations for the protection of investors and the public interest. The fee waiver also enhances a member's ability to access and test the uses of real-time TRACE transaction

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Securities Exchange Act Release No. 68255 (November 19, 2012), 77 FR 70515 (November 26, 2012) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2012–049) (''Free Trial Pilot'' or ''Pilot'').

[6] Pursuant to FINRA Rule 7730(c)(1)(A), FINRA assesses charges for professional users of $60 per month per Data Set, per display application to access real-time TRACE transaction data. In general, real-time TRACE transaction data is accessed not directly from FINRA but through a vendor, such as Bloomberg, L.P. and its Bloomberg display application. Under these types of arrangements, a professional user pays the vendor for the license to use the vendor's display application and if the display application displays real-time TRACE transaction data, the vendor must remit the applicable TRACE fee to FINRA.

[7] In addition, after FINRA has waived the fee in connection with a free trial offered by a member, vendor or other redistributor, a professional and the member, employer, or other person whom the professional is associated with, employed by or otherwise affiliated with, may not use the waiver again for that member, vendor or other distributor until 12 months has lapsed from the last day of the prior waiver.

[8] *See* Securities Exchange Act Release No. 70483 (September 24, 2013), 78 FR 60003 (September 30, 2013) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Limited Waiver of the TRACE Professional Real-Time Data Display Fee Pilot; File No. SR–FINRA–2013–040).

[9] The fee waiver pilot program is not applicable to professionals associated with, employed by or otherwise affiliated with entities that obtain unlimited internal use of market data through any number of display applications by paying a flat fee of $7,500 (per month per Data Set) under Rule 7730(c)(1)(A) (*i.e.,* ''enterprise fee''). The enterprise fee structure is inconsistent with the limitation that the fee waiver may apply to not more than four professionals per entity, per trial period.

[10] For example, if a professional were granted a waiver for one month beginning on November 15, 2014, the professional would not be eligible for another waiver in connection with another free trial offered by the same vendor until December 15, 2015.

[11] 15 U.S.C. 78*o*–3(b)(6).

[12] 15 U.S.C. 78*o*–3(b)(5).

data to determine if the data would further its business needs.

The fee waiver has operated on a pilot basis for two years, and FINRA has not experienced problems with its implementation or administration. FINRA believes that permanently adopting the Pilot, with the same conditions under which it has been operating, preserves these potential benefits for all professionals that participate in a free trial of a vendor data product that includes real-time TRACE transaction data. Any professional that tests data products during a free trial would be eligible for and would benefit from the concurrent FINRA fee waiver, consistent with the previously discussed conditions applicable to eligibility for the fee waiver program.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The fee waiver program does not unfairly discriminate between or among professionals and members (or other end-users) in that the waiver would be available to any person that participates in a vendor's free trial that includes real-time TRACE transaction data, subject to the conditions described above.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and paragraph (f)(2) of Rule 19b–4 thereunder.[14] 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.

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(2).

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–FINRA–2014–043 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–FINRA–2014–043. 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 FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2014–043 and should be submitted on or before November 6, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

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[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73333; File Nos. SR–NYSE–2014–32 and SR–NYSEMKT–2014–56]

Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE MKT, Inc.; Order Approving Proposed Rule Changes Amending Exchange Rule 13 To Make the Add Liquidity Only Modifier Available for Limit Orders, and Make the Day Time-In-Force Condition and Add Liquidity Only Modifier Available for Intermarket Sweep Orders

October 9, 2014.

I. Introduction

On June 27, 2014, New York Stock Exchange LLC (''NYSE'') and NYSE MKT LLC (''NYSE MKT'') (each an ''Exchange'' and together the ''Exchanges'') each filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Rule 13 to allow an Add Liquidity Only (''ALO'') modifier for day limit orders and to allow the day time-in-force condition and ALO modifier for Intermarket Sweep Orders (''ISO'').[3] The proposed rule changes were published for comment in the **Federal Register** on July 11, 2014.[4] On August 21, 2014, the Commission extended the time period in which to approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule changes to October 9, 2014.[5] The Commission received three comment letters from two

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NYSE MKT designates its Rule 13 as ''Rule 13—Equities.'' All references to NYSE MKT rules in this order are to its equities rules, whether or not the ''—Equities'' designation is included in the reference.

[4] *See* Securities Exchange Act Release Nos. 72548 (July 7, 2014), 79 FR 40183 (''NYSE Notice'') and 72547 (July 7, 2014), 79 FR 40169 (''NYSE MKT Notice'').

[5] *See* Securities Exchange Act Release Nos. 72893 (Aug. 21, 2014), 79 FR 51208 (Aug. 27, 2014) and 72894 (Aug. 21, 2014), 79 FR 51208.

commenters on the NYSE Notice.[6] On September 30 and October 8, 2014, NYSE submitted letters responding to the comment letters.[7] This order approves the proposed rule changes.

II. Description of the Proposals

A. ALO Modifier for Day Limit Orders

Currently, only mid-point passive liquidity (''MPL'') orders are available with the ALO modifier on the Exchanges.[8] The Exchanges propose to allow the use of the ALO modifier for day limit orders.[9] As proposed, a limit order on either Exchange designated with the ALO modifier would not route and would not remove liquidity from the Exchange's book. Limit orders designated with an ALO modifier would be able to participate in the open or close, but the ALO modifier would be disregarded. A limit order with an ALO modifier would be required to represent at least one displayable round lot.

If, at the time of entry, a limit order with the ALO modifier were marketable against Exchange interest or would lock or cross a protected quotation in violation of Rule 610(d) of Regulation NMS (''Rule 610(d)''),[10] the Exchange receiving the order would re-price and display the order at one minimum price variation (''MPV'') below the ''best-priced sell interest'' (for bids) or above the ''best-priced buy interest'' (for offers). The term ''best-priced sell interest'' refers to the lowest-priced sell interest against which incoming buy interest would be required to execute with or route to, including the receiving Exchange's displayed offers, Non-Display Reserve Orders,[11] Non-Display Reserve e-Quotes,[12] and odd-lot sized sell interest, as well as protected offers on away markets, but not including non-displayed sell interest that is priced based on the protected best bid or offer (''PBBO''). The term ''best-priced buy interest'' refers to the highest-priced buy interest against which incoming sell interest would be required to execute with or route to, including the receiving Exchange's displayed bids, Non-Displayed Reserve Orders, Non-Display Reserve e-Quotes, and odd-lot sized buy interest, as well as protected bids on away markets, but not including non-displayed buy interest that is priced based on the PBBO.

If, while an ALO limit order to buy is pending, the best-priced sell interest is re-priced higher, the ALO limit order would be re-priced and re-displayed one MPV below the new best-priced sell interest, up to the limit price of the ALO order. If, while an ALO limit order to sell is pending, the best-priced buy interest is re-priced lower, the ALO limit order would be re-priced and re-displayed one MPV above the new best-priced buy interest, down to the limit price of the ALO order. An ALO limit order would not be re-priced if it is displayed at its limit price or if the best-priced sell interest is re-priced lower (for bids) or if the best-priced buy interest is re-priced higher (for offers). Each time an ALO limit order is re-priced and re-displayed, that order would receive a new time stamp.

Limit orders designated with the ALO modifier would not be priced based on resting opposite-side MPL Orders, which are triggered to trade at the midpoint of the PBBO by arriving interest. Limit orders designated with the ALO modifier would not trigger opposite-side MPL Orders to trade.

Pegging interest to buy (sell) that is designated with the ALO modifier would not peg to a price that would result in execution before displaying and would instead peg one MPV below (above) the undisplayed Exchange sell (buy) interest against which it would have otherwise executed.

B. Day Time-in-Force Designation and ALO Modifier for ISOs

An ISO is currently defined in NYSE Rule 13 and NYSE MKT Rule 13—Equities as a limit order designated for automatic execution that meets the following requirements: (i) It is identified as an ISO in the manner prescribed by the Exchange; and (ii) simultaneously with the routing of an ISO to the Exchange, one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, and these additional orders are identified as ISOs. Currently, each Exchange immediately and automatically executes an ISO upon arrival, and the portion not so executed will be immediately and automatically cancelled.

Each Exchange proposes to define an ISO as a limit order designated for automatic execution in a particular security that is never routed to an away market, may trade through a protected bid or offer, and will not be rejected or cancelled if it would lock, cross, or be marketable against an away market, provided that it is identified as an ISO and that, simultaneously with the routing of the ISO to the Exchange, one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any protected bid or offer.[13]

Each Exchange proposes to allow ISOs to operate with a day time-in-force condition (''Day ISO''). A Day ISO, if marketable upon arrival, would be immediately and automatically executed against the displayed bid (offer) up to its full size in accordance with and to the extent provided by each Exchange's Rules 1000 to 1004, which address automatic executions of orders, and would then sweep the Display Book, as provided in each Exchange's Rule 1000(d)(iii). The remaining unexecuted portion, if any, of a Day ISO would be posted to the Exchange's book at its limit price and would be permitted to lock or cross a protected quotation that was displayed at the time of arrival of the Day ISO. A Day ISO would be required to represent a minimum of one displayable round lot. Day ISOs would

[6] *See* Letter from Haim Bodek, Managing Principal, Decimus Capital Markets, LLC, to Commission, dated September 15, 2014 (''DCM Letter''); and Letters from Richard A. Tierney III, President and Chief Executive Officer, Bloomberg Tradebook LLC, and Gary Stone, Chief Strategy Officer, Bloomberg Tradebook LLC, to Brent J. Fields, Secretary, Commission, dated September 22, 2014 (''Tradebook Letter I'') and October 6, 2014 (''Tradebook Letter II''). The Commission notes that these comment letters address the NYSE proposal only. However, since the NYSE and NYSE MKT proposals are nearly identical, the Commission will treat the comment letters as addressing both the NYSE and the NYSE MKT proposals.

[7] *See* Letter from Martha Redding, Chief Counsel, New York Stock Exchange, to Kevin M. O'Neill, Deputy Secretary, Commission, dated September 30, 2014 (''Response Letter I''); and Letter from Martha Redding, Chief Counsel, New York Stock Exchange, to Kevin M. O'Neill, Deputy Secretary, Commission, dated October 8, 2014 (''Response Letter II''). NYSE noted that the Response Letters were submitted in support of both the NYSE and NYSE MKT proposals.

[8] *See* NYSE Rule 13 and NYSE MKT Rule 13—Equities for the definition of MPL orders. MPL orders are currently available with the ALO modifier.

[9] The following interest would not be eligible for the ALO modifier: (1) DMM interest entered via the Capital Commitment Schedule; (2) d-Quotes; (3) Sell ''Plus—Buy Minus'' Orders; (4) Non-Display Reserve Orders or Non-Display Reserve e-Quotes; (5) Retail Orders or Retail Price Improvement Orders; or (6) High-priced securities. These terms and order types are defined in NYSE Rule 1000(a)(vi) and NYSE MKT Rule 1000(a)(vi)—Equities.

[10] *See* 17 CFR 242.610(d).

[11] A ''Non Displayed Reserve Order'' is a limit order that is not displayed, but remains available for potential execution against all incoming automatically executing orders until executed in full or cancelled. *See* NYSE Rule 13 and NYSE MKT Rule 13—Equities.

[12] *See* NYSE Rule 70(f)(II) and NYSE MKT Rule 70(f)(II)—Equities.

[13] *See* NYSE Rule 19(d)(3) (permitting the display of a quotation that locks or crosses a protected quotation if the locking or crossing quotation was an automated quotation and if the member of the Exchange displaying the automated quotation simultaneously routed an intermarket sweep order to execute against the full displayed size of any locked or crossed protected quotation); NYSE MKT Rule 19(d)(3)—Equities (same).

be available for Minimum Display Reserve Orders and Minimum Display Reserve e-Quotes.

Each Exchange also proposes to allow a Day ISO to be designated with an ALO modifier. If, after being posted, a Day ISO would lock or cross a protected quotation in violation of Rule 610(d) of Regulation NMS, each Exchange would re-price and re-display the Day ISO consistent with the proposed ALO modifier for day limit orders. Any such re-pricing would be based on the best-priced sell interest (for bids) or best-priced buy interest (for offers), and a Day ISO would receive a new timestamp each time that it was re-priced.

A Day ISO designated with an ALO modifier that is marketable against Exchange interest upon arrival would be re-priced and displayed one MPV below the receiving Exchange's best-priced non-MPL Order sell interest (for bids) or above the Exchange's best-priced non-MPL Order buy interest (for offers). After being displayed on the Exchange's book, a Day ISO designated ALO would be re-priced and re-displayed consistent with the proposed ALO modifier.

Each Exchange proposes to specify that IOC ISOs and Day ISOs are not available for Sell ''Plus''—Buy ''Minus'' Orders or Non-Display Reserve Orders or for Non-Display Reserve e-Quotes and that IOC ISOs are not available for high-priced securities, as defined in each Exchange's Rule 1000(a)(vi).[14]

III. Summary of Comments and the Exchanges' Response

As noted above, the Commission received three comment letters from two commenters on the proposed rule changes.[15] The commenters generally raised three broad concerns regarding the proposals and urged the Commission to disapprove the filings.[16]

A. ALO Modifier Would Provide Queue Priority and Encourage Orders That Are Not Bona Fide

The first commenter expressed concern that the ALO modifier would provide queue priority over ''traditional orders'' because ALO orders, unlike ''traditional orders,'' would automatically re-price to a more aggressive price when permissible.[17] The Exchanges responded that the ALO modifier would be available to all member organizations, including those that represent agency interest.[18] The Exchanges also noted that a limit order designated ALO would receive a new time stamp each time it is re-priced and re-displayed, which the Exchanges believe is consistent with current Exchange rules that provide that an order that is modified to change the price of the order shall receive a new time stamp.[19]

This commenter also stated its belief that the ALO modifier would encourage the submission of ''overly aggressive'' orders that are not bona fide, that ''do not reflect the true economics of a security,'' and whose primary function appears to ''unfairly preference such orders for rebate capture at the most aggressive price possible.'' [20] The Exchanges responded that aggressively priced orders ''improve the public quote and provide better prices to contra-side interest'' and stated that these are precisely the type of orders they are trying to promote.[21] Additionally, Exchanges disagreed with the commenter's belief that these types of orders are not bona fide because, according to the Exchanges, a member bears the risk of its order being re-priced to its limit price and being executed at that price.[22]

B. The ALO Modifier Would Allow the Detection of Hidden Orders

The first commenter stated its belief that participants could use limit orders with the ALO modifier to detect hidden orders at the Exchanges by analyzing price-sliding confirmation messages. This commenter argued that, unlike comparable order types at other exchanges, an order with the ALO modifier is permitted to ''forward-tick price-slide to establish prices when the hidden order on the contra-side is canceled, thereby leaking information about this hidden order.'' [23] The Exchanges responded that, because of the minimum display quantity requirement for limit orders with the ALO modifier and the related risk of a round-lot execution, it would be cost-prohibitive to use this functionality to probe for hidden interest.[24] The Exchanges further argued that the benefit associated with the proposed functionality (i.e., displayed liquidity at the Exchanges that is available to provide price improvement to incoming orders) outweighs the potential cost that a market participant could determine the existence, though not the depth, of hidden interest at a price.[25]

C. The Day ISO and Day ISO ALO Order Types Are Inconsistent With Rule 610 of Regulation NMS

The first commenter expressed its belief that the proposed Day ISO ALO would encourage orders that lock or cross protected quotations, because the order type is designed to be accepted by the Exchanges at aggressive prices in conditions where high-frequency traders actually lock or cross away markets or appear to lock or cross away markets, thus defeating the intended purpose of ISOs to be ''routed to execute'' in such conditions.[26]

The second commenter stated its belief that Day ISO and Day ISO ALO order types would violate Rule 610(d) of Regulation NMS.[27] This commenter argued that ensuring compliance with the prohibition against locking and crossing markets pursuant to Rule 610(d) is solely a self-regulatory organization (''SRO'') obligation,[28] and that only an SRO is allowed to ''ship and post'' (i.e., transmit an order to attempt to execute against a displayed quotation while posting a quotation that could lock or cross the displayed quotation).[29] This commenter further stated its belief that the Exchanges are improperly attempting to transfer to member firms the obligations of the Exchanges to reasonably avoid locking and crossing quotations, arguing that the

[14] Each Exchange also proposes to change certain references in its rules from ''Intermarket Sweep Order'' to ''ISO.'' Each Exchange further proposes to define the existing form of an ISO as an ''ISO designated IOC ('IOC ISO').''

[15] *See* note 6, *supra.*

[16] Both commenters also raised broader issues, arguing that the increasing complexity of market structure, the proliferation of order types, and the alleged use by other exchanges of a Day ISO order type without Commission approval should be considered by the Commission in determining whether to approve or disapprove the Exchanges' filings. *See* DCM Letter at 7–8; Tradebook Letter at 8–9. The Commission notes that its obligation with respect to the Exchanges' proposals is to determine whether they are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.

[17] *See* DCM Letter at 3–4. The commenter did not define ''traditional orders.''

[18] *See* Response Letter I at 4.

[19] *See* NYSE Notice, *supra* note 4, at 40185, and NYSE MKT Notice, *supra* note 4, at 40171. *See also* Response Letter I at 4–5 (providing examples of how re-pricing and the assignment of new time stamps would work and citing NYSE Rule 72(c)).

[20] *See* DCM Letter at 4.

[21] *See* Response Letter I at 4.

[22] *Id.*

[23] *See* DCM Letter at 4. The commenter also expressed its belief that the ALO modifier is inadequately disclosed to market participants. The Exchanges responded that the proposed rule text provided full disclosure.

[24] *See* Response Letter I at 5.

[25] *See* Response Letter I at 4.

[26] *See* DCM Letter at 5.

[27] *See* Tradebook Letter I at 4–5.

[28] *See* Tradebook Letter I at 5. This commenter argued that Regulation NMS prohibits an SRO from considering as cleared a protected quote in existence at the time a Day ISO arrives at the SRO. *See id.*

[29] *See* Tradebook Letter II at 6. The commenter believes that this interpretation is consistent with the Regulation NMS guidance on Rules 610 and 611 set forth in Question 5.02 in Responses to Frequently Asked Questions Concerning Rule 611 and 610 of Regulation NMS (''NMS Guidance''), available at *http://www.sec.gov/divisions/marketreg/nmsfaq610-11.htm#sec5.*

receipt of an ISO does not absolve the Exchanges from the responsibility of checking the market before posting any remaining portion of that ISO.[30] And this commenter asserted that the Exchanges' treatment of reserve interest creates a ''systemic violation of Rule 610,'' arguing that the proposed Day ISOs would not actually clear certain protected quotes because they would not interact with reserve interest behind the displayed portion of the protected quote.[31]

The Exchanges responded that the proposed order functionalities are consistent with approved rules on other exchanges, as well as Rule 610(d) and the NMS Guidance issued by the Commission's Division of Trading and Markets.[32] The Exchanges argued that there is not an absolute prohibition on exchanges displaying locking or crossing quotations, provided that the resulting locked or crossed market is consistent with an approved exception to Rule 610(d).[33] The Exchanges stated that their Rule 19 has long included several exceptions permitting locking or crossing quotations, such as the ISO exception, and the receipt of an ISO signals that such an order qualifies for an exception, consistent with Rule 610(d).[34] The Exchanges stated that inherent in the ISO exception to their respective rules against locking and crossing quotations is that an ISO would be displayed, and thus could lock or cross a protected quotation.[35]

The Exchanges also responded that the NMS Guidance does not support the second commenter's argument that the reference to ''market participants'' in the response to Question 5.02 of the NMS Guidance (ISO Exception to SRO Lock/Cross Rules) refers only to SROs and that, therefore, only SROs have the ability to ''ship and post.'' [36] The Exchanges further argued that such an interpretation would not only call into question the current use of ISOs by broker-dealers,[37] but would be inconsistent with the Commission's past approval of a rule filing by another exchange.[38] With respect to the reserve portion of protected quotes, the Exchanges argued that the unexecuted portion of a Day ISO would be posted on the Exchanges' books ''at its limit price and would lock or cross a protected quotation *that was displayed at the time of the arrival of the Day ISO.''* [39]

IV. Discussion and Commission Findings

After carefully considering the proposals, the comments submitted, and the Exchanges' responses to the comments, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[40] In particular, the Commission finds that the proposals are consistent with Section 6(b)(5) of the Act,[41] which requires, among other things, that the Exchanges' rules be 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.

The Commission does not believe that the ALO modifier for limit orders would provide unjustified queue priority or that it would encourage the submission of orders that are not bona fide. Limit orders with the ALO modifier will be fully executable at the prices at which they are priced and re-priced and are therefore bona fide orders. In addition, limit orders with the ALO modifier will receive queue priority only at the prices for which they are fully executable, which is a justifiable means of assigning queue priority that is commonly used by exchanges. Moreover, the Commission notes that the Exchanges would assign a new time stamp (and thus new time priority) on such orders whenever they are re-priced and re-displayed, which would prevent these orders from stepping in front of orders that are already on the Exchanges' order books, and that the ALO order modifier would be available for day limit orders submitted by any exchange member. The ALO modifier for day limit orders is designed to be used to provide liquidity on the Exchanges at aggressive prices, rather than to remove liquidity, and the Commission notes that the proposals would require that limit orders with the ALO modifier represent at least one round lot, which should promote orders that are not of insignificant odd-lot size. Thus, the Commission believes that these proposals have the potential to allow market participants to aggressively compete with each other to offer better prices to contra-side trading interest.

The Commission also believes that the requirement that an ALO limit order have a minimum size of one round lot should reduce the economic incentives for a submitting firm to attempt to use this order type to detect the presence of hidden interest on the Exchanges. The Commission also notes that, unlike hidden orders, the ALO limit order is designed to provide displayed liquidity to the market and thereby contribute to public price discovery—an objective that is fully consistent with the Act.[42] Accordingly, the Exchanges have determined to offer an order type that promotes displayed liquidity, while adding the minimum size requirement in an effort to minimize the potential for the order type to be used to detect the existence of undisplayed interest.

The Commission also finds that the proposed Day ISO and Day ISO ALO order types are consistent with Rule 610(d) of Regulation NMS. The NMS Guidance previously issued by Commission's Division of Trading and Markets clearly contemplates that not all ISOs would be immediate-or-cancel orders.[43] The NMS Guidance provides that, if a trading center chooses not to cancel the portion of ISOs that cannot be executed immediately, ''its rules will need to address appropriately the subsequent handling of the unexecuted portions.'' [44] More generally, Rule 610 of Regulation NMS requires, among other

[30] *See* Tradebook Letter II at 6. The commenter further stated its belief that the Commission should evaluate the proposal based on whether it is consistent with the requirements of the Act, and not rely on the Exchange's response that the Exchanges would be at a competitive disadvantage vis-à-vis other exchanges. *See* Tradebook Letter II at 3.

[31] *See* Tradebook Letter I at 6–8. This commenter asserts that certain exchanges update displayed interest with remaining reserve interest on an ''instantaneous'' basis and that, therefore, the Exchanges should not be able to post a Day ISO order that would lock or cross a replenished protected quote.

[32] *See* Response Letter I at 6; *see also* NMS Guidance, *supra* note 29.

[33] *See* Response Letter I at 7; Response Letter II at 3.

[34] *See* Response Letter I at 7. The Commission notes that NYSE MKT Rule 19—Equities contains the same provisions as NYSE Rule 19.

[35] *See* Response Letter I at 7; Response Letter II at 3.

[36] *See* Response Letter II at 3.

[37] *Id.*

[38] The Exchanges cite the Commission's approval of an NYSE Arca rule filing that provides for the display of the remaining balance of an ISO that is not marked ''immediate or cancel.'' *See* Response Letter I at 6 (citing Securities Exchange Act Release No. 54549 (Sept. 29, 2006), 71 FR 59179 (Oct. 6, 2006) (SR–NYSEArca–2006–49)).

[39] *See* Response Letter I at 7–8 (emphasis in original).

[40] In approving the proposals, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[41] 15 U.S.C. 78f(b)(5).

[42] *See, e.g.,* Section 11A(a)(1)(C)(iii) and (iv) of the Exchange Act (objectives for the national market system include assuring the availability of information with respect to quotations in securities and the practicability of brokers executing investors' orders in the best market).

[43] *See* NMS Guidance, *supra* note 29 (Response to Question 3.01, ''Handling Unexecuted Portions of ISOs'').

[44] *Id.*

things, that each SRO adopt, maintain, and enforce written rules that prohibit its members from engaging in a pattern or practice of displaying quotations that lock or cross protected quotations.[45]

The Exchanges have adopted rules pursuant to Rule 610, and their rules include an ISO exception.[46] Under the ISO exception, market participants are permitted to ''ship and post.'' The exchanges have not proposed to amend this exception. Under the Exchanges' proposed amendments to their rules, the Day ISO subjected to an Exchange would be immediately executed against the Exchange's displayed quote, and then the remainder, if any, would be posted to the book, where it may lock or cross a protected quotation that is displayed at the time the Day ISO arrives. Under the ''ship and post'' exception, the market participants submitting the Day ISO would have to send one or more additional ISOs to execute against the protected quotations on other exchanges that would be locked or crossed, and thus, the Day ISO is consistent with Rule 610 of Regulation NMS. The Day ISO with the ALO modifier would function in a similar manner as the day limit order with the ALO modifier and the Day ISO, including re-pricing and re-displaying.

For the reasons discussed above, the Commission finds that the Exchanges' proposals are consistent with the Act.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[47] that the proposed rule changes SR–NYSE–2014–32 and SR–NYSEMKT–2014–56, be and hereby are, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[48]

Kevin M. O'Neill,

Deputy Secretary.

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[45] *See* 17 CFR 242.610(d).

[46] *See* NYSE Rule 19; NYSE MKT Rule 19—Equities.

[47] 15 U.S.C. 78s(b)(2).

[48] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73329; File No. SR–NYSEARCA–2014–115]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Retail Liquidity Program and NYSE Arca Equities Rule 7.44 To Provide That Retail Price Improvement Orders That Are Not Priced Better Than the Best Protected Bid or Best Protected Offer Will Not Be Rejected Upon Entry

October 9, 2014.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on October 1, 2014, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the 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 Arca Equities Rule 7.44 to provide that Retail Price Improvement Orders that are not priced better than the best protected bid or best protected offer will not be rejected upon entry. 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend NYSE Arca Equities Rule 7.44 (''Rule 7.44'') to provide that Retail Price Improvement Orders (''RPI'') that are not priced better than the best protected bid (''PBB'') or best protected offer (''PBO'') will not be rejected upon entry.

Rule 7.44 sets forth the Exchange's pilot Retail Liquidity Program (the ''Program'').[4] Under the Program, ETP Holders are able to provide price improvement to Retail Orders, as defined in Rule 7.44(a)(3) and (k), by submitting an RPI, which is non-displayed liquidity in NYSE Arca-listed securities and UTP Securities, excluding NYSE-listed (Tape A) securities, that is priced more aggressively than the PBBO by at least $0.001 per share and that is identified as an RPI in a manner prescribed by the Exchange. RPIs are entered at a single limit price, rather than being pegged to the PBBO; however, RPIs can be designated as a Mid-Point Passive Liquidity (''MPL'') Order, in which case the order will re-price as the PBBO changes.[5] RPIs remain non-displayed and only execute against Retail Orders.

Rule 7.44(a)(4) currently provides that an order that is identified as an RPI but is not priced better than the PBB or PBO will be rejected upon entry. The Exchange proposes to amend Rule 7.44(a)(4) to permit entry of RPI's that are not priced better than the PBB or PBO. The Exchange believes that by accepting all RPIs, regardless of price, the Exchange will expand the interest that would be available to provide price improvement for Retail Orders, particularly if the PBB or PBO moves such that an RPI that otherwise would have been rejected could become price-improving interest.

To effect this change, the Exchange proposes to delete the third sentence of Rule 7.44(a)(4) that provides for such inferior-priced RPIs to be rejected upon entry. The Exchange further proposes to amend the fourth sentence of Rule 7.44(a)(4) to conform the rule text to this proposed change. Specifically, the current rule text provides that ''[a] previously entered RPI that becomes priced at or inferior to the PBBO will not be eligible to interact with incoming

[4] *See* Securities Exchange Act Release No. 71176 (Dec. 23, 2013), 78 FR 79524 (Dec. 30, 2013) (SR–NYSEArca–2013–107).

[5] RPIs not designated as MPL Orders would alternatively need to be designated as a Passive Liquidity (''PL'') Order.

Retail Orders, and such an RPI will cancel if a Retail Order executes against all displayed liquidity at the PBBO and the [sic] attempt [sic] to execute against the RPI.'' Because the Exchange would no longer be rejecting RPIs that are not priced better than the PBB or PBO, the Exchange believes that use of the term ''previously entered'' would no longer reflect the universe of RPIs that may not be priced better than the PBB or PBO. The Exchange therefore proposes to amend this sentence to delete the term ''previously entered'' and instead state that an RPI that is or becomes priced at or inferior to the PBBO would be subject to the treatment currently described in the rule.

The Exchange does not intend to make any other changes to the Program with this rule filing. The Exchange will announce the implementation date of the systems functionality associated with the proposed rule change by Trader Update to be published no later than 30 days following the effective date. The implementation date will be no later than 30 days following the issuance of the Trader Update.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5),[7] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change removes impediments to and perfects the mechanism of a free and open market and national market system because it would enable additional RPI interest to be entered regardless of price, thereby allowing that RPI interest to remain in Exchange systems and become eligible to provide price improvement if the PBB or PBO changes such that the RPI interest becomes priced better than the PBB or PBO. The Exchange further believes that the proposed rule change protects investors and the public interest because it potentially increases the amount of RPI interest available to provide price improvement to incoming Retail Orders if the PBB or PBO moves such that the RPI becomes eligible to provide price improvement. The Exchange further believes the proposal will protect investors and the public interest because the proposed rule change will increase the incentives of liquidity providers to enter RPIs because liquidity providers will no longer need to risk rejection of RPIs that may be priced inferior to the PBB or PBO upon entry.

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. The Exchange believes that the Program is designed to increase competition among execution venues, encourage additional liquidity, and offer the potential for price improvement to retail investors. The Exchange notes that a significant percentage of the orders of individual investors are executed over-the-counter. The Exchanges believes that it is appropriate to create a financial incentive to bring more retail order flow to a public market. The Exchange believes that the proposed rule change supports this objective by eliminating the possibility that liquidity-providing interest would be rejected based on price.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6)[9] thereunder because the proposal does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[10]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.

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.[12]

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–2014–115 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2014–115. 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

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 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.

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] 15 U.S.C. 78s(b)(3)(C).

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–2014–115 and should be submitted on or before November 6, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–24543 Filed 10–15–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[(Release No. 34–73325; File No. SR–NYSE–2014–55]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Conforming Amendments To Reflect Recent Deletion of Rule 343

October 9, 2014.

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 October 6, 2014, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I 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 proposes to [sic] make conforming amendments to reflect its recent deletion of Rule 343. 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 make conforming amendments to reflect its recent deletion of Rule 343. The Exchange deleted Rule 343 and its interpretation, effective as of April 7, 2014.[4] The Exchange accordingly proposes to delete obsolete references to Rule 343 in Rule 321, governing formation or acquisition of subsidiaries by member organizations, and Rules 476A and 9217, which govern minor rule violations.[5]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, 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 and, in general, help to protect investors and the public interest. Specifically, the Exchange believes that deleting references to obsolete rules removes impediments to and perfects the mechanism of a free and open market by removing confusion that may result from having references to obsolete rules in the Exchange's rulebook. The Exchange further believes that the proposal removes impediments to and perfects the mechanism of a free and open market by ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the Exchange's rulebook. The Exchange believes that eliminating references to obsolete rules would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased transparency as to which rules are operable, thereby reducing potential confusion. Removing such obsolete cross references will also further the goal of transparency and add clarity to the Exchange's rules.

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. The proposed change is not designed to address any competitive issue but rather would make the Exchange's rules internally consistent, thereby reducing confusion and making the Exchange's rules easier to understand and navigate.

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[8] and Rule 19b–4(f)(6) thereunder.[9] 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

[13] 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. 71989 (April 22, 2014), 79 FR 23391 (April 28, 2014) (SR–NYSE–2014–21). *See also* FINRA Regulatory Notices 14–10 and 14–11.

[5] In 2013, the NYSE adopted a new set of procedural rules modeled on the rules of the Financial Industry Regulatory Authority (''FINRA'') that included aspects of FINRA's process and fine levels for minor rule violations. The Exchange maintained the specific list of rules set forth in NYSE Rule 476A, which were moved to new Rule 9217. *See* Securities Exchange Act Release Nos. 68678 (Jan. 16, 2013), 78 FR 5213 (Jan. 24, 2013), and 69045 (Mar. 5, 2013), 78 FR 15394 (Mar. 11, 2013) (SR–NYSE–2013–02). Rule 476A continues to apply to disciplinary proceedings filed prior to July 1, 2013.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [10] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The NYSE has asked the Commission to waive the 30-day operative delay so that the proposal may become operative on filing. The Commission believes that waiving the 30-day operative delay is consistent with the public interest and investor protection, as it removes references to a rule that has been deleted by NYSE. This change will make NYSE's rules more accurate. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal effective on filing.[12]

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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [13] of the Act to determine whether the proposed rule change 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–NYSE–2014–55 on the subject line.*

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2014–55. 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 NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2014–55 and should be submitted on or before November 6, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

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[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] 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).

[13] 15 U.S.C. 78s(b)(2)(B).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73328; File No. SR–MIAX–2014–50]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

October 9, 2014.

Pursuant to the provisions of 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 September 26, 2014, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Priority Customer Rebate Program (the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

''Program'') [3] to expand the number of option classes that qualify for a per contract credit for transactions in MIAX Select Symbols.[4]

Under the Program, the Exchange credits each Member the per contract amount set forth in the Fee Schedule resulting from each Priority Customer [5] order transmitted by that Member which is executed on the Exchange in all multiply-listed option classes (excluding mini-options, Priority Customer-to-Priority Customer Orders, PRIME AOC Responses, PRIME Contra-side Orders, PRIME Orders for which both the Agency and Contra-side Order are Priority Customers, and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in MIAX Rule 1400), provided the Member meets certain volume thresholds in a month. For each Priority Customer order submitted into the PRIME Auction as a PRIME Agency Order, MIAX shall credit each member at the separate per contract rate for PRIME Agency Orders; however, no rebates will be paid if the PRIME Agency Order executes against a Contra-side Order which is also a Priority Customer. The volume thresholds are calculated based on the customer average daily volume over the course of the month. Volume is recorded for and credits are delivered to the Member Firm that submits the order to the Exchange. The Exchange aggregates the contracts resulting from Priority Customer orders transmitted and executed electronically on the Exchange from affiliated Members for purposes of the thresholds above, provided there is at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A. In the event of a MIAX System outage or other interruption of electronic trading on MIAX, the Exchange adjusts the national customer volume in multiply-listed options for the duration of the outage. A Member may request to receive its credit under the Program as a separate direct payment.

The Exchange proposes modifying the Program to expand the number of option classes that qualify for a per contract credit for transactions in MIAX Select Symbols. MIAX Select Symbols currently include options overlying AA, AAL, AAPL, AIG, AMZN, AZN, BP, C, CBS, CLF, CMCSA, EBAY, EEM, EFA, EWJ, FB, FCX, FXI, GE, GILD, GLD, GM, GOOG, GOOGL, HTZ, INTC, IWM, IYR, JCP, JPM, KO, MO, MRK, NFLX, NOK, NQ, PBR, PCLN, PFE, PG, QCOM, QQQ, S, SIRI, SPY, SUNE, T, TSLA, USO, VALE, WAG, WFC, WMB, WY, XHB, XLE, XLF, XLP, XLU and XOM. The Exchange proposes to modify the MIAX Select Symbols to add BABA. Thus, the Exchange will credit each Member the per contract rate set forth in the table located in the Fee Schedule resulting from each Priority Customer order transmitted by that Member executed on Exchange in AA, AAL, AAPL, AIG, AMZN, AZN, BABA, BP, C, CBS, CLF, CMCSA, EBAY, EEM, EFA, EWJ, FB, FCX, FXI, GE, GILD, GLD, GM, GOOG, GOOGL, HTZ, INTC, IWM, IYR, JCP, JPM, KO, MO, MRK, NFLX, NOK, NQ, PBR, PCLN, PFE, PG, QCOM, QQQ, S, SIRI, SPY, SUNE, T, TSLA, USO, VALE, WAG, WFC, WMB, WY, XHB, XLE, XLF, XLP, XLU and XOM. The per contract credit would be in lieu of the applicable credit that would otherwise apply to the transaction based on the volume thresholds. The Exchange notes that all the other aspects of the Program would continue to apply to the credits (*e.g.,* the aggregation of volume of affiliates, exclusion of contracts that are routed to away exchanges, exclusion of mini-options . . . etc.).[6]

For example, if Member Firm ABC, Inc. (''ABC'') has enough Priority Customer contracts to achieve 0.5% of the national customer volume in multiply-listed option contracts during the month of October, ABC will receive a credit of $0.15 for each Priority Customer contract executed in the month of October. However, any qualifying Priority Customer transactions during such month that occurred in AA, AAL, AAPL, AIG, AMZN, AZN, BABA, BP, C, CBS, CLF, CMCSA, EBAY, EEM, EFA, EWJ, FB, FCX, FXI, GE, GILD, GLD, GM, GOOG, GOOGL, HTZ, INTC, IWM, IYR, JCP, JPM, KO, MO, MRK, NFLX, NOK, NQ, PBR, PCLN, PFE, PG, QCOM, QQQ, S, SIRI, SPY, SUNE, T, TSLA, USO, VALE, WAG, WFC, WMB, WY, XHB, XLE, XLF, XLP, XLU and XOM would be credited at the $0.20 per contact rate versus the standard credit of $0.15. Similarly, if Member Firm XYZ, Inc. (''XYZ'') has enough Priority Customer contracts to achieve 2.5% of the national customer volume in multiply-listed option contracts during the month of October, XYZ will receive a credit of $0.18 for each Priority Customer contract executed in the month of October. However, any qualifying Priority Customer transactions during such month that occurred in AA, AAL, AAPL, AIG, AMZN, AZN, BABA, BP, C, CBS, CLF, CMCSA, EBAY, EEM, EFA, EWJ, FB, FCX, FXI, GE, GILD, GLD, GM, GOOG, GOOGL, HTZ, INTC, IWM, IYR, JCP, JPM, KO, MO, MRK, NFLX, NOK, NQ, PBR, PCLN, PFE, PG, QCOM, QQQ, S, SIRI, SPY, SUNE, T, TSLA, USO, VALE, WAG, WFC, WMB, WY, XHB, XLE, XLF, XLP, XLU and XOM would be credited at the $0.20 per contact rate versus the standard credit of $0.18.

The purpose of the amendment to the Program is to further encourage Members to direct greater Priority Customer trade volume to the Exchange in these high volume symbols. Increased Priority Customer volume will provide for greater liquidity, which benefits all market participants on the Exchange. The practice of incentivizing increased retail customer order flow in order to attract professional liquidity providers (Market-Makers) is, and has been, commonly practiced in the options markets. As such, marketing fee programs,[7] and customer posting incentive programs,[8] are based on attracting public customer order flow. The practice of providing additional incentives to increase order flow in high volume symbols is, and has been, commonly practiced in the options markets.[9] The Program similarly intends

[3] *See* Securities Exchange Act Release Nos. 72567 (July 8, 2014), 79 FR 40818 (July 14, 2014) (SR–MIAX–2014–34); 72356 (June 10, 2014), 79 FR 34384 (June 16, 2014) (SR–MIAX–2014–26); 71698 (March 12, 2014), 79 FR 15185 (March 18, 2014) (SR–MIAX–2014–12); 71700 (March 12, 2014), 79 FR 15188 (March 18, 2014) (SR–MIAX–2014–13); 71283 (January 10, 2014), 79 FR 2914 (January 16, 2014) (SR–MIAX–2013–63); 71009 (December 6, 2013), 78 FR 75629 (December 12, 2013) (SR–MIAX–2013–56).

[4] The term ''MIAX Select Symbols'' currently means options overlying AA, AAL, AAPL, AIG, AMZN, AZN, BP, C, CBS, CLF, CMCSA, EBAY, EEM, EFA, EWJ, FB, FCX, FXI, GE, GILD, GLD, GM, GOOG, GOOGL, HTZ, INTC, IWM, IYR, JCP, JPM, KO, MO, MRK, NFLX, NOK, NQ, PBR, PCLN, PFE, PG, QCOM, QQQ, S, SIRI, SPY, SUNE, T, TSLA, USO, VALE, WAG, WFC, WMB, WY, XHB, XLE, XLF, XLP, XLU and XOM.

[5] The term ''Priority Customer'' means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial accounts(s). *See* MIAX Rule 100.

[6] *See* MIAX Options Fee Schedule, p. 3. *See also* Securities Exchange Act Release Nos. 72798 (August 8, 2014), 79 FR 47695 (August 14, 2014) (SR–MIAX–2014–41); 72567 (July 8, 2014), 79 FR 40818 (July 14, 2014) (SR–MIAX–2014–34); 72356 (June 10, 2014), 79 FR 34384 (June 16, 2014) (SR–MIAX–2014–26); 71698 (March 12, 2014), 79 FR 15185 (March 18, 2014) (SR–MIAX–2014–12); 71700 (March 12, 2014), 79 FR 15188 (March 18, 2014) (SR–MIAX–2014–13); 71283 (January 10, 2014), 79 FR 2914 (January 16, 2014) (SR–MIAX–2013–63); 71009 (December 6, 2013), 78 FR 75629 (December 12, 2013) (SR–MIAX–2013–56).

[7] *See* MIAX Fee Schedule, Section 1(b).

[8] *See* NYSE Arca, Inc. Fees Schedule, page 4 (section titled ''Customer Monthly Posting Credit Tiers and Qualifications for Executions in Penny Pilot Issues'').

[9] *See* International Securities Exchange, LLC, Schedule of Fees, p. 6 (providing reduced fee rates for order flow in Select Symbols); NASDAQ OMX

Continued

to attract Priority Customer order flow, which will increase liquidity, thereby providing greater trading opportunities and tighter spreads for other market participants and causing a corresponding increase in order flow from such other market participants in these select symbols. Increasing the number of orders sent to the Exchange will in turn provide tighter and more liquid markets, and therefore attract more business overall.

The credits paid out as part of the program will be drawn from the general revenues of the Exchange.[10] The Exchange calculates volume thresholds on a monthly basis.

2. Statutory Basis

The Exchange believes that its proposal to amend its fee schedule is consistent with Section 6(b) of the Act [11] in general, and furthers the objectives of Section 6(b)(4) of the Act [12] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that the proposal to modify the Program to expand the number of option classes that qualify for the credit for transactions in MIAX Select Symbols is fair, equitable and not unreasonably discriminatory. The credit for transactions in the select symbols is reasonably designed because it will incent providers of Priority Customer order flow to send that Priority Customer order flow to the Exchange in order to receive a credit in a manner that enables the Exchange to improve its overall competitiveness and strengthen its market quality for all market participants. The Program which provides increased incentives in high volume select symbols is also reasonably designed to increase the competitiveness of the Exchange with other options exchanges that also offer increased incentives to higher volume symbols. The proposed changes to the rebate Program are fair and equitable and not unreasonably discriminatory because it will apply equally to all Priority Customer orders in the select symbols. All similarly situated Priority Customer orders in the select symbols are subject to the same rebate schedule, and access to the Exchange is offered on terms that are not unfairly discriminatory. In addition, the Program is equitable and not unfairly discriminatory because, while only Priority Customer order flow qualifies for the Program, an increase in Priority Customer order flow will bring greater volume and liquidity, which benefit all market participants by providing more trading opportunities and tighter spreads.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed change would increase both intermarket and intramarket competition by incenting Members to direct their Priority Customer orders in the select symbols to the Exchange, which will enhance the quality of quoting and increase the volume of contracts traded here in those symbols. To the extent that there is additional competitive burden on non-Priority Customers or trading in non-select symbols, the Exchange believes that this is appropriate because the proposed changes to the rebate program should incent Members to direct additional order flow to the Exchange and thus provide additional liquidity that enhances the quality of its markets and increases the volume of contracts traded here in those symbols. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market liquidity in such select symbols. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange in such select symbols. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. The Exchange believes that the proposed rule change reflects this competitive environment because it reduces the Exchange's fees in a manner that encourages market participants to direct their customer order flow, to provide liquidity, and to attract additional transaction volume to the Exchange. Given the robust competition for volume among options markets, many of which offer the same products, implementing a volume based customer rebate program to attract order flow like the one being proposed in this filing is consistent with the above-mentioned goals of the Act. This is especially true for the smaller options markets, such as MIAX, which is competing for volume with much larger exchanges that dominate the options trading industry. MIAX has a nominal percentage of the average daily trading volume in options, so it is unlikely that the customer rebate program could cause any competitive harm to the options market or to market participants. Rather, the customer rebate program is a modest attempt by a small options market to attract order volume away from larger competitors by adopting an innovative pricing strategy. The Exchange notes that if the rebate program resulted in a modest percentage increase in the average daily trading volume in options executing on MIAX, while such percentage would represent a large volume increase for MIAX, it would represent a minimal reduction in volume of its larger competitors in the industry. The Exchange believes that the proposal will help further competition, because market participants will have yet another additional option in determining where to execute orders and post liquidity if they factor the benefits of a customer rebate program into the determination.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[13] 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.

PHLX, Pricing Schedule, Section I (providing a rebate for adding liquidity in SPY); NYSE Arca, Inc. Fees Schedule, page 4 (section titled ''Customer Monthly Posting Credit Tiers and Qualifications for Executions in Penny Pilot Issues'').

[10] Despite providing credits under the Program, the Exchange represents that it will continue to have adequate resources to fund its regulatory program and fulfill its responsibilities as a self-regulatory organization while the Program will be in effect.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2014–50 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2014–50. 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–MIAX–2014–50 and should be submitted on or before November 6, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

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[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73326; File No. SR–MIAX–2014–51]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Options Fee Schedule

October 9, 2014.

Pursuant to the provisions of 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 September 29, 2014, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to reduce several testing and certification fees, and System connectivity fees for non-Members. Specifically, the Exchange proposes to: (i) Eliminate the Member and non-Member API testing and certification fee for AIS; [3] (ii) eliminate the non-Member networking connectivity fee for AIS; (iii) eliminate the AIS Port fees; (iv) add a monthly fee for Internal Distributors and External Distributors of AIS; and (v) clarify that non-Member fees that apply to Third Party Vendors and Service Bureaus also apply to other non-Members.

API Testing and Certification

The Exchange assesses a one-time Application Programming Interface (''API'') testing and certification fee on Members and non-Members for AIS. Specifically, the Exchange assesses a one-time API Testing and Certification fee of $1,000.00 Members and $1,000.00 on third party vendors [4] and Service Bureaus [5] whose software interfaces with MIAX software in order to receive the AIS market data feed. The API makes it possible for third party vendors' and Service Bureaus' software to communicate with MIAX software applications, and is subject to testing with, and certification by, the Exchange. The Exchange plans on migrating the AIS data feed to a multicast data format and thus will no longer need to assess

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] AIS market data feed includes: Opening imbalance condition information; opening routing information; Expanded Quote Range information, as provided in MIAX Rule 503(f)(5); Post-Halt Notification, as provided in MIAX Rule 504(d); and Liquidity Refresh condition information, as provided in MIAX Rule 515(c)(2). This additional information (the ''administrative information'') is included in the ToM feed and is not top of market information. The administrative information is also currently available to MIAX Market Makers via connectivity with the MIAX Express Interface (''MEI''), for which they are assessed connectivity fees.

[4] Third party vendors are subscribers of MIAX's market and other data feeds, which they in turn use for redistribution purposes. Third party vendors do not provide connectivity and therefore are not subject to Network testing and certification.

[5] A Service Bureau is a technology provider that offers and supplies technology and technology services to a trading firm that does not have its own proprietary system. The technology and technology services supplied by Service Bureaus includes both software applications and connectivity, thus Service Bureaus are subject to both API testing and certification and Network testing and certification.

API Testing and Certification fees to market participants that receive AIS. Therefore, the Exchange proposes to eliminate the API testing and certification fee for both Members and non-Members because the Exchange will no longer offer the AIS data feed in a format that necessitates API testing and certification.

AIS Port Fees

The Exchange assesses monthly AIS Port fees for the use of AIS Ports, which provide the connectivity necessary to receive the AIS from the MIAX System. The Exchange assesses monthly AIS Port fees based on the number of Exchange matching engines to which a subscriber connects. Specifically, the Exchange assesses a monthly AIS Port fee of $1,000.00 for the first matching engine on which an AIS has two ports, $250.00 each for the second through fifth matching engines on which an AIS has two ports, and $125.00 each for the sixth matching engine and any additional engines on which the AIS has the two ports. As mentioned above, the Exchange plans on migrating the AIS data feed to a multicast data format and thus will no longer needs to assess API Port fees to market participants that receive AIS. Therefore, the Exchange proposes to eliminate the AIS Port fees because the Exchange will no longer offer the AIS data feed in a format that necessitates the use of AIS Ports.

Internal Distributors and External Distributors

The Exchange proposes to charge monthly fees to Distributors of the AIS market data product that receive a feed of AIS data either directly from MIAX or indirectly through another entity and then distributes it either internally (within that entity) or externally (outside that entity). The monthly Distributor Fee charged depends on whether the Distributor is an ''Internal Distributor'' [6] or an ''External Distributor''.[7] The Exchange will assess Internal Distributor's a monthly fee of $1,000.00 and External Distributor's a monthly fee of $1,500.00 for the AIS market data product. The Exchange notes that all Distributors are required to execute a MIAX Distributor Agreement. The fees for AIS will be reduced for new Distributors for the first month during which they subscribe to AIS, based on the number of trading days that have been held during the month prior to the date on which they subscribe. Such new Distributors will be assessed a pro-rata percentage of the fees described above, which is the percentage of the number of trading days remaining in the affected calendar month as of the date on which they begin to receive the AIS feed, divided by the total number of trading days in the affected calendar month. The monthly fee for Internal Distributors and External Distributors of AIS will be waived if they also subscribe to the ToM market data product. The Exchange believes that waiving the fees for Internal Distributors and External Distributors of AIS will encourage additional market participants that currently subscribe to ToM to use the service to receive administrative information.[8]

Finally, the Exchange proposes to amend the Fee Schedule in several places to clarify that non-Member fees that apply to Third Party Vendors and Service Bureaus also apply to other non-Members. The Exchange believes that this change may reduce the potential for confusion by market participants as to which type of non-Members the non-Member fees apply to. The Exchange also believes that clarification may encourage more non-Members, other than Third Party Vendors and Service Bureaus, to use the Exchange's market data products.

2. Statutory Basis

The Exchange believes that its proposal to amend its fee schedule is consistent with Section 6(b) of the Act [9] in general, and furthers the objectives of Section 6(b)(4) of the Act [10] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes the proposed changes to eliminate several fees are reasonable in that they are designed to correspond with the migration of the data feed to a new format that no longer necessitates the fees being assessed. The Exchange anticipates the changes will result in a reasonable allocation of its costs and expenses among its Members and other persons using its facilities because the proposed fees would enable the Exchange to recover the costs associated with providing such infrastructure, and with offering access through the network connections and access and services, responding to customer requests, configuring MIAX systems, and administering the various services [sic] connectivity services. The Exchange believes the proposed fees are equitable and not unfairly discriminatory because the new fee levels result in a more reasonable and equitable allocation of fees amongst non-Members and Members for similar services. Access to the Exchange is provided on fair and non-discriminatory terms. Moreover, the decision as to whether or not to subscribe to AIS is entirely optional to all parties. Potential subscribers are not required to purchase the AIS market data feed. Subscribers can discontinue their use at any time and for any reason, including due to their assessment of the reasonableness of fees charged. The allocation of fees among subscribers is fair and reasonable because, if the market deems the proposed fees to be unfair or inequitable, firms can diminish or discontinue their use of this data.

In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[11]

By removing ''unnecessary regulatory restrictions'' on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well.

In July, 2010, Congress adopted H.R. 4173, the Dodd-Frank Wall Street Reform and Consumer Protection Act of

[6] An Internal Distributor is an organization that subscribes to the Exchange for the use of ToM, and is permitted by agreement with the Exchange to provide ToM data to internal users (*i.e.,* users within their own organization).

[7] An External Distributor is an organization that subscribes to the Exchange for the use of ToM, and is permitted by agreement with the Exchange to provide ToM data to both internal users and to external users (*i.e.,* users outside of their own organization).

[8] The Exchange notes that in a companion filing that the Exchange proposes to eventually to remove messages related to administrative information and Liquidity Seeking Events (''LSE'') from ToM and MEI and add them to the AIS data feed to the extent that they are not already included in AIS. *See* SR–MIAX–2014–53. Thus, waiving the fees for Internal Distributors and External Distributors of AIS will allow market participants that subscribe to ToM to continue to receive administrative information and LSE related messages at no additional cost than what is currently being assessed today.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

2010 (''Dodd-Frank Act''), which amended Section 19 of the Act. Among other things, Section 916 of the Dodd-Frank Act amended paragraph (A) of Section 19(b)(3) of the Act by inserting the phrase ''on any person, whether or not the person is a member of the self-regulatory organization'' after ''due, fee or other charge imposed by the self-regulatory organization.'' As a result, all SRO rule proposals establishing or changing dues, fees or other charges are immediately effective upon filing regardless of whether such dues, fees or other charges are imposed on members of the SRO, non-members, or both. Section 916 further amended paragraph (C) of Section 19(b)(3) of the Act to read, in pertinent part, ''At any time within the 60-day period beginning on the date of filing of such a proposed rule change in accordance with the provisions of paragraph (1) [of Section 19(b)], the Commission summarily may temporarily suspend the change in the rules of the self-regulatory organization made thereby, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title. If the Commission takes such action, the Commission shall institute proceedings under paragraph (2)(B) [of Section 19(b)] to determine whether the proposed rule should be approved or disapproved.''

The Exchange believes that these amendments to Section 19 of the Act reflect Congress's intent to allow the Commission to rely upon the forces of competition to ensure that fees for market data are reasonable and equitably allocated. Although Section 19(b) had formerly authorized immediate effectiveness for a ''due, fee or other charge imposed by the self-regulatory organization,'' the Commission adopted a policy and subsequently a rule stating that fees for data and other products available to persons that are not members of the self-regulatory organization must be approved by the Commission after first being published for comment. At the time, the Commission supported the adoption of the policy and the rule by pointing out that unlike members, whose representation in self-regulatory organization governance was mandated by the Act, non-members should be given the opportunity to comment on fees before being required to pay them, and that the Commission should specifically approve all such fees. The Exchange believes that the amendment to Section 19 reflects Congress's conclusion that the evolution of self-regulatory organization governance and competitive market structure have rendered the Commission's prior policy on non-member fees obsolete. Specifically, many exchanges have evolved from member-owned, not-for-profit corporations into for-profit, investor-owned corporations (or subsidiaries of investor-owned corporations). Accordingly, exchanges no longer have narrow incentives to manage their affairs for the exclusive benefit of their members, but rather have incentives to maximize the appeal of their products to all customers, whether members or non-members, so as to broaden distribution and grow revenues. Moreover, the Exchange believes that the change also reflects an endorsement of the Commission's determinations that reliance on competitive markets is an appropriate means to ensure equitable and reasonable prices. Simply put, the change reflects a presumption that all fee changes should be permitted to take effect immediately, since the level of all fees are constrained by competitive forces. The Exchange therefore believes that the fees for AIS are properly assessed on non-member Distributors.

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoaliton* v. *SEC,* No. 09–1042 (D.C. Cir. 2010), although reviewing a Commission decision made prior to the effective date of the Dodd-Frank Act, upheld the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data:

> In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.' [12]

The court's conclusions about Congressional intent are therefore reinforced by the Dodd-Frank Act amendments, which create a presumption that exchange fees, including market data fees, may take effect immediately, without prior Commission approval, and that the Commission should take action to suspend a fee change and institute a proceeding to determine whether the fee change should be approved or disapproved only where the Commission has concerns that the change may not be consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

Notwithstanding its determination that the Commission may rely upon competition to establish fair and equitably allocated fees for market data, the NetCoalition Court found that the Commission had not, in that case, compiled a record that adequately supported its conclusion that the market for the data at issue in the case was competitive. The Exchange believes that a record may readily be established to demonstrate the competitive nature of the market in question.

There is intense competition between trading platforms that provide transaction execution and routing services and proprietary data products. Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a representative example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platform where the order can be posted, including the execution fees, data quality and price and distribution of its data products. Without the prospect of a taking order seeing and reacting to a posted order on a particular platform, the posting of the order would accomplish little.

Without trade executions, exchange data products cannot exist. Data products are valuable to many end subscribers only insofar as they provide information that end subscribers expect will assist them or their customers in making trading decisions. The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, an exchange's customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A broker-dealer will direct orders to a particular exchange only if the expected revenues from executing trades on the exchange exceed net transaction execution costs and the cost of data that the broker-dealer chooses to buy to support its trading decisions (or those of its customers). The choice of data

[12] *NetCoalition,* at 15 (quoting H.R. Rep. No. 94–229, at 92 (1975), as reprinted in 1975 U.S.C.C.A.N. 321, 323).

products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the broker-dealer will choose not to buy it.

Moreover, as a broker-dealer chooses to direct fewer orders to a particular exchange, the value of the product to the broker-dealer decreases, for two reasons. First, the product will contain less information, because executions of the broker-dealer's orders will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that broker-dealer because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the broker-dealer is directing orders will become correspondingly more valuable.

Thus, a super-competitive increase in the fees charged for either transactions or data has the potential to impair revenues from both products. ''No one disputes that competition for order flow is 'fierce'.'' However, the existence of fierce competition for order flow implies a high degree of price sensitivity on the part of broker-dealers with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A broker-dealer that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. Similarly, if a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected broker-dealers will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data.

Analyzing the cost of market data distribution in isolation from the cost of all of the inputs supporting the creation of market data will inevitably underestimate the cost of the data. Thus, because it is impossible to create data without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of market data. It would be equally misleading, however, to attribute all of the exchange's costs to the market data portion of an exchange's joint product. Rather, all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platforms may choose to pay rebates to attract orders, charge relatively low prices for market information (or provide information free of charge) and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market information, and setting relatively low prices for accessing posted liquidity. In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering. This would be akin to strictly regulating the price that an automobile manufacturer can charge for car sound systems despite the existence of a highly competitive market for cars and the availability of aftermarket alternatives to the manufacturer-supplied system.

The market for market data products is competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

Broker-dealers currently have numerous alternative venues for their order flow, including eleven existing options markets. Each SRO market competes to produce transaction reports via trade executions. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products. The large number of SROs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO is currently permitted to produce proprietary data products, and many in addition to MIAX currently do, including NASDAQ, CBOE, ISE, NYSE Amex, and NYSEArca. Additionally, order routers and market data vendors can facilitate single or multiple broker-dealers' production of proprietary data products. The potential sources of proprietary products are virtually limitless.

Market data vendors provide another form of price discipline for proprietary data products because they control the primary means of access to end subscribers. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Thomson Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end subscribers will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only data that will enable them to attract ''eyeballs'' that contribute to their advertising revenue. Retail broker-dealers, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: They can simply refuse to purchase any proprietary data product that fails to provide sufficient value. The Exchange and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, BATS Trading and Direct Edge. Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While broker-dealers have previously published their proprietary data individually, Regulation NMS encourages market data vendors and broker-dealers to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg, and Thomson Reuters.

The Court in NetCoalition concluded that the Commission had failed to demonstrate that the market for market data was competitive based on the reasoning of the Commission's NetCoalition order because, in the Court's view, the Commission had not

adequately demonstrated that the proprietary data at issue in the case is used to attract order flow. The Exchange believes, however, that evidence not then before the court clearly demonstrates that availability of data attracts order flow. Due to competition among platforms, the Exchange intends to improve its platform data offerings on a continuing basis, and to respond promptly to customers' data needs.

The intensity of competition for proprietary information is significant and the Exchange believes that this proposal itself clearly evidences such competition. The Exchange is offering AIS in order to keep pace with changes in the industry and evolving customer needs. It is entirely optional and is geared towards attracting new Member Applicants and customers. MIAX competitors continue to create new market data products and innovative pricing in this space. The Exchange expects to see firms challenge its pricing on the basis of the Exchange's explicit fees being higher than the zero-priced fees from other competitors such as BATS. In all cases, the Exchange expects firms to make decisions on how much and what types of data to consume on the basis of the total cost of interacting with MIAX or other exchanges. Of course, the explicit data fees are only one factor in a total platform analysis. Some competitors have lower transactions fees and higher data fees, and others are vice versa. The market for this proprietary information is highly competitive and continually evolves as products develop and change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[13] 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–MIAX–2014–51 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2014–51. 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–MIAX–2014–51 and should be submitted on or before November 6, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–24540 Filed 10–15–14; 8:45 am]

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[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73327; File No. SR–CBOE–2014–072]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

October 9, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 1, 2014, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 its Fees Schedule, to be effective October 1, 2014. Specifically, the Exchange proposes to increase the Customer Priority Surcharge fee assessed to contracts executed in VIX volatility index options (''VIX options''). Currently, the VIX Customer Priority Surcharge (''Surcharge'') is assessed on all Customer (C) VIX contracts executed electronically that are Maker and not Market Turner. Additionally, the surcharge is only assessed on such contracts that have a premium of $0.11 or greater. The Exchange proposes to increase the Surcharge from $0.05 per contract to $0.10 per contract on such contracts that have a premium of $0.11 or greater.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[3] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[4] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[5] which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders.

The Exchange believes that the VIX Customer Priority Surcharge increase is reasonable because the amount of the new fee is within the range of surcharges assessed for customer transactions in other CBOE proprietary products (for example customers are currently assessed a $0.20 Hybrid 3.0 Execution Surcharge (which essentially acts as a customer priority surcharge) in SPX options).

The Exchange believes that it is equitable and not unfairly discriminatory to assess the VIX Priority Surcharge to Customers and not other market participants because Customers are not subject to additional costs for effecting transactions in VIX which are applicable to other market participants, such as license surcharges. Additionally, Customers are not subject to fees applicable to other market participants such as connectivity fees and fees relating to Trading Permits, and are not subject to the same obligations as other market participants, including regulatory and compliance requirements and quoting obligations. The Exchange believes that it is equitable and not unfairly discriminatory to only assess the Surcharge to Maker Non-Turners because the Exchange wants to encourage improving the market (''turning'').

The Exchange believes that it is equitable and not unfairly discriminatory to only assess this fee when the contract premium is at least $0.11 because the Exchange wants to reduce costs on low priced VIX options to encourage Customers to close and roll over positions close to expiration at low premium levels. Currently, such Customers are less likely to do this because the transaction fee is closer to the premium level. The Exchange believes that maintaining lowered fees overall for VIX options trading with a premium of $0.00–$0.10 will encourage the trading of such options. As such, the Exchange does not wish to assess Customer Priority Surcharge on such options in order to keep the costs low.

The Exchange believes that increasing the customer priority surcharge for VIX options and not VXST is equitable and not unfairly discriminatory because VXST is a relatively new product that the Exchange has expended significant resources in developing and believes that not assessing a higher surcharge will encourage trading in VXST.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, while different electronic transaction fees are assessed to different market participants, different market participants have different obligations and circumstances as noted above. The Exchange believes that the proposal to increase the surcharge amount assessed to Customers for executions in VIX contracts will not cause an unnecessary burden on intermarket competition because the proposed change was not motivated by intermarket competition. Additionally, VIX is only traded on CBOE. To the extent that the proposed changes make CBOE a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become CBOE market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and paragraph (f) of Rule 19b–4[7] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change 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–CBOE–2014–072 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f).

All submissions should refer to File Number SR–CBOE-2014–072. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2014–072 and should be submitted on or before November 6, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–24541 Filed 10–15–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73330; File No. SR–Phlx–2014–64]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Options Floor Procedure Advice F–27, Options Exchange Official Rulings

October 9, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 2, 2014, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to correct Options Floor Procedure Advice (''Advice'') F–27, Options Exchange Official Rulings, by updating an obsolete reference.

The text of the proposed rule change is below; proposed new language is in italics; proposed deletions are in brackets.

* * * * *

F–27 Options Exchange Official Rulings

Options Exchange Officials are empowered to render rulings on the trading floor to resolve trading disputes occurring on and respecting activities on the trading floor. All rulings rendered by Options Exchange Officials are effective immediately and must be complied with promptly. Failure to promptly comply with a ruling concerning a trading dispute may result in referral to the Business Conduct Committee. Failure to promptly comply with other rulings issued pursuant to Order and Decorum Regulations or Floor Procedure Advices and not concerning a trading dispute may result in an additional violation. Options Exchange Officials need not render decisions in any instance where the request for a ruling was not made within a reasonable period of time. An Options Exchange Official should not render a decision or authorize a citation where such Options Exchange Official was involved in or affected by the dispute, as well as in any situation where the Options Exchange Official is not able to objectively and fairly render a decision.

Options Exchange Officials shall endeavor to be prompt in rendering decisions. However, in any instance where an Options Exchange Official has determined that the benefits of further discovery as to the facts and circumstances of any matter under review outweigh the monetary risks of a delayed ruling, the Options Exchange Official may determine to delay rendering the ruling until such time as that further discovery is completed. In issuing decisions for the resolution of trading disputes, Options Exchange Officials shall institute the course of action deemed by the ruling Options Exchange Official to be more fair to all parties under the circumstances at the time. An Options Exchange Official may direct the execution of an order on the floor, or adjust the transaction terms or participants to an executed order on the floor. However, an Options Exchange Official may nullify a transaction if they determine the transaction to have been in violation of Rule Rules 1014 (Obligations and Restrictions Applicable to Specialists and Registered Options Traders), Rule 1017 (Openings In Options), Rule 1033 (Bids And Offers-Premium) or Rule 1080 (Phlx XL and Phlx XL II).

Exchange staff may determine that an Options Exchange Official is ineligible to participate in a particular ruling where it appears that such Options Exchange Official has a conflict of interest. For purposes of this Rule, and without limitation, a conflict of interest exists where an Options Exchange Official: (a) Is directly or indirectly affiliated with a party seeking an Options Exchange Official ruling; (b) is a participant or is directly or indirectly affiliated with a participant in a transaction that is the subject of an Options Exchange Official ruling; (c) is a debtor or creditor of a party seeking an Options Exchange Official ruling; or (d) is an immediate family member of a party seeking an Options Exchange Official ruling. Exchange staff may consider other circumstances, on a case-by-case basis, in determining the eligibility or ineligibility of a particular Options Exchange Official to participate in a particular ruling due to a conflict of interest.

All Options Exchange Official rulings concerning the adjustment and nullification of transactions are reviewable by the [Referee (as defined in Rule 124)] *Market Operations Review Committee.*

(i)–(v) No change.

FINE SCHEDULE

$250.00

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposal is to correct an Exchange provision respecting how disputes are settled. Advice F–27 generally parallels Rule 124 and governs how disputes are settled on the Exchange's options trading floor. Specifically, Advice F–27 (as well as Rule 124) provides that Options Exchange Officials are empowered to render rulings on the trading floor to resolve trading disputes occurring on and respecting activities on the trading floor. It also governs the process for rendering rulings and situations where the Options Exchange Official may have a conflict.

Some time ago, Options Exchange Official rulings were appealable to the Exchange Referee, an Exchange employee who was empowered to review Options Exchange Official rulings. In 2009,[3] the Exchange replaced the Referee with a committee, the Market Operations Review Committee,[4] and inadvertently left one reference to the Referee in Advice F–27. At this time, the Exchange proposes to delete that reference and replace it with reference to the Market Operations Review Committee. This change to Advice F–27 ensures that the terms used in the Advice and the Rule are consistent and up-to-date.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[5] in general, and furthers the objectives of Section 6(b)(5) of the Act[6] in particular, in that it is designed to promote just and equitable principles of trade, and, to protect investors and the public interest, by providing a clear rule on how rulings can be appealed.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, because it merely corrects a reference.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] 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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[9]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing. 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. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Specifically, the Commission believes that the proposal would eliminate confusion in the Exchange's rules and provide clarification to the public. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if 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–Phlx–2014–64 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2014–64. 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

[3] Securities Exchange Act Release Nos. 60687 (September 18, 2009), 74 FR 49060 (September 25, 2009) (SR–Phlx–2009–59) (Replacing Referee with Options Trade Review Committee); and 64338 (April 25, 2011), 76 FR 24069 (April 29, 2011) (SR–Phlx–2011–13) (Renaming the Options Trade Review Committee as the Market Operations Review Committee).

[4] Options Exchange Official rulings (including those concerning the nullification or adjustment of transactions) may be sustained, overturned or modified by the Market Operations Review Committee. *See* Rule 124(d) and By-Law Article V, Section 5–3(d).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

[9] 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.

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] 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).

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–Phlx–2014–64 and should be submitted on or before November 6, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–24544 Filed 10–15–14; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 8918]

Culturally Significant Objects Imported for Exhibition Determinations: ''Monet/Kelly''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Monet/Kelly,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Sterling and Francine Clark Art Institute, Williamstown, Massachusetts, from on or about November 23, 2014, until on or about February 15, 2015, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: October 8, 2014.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2014–24629 Filed 10–15–14; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 8916]

Culturally Significant Objects Imported for Exhibition Determinations: ''Bridget Riley'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Bridget Riley,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Art Institute of Chicago, Chicago, IL, from on or about November 11, 2014, until on or about March 15, 2015, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: October 8, 2014.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2014–24649 Filed 10–15–14; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 8917]

Culturally Significant Objects Imported for Exhibition Determinations: ''Keith Haring: The Political Line'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Keith Haring: The Political Line,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Fine Arts Museums of San Francisco, de Young, San Francisco, CA, from on or about November 8, 2014, until on or about February 16, 2015, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: October 8, 2014.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2014–24655 Filed 10–15–14; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Twenty Seventh Meeting: RTCA Special Committee 213, Enhanced Flight Vision Systems/Synthetic Vision Systems (EFVS/SVS)

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: Meeting notice of RTCA Special Committee 213, Enhanced Flight Vision Systems/Synthetic Vision Systems (EFVS/SVS).

SUMMARY: The FAA is issuing this notice to advise the public of the twenty seventh meeting of the RTCA Special Committee 213, Enhanced Flight Vision Systems/Synthetic Vision Systems (EFVS/SVS).

DATES: The meeting will be held November 5, 2014 from 2:30–5:00 p.m.

ADDRESSES: *https://rtca.webex.com/rtca/j.php?MTID=m8c15ab559c5c8380811759806531cae4.*

Meeting number: 684 099 495
Meeting password: November 5
Join by phone
Dial: 1–888–481–3032 International: 617–801–9600 Participant Passcode: 56022675

FOR FURTHER INFORMATION CONTACT: Tim Etherington, *tjetheri@rockwellcollins.com,* (319) 295–5233 or mobile at (319) 431–7154, Patrick Krohn, *pkrohn@uasc.com,* telephone (425) 602–1375 or mobile at (425) 829–1996 and The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 330–0652/(202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.* Additional contact information: RTCA contact is Jennifer Iverson, *jiverson@rtca.org,* (202) 330- 0662.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 213. The agenda will include the following:

November 5th

Plenary Discussion

- Introductions and administrative items
- DO–315C FRAC Comment Review and Disposition
- Approval of DO–315C to go to Program Management Committee
- Administrative items (new meeting location/dates, action items etc.)
- Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 8th, 2014.

Mohannad Dawoud,

Management Analyst, NextGen, Business Operations Group, Federal Aviation Administration.

[FR Doc. 2014–24537 Filed 10–15–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. 2014–0126]

Request for Comments of a Previously Approved Information Collection: Procedures for Determining Vessel Services Categories for Purposes of the Cargo Preference Act

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on July 7, 2014 (**Federal Register** 38356, Vol. 79, No. 129).

DATES: Comments must be submitted on or before November 17, 2014.

FOR FURTHER INFORMATION CONTACT: Dennis Brennan, 202–366–1029, Office of Cargo and Commercial Sealift, Maritime Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Procedures for Determining Vessel Services Categories for Purposes of the Cargo Preference Act.

OMB Control Number: 2133–0540.

Type of Request: Renewal of a Previously Approved Information Collection.

Abstract: The purpose is to provide information to be used in the designation of service categories of individual vessels for purposes of compliance with the Cargo Preference Act under a Memorandum of Understanding entered into by the U.S. Department of Agriculture, U.S. Agency for International Development, and the Maritime Administration. The Maritime Administration will use the data submitted by vessel operators to create a list of Vessel Self-Designations and determine whether the Agency agrees or disagrees with a vessel owner's designation of a vessel.

Affected Public: Owners or operators of U.S.-registered vessels and foreign-registered vessels.

Estimated Number of Respondents: 100.

Estimated Number of Responses: 100.

Annual Estimated Total Annual Burden Hours: 800/8 hours per Respondent.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW., Washington, DC 20503.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.93.

Dated: October 9, 2014.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2014–24636 Filed 10–15–14; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD–2014–0132]

Deepwater Ports License Application Process for Offshore Export Facilities

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of proposed policy.

SUMMARY: The Maritime Administration (MARAD) is seeking public comment on the agency's proposed policy to accept, evaluate and process license applications for the construction and operation of offshore deepwater port facilities for the export of oil and natural gas from the United States to foreign markets abroad, and to use the existing Deepwater Port License regulations, cited at 33 CFR Parts 148, 149 and 150 for such purposes.

DATES: Written public comments regarding this notice of proposed policy

should be submitted on or before December 15, 2014.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2014–0132 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Search MARAD–2014–0132 and follow the instructions for submitting comments.
- *Email: Rulemakings.MARAD@dot.gov.* Include MARAD–2014–0132 in the subject line of the message.
- *Fax:* (202) 493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590. If you would like to confirm that your comments reached the facility, please enclose a stamped, self-addressed postcard or envelope.
- *Hand Delivery/Courier:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590. The Docket Management Facility is open 9:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays.

Note: If you fax, mail or hand deliver your input, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that you can be contacted if there are questions regarding your submission. If you submit your inputs by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing.

Instructions: All submissions received must include the agency name and docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Ms. Yvette M. Fields, Director, Office of Deepwater Ports and Offshore Activities, Maritime Administration, telephone: 202–366–0926, email: *Yvette.Fields@dot.gov.* If you have questions on viewing the Docket, call Renee V. Wright, Program Manager, Docket Operations, telephone: 202–493–0402.

SUPPLEMENTARY INFORMATION: On December 20, 2012, the Coast Guard and Maritime Transportation Act of 2012 (Title III, Sec. 312) amended Section 3(9)(A) of the Deepwater Port Act of 1974 (33 U.S.C. 1502(9)(A)) to insert the words ''or from'' before the words ''any State'' in the definition of Deepwater Port. This amendment grants MARAD, as delegated by the Secretary of Transportation, the authority to license the construction and operation of Deepwater Ports for the export of oil and natural gas from domestic sources within the United States.[1] This amendment will be implemented in accordance with existing legislative and regulatory requirements pertaining to the Deepwater Port Act of 1974, as amended (the Act). The Coast Guard and Maritime Transportation Act of 2012 provided no other amendments to the Act.

The amended Act defines a Deepwater Port, in part, as ''any fixed or floating manmade structure other than a vessel, or any group of such structures, that are located beyond State seaward boundaries and that are used or intended for use as a port or terminal for the transportation, storage, or further handling of oil or natural gas for transportation to or from any State . . . .''

The Act grants the Maritime Administrator authority to license Deepwater Ports (by delegation from the Secretary of Transportation, published on August 17, 2012 [77 FR 49964]). Deepwater Port license applications are jointly processed by MARAD and the U.S. Coast Guard (Coast Guard) under delegations from, and between, the Secretary of Transportation and the Secretary of Homeland Security. In general, the Coast Guard is the lead agency for compliance with the National Environmental Policy Act and is responsible for matters related to navigation safety, engineering and safety standards, and facility inspections. MARAD is responsible for determining citizenship and financial capability of the potential licensees, and for preparing the project Record of Decision and issuing or denying the license. The various other responsibilities under the Act, including the duty of consultation, are shared by the Coast Guard and MARAD. Statutory and regulatory requirements for Deepwater Port licensing appear in 33 U.S.C. 1501 *et seq.* and in 33 CFR Parts 148, 149 and 150.

[1] With regard to exports from a State that are intended for non-United States markets, the Department of Energy is responsible for approving applications to export natural gas to Free Trade Agreement and Non-Free Trade Agreement nations. As a general proposition, the export of oil from the United States is restricted (see e.g., the Energy Policy and Conservation Act of 1975 or the Export Administration Act of 1979).

The Coast Guard has previously developed comprehensive regulatory guidance for Deepwater Port license applications and remains the Federal agency responsible for the promulgation of rules relating to the Deepwater Port license application process. Regulations detailing the requirements of the Deepwater Port license application process; design, construction and equipment; and port operations can be found in 33 CFR Parts 148, 149 and 150. These regulations pertain to the application review process, planning, environmental review, design, construction and operation of deepwater port facilities without specific regard to whether the facility imports or exports oil and/or natural gas products. With the addition of oil and natural gas exportation under the amendment to the Act, MARAD does not foresee any reason to alter the Deepwater Port licensing application process. As such, this notice is provided to inform the public that MARAD, with the concurrence of the Coast Guard's Deepwater Ports Standards Division, intends to use the existing Deepwater Port regulations for the review, evaluation and processing of any Deepwater Port license application involving the export of oil or natural gas from domestic sources within the United States as provided for in 33 CFR Part 148, 149 and 150.

Any proposed Deepwater Port involving the export of oil or natural gas from domestic sources within the United States will require the submission of an export-specific comprehensive license application conforming to all established and applicable Deepwater Port licensing requirements and regulations. The considerable technical, operational and environmental differences between import and export operations for oil or natural gas projects are such that any licensed Deepwater Port facility, or any proponent of a deepwater port that has an application in process, that proposes to convert from import to export operations will be required to submit a new license application (including application fee) and conform to all licensing requirements and regulations in effect at such time of application. For licensed deepwater ports, an application to convert from import operations to export operations will require, at a minimum: (1) Approval from the Department of Energy or other approval authority to export oil or natural gas to free trade and/or non-free trade agreement countries; (2) a new or supplemental environmental impact analysis (Environmental Impact

Statement or Environmental Assessment—Finding of No Significant Impact) pursuant to the National Environmental Policy Act that assesses the significance of the environmental impact of the proposed change in operations; and (3) a revised operations manual that fully describes the proposed change in port operations. Only after all required application processes are completed, and after consideration of the nine factors specified in the Act (33 U.S.C. 1503(c)), may the Maritime Administrator approve (or disapprove) an application to export oil or natural gas through a deepwater port. In the event the Maritime Administrator approves the application to convert to export operations, the applicant's existing license shall be surrendered and the Maritime Administrator will issue a new license with conditions appropriate to all intended activities, including, if applicable, authority to engage in bidirectional oil or natural gas import and export operations. In all other cases, the Maritime Administrator will issue a new license with conditions appropriate to the applied for activity.

This proposed policy will take effect upon the date of the final **Federal Register** Notice of Policy and will remain in effect until such time that additional or other related regulations are promulgated. As previously stated, all statutory provisions of the Deepwater Port Act of 1974, as amended, shall apply to the final authorization and licensure of export oil and natural gas Deepwater Ports.

Public Participation

Your comments must be written and provided in English. To ensure that your comments are correctly filed in the Docket, please include the docket number in your comments. MARAD encourages you to provide concise comments. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments. Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**.

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE., Washington, DC 20590. When you send comments containing information claimed to be confidential information, you should include a cover letter setting forth with specificity the basis for any such claim.

MARAD will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, MARAD will also consider comments received after that date. If a comment is received too late for MARAD to consider in developing a final policy (assuming one is issued), MARAD will consider that comment as an informal suggestion for future policy action.

For access to the docket to read background documents, including those referenced in this document, or to submit or read comments received, go to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590. The Docket Management Facility is open 9:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays. To review documents, read comments or to submit comments, the docket is also available online at *http://www.regulations.gov.,* keyword search MARAD–2014–0132.

Please note that even after the comment period has closed, MARAD will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, MARAD recommends that you periodically check the Docket for new material.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT Privacy Act system of records notice for the Federal Docket Management System (FDMS) in the **Federal Register** published on January 17, 2008, (73 FR 3316) at *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

Authority: 49 CFR 1.93.

Dated: October 10, 2014.

By Order of the Maritime Administrator

Thomas M. Hudson,

Secretary, Maritime Administration.

[FR Doc. 2014–24609 Filed 10–15–14; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2014–0129]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel SEACLUSION; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before November 17, 2014.

ADDRESSES: Comments should refer to docket number MARAD–2014–0129. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SEACLUSION is:

Intended Commercial Use of Vessel: This small motor vessel will primarily be used for 6 or fewer passengers in the immediate vicinity of New Orleans on Lake Pontchartrain. The vessel will be used for sunset cruises, small group parties, and other miscellaneous charter work, as well as some limited recreational fishing.

Geographic Region: Texas, Alabama, Louisiana, Mississippi, Florida, South Carolina, North Carolina, Georgia, Virginia, Maryland, Delaware, New Jersey, New York, Rhode Island, Maine, Ohio, Michigan, Minnesota, Wisconsin, Illinois, Arkansas, Tennessee, Missouri, and Puerto Rico.

The complete application is given in DOT docket MARAD–2014–0129 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: October 9, 2014.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2014–24703 Filed 10–15–14; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2014–0131]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel NAUTI KAT; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before November 17, 2014.

ADDRESSES: Comments should refer to docket number MARAD–2014–0131. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel NAUTI KAT is:

Intended Commercial Use of Vessel: ''The vessel will be used for 12 passenger day charters and some 6 passenger overnight charters.''

Geographic Region: ''Alabama, Florida, Georgia, North Carolina, South Carolina, Maryland, Virginia, Pennsylvania, New Jersey, New York, Ohio, Michigan, Wisconsin, Illinois, Kentucky, Tennessee.''

The complete application is given in DOT docket MARAD–2014–0131 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: October 9, 2014.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2014–24630 Filed 10–15–14; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2014–0130]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel WAYA; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before November 17, 2014.

ADDRESSES: Comments should refer to docket number MARAD–2014–0130. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above

address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel WAYA is:

Intended Commercial Use of Vessel: ''Charter fishing and sightseeing tours of Puget Sound and San Juan Islands.''

Geographic Region: ''Washington State.''

The complete application is given in DOT docket MARAD–2014–0130 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: October 9, 2014.

By Order of the Maritime Administrator.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2014–24633 Filed 10–15–14; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2014–0128]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel DRIFTER; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before November 17, 2014.

ADDRESSES: Comments should refer to docket number MARAD–2014–0128. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel DRIFTER is:

Intended Commercial Use of Vessel: ''Coastal 2–3 hour day sails on Lake Michigan.''

Geographic Region: ''Michigan.''

The complete application is given in DOT docket MARAD–2014–0128 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: October 9, 2014.

By Order of the Maritime Administrator.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2014–24628 Filed 10–15–14; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 10, 2014.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before November 17, 2014 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania

Ave. NW., Suite 8141, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by emailing *PRA@treasury.gov,* calling (202) 622–1295, or viewing the entire information collection request at *www.reginfo.gov.*

Departmental Offices

OMB Number: 1505–0146.

Type of Review: Revision of a currently approved collection.

Title: Survey of U.S. Ownership of Foreign Securities.

Form: Form SHC, Form SHCA.

Abstract: The survey will collect information on U.S. holdings of foreign securities. The information will be used in the computation of the U.S. balance of payments accounts and international investments position, as well as in the formulation of U.S. financial and monetary policies. This survey is also part of an international effort coordinated by the IMF to improve worldwide balance of payments statistics. Respondents are primarily the largest custodians of securities, banks, securities dealers, and investors.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden Hours: 57,565.

Brenda Simms,

Treasury PRA Clearance Officer.

[FR Doc. 2014–24615 Filed 10–15–14; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Senior Executive Service; Departmental Offices Performance Review Board

AGENCY: Treasury Department.

ACTION: Notice of members of the Departmental Offices Performances Review Board.

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the Departmental Offices Performance Review Board (PRB). The purpose of this Board is to review and make recommendations concerning proposed performance appraisals, ratings, bonuses and other appropriate personnel actions for incumbents of SES positions in the Departmental Offices, excluding the Legal Division. The Board will perform PRB functions for other bureau positions if requested.

Composition of Departmental Offices PRB: The Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half the members shall consist of career appointees. The names and titles of the Board members are as follows:

Names for Federal Register Publication

- Battle, John Associate Director, Resource Management OFAC
- Baukol, Andy P., Deputy Assistant Secretary for Mid-East and Africa
- Banks, Carol, Director, Office of Accounting and Internal Controls
- Berry, Elizabeth, Treasury Attaché
- Blair, Anita K., Deputy Assistant Secretary for Human Resources and Chief Human Capital Officer
- Cavella, Charles J., Deputy Assistant Secretary for Security
- Cole, Lorraine, Director, Office of Minority and Women Inclusion
- Conrath, Kristine, Deputy Assistant Secretary for Fiscal Operations and Policy
- Coley, Anthony, Deputy Assistant Secretary for Public Affairs
- Cooper, Iris, Senior Procurement Executive
- Dohner, Robert S., Deputy Assistant Secretary for South and East Asia
- Fagan, John, Director, Markets Room
- Gatjanis, Gregory, Associate Director, Office of Global Targetting
- Harvey, Mariam G., Associate Chief Human Capital Officer for Civil Rights and Diversity
- Hunt, Jennifer, Deputy Assistant Secretary Microeconomic Analysis
- Jermano, Jill, Director, Office of Transnational Issues
- Kershbaum, Sharon, Deputy Assistant Secretary for Management & Budget
- Koide, Melissa, Deputy Assistant Secretary for the Office of Consumer Policy
- Kowalski, Theodore, Director Office of Grants and Asset Management
- Mathiasen, Karen, Director Office of Multilateral Development Bank
- McCubbin, Janet, Director for Individual Taxation
- McDonald, William L., Deputy Assistant Secretary for Technical Assistance Policy
- Monroe, David J., Director, Office of Fiscal Projections
- Nolan, Dennis, Deputy Director CDFI
- Ostrowski, Nancy, Director, Office of D.C. Pensions
- Pabotoy, Barbara, Associate Chief Human Capital Officer for Executive & Human Capital Services
- Rasetti, Lorenzo, Chief Financial Officer for Office of Financial Stability
- Roth, Dorrice, Deputy Chief Financial Officer
- Singh, Daleep, Deputy Assistant Secretary for Europe and Asia
- Skud, Timothy, Deputy Assistant Secretary Tax, Trade & Tariff Policy
- Sobel, Mark D., Deputy Assistant Secretary for International Monetary and Financial Policy
- Tran, Luyen, Director, Mid-East and North Africa

DATES: *Effective Date:* Membership is effective on the date of this notice.

FOR FURTHER INFORMATION CONTACT: Mario R. Minor, Senior HRS, 1500 Pennsylvania Avenue NW., ATTN: Room 6W529, 6th Floor, Washington, DC 20220, Telephone: 202–622–0774.

This notice does not meet the Department's criteria for significant regulations.

Dated: October 8, 2014.

Barbara B. Pabotoy,

Associate Chief Human Capital Officer, Human Capital Services.

[FR Doc. 2014–24577 Filed 10–15–14; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Senior Executive Service Departmental Performance Review Board

AGENCY: Treasury Department.

ACTION: Notice of members of the Departmental Performance Review Board (PRB).

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the Departmental PRB. The purpose of this PRB is to review and make recommendations concerning proposed performance appraisals, ratings, bonuses and other appropriate personnel actions for incumbents of SES positions for which the Secretary or Deputy Secretary is the appointing authority. These positions include SES bureau heads, deputy bureau heads and certain other positions. The Board will perform PRB functions for other key bureau positions if requested.

Composition of Departmental PRB: The Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half the members shall consist of career appointees. The names and titles of the PRB members are as follows:

- Nani A. Coloretti, Assistant Secretary for Management
- Sharon Kershbaum, Deputy Assistant Secretary for Management and Budget
- Daniel L. Glaser, Assistant Secretary for Terrorist Financing
- Mark Mazur, Assistant Secretary for Tax Policy
- David A. Lebryk, Fiscal Assistant Secretary

- Rosa G. Rios, Treasurer of the United States
- Anita K. Blair, Deputy Assistant Secretary for Human Resources and Chief Human Capital Officer
- John J. Manfreda, Administrator, Alcohol and Tobacco Tax and Trade Bureau
- Mary G. Ryan, Deputy Administrator, Alcohol and Tobacco Tax and Trade Bureau
- Jennifer Shasky-Calvery, Director, Financial Crimes Enforcement Network
- Frederick Reynolds, Deputy Director, Financial Crimes Enforcement Network
- Sheryl Morrow, Commissioner, Bureau of Fiscal Service
- Wanda J. Rogers, Deputy Commissioner, Financial Services and Operations, Bureau of Fiscal Service
- Kimberly McCoy, Deputy Commissioner, Finance and Administration, Bureau of Fiscal Service
- Cynthia Z. Springer, Deputy Commissioner, Accounting and Shared Services, Bureau of Fiscal Service
- Larry R. Felix, Director, Bureau of Engraving and Printing
- Leonard Olijar, Deputy Director, Bureau of Engraving and Printing
- Richard A. Peterson, Deputy Director, U.S. Mint
- Margaret Sherry, Deputy Commissioner, Operations Support, Internal Revenue Service

DATES: Membership is effective on the date of this notice.

FOR FURTHER INFORMATION CONTACT: Julia J. Markham, Human Resources Specialist (Executive Resources), 1500 Pennsylvania Avenue NW., ATTN: 1801 L Street NW., 6th Floor, Washington, DC 20220, Telephone: (202) 927–4370.

This notice does not meet the Department's criteria for significant regulations.

Dated: October 8, 2014.

Barbara B. Pabotoy,

Associate Chief Human Capital Officer, Human Capital Services.

[FR Doc. 2014–24608 Filed 10–15–14; 8:45 am]

BILLING CODE 4810–25–P

FEDERAL REGISTER

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Part II

Department of Housing and Urban Development

24 CFR Parts 970 and 972

Public Housing Program: Demolition or Disposition of Public Housing Projects, and Conversion of Public Housing to Tenant-Based Assistance; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 970 and 972

[Docket No. FR–5399–P–01]

RIN 2577–AC82

Public Housing Program: Demolition or Disposition of Public Housing Projects, and Conversion of Public Housing to Tenant-Based Assistance

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise and update HUD's regulations governing the demolition and disposition of public housing. Currently, demolitions and dispositions are approved based on certification by a public housing agency (PHA) that certain conditions are met. This rule increases the oversight of demolition and disposition of public housing by requiring PHAs to submit more detailed justifications supporting such certifications, and specifying the requirements concerning the use of disposition proceeds, and other matters. The rule would also clarify and provide more detail related to existing requirements applicable to demolition and disposition such as resident relocation, and fair housing and civil rights compliance to ensure that PHAs properly abide by such requirements. The rule proposes to allow a PHA to request HUD permission to retain public housing property free of restrictions under the declaration of trust and annual contributions contract. In addition, the rule would update regulatory provisions to conform to certain requirements under the Housing and Economic Recovery Act of 2008, and clarify the definition of ''conversion'' in HUD's conversion of public housing regulations.

DATES: *Comment Due Date:* December 15, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, 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 202–402–3055 (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, toll-free, at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Szybist, Program Analyst, Special Applications Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 121 S. Main Street, Suite 300, Providence, RI 02903; telephone number 401–277–8310 (this is not a toll-free number); email *kathleen.a.szybist@hud.gov.* Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of Regulatory Action

Need for regulation. HUD last updated its demolition and disposition regulations in 24 CFR part 970 in 2006 (71 FR 62362, October 24, 2006). This regulation is necessary in order to update HUD's regulations in accordance with the Housing and Economic Recovery Act of 2008 (Pub. L. 110–289, approved July 30, 2008) (HERA), which made certain changes to the requirements applicable to qualified PHAs, which are non-troubled PHAs whose public housing and Section 8 units combined are fewer than 550 units. Such PHAs are relieved from annual plan filing requirements, and consequently from demolition and disposition requirements that involve the annual plan. In addition, this regulation is necessary to add clarifications and requirements related to resident consultation, application processing, and other requirements that have until now been placed in notices to PHAs. This regulation would provide the requirements applicable to real property transactions and retention of projects by PHAs, a topic which HUD has addressed in practice under 24 CFR part 85 but which until now has not had specific regulatory standards. Finally, this regulation makes a needed clarification to HUD's regulations at 24 CFR part 972, which govern the conversion of public housing assistance to tenant-based assistance (conversion regulations).

How this rule would meet the need. This rule would promulgate the HERA-related changes and the needed clarifications to the demolition and disposition regulations, would substantially clarify the existing regulations, and correct HUD's conversion regulations.

Legal authority for the regulation. HUD has general authority to make such rules and regulations as needed to carry out its functions, powers, and duties under 42 U.S.C. 3535(d). In addition, HUD has specific authority over the demolition and disposition of public housing under 42 U.S.C. 1437p. HUD has authority over conversion of assistance under 42 U.S.C. 1437t and 1437z–5.

B. Summary of the Major Provisions

The rule would divide HUD's 24 CFR part 970 into two subparts. Subpart A would comprise the current regulations applicable to demolitions and dispositions of public housing projects as provided under section 18 of the 1937 Act. Subpart B would provide the requirements applicable to real property

transactions and retention of projects by PHAs. Additionally, this rule would issue a clarification to 24 CFR part 972 on conversion of assistance.

Subpart A

Rules regarding leasing of the project and reconfiguration of interior space would be tightened to address abuses that have occurred. Currently, 24 CFR 970.3(b)(10) does not limit the purposes for which a lease may be entered into. In order to clarify that leases should not be entered into to avoid obligations under the Annual Contributions Contract (ACC), this proposed rule would clarify this exception to indicate these leases should only be entered into for the limited purposes of allowing an owner-entity to show site control. Thus, the rule at § 970.3(b)(7), would permit, as an exception, the leasing of the entire project only for one year or less for the strictly limited purpose of allowing a prospective owner-entity to show site control in an application for funding for the redevelopment of the project. The rule would clarify that reconfiguration as an exception to demolition may only be done for an authorized use related to the normal operation of public housing and without demolition, as permitted by the ACC.

The material on de minimis demolition, which is allowed by statute, would be revised to ensure that HUD receives a notice of the proposed action before it takes place and ensures that the statutory requirements are being met prior to the action.

Generally, under the currently codified rule and this proposed rule, PHA property must be disposed of for fair market value (FMV). While the current rule, as an exception to the requirement that PHA property generally must be disposed for FMV, allows for the disposition of public housing for less than FMV if there is a commensurate public benefit to the community, the PHA, or the Federal Government, there are no further requirements ensuring that commensurate benefit is actually obtained. The proposed rule would add informational requirements to ensure that commensurate public benefit is actually being obtained for these types of dispositions. The information required would include anticipated future use of the property, a detailed description of any housing to be located on the property, the length of time the future use would be maintained, and other pertinent information.

The rule would strengthen the application and resident consultation requirements. Regarding application requirements, the rule would enhance the information provided with the application to ensure that HUD has enough information regarding the action to make sure the PHA's supporting certifications are correct so that HUD makes the appropriate decision. Demolition requests would (as the statute requires), be granted unless HUD has or obtains information contrary to the supporting certification of the PHA, or the application was not developed in consultation with the affected residents and appropriate local government officials.

Regarding resident consultation, the proposed rule would provide more specificity to the resident consultation requirements to give PHAs better guidance and to ensure that resident consultation is as effective as possible. The rule would require the supporting evidence to include a description of the process of the consultations summarizing the dates, meetings, and issues raised by the residents and the PHA's responses to those issues; meeting sign-in sheets; any written comments submitted by affected residents/groups along with the PHA's responses to those comments; and any certifications or other written documentation that the PHA receives from the resident advisory board (RAB) and resident council regarding resident support or opposition.

Regarding the relocation of residents made necessary by demolition or disposition, the rule would continue to incorporate the requirement that the housing being offered must meet Housing Quality Standards (HQS) (or such successor standard that HUD may adopt) and be in a location ''not less desirable'' than the housing the resident is being displaced from. However, the currently codified regulation does not define a ''not less desirable'' location. The proposed rule would define the ''not less desirable'' location, within the definition of ''comparable housing,'' as not less desirable than the original neighborhood in terms of access to public transportation, employment, education, service, child care, medical services, shopping, recreational, and other amenities, considered in the aggregate (such that, for example, a large increase with respect to shopping and employment would outweigh a small deficit as to recreation).

The proposed rule would also strengthen the notice to be provided to residents who would be relocated. The written notice would have to include a statement that the demolition, disposition, or combined application has been approved and that the action will occur, and a description of the process to relocate the residents. The written notice must be provided through an effective means of communication to persons with disabilities in accordance with 24 CFR 8.6 and in the appropriate non-English language or languages to persons with limited English proficiency as needed. The rule would specify that the notice must include a description of the (statutorily required) housing counseling services that will be available, including mobility counseling, and how a resident may access those services. The timing of the notice to residents would be specified as at least 90 days prior to the displacement date, except in cases of imminent threat to health and safety, but not before HUD has approved the application.

The rule would codify HUD's practice of allowing for timely demolitions made necessary by natural disasters and accidents to ensure the health and safety of residents. In such a case, if the PHA rebuilds the same number of dwelling units or non-dwelling structures that comprised the demolished project, the demolition (and any additional demolition required to carry out the redevelopment) shall not be subject to 24 CFR part 970. If the PHA rebuilds less than all of the demolished structures or the project, the PHA shall submit a demolition application under this part within one year of such demolition to formalize and request official HUD approval for the action under this part.

There has been increased frequency of dispositions that remove all of the housing and other property in a PHA's inventory. To clarify the PHA's obligations in this situation, a section would be added to require that once the action is complete and the PHA has no plans to develop any additional units, the PHA shall not expend any remaining Operating Funds, including operating reserves, other than for purposes related to the close-out of its public housing inventory, including audit requirements required by this section. Any remaining Operating Funds (including operating reserves and any unspent asset-repositioning fees received pursuant to 24 CFR 990.190(h)) would be required to be returned to HUD within 90 days of the date of removal of the project. The PHA may spend no more of its Capital Funds other than, with HUD approval, amounts required to close out contract obligations incurred prior to HUD's approval of the action.

The proposed rule would add civil rights requirements, including documentation that the PHA is not in violation of any civil rights law, compliance agreement, settlement

agreement, or court order. Certifications would be required that the action will not violate any such law, settlement, order or other nondiscrimination requirements, and does not serve to maintain or increase segregation based on race, ethnicity, or disability. The rule would require a description of the civil rights-related characteristics (including race, color, religion, sex, national origin, familial status, and disability) of both the residents who will be displaced by the action, the residents anticipated to remain in a public housing project that is partially demolished or disposed of, and of the residents on the PHA's waiting list (by bedroom size). The purpose of these requirements is to ensure that PHAs that request demolition or disposition are not in violation of any civil rights-related laws, agreements, or orders.

Finally, the rule would revise currently codified § 970.35, ''Reports and records'' to strengthen HUD's oversight and monitoring of demolition and disposition actions.

Subpart B

The proposed rule would add a subpart B to 24 CFR part 970, to allow PHAs and other owners of public housing to retain public housing property, including dwelling units, without the use restrictions under the ACC and Declaration of Trust (DOT). Section 18 does not apply to cases where a PHA retains property, rather than disposing of it to another party.

Part 972—Conversion of Assistance

HUD is also proposing to revise the definition of ''conversion'' in the part 972 regulations that cover both voluntary and required conversion of public housing to tenant-based assistance to more accurately reflect what ''conversion'' means in the relevant statutory sections (for voluntary conversion, section 22 of the 1937 Act (42 U.S.C. 1437t); for required conversion, section 33 of the 1937 Act (42 U.S.C. 1437z–5). Currently, the regulations at 24 CFR 972.103 and 972.203 (for voluntary and required conversion, respectively), define conversion as the removal of public housing units from the inventory of a Public Housing Agency (PHA), and the provision of tenant-based, or project-based assistance for the residents of the PHA. While it is true that under the statutes the residents of a project undergoing conversion may be provided with alternate housing including project-based assistance, the statute provides that the conversion is only from public housing to tenant-based assistance. Therefore, HUD is proposing to revise these definitions accordingly to remove the reference to project-based assistance.

C. Costs, Benefits, and Transfers

Costs and Benefits

The inception of this proposed rule does not come from a perceived market failure, but rather, from the desire to strengthen and streamline the demolition and disposition processes to reflect changes that have occurred in the public housing program over the last 20 years. As such, while this proposed rule would marginally increase the administrative burden, it would provide greater clarity regarding the demolition and disposition process.

The rule adds increased clarity and guidance to assist PHAs in determining when a demolition and/or disposition may be appropriate for their public housing inventories (e.g., so a PHA would be less likely to put the time into preparing and submitting an application to HUD that would not meet the criteria necessary for HUD approval and thus would not waste its or HUD's staff time and resources. Based on the clarified and new guidance in the rule, some PHAs may sometimes opt not to apply for demolition/disposition and instead pursue other HUD tools—e.g., CFFP financing—for their public housing stock).

The rule adds increased clarity and guidance on what HUD will require to approve an application submitted by a PHA (e.g., HUD will re-do the paperwork burden—HUD form—to make the application easier to fill out by PHAs). Applications submitted by PHAs will be more likely to be approved by HUD because PHAs will be better able to show they are meeting the applicable HUD criteria. Further, HUD's review time will likely be significantly reduced, a benefit to both PHAs and HUD.

On average, HUD's special application center (SAC) estimates that the total additional administrative burden as a result of this rule is 162 hours per application per year. Each year, the center receives between 150 and 200 applications for demolition and or disposition. If HUD assumes that the average hourly rate is $200, the total compliance cost would be between $4.86 million and $6.48 million a year. For example, the proposed rule would require that the determination of obsolescence be found by an independent architect or engineer that is not a regular employee of the PHA (§ 970.15(a)(2)).

In addition, units that are demolished or disposed of do not receive full funding under the public housing operating and capital funds. Under the public housing program, these units receive a proration and under the capital funds, they receive replacement housing factor funds. Funds retained under the capital fund program are redistributed to PHAs (including the applying PHA) by formula. The same units removed from the inventory and the PHA will no longer receive operating funds for those units, but the PHA will also not have any operating or maintenance expenses for those units.

The proposed rule would create very little additional financial flux. It is likely that the proposed rule may generate up to $2.23 million in additional compliance costs. These costs would constitute transfers to architects, engineers, lawyers, accountants, etc. For example, the proposed rule requires that the determination of obsolescence be found by an independent (that is not a regular employee of the PHA) architect or engineer.

II. Background

The Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105–276, approved October 21, 1998) (QHWRA) made extensive amendments to the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (1937 Act) for the purpose of reforming and improving HUD's public housing and tenant-based Section 8 housing assistance programs. Prior to QHWRA, HUD had to make specific findings regarding the obsolescence and the cost of rehabilitation of public housing, prior to approving any demolition or disposition of public housing. At that time, the Nation's public housing supply had a large stock of dilapidated and unusable housing. QHWRA, among other things, amended section 18 of the 1937 Act (42 U.S.C. 1437p) to allow for demolition if the PHA requesting demolition certifies to HUD that: (1) The project or portion of the public housing project is obsolete as to physical condition, location, or other factors, making it unsuitable for housing purposes; and (2) no reasonable program of modifications is cost-effective to return the public housing project or portion of the project to useful life.

The 1937 Act provides that, in the case of partial demolition, the PHA must certify that the demolition will help to ensure the viability of the remaining portion of the project. In the case of disposition by sale or transfer, the PHA must certify that: (1) Conditions in the area surrounding the project adversely affect the health or safety of the residents or the feasible operation of the project by the PHA; or

(2) disposition allows the acquisition, development, or rehabilitation of other properties that will be more efficiently or effectively operated as low-income housing. The PHA may also certify that the disposition is appropriate for other reasons, as long as those reasons are in the best interests of the residents and the PHA; consistent with the goals of the PHA as set forth in the PHA plan; and otherwise consistent with the goals of the 1937 Act. In the case of both demolition and disposition, the 1937 Act contains specific requirements to which the PHA must certify for notice to residents residing in the project 90 days prior to the action. Residents to be displaced, by statute, must be offered replacement housing, which may include tenant-based or project-based vouchers in addition to other public housing.

There are several other statutory requirements governing demolition and disposition of public housing that relate to the following: Resident and local government consultation; the PHA planning process; relocation rights of residents; the use of the proceeds that result from disposition; residents' opportunity to purchase the property subject to disposition in the case of a proposed disposition; consolidation of occupancy; demolition of a minimum number of units under an exception to many of the requirements of the statute (de minimis demolition); and the non-applicability of the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. 4601 *et seq.*) (URA) to demolition and disposition (section 18(g) of the 1937 Act (42 U.S.C. 1437p(g)) (although displaced residents have specific rights to be relocated, and the PHA specific relocation responsibilities, including payment of the actual and reasonable relocation expenses of residents being displaced, section 18(a)(4)(B) of the 1937 Act (42 U.S.C. 1437p(a)(4)(B))).

In accordance with section 18(a) of the 1937 Act (42 U.S.C. 1437p(a)), HUD approves a demolition or disposition application from a PHA as long as the proper certification is made and the specified requirements are met. The only statutory exceptions to this requirement are: (1) That the PHA's certifications pertaining to the demolition or disposition are inconsistent with information and data that is made available to HUD or that is requested by HUD; and (2) the PHA did not comply with the resident and local government consultation process. Under exception (1) HUD has the statutory right to request ''information and data'' regarding the proposed action in order to ascertain whether the PHA's certifications do in fact comport with the facts (see section 18(b)(1) of the 1937 Act (42 U.S.C. 1437p(b)(1)).

III. This Proposed Rule

HUD's demolition and disposition regulations (24 CFR part 970), were promulgated by a final rule published on October 24, 2006, at 71 FR 62362, and no significant changes to the regulations have been made since that date.[1] The Housing and Economic Recovery Act of 2008 (Pub. L. 110–289, approved July 30, 2008) (HERA) made certain changes to the requirements applicable to qualified PHAs, as this term was defined by section 2702 of HERA, and these changes therefore require certain corresponding changes to HUD's demolition and disposition regulations. However, as recent notices issued by HUD's Office of Public and Indian Housing (PIH) reflect, HUD has clarified, through such notices, existing regulatory requirements applicable to demolition and disposition, such as resident consultation, application processing, and PHA Plan requirements because the regulations did not provide the details that PHAs needed to execute the requirements as contemplated by law.[2] Therefore, as more fully discussed below, this proposed rule revises HUD's demolition and disposition regulations to add the details and further clarify certain requirements as presented in recent notices issued by PIH.

Proposed Organization of Part 970

This rule proposes to divide HUD's regulations on demolition and disposition in 24 CFR part 970 into two subparts. Subpart A would comprise, with revisions, the current regulations applicable to demolitions and dispositions of public housing projects as provided under section 18 of the 1937 Act. Subpart B would provide the requirements applicable to real property transactions and retention of projects by PHAs, to which 24 CFR part 85, which provides the administrative requirements for grants and cooperative agreements to state, local, and federally recognized Indian tribal governments, would apply. Part 85 does not apply to subpart A, as subpart A is issued pursuant to a superseding statutory authority, 42 U.S.C. 1437p. This non-applicability is consistent with 24 CFR 85.31(b), which provides an exception to part 85 for real property pursuant to Federal statutes.

A. Purpose and Applicability (Subpart A)

Purpose (§ 970.1). Section 970.1, which addresses the purpose of the part 970 regulations, would be revised to reflect the new structure of the regulations.

Applicability (§ 970.3). The applicability of subpart A, as stated in § 970.3, would be revised to reflect changes to the applicability of the regulations. A new § 970.3(b)(1) would exempt from applicability, of the part 970 regulations, those public housing projects that PHAs apply to retain under subpart B of this rule. The current § 970.3(b)(1), which exempts PHA-owned section 8 housing, or housing leased under former sections 10(c) or 23 of the 1937 Act, would be redesignated as § 970.3(b)(2), and the current § 970.3(b)(2), which exempts demolition or disposition before the date of funding availability (DOFA) of property acquired incident to the development of a public housing project, would be redesignated at § 970.3(b)(3). The conveyance exception for providing homeownership opportunities under § 970.3(b)(3) would be redesignated as § 970.3(b)(4) and revised to clarify that this homeownership exception applies to certain specified homeownership opportunities for low-income families. In addition, the references to specific homeownership programs would be updated to reflect new homeownership programs since the regulations were promulgated in 2006. Discontinued programs like the section 5(h) homeownership program (section 5(h) of the 1937 Act (42 U.S.C. 1437c(h)) would remain referenced in this section to reflect the continued applicability of the part 970 regulations to any units that remain to be administered under these discontinued programs.

The exception for the leasing of non-dwelling space incidental to the operation of the PHA is updated and clarified in proposed § 970.3(b)(5). Agreements with third parties in the form of leases or license agreements, only insofar as they are for authorized non-dwelling purposes related to public housing, are permitted, provided that such an agreement benefits the PHA and its residents; is consistent with the PHA's plan, as determined by HUD; is consistent with the PHA's annual contributions contract (ACC); and is approved in writing by HUD.

[1] Certain technical corrections were made to the regulations by a January 23, 2008, final rule published at 73 FR 3868.

[2] See Notice PIH 2012–7, issued February 2, 2012, pertaining to demolition/disposition of public housing and associated requirements; Notice PIH–2011–18, issued April 12, 2011, providing guidance on re-occupying public housing units proposed or approved for demolition, disposition, or transition to homeownership; Notice PIH–2008–17, providing guidance in the disposition of certain public housing assets.

Proposed § 970.3(b)(6) would revise the currently codified § 970.3(b)(5), on the use of common areas and unoccupied dwelling units, similarly to clarify that the use must be for authorized non-dwelling purposes related to public housing.

Proposed new § 970.3(b)(7) would permit, as an exception, the leasing of the entire project only for one year or less for a strictly limited purpose. That purpose is to allow a prospective owner-entity to show site control in an application for funding for the redevelopment of the project, such as low-income housing tax credits (LIHTC). Only the entire project, not individual dwelling units, may be leased under this exception.

Proposed § 970.3(b)(8) would revise currently codified § 970.3(b)(6) on reconfiguration of interior space to clarify that reconfiguration as an exception to demolition may only be done for an authorized use related to the normal operation of public housing and without demolition as defined in 24 CFR 970.5, as permitted by the ACC. As proposed, such reconfiguration would have to be done in accordance with all HUD requirements and approvals, and any resulting reduction in bedroom numbers would have to be reflected in the Inventory Management System (IMS)/PIH Information Center (PIC) or any future system for collecting similar information.

Proposed § 970.3(b)(9) would revise currently codified § 970.3(b)(7), which relates to transfers, easements, and transfers of utility systems. The proposed rule would require that such easements, rights of way, and transfers be approved in writing.

Based on experience since the regulations were promulgated in 2006, HUD has found that the general exception for leases of units or land for one year or less (currently codified § 970.3(b)(10)) is not always being used for the intended purpose. Specifically, HUD has found that some PHAs have incorrectly relied on this exception to enter into leases that did not otherwise comply with the PHA's ACC with HUD and other public housing requirements and this was never the intent of this exception. In addition, HUD has found that some PHAs incorrectly used this exception to avoid the disposition requirements of section 18 of the 1937 Act (42 U.S.C. 1437p), for instance, by structuring a long-term lease as a one-year lease and then renewing that lease every year. As a result, § 970.3(b)(10) is proposed to be removed by this rule. Proposed § 970.3(b)(5) specifies the conditions under which leases of units and other PHA property will be allowed. The current § 970.3(b)(8), which exempts a whole or partial taking by a public or quasi-public agency, would be redesignated at § 970.3(b)(10). Proposed § 970.3(b)(11) would clarify currently codified § 970.3(b)(11), which addresses conveyance of PHA property to allow for mixed-finance development under 24 CFR 905.604. As proposed, real property, including land, improvements, or both, may be acquired by a PHA with public housing or other funds, or donated to a PHA, and sold or otherwise transferred to an owner entity prior to DOFA, to enable the owner entity to develop the property using the mixed finance method in 24 CFR 905.604.

Proposed § 970.3(b)(12) clarifies that this exemption for disposition of vacant land for mixed-finance development is only an exemption from these regulations, and not from the statutory requirements in section 18 of the 1937 Act, and only if the PHA submits an application in the form prescribed by HUD, and receives HUD approval of the application before commencing disposition of the property.

Section 18(f) of the 1937 Act (42 U.S.C. 1437p(f)) and the currently codified regulations at § 970.3(b)(13)) provide an exception for most requirements under the statute for demolition of the lesser of 5 dwelling units or 5 percent of the PHA's total units in any 5-year period (referred to as de minimis demolition). HUD determined that environmental review, which has authority separate from the 1937 Act, applies, which the current regulation reflects, and the proposed rule would continue to reflect. In addition, the 1937 Act states that such de minimis exception only applies if the space occupied by the demolished unit is used for meeting the service or other needs of public housing residents or the demolished unit was beyond repair. This proposed rule would revise § 970.3(b)(13) to require that the PHA must receive acknowledgment by HUD of the required notification prior to the commencement of the demolition. Such requirement would confirm that HUD is in fact aware of the proposed demolition and proposed use of space before the demolition commences.

Proposed § 970.3(b)(15) clarifies the current language to indicate that demolition of severely distressed units as a part of a revitalization plan in connection with a Choice Neighborhoods grant is exempt from these regulations.

The proposed rule would add a new § 970.3(b)(16) to provide for demolition of projects made necessary by disaster or sudden accident or casualty loss. It has been HUD's practice, as reflected in the ACC, to allow for such demolitions in order to ensure the health and safety of public housing residents.

At proposed § 970.3(b)(17), the rule would add an exception to this rule for dispositions of a de minimis nature that are necessary to correct and/or clarify legal descriptions to deed or ownership documents, provided such de minimis dispositions are approved by HUD. Generally, these are dispositions of a very small amount of property, in some cases literally a few square feet, that should never have been owned by the PHA but through an error were added to the legal description of the property. It is necessary to correct these small inaccuracies because, if a PHA's deed to public housing property reflects other than what was originally intended in the PHA's acquisition of the property, a PHA may be subject to unanticipated liabilities. These small dispositions are authorized under section 18(a)(2)(B) of the 1937 Act (42 U.S.C. 1437p(a)(2)(B)), which states that a justification for disposition is that retention of the property is not in the best interests of the PHA because ''the public housing agency has otherwise determined the disposition to be appropriate for reasons that are in the best interests of the residents and the public housing agency.''

The proposed rule would add a new § 970.3(b)(18), which would reorganize the consolidation of occupancy exception currently found at § 970.25(b), and authorized under section 18(e) of the 1937 Act (42 U.S.C. 1437p(e)). The purpose of such consolidation must be to improve the living conditions of residents or to provide greater efficiency in serving the residents. For example, in the case of older projects that are badly in need of modernization, health hazards, such as lack of heating and issues with plumbing, may occur in certain buildings. Residents can be consolidated into healthier buildings with vacancies so that the PHA can concentrate on providing services over a more compact and manageable area, and the residents have a better living environment.

In addition, as it proposes for other exceptions, the rule would add legal parameters to ensure that PHAs take such consolidation actions pursuant to applicable federal laws and requirements, including the PHA's written policies on admissions and continued occupancy, the PHA's section 8 Administrative Plan (24 CFR part 982), and PHA Plan requirements (24 CFR part 903). The PHA would be required as well to notify HUD in

advance of such occupancy consolidation.

HUD proposes to add a new 24 CFR 970.3(c) to clarify that the enumerated activities in § 970.3(b) are exempt from section 18 requirements only. As described in § 970.21(g) of this proposed rule, section 104(d) of the Housing and Community Development Act of 1974 (42 U.S.C. 5304(d) (section 104(d)) operates independently of section 18 and cannot be limited administratively by HUD. If any of the activities listed in § 970.3(b) involve demolition or conversion of a lower-income dwelling unit, as those terms are defined in 24 CFR part 42, subpart C, and include funding pursuant to the Community Development Block Grant Program (42 U.S.C. 5301 *et seq.*), the Urban Development Action Grant Program (42 U.S.C. 5318) or the HOME Investment Partnerships Program (42 U.S.C. 12701 *et seq.*), the relocation assistance and one-for-one replacement requirements of section 104(d) may apply.

Definitions (§ 970.5). The proposed rule would add several new definitions to this section, and revise or remove others.

- Accessible or accessibility would be added, referencing the definition of ''accessible'' at 24 CFR 8.3.
- Commensurate public benefit would be added. While this phrase is used in current § 970.19 to describe a standard for disposition of a property for less than fair market value where there are other compensating benefits. However, currently the phrase is not defined. In order to eliminate any possible ambiguity about the applicable standard, HUD proposes to define this phrase. The definition would make clear that public benefits in this context are ''as approved by HUD.'' The definition also supplies four general cases of commensurate public benefits: (1) Rental units with a 30-year use restriction; (2) homeownership units affordable to low-income families; (3) non-dwelling structures or facilities to serve low-income families as approved by HUD; and (4) other or additional benefits as approved by HUD, which may include, in part, planning and carrying out related activities under section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u).
- ''Comparable housing'' would be added. This term means housing that meets HQS (or such successor standard that HUD may adopt) and is appropriate in size for the household, and located in an area that is generally not less desirable than the location of the displaced resident's current public housing unit. In determining comparable housing, a PHA shall also consider the following criteria (in aggregate): neighborhood safety; quality of local schools; accessibility of amenities (e.g., transportation, employment); and exposure to adverse environmental conditions. The comparable location should not expose displaced persons to increased segregation by race or national origin, poverty, crime or adverse environmental conditions. For residents with disabilities, comparable housing must include the accessibility features that the resident needs and must be located in the most integrated setting appropriate for the resident with respect to the residents' ability to interact to the fullest extent possible with non-disabled persons and access to community-based services. Such housing is often subsidized housing, but does not have to be if there is comparable non-subsidized housing available on the private market.
- ''Demolition'' would be revised from the definition in the currently codified § 970.5. The revised term defines demolition as the removal by razing or other means, in whole or in part, of one or more permanent buildings of a project such as to render the building(s) uninhabitable as defined by the applicable building occupancy code. The revised definition states that a demolition involves not only any four or more of the factors listed in the current definition (including envelope removal (roof, windows, exterior walls), kitchen removal, bathroom removal, electrical system removal (unit service panels and distribution circuits, and plumbing system removal (e.g., either the hot water heater or distribution piping in the unit, or both)), but also the lifting and relocating of a building from its existing site to another not covered by the same Declaration of Trust.
- ''Declaration of Trust (DOT)'' is proposed to be added. This term is not currently defined in 24 CFR part 970, and it would be beneficial to define what the term means in this context. Generally, this term would refer to a legal instrument that grants HUD an interest in a project, and provides public notice that the project must be operated in accordance with all federal requirements for public housing.
- ''Displaced resident'' would be added to § 970.5. This term means a resident of public housing, one that is assisted with Section 8, or is eligible for assistance under an MTW agency's HUD-approved annual MTW plan, that is relocated permanently from the project as a direct result of a demolition and/or disposition action under this part. The term includes any members of the resident's household and over-income residents who are, at the time of displacement, eligible for occupancy under PHA policies for continued occupancy or other special rent exceptions.
- ''Disposition'' would be added. The proposed definition would include both sales and transfers to an independent legal entity under the relevant state's law, including an affiliate that is legally independent. Under this definition, a PHA would be able to make a transfer to an affiliate such as a non-profit in which the PHA has a controlling interest, so long as the non-profit is a separate legal entity. A PHA could not dispose to an instrumentality of the PHA, because the instrumentality essentially is the PHA—it is fully controlled by the PHA and assumes the role of the PHA. ''Affiliate'' and ''instrumentality'' are both defined at 24 CFR 905.604(b)(3) and (4).
- ''Emergency'' would be added. This term is defined to mean any occasion or instance, for which, in the determination of the President or HUD, federal assistance is needed to supplement state and local efforts and capabilities to save lives and protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States. This proposed definition is based on the definition of ''emergency'' found in 42 U.S.C. 5122.
- ''Fair Market Value (FMV)'' would be added. This definition provides that FMV is the estimated value of a project, as determined by an independent appraiser contracted but not employed by the PHA, and completed within 6 months of the application, unless HUD approves a longer time. This definition would capture the importance of the appraiser being independent of the PHA and the appraisal being completed on a timely basis.
- ''Major disaster'' would be added. This term is defined to mean any natural catastrophe (including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance to supplement the efforts and available resources of states, local governments, and disaster relief organizations, or causes severe danger, hardship, or suffering, as determined by HUD. This proposed definition is based

on the definition of ''major hazard'' found in 42 U.S.C. 5122.

• The rule incorporates the general definition of ''public housing agency (PHA),'' at 24 CFR 5.100.

• The rule would incorporate the definition of ''public housing funds'' from § 905.108, and specify that as to disposition proceeds that are public housing funds, § 970.20(d) applies.

• The rule would add a definition of ''project'' to clarify that the term refers to all public housing property (units, vacant land, air rights, non-dwelling and dwelling buildings, and appurtenant equipment and personal property purchased by the PHA using 1937 Act funds) and has the same meaning as development, which is often used in other HUD issuances and guidance. In the currently codified part 970, both terms are used. This proposed rule would use the term ''project'' as defined in preference to ''development.'' This rule would clarify that the term ''project'' includes mixed-finance public housing units. Additionally, because by definition the term now includes appurtenant equipment and property, when a PHA disposes of a project or portion of a project, it is generally expected that the related appurtenances will be disposed of as well.

• ''Public housing unit'' would be added to clarify what HUD means by the term in the context of demolition and disposition. The definition includes any dwelling unit in a project, including a dwelling unit developed for homeownership under the 1937 Act (other than units developed for homeownership under section 8(y) of the 1937 Act (42 U.S.C. 1437f(y)), because that is a tenant-based program and does not constitute a unit ''developed'' for homeownership) prior to the transfer of title of that unit to the homebuyer.

• The phrase ''related to the normal operation of the project for public housing purposes'' would be added to mean activities that are required or permitted to meet the obligations of the ACC, including the provision of low-income housing and related services and other benefits to the residents of the PHA. This phrase is used in § 970.3.

• ''Resident'' would be defined. The purpose of the definition is to clarify that a resident under part 970 includes an individual or family assisted under HUD's Housing Choice Voucher program (section 8 program), or one that is eligible for assistance under an MTW agency's HUD-approved annual MTW plan, in addition to those who reside in public housing, in accordance with the 1937 Act.

• The term ''qualified PHA'' would be added and defined as a PHA that is considered a ''qualified public housing agency'' under section 2702 of HERA, codified at section 5A(b)(3)(C) of the 1937 Act (42 U.S.C. 1437c–1(b)(3)(C)). Essentially, this is a non-troubled PHA that does not have a recent failing Management Assessment Program score, and which has 550 or fewer units, considering only public housing units and vouchers under 42 U.S.C. 1437f(o).

The proposed rule would add definitions for the following terms—''Housing Quality Standards (HQS)'', housing construction cost (HCC)'', ''low-income families'', ''low-income housing'', ''PHA or Public Housing Agency,'' ''PHA Plan'', and ''Resident Management Corporation (RMC)''—by cross-referencing to those terms found elsewhere in HUD's codified regulations. The definition of ''total development cost'' would be removed because total development cost would be replaced by HCC.

The proposed rule would also revise some existing definitions. The definition of ''chief executive officer of a unit of local government'' would clarify that the officer must have the authority to contractually bind the local government jurisdiction. The definition of ''firm financial commitment'' would be revised to remove the requirement that contingencies must be satisfied before the closing of the transaction. Other minor editorial changes are made to definitions to update terminology or correct errors.

General requirements for HUD review and approval of a demolition, disposition, or combined application (§ 970.7). The proposed rule would make substantial revisions to § 970.7, the title of which would be revised to read ''General requirements for HUD review and approval of a demolition, disposition, or combined application.'' A paragraph on ''Sufficiency of application'' would be added to make explicit that HUD will not consider an application for demolition, disposition, or both, unless the application contains all the substantive information required in § 970.7 and in this part.

Section 970.7(c), which addresses an application's supporting documentation, would be revised to require additional material.

Paragraph (c)(1) would require that the PHA not only ''describe'' the demolition or disposition action, but that the PHA has specifically authorized the action in its PHA plan or significant amendment to that plan, and the plan is consistent with any plans, policies, assessment, or strategies prepared pursuant to the PHA plan, for example, the deconcentration plan under 24 CFR 903.2 or the obligation to affirmatively further fair housing (42 U.S.C. 3608(e)(5)). An exception would be provided for qualified PHAs (those non-troubled PHAs whose public housing and Section 8 units combined are fewer than 550 units), which are not required to file PHA plans under HERA. In those cases, the qualified PHA must describe the proposed action at its required annual public hearing (or second public hearing if it determines to submit an application for demolition and/or disposition between its annual public hearings). Also, the PHA will certify that the proposed activities are consistent with its Deconcentration Plan (24 CFR 903.2), its obligation to affirmatively further fair housing (42 U.S.C. 3608(e)(5)), and any applicable Consolidated Plan (24 CFR 91.2).

Paragraph (c)(2), requiring a description of the property to be demolished, would be revised to require bedroom size, whether the units meet the accessibility requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and HUD's implementing regulations at 24 CFR part 8, and the acreage and legal description of the land. The description would include both dwelling and non-dwelling units.

A new paragraph (c)(3) would be added to § 970.7 and would require information about the number of vacant units approved for the demolition, disposition, or combined action, and a narrative explanation of the reasons for any vacancies. The explanation could be, for example, health or safety issues have arisen; the PHA is consolidating occupancy under § 970.3(b)(18); or there is an emergency or major disaster.

Paragraph (c)(4) would require a description of the demolition and/or disposition action, and, if disposition is involved, the method of disposition, which may include methods in addition to sale, such as leases, negotiated dispositions, and public bids. To ensure that future use of the property to be disposed of or demolished would be used for low-income housing purposes, this paragraph would also require a statement about the proposed future use of the property, including any anticipated subsidies expected to be used for future low-income housing on the site of the former project.

The current § 970.7(a)(4), which requires the inclusion of a general timetable for the proposed action, would be redesignated at § 970.7(c)(5). The current § 970.7(a)(5), which requires a statement and other supporting documentation justifying the proposed demolition and/or disposition under the applicable criteria of

§§ 970.15 or 970.17, would be redesignated at § 970.7(c)(6).

Proposed § 970.7(c)(2) would require the portion of the application that contains a description of all identifiable property to include appurtenant personal property and equipment, in conformance to the proposed definition of ''project.'' Such property and equipment would consist of items purchased with 1937 Act funds for use in connection with the project.

Proposed § 970.7(c)(7) would revise currently codified § 970.7(a)(6) to add more specificity to the information submitted in the resident relocation plan, which is required when any residents will be displaced by a proposed demolition and/or disposition action. This additional information would include:

- A certification that the PHA will comply with the relocation provisions of this part;
- The estimated number of individual residents and families to be displaced;
- The comparable housing resources the PHA will provide to displaced residents;
- The type of housing counseling services the PHA plans to provide, including mobility counseling for residents, and affirmative marketing outreach to persons in groups whose representation among applicants and participants in the PHA's housing programs is significantly less than in the PHA's service area and those least likely to apply, including outreach appropriate to individuals with limited English proficiency, and accessible to persons with disabilities;
- An estimate of the costs for housing counseling services and resident relocation (which requirement is currently in § 970.7(a)(11), which would be removed), and the expected source for payment for these expenses;
- Evidence that displaced residents will be relocated in compliance with all civil rights and fair housing laws, including all affirmatively furthering fair housing regulations, the laws, and authorities listed in 24 CFR 5.105, and the identification of accessible units for displaced residents with disabilities;
- Evidence that residents with disabilities will be relocated in housing that meets their accessibility needs in the most integrated setting appropriate to their needs, that is, the setting that enables individuals with a disability to interact with non-disabled persons to the greatest extent possible and provides access to community-based services;
- A relocation timetable, which indicates the estimated number of days after HUD approval of the demolition, disposition, or combined action that the PHA plans to begin relocating residents;
- Evidence that displaced residents will be relocated in compliance with all nondiscrimination and equal opportunity requirements;
- A plan for determining and meeting the functional needs of displaced residents with disabilities, including communications assistance under 24 CFR 8.6 and assistance in locating units that provide appropriate access to social services, reasonable accommodations, compliance with section 504 of the Rehabilitation Act of 1973;
- A marketing plan that informs residents of affordable housing units or other new developments in the market area, especially to persons who may not be aware of the housing opportunity, and including information in languages other than English as needed; and
- A plan and information under § 970.21(d) if applicable.

The relocation timetable information will be used to determine the PHA's Operating Fund eligibility under 24 CFR part 990, which may include the PHA's eligibility for an asset-repositioning fee (or add-on to Operating Funds) under 24 CFR 990.190(h). As to comparable housing resources the PHA will provide to displaced residents, if some residents are not eligible to move to other public or assisted housing, the PHA must describe why such residents are not eligible and what resources it will make available to provide comparable housing for such displaced residents.

This additional relocation information is to ensure that the PHA is ready and able to comply with Section 18 relocation requirements if and when HUD approves the demolition, disposition, or combined action. The proposed § 970.7(c)(7) would also clarify that the Relocation Plan must be a separate written document that the PHA must prepare and submit as part of its application for demolition or disposition, or both.

Proposed § 970.7(c)(8) would require more supporting evidence on a PHA's required resident consultation than the current § 970.7(a)(7). The supporting evidence under the proposed rule must include: A description of the process of the consultations summarizing the dates, meetings, and issues raised by the residents and the PHA's responses to those issues; meeting sign-in sheets; any written comments submitted by affected residents/groups along with the PHA's responses to those comments; and any certifications or other written documentation that the PHA receives from the RAB (or equivalent body) and resident council regarding resident support or opposition. In addition, there must be a description and/or documentation evidencing that the PHA communicated with affected residents and other required groups in a manner that was effective for persons with hearing, visual, and other communications-related disabilities; that public hearing facilities and services were physically accessible to persons with disabilities; and that appropriate written or oral translations and language assistance services, as required, were provided for Limited English Proficient (LEP) individuals, consistent with the requirements of 24 CFR 8.6. These requirements are to ensure that the required consultations are held and issues raised by residents are considered.

The current § 970.7(a)(8), which requires the inclusion of evidence of compliance with the offering to resident organizations in the case of disposition, would be redesignated at § 970.7(c)(9). The current § 970.7(a)(9), which requires, in the case of disposition, the inclusion of the FMV of the project as established on the basis of at least one independent appraisal, unless otherwise determined by HUD, would be redesignated at § 970.7(c)(11). The current § 970.7(a)(10), which requires, in the case of disposition, the inclusion of estimates of the gross and net proceeds to be realized, would be redesignated at § 970.7(c)(12).

Under proposed § 970.7(c)(13), in the case of a sale for less than FMV based on commensurate public benefit, HUD will consider the anticipated future use of the project after disposition required in § 970.7(c)(4)(iii). In addition, the supporting information for the application shall include: A detailed description of any housing that will be located on the property, including the number of units, bedroom size, accessibility, affordability, and priorities for displaced residents; the proposed length of time in which the acquiring entity will maintain the former project for the proposed future use (HUD will generally require the proposed future use remain as such for not less than 30 years, but will consider other factors such as the extent of public benefits (e.g. number of affordable units) arising from proposed disposition and the FMV of the property in determining if a period of less than 30 years is acceptable); proposed legal documentation (e.g. use restriction, provision in ground lease, declaration of restrictive covenant) the PHA proposes to ensure the approved use; a plan to implement the requirement that income-eligible, displaced residents be offered an opportunity to return if housing units will be developed on-site at the former

project as outlined in § 970.21(d); and other information that HUD may require in order to make the determination.

HUD's part 970 regulations currently allow PHAs to request a waiver of the requirement to apply the proceeds of disposition to the repayment of outstanding debt (see § 970.19(e)(1)), which is required unless waived by HUD under section 18p(a)(5)(A) of the 1937 Act (42 U.S.C. 1437p(a)(5)(A)). Proposed § 970.7(c)(14) provides more details about the types of debt waivers that can and cannot be requested. HUD does not have the statutory authority to waive modernization debt, such as Capital Fund Financing Program (CFFP) debt, Energy Performance Contracting (EPC) debt, and Operating Fund Financing Program (OFFP) debt.

The current § 970.7(a)(13), which requires the inclusion a copy of a resolution by the PHA's Board of Commissioners approving the specific demolition and/or disposition application, would be redesignated at § 970.7(c)(16). The current § 970.7(a)(14), which requires evidence that the application was developed in consultation with appropriate government officials, would be redesignated at § 970.7(c)(17). The proposed rule at § 970.7(c)(18) would revise the environmental review requirement in currently codified § 970.13 to address environmental justice issues as applicable.

The proposed rule would add submission requirements related to civil rights compliance. Proposed § 970.7(c)(19) would add a requirement to submit a statement as to whether the PHA is subject to a voluntary compliance agreement (VCA), conciliation agreement, settlement agreement, consent order, consent decree, or any other civil rights related final judicial ruling or decision, in connection with the civil rights and fair housing rights of residents who will be affected by the proposed demolition, disposition, or combined action, and a certification that the demolition or disposition, or combined action does not violate any civil rights law, remedial order or agreement, VCA, conciliation agreement, final judgment, consent order, consent decree, settlement agreement, or any other civil rights related final judicial ruling or decision.

This section would also require a certification that the proposed activities will not violate nondiscrimination or equal opportunity requirements, and that the PHA will meet affirmative obligations to provide equal housing opportunity, supported by: A statement that the proposed demolition and/or disposition will not prevent the PHA from fulfilling any VCA, conciliation agreement final judgment, consent order, consent decree, settlement agreement, or any other civil rights related final judicial ruling or decision, as well as a description of how the proposed demolition and/or disposition will help the PHA meet its affirmative obligations, including but not limited to the obligations to overcome discriminatory effects of the PHA's use of 1937 Act funds pursuant to 24 CFR part 1 to address the obligation to affirmatively further fair housing (42 U.S.C. 3608(e)(5)); deconcentration plans adopted by the PHA pursuant to 24 CFR part 903; and housing accessibility, effective communications, and integration requirements under 24 CFR part 8.

The PHA would also certify that it does not have any outstanding charges from HUD or a substantially equivalent state or local fair housing agency concerning a violation of the Fair Housing Act (42 U.S.C. 3601–19); it is not a defendant in a Fair Housing Act lawsuit filed by the Department of Justice; it does not have outstanding letters of findings identifying noncompliance under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–200d–4), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 294), or section 109 of the Housing and Community Development Act of 1974 (42 U.S.C. 5309); and it has not received a cause determination from a substantially equivalent state or local fair housing agency concerning a violation of provisions of a state or local law prohibiting discrimination in housing based on sexual orientation, gender identity, or source of income; and any additional supporting information that may be requested by HUD, that shows that the proposed demolition and/or disposition will not maintain or increase segregation on the basis of race, ethnicity, or disability and will not otherwise violate applicable nondiscrimination or equal opportunity requirements, including a description of any affirmative efforts to prevent discriminatory effects. The purpose of these requirements is to ensure that PHAs that request demolition or disposition do not discriminate against residents, are not in violation of any civil rights-related law, agreements or orders, and that HUD can ensure that the residents who are displaced are not unlawfully segregated or denied appropriate housing because of their membership in a protected class.

Proposed § 970.7(c)(20) would require a description of the civil rights-related characteristics (including race, color, religion, sex, national origin, familial status, and disability) of both the residents who will be displaced by the action, the residents anticipated to remain in a public housing project that is partially demolished or disposed of, and of the residents on the PHA's waiting list (by bedroom size). The purpose of these requirements is to ensure that PHAs that request demolition or disposition are not in violation of any civil rights-related *laws,* agreements, or orders, and that HUD can ensure that the residents who are displaced are not unlawfully segregated or denied appropriate housing because of their membership in a protected class.

Proposed §§ 970.7(c)(10), (c)(15), and (c)(21) would require material related to legal eligibility to undertake the demolition or disposition. In the case of disposition, a legal opinion would be required that the acquiring entity is a separate entity (i.e., an affiliate or fully independent entity rather than an instrumentality of the PHA) under the applicable state law. In the case where the PHA has applied for or been approved for financing under a HUD financing program such as the Capital Fund Financing Program (CFFP), the Operating Funding Financing Program (OFFP), or the Energy Performance Contract (EPC) program, the PHA must submit a legal opinion stating that the demolition, disposition, or combined action is permitted pursuant to the legal documentation associated with any such CFFP, OFFP, or EPC program. In addition the PHA must submit a general certification that it will comply with the program regulations and any conditions of HUD's approval.

Finally, proposed § 970.7(c)(22) would permit HUD to request any additional documentation it determines necessary to support the application and assist HUD in making a determination whether or not to approve it.

Under both the current regulations and this proposed rule, a PHA must obtain written approval from HUD prior to demolishing or disposing of public housing (see § 970.7(a)). This proposed rule would allow HUD to require PHAs to adhere to certain terms and conditions based on the approval documents. Proposed § 970.7(d) states that if a PHA includes documentation, certifications, assurances, or legal opinions in its application that exceed the requirements of section 18 of the 1937 Act or the regulations of part 970 (e.g., that commit to provide residents with an opportunity to return to new affordable housing units that may be developed with disposition proceeds and/or on the public housing property when such an opportunity is not

required by this part), HUD may establish additional requirements, based on such documentation, in its approval of the demolition, disposition, or combined action. Further, this proposed section states that the PHA cannot vary from the terms and conditions of HUD approval without prior written approval from HUD.

Currently codified § 970.7(b)(1) allows for PHAs to request rescission of an approval of a demolition or disposition application based on a board resolution and documentation that the conditions that led to the original request have significantly changed or been removed. Proposed § 970.7(e) would also allow a PHA to amend an earlier approval, on a case-by-case basis, based on the PHA's submission (in the form prescribed by HUD) of an explanation and documentation, if applicable, evidencing the reason for the requested change. The current requirement at § 970.7(b)(2), which provides that substitution or addition of units requires the submission of a new application for those units would be removed.

Resident Participation and Opportunity To Purchase (§ 970.9). The proposed rule would provide more specificity to the resident consultation requirements to give PHAs better guidance and to ensure that resident consultation is as effective as possible. Proposed § 970.9(a) would list with specificity the residents and resident groups with which the PHA must consult, as well as specific steps required to be taken. Included in the consultation, in addition to residents residing in the project proposed for the action, would be any resident councils, resident organizations for the project, PHA-wide resident organizations that will be affected, and the applicable RAB. Consultation would mandatorily include the following: Providing a copy of the demolition, disposition, or combined application, or posting it on the PHA's Web site, which must be accessible; consulting on any report on the environmental or health effects of the proposed activities; consulting on the final application; consulting on the relocation plan and opportunity to return to ACC units, if applicable; stating that residents and groups have the right to submit written comments, that the PHA will respond to those comments, and that the comments and responses will be submitted to HUD as part of the PHA's application materials. The PHA would have to provide residents and resident groups with a reasonable time frame to submit written comments, and must respond to those comments within a reasonable time frame.

In addition, PHAs must take steps to ensure that they communicate with public housing and rental assistance applicants and residents that are effective for persons with hearing, visual, and other communications-related disabilities consistent with section 504 of the Rehabilitation Act of 1973, and as applicable, the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*). This includes ensuring that notices, policies, and procedures are made available via accessible communication methods including the use of alternative formats, such as Braille, audio, large type, sign language interpreters, assistive listening devices, and other similar methods, and are written using plain language. Additionally, PHAs must ensure that the public meeting facilities and services used are physically accessible to persons with disabilities in accordance with section 504 of the Rehabilitation Act of 1973 and that Limited English Proficient (LEP) individuals will have meaningful access to programs and activities, in accordance with Title VI of the Civil Rights Act of 1974, as amended, 42 U.S.C. 2000, and Executive Order 13166.

As part of the consultation, in addition to the requirement for the PHA to consult residents and resident organizations on the application as stated in proposed § 970.9(a)(5)(i) and (ii), the PHA must consult with the residents and resident organizations on any report on the environmental or health effects of the proposed demolition, disposition, or combined action (see proposed § 970.9(a)(5)(iii)).

Proposed § 970.9(b) would require, similarly to the currently codified section, the PHA in appropriate circumstances to offer to sell the project proposed for disposition to any ''Established Eligible Organization,'' which is defined as a resident organization, resident management corporation (RMC), or a nonprofit organization acting on behalf of the residents. Exceptions in proposed § 970.9(b)(3) would be similar to those in the currently codified rule, with a few clarifications and updating of vocabulary. Proposed § 970.9(b)(4) would remove language referencing the partial disposition of PHA property and use the term ''project'' instead, under the proposed revised definition of which a partial disposition would be included. If there is no exception to the resident offer requirement and if an Established Eligible Organization has expressed an interest under § 970.9(c), then the procedures in proposed § 970.11, ''Procedures for the offer of sale to established eligible organizations,'' would apply.

Procedure for the Offer of Sale to an Established Eligible Organization (§ 970.11). Proposed § 970.11 would be generally similar to the currently codified section. However, current paragraph (d), ''Contents of the initial written notification,'' which states the information the PHA must provide to the Established Eligible Organization when it notifies them of the upcoming disposition, would be moved and redesignated as § 970.11(b), to immediately follow the requirement to send the notification (current paragraphs (b) and (c) accordingly would be redesignated (c) and (d)).

Proposed § 970.11(b) would be revised largely to update terminology; however, a couple of substantive changes are proposed. Proposed § 970.11(b)(1) replaces the phrase ''development, or portion of the development,'' with the term ''project,'' which would also include a portion of a project. In addition, the proposed rule would add ''the number of accessible units or units that otherwise contain accessible features'' to the information that must be provided in the initial written notification. Proposed § 970.11(b)(5) would revise currently codified § 970.11(d)(5), which states that public housing developments sold to resident organizations will not receive capital or operating funds after the disposition. The proposed rule would revise this general statement to indicate that if the Established Eligible Organization is an RMC and enters into an ACC with HUD, it will receive Operating and Capital Funds in accordance with 24 CFR part 964 (Tenant Participation and Tenant Opportunities in Public Housing), the ACC, and applicable federal law and regulation.

Proposed § 970.11(e), ''Response to notice of sale,'' would be updated to state that the count of the 30-day response time begins with the date the PHA's notice is postmarked.

Proposed § 970.11(h) would change the addressee for the letter of appeal from the field office director to HUD, and break the single paragraph into 2 numbered paragraphs solely for better readability, and would specify the initial 30-day clock for HUD's response begins to run on the date on which HUD receives the appeal. Proposed § 970.11(i), which states the required contents of the Established Eligible Organization's proposal, except for the use of updated terminology (for instance, using the terms ''project'' and ''Established Eligible Organization''),

would be substantively the same as the current regulation.

Proposed § 970.11(i)(6), which would require the resident organization's proposal to include a plan for financing the purchase of the project similar to the currently codified § 970.11(i)(6), would also require the financing to include paying for any necessary accessibility modifications.

Proposed § 970.11(j) summarizes the PHA's responsibilities, which are to: Prepare and distribute the notice of disposition; evaluate the proposals received and make selections based on regulatory criteria in § 970.11(b); obtain the certifications from the executive director or board of commissioners required in § 970.11(k); consult with residents as required in § 970.9(a); not act in an arbitrary and capricious manner and give full and fair consideration to any offer from an Established Eligible Organization; and accept an offer if the offer meets the terms of sale. This section does not change the obligations that PHAs must currently meet under the codified regulations, but updates some terminology and provides some clarification to existing language where HUD thought further clarification would enhance understanding of the obligations required.

Proposed § 970.11(k) would change its title from ''PHA post-offer requirements'' to ''Offer by an Established Eligible Organization,'' and, like the current § 970.11(k), would state the procedures that the PHA is to follow once a resident offer is made. Except for the removal of language related to a partial disposition because it is no longer needed under the new definition of ''project,'' this section is the same as in the currently codified regulation. Essentially, this section requires the PHA to fully document that it correctly followed the resident offer requirements, including a board resolution of each eligible organization that the eligible organization received the PHA's offer, that the organization understands the offer, and that it waives its opportunity to purchase; alternatively, a certification of the executive director or board of commissioners of the PHA that the 30-day time has expired and no resident offer was received; or a certification, with supporting documentation, that the offer was rejected by the PHA.

Civil Rights and Equal Opportunity Review (§ 970.12). The proposed rule would add a new § 970.12 that describes compliance with civil rights and equal opportunity requirements. HUD will review the PHA's civil rights certification under section 5A(d)(16) of the 1937 Act (42 U.S.C. 1437c–1(d)(16)), and other related information that may be available to HUD or requested by HUD. Pursuant to § 970.29, HUD will disapprove a PHA's application for demolition and/or disposition if HUD determines that any civil rights certifications or submissions required under this part are incomplete, inaccurate, or inconsistent with the requirements stated in this section.

Environmental Review Requirements (§ 970.13). The environmental review requirements in proposed § 970.13 would be substantively the same as in the currently codified § 970.13. Environmental review requirements apply to the demolition, disposition, or combined action being taken and any known future re-use. The current regulation and this proposed rule state four factors to be considered in determining whether a future re-use is ''known.'' These factors are as follows: (1) That funding has been committed; (2) a grant application involving the site has been filed; (3) a government (federal, state, or local) has made a commitment to take an action that will facilitate a particular re-use of the site, and this may or may not be a physical action; and (4) that there are architectural, engineering, or design plans that go beyond preliminary stages.

Section 3 Compliance (§ 970.14). Pursuant to section 3 of the Housing and Urban Development Act of 1968 (section 3) (12 U.S.C. 1701u), and HUD's regulation at 24 CFR part 135, HUD requires programs or projects funded by public housing funds to provide employment, training, contracting, and economic opportunities to the greatest extent feasible, to low and very-low income persons. The proposed rule would implement this requirement by adding a new § 970.14. This requirement applies to demolition and disposition (and combined) actions if public housing funds are used. If public housing funds are not used so that the requirement does not apply, planning and carrying out section 3 activities related to these proposed actions would satisfy, in part, the commensurate public benefit requirement for below FMV dispositions pursuant to § 970.19.

Specific Criteria for HUD Approval of a Demolition Application (§ 970.15). Proposed § 970.15, like currently codified § 970.15, states the specific criteria for HUD approval of demolition applications, although the section would be reorganized and more detail would be added to some of the requirements. The proposed rule would reorganize this section to keep similar material together; for example, proposed § 970.15(a)(1) would cover the factor of obsolescence making a project unsuitable for housing purposes, and then include the list of major problems indicative of obsolescence to subparagraphs.

The problems that cause obsolescence for purposes of this rule are structural deficiencies, serious outstanding capital needs, and design or site issues such as severe erosion or flooding. While the currently codified regulation, at § 970.15(b)(1)(i), lists specific kinds of structural deficiencies, HUD believes that other structural deficiencies than those mentioned could cause obsolescence. At the same time, HUD acknowledges that there must be some degree of objectivity in the obsolescence determination. Therefore, this rule would propose at § 970.15(a)(1)(i) that obsolescence be found by an independent (that is, not a regular employee of the PHA) architect or engineer. HUD will review the determination and supporting documentation, and may obtain additional information, to ensure against any discriminatory effects of the proposed demolition—such as avoidance of the obligation to provide accessible housing for persons with disabilities. Furthermore, HUD seeks to clarify that, if the issue is a site issue related to the location of the project, such as physical deterioration of the neighborhood, a change from residential to industrial or commercial development in the neighborhood, or environmental conditions as determined by an environmental review in accordance with HUD's environmental regulations at 24 CFR part 50 or part 58, which jeopardize the suitability of the site or a portion of the site and its housing structures for residential use, then the proposed rule would require that the PHA simultaneously submit a disposition application. The reason for this proposed change is that if the site is not suitable for public housing such that existing public housing had to be demolished, it should not be redeveloped for low-income housing purposes in the future, even if of a lesser density. Instead, the PHA should dispose of the unsuitably located property.

The criteria of ''no reasonable program of modifications will be cost-effective to return the project to its useful life'' would be addressed in proposed § 970.15(a)(2). The test for cost effectiveness in this context would be revised from a percentage of total development cost based on type of structure (elevator or non-elevator), to a simple test as to whether the cost of modifications would exceed the HCC for new housing in effect at the time the

application is submitted to HUD. HCC is regularly updated and well understood by the public housing industry.

In the case of partial demolitions, proposed § 970.15(b) would revise currently codified § 970.15(c) to remove the requirement for an additional PHA certification that the proposed action would reduce development density to allow better access by emergency services or improve marketability. Instead, in the case of contiguous (non-scattered site) projects, the PHA would have to certify that the demolition will help to ensure the viability of the remaining portion of the project. In the case of scattered site projects, the viability certification would not be required. Where there is no contiguous project, there is no ''remaining portion of the project'' that would be affected, so the viability concern would not apply.

Proposed § 970.15(c) would require the PHA, unless the PHA also submits an application for disposition of the project at the same time it submits the demolition application, to also certify that the vacant land comprising the project after the demolition of the buildings shall be used for low-income housing purposes as permitted by the ACC, which purposes may initially include land banking as approved in writing by HUD if a use is not determined. In addition, proposed § 970.15(d) would require a demolition to be completed in 2 years of the date of HUD approval, unless the PHA receives from HUD an extension in writing. Proposed paragraphs (c) and (d) of § 970.15 would be new requirements.

Specific Criteria and Conditions for HUD Approval of a Disposition (§ 970.17). Proposed § 970.17, like currently codified § 970.17, states the specific reasons for which HUD may approve of disposition applications. The standard would in part remain the same as currently codified in regulation, which is that HUD will approve an application for disposition when retention of the project is not in the best interests of the residents or the PHA for at least one of these reasons: The conditions in the area surrounding the project adversely affect the health and safety of the residents (proposed § 970.17(a)); disposition allows for the acquisition, development, or rehabilitation of other properties that will be operated as low-income housing more efficiently, effectively, or both (proposed § 970.17(b)); the PHA has determined the disposition to be appropriate (proposed § 970.17(c)); and, in the case of a disposition that does not include dwellings, the PHA must certify that the portion disposed of exceeds the needs of the project or the disposition is incidental to, or does not interfere with, the continued operation of the remainder of the project.

In addition, the proposed rule would revise and add more detail to some of the existing standards. Proposed § 970.17(b) would add examples of what would be considered more efficient and effective operation. In addition, the rule would require the PHA to demonstrate to the satisfaction of HUD that the units will be replaced with other low-income housing units. Section 970.17(b)(2) clarifies that the PHA must demonstrate to the satisfaction of HUD that sufficient replacement units are being provided in connection with the disposition of the property. The PHA should obtain sufficient value for the units to attain this replacement goal, which ensures that the PHA receives sufficient value for its units and also safeguards the Nation's valuable low-income housing stock. It is worth noting in this connection that the Senate Committee on Appropriations, in Senate Report 112–83 (September 21, 2011) stated, in a discussion of leveraging resources, that ''The Committee is concerned that without an infusion of new resources to bring public housing stock into a state of good repair, irreplaceable affordable housing will be permanently lost'' (p. 108). The Committee also notes that the public housing stock continues to age, and that the current backlog of capital needs is $25.6 billion. In this environment, when disposing of public housing units, PHAs must receive sufficient compensation, after any required retirement of outstanding debt not waived by HUD, from the disposition to replace the dwelling units with other low-income housing units through acquisition, development, or rehabilitation.

The replacement housing may, for example, be public housing units or project-based voucher units. Section 970.17(b)(3) would provide that replacement housing units be developed on another property, that the PHA must have the replacement housing units or land for the new construction of the units identified at the time it submits its request to HUD, and that the PHA provide its financing plan for the replacement units. The disposition of the project must be an arms-length transaction at FMV and 100 percent of the proceeds must be used to acquire, develop, or rehabilitate the replacement units. The proposed rule would revise § 970.17(c), which currently states that the PHA may also dispose of a project if the PHA has otherwise determined the disposition to be consistent with the goals of the PHA, the PHA Plan, and the 1937 Act, to add that the disposition under this section (c) must be in the best interests of the residents and the PHA. In addition, the proposed rule would add an additional condition under this section. Specifically, the PHA may not dispose of a project under this section if the reason for disposition, as determined by HUD, falls under another regulatory section (such as § 970.7(a) or (b)); another law (such as voluntary conversion under section 22 of the 1937 Act (42 U.S.C. 1437t) and required conversion under section 33 of the 1937 Act (42 U.S.C. 1437z–5) or homeownership under section 32 of the 1937 Act (42 U.S.C. 1437z–4)), or an eminent domain taking. HUD would consider the following reasons for disposition to be acceptable under this section: The project meets the criteria for obsolescence under § 970.15; the units will be rehabilitated through mixed-finance development method, and to reduce the number of public housing units in the project, the criteria under § 970.15 or another section of this part must be met; and other reasons determined by HUD to meet this criteria. In addition, proposed § 970.17(d) would revise currently codified § 970.17(d) by clarifying the language of the provision.

Requirements for the Disposition of a Project (§ 970.19). Proposed § 970.19 would require that a project be disposed of for not less than FMV, unless HUD authorizes a disposition for less than FMV under § 970.19(b), which requires that a commensurate public benefit result from the disposition. The statute does not cover the amount that the PHA is required to obtain when disposing of public housing property, but instead appears to leave that element up to HUD regulation. In the case where there are proceeds from the disposition, the statute requires specified uses to be made of the proceeds, that is, retirement of bond debt that originally financed the project unless waived by the Secretary (see 42 U.S.C. 1437p(a)(5)(A)), and, to the extent that other proceeds remain, the provision of low-income housing or to benefit the residents of the public housing agency, or on-site commercial enterprises to serve the needs of the residents (see 42 U.S.C. 1437p(a)(5)(B)). Thus, the statute evidences an intent that the proceeds of disposition inure to the benefit of public housing residents. The statute does not explicitly cover the situation, however, where disposition is for less than FMV and hence there are no proceeds from the disposition to be applied as directed. Instead, that scenario is left to HUD regulation.

HUD believes that in below-FMV dispositions, there needs to be some

assurance that the federal investment in public housing is not lost and the purpose of the investment continues to be fulfilled. Hence, the proposed rule would add a new § 970.19(c), while currently codified paragraph (c), which relates to obtaining an estimate of FMV, would be redesignated as paragraph (c)(i). This new paragraph would require that where a PHA disposes of a project at below FMV on the basis that there is a commensurate public benefit, the PHA execute a use restriction or other arrangement of public record, in a form acceptable to HUD, that will ensure that the property will be used for not less than 30 years for the public use that HUD approved. This period is commensurate with other PIH use restrictions. This proposed new measure would ensure that public funds are being used for appropriate purposes. The use restriction or other similar arrangement must be in a first priority lien position that would survive any other liens or foreclosures. The PHA would be responsible for monitoring and enforcing the use restriction throughout the term of the use restriction. HUD may take enforcement action against the PHA if the PHA fails to enforce the use restriction.

Proposed § 970.19(a) and (b) are substantively similar to currently codified § 970.19(a), with the exception that the definition of commensurate public benefit is moved, to proposed § 970.5.

A new § 970.19(d) would provide that if a PHA is unable to dispose of a project containing obsolete units that is approved for disposition under § 970.17(c)(1) in its ''as is'' condition despite due diligence and reasonable efforts, as determined by HUD, if requested by the PHA, HUD will approve a demolition of the project, in accordance with § 970.15 so that the PHA can proceed with demolition and then the disposition of only the vacant land comprising the project.

In order to ensure timely action, the proposed rule would require at § 970.19(e) that the disposition shall occur within 2 years of HUD's approval, unless HUD extends the time in writing. In HUD's experience, 2 years is usually sufficient time. This time limit is the same as HUD is proposing for demolition (see proposed § 970.15(d)).

The proposed rule would also specifically address dispositions in which the property is transferred for more than one, but less than 30 years, such as by lease. Proposed § 970.19(f) would require the PHA to return the project to either return the property to the public housing inventory, including adding the property again to its ACC and placing a DOT on the property, or submit another disposition or other removal (e.g. demolition, homeownership, voluntary conversion) application, at the end of the temporary period.

Proposed § 970.19(g) would require the PHA to ensure that the use of the property that HUD approved as the commensurate public benefit begin within 2 years of the date of disposition of the project, unless the PHA receives an extension from HUD in writing. This proposal, again, is intended to ensure timeliness in the use of public funds. Current § 970.19(b), which allows for the PHA to pay for the reasonable expenses of disposition and relocation cost for displaced residents, is redesignated § 970.19(h).

Proposed § 970.19(h) and (i) would revise existing § 970.19(c) on obtaining an estimate of FMV and would add a provision on obtaining an estimate of FMV when a project is proposed for disposition via negotiated sale at less than FMV based on commensurate public benefit. In that case, HUD may accept any reasonable valuation of the property, which need not be obtained by hiring an independent appraiser, such as a tax assessor's valuation. Because of the commensurate public benefit being obtained in lieu of FMV, the market valuation is not as critical, so HUD can rely on a less expensive and more easily available form of valuation than an appraisal.

Use and treatment of Proceeds (§ 970.20). The proposed rule would move and revise the content on use of proceeds found in currently codified § 970.19(e) and (f) into a new § 970.20, entitled ''Use and treatment of proceeds.'' The proposed revisions would provide additional detail on what HUD considers the appropriate uses of proceeds of disposition after the payment of HUD-approved costs of disposition and relocation. According to the 1937 Act, the proceeds are to be used: (1) For the retirement of outstanding debt, unless waived by HUD; (2) to the extent that any proceeds remain, for the provision of low-income housing or ''to benefit the residents of the public housing agency''; or (3) leveraging amounts for commercial enterprises appropriate to the needs of the residents. The proposed revisions would provide more detail regarding HUD's interpretation of ''to benefit the residents.''

The proposed new section would provide that uses of proceeds that remain after debt obligations for providing low-income housing could include: Modernization of existing projects; development of a project; funding of homeownership units under sections 9, 24, or 32 of the 1937 Act (42 U.S.C. 1437g, 1437v, and 1437z–4, respectively); construction, rehabilitation, and acquisition of units to be used as Section 8 housing, provided that the PHA complies with safe harbors in connection with such construction, rehabilitation, and/or acquisition, and executes a use agreement in a form acceptable to HUD ensuring that the property will be operated exclusively as Section 8 housing for not less than 30 years, roughly commensurate with other use restrictions (along with other requirements, such as compliance with program regulations); benefits to the residents for uses permitted by HUD's Operating Fund rule; and funding of shortfalls (*but not* new allocations) of vouchers under section 8 of the 1937 Act (42 U.S.C. 1437f), subject to further HUD approval and discretion considering the applicable section 8 statutory, regulatory, and funding requirements. Benefits to the residents (that is, benefits for public housing residents) for which funds could be used include, for example, job training, child care programs, and service coordination. Other housing and benefits to the residents may be approved by HUD as well. The net proceeds may be leveraged with other funds so long as the net proceeds are used on a pro-rata basis to fund only the approved uses.

The proposed rule would require, in other contexts, expenditures of proceeds for the provision of low-income housing or for the benefit of PHA residents under this section to begin within 2 years from the date of disposition approval and be completed (i.e., entirely expended for the approved use) within 4 years unless HUD approves an extension in writing. The purpose of this proposal is to ensure timely use of public funds for their appropriate purposes, and to prevent banking public funds. These funds are appropriated and approved for particular public purposes, and should be used for those purposes in a timely manner.

The rule would also provide that proceeds generated from dispositions are subject to all laws, regulations, and other requirements applicable to use approved by HUD unless otherwise approved by HUD in writing. Thus, for example, for development, equal opportunity and environmental requirements, requirements pertaining to section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the labor standards provisions of section 12 of the 1937 Act (42 U.S.C. 1437j), may all be applicable.

The one exception to this general rule is that where disposition proceeds are used with HUD approval for the development of public housing units, the disposition proceeds will not count toward the total development cost (TDC) limit pursuant to 24 CFR 905.314(c).

If a PHA fails to use proceeds as required, HUD may recapture or require repayment of the proceeds, or take all other remedies available under law. Finally, the rule would require that upon immediate receipt of proceeds, and until expended for an approved use, a PHA must deposit the proceeds into an interest bearing account, subject to a HUD General Depository Agreement and/or an escrow agreement in a form acceptable to HUD. All accrued interest will be treated as additional proceeds, subject to this section.

Relocation of Residents (§ 970.21). Proposed § 970.21(a) would revise the currently codified § 970.21(a) to include material concerning the written notice to residents who will be displaced, now required at § 970.21(e), with additional details provided. The written notice would have to include a statement that the demolition, disposition, or combined application has been approved and that the action will occur, and a description of the process to relocate the residents. The written notice must be provided through an effective communications means to persons with disabilities in accordance with 24 CFR 8.6 and in the appropriate non-English language to persons with limited English proficiency as needed. This section would also continue to incorporate the requirement that the housing being offered must meet HQS (or such equivalent or successor standard that HUD may adopt) and be in a location ''not less desirable'' than the housing the resident is being displaced from. The currently codified regulation does not define a ''not less desirable'' location. Under the proposed rule, a PHA would, in determining comparable housing, also consider the following criteria (in aggregate): Neighborhood safety; quality of local schools; accessibility of amenities (e.g., transportation, employment); and exposure to adverse environmental conditions. Relocation associated with demolition and disposition plans must be consistent with the PHA's obligation to affirmatively further fair housing (42 U.S.C. 3608(e)(5)). In no event shall a PHA commence a demolition or disposition of the building (or a combined action) in which a resident lives until each resident of the building is provided relocation assistance.

Under proposed § 970.21(a)(4), the written notice would include a description of the comparable housing options that the PHA is offering to the resident, including the location of the housing to public transportation, employment, education, child care, medical services, shopping, and other amenities. The housing may include the types of housing currently codified at § 970.21(a)(1)–(3) (as of the April 1, 2013 edition of the Code of Federal Regulations).

Under § 970.21(a)(5), the notice shall include statements that the PHA shall offer displaced residents comparable housing on a nondiscriminatory basis with respect to race, color, religion, national origin, disability, familial status, or sex, as required by civil rights laws. Under proposed § 970.21(a)(6), the PHA shall offer residents with disabilities comparable housing that includes the accessibility features needed by the resident and located in the most integrated setting appropriate for the resident. The most integrated setting appropriate to the needs of individuals with disabilities is the setting that enables individuals with disabilities to interact with nondisabled individuals to the fullest extent possible, in furtherance of the Supreme Court's decision in *Olmstead* v. *L.C.,* 527 U.S. 581 (1999), and pursuant to HUD's regulations at 24 CFR 8.4(d). The statement shall also include the right of displaced residents to a reasonable accommodation under Section 504 of the Rehabilitation Act of 1973, the Fair Housing Act, and the Americans with Disabilities Act, as applicable, and how to request such an accommodation.

Section 18(a)(4)(B) of the 1937 Act (42 U.S.C. 1437p(a)(4)(B)) requires the payment of ''actual and reasonable relocation expenses'' of each resident being displaced, as does the current regulation at § 970.21(e)(2). The proposed rule would add more detail to what constitutes ''actual and reasonable relocation expenses.'' Under proposed § 970.21(a)(7), the PHA would provide for the payment of actual and reasonable relocation costs for each displaced resident, including reasonable accommodations for residents with a disability in accordance with Section 504 of the Rehabilitation Act of 1973, essentially similar to currently codified 970.21(e)(2). The proposed rule would further specify that the PHA shall pay for moving cost assistance, the payment of a displaced resident's security or utility deposit (or both), at a comparable housing unit (provided that loans or grants made directly to displaced residents for new deposits are not permitted if the PHA's source is either Capital or Operating Funds). The PHA would pay such deposits directly to the utility company, the landlord, or both, with the resident holding no interest in the funds. Any returns or refunds would go to the PHA directly.

Section 18(a)(4)(D) of the 1937 Act (42 U.S.C. 1437p(a)(4)(D)) provides that a PHA, as a condition of approval of its application, must provide ''any necessary counseling for residents who are displaced'' as a result of the demolition, disposition, or combined action. Proposed § 970.21(a)(8) would specify that the notice must include a description of the housing counseling services that will be available, including mobility counseling, and how a resident may access those services.

Proposed § 970.21(a)(9) requires that if the provisions of section 104(d) of the Housing and Community Development Act of 1974 (42 U.S.C. 5304(d) (section 104(d)), referenced in § 970.21(g), apply to the project, the notice required by § 970.21(a) must explain the assistance available under section 104(d), which requires a residential antidisplacement and relocation assistance plan for certain grants.

Proposed § 970.21(b) covers the timing of the notification to residents of the upcoming action. Like currently codified § 970.21(e)(1), proposed § 970.21(b) requires notification to residents at least 90 days prior to the displacement date, except in cases of imminent threat to health and safety. The proposed rule would define displacement date as the earliest date by which a resident who will be displaced by a demolition, disposition, or combined action shall be required to move. A PHA may not issue the notification prior to the date that HUD approves the application. Section 18(a)(4)(A)(iii) of the 1937 Act (42 U.S.C. 1437p(a)(4)(A)(iii)) and the current regulation at § 970.21(e)(1)(iii) require that each resident who is displaced from housing must be offered comparable housing and must be provided with actual and reasonable relocation assistance. The notice provisions in proposed § 970.21(a) reflect these requirements.

Proposed § 970.21(c)(1) would provide that if a PHA offers a resident comparable housing in the form of tenant-based assistance under section 8 of the 1937 Act, and the resident is unable to lease a dwelling unit during the initial 60-day leasing period provided under the Housing Choice Voucher program, the PHA may either (i) grant one or more extensions to the initial term in accordance with the voucher program regulations at 24 CFR 982.303 as reflected in the PHA's administrative plan; or (ii) provide the resident with another form of

comparable housing (e.g., public housing unit or project-based unit under section 8 of the 1937 Act). Proposed § 970.21(c)(2) would provide that a PHA shall not commence the HUD-approved demolition or complete the HUD-approved disposition of a building until each resident who will be displaced by the action is relocated in accordance with the requirements of this part.

As discussed in this preamble, the proposed rule would allow dispositions at below FMV based on commensurate public benefit. In such a case, if housing is developed on the site of the former project and is income-eligible, proposed § 970.21(d) would provide that income-eligible residents shall be offered the opportunity to return to the site once appropriately-sized units are available for occupancy. As part of its application for this type of disposition, the PHA would provide a plan that addresses how residents will be notified of the opportunity to return; the amount of time residents will have to exercise this opportunity; the source of funds from which the PHA or the new owner will pay the moving costs for moving the displaced residents back into the new units; and the process for selecting displaced residents who will be offered an opportunity to return (for example, lottery) if the number of new public housing units cannot accommodate all lease-compliant displaced residents at appropriate bedroom sizes. A displaced resident is ''lease-compliant'' for this purpose if the displaced resident (including household members whose names appear on their public housing lease) has not engaged in serious or repeated violations of material terms of the lease that result, or could result, in good cause to evict or terminate the assistance;

Proposed § 970.21(e) would provide that if a resident who will be displaced by a demolition, disposition, or combined action, refuses to move or otherwise rejects the PHA's offer(s) of comparable housing and relocation counseling and advisory services despite the PHA's due diligence, the PHA may evict the tenant under state law as long as the PHA exercises due diligence in making continued efforts to offer the resident comparable housing and relocation counseling.

Proposed § 970.21(f) would specify some of the sources of funding that may be used for relocation. Proposed § 970.21(f) would state that sources of funding for relocation expenses include gross proceeds a PHA receives under this part, Capital Funds, section 8 administrative fee funding (where section 8 assistance is offered as comparable housing), or other federal funds available for this purpose.

Proposed § 970.21(g) would specify that if federal financial assistance under the Community Development Block Grant (CDBG) program (42 U.S.C. 5301 *et seq.*); the Urban Development Action Grant (UDAG) program (42 U.S.C. 5318 *et seq.*); or the HOME Investment Partnerships (HOME) program (42 U.S.C. 12701 *et seq.*) is used in connection with the demolition of lower-income dwelling units, or conversion of such units to a use other than lower-income dwelling units, the project is subject to section 104(d) of the HCD Act of 1974, including the relocation payment and one-for-one replacement provisions as provided at 24 CFR part 42, subpart C. Proposed § 970.21(h) states that the URA does not apply to this part.

Costs of Demolition and Relocation of Displaced Residents (§ 970.23). Proposed § 970.23 would add provisions and clarifications to currently codified § 970.23. Proposed § 970.23(a) would clarify that a PHA may pay for relocation expenses with non-Federal funds or any eligible HUD funds, which may include Capital Funds. Proposed § 970.23(b) would provide that the PHA may pay for the costs of demolition with non-Federal or any eligible funds, including Capital Fund. Proposed § 970.23(c) would provide that where HUD has approved the demolition of a project and the proposed action is part of a program under the Capital Fund Program (24 CFR part 905), that the expenses of the demolition and of relocation of displaced residents must be included in the Capital Fund Submission pursuant to section 9(d) of the Act (42 U.S.C. 1437g(d)) or other eligible HUD funds.

Required and Permitted Actions Prior to Approval (§ 970.25). Proposed § 970.25 would update and clarify currently codified § 970.25. In addition to updating language, proposed § 970.25(a) would clarify that HUD permission to take any actions related to demolition, disposition, or a combined action prior to HUD approval of the application, may only be granted in writing, and that a PHA may not delay or withhold maintenance on a project in such a way as to cause or allow it to meet the demolition criteria under § 970.15.

The consolidation of occupancy requirements would be covered under proposed § 970.3(b)(18), and so would be removed from currently codified § 970.25(b) by this proposed rule. Proposed § 970.25(b) would provide that a PHA may lease public housing units at turnover while HUD is considering approval or after HUD has approved its application subject to the following conditions: The units are in decent, safe, and sanitary condition; the PHA determines that due to community housing needs or for other reasons consistent with its PHA Plan, leasing turnover units is in the best interests of the PHA, its residents, and community; and residents of units leased during such a period are provided with the relocation assistance required by proposed § 970.21. Where units are leased under this provision, the PHA's Operating Fund continues to be calculated as stated in 24 CFR part 990 (Public Housing Operating Fund).

De Minimis Exception to Demolition Application Requirements (§ 970.27). Proposed § 970.27 is essentially the same as the current codified section. The basic requirements—that the demolition be limited to the lesser of 5 dwelling units or 5 percent of the total number of units owned by the PHA, and that the space occupied by the demolished units be used for meeting the needs of PHA residents, or, alternatively, that the units were beyond repair—are found at proposed § 970.27(a) and (c).

The explanation of the 5-year period currently found at § 970.27(c) would be moved to proposed § 970.27(b). The reporting and recordkeeping requirements would be updated at proposed § 970.27(e).

Proposed § 970.27(f) would clarify that any resident displaced by de minimis demolition would be entitled to housing assistance in accordance with federal laws and requirements, which include the PHA's Admissions and Continued Occupancy Policy (24 CFR part 966), the PHA's section 8 Administrative Plan (24 CFR part 982), PHA Plan requirements (24 CFR part 903), and, except where the PHA provides the residents to be displaced with another public housing unit from its inventory, the URA. If CDBG or HOME funds are involved, the displaced resident shall be provided assistance under section 104(d) of the Housing and Community Development Act of 1974, where applicable.

Criteria for HUD Disapproval of Demolition or Disposition Application (§ 970.29). Proposed § 970.29 would revise the currently codified § 970.29, specifically, the provision that an application can be rejected if it is clearly inconsistent with the PHA Plan. The section would explicitly state that failing to satisfy the application requirements is grounds for disapproval. The proposed rule would also specify in particular the civil rights related

requirements under § 970.12. There are minor technical updates to language.

Effect on the Operating Fund Program and Capital Fund Program (§ 970.31). The proposed rule would remove § 970.31 on replacement units as this material will be moved to the Capital Fund rule at 24 CFR part 905. Currently codified § 970.33, which states the applicability of the Operating Fund program (24 CFR part 990) and the Capital Fund program (24 CFR part 905), would be redesignated as § 970.31.

Demolition Due to Emergency, Major Disaster, or Accidental Loss (§ 970.33). Proposed § 970.33 would codify HUD's practice in cases where PHAs must demolish housing due to an emergency or natural disaster. These terms are defined at proposed § 970.5. An ''emergency'' is defined as it is in section 102(1) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(1)) (Stafford Act). ''Major disaster'' is defined similarly to the definition in the Stafford Act (see 42 U.S.C. 5122(2)), with the addition that it includes any natural catastrophe or, regardless of cause, fire, flood, or explosion, that causes damage of sufficient severity or magnitude to warrant demolition to alleviate the danger, loss, hardship, or suffering caused thereby. In such a case, if the PHA rebuilds the same number of dwelling units or non-dwelling structures that comprised the demolished project, the demolition (and any additional demolition required to carry out the redevelopment) shall not be subject to 24 CFR part 970. If the PHA rebuilds less than all of the demolished structures or the project, the PHA shall submit a demolition application under this part within one year of such demolition to formalize and request official HUD approval for the action under this part.

Removal of All Projects in the PHA's Public Housing Inventory (§ 970.35). Proposed § 970.35 would be added to address the increased frequency of such actions and to clearly codify the PHA's responsibilities in this case, as well as to assist HUD and HUD field offices in monitoring and enforcing these requirements. In cases where a disposition application proposes to remove all structures and land in a PHA's public housing inventory and the PHA has no plans to develop any additional projects, once the disposition is complete, the PHA shall not expend any remaining Operating Funds, including operating reserves, other than for purposes related to the close-out of its public housing inventory, including audit requirements required by this section. Any remaining Operating Funds (including operating reserves and any unspent asset-repositioning fees received pursuant to 24 CFR 990.190(h)) would be required to be returned to HUD within 90 days of the date of disposition of the project. The PHA may spend no more of its Capital Funds other than, with HUD approval, amounts required to close out contract obligations incurred prior to HUD's approval of the disposition and amounts required to address imminent health and safety issues that arise at the project prior to completion of the disposition transaction.

If the disposition was approved at below FMV based on commensurate public benefit, prior to expending any Capital Funds on the project for the purposes identified above, the PHA must notify HUD in writing of the planned expenditure of Capital Funds so that HUD can determine if any changes are necessary to the terms of its commensurate public benefit and/or if the disposition price should be adjusted to reflect the expenditure of funds; no Capital Funds may be expended after the date of disposition of the project and any remaining Capital Funds shall be returned to HUD within 180 days of such date of disposition. The PHA shall be ineligible to receive any Capital Funds (replacement housing factor funds) under 24 CFR 905.10(i), and any funds issued under this section shall be recaptured by HUD.

Within 60 days after the disposition of all projects in its inventory, the PHA shall dispose of all equipment in its inventory that was acquired in whole or in part with 1937 Act funds in accordance with 24 CFR 85.32(c) (which addresses equipment acquired under a grant or subgrant), pursuant to a plan acceptable to HUD; and within 90 days of the date of disposition, the PHA must have an independent audit conducted on the close-out of its public housing inventory.

Reports and Records (§ 970.37). Proposed § 970.37 would revise currently codified § 970.35, ''Reports and records'' to strengthen HUD's oversight and monitoring of demolition and disposition actions. The information on demolition and sale or lease contracts currently found at § 970.35(a)(1) and (2) would be retained at proposed § 970.37(a)(1) and (2), and a new paragraph (a)(3) would be added.

This section would revise currently codified § 970.35 to require a report, in a form and frequency to be prescribed by HUD, until HUD determines that the report no longer needs to be submitted, containing the following information: (i) A description of resident relocation and timetable, including the number of families actually relocated by bedroom size; the types and location of comparable housing provided to each family; demographic information on family size, race, national origin, sex, and disability of relocated residents; reasonable accommodations that were provided in connection with the comparable housing; units to which residents were relocated that meet the accessibility requirements of Section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations at 24 CFR part 8 or that otherwise contain accessible features; the status of the Opportunity to Return Plan, including residents who express an interest in the plan; and the comparable housing offered to families that include a member with a disability that was located in a non-segregated setting, or, if non-segregated housing was not offered, an explanation of why the setting that was offered was the most integrated setting appropriate for the family, that is, the setting that enables the family to interact with non-disabled persons to the fullest extent possible and have access to community-based services; (ii) a description of the PHA's use of the proceeds of disposition by providing a financial statement showing how the gross and net proceeds were expended by item and dollar amount, as approved by HUD; (iii) a description of any remaining disposition proceeds, including current balance (plus interest), bank information of where such proceeds are being held, and plans for expending such proceeds for the use approved by HUD within the required timeframe; (iv) for dispositions approved by HUD at less than FMV based on commensurate public benefit, a description of the current use of the property (e.g., owner, number of housing units developed), and a statement of how the property is being used for the HUD-approved use; (v) a description of whether any project-based voucher contracts under section 8 of the 1937 Act have been executed on a former public housing property approved for disposition and/or at housing developed, acquired, or constructed with disposition proceeds; and (vi) evidence that an audit has been conducted on the demolition, and/or disposition action within 3 years of completion of the demolition and/or disposition action. In addition, as in the current regulation, HUD would be able to ask for such additional information as HUD may require from time to time.

B. Retention of Projects by PHAs Under 24 CFR Part 85

The proposed rule would add a subpart B to 24 CFR part 970, to allow

PHAs and other owners of public housing to retain public housing property, including dwelling units and appurtenant personal property and equipment that were purchased with 1937 Act funds, without the use restrictions under the ACC and DOT. Section 18 does not apply to cases where a PHA retains property rather than disposing of it to another party. In the case of retention, 24 CFR part 85 applies, particularly, § 85.31.

Definitions (§ 970.39). Proposed § 970.39 would provide that the definitions contained in § 970.5 would apply to subpart B.

Applicability (§ 970.41). Under proposed § 970.41, disposition in this case would be under 24 CFR 85.31. Under proposed § 970.41, the PHA may retain title to property that is no longer needed provided that the PHA requests and is approved by HUD to retain the property. In order to approve a request under this section, HUD will generally require the PHA to compensate HUD for the federal government's equity in the project (computed by applying HUD's percentage of participation in the cost of the original purchase to the FMV of the property and subsequent modernization), but the PHA could request an exception to this repayment requirement, for good cause, in accordance with 24 CFR 85.6(c). If HUD finds the PHA has shown good cause for retaining the project under this section, HUD will release the ACC and DOT on the project. HUD's approval may require the PHA to enter into certain use restrictions or may impose other requirements to ensure that the property is used for the HUD-approved purposes for a certain length of time.

Removal of a project from public housing without a transfer to a third party (§ 970.43). Proposed § 970.43 would clarify when a project can be removed from public housing without a transfer to a third party. HUD's regulations at 24 CFR 85.31 provide that except as otherwise provided by federal statutes, real property will be used for the originally authorized purpose as long as needed for that purpose, and the grantee shall not dispose of or encumber its title or other interests. Proposed § 970.43(a) would provide that when real property is no longer needed for the originally authorized purpose, the grantee will request disposition instructions from HUD. Section 18 of the 1937 Act and subpart A of part 970 covers the procedures that PHAs must follow if they choose to sell or otherwise transfer title of the property.

Section 85.31 of HUD's regulations in 24 CFR part 85 permits a PHA to retain title of real property that is no longer needed for its originally authorized purpose, provided the PHA requests and is approved by HUD to retain the property. Proposed § 970.43(b) would provide that HUD will generally require the PHA to compensate HUD for the federal government's equity in the project (computed by applying HUD's percentage of participation in the cost of the original purchase or construction to the FMV of the property and subsequent modernization), but the PHA could request an exception to this repayment requirement, for good cause, in accordance with 24 CFR 85.6(c). If HUD finds the PHA has shown good cause for retaining the project under this section, HUD will release the ACC and DOT on the project. HUD's approval may require the PHA to enter into certain use restrictions or may impose other requirements to ensure that the property is used for the HUD-approved purposes for a certain length of time.

Specific Criteria for HUD Approval of Requests (§ 970.45). Proposed § 970.45 would list the specific criteria for HUD approval of retention of public housing without use restrictions under subpart B. In addition to showing that the project is no longer needed for public housing and there is good cause for the action, for projects that include dwelling units, HUD will require compliance with the regular disposition regulations under part 970, subpart A, particularly § 970.17. To determine applicable requirements, references to ''disposition'' in subpart A shall mean ''retention of property'' for subpart B. The PHA must also show that retention of projects with dwelling units will leverage the property so that the PHA can obtain financing to address deferred capital needs and otherwise better maintain and operate the units as low-income housing. In addition, where there is resulting resident displacement, the PHA must comply with the relocation requirements in subpart A of this part. Vacant land may be retained (for example, as green space) as may nondwelling structures, if the structure is no longer needed by the PHA.

Proposed § 970.45(c) would contain the applicable application requirements for retention requests. These application requirements are proposed to be parallel to the application requirements under subpart A found in proposed § 970.7(c), with the omission of those items that would not apply in the case of retention. Thus, § 970.7(c)(4), a description of the specific action proposed; § 970.7(c)(7)(ii), a description of the comparable housing resources to be provided to any residents to be displaced; § 970.7(c)(9), related to the offering to resident organizations; § 970.7(c)(10), the name of the acquiring entity in the case of dispositions; §§ 970.7(c)(11)–(13), having to do with disposition proceeds, FMV, and commensurate public benefit; and § 970.7(c)(20), requiring a description of the race, color, religion, sex, national origin, familial status, and disability status of any residents who will be displaced.

On the other hand, elements that are unique to property retention are proposed to be added to the application requirements. These include a description of the future ownership structure of the project; the anticipated future use of the project and the proposed length of time the PHA will maintain the former project for the anticipated future use; and, in the case of displacement of residents, if any, a certification that the PHA will comply with the URA (which does not apply under 42 U.S.C. 1437p and subpart A; instead, there are specific relocation requirements under both the statute and regulation).

Revisions to Conversion Regulations

HUD is also proposing to revise the definition of ''conversion'' in the part 972 regulations that cover both voluntary and required conversion of public housing to tenant-based assistance to more accurately reflect what ''conversion'' means in the relevant statutory sections (for voluntary conversion, section 22 of the 1937 Act (42 U.S.C. 1437t); for required conversion, section 33 of the 1937 Act (42 U.S.C. 1437z–5). Currently, the regulations at 24 CFR 972.103 and 972.203 (for voluntary and required conversion, respectively) define conversion as the removal of public housing units from the inventory of a Public Housing Agency (PHA), and the provision of tenant-based, or project-based assistance for the residents of the PHA. While it is true that under the statutes the residents of a project undergoing conversion may be provided with alternate housing including project-based assistance, the statute provides that the conversion is only from public housing to tenant-based assistance. Therefore, HUD is proposing to revise these definitions accordingly to remove the reference to project-based assistance.

HUD notes in this context that the voluntary conversion rule as currently codified at 24 CFR 972.212(d) states that HUD may require that funding for the initial year of tenant-based assistance be provided from the public housing Capital Fund, Operating Fund, or both. This is a regulatory provision not found in the voluntary conversion statute,

section 22(f) of the 1937 Act (42 U.S.C. 1437t(f)), although that statute has a clause granting discretion to the Secretary in this area (''[t]o the extent approved by the Secretary''). HUD notes as a point of clarification that this statement is only true to the extent that use of Capital or Operating funds for this purpose is specifically provided for in appropriations acts, and that there is currently no appropriation, outside of the limited Rental Assistance Demonstration under the Consolidated and Further Continuing Appropriations Act, 2012 (Pub. L. 112–55, approved November 18, 2011), that allows either Operating or Capital fund appropriations to be used for this purpose. However, HUD is retaining this language in its regulations in case Congress chooses to grant HUD this ability in an upcoming appropriation.

Specific Questions for Public Comment

HUD welcomes public comments on any issue relevant to this rulemaking. HUD is also interested in public comments on the following specific subjects:

- The proposed definition of ''commensurate public benefit'' in proposed § 970.5;
- Whether or not the definition of ''disposition'' in proposed § 970.5 should include a PHA's transfer to the PHA's own nonprofit instrumentality;
- The requirements for a PHA to amend an existing approval under proposed § 970.7(e). For example, should the PHA be required to get a board resolution approving the amendment request? Should the PHA be required to consult residents and local government officials on the amendment request? Should it depend on whether the change is minor or significant?
- The circumstances under which a PHA would want to only demolish structures on public housing property under proposed § 970.15 without also proceeding with a disposition of the vacant land after demolition (considering the land would remain under the conventional ACC and DOT and could only be used for public housing purposes, e.g., to construct new public housing units), and there is limited funding for such purposes;
- In those instances where PHAs seek to both demolish and dispose of public housing projects as part of the same request, when would it be appropriate for HUD to allow a PHA to demolish obsolete structures (with HUD funds) only to immediately seek to dispose of the underlying vacant land, and whether HUD should instead require the PHA to dispose of the obsolete structures in their ''as-is'' obsolete condition and have the acquiring entity agree to demolish or otherwise dispose of or use that property?
- The criteria HUD should use in determining if a project is obsolete as to location under § 970.15(a)(1)(ii) and whether HUD should require the PHA to simultaneously submit a disposition application in these instances;
- For HUD to approve disposition under proposed § 970.17(b) for acquisition of other properties that will more efficiently or effectively operate as low-income housing, how far along must the development/acquisition of the replacement housing be? Is it enough that the PHA be irrevocably committed for the replacement units? Alternatively, is it enough that the PHAs have permanent financing in place and the actual replacement units identified? If the replacement units are public housing units, should a threshold requirement for approval under this section include those replacement units having met the applicable site and neighborhood standards? If the replacement units are not public housing but other low-income housing units (e.g., project-based Section 8 units), how much involvement should HUD have in the development of those units to assure that they will be more effectively and efficiently operated as low-income housing than the units proposed for disposition?
- For HUD to approve disposition under proposed § 970.17(b) for acquisition of other properties that will more efficiently or effectively operate as low-income housing, this rulemaking proposes that the minimum replacement amount be 75 percent of the units (all units housing families displaced by the action must be replaced). HUD would also consider a minimum of 50 percent, and would be interested in public comment on this issue;
- Are there any additional factors HUD should consider when approving a disposition for less than FMV under § 970.19(b)? Should the definition of commensurate public benefit under § 970.5 be amended?
- In what extent of planning should a PHA engage under § 970.25 without receiving HUD approval under section 18? For instance, should a PHA issue RFQs or RFPs that assume HUD will approve a full or partial demolition and/or disposition of the project?
- In order to preserve and make most efficient use of appropriated funds, should HUD limit tenant protection vouchers (TPVs) to fewer than the number of occupied units being replaced in cases where the PHA can provide assistance from funds already allocated to it?

IV. Findings and Certifications

Paperwork Reduction Act

The information collection requirements contained in this 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 (PRA), 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.

HUD currently collects information related to this rule through OMB PRA package 2577–0075 (which expires in August 2014). That information package includes submission requirements for the current 24 CFR part 970 rule, as well as submission requirements for 24 CFR part 972 (required and voluntary conversion), 24 CFR part 906 (homeownership), and eminent domain takings and de minimis demolitions (both exempt from Section 18 and the requirements of 24 CFR part 970). HUD will revise this PRA package 2577–0075 to reflect the changes made to this rule once the final version of this rule is published in the FR.

HUD estimates the burden increase on PHAs from this rule as 161.75 hours. HUD estimates the average cost to the PHA (staff salary) for these hours to be approximately $30 per hour. The modest increase from the current rule will benefit PHAs, HUD, and public housing residents and in several general ways, including:

(1) Faster application processing: HUD cannot process incomplete or substantially deficient applications. By clearly indicating (at a modest increase) the application submission materials that PHAs are required to provide about their proposed disposition and/or demolition actions, HUD staff will be less likely to reject an application for being incomplete or deficient. In addition, HUD staff will be able to more quickly process an application that meets the clearer requirements of this revised rule. Finally, HUD staff will be able to complete its civil rights compliance review in a much more streamlined and expeditious manner;

(2) Better protection for public housing residents—in assuring PHAs comply with all applicable requirements related to resident relocation and consultation;

(3) Better information for monitoring: HUD staff has an ongoing obligation to assure PHAs comply with the terms and requirements of Section 18, this revised rule, and the HUD approval letter. Sometimes these requirements extend

for 30+ years (use restrictions on land, receipt and use of proceeds). Requiring PHAs to submit annual reports to HUD will vastly assist HUD in its monitoring efforts.

Specific explanations for the increase in burden hours are as follows:

• 24 CFR 970.3(b)(5), (7), (9), and (18): HUD is clarifying that although these actions are exempt from Section 18 and the ''normal'' submission requirements of 24 CFR 970.7, HUD approval is nevertheless required and this requires a very modest PRA submission requirement;

• 24 CFR 970.3(b)(10): HUD is clarifying that although these eminent domain actions are exempt from Section 18 and the ''normal'' submission requirements of 24 CFR 970.7, HUD approval is nevertheless required and this requires a PRA submission requirement as is currently captured in PRA package 2577–0075);

• 24 CFR 970.3(c)(7): HUD is requiring PHAs to submit modestly more information about their relocation plans to HUD. The current rule requires PHAs to keep their relocation plans on file so the increased burden is minimal. This information will also assist HUD in doing a quicker civil rights compliance review;

• 24 CFR 970.7(c)(8): HUD is requiring PHAs to submit modestly more information about their resident consultations to HUD, including communication to persons with disabilities. This information will also assist HUD in doing a quicker civil rights compliance review;

• 24 CFR 970.7(c)(10) and (15): HUD is requiring PHAs to submit a legal opinion related to the acquiring entity (if applicable with dispositions) and outside financing (if applicable with CFFP, OFFP, or EPC). The legal opinion may be done by in-house PHA counsel or outside counsel. The purpose of this is to assure PHAs are aware of the legal implications of these disposition requirements;

• 24 CFR 970.7(c)(13): In the case of disposition proposed at below FMV based on commensurate public benefit in accordance with § 970.19, HUD is clarifying the information that PHAs are required to submit including: (i) A detailed description of any housing that will be located on the property, including the number of units, bedroom sizes, accessibility, affordability, and priorities for displaced residents; (ii) The proposed length of time in which the acquiring entity will maintain the former project for the proposed future use (HUD will generally require the proposed future use remain as such for not less than 30 years, but will consider other factors such as the extent of public benefits (e.g., number of affordable units) arising from proposed disposition and the FMV of the property in determining if a period of less than 30 years is acceptable); (iii) The plan to implement the opportunity to return requirement for existing residents' as outlined in § 970.21(d); and (iv) The proposed legal documentation (e.g., use restriction, provision in ground lease, declaration of restrictive covenant) the PHA proposes to ensure the approved use. This information is necessary for HUD to fully evaluate and review the ''opportunity cost'' of a PHA not disposing of public housing property at its FMV and using the proceeds for authorized purposes under the statute. HUD is currently processing applications in a way that requests much of this information. This section of the proposed rule makes these requirements clearer and more transparent;

• 24 CFR 970.7(e)(1): HUD is clarifying that PHAs must request HUD approval to amend any aspect of an approved demolition/disposition application;

• 24 CFR 970.15(a)(1)(i): HUD is requiring that obsolescence be verified by an independent architect or engineer not employed by the PHA. PHAs area already required to submit supporting information about obsolescence, so this burden reporting increase is minimal in that it just requires the submission be prepared by a professional other than the PHA staff;

• 24 CFR 970.17(b)(3): HUD is requiring documentation on its replacement housing plan to assure the PHA meets the requirements of this section, as newly implemented by this rule revision, including information on the financing plan, etc., for the replacement units;

• 24 CFR 970.37(a)(3): To assure continued compliance with all statutory and regulatory requirements, HUD is reserving the right to require PHAS to submit reports in the form and frequency required by HUD. The purpose of this is to assist HUD with monitoring these actions (there has been a vast increase in OIG investigations and findings related to approved demolition and disposition actions). While this section is one of the largest increases in the reporting burden in this proposed rule, HUD thinks it is justified. However, the rule is written in a way that allows HUD to implement this and reduce the burden on some or all PHAs. For instance, HUD could further implement this in a way to require reporting under this section at a frequency of less than 1 time per year (e.g., on an as-requested basis). In addition, HUD could revise/reduce/eliminate this burden, for instance, for small PHAs, per OMB's other comment;

• 24 CFR 970.45(a): HUD is requiring PHAs to submit documentation on assuring that it is justified, under these HUD criteria, to retain property free of federalized public housing restrictions (e.g., evidencing good cause) under the new subpart B.

This information, like currently required information, will be collected via on-line application and reviewed by HUD's Special Application Center (SAC) to ensure that PHAs meet the statutory and regulatory requirements necessary for HUD to approve inventory removal actions. HUD approval is necessary prior to PHAs removing their public housing property in order to protect the Federal interest in the public housing property under the ACC and Declaration of Trust. This information is also collected so that HUD has an accurate database of Federal public housing inventory and so the HUD Field Office can effectively monitor the implementation of the removal action.

The burden of the information collections in this rule is estimated as follows:

REPORTING AND RECORDKEEPING BURDEN

Section reference	Number of respondents	Number of responses per respondent	Estimated average time for requirement (in hours)	Estimated annual burden (in hours)
970.3(b)(5) PHA request for HUD approval for agreement related to operation of public housing	25	1	.15	7.5
970.3(b)(7) PHA request for HUD approval for agreement of leasing of project	5	1	.15	2.5

REPORTING AND RECORDKEEPING BURDEN—Continued

Section reference	Number of respondents	Number of responses per respondent	Estimated average time for requirement (in hours)	Estimated annual burden (in hours)
970.3(b)(9) PHA request for HUD approval for easements related to operation of public housing	25	1	.15	7.5
970.3(b)(10) Eminent Domain	7	1	2	14
970.3(b)(12) Dispositions for property developed pursuant to 24 CFR 905.604	20	1	2	40
970.3(b)(13) De Mimimis Demolition	15	1	2	30
970.3(b)(16) Demolitions due to disaster	8	1	1	8
970.3(b)(17) De Minimis Dispositions	3	1	.15	4.5
970.3(b)(18) Occupancy Consolidation approval	10	1	.15	1.5
970.7(c)(1) Certification authorized in PHA Plan	150	1	.05	7.5
970.7(c)(2) Description of property	150	1	.10	15
970.7(c)(3) Vacant units	100	1	.05	5
970.7(c)(4) Description of action proposed	150	1	.15	22.5
970.7(c)(5) General Timeframe	150	1	.05	7.5
970.7(c)(6) Justification for action	150	1	1	150
970.7(c)(7) Relocation Certification and plan	100	1	1	100
970.7(c)(8) Resident Consultation Description	150	1	1	150
970.7(c)(9) Offer to sell to residents or exception to offer to sell (disposition only)	100	1	.10	10
970.7(c)(10) Legal Opinion as to acquiring entity (disposition only)	100	1	.05	5
970.7(c)(11) Fair market value of property (disposition only)	100	1	.10	10
970.7(c)(12) Estimates of the gross and net proceeds to be realized and proposed uses (disposition only)	100	1	.45	45
970.7(c)(13) Proposed commensurate public benefit in accordance for below FMV disposition (disposition only)	70	1	1	70
970.7(c)(14) Debt Waiver (disposition only)	100	1	.05	5
970.7(c)(15) Legal Opinion as to other debt financing	50	1	.05	2.5
970.7(c)(16) Board Resolution	150	1	.05	7.5
970.7(c)(17) Local government consultation	150	1	.10	15
970.7(c)(18) Environmental review	150	1	.10	15
970.7(c)(19) Civil Rights Compliance Certification	150	1	.15	22.5
970.7(c)(20) Civil rights description of residents	150	1	.50	50
970.7(c)(21) Certification will comply with HUD approval	150	1	.05	5
970.7(c)(22) Additional requested information	100	1	.50	50
970.7(e)(1) Amendments requests	100	1	1	100
970.7(e)(2) Recession requests	5	1	1	5
970.35 Removal of all units in a PHA's inventory, HUD approvals, and audit	10	1	2	20
970.37 Record-keeping and reporting requirements	250	1	1	250
970.43 Requirements for HUD approval under subpart B	5	1	2	20
Total Paperwork Burden for the New Rule	1483			
Total Burden from Previous Rule (24 CFR part 970)	1321.25			
Total additional burden as a result of this rule	161.75			

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 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.

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–5563) and must 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 Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410.

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.

Executive Order 12866—Regulatory Impact Analysis

At the outset, it is determined that while the proposed rule is a significant regulatory action, it is not economically significant. The rule addresses programmatic concerns to an existing regulation, clarifies ambiguous language in program regulations, strengthens internal controls, and facilitates the full implementation of the demolition and disposition processes. To the extent that this proposed rule would alter the previous demolition/disposition requirements, it would do so in ways that are likely to leave the economic impact mostly unchanged.

Notwithstanding, the proposed rule would marginally add to the administrative burden associated with added oversight and compliance and would generate some costs. Housing authorities and other program participants would also benefit from the added clarity in the demolition and disposition regulations. These program clarifications would also certainly translate into some cost savings. On average, HUD's special application center (SAC) estimates that the total additional administrative burden as a result of this rule is 162 hours per application per year. Each year, the center receives between 150 and 200 applications for demolition and or disposition. If we assume that the average hourly rate is $70, the total compliance cost would be between $1.70 million and $2.27 million a year.

In regards to the above, it is concluded that this proposed rule is not a major rule under Executive Order 12866 and OMB Circular A–4 as it would not result in transfers of funding to and among stakeholders of more than $100 million per year.

Background

HUD has promulgated a regulation, 24 CFR part 970, detailing the administrative steps required to perform demolition/disposition activity in accordance with the 1937 Act, as authorized under section 18 of the 1937 Act, 42 U.S.C. 1437p. A revision to 24 CFR part 970 was published in the **Federal Register** on October 24, 2006, and took effect on November 24, 2006. A correction to the revised 24 CFR part 970 was published in the **Federal Register** on January 23, 2008.

Although demolition/disposition activity has always been permitted, HUD and its business partners have begun to actively pursue it as a management strategy option in the last twenty years with the HOPE VI program. This is due to the realization that some developments have difficulties associated not only with physical deterioration of the housing stock, but also with the overall condition of the community surrounding the public housing development subject to demolition or disposition. It is also true that a large portion of the housing now being proposed for demolition/disposition was built in the late 1940s and early 1950s, and was built to a standard that is no longer acceptable for the general public.

Currently, demolitions and dispositions are approved based on certification by the public housing agency (PHA) that certain conditions are met. About 150,000 of the 1.4 million public housing units available in 1989 have been demolished, converted, or disposed of. The program would continue to lose thousands more units every year as properties continue to deteriorate. Based on the HUD's 2010 Capital Needs in the Public Housing Program study, there is no sign that this trend will change anytime soon. This Congressionally-funded study estimated that the aggregate national capital backlog exceeds $25.6 billion—or, $23,365 per unit—in the public housing portfolio alone.[3]

Costs and Benefits.

The inception of this proposed rule does not come from a perceived market failure, but rather, from the desire to strengthen and streamline the demolition and disposition processes to reflect changes that have occurred in the public housing program over the last 20 years. As such, while the proposed rule would marginally add administrative burden, this proposed rule would not have any significant financial or cost incidence on stakeholders, but it would create greater clarity regarding the demolition and disposition process. The rule adds increased clarity and guidance to assist PHAs in determining when a demolition and/or disposition may be appropriate for their public housing inventories (e.g., so a PHA would be less likely to put the time into preparing and submitting an application to HUD that would not meet the criteria necessary for HUD approval and thus would not waste its or HUD's staff time and resources. Based on the clarified and new guidance in the rule, some PHAs may sometimes opt not to apply for demolition/disposition and instead pursue other HUD tools—e.g. CFFP financing—for their public housing stock);

The rule adds increased clarity and guidance on what HUD will require to approve an application submitted by a PHA (*e.g.,* HUD will re-do the paperwork burden—HUD form—to make the application easier to fill-out by PHAs. Applications submitted by PHAs will be more likely to be approved by HUD because PHAs will be better able to show that they are meeting the applicable HUD criteria. Further, HUD's review time will likely be significantly reduced, a cost benefit to both PHAs and HUD).

On average, HUD's SAC estimates that the total additional administrative burden as a result of this rule is 162 hours per application per year. Each year, the center receives between 150 and 200 applications for demolition and or disposition. If we assume that the average hourly rate is $70, the total compliance cost would be between $1.70 million and $2.27 million a year.[4] The proposed rule requires that the determination of obsolescence be found by an independent (that is not a regular employee of the PHA) architect or engineer.

In addition, units that are demolished or disposed of do not receive full funding under the public housing operating and capital funds. Under the public housing program, these units receive a proration and under the capital funds, they receive replacement housing factor funds. Funds retained under the capital fund program are redistributed to PHAs (including the applying PHA) by formula. The same units removed from the inventory and the PHA will no longer receive operating funds for those units, but the PHA will also not have any operating or maintenance expenses for those units.

Transfers

The proposed rule would create very little additional financial flux. It is likely that the proposed rule may generate up to $2.23 million in additional compliance costs. These costs would constitute transfers to architects, engineers, lawyers, accountants, etc. For example, the proposed rule requires that the determination of obsolescence be found by an independent (that is not a regular employee of the PHA) architect or engineer.

[3] *http://portal.hud.gov/hudportal/documents/huddoc?id=PH_Capital_Needs.pdf.*

[4] The Congressional Budget Office (CBO) reports that the average total compensation for a federal government employee with a Master's Degree was $65.30 in 2010 or $70 adjusted for inflation in 2013. CBO, comparing the Compensation of Federal and Private-Sector Employees, January 2012, available at *http://www.cbo.gov.*

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (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 proposed rule would not change existing requirements applicable to demolition and disposition of public housing, but would clarify and include additional detail regarding such requirements, to assist those PHAs that seek to demolish or dispose of public housing fully meet these requirements.

The rule is voluntary. PHAs may choose to continue to retain all of their current public housing property and operate and maintain it in accordance with all public housing requirements (and obtain all available HUD funding to do this). For those entities that choose to demolish or dispose of public housing units, as discussed in Section III of this preamble, while the proposed rule would add marginally to administrative burden associated with increased oversight and enhanced compliance, the proposed rule would also generate savings through the greater clarity brought to existing requirements, as well as relieve the PHAs of the cost associated with the preexisting legal requirement to maintain all of their residential units in a condition that is decent, safe, sanitary, and in good repair (24 CFR 5.703). Additionally and importantly, the proposed rule does not alter the exemption from the annual PHA Plan requirements that are applicable to qualified public housing agencies, which are small agencies, which significantly reduces the administrative burden associated with demolishing or disposing of property.

For those PHAs that choose to demolish or dispose of their public housing units, data shows that relatively few are small PHAs and the economic impact on those PHAs is not significant. Between January 2009–January 2014, HUD received approximately 930 demolition and/or disposition applications from PHAs (an average of 186/year). Of these approximately 930 applications, approximately 136 were submitted by PHAs that are currently small PHAs (PHAs with inventories of 50–249 public housing units) and approximately 16 applications were submitted by PHAs that are currently very small PHAs (PHAs with inventories of 1–49 of total public housing units) (note that some of these PHAs may have been large PHAs at the time of the application). Only 23 small and very small PHAs submitted more than one application during this period. Thus the demolition and/or disposition applications submitted by small and very small PHAs over the past 5 years represent only about 16.3 percent of all applications received. There are approximately 2,310 small or very small PHAs nationwide out of 3,089 total PHAs, and thus the percentage of all small or very small PHAs submitting applications over the last 5 years is only 6.6 percent of all small or very small PHAs, and only 4.9 percent of all PHAs. Thus, there are not a substantial number of small entities involved.

As noted in the Regulatory Impact Analysis, the average cost to PHAs is $70 per hour, and the average number of hours per application is 162, resulting in an average cost of $11,340. The average 2013 budget of small and very small PHAs is approximately $104,230 in Capital Funds and $197,159 in Operating Funds, so this cost, on average, represents only 3.8 percent of a small PHA's funding, which is not a significant impact.

As also noted in Section III of this preamble, applying for demolition or disposition of a portion of the property has no economic impact on the PHA apart from this minor administrative cost; units are removed from the inventory and the PHA will no longer receive operating funds for those units, but the PHA will also not have any operating or maintenance expenses for those units. Furthermore, any resident relocation would be to existing PHA housing or funded through section 8 of the 1937 Act, 42 U.S.C. 1437f. Accordingly, 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.

Unfunded Mandates Reform Act

Title II of 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 the private sector. This rule does not impose any Federal mandate on any state, local, or tribal government or the private sector within the meaning of UMRA.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding is available for public inspection during regular business hours 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 Finding by calling the Regulations Division at (202) 402–3055 (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.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute or preempts state law, unless the relevant requirements of section 6 of the Executive order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive order.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number for 24 CFR part 970 is 14.850.

List of Subjects in 24 CFR Parts 970 and 972

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, HUD proposes to amend 24 CFR parts 970 and 972 as follows:

■ 1. 24 CFR part 970 is revised to read as follows:

PART 970—PUBLIC HOUSING PROGRAM—DEMOLITION OR DISPOSITION OF PUBLIC HOUSING PROJECTS

Subpart A—Demolitions and Dispositions Under Section 18 of the U.S. Housing Act of 1937

Sec.
970.1 Purpose.
970.3 Applicability.
970.5 Definitions.
970.7 General requirements for HUD review and approval of a demolition or disposition application.
970.9 Resident participation—consultation and opportunity to purchase.
970.11 Procedures for the offer of sale to an Established Eligible Organization.
970.12 Civil rights and equal opportunity review.
970.13 Environmental review requirements.
970.14 Section 3 compliance.
970.15 Specific criteria for HUD approval of a demolition application.
970.17 Specific criteria and conditions for HUD approval of a disposition application.
970.19 Requirements for the disposition of a project.
970.20 Use and treatment of proceeds.
970.21 Relocation of residents.
970.23 Costs of demolition and relocation of displaced residents.
970.25 Required and permitted actions prior to approval.
970.27 De minimis exception to demolition application requirement.
970.29 Criteria for HUD disapproval of a demolition or disposition application.
970.31 Effect on Operating Fund Program and Capital Fund Program.
970.33 Demolitions due to emergency, disaster, or accidental loss.
970.35 Removal of all projects in the PHA's public housing inventory.
970.37 Reports and records.

Subpart B—Real Property Transactions: Retention of Projects by Public Housing Agencies

970.39 Definitions.
970.41 Applicability.
970.43 Removal of a project from public housing without a transfer to a third party.
970.45 Specific criteria for HUD approval of requests under this subpart.

Authority: 42 U.S.C. 1437p and 3535(d).

Subpart A—Demolitions and Dispositions Under Section 18 of the U.S. Housing Act of 1937

§ 970.1 Purpose.

This part states requirements for HUD approval of applications for demolition or disposition (in whole or in part) of public housing projects assisted under Title I of the U.S. Housing Act of 1937 (1937 Act). This subpart states the requirements applicable to demolitions and dispositions of public housing projects as provided under section 18 of the 1937 Act. Subpart B of this part states the requirements applicable to real property transactions and retention of projects by public housing agencies (PHAs). The regulations in 24 CFR part 85 are not applicable to this subpart, and are addressed in subpart B of this part.

§ 970.3 Applicability.

(a) This subpart applies to public housing projects that are subject to an annual contributions contract (ACC) under the 1937 Act and which are proposed for demolition, disposition, or both, through an application under section 18 of the 1937 Act, and includes projects owned by PHAs;

(b) This subpart does not apply to the following:

(1) Public housing projects that PHAs apply to retain under subpart B of this part;

(2) PHA-owned Section 8 housing, or housing leased under former sections 10(c) or 23 of the 1937 Act;

(3) Demolition or disposition before the date of full availability (DOFA) of property acquired incidental to the development of a project (however, this exception shall not apply to dwelling units under ACC);

(4) The conveyance of projects for the purpose of providing homeownership opportunities for low-income families under sections 21 and 32 of the 1937 Act (42 U.S.C. 1437s and 42 U.S.C. 1437z–4, respectively), the homeownership program under former section 5(h) of the 1937 Act (42 U.S.C. 1437c(h)), or other predecessor homeownership programs;

(5) An agreement with a third party (e.g., leases or license, solar roof top lease, telecommunications lease, garden or park space) provided such agreement:

(i) Benefits the PHA and its residents;

(ii) Is consistent with the PHA's Plan (as determined by HUD);

(iii) Is consistent with the PHA's ACC with HUD; and

(iv) Is approved in writing by HUD;

(6) The adaptation or utilization of portions of projects (including available common areas and unoccupied dwelling units) for authorized non-dwelling purposes related to public housing, including resident amenities, activities and services, and public housing administration;

(7) The leasing of a project (but not individual dwelling units) for the purpose of enabling a prospective owner-entity to show site control in an application for funding for the redevelopment of the project, such as low-income housing tax credits (LIHTC), provided such lease is for one year or less and is approved by HUD in writing;

(8) The reconfiguration of the interior space of buildings (e.g., moving or removing interior walls to change the design, sizes, or number of units) for an authorized use related to the normal operation of public housing, without ''demolition,'' as defined in § 970.5. (This includes the reconfiguration of bedroom size, occupancy type, or changing the status of unit from dwelling to non-dwelling in accordance with all applicable HUD requirements and approvals. Changes in the number of units or number of bedrooms will be reflected in the PIH Information Center (PIC) or any future substitute system required by HUD);

(9) Easements, rights-of-way, and transfers of utility systems related to the normal operation of the project for public housing purposes as permitted by the ACC, provided such easements, rights-of-way, and transfers of utility systems are approved by HUD in writing;

(10) A whole or partial taking by a public or quasi-public entity (taking agency) authorized to take real property by its use of police power or exercise of its power of eminent domain under state law. A taking does not qualify for the exception under this paragraph unless:

(i) The taking agency has been authorized to acquire real property by use of its police power or power of eminent domain under its state law;

(ii) The taking agency has taken at least the first step in formal proceedings under its state law; and

(iii) If the taking is for a federally assisted project, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601 *et seq.*) applies to any resulting displacement of residents and it is the responsibility of the taking agency to comply with applicable URA requirements;

(11) Real property (vacant land and improvements) that is owned or has been acquired by, or donated to, a PHA with public housing or other funds and then conveyed, sold, or otherwise transferred to an owner-entity prior to DOFA to enable an owner-entity to develop the property using the mixed-finance development method at 24 CFR 905.604;

(12) Disposition of vacant land (but not units) comprising a project for development pursuant to the mixed-finance development method at 24 CFR 905.604 are exempt from this regulation, but not Section 18 of the 1937 Act, and provided that the PHA:

(i) Submits an application, in the form prescribed by HUD, that evidences to HUD's satisfaction that it has complied

with the requirements of section 18 of the 1937 Act; and

(ii) Receives HUD approval of that application before commencing the disposition of the project;

(13) Demolition under the de minimis exception in § 970.27, except that the environmental review provisions apply, including the provisions at §§ 970.7(c)(18) and 970.13, provided that the PHA notifies HUD in the form prescribed and submits the documents and information outlined in § 970.27(e) and, except in cases of imminent threats to health or safety, HUD acknowledges the action in writing prior to the commencement of the demolition;

(14) Demolition (but not disposition) of severely distressed units as part of a revitalization plan under section 24 of the 1937 Act (42 U.S.C. 1437v) (HOPE VI and Choice Neighborhoods) approved after October 21, 1998;

(15) Demolition (but not disposition) of projects removed from a PHA's inventory under section 33 of the 1937 Act (42 U.S.C. 1437z–5);

(16) Demolition of projects due to a disaster, sudden accidental or casualty loss, as permitted by the ACC and § 970.33, provided the PHA submits the documents and information outlined in § 970.33;

(17) Dispositions of projects of a de minimis nature that are necessary to correct and/or clarify legal descriptions to deed or ownership documents, provided such de minimis dispositions are approved by HUD; and

(18) Consolidation of occupancy within or among buildings of a project, or among projects, or with other low-income housing for the purposes of improving living conditions of, or providing more efficient services to residents, provided such consolidation of occupancy is done in accordance with applicable federal laws and requirements, which may include the PHA's written policies on admissions and continued occupancy, the PHA's section 8 Administrative Plan (24 CFR part 982), and PHA Plan requirements (24 CFR part 903), and further provided the PHA notifies HUD in writing in advance of such occupancy consolidation.

(c) The exclusion of activities in § 970.3(b) from applicability of this subpart does not impair the applicability of other requirements that apply independently of section 18 of the 1937 Act, including the requirements of section 104(d) of the Housing and Community Development Act of 1974 (42 U.S.C. 5304(d)).

§ 970.5 Definitions.

1937 Act, is defined in 24 CFR 5.100.

ACC, or annual contributions contract, is defined in 24 CFR 5.403.

Accessible, or accessibility, means accessible to persons with disabilities as defined further in HUD's regulations at 24 CFR 8.3.

Appropriate government officials mean the Chief Executive Officer or officers of a unit of general local government.

Assistant Secretary means the Assistant Secretary for Public and Indian Housing at HUD.

Chief Executive Officer of a unit of general local government means the elected official or the legally designated official who has the primary responsibility for the conduct of that entity's governmental affairs and who has the authority to contractually bind the jurisdiction. Examples of the chief executive officer of a unit of general local government are: The elected mayor of a municipality; the elected county executive of a county; the chairperson of a county commission or board in a county that has no elected county executive; and the official designated pursuant to law by the governing body of a unit of general local government.

Commensurate public benefit means benefits to the residents of the PHA, the community, and/or the federal government, as approved by HUD. General public improvements or public infrastructure such as streets and bridges, do not qualify as commensurate public benefits. HUD will generally consider the following to be commensurate public benefits:

(1) Rental dwelling units (in a number approved by HUD) to house low-income families (as defined herein) for a period required by HUD of not less than 30 years from the date such units are available for occupancy, and for which all lease-compliant public housing residents (as defined herein) who are displaced from a public housing project (as defined herein) due to a demolition and/or disposition under this part are provided with an opportunity to return to size-appropriate public housing units that are rebuilt on the site;

(2) Homeownership dwelling units (in a number approved by HUD) affordable to low-income families;

(3) Non-dwelling structures or facilities to serve low-income families, as approved by HUD; and

(4) Other or additional benefits as approved by HUD (which may include, in part, planning and carrying out section 3 activities under section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (section 3 or section 3 activities) related to these proposed benefits)).

Comparable housing means housing that meets housing quality standards (HQS) (or such successor standard that HUD may adopt) and is appropriate in size for the household. For residents with a disability, comparable housing must include the accessibility features needed by the resident and must be located in the most integrated setting appropriate for the resident with a disability (i.e., the setting that enables the resident to interact with non-disabled persons to the fullest extent possible and have access to community-based services). Comparable housing must be located in an area that is generally not less desirable than the location of the displaced resident's current public housing unit. In determining comparable housing, a PHA shall also consider the following criteria (in aggregate): Neighborhood safety; quality of local schools; accessibility of amenities (e.g., transportation, employment); and exposure to adverse environmental conditions. Relocation associated with demolition and disposition plans must be consistent with the PHA's obligation to affirmatively further fair housing (42 U.S.C. 3608(e)(5))).

(1) Comparable housing for displaced residents is generally other subsidized housing and may include:

(i) Tenant-based assistance under section 8 of the 1937 Act;

(ii) Project-based assistance under section 8 of the 1937 Act; or

(iii) Occupancy in a unit operated or assisted by a PHA at a rental rate paid by the resident that is comparable to the rental rate applicable to the public housing unit from which the resident is displaced. Comparable housing for a resident household which is not eligible for public or assisted housing or in cases where no other comparable subsidized housing is available may be provided by offering referrals to non-subsidized housing currently available on the private market, and may include another level of housing assistance, as adopted by the PHA and approved by HUD, in order to mitigate the costs of displacement.

(2) [Reserved]

Demolition means the removal by razing or other means, in whole or in part, of one or more permanent buildings of a project such as to render the building(s) uninhabitable as defined by the applicable building occupancy code. A demolition involves:

(1) The lifting and relocation of a building from its existing site to another site not covered by the same DOT; or

(2) The removal of 50 percent or more of a building's partition walls in

addition to four or more of the following:

(i) Envelope removal (roof, windows, exterior walls);

(ii) Kitchen removal;

(iii) Bathroom removal;

(iv) Electrical system removal (unit service panels and distribution circuits); or

(v) Plumbing system removal (e.g., either the hot water heater or distribution piping in the unit, or both).

Declaration of Trust (DOT) means a legal instrument that grants HUD an interest in a project. It provides public notice that the project must be operated in accordance with all public housing federal requirements, including the requirement not to convey or otherwise encumber the property unless expressly authorized by federal law and/or HUD.

Displaced resident means a ''resident'' as defined in this section that is relocated permanently from the project as a direct result of a demolition and/or disposition action under this part. The term ''displaced resident'' means a resident displaced from a project under this part and includes, but is not limited to:

(1) An eligible public housing resident (including any current members of the resident household) that lives in a project at the time the displacement is approved, subject to an ACC under the 1937 Act; and

(2) An over-income or other resident who is otherwise ineligible for occupancy in public housing or other subsidized housing who, at the time the displacement is approved, resides in a project subject to an ACC under the Act but occupies a unit under PHA policies for continued occupancy or other special rent exceptions.

Disposition means the sale or other transfer (e.g. ground lease) of a project that will cause HUD to terminate the ACC with respect to the project and release the DOT recorded against the project, provided that such sale or transfer is to a legal entity that is independent from the PHA under the applicable state law.

DOFA, or date of full availability, means the last day of the month in which substantially all (95 percent or more) of the units in a project are available for occupancy.

Emergency means any occasion or instance for which, in the determination of the President or HUD, federal assistance is needed to supplement state and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

Established Eligible Organization means any resident council or any resident management corporation as those terms are defined in 24 CFR part 964, or to a nonprofit organization acting on behalf of the residents.

Fair Market Value (FMV) means the estimated market value of a project, as determined by an independent appraiser contracted but not employed by the PHA and completed within 6 months of the date an application is submitted to HUD, unless a longer time is approved by HUD.

Firm financial commitment means a commitment that obligates a creditable source, lender, or equity provider, to the lending or equity investment of a specific sum of funds to be made on or before a specific date(s) and may contain contingencies or conditions that must be satisfied by the borrower (or entity receiving equity investments). The condition of a firm commitment must be that it is enforceable by the borrower (or entity receiving the equity investment) upon the satisfaction of all contingencies or conditions.

Housing Quality Standards (HQS) has the same meaning as 24 CFR part 982.

Housing Construction Cost (HCC) has the same meaning as in 24 CFR part 905.

Lease-compliant displaced resident means a displaced resident (including household members whose names appear on the public housing lease) who has not engaged in serious or repeated violations of material terms of the lease that result, or could result, in good cause to evict, and terminate the resident's assistance.

Low-income families has the same meaning as found in section 3 of the 1937 Act (e.g., families with incomes that do not exceed 80 percent of area median income (AMI)).

Low-income housing has the same meaning as section 3 of the 1937 Act (e.g., decent, safe, and sanitary dwellings assisted under the 1937 Act) and which may include public housing units and units assisted by funds from section 8 of the 1937 Act (e.g., tenant-based or project-based voucher units under section 8 of the 1937 Act, and homeownership units developed under sections 32, 24, or 9 of the 1937 Act.)

Major disaster means any natural catastrophe (including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which:

(1) In the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this 1937 Act to supplement the efforts and available resources of states, local governments, and disaster relief organizations; or

(2) Causes severe danger, hardship, or suffering, as determined by HUD.

PHA or Public Housing Agency is defined at 24 CFR 5.100.

PHA Plan means the plan the PHA is required to prepare and/or submit to HUD under section 5(A) of the 1937 Act (42 U.S.C. 1437c–1) and 24 CFR part 903, and which plan must be consistent with the jurisdiction's Consolidated Plan under 24 CFR part 91 (the PHA Plan is generally the annual plan unless the PHA is a Moving to Work (MTW) agency in which case it means the Annual MTW Plan).

Project means discrete property, including all necessary appurtenances (e.g., playgrounds, as well as equipment and personal property that has been acquired with HUD funds and used in the operation, maintenance, or improvement of the project) and other real property developed, acquired, or assisted with funds under the 1937 Act. A project may comprise vacant land and/or dwelling or non-dwelling structures. A project will generally have an identification number in the PIH Information Center (PIC), but may also include housing, including mixed finance public housing units, and other real property that has been acquired or otherwise developed with funds provided under the 1937 Act, but without prior HUD approval. A project may be owned by a PHA or, in whole or in part, by another owner entity pursuant to 24 CFR 905.604. A project is governed by an ACC. For purposes of this part, the term project includes any housing or other real property, regardless of whether the property comprises all or a portion of property on a given site and/or within a project number, and includes units developed pursuant to the mixed finance method at 24 CFR 905.604. The term project means the same as the word development used in other HUD systems and guidance.

Public housing funds are defined at § 905.108 and include disposition proceeds that a PHA may realize under 42 U.S.C. 1437p. In the case of such proceeds, § 970.20(d) applies.

Public housing unit means a dwelling unit in a project, including a dwelling unit developed for homeownership under the 1937 Act (other than units developed for homeownership under section 8(y) of the Act) prior to the transfer of title of that unit to the homebuyer.

Qualified PHA means a PHA that is considered a ''qualified public housing agency'' under section 2702 of the

Housing and Economic Recovery Act of 2008 (HERA), codified at section 5A(b)(3) of the 1937 Act (42 U.S.C. 1437c–1(b)(3)).

Related to the normal operation of the project for public housing purposes means activities that are required or permitted to meet the obligations of the ACC, including the provision of low-income housing and related services and other benefits to the residents of the PHA.

Resident means an individual or family who in accordance with the 1937 Act:

(1) Is living in a public housing unit;

(2) Is living in a unit that is assisted with funds under section 8 of the 1937 Act; or

(3) Is eligible for assistance under an MTW agency's HUD-approved annual MTW plan.

Resident Advisory Board (RAB) has the same meaning as in 24 CFR 903.13(a).

Resident Council means a resident organization, the role and requirements of which are as described in 24 CFR part 964.

Resident Management Corporation (RMC) has the same meaning as 24 CFR 964.7.

§ 970.7 General requirements for HUD review and approval of a demolition or disposition application.

(a) *Application for HUD approval.* A PHA must obtain written approval from HUD before undertaking any transaction involving demolition and/or disposition of a project. Where a PHA demolishes or disposes of a project without HUD approval, no HUD funds may be used to fund the costs of demolition or disposition or reimburse the PHA for those costs. HUD will approve an application for demolition and/or disposition upon the submission of an application with the required certifications and the supporting information required by this section and §§ 970.15 or 970.17. Section 970.29 specifies criteria for disapproval of an application. Approval of the application under this part does not imply approval of a request for additional funding, which the PHA must make separately under a program that makes such additional funding available.

(b) *Sufficiency of application.* HUD will not consider an application for demolition, disposition, or both, unless the application contains all the substantial information set forth in § 970.7 and in this part, and will return an incomplete application to the PHA.

(c) *Form of application.* Applications for demolition and/or disposition shall be submitted in the form and manner prescribed by HUD. The supporting information shall include:

(1) A certification that the PHA has specifically authorized the demolition and/or disposition action in its PHA Plan or significant amendment to that plan unless the PHA is a qualified PHA under the Housing and Economic Recovery Act of 2008 (HERA), and the proposed action is consistent with any plans, policies, assessments, or strategies prepared pursuant to the PHA Plan, such as the deconcentration plan (24 CFR 903.2) and the obligation to affirmatively further fair housing (42 U.S.C. 3608(e)(5)). In the case of a qualified PHA, the PHA must describe the proposed demolition and/or disposition at its required annual public hearing (or a second public hearing if it determines to submit an application for demolition and/or disposition between its annual public hearings). Qualified PHAs must also comply with §§ 970.12 and 970.7(c)(19) regarding civil rights and fair housing requirements in connection to 24 CFR part 903 and PHA Plans;

(2) A description of all identifiable property (including dwelling and non-dwelling units, bedroom size, and whether the units meet the accessibility requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and HUD's implementing regulations at 24 CFR part 8, other improvements, and land (acreage and legal description) in the project proposed for demolition and/or disposition, as well as equipment and personal property appurtenant to the project proposed for demolition and/or disposition;

(3) The number of vacant units proposed for demolition and/or disposition and a narrative explanation for the reasons for the vacancies (e.g., health/safety issues, occupancy consolidation, emergency relocation due to disaster);

(4) A description of the specific action proposed, such as:

(i) Demolition, disposition, or demolition and disposition;

(ii) If disposition is involved, the method of disposition (e.g., sale or lease terms, proposed compensation, negotiated or public bid disposition);

(iii) The anticipated future use of the project after demolition and/or disposition, including any anticipated subsidies (e.g., low-income housing tax credits, Section 8 project-based vouchers, Section 8 tenant-based vouchers) that the PHA expects will be used for future dwelling that will be operated as housing for low-income families on the site of the former project; and

(iv) Plans for replacement of demolished or disposed of housing, if any;

(5) A general timetable for the proposed demolition and/or disposition, including the initial contract for demolition, the actual demolition, and, if applicable, the closing of sale or other form of disposition;

(6) A statement and other supporting documentation justifying the proposed demolition and/or disposition under the applicable criteria of §§ 970.15 or 970.17;

(7) If any residents will be displaced by the proposed demolition and/or disposition, a certification that the PHA will comply with the relocation provisions of this part and a written relocation plan in compliance with this part that describes the proposed relocation of residents, and includes the following information:

(i) The estimated number of individual residents and families to be displaced;

(ii) The comparable housing resources the PHA will provide to displaced residents. If the source is tenant-based assistance under section 8 of the 1937 Act, indicate if the PHA is relying on a future allocation of tenant-protection vouchers to complete the relocation and if the PHA's desire to proceed with the action, if approved, is conditional upon its receipt of such vouchers. If some residents are not eligible to move to other public or assisted housing, the PHA must describe why such residents are not eligible and what resources it will make available to provide comparable housing for such displaced residents;

(iii) The type of housing counseling services, including mobility counseling, to be provided to residents so that they are informed about comparable housing opportunities throughout the market area (e.g., showing residents who receive a tenant-based voucher comparable housing located in neighborhoods with low concentrations of poverty and high-performing schools), and plans for making this counseling available to persons with disabilities in accordance with the effective communication requirements at 24 CFR 8.6 and to residents with limited English proficiency;

(iv) An estimate of the costs for housing counseling services and resident relocation, and the expected source for payment for these expenses;

(v) A discussion of how the PHA will relocate residents in compliance with the non-discrimination and equal opportunity requirements specified under 24 CFR 5.105(a). This discussion shall include, but is not limited to, how

the PHA will make its best efforts to offer each displaced resident at least one unit of comparable housing that is located in a non-minority area with access to public transportation, employment, education, child care, medical services, shopping, and other amenities. The PHA shall provide census tract data for the location(s) of the comparable housing that it will offer to residents;

(vi) A plan for determining the housing needs of displaced residents with disabilities and offering them comparable housing that includes the accessibility features needed by the resident with a disability in the most integrated setting appropriate for the resident (i.e., the setting that enables the resident with a disability to interact with non-disabled persons to the fullest extent possible and have access to community-based services);

(vii) A plan and information required by § 970.21(d) if applicable; and

(viii) A relocation timetable, which indicates the estimated number of days after HUD approval of the demolition and/or disposition action that the PHA plans to begin relocating residents. This information will be used to determine the PHA's Operating Fund eligibility under 24 CFR part 990, which may include an asset-repositioning fee under 24 CFR 990.190(h);

(8) A description with supporting evidence of the PHA's consultations with affected residents and other groups, as required under § 970.9(a). Supporting evidence shall include: A description of the process of the consultations summarizing the dates, meetings, and issues raised by the residents and the PHA's responses to those issues; meeting sign-in sheets; any written comments submitted by affected residents/groups along with the PHA's responses to those comments; any certifications or other written documentation that the PHA receives from the RAB (or equivalent body) and resident council regarding resident support or opposition; a description and/or documentation evidencing that the PHA communicated with affected residents and other required groups in a manner that was effective for persons with hearing, visual, and other communications-related disabilities consistent with 24 CFR 8.6 and that public hearing facilities and services were physically accessible to persons with disabilities, and that appropriate translations were provided for Limited English Proficient (LEP) individuals;

(9) In the case of disposition, evidence of compliance with the offering to resident organizations, as required under § 970.9;

(10) In the case of disposition, the name of the acquiring entity (e.g., buyer or ground lessee) and a legal opinion that the acquiring entity is a separate legal entity (i.e., an affiliate or fully independent entity rather than an instrumentality of the PHA) under the applicable state law;

(11) In the case of disposition, the FMV of the project, as established on the basis of at least one independent appraisal, unless otherwise determined by HUD, as described in § 970.19;

(12) In the case of disposition, estimates of the gross and net proceeds to be realized, with an itemization of estimated expenses to be paid out of gross proceeds and the proposed use of any net proceeds in accordance with § 970.19;

(13) In the case of disposition proposed at below FMV based on commensurate public benefit in accordance with § 970.19, HUD will consider the anticipated future use of the project after disposition described in § 970.7(c)(3). In addition, the supporting information for the application shall include:

(i) A detailed description of any housing that will be located on the property, including the number of units, bedroom sizes, accessibility, affordability, and priorities for displaced residents;

(ii) The proposed length of time in which the acquiring entity will maintain the former project for the proposed future use (HUD will generally require the proposed future use remain as such for not less than 30 years, but will consider other factors such as the extent of public benefits (e.g., number of affordable units) arising from proposed disposition and the FMV of the property in determining if a period of less than 30 years is acceptable);

(iii) The plan to implement the opportunity to return requirement for existing residents' as outlined in § 970.21(d);

(iv) The proposed legal documentation (e.g., use restriction, provision in ground lease, declaration of restrictive covenant) the PHA proposes to ensure the approved use; and

(v) Other information as may be required by HUD in determining if a commensurate public benefit exists;

(14) Where the PHA is requesting a waiver of the requirement for the application of proceeds for repayment of outstanding development debt, the PHA must request such a waiver in its application, however, modernization debt, such as Capital Fund Financing Program (CFFP) debt, Energy Performance Contracting (EPC) debt, and Operating Fund Financing Program (OFFP) debt cannot be waived and repayment is required;

(15) In the case where the PHA has applied for and/or been approved for financing under any HUD program (including CFFP, the OFFP, and the EPC program) or any other financing requested pursuant to section 30 of the 1937 Act (42 U.S.C. 1437z–2)), a legal opinion that the proposed demolition and/or disposition action is permitted pursuant to the legal documentation associated to that program;

(16) A copy of a resolution by the PHA's Board of Commissioners approving the specific demolition and/or disposition application or, in the case of the report required under § 970.27(e) for ''de minimis'' demolitions, the Board of Commissioner's resolution approving the ''de minimis'' action for that project. The resolution must be signed and dated after all resident and local government consultation has been completed;

(17) Evidence that the application was developed in consultation with appropriate government officials as defined in § 970.5, including:

(i) A description of the process of consultation with local government officials, which summarizes dates, meetings, and issues raised by the local government officials and the PHA's responses to those issues;

(ii) A signed and dated letter in support of the application from the chief executive officer of the unit of local government that demonstrates that the PHA has consulted with the appropriate local government officials on the proposed demolition or disposition;

(iii) Where the local government consistently fails to respond to the PHA's attempts at consultation, including letters, requests for meetings, public notices, and other reasonable efforts, documentation of those attempts;

(iv) Where the PHA covers multiple jurisdictions (such as a regional housing authority), the PHA must meet these requirements for each of the jurisdictions where the PHA is proposing demolition or disposition of the project;

(18) An approved environmental review of the proposed demolition and/or disposition in accordance with 24 CFR parts 50 or 58, including acting in accordance with the applicable environmental justice principles, for any demolition and/or disposition of the project covered under this part, as required under § 970.13;

(19) Evidence of compliance with § 970.12 including:

(i) A civil rights certification in a form and manner prescribed by HUD whereby the PHA certifies:

(A) A description of how the proposed demolition and/or disposition will help the PHA meet its affirmative obligations including, but not limited to, the obligation and to overcome discriminatory effects of the PHA's use of 1937 Act funds pursuant to part 1 of this title and the obligations to deconcentrate poverty (24 CFR part 903, subpart A) and affirmatively further fair housing (42 U.S.C. 3608(e)(5));

(B) It does not have any outstanding charges from HUD (or a substantially equivalent state or local fair housing agency) concerning a violation of the Fair Housing Act or substantially equivalent state or local fair housing law proscribing discrimination because of race, color, religion, sex, national origin, disability, or familial status;

(C) It is not a defendant in a Fair Housing Act lawsuit filed by the Department of Justice;

(D) It does not have outstanding letters of findings identifying noncompliance under title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, or section 109 of the Housing and Community Development Act of 1974; and

(E) It has not received a cause determination from a substantially equivalent state or local fair housing agency concerning a violation of provisions of a state or local law proscribing discrimination in housing based on sexual orientation, gender identity, or source of income;

(ii) Additional supporting information that may be requested by HUD, if applicable, that shows that the proposed demolition and/or disposition will not maintain or increase segregation on the basis of race, ethnicity, or disability and will not otherwise violate applicable nondiscrimination or equal opportunity requirements, including a description of any affirmative efforts to prevent discriminatory effects;

(20) A description and data regarding the race, color, religion, sex, national origin, familial status, and disability status of its residents who will be displaced by the action, the residents anticipated to remain in a public housing project that is partially demolished or disposed of, and the applicants on the PHA's waiting list(s), by bedroom size;

(21) A certification that the PHA will comply with this part and the terms and conditions of the HUD demolition and/or disposition approval, including, if applicable, monitoring the future use of a former project, for compliance with HUD's approval; and

(22) Any additional information requested by and determined to be necessary to HUD to support the demolition and/or disposition application and assist HUD in making a determination to approve or disapprove the application under this part.

(d) *Approval documents.* (1) If a PHA includes documentation, certifications, assurances, or legal opinions in its application that go above and beyond the requirements of section 18 or this part, HUD may include these as additional requirements in its approval of the demolition and/or disposition action.

(2) A PHA shall not take any action contrary to the terms and conditions of HUD's approval documents of a demolition and/or disposition action without obtaining prior written approval of the proposed change from HUD.

(e) *Amendments to and rescissions of approval.* (1) HUD will consider a PHA's request to amend an earlier approval on a case-by-case basis upon the PHA's submission (in the form prescribed by HUD) of an explanation and documentation, if applicable, evidencing the reason for the requested change.

(2) HUD will consider a PHA's request to rescind an earlier approval to demolish and/or dispose of a project, where a PHA submits a resolution from the Board of Commissioners and submits documentation that the conditions that originally led to the request for demolition and/or disposition have significantly changed or been removed.

§ 970.9 Resident participation—consultation and opportunity to purchase.

(a) *Resident consultation.* PHAs must ensure that they communicate with public housing and rental assistance applicants and residents in a manner that is effective for persons with hearing, visual, and other communications-related disabilities consistent with section 504 of the Rehabilitation Act of 1973, and as applicable, the Americans with Disabilities Act. This includes ensuring that notices, policies, and procedures are made available via accessible communications methods including the use of alternative formats, such as Braille, audio, large type, sign language interpreters, and assistive listening devices, etc., and are written in plain language. Additionally, PHAs must ensure public hearing facilities and services are physically accessible to persons with disabilities in accordance with section 504 of the Rehabilitation Act of 1973 and that Limited English Proficient (LEP) individuals will have meaningful access to programs and activities, in accordance with Executive Order 13166.

(1) A PHA must consult with the following residents and resident groups who will be affected by a proposed demolition, disposition, or combined action that is the subject of an application:

(i) Residents who are residing in the project proposed for demolition and/or disposition;

(ii) Resident council, if any;

(iii) Resident management corporation for the project, if any;

(iv) PHA-wide resident organization, if any; and

(v) The Resident Advisory Board (RAB) (or equivalent body).

(2) As part of such consultation, the PHA must either provide a copy of its demolition and/or disposition application to the residents and groups identified above, post the application on its Web site, or make the application available for review at its central office. Consultation must take place as follows:

(i) On the final application submitted to HUD (e.g., even if the PHA consults the affected residents and groups early on in the application planning process, it must consult the residents and groups again on the final application);

(ii) On any report on the environmental or health effects of the proposed activities;

(iii) On the relocation plan, if any, for the demolition and/or disposition action;

(iv) Informed by the PHA that they have a right to submit written comments about the application and that the PHA shall respond to those comments in writing to the residents and also submit such comments and responses to HUD.

(v) Provided by the PHA with a reasonable timeframe in which they can submit written comments and must respond to those comments within a reasonable timeframe; and

(vi) If applicable, consultation with Affected Resident and Resident Groups shall include information concerning the opportunity to return to ACC units under § 970.21(d).

(b) *Applicability of the requirement to sell to Established Eligible Organization.* In the situation where the PHA applies to dispose of a project:

(1) The PHA shall, in appropriate circumstances as determined by the Assistant Secretary, initially offer the project proposed for disposition to any Established Eligible Organization, if such Established Eligible Organization has expressed an interest in purchasing

the project for continued use as housing for low-income families in accordance with § 970.11.

(2) If the Established Eligible Organization has expressed an interest in purchasing the project for continued use as housing for low-income persons, in order for its purchase offer to be considered, the Established Eligible Organization must:

(i) In the case of a nonprofit organization, be acting on behalf of the residents of the project; and

(ii) Demonstrate that it has obtained a firm commitment for the necessary financing within 60 days of the date of serving its written notice of interest under paragraph (b)(1) of this section.

(3) The requirements of this section do not apply to the following cases, which have been determined not to present an appropriate opportunity for purchase by a resident organization:

(i) A unit of state or local government requests to acquire vacant land that is less than two acres in order to build or expand its public services (e.g., a local government wishes to use the land to build or establish a police substation);

(ii) A PHA seeks disposition to privately finance or otherwise develop housing for low-income families (including housing that is part of a mixed-income community) or to develop a non-dwelling facility to benefit low-income families (e.g., day care center or administrative building);

(iii) Units that have been legally vacated in accordance with the HOPE VI program, the regulations at 24 CFR part 971, or the regulations at 24 CFR part 972, excluding projects where the PHA has consolidated vacancies;

(iv) Distressed units required to be converted to tenant-based assistance under section 33 of the 1937 Act (42 U.S.C. 1437z–5); or

(v) Disposition of non-dwelling properties, including administration and community buildings, and maintenance facilities.

(4) If the requirements of this section are not applicable, as provided in paragraph (b)(3) of this section, the PHA may proceed to submit to HUD its application under this part to dispose of the project, without affording an opportunity for purchase by a resident organization. However, PHAs must:

(i) Consult with their residents in accordance with paragraph (a) of this section; and

(ii) Submit documentation with date and signatures to support the applicability of one of the exceptions in paragraph (b)(3) of this section.

(c) *Established Eligible Organization purchase of project.* Where there is an Established Eligible Organization that has expressed an interest in purchasing the project in accordance with the requirements of § 970.11, the PHA shall follow the procedures concerning such offer as described in such section.

§ 970.11 Procedures for the offer of sale to an Established Eligible Organization.

In making an offer of sale to an Established Eligible Organization, in the case of a proposed disposition, the PHA shall proceed as follows:

(a) *Initial written notification of sale of project.* The PHA shall send an initial written notification to each Established Eligible Organization (for purposes of this section, an Established Eligible Organization that has been so notified is a ''Notified Eligible Organization'') of the proposed sale of the project. The notice of sale must include, at a minimum, the information listed in paragraph (b) of this section.

(b) *Contents of initial written notification.* The initial written notification to each Established Eligible Organization under paragraph (a) of this section must include at a minimum the following:

(1) An identification of the project involved in the proposed disposition, including the project number and location, the number of units and bedroom configuration, the number of accessible units or units that otherwise contain accessible features, the amount and use of non-dwelling space, the current physical condition (fire damaged, friable asbestos, lead-based paint test results), and percent of occupancy;

(2) A copy of the appraisal of the project and any terms of sale to residents;

(3) Disclosure and description of the PHA's plans for reuse of land, if any, after the proposed disposition;

(4) An identification of available resources (including its own and HUD's) to provide technical assistance to the organization to help it to better understand its opportunity to purchase the project, the project's value, and potential use;

(5) A statement that any project sold to an Established Eligible Organization will not continue to receive grants from the Capital Fund and Operating Fund after the completion of the sale unless the Established Eligible Organization is also a Resident Management Corporation and such Resident Management Corporation enters into an ACC with HUD in accordance with 24 CFR part 964;

(6) Any and all terms of sale that the PHA will require, including a statement that the purchaser must use the project for low-income housing. If the PHA does not know all the terms of the offer of sale at the time of the notice of sale, the PHA shall include all the terms of sale of which it is aware. The PHA must supply the totality of all the terms of sale and all necessary material to the residents no later than 7 business days from the day the PHA receives the residents' initial expression of interest;

(7) A date by which an Established Eligible Organization must express its interest, in writing, in response to the PHA's offer to sell the project proposed for demolition and/or disposition, which shall be up to 30 days from the date of the official written offer of sale from the PHA; and

(8) A statement that the established eligible organization will be given 60 days from the date of the PHA's receipt of its letter expressing interest to develop and submit a proposal to the PHA to purchase the project and to obtain a firm financial commitment, as defined in § 970.5. The statement shall:

(i) Explain that the PHA shall approve the proposal from an organization if the proposal meets the terms of sale and is supported by a firm commitment for financing;

(ii) Provide that the PHA can consider accepting an offer from the organization that differs from the terms of sale;

(iii) Explain that if the PHA receives proposals from more than one organization, the PHA shall select the proposal that meets the terms of sale, if any. In the event that two proposals from the project to be sold meet the terms of sale, the PHA shall choose the best proposal. The PHA may reject all proposals if none adequately meet terms of sale or may select the best available proposal.

(c) *Initial expression of interest.* All Notified Eligible Organizations shall have 30 days to initially express an interest, in writing, in the offer (''initial expression of interest''). The initial expression of interest need not contain details regarding financing, acceptance of an offer of sale, or any other terms of sale.

(d) *Opportunity to obtain firm financial commitment by a notified eligible organization.* If a Notified Eligible Organization expresses interest in writing during the 30-day period referred to in paragraph (b) of this section, no disposition of the project shall occur during the 60-day period beginning on the date of the receipt of the written notice of interest. During this period, the PHA must give the entity expressing interest an opportunity to obtain a firm financial commitment as defined in § 970.5 for the financing necessary to purchase the project.

(e) *Response to the notice of sale.* The Established Eligible Organization, or organizations have up to 30 days, from the date the notice is postmarked, to respond to the notice of sale from the PHA. The Established Eligible Organization shall respond to the PHA's notice of sale by means of an initial expression of interest under paragraph (c) of this section.

(f) *Resident proposal.* The Established Eligible Organization has up to 60 days from the date the PHA receives its initial expression of interest and provides all necessary terms and information to prepare and submit a proposal to the PHA for the purchase of the project of which the PHA plans to dispose, and to obtain a firm commitment for financing. The Established Eligible Organization's proposal shall provide all the information requested in paragraph (i) of this section.

(g) *PHA review of proposals.* The PHA has up to 60 days from the date of receipt of the proposal or proposals to review the proposals and determine whether they meet the terms of sale described in the PHA's offer or offers. If the PHA determines that the proposal meets the terms of sale, within 14 days of the date of this determination, the PHA shall notify the organization of that fact and that the proposal has been accepted. If the PHA determines that the proposal differs from the terms of sale, the PHA may accept or reject the proposal at its discretion.

(h) *Appeals.* An Established Eligible Organization has the right to appeal the PHA's decision to the Assistant Secretary for Public and Indian Housing, or the Assistant Secretary's designee, by sending a letter of appeal within 30 days of the date of the PHA's decision to the Field Office of Public Housing Director.

(1) The letter of appeal must include copies of the proposal and any related correspondence, along with a statement of reasons why the organization believes the PHA should have decided differently.

(2) HUD shall render a decision within 30 days of the date the appeal is received by HUD, and notify the organization and the PHA by letter within 14 days of such decision. If HUD cannot render a decision within 30 days, HUD will so notify the PHA and the Established Eligible Organization in writing, in which case HUD will have an additional 30 days in which to render a decision. HUD may continue to extend its time for decision in 30-day increments for a total of 120 days. Once HUD renders its decision, there is no further administrative appeal or remedy available.

(i) *Contents of the organization's proposal.* The Established Eligible Organization's proposal shall at a minimum include the following:

(1) The length of time the organization has been in existence;

(2) A description of current or past activities that demonstrate the organization's organizational and management capability, or the planned acquisition of such capability through a partner or other outside entities (in which case the proposal should state how the partner or outside entity meets this requirement);

(3) To the extent not included in paragraph (i)(2) of this section, the Established Eligible Organization's experience in the development of low-income housing, or planned arrangements with partners or outside entities with such experience (in which case the proposal should state how the partner or outside entity meets this requirement);

(4) A statement of financial capability;

(5) A description of involvement of any non-resident organization (such as non-profit, for-profit, governmental, or other entities), if any, the proposed division of responsibilities between the non-resident organization and the Established Eligible Organization, and the non-resident organization's financial capabilities;

(6) A plan for financing the purchase of the project and a firm financial commitment as stated in paragraph (c) of this section for funding resources necessary to purchase the project and pay for any necessary repairs, including accessibility modifications;

(7) A plan for using the project for low-income housing;

(8) The proposed purchase price in relation to the appraised value;

(9) Justification for purchase at less than the FMV of the project in accordance with § 970.19(a), if applicable;

(10) Estimated time schedule for completing the transaction;

(11) Any additional items necessary to respond fully to the PHA's terms of sale;

(12) A resolution from the Established Eligible Organization approving the proposal; and

(13) A proposed date of settlement, generally not to exceed 6 months from the date of PHA approval of the proposal, or such period as the PHA may determine to be reasonable.

(j) *PHA responsibility.* The PHA must:

(1) Prepare and distribute the initial notice of sale pursuant to § 970.11(a), and, if any Established Eligible Organization expresses an interest, any further documents necessary to enable the organization, or organizations, to make an offer to purchase;

(2) Evaluate proposals received, make the selection based on the considerations set forth in paragraph (b) of this section, and issue letters of acceptance or rejection;

(3) Obtain certifications, where appropriate, as provided in paragraph (k) of this section; and

(4) Comply with its requirements under § 970.9(a) regarding resident consultation and provide evidence to HUD that the PHA has met those obligations. The PHA shall not act in an arbitrary manner and shall give full and fair consideration to any offer from an Established Eligible Organization, and shall accept the proposal if the proposal meets the terms of sale.

(k) *Offer by an Established Eligible Organization.* If an offer is made by an Established Eligible Organization, the PHA shall:

(1) Submit its disposition application to HUD in accordance with section 18 of the 1937 Act and this part. The disposition application must include complete documentation that the resident offer provisions of this part have been met. This documentation shall include:

(i) A copy of the signed and dated PHA notification letter(s) to each Established Eligible Organization informing them of the PHA's intention to submit an application for disposition, the organization's right to purchase the project to be disposed of; and

(ii) The responses from each organization.

(2)(i) If the PHA accepts the proposal of an Established Eligible Organization, the PHA shall submit revisions to its disposition application to HUD in accordance with section 18 of the 1937 Act and this part reflecting the arrangement with the Established Eligible Organization, with appropriate justification for a negotiated sale and for sale at less than fair market value, if applicable.

(ii) If the PHA rejects the proposal of an Established Eligible Organization, the Established Eligible Organization may appeal as provided in paragraph (h) of this section. Once the appeal is resolved, or, if there is no appeal, and the 30 days allowed for appeal has passed, HUD shall proceed to approve or disapprove the application.

(3) HUD will not process an application for disposition unless the PHA provides HUD with one of the following:

(i) An official board resolution or its equivalent from each Established Eligible Organization stating that such

organization has received the PHA offer, and that it understands the offer and waives its opportunity to purchase the project covered by the disposition application;

(ii) A certification from the executive director or board of commissioners of the PHA that the 30-day time frame to express interest has expired and no response was received to its offer; or

(iii) A certification from the executive director or board of commissioners of the PHA with supporting documentation that the offer was rejected.

§ 970.12 Civil rights and equal opportunity review.

Demolition and/or disposition activities under this part (including de minimis demolition pursuant § 970.27) are subject to compliance with HUD's nondiscrimination and equal opportunity requirements specified in 24 CFR 5.105(a) and must be consistent with the PHA's civil rights certification at section 5A(d)(16) of the 1937 Act (42 U.S.C. 1437c–1(d)(16)) and the obligation to affirmatively further fair housing (42 U.S.C. 3608(e)(5)). Pursuant to § 970.29, HUD will disapprove a PHA's application for demolition and/or disposition if HUD determines that the application is inconsistent with this section.

§ 970.13 Environmental review requirements.

(a) Activities under this part (including de minimis demolition pursuant to § 970.27) are subject to HUD environmental regulations in 24 CFR part 58. However, if a PHA objects in writing to the responsible entity performing the review under 24 CFR part 58, HUD may make a finding in accordance with 24 CFR 58.11(d) and perform the environmental review under the provisions of 24 CFR part 50.

(b) The environmental review is limited to the demolition and/or disposition action and any known re-use, and is not required for any unknown future re-use. Factors that indicate that the future site reuse can reasonably be considered to be known include the following:

(1) Private, Federal, state, or local funding for the site reuse has been committed;

(2) A grant application involving the site has been filed with the Federal Government or a state or local unit of government;

(3) The Federal Government or a state or unit of local government has made a commitment to take an action, including a physical action, that will facilitate a particular reuse of the site; and

(4) Architectural, engineering, or design plans for the reuse exist that go beyond preliminary stages.

(c) In the case of a demolition and/or disposition made necessary by a disaster that the President has declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.,* or a disaster that has been declared under state law by the officer or entity with legal authority to make such declaration, the provisions of 40 CFR 1506.11 will apply pursuant to 24 CFR 50.43 and 58.33.

§ 970.14 Section 3 compliance.

Pursuant to section 3 of the Housing and Urban Development Act of 1968 (section 3), HUD's regulation to provide employment, training, contracting, and economic opportunities to the greatest extent feasible to section 3 residents or business concerns is applicable to any projects or activities funded by public housing funds, regardless of the amount of funds (24 CFR 135.3(a)(3)), including the demolition or disposition of public housing. PHAs must comply with section 3 if public housing funds are used to demolish a project and when disposition proceeds are used for section 3 covered assistance as defined in 24 CFR 135.3. In addition, in the event that section 3 does not apply to demolition and/or disposition actions, planning and carrying out section 3 activities related to these proposed actions would satisfy, in part, the commensurate public benefit requirement for below fair market value (FMV) dispositions pursuant to § 970.19.

§ 970.15 Specific criteria for HUD approval of a demolition application.

(a) In addition to other applicable requirements of this part, unless the application meets the criteria for disapproval under § 970.29, HUD will approve an application for demolition upon the PHA's certification that the project proposed for demolition meets the following criteria:

(1) The project is obsolete as to physical condition, location, or other factors, making it unsuitable for housing purposes. HUD shall consider the following major problems to be indicative of obsolescence:

(i) As to physical condition: Structural deficiencies, serious outstanding capital needs, and/or other design or site problems (e.g., severe erosion or flooding), as evidenced by an independent architect or engineer not employed by the PHA); or

(ii) As to location: Physical deterioration of the neighborhood, change from residential to industrial or commercial development, or environmental conditions as determined by an environmental review in accordance with 24 CFR part 50 or 58, which jeopardize the suitability of the site and its housing structures for residential use, provided the PHA simultaneously submits a disposition application pursuant to § 970.17; or

(iii) As to other factors: Conditions that have seriously affected the marketability, usefulness, or management of the project; and

(2) No reasonable program of modifications is cost-effective to return the project to its useful life as evidenced by at least one estimate of the rehabilitation cost of the project by an independent architect or engineer that is not a regular employee of the PHA. HUD generally shall not consider a program of modifications to be cost-effective if the costs of such program exceeds Housing Conservation Coordinators (HCC) in effect at the time the application is submitted to HUD; and

(b) In the case of an application for demolition of a project that comprises less than all real property in a given project identification number, the PHA must also certify that the demolition will help to ensure the viability of the remaining portion of the project, except that this requirement shall not apply for applications where buildings are scattered non-contiguous sites.

(c) Unless the PHA also submits an application to HUD for disposition of the project in accordance with § 970.17 at the time it submits an application to HUD for the demolition of the project, the PHA must also certify that the vacant land comprising the project after demolition shall be used for low-income housing purposes, as permitted by the ACC, which may initially include land banking as approved in writing by HUD if a specific use is not determined.

(d) The PHA shall demolish a project approved under this part within two years of the date of HUD approval (unless the PHA receives an extension from HUD in writing).

§ 970.17 Specific criteria and conditions for HUD approval of a disposition application.

In addition to other applicable requirements of this part, unless the application meets the criteria for disapproval under § 970.29, HUD will approve a request for disposition of a project if the PHA certifies that the retention of the project is not in the best interests of the residents and the PHA for at least one of the following reasons:

(a) Conditions in the area surrounding the project (density, or industrial or commercial development) adversely

affect the health or safety of the residents or the feasible operation of the project by the PHA.

(b)(1) Disposition allows for the acquisition, development, or rehabilitation of other properties that will be more efficiently and/or effectively operated as low-income housing (e.g., more energy efficient, better unit configurations to meet community needs, better location for resident jobs and transportation), provided that the PHA demonstrates to the satisfaction of HUD that public housing units will be replaced with other low-income housing units (e.g., public housing units or Section 8 project-based voucher units).

(2) In order to dispose of public housing units under paragraph (b)(1) of this section, a PHA must demonstrate to the satisfaction of HUD that sufficient replacement units are being provided in connection with the disposition of the property. A PHA must receive sufficient compensation from the disposition to replace not less than 75 percent of the public housing units (HUD encourages the PHA to replace as many units as is feasible through leveraging the proceeds) with other low-income housing units through acquisition, development, or rehabilitation as required by this part. Replacement units must be provided for all units housing families displaced by the disposition.

(3) The following additional terms apply to dispositions under paragraph (b)(1) of this section:

(i) The replacement housing units must be developed on another property (e.g., not on the same land as the existing project);

(ii) The PHA must have the replacement housing units (or land for the new construction of the units) identified at the time it submits a request to HUD under this part;

(iii) The PHA must provide its financing plan for the replacement units. HUD will evaluate the feasibility of the financing plan; and

(iv) The disposition of the project must be an arms-length transaction at FMV and 100 percent of the proceeds must be used to acquire, develop, or rehabilitate the replacement housing units. While a PHA may dispose to an affiliate (as defined in 24 CFR 905.604(b)(4)) that is an independent legal entity, a PHA may not dispose to its own instrumentality (as defined in 24 CFR 905.604(b)(3)).

(c) The PHA has otherwise determined the disposition to be appropriate for reasons that are in the best interests of the residents and the PHA, consistent with the goals of the PHA and the PHA Plan, and are otherwise consistent with the 1937 Act. The PHA may not dispose of a project under this section if the PHA's reason for disposition (as determined by HUD) falls under another HUD regulation or federal statute (e.g., § 970.17(b)), voluntary or required conversion under sections 22 or 33 of the 1937 Act, homeownership under section 32 of the 1937 Act, or proposed eminent domain taking). HUD considers each of the following reasons to be acceptable under this section:

(1) The project meets the criteria for obsolescence under § 970.15;

(2) The units will be rehabilitated through the mixed-finance development method. To reduce the number of public housing units in the project, the criteria under § 970.15 or another section specifically permitting demolition or disposition, such as §§ 970.15, 970.17 (along with 970.19), 970.27, or 970.33, must be met; and

(3) Other reasons determined by HUD to meet the criteria of § 970.17(c).

(d) In the case of disposition of a project that does not include dwelling structures (e.g., includes non-dwelling community center structure, vacant land), the PHA certifies that:

(1) The non-dwelling structure or land exceeds the needs of the project (after DOFA); and

(2) The disposition is incidental to, or does not interfere with, the continued operation of the remainder of the project.

§ 970.19 Requirements for the disposition of a project.

(a) Where HUD approves the disposition of a project, the PHA shall dispose of the project for not less than FMV unless HUD authorizes a below FMV disposition under paragraph (b) of this section.

(b) HUD may approve a PHA to dispose of a project, in whole or in part, for less than FMV (if permitted by state law) if HUD finds, in its sole discretion, that a commensurate public benefit will result from the disposition.

(c) As a condition of HUD's approval of a project for disposition at below FMV under paragraph (b) of this section and HUD's release of the DOT on the project, HUD shall require the PHA to execute a use restriction, or other arrangement of public record, in a form acceptable to HUD, that will ensure to HUD's satisfaction that the former project will be used for the commensurate public benefit use approved by HUD for a period of not less than 30 years, and such use restriction is in a first priority position against the property and survives foreclosure of any mortgages or other liens on the property. The PHA is responsible for monitoring and enforcing the required use restrictions throughout the use restriction term. HUD may impose sanctions or take other enforcement action against the PHA if the PHA fails to enforce the use restrictions.

(d) If a PHA is unable to dispose of a project containing obsolete units that is approved for disposition under § 970.17(c)(1) in its ''as is'' condition despite due diligence and reasonable efforts (as determined by HUD), if requested by the PHA, HUD will approve a demolition of the project (in accordance with § 970.15) so that the PHA can proceed with demolition and the disposition of only that vacant land comprising the project.

(e) The PHA shall dispose of a project approved for disposition under this part within two years of the date of HUD approval (unless the PHA receives an extension from HUD in writing).

(f) Where HUD approves the disposition of a project for a period greater than one year but fewer than 30 years (e.g., via lease or other transfer), the PHA is required to return the project to its public housing inventory, including adding the property again to its ACC and placing a DOT on the property, (or submit another disposition or other removal application) at the end of the approved disposition period.

(g) The PHA shall ensure the HUD-approved commensurate public benefit use commences within 2 years from the date of actual disposition of the project (unless the PHA receives an extension from HUD in writing).

(h) A PHA may pay the reasonable expenses of disposition and relocation costs for displaced residents under § 970.21 out of the gross proceeds, as approved by HUD.

(i) To obtain an estimate of the FMV before the project is advertised for bid, the PHA shall have one independent appraisal performed on the project proposed for disposition, unless HUD determines that:

(1) More than one appraisal is warranted; or

(2) Another method of valuation is clearly sufficient and the expense of an independent appraisal is unjustified because of the limited nature of the project interest involved or other available data.

(j) To obtain an estimate of the FMV when a project is proposed for disposition via a negotiated sale at less than FMV based on commensurate public benefit, HUD may accept a reasonable valuation of the project (e.g., tax assessor's valuation).

§ 970.20 Use and treatment of proceeds.

(a) *Use of proceeds.* Subject to HUD approval, a PHA shall use net proceeds, including any interest earned on the proceeds (after payment of HUD-approved costs of disposition and relocation under § 970.19(h)), as follows:

(1) Unless waived by HUD, for the retirement of outstanding obligations, if any, issued to finance original development or modernization of the project;

(2) For the payment of CFFP debt or later issued modernization debt on the project; and

(3) To the extent that any net proceeds remain, after the application of proceeds in accordance with paragraphs (a)(1) and (2) of this section, for the provision of low-income housing or to benefit the residents of the PHA, which uses may include:

(i) Modernization (as defined in 24 CFR 905.108) of existing projects;

(ii) Development (as defined in 24 CFR 905.108) of a project;

(iii) Funding of homeownership units in accordance with an approved homeownership plan under sections 9, 24, and 32 of the 1937 Act (42 U.S.C. 1437g, 1437v, and 1437z–4), respectively;

(iv) Construction, rehabilitation, and/or acquisition of dwelling units that will be assisted by funds under Section 8 of the 1937 Act, provided that:

(A) The PHA complies with safe harbors as determined by HUD in connection with such construction, rehabilitation, and/or acquisition;

(B) Complies with program regulations governing such assistance and the PHA executes a use agreement, in a form acceptable to HUD, to ensure the units will be operated exclusively as Section 8 units for not less than 30 years;

(4) Benefits to the residents of the PHA (e.g., job training, child care programs, service coordination), for uses permitted by HUD's Operating Fund regulations at 24 CFR part 990;

(5) Leveraging amounts for securing commercial enterprises on-site in public housing projects of the PHA, appropriate to serve the needs of the residents;

(6) Funding of voucher shortfalls under section 8 of the 1937 Act, however, this is subject to further HUD approval and discretion considering the applicable section 8 statutory, regulatory, and funding requirements; and

(7) Other housing assisted under the 1937 Act or benefits to the residents of the PHA, as approved by HUD.

(b) *Net proceeds.* Net proceeds which HUD approves for the purposes described in paragraph (a) of this section may be leveraged with other funds so long as the net proceeds are used on a pro-rata basis to fund only the approved uses (e.g., low-income housing units).

(c) *Expenditure of proceeds.* Expenditure of the proceeds pursuant to paragraph (a) of this section must begin within 2 years from the date of disposition approval and be completed (i.e., entirely expended for the approved use) within 4 years (unless the PHA receives an extension from HUD in writing).

(d) *Disposition proceeds.* Disposition proceeds are subject to all laws, regulations, and other requirements applicable to use approved by HUD unless otherwise approved by HUD in writing. For instance, if net disposition proceeds are approved by HUD for modernization of public housing units, they are considered public housing funds and are generally subject to the requirements of 24 CFR part 905. However, when net disposition proceeds are used with HUD approval for the development of public housing units, the disposition proceeds will not count toward total development cost limits as determined pursuant to 24 CFR 905.314(c). Disposition proceeds may be used to supplement existing HAP contracts when there are funding shortages, but cannot be used to issue new vouchers. Federal requirements apply to disposition proceeds, including the Federal nondiscrimination and equal opportunity requirements stated in 24 CFR 5.105, environmental requirements, and, where applicable, the labor standard provisions of section 12 of the 1937 Act (42 U.S.C. 1437j) and section 3 of the HUD Act of 1968 (12 U.S.C. 1701u). 42 U.S.C. 1437p(a)(5).

(e) *Recapture or repayment of proceeds.* If a PHA fails to use proceeds as permitted by this section and approved by HUD or violates the term of the use agreement imposed to ensure proceeds are used in accordance with this part, HUD may recapture or require repayment of the proceeds or take all other available remedies available under law.

(f) *Treatment of proceeds.* Upon immediate receipt of proceeds and until expended for an approved use, PHAs must deposit proceeds into an interest bearing account subject to HUD General Depository Agreement and/or an escrow agreement in a form acceptable to HUD. All accrued interest shall be treated as additional proceeds, subject to this section.

§ 970.21 Relocation of residents.

(a) *Notification to residents—Content.* A PHA shall provide a written notice to each resident who will be displaced by a demolition and/or disposition action approved under this part. Notices shall be provided via an effective communications means to persons with disabilities in accordance with 24 CFR 8.6 and in the appropriate non-English language to persons with limited English proficiency as needed. The notice shall specifically include the following information:

(1) A statement that the PHA's application for the demolition and/or disposition of the project has been approved by HUD and the project will be demolished and/or disposed of;

(2) A description of the process involved to relocate the residents, including that the residents will not be required to relocate until the conditions set forth in this section have been met, and in no event shall a PHA commence a demolition or disposition of the building (or a combined action) in which a resident lives until each resident of the building is provided relocation assistance in accordance with this section;

(3) A statement that each displaced resident shall be offered comparable housing that, at minimum:

(i) Meets the standards stated in the definition of ''comparable housing'' in § 970.5; and

(ii) Not be in a special flood hazard area as stated in 24 CFR 905.602(d)(11).

(4) If tenant-based assistance under section 8 of the 1937 Act is provided for relocation, such assistance will not be considered to have fulfilled the PHA's obligation to offer comparable housing under this section until the resident is actually relocated into such housing, or alternate housing is provided pursuant to paragraph (c) of this section;

(5) A description of the comparable housing options that the PHA is offering to the resident. This description shall include the location of the comparable housing and specifically how it at minimum meets the requirements of comparable housing, as defined in § 970.5;

(6) A statement that comparable housing shall be offered to each resident on a nondiscriminatory basis, without regard to race, color, religion, sex, national origin, familial status, or disability in compliance with applicable federal, state, and local laws;

(7) A statement that displaced residents with disabilities shall be offered comparable housing that includes the accessibility features needed by the resident with a disability and located in the most integrated

setting appropriate for the resident (i.e., the setting that enables the resident with a disability to interact with non-disabled persons to the fullest extent possible and have access to community-based services). This statement shall also include the right of displaced residents to a reasonable accommodation under Section 504 of the Rehabilitation Act of 1973, the Fair Housing Act, and the Americans with Disabilities Act, as applicable, and how to request such an accommodation;

(8) A statement that the PHA shall provide for the payment of the actual and reasonable relocation expenses of each displaced resident, including moving cost assistance, expenses necessary to provide reasonable accommodations for a resident with a disability in accordance with Section 504 of the Rehabilitation Act of 1973, and the payment of a displaced resident's security, utility, or both security and utility deposits at a comparable housing unit, provided that loans or grants directly to displaced residents for new deposits are not permitted if the PHA's source is either Capital or Operating Funds. The PHA shall pay such deposits directly to the utility company or landlord with subsequent returns or refunds back to the PHA. The resident shall hold no interest in a utility or security deposit paid by the PHA;

(9) A description of the housing counseling services, including mobility counseling, that will be available to the resident and how the resident can access these services; and

(10) If the provisions of section 104(d) of the Housing and Community Act of 1974 (42 U.S.C. 5304(d)) (section 104(d)), referenced in § 970.21(g), apply to the project, the notice required by § 970.21(a) must explain the assistance available under section 104(d).

(b) *Notification to residents—Timing.* (1) Except in cases of imminent threat to health or safety, no resident of a project approved by HUD for demolition and/or disposition shall be required to move unless he or she has been provided with the written notice required by § 970.21(a) at least 90 days prior to the displacement date. Displacement date means the earliest date by which a resident who will be displaced by a demolition and/or disposition action under this part shall be required to move.

(2) The notification required by paragraph (a) of this section shall not be issued to any resident prior to the date HUD approves the PHA's application for demolition and/or disposition.

(c) *Offer of comparable housing.* The PHA shall ensure that each displaced resident is offered comparable housing and provided with the relocation assistance required by this part.

(1) If a PHA offers a resident comparable housing in the form of tenant-based assistance under section 8 of the 1937 Act, and the resident is unable to lease a dwelling unit during the initial period of not less than 60-days, the PHA may either:

(i) Grant one or more extensions to the initial term in accordance with 24 CFR part 982 as reflected in its administrative plan; or

(ii) Provide the resident with another form of comparable housing (e.g., public housing unit or project-based unit under section 8 of the 1937 Act).

(2) The PHA shall not commence the HUD-approved demolition or complete the HUD-approved disposition of a building until each resident who will be displaced by the action is relocated in accordance with the requirements of this part.

(d) *Plan of return.* If HUD approves a below fair market value (FMV) disposition of a project based on commensurate public benefit under § 970.19 and housing units will be developed on-site at the former project, income-eligible, displaced residents shall be provided with the opportunity to return to the new, appropriately sized units once those units are available for occupancy. The PHA shall develop a plan to implement this opportunity to return requirement and the plan must address the following:

(1) How residents will be notified of the opportunity to return;

(2) The amount of time residents will have to exercise the opportunity to return, from the date of the notice;

(3) The source of funds from which the PHA or the new owner will pay the moving costs for moving the displaced residents back into the new units; and

(4) The process for selecting displaced residents who will be offered an opportunity to return (for example, lottery) if the number of new public housing units cannot accommodate all lease-compliant displaced residents (as defined in § 970.5) at appropriate bedroom sizes. This opportunity to return requirement does not negate the PHA's responsibility to provide permanent comparable housing to all displaced residents in accordance with this part.

(e) *Refusal or rejection.* If a resident who will be displaced by a demolition, disposition, or combined action, refuses to move or otherwise rejects the PHA's offer(s) of comparable housing and relocation counseling and advisory services despite the PHA's due diligence and continued efforts to offer the resident comparable housing and counseling and advisory services, HUD shall consider the PHA to have satisfied the relocation requirements of this section if the PHA must resort to eviction of the resident as long as the PHA exercises due diligence in making continued efforts to offer the resident comparable housing and relocation counseling.

(f) *Funding sources.* Sources of funding for relocation expenses related to demolition and/or disposition may include, but are not limited to, gross proceeds a PHA receives under this part, Capital Funds, section 8 administrative fee funding (where section 8 assistance is offered as comparable housing), or other federal funds currently available for this purpose.

(g) *Certain funding requirements.* If Federal financial assistance under the Community Development Block Grant (CDBG) program (42 U.S.C. 5301 *et seq.*); the Urban Development Action Grant (UDAG) program (42 U.S.C. 5318 *et seq.*); or the HOME Investment Partnerships (HOME) program (42 U.S.C. 12701 *et seq.*) is used in connection with the demolition of lower-income dwelling units, or conversion of such units to a use other than lower-income dwelling units, the project is subject to section 104(d) of the Housing and Community Development Act of 1974, including the relocation payment and one-for-one replacement provisions as provided at 24 CFR part 42, subpart C. For purposes of this paragraph (g), lower-income dwelling units and conversion shall have the definitions in 24 CFR part 42 and units in projects under this part are considered lower-income dwelling units.

(h) *URA.* The URA shall not apply to demolitions and/or dispositions actions under this part.

§ 970.23 Costs of demolition and relocation of displaced residents.

(a) A PHA may pay for the relocation expenses it incurs under § 970.21 with non-federal funds or any eligible HUD funds, which may include Capital Funds or proceeds received for a disposition under this part.

(b) A PHA may pay for the costs of demolition with non-federal funds or any eligible HUD funds, which may include Capital Funds when HUD approves a demolition under § 970.15.

(c) Where HUD has approved the demolition of a project and the proposed action is part of a program under the Capital Fund Program (24 CFR part 905), the expenses of the demolition and of relocation of

displaced residents must be included in the Capital Fund Submission pursuant to section 9(d) of the 1937 Act (42 U.S.C. 1437g(d)) or other eligible HUD funds.

§ 970.25 Required and permitted actions prior to approval.

(a) A PHA may not take any action to demolish and/or dispose of a project without obtaining prior written HUD approval under this part.

(1) HUD funds may not be used to pay for the expense to demolish or dispose of a project unless HUD approval has been obtained under this part.

(2) Until the PHA receives HUD approval, the PHA shall continue to meet its ACC obligations to maintain and operate the project as public housing. A PHA may not delay or withhold maintenance on a project in such a way as to cause or allow it to meet the demolition criteria under § 970.15.

(3) The PHA may engage in planning activities, analysis, or consultations without seeking HUD approval. Planning activities may include project viability studies, capital planning, relocation and replacement housing planning, and comprehensive occupancy planning.

(4) The PHA must continue to provide full housing services to all residents that remain in the project.

(b) A PHA may lease public housing units at turnover to eligible residents while HUD is considering, or after HUD has approved, its application for demolition and/or disposition of the project, provided that:

(1) The units are in decent, safe, and sanitary condition;

(2) The PHA determines that due to community housing needs or for other reasons consistent with its PHA Plan, leasing turnover units is in the best interests of the PHA, its residents, and community; and

(3) Residents of units leased during such a period are provided with the relocation assistance required by § 970.21. The PHA's Operating Fund eligibility will continue to be calculated as stated in 24 CFR part 990.

§ 970.27 De minimis exception to demolition application requirement.

(a) A PHA may demolish public housing units in a project without HUD approval if the PHA is proposing to demolish not more than the lesser of:

(1) 5 dwelling units; or

(2) 5 percent of the total dwelling units owned by the PHA over any 5-year period.

(b) The 5-year period referred to in paragraph (a)(2) of this section is the 5 years counting backward from the date of the proposed de minimis demolition, except that any demolition performed prior to October 21, 1998, will not be counted against the 5 units or 5 percent of the total, as applicable. For example, if a PHA that owns 1,000 housing units wishes to demolish units under this de minimis provision on July 1, 2004, and previously demolished 2 units under this provision on September 1, 2000, and 2 more units on July 1, 2001, the PHA would be able to demolish 1 additional unit for a total of 5 in the preceding 5 years. As another example, if a PHA that owns 60 housing units as of July 1, 2004, had demolished 2 units on September 1, 2000, and 1 unit on July 1, 2001, that PHA would not be able to demolish any further units under this ''de minimis'' provision until after September 1, 2005, because it would have already demolished 5 percent of its total.

(c) In order to qualify for this exemption, one of the following criteria must be met:

(1) The space occupied by the demolished unit must be used for meeting the service or other needs of public housing residents (e.g., use of space to construct a laundry facility, community center, child care facility, office space for a service coordinator; or for use as open space or garden); or

(2) The unit(s) being demolished must be beyond repair.

(d) PHAs utilizing this section will comply with environmental review requirements at § 970.13 and, if applicable, the requirements of 24 CFR 8.23.

(e) For recordkeeping purposes, PHAs that wish to demolish units under this section shall submit the information required in § 970.7(c)(2), (16), (18), and (19) in addition to a certification that the unit(s) being demolished meets one of the two conditions in paragraph (c) of this section. HUD will accept such a certification unless it has independent information that the requirements for ''de minimis'' demolition have not been met. Additionally, PHAs demolishing units under this section must comply with the reporting and recordkeeping requirements of § 970.37.

(f) Any resident displaced by a ''de minimis'' demolition under this section shall be provided with housing assistance in accordance with applicable federal laws and requirements, which may include the PHA's Admissions and Continued Occupancy Policy (ACOP) (24 CFR part 966), the PHA's section 8 Administrative Plan (24 CFR part 982), and PHA Plan requirements (24 CFR part 903), and if CDBG or HOME funds are involved, section 104(d) of the Housing and Community Development Act of 1974.

§ 970.29 Criteria for HUD disapproval of a demolition or disposition application.

HUD will disapprove an application for demolition and/or disposition if HUD determines that:

(a) The applicant failed to satisfy the application requirements contained in § 970.7;

(b) Any certification or submission made by the PHA under this part is clearly inconsistent with:

(1) Any information and data available to HUD related to the requirements of this part, including failure to meet the requirements for the justification for demolition and/or disposition as found in §§ 970.15 or 970.17 and the civil rights requirements referenced in § 970.12; or

(2) Information or data requested by HUD; or

(c) The application was not developed in consultation with:

(1) Residents who will be affected by the proposed demolition or disposition as required in § 970.9; and

(2) Each RAB and resident council, if any, of the project (that will be affected by the proposed demolition and/or disposition as required in § 970.9), and appropriate government officials as required in § 970.7.

§ 970.31 Effect on Operating Fund Program and Capital Fund Program.

The provisions of 24 CFR part 990, the Public Housing Operating Fund Program, and 24 CFR part 905, the Public Housing Capital Fund Program, apply.

§ 970.33 Demolitions due to emergency, disaster, or accidental loss.

(a) A PHA may demolish a project without HUD approval if a project suffers abrupt damage from an Emergency, Major Disaster, or other event outside of the control of the PHA to the extent necessary to maintain the project in a safe condition or to eliminate an unattractive nuisance, and to the extent such demolition is permitted by section 13 of the ACC and § 970.3(b)(16). For funding requirements under the Capital Fund related to emergencies and disasters, the requirements of 24 CFR part 905 apply.

(b) If the PHA rebuilds the same number of dwelling units or non-dwelling structures that comprised the demolished project, the demolition (and any additional demolition required to carry out the redevelopment) shall not be subject to this part.

(c) If the PHA decides not to rebuild the same number of structures with the

same number of units at the project, the PHA shall submit a demolition application under this part within one year of such demolition to formalize, and request official HUD approval for the action under this part, unless HUD specifically authorizes, in writing, a lesser number of units. If the PHA decides to rebuild fewer structures at the project, regardless of the number of units, the PHA shall submit a demolition application under this part within one year of the action.

§ 970.35 Removal of all projects in the PHA's public housing inventory.

If a proposed disposition action (or combined demolition and disposition action) will remove all projects (including dwelling units, non-dwelling structures, and underlying land) in a PHA's public housing inventory and the PHA has no plans to develop any additional projects, the following additional provisions apply:

(a) *Operating Funds.* After the disposition is complete, the PHA shall not expend any remaining Operating Funds (including operating reserves) other than for purposes related to the close-out of its public housing inventory, including audit requirements required by this section. Any remaining Operating Funds (including operating reserves and any unspent asset-repositioning fees received pursuant to 24 CFR 990.190) shall be returned to HUD within 90 days of the date of disposition of the project.

(b) *Capital Funds.* (1) If the project will not be retained as public housing after the disposition is approved, the PHA may spend no more of its Capital Funds without HUD approval, and then only if the amounts are required to close out contract obligations incurred prior to HUD's approval of the disposition and/or to address imminent health and/or safety issues that arise at the project prior to completion of the disposition transaction. However, if the disposition was approved for disposition at below fair market value based on commensurate public benefit, prior to expending Capital Funds for the purposes permitted in this section, the PHA must notify HUD in writing of the planned expenditure of Capital Funds so that HUD can determine if any changes are necessary to the terms of its commensurate public benefit, if the disposition price should be adjusted to reflect the expenditure of funds, or both.

(2) No Capital Funds may be expended after the date of disposition of the project and any remaining Capital Funds shall be returned to HUD within 180 days of such date of disposition. The PHA shall be ineligible to receive any Capital Funds (replacement housing factor funds) under 24 CFR 905.10(i), and any funds issued under this section shall be recaptured by HUD.

(c) If a PHA owns any equipment or other personal property that it acquired or has maintained with 1937 Act funds, which property was not included in the disposition of all projects in its inventory or any particular project to which the equipment or personal property appertained, the PHA shall, within 60 days after the disposition, dispose of all such remaining personal equipment and other personal property in its inventory that was acquired in whole or in part with 1937 Act funds pursuant to a plan acceptable to HUD.

(d) Within 90 days of the date of disposition, the PHA must have an independent audit conducted on the close-out of its public housing inventory.

§ 970.37 Reports and records.

(a) After HUD approval of demolition or disposition of all or part of a project, the PHA shall provide the following to HUD:

(1) Date of execution of each demolition contract by entering the appropriate information into HUD's applicable data system, or providing the information by another method HUD may require, within a week of executing such contract;

(2) Date of execution of sales or lease contracts by entering the appropriate information into HUD's applicable data system, or providing the information by another method HUD may require, within a week of execution;

(3) A report, in a form and frequency prescribed by HUD (until HUD determines that the report no longer needs to be submitted), containing the following information:

(i) A description of resident relocation and timetable, including:

(A) The number of families actually relocated by bedroom size and the types and locations (including census tract) of comparable housing offered to each family;

(B) A description of the Fair Housing Act protected classes of relocated residents;

(C) Reasonable accommodations that were provided to residents in connection with the comparable housing, in accordance with Section 504 of the Rehabilitation Act of 1973;

(D) Units where residents were relocated that meet federal accessibility standards or that otherwise contain accessible features;

(E) The status of the Opportunity to Return Plan, including residents who express an interest in the plan; and

(F) The comparable housing that was offered to families that include a member with a disability that was located in a non-segregated setting. If such a family was not offered comparable housing in a non-segregated setting, the PHA must explain why the comparable housing that it offered was the most integrated setting appropriate for the family (i.e., the setting that enables the family member with a disability to interact with non-disabled persons to the fullest extent possible and have access to community-based services);

(ii) A description of the PHA's use of the proceeds of disposition by providing a financial statement showing how the gross and net proceeds were expended by item and dollar amount, as approved by HUD;

(iii) A description of any remaining disposition proceeds, including current balance (plus interest), bank information of where such proceeds are being held, and plans for expending such proceeds for the use approved by HUD within the required timeframe;

(iv) For dispositions approved by HUD at less than fair market value based on commensurate public benefit, a description of the current use of the property (e.g., owner, number of housing units developed), and a statement of how the property is being used for the HUD-approved use; and

(v) A description of whether any project-based voucher contracts under Section 8 of the 1937 Act have been executed on a former public housing property approved for disposition and/or at housing developed, acquired, or constructed with disposition proceeds; and

(vi) Evidence that an audit has been conducted on the demolition and/or disposition within 3 years of completion of the demolition and/or disposition action; and

(4) Such other information as HUD may from time to time require.

(b) [Reserved]

Subpart B—Real Property Transactions: Retention of Projects by Public Housing Agencies

§ 970.39 Definitions.

All definitions in § 970.5 shall apply to this subpart.

§ 970.41 Applicability.

This subpart applies when a PHA proposes to retain ownership of a project without public housing DOT and ACC restrictions (e.g., clean title) in accordance with 24 CFR 85.31. This subpart is an alternative to disposing of projects under subpart A of this part and

is another option available to PHAs to determine the future of their public housing stock. Actions under this subpart may especially assist PHAs in preserving their public housing stock.

§ 970.43 Removal of a project from public housing without a transfer to a third party.

(a) *General.* HUD's regulations at 24 CFR 85.31 provide that except as otherwise provided by federal statutes, real property will be used for the originally authorized purpose as long as needed for that purpose, and the grantee shall not dispose of or encumber its title or other interests. When real property is no longer needed for the originally authorized purpose, the grantee will request disposition instructions from HUD. Section 18 of the 1937 Act and subpart A of this part covers the procedures that PHAs must follow if they choose to sell or otherwise transfer title of the property, except as stated in § 970.43(b).

(b) *Retention of property (no PHA transfer of title).* Section 85.31 of HUD's regulations (24 CFR 85.31) permits a PHA to retain title of real property that is no longer needed for its originally authorized purpose, provided the PHA requests and is approved by HUD to retain the property. In order to approve a request under this section, HUD will generally require the PHA to compensate HUD for the federal government's equity in the project (computed by applying HUD's percentage of participation in the cost of the original purchase or construction to the FMV of the property and subsequent modernization), but the PHA could request an exception to this repayment requirement, for good cause, in accordance with 24 CFR 85.6(c). If HUD finds the PHA has shown good cause for retaining the project under this section, HUD will release the ACC and DOT on the project. HUD's approval may require the PHA to enter into certain use restrictions, or may impose other requirements to ensure that the property is used for the HUD-approved purposes for a certain length of time.

§ 970.45 Specific criteria for HUD approval of requests under this subpart.

(a) *Minimum requirements.* The PHA shall comply with HUD requirements and application procedures relative to this subpart. At a minimum, to obtain HUD approval under this subpart, a PHA must demonstrate that:

(1) The project is no longer needed for the operation of public housing; and

(2) There is good cause for the action (and, if applicable, for any request for an exception to the repayment requirement).

(b) *Retention requests.* HUD may accept retention of title requests under this subpart in three instances:

(1) Retention of projects that include dwelling units (e.g., in order to leverage the property or attach project-based assistance under section 8 of the 1937 Act), as well as appurtenant equipment, and personal property, in accordance with all program requirements, so that the project can be better operated and maintained as long-term low-income housing;

(2) Retention of vacant land (e.g., to retain limited green-space as part of a mixed-finance redevelopment); and

(3) Retention of a central warehouse building or other non-dwelling structure (e.g., if the structure is no longer needed).

(c) *Form of application.* Applications for retentions under this part shall be submitted in the form and manner prescribed by HUD. The supporting information shall include:

(1) A certification that the PHA has specifically authorized the retention action in its PHA Plan or significant amendment to that plan unless the PHA is a Qualified PHA under the Housing and Economic Recovery Act of 2008 (HERA), and the proposed action is consistent with any plans, policies, assessments, or strategies prepared pursuant to the PHA Plan, such as the deconcentration plan (24 CFR 903.2) and the obligation to affirmatively further fair housing (42 U.S.C. 3608(e)(5)). In the case of a qualified PHA, the PHA must describe the proposed retention at its required annual public hearing (or a second public hearing if it determines to submit an application for retention between its annual public hearings). Qualified PHAs must also comply with §§ 970.12 and 970.7(c)(19) regarding civil rights and fair housing requirements in connection to 24 CFR part 903 and PHA Plans;

(2) A description of all identifiable property (including dwelling and non-dwelling units, bedroom size, and whether the units meet the accessibility requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and HUD's implementing regulations at 24 CFR part 8, other improvements, and land (acreage and legal description) in the project proposed for retention; and equipment and personal property appurtenant to the project proposed for retention;

(3) The number of vacant units proposed for retention and a narrative explanation for the reasons for the vacancies (e.g., health/safety issues, occupancy consolidation, emergency relocation due to disaster);

(4) A description of the future ownership structure of the project by the PHA (e.g., fee title by the PHA, ownership by the PHA's instrumentality, ownership by a Limited Partnership or LLC that is controlled by the PHA);

(5) The anticipated future use of the project after HUD approval under this part, including any rehabilitation of units and/or demolition and any anticipated subsidies (e.g., low-income housing tax credits Section 8 project-based vouchers, Section 8 tenant-based vouchers) that the PHA expects will be used for future dwelling that will be operated as housing for low-income families on the site of the former project;

(6) A general timetable for the proposed action, including the anticipated relocation start date, if applicable, and the anticipated transfer date to an instrumentality, limited partnership or LLC, if applicable;

(7) A statement and other supporting documentation justifying the proposed action, including a statement justifying a waiver to the repayment provision of 24 CFR 85.31 based on 24 CFR 85.6(c) if applicable. Such a statement shall include:

(i) A detailed description of the proposed future use of the project, including a description of any housing that will be located on the property after de-federalization under this part, including the number of units, bedroom sizes, accessibility, affordability, and priorities for displaced residents;

(ii) The proposed length of time in which the PHA will maintain the former project for the proposed future use (HUD will generally require the proposed future use remain as such for not less than 30 years, but will consider other factors such as the extent of public benefits (e.g., number of affordable units) arising from the proposed action of the property in determining if a period of less than 30 years is acceptable); and

(iii) The proposed legal documentation (e.g., use restriction, provision in ground lease, declaration of restrictive covenant) the PHA proposes to ensure the approved use.

(8) A description of any displacement of residents (temporary or permanent) that will occur based on this action, along with a certification that the PHA will comply with the URA and has a written relocation plan on file at its central office that includes:

(i) The estimated number of individual residents and families to be displaced, if any (and whether the relocation is temporary or permanent);

(ii) The housing resources the PHA will provide to displaced residents, if any; and

(iii) The type of housing counseling services, including mobility counseling, to be provided to displaced residents, if any;

(iv) An estimate of the costs for housing counseling services and resident relocation, and the expected source for payment for these expenses;

(v) A plan for determining the housing needs of any displaced residents with disabilities and offering them comparable housing that includes the accessibility features needed by the resident with a disability in the most integrated setting appropriate for the resident (i.e., the setting that enables the resident with a disability to interact with non-disabled persons to the fullest extent possible and have access to community-based services);

(9) A description with supporting evidence of the PHA's consultations with any residents who are residing in the project; the resident council (if any), the resident management corporation for the project, if any; the PHA-wide resident organization, if any; and the Resident Advisory Board (RAB). Supporting evidence shall include: A description of the process of the consultations summarizing the dates, meetings, and issues raised by the residents and the PHA's responses to those issues; meeting sign-in sheets; any written comments submitted by affected residents/groups along with the PHA's responses to those comments; any certifications or other written documentation that the PHA receives from the RAB (or equivalent body) and resident council regarding resident support or opposition; a description and/or documentation evidencing that the PHA communicated with affected residents and other required groups in a manner that was effective for persons with hearing, visual, and other communications-related disabilities consistent with 24 CFR 8.6 and that public hearing facilities and services were physically accessible to persons with disabilities, and that appropriate translations were provided for Limited English Proficient (LEP) individuals;

(10) Where the PHA is requesting a waiver of the requirement for the application of proceeds for repayment of outstanding development debt, the PHA must request such a waiver in its application. However, modernization debt, such as Capital Fund Financing Program (CFFP) debt, Energy Performance Contracting (EPC) debt, and Operating Fund Financing Program (OFFP) debt cannot be waived and repayment is required;

(11) In the case where the PHA has applied for and/or been approved for financing under any HUD program (including CFFP, the OFFP, and the EPC program) or any other financing requested pursuant to section 30 of the 1937 Act (42 U.S.C. 1437z–2)), a legal opinion that the proposed retention action is permitted pursuant to the legal documentation associated to that program;

(12) A copy of a resolution by the PHA's Board of Commissioners approving the retention under this part;

(13) Evidence that the application was developed in consultation with local government officials. Supporting evidence should include a signed and dated letter in support of the application from the chief executive officer of the unit of local government;

(14) An approved environmental review of the proposed action under this part in accordance with 24 CFR part 50 or 58, including acting in accordance with the applicable environmental justice principles;

(15) A civil rights certification in a form and manner prescribed by HUD whereby the PHA certifies:

(i) A description of how the proposed action under this part will help the PHA meet its affirmative obligations including, but not limited to, the obligation and to overcome discriminatory effects of the PHA's use of 1937 Act funds pursuant to part 1 of this title and the obligations to deconcentrate poverty (24 CFR part 903, subpart A) and affirmatively further fair housing (42 U.S.C. 3608(e)(5)); and

(ii) It does not have any outstanding charges from HUD (or a substantially equivalent state or local fair housing agency) concerning a violation of the Fair Housing Act or substantially equivalent state or local fair housing law proscribing discrimination because of race, color, religion, sex, national origin, disability, or familial status.

(iii) It is not a defendant in a Fair Housing Act lawsuit filed by the Department of Justice;

(iv) It does not have outstanding letters of findings identifying noncompliance under title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, or section 109 of the Housing and Community Development Act of 1974; and

(v) It has not received a cause determination from a substantially equivalent state or local fair housing agency concerning a violation of provisions of a state or local law proscribing discrimination in housing based on sexual orientation, gender identity, or source of income;

(vi) Additional supporting information that may be requested by HUD, if applicable, that shows that the proposed action will not maintain or increase segregation on the basis of race, ethnicity, or disability and will not otherwise violate applicable nondiscrimination or equal opportunity requirements, including a description of any affirmative efforts to prevent discriminatory effects;

(16) A certification that the PHA will comply with this part and the terms and conditions of the HUD retention approval, including, if applicable, monitoring the future use of a former project, for compliance with HUD's approval; and

(17) Any additional information requested by and determined to be necessary to HUD to support the proposed retention action, and to assist HUD in making a determination to approve or disapprove the application under this part.

PART 972—CONVERSION OF PUBLIC HOUSING TO TENANT-BASED ASSISTANCE

■ 2. The authority citation for part 972 continues to read as follows:

Authority: 42 U.S.C. 1437t, 1437z–5, and 3535(d).

Subpart A—Required Conversion of Public Housing Developments

■ 3. Revise § 972.103 to read as follows:

§ 972.103 Definition of ''conversion.''

For purposes of this subpart, the term ''conversion'' means the removal of public housing units from the inventory of a PHA, and the replacement of the converted project or portion with tenant-based assistance. The term ''conversion,'' as used in this subpart, does not necessarily mean the physical removal of the public housing development.

Subpart B—Voluntary Conversion of Public Housing Developments

■ 4. Revise § 972.203 to read as follows:

§ 972.203 Definition of ''conversion.''

For purposes of this subpart, the term ''conversion'' means the removal of public housing units from the inventory of a PHA, and the replacement of the converted project or portion with tenant-based assistance. The term ''conversion,'' as used in this subpart, does not necessarily mean the physical removal of the public housing development.

Dated: October 3, 2014.

Jemine A. Bryon,

Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 2014–24068 Filed 10–15–14; 8:45 am]

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Part III

Postal Regulatory Commission

39 CFR Part 3032

Restrictions on Unfair Competition; Final Rule

POSTAL REGULATORY COMMISSION

39 CFR Part 3032

[Docket No. RM2013–4; Order No. 2207]

Restrictions on Unfair Competition

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is issuing a set of final rules that enhance the formal complaint process in cases involving alleged violations of a law that prohibits the Postal Service from taking certain actions that might provide it with unfair competitive advantages. The rules implement the statutory prohibitions on unfair competition. Relative to the proposed rules, some of the changes are substantive and others are minor and non-substantive. Proposed rules of a procedural nature were either removed or modified.

DATES: *Effective* November 17, 2014.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION: Regulatory History: 78 FR 35826, June 14, 2013.

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I. Introduction

On June 5, 2013, the Commission issued a notice of proposed rulemaking to promulgate implementing regulations for 39 U.S.C. 404a.[1] Section 404a prohibits the Postal Service from certain anticompetitive behaviors, and permits any person to file a complaint with the Commission if that person believes the Postal Service has violated the section. Order No. 1739 contained proposals for both substantive rules relating to the standards by which complaints under section 404a are adjudicated and procedural rules accessible to only complaints that allege a violation of section 404a.

The Commission received comments and reply comments from: The Public Representative,[2] the Postal Service,[3] Stamps.com and Endicia (jointly),[4] Valpak Direct Marketing Systems, Inc. and Valpak Dealers Association, Inc.,[5] and Time Inc.[6] Frederick Foster,[7] IDEAlliance,[8] United Parcel Service,[9] Pitney Bowes,[10] Valassis Direct Mail,[11] National Association of Presort Mailers [12] and Grayhair Software, Inc.[13] only filed initial comments. The Newspaper Association of America only filed reply comments.[14]

Overall the rules relating to the substantive implementation of section 404a were significantly less controversial than those creating procedures applicable only for 404a complaints. The Commission finds it appropriate to bifurcate action on the proposed rules. Pursuant to 39 U.S.C. 404a(b), this Order adopts substantive rules relating to the implementation of section 404a, but defers consideration of procedural rules to later proceedings. The Commission plans consideration of changes to the procedural rules governing all complaints before the Commission, and has determined that it is not appropriate at this time to create procedural rules only applicable to complaints alleging Postal Service violations of section 404a. As such, the Commission does not offer final rules for 39 CFR part 3032, subpart C, nor part 3033 accelerated procedures for complaints alleging violations of 39 U.S.C. 404a.

The remainder of this Order is comprised of two sections. The first identifies each substantive rule to be implemented and discusses any issues or comments. The second provides a section-by-section analysis of the final rules with a description of any changes from the proposed rules. The full text of the final rules is set forth below.

II. Substantive Rules

In this section, each substantive rule that will be finalized is identified, briefly outlined, and comments or issues relating to the rule are discussed and analyzed.

A. Rule 3032.1 Applicability

Proposed rule 3032.1 identifies how the standards and rules that follow in part 3032 are applied. Specifically, it states that complaint proceedings filed under 39 U.S.C. 3662 for alleged Postal Service violations of 39 U.S.C. 404a are governed by the substantive standards set forth in part 3032.

No comments address proposed rule 3032.1. However, the Commission implements several changes to the proposed rule because the proposed rule covers both the substantive standards appearing in subpart B of part 3032, as well as the procedural rules appearing in subpart C of part 3032 and all of part 3033. The final rule removes references to those procedural rules.

B. Rule 3032.5 Unfair Competition

Proposed rule 3032.5 implements section 404a(a)(1). It lists the elements that a complainant must show to bring a complaint that the Postal Service has violated 39 U.S.C. 404a(a)(1). Specifically, a valid complaint requires that the Postal Service have a rule, regulation, or standard that precludes competition or establishes the terms of the competition. It further requires that the rule, regulation, or standard harms or harmed the person filing the complaint and competition. The rule offers an affirmative defense available to the Postal Service, namely that it may demonstrate the rule at issue does not create an unfair competitive advantage for itself or any entity it funds. Finally, the rule defines terms (rule, regulation, or standard) to include other actions or edicts issued by the Postal Service that have the effect of a rule, regulation, or standard. At the outset, the Public Representative notes that the title of the rule is not clear. Public Representative Comments at 5, n.5. Unfair Competition is a broader concept than the rule itself. Therefore, the Commission finds it appropriate to alter the title of the rule (from Unfair Competition to Postal Service Rules that Create an Unfair

[1] Notice of Proposed Rulemaking Establishing Rules Pursuant to 39 U.S.C. 404a, June 5, 2013 (Order No. 1739).

[2] Public Representative Comments, July 29, 2013 (PR Comments), Public Representative Reply Comments, August 28, 2013 (PR Reply Comments).

[3] Initial Comments of the United States Postal Service, July 29, 2013 (Postal Service Comments), Reply Comments of the United States Postal Service, August 28, 2013 (Postal Service Reply Comments).

[4] Joint Comments of Stamps.com and Endicia, July 29, 2013 (Stamps.com and Endicia Comments), Joint Reply Comments of Stamps.com and Endicia, August 28, 2013 (Stamps.com and Endicia Reply Comments).

[5] Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Initial Comments on Notice of Proposed Rulemaking, July 29, 2013 (Valpak Comments), Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Reply Comments on Notice of Proposed Rulemaking, August 28, 2013 (Valpak Reply Comments).

[6] Comments of Time Inc. in Response to Order No. 1739, July 29, 2013 (Time Comments), Reply Comments of Time Inc. Regarding Order No. 1739 (Time Reply Comments). Concurrent with its reply comments, Time Inc. filed a Motion of Time Inc. for Acceptance of Late Filing on August 29, 2013. That motion is granted.

[7] Frederick Foster's Opinion on the PRC Notice of Proposed Rulemaking Establishing Rules Pursuant to 39 U.S.C. 404a, July 19, 2013 (Foster Comments).

[8] Initial Comments of the International Digital Enterprise Alliance, Inc. (IDEAlliance), July 29, 2013 (IDEAlliance Comments).

[9] Initial Comments of United Parcel Service in Response to Notice of Proposed Rulemaking Establishing Rules Pursuant to 39 U.S.C. 404a, July 29, 2013 (UPS Comments).

[10] Comments of Pitney Bowes, Inc., July 29, 2013 (Pitney Bowes Comments).

[11] Valassis Direct Mail, Inc., July 29, 2013 (Valassis Comments).

[12] Comments of the National Association of Presort Mailers, July 29, 2013 (NAPM Comments).

[13] Comments of Grayhair Software, Inc., July 29, 2013 (Grayhair Software Comments).

[14] Reply Comments of the Newspaper Association of America, August 28, 2013 (NAA Reply Comments).

Competitive Advantage). Comments address five specific aspects of proposed rule 3032.5.

1. Harm Requirement in 3032.5(a)(2)

Proposed 3032.5(a)(2) requires that the Postal Service's action harms or harmed the person filing the complaint and competition. United Parcel Service objects to the inclusion of this harm requirement because that requirement is not present in the statute. UPS Comments at 5 (The rule would add elements to the complainant's burden that are not currently in the statute.). See also Public Representative Reply Comments at 9, Stamps.com and Endicia Reply Comments at 2, NAA Reply Comments at 5. Pitney Bowes contends that the proposed harm requirement shifts the burden improperly away from the Postal Service to demonstrate that the rule or regulation does not cause harm, and is therefore inconsistent with the plain language of the statute. Pitney Bowes Comments at 2.

United Parcel Service also notes that reading a requirement of harm into the rule makes the rule analogous to other antitrust and unfair competition standards that the Postal Service is already subject to by virtue of 39 U.S.C. 409(e). UPS Comments at 5.

The Postal Service supports the inclusion of the harm requirement as a reasonable interpretation of the statute and consistent with the legal concept of standing. Postal Service Reply Comments at 5–7. The Postal Service contends that the requirement to show harm would limit the number of claims that would waste time because no party has suffered, nor ever would suffer, any harm. *Id.* at 7. Time, Inc. contends that the harm requirement should be read as purely jurisdictional, and could be broadened to include associations or representative bodies of those harmed. Time Reply Comments at 8. Time, Inc. comments that the harm to competition requirement should be read to mean that complainant must show how the Postal Service's action precluded competition or established the terms of competition. *Id.* at 8–9.

The Commission agrees with the comments that point out the harm requirement is not present in the statute. The Commission removes the harm requirement as a jurisdictional element that complainants must demonstrate to proceed under the rules. Harm may remain a relevant part of a complaint alleging a violation of 39 U.S.C. 404a(a)(1), and could be used to show how the Postal Service has established the terms of competition or precluded competition. It could also be used in the Commission's consideration of an appropriate remedy should a complaint be sustained.

The Commission finds that the benefits of keeping the harm requirement, as articulated by the Postal Service, are outweighed by the extra-statutory restrictions it would impose upon complainants. The final rule, therefore, does not contain a requirement that the complainant demonstrate harm to himself and competition.

2. Affirmative Defense in 3032.5(b)

Proposed 3032.5(b) offers the Postal Service an affirmative defense that no violation has occurred when the Postal Service can demonstrate that the rule, regulation or standard does not create an unfair competitive advantage for itself or any entity funded, in whole or part, by it. The Public Representative proposes that the defense should be rebuttable rather than affirmative. Public Representative Comments at 5. This would mean that even if the Postal Service shows that there is a regulatory justification for the rule subject to a 404a complaint, it could nonetheless be found in violation of 404a if anticompetitive harm outweighs the regulatory justification. *Id.* at 7–8. The Public Representative contends that this burden-shifting framework is used in antitrust litigation under the Sherman Antitrust Act of 1890 when applying the rule-of-reason analysis. *Id.* at 6–7. Stamps.com and Endicia support the Public Representative's suggestion. Stamps.com and Endicia Reply Comments at 4–5.

The Postal Service opposes the rebranding of its defense as rebuttable. The Postal Service characterizes this proposed change as importing principles of antitrust law that were not envisioned by Congress when section 404a was enacted. Postal Service Reply Comments at 22.

The Commission is sympathetic to the arguments of the Public Representative and Stamps.com and Endicia, but the framework of section 404a is clear in its construction. The statute unequivocally states that the Postal Service is prohibited from certain behavior unless a condition is present. Put another way, if that condition is present, the Postal Service is not prohibited from that certain behavior.

The Commission finds it appropriate to maintain the rule as constructed, as it better reflects the language and intent of the statute. The principles used under other laws to evaluate unfair competition are instructive and useful as reasoned analysis, but cannot be relied upon to change the plain meaning of the controlling law. Congress enacted section 404a(a)(1) using substantially different language than the Sherman Act.[15] If Congress intended for the Commission to use the entire rule-of-reason analysis to evaluate 404a(a)(1) complaints, it likely would have used language similar to the Sherman Act language in formulating section 404a(a)(1).

3. Rule, Regulation or Standard Definition

Proposed 3032.5(c) broadly defines rule, regulation, or standard to include other edicts by the Postal Service that may have the effect of a rule, but without a title identifying it as such. The Postal Service contends that the definition is too broad, ambiguous, and should rather refer to the Postal Service's own definition of its rules in the Code of Federal Regulations. Postal Service Comments at 5–6. The Postal Service comments that the proposed definition could be argued to have no boundaries and would expand the Postal Service's potential liability. *Id.* at 6.

Stamps.com and Endicia, Pitney Bowes, the Public Representative, United Parcel Service, and Newspaper Association of America counter that the broad definition is necessary to avoid the Postal Service's ability to play semantics. Stamps.com and Endicia Comments at 3–4, Pitney Bowes Comments at 6, Public Representative Comments at 10, UPS Comments at 4, NAA Reply Comments at 7.

The Commission does not find it appropriate to limit the jurisdiction of complaints brought under 404a(a)(1) to the Postal Service's definition of its rules, regulations, or standards. As several commenters point out, the Postal Service is able to take action, as a regulator, without formally announcing its intent as a rule, regulation, or standard. Stamps.com and Endicia Comments at 3–4, UPS Comments at 4, NAA Reply Comments at 6–7. The Postal Service could also amend its definition through its rulemaking authority.

The Commission finds that the uncertainty introduced by leaving the definition of rule, regulation, or standard open to action that has the effect of regulation without the title is not limitless as characterized by the Postal Service. Rather, it allows the Commission to review the facts and circumstances when a complainant believes the Postal Service has acted in its capacity as a regulator and violated the statute.

[15] 15 U.S.C. 1–38.

4. Passive Violations of 404a(a)(1)

The Public Representative and Stamps.com and Endicia suggest that complainants be able to pursue a 404a(a)(1) violation for a passive violation, where the Postal Service, by competing in a market, has established the terms of competition. Public Representative Comments at 10. Stamps.com and Endicia agree with the Public Representative and comment that the Postal Service entering a market that it also regulates could have the effect of precluding competition or establishing the terms of competition. Stamps.com and Endicia Reply Comments at 5.

The Postal Service comments that allowing a complaint to proceed merely on the basis that the Postal Service has entered a market, and not more, would unlawfully expand the scope of section 404a(a)(1). Postal Service Reply Comments at 26. The Postal Service notes that other laws and regulations govern its activity in other spheres. *Id.*

The Commission notes that both section 404a(a)(1) and proposed rule 3032.5 have no requirement as to the timing of the Postal Service's rule versus its competing in a market. If the Postal Service enters a market, and existing rules coupled with that entry mean that the Postal Service has now precluded competition or established the terms of competition, the existing framework does not foreclose a complaint. If the Postal Service does not, however, have any rule, regulation or standard that applies, and enters a market, it is not possible for it to violate section 404a(a)(1). The Postal Service is correct that merely competing, without an applicable rule, regulation, or standard, cannot form the basis of a 404a(a)(1) complaint. The plain reading of the terms of 404a(a)(1) requires the Postal Service to preclude competition or establish the terms of competition with its establishment of a rule or regulation.

5. *Per se* Violations of 404a(a)(1)

Grayhair Software and Pitney Bowes encourage the Commission to specifically identify, in its substantive rules, actions by the Postal Service that would, by their nature, be anticompetitive and in violation of rule 3032.5. Grayhair Software Comments at 17–18 (Grayhair advocates a new rulemaking to consider specific guidance on standards regarding competitive foreclosure.). Pitney Bowes Comments at 5. Pitney Bowes provides an example of a product or service with a non-zero cost being offered for free as what could be termed a *per se* violation of the rule. *Id.* Stamps.com and Endicia agree that the rules would be improved by offering guidance on Postal Service actions that would constitute *per se* violations. Stamps.com and Endicia Reply Comments at 2.

The Postal Service opposes the Commission defining *per se* violations of the rule. Postal Service Reply Comments at 2. It notes the general move away from *per se* analysis in the antitrust law context, and that the availability of greater economic and market expertise has made for more nuanced analysis and adjudication. *Id.* at 2–4. The Public Representative also comments that *per se* declarations of prohibited conduct would be inappropriate. Public Representative Reply Comments at 11–12. The Public Representative notes the general disadvantages in offering declaratory judgments, where the facts of an individual case are not considered. *Id.* at 12.

At this juncture, especially given that there have been no complaints adjudicated that have alleged a violation of 39 U.S.C. 404a, the Commission finds insufficient information exists in the record to determine what specific actions by the Postal Service would constitute a violation of section 404a(a)(1).

C. Rule 3032.6 Disclosure, Transfer, and Licensing of Intellectual Property

Proposed rule 3032.6 implements section 404a(a)(2), which prohibits the Postal Service from compelling or attempting to compel the disclosure, transfer, or licensing of intellectual property from the complainant to a third party. No comments address proposed rule 3032.6, and there are no revisions to the proposed rule.

D. Rule 3032.7 Unlawfully Obtaining Information

Proposed rule 3032.7 implements section 404a(a)(3), which prohibits the Postal Service from obtaining information from a party and later offer a product or service based on that information, unless the Postal Service has consent of the party or obtained (or could have obtained) the information from another source. Two aspects of proposed rule 3032.7 were addressed in the comments.

1. Provided or Sought To Provide to the Postal Service

Stamps.com and Endicia comment that a party need only to provide or seek to provide a product, and that it need not be directed at the Postal Service. Stamps.com and Endicia Comments at 5–6. Stamps.com and Endicia contend that a product could be offered to the public, and the Postal Service could obtain information from the complainant through other submissions, approvals, or concurrence. *Id.* at 6. Stamps.com and Endicia comment that this revision conforms more closely to the language of 404a(a)(3). *Id.* at 5.

The Postal Service counters that the intent of the statute is to protect parties in negotiation with the Postal Service, and it need not be extended beyond that scope. Postal Service Reply Comments at 32–33. The Postal Service contends that section 404a(a)(3) aims to protect confidential information shared with the Postal Service pursuant to a business relationship, and therefore should not apply outside the context of that relationship. *Id.* at 32.

The Commission finds that Stamps.com and Endicia's suggested revision is in keeping with the language of the statute, and amends the final rule.

It may be difficult to envision a circumstance where the Postal Service would procure such confidential information outside the scope of an offering by the complainant, but that difficulty does not place the circumstance out of the realm of possibility. The Postal Service remains protected from a broad expanse of the rule by other requirements of the rule. Rule 3032.7(a)(2) requires the Postal Service to have obtained the information from the complainant, and 3032.7(b) and (c) give the Postal Service the ability to defend the acquisition by showing availability from other sources or provision by consent.

2. Informed Consent

The Postal Service objects to the Commission's linking of the District of Columbia's Rules for Professional Conduct to the rule 3032.7 definition of informed consent. Postal Service Comments at 20. The Postal Service comments that the professional conduct rule was designed to apply to the attorney-client relationship, which is inapplicable to transaction negotiations as envisioned under section 404a. *Id.* at 20–21. Notwithstanding those specific objections, the Postal Service also opposes all the requirements concerning consent in proposed rule 3032.7 because the Postal Service believes the requirements are based on a faulty assumption—that there is inequality of bargaining power between the Postal Service and its business partners. *Id.* at 21. The Postal Service contends that these requirements concerning consent would interfere with the Postal Service's ability to conduct business.

Stamps.com and Endicia reply that it is unclear what about the nature of informed consent would interfere with the Postal Service's ability to do

business. Stamps.com and Endicia Reply Comments at 4.

The Public Representative replies that if the Postal Service is to rely on consent to defeat an allegation that it unlawfully appropriated intellectual property, that consent should be informed and uncoerced. Public Representative Reply Comments at 10. However, the Public Representative also agrees with the Postal Service that it should not have to make an affirmative prior communication explaining the risks of providing consent because it would be tantamount to treating business partners as fiduciaries. *Id.*

The Commission's intent with requiring informed consent in its proposed rules was to require the Postal Service to demonstrate more than a party's signature on a form presented as a requirement before the Postal Service will enter negotiations. See Order No. 1789 at 16. A long-held tenet of tort law is that where a party consents a claim of conversion will not lie.[16] Similarly, if a party consents to the Postal Service's taking of its intellectual property, a claim the Postal Service violated section 404a(a)(3) cannot be sustained. Because the harm to an individual in losing rights to intellectual property can be great, the Commission sought to protect that interest.

However, the Commission agrees with the Postal Service and the Public Representative that the heightened duty articulated in rule 3032.7 is more than would be necessary to protect that interest. The Commission finds that the standard for consent, to justify the taking of intellectual property is not informed and uncoerced consent but rather the traditional common law notion of consent with a minor modification.[17] To attempt to mitigate the potential harm to an individual losing his or her rights to intellectual property, the Commission will require consent to be written rather than implied for instances where the Postal Service claims consent as a defense pursuant to 3032.7.

The Commission will examine evidence that the complainant consented in writing to the taking of its intellectual property under rule 3032.7 in light of the traditional common law notion of consent, and make a determination based on the preponderance of the evidence whether complainant consented to the taking.

The final rule will not include a requirement that the Postal Service has communicated adequate information and explanation about the risks of providing such consent. The Commission agrees with the Postal Service and the Public Representative that such a requirement, as used in evaluating legal representation agreements, is not appropriate to use in evaluating informed consent between the Postal Service and a contracting partner. By omitting this language, the Commission does not require the Postal Service to act in an advisory capacity to its contracting partners when it obtains consent.

A requirement that a party provide written consent to the Postal Service's taking of its intellectual property strikes an appropriate balance between the need to protect an individual's property rights and avoid undue burden to the Postal Service.

E. Rule 3032.8 Statutorily Authorized Affirmative Defense

Proposed rule 3032.8 sets forth that the Postal Service may offer, as an affirmative defense to any alleged violation of section 404a, that it is specifically authorized by law to take such action (or inaction) that is alleged to be in violation of the section. Subsection (b) states that the Postal Service may not use its general or specific authority (enumerated in 39 U.S.C. 401 and 404) to form the basis of an affirmative defense.

The Postal Service comments that the rule is not tenable, because it precludes the Postal Service from using its authority to act. Postal Service Comments at 15. The Postal Service gives an example of using its eminent domain authority over intellectual property. *Id.* at 16.

Pitney Bowes, as well as Stamps.com and Endicia, comment that section 404a would be meaningless if the Postal Service could justify its actions based on its general and specific authority alone. Pitney Bowes Comments at 5, Stamps.com and Endicia Reply Comments at 3–4.

Authority for all Postal Service action is derived from its general or specific authority that is set forth in 39 U.S.C. 401 and 404. The Commission does not read the proposed rule 3032.8 to foreclose the Postal Service's ability to execute its general or specific authority as authorized by those sections. Action by the Postal Service pursuant to either of those sections is limited by and subject to 39 U.S.C. 404a, as both the Postal Service and other commenters point out. There appears to be a misunderstanding, however, in the construction of rule 3032.8.

The Postal Service, under the current iteration of the rule, is not precluded from offering its statutory authority in sections 401 or 404 as a justification for any action it may take. It is only prohibited from offering, as the basis of an affirmative defense, its general or specific authority. The Postal Service uses the example of its specific authority to exercise eminent domain, and contends that it could use that authority over intellectual property. Rule 3032.8 does not preclude the Postal Service's use of its eminent domain authority. The rule makes clear that such authority is subject to the limitations imposed by section 404a. Rule 3032.8(c) clarifies that the Postal Service is not precluded from arguing that its use of its eminent domain authority does not have the requisite effect to violate section 404a(a).

The rule is only meant to convey that both sections 401 and 404 are subject to the limitations of 404a and therefore unavailable as the basis for an affirmative defense of an alleged violation of 404a. Based on that understanding and interpretation, the Commission does not find it necessary to amend rule 3032.8.

F. General Substantive Comments

Several comments are more general, and though related to the substantive rules, are not tied to a specific proposed rule.

Frederick Foster comments that the Commission should not administer 404a complaints, but rather should investigate allegations and report such results to the United States District Court. Foster Comments at 1–4. Title 39, section 404a(c), however, unequivocally confers the rights of any party to bring a complaint to the Commission on the basis of an alleged Postal Service violation of section 404a.

Pitney Bowes comments that the Commission should take a broad view of its authority in enforcing anticompetitive practices, beyond 404a, and gives the example of workshare discounts that pass through less than 100 percent of costs avoided. Pitney Bowes Comments at 8. The Commission notes that the review of workshare discount pricing, as acknowledged by Pitney Bowes, appears to extend beyond the Commission's section 404a responsibilities. However, the Commission does not make a determination as to the scope of section 404a vis-à-vis workshare discount pricing to avoid prejudicing any

[16] See, *e.g., Tousley* v. *Board of Education,* 40 N.W. 509 (Minn. 1888).

[17] See *American Jurisprudence,* section 104 Conversion. Consent is a complete defense to a claim of conversion. See, *e.g., Bank of New York* v. *Fremont General Corp.,* 523 F.3d 902, 914 (C.A.9 (Cal.), 2008). There can be no action for conversion where the dispossessed party consented to the taking of the property. The Commission notes that using the term uncoerced is duplicative as consent by its nature is voluntary.

particular complaint where such issues may arise.

The Newspaper Association of America cautions that the Commission should not import any principles of antitrust law or unfair competition, but rather should use 404a as a check on a government entity's monopoly power. The Commission's aim in developing rules implementing 404a is to follow Congressional intent as enacted. The Commission's reference to anticompetitive principles is meant as guidance for the Commission and parties as to relevant lines of inquiry, not as any replacement of the statutory intent of section 404a.

III. Section-by-Section Analysis

This section sets forth the title of each final rule adopted by this Order, and any changes, to the rule from the proposed rule. The discussion of the comments and basis for those changes appears in the preceding section.

Rule 3032.1. This provision describes the type of proceedings that are covered by this part.

Rule 30302.5. This provision describes the showing that a complainant must make in matters involving unfair competitive advantage and the type of affirmative defense the Postal Service may raise. It also addresses the scope of certain terms.

Rule 3032.6. This provision describes the showing that the complainant must make with respect to matters involving intellectual property and addresses the scope of certain terms.

Rule 3032.7. This provision describes the showing that the complainant must make with respect to unlawfully obtained information and the type of affirmative defense the Postal Service may raise.

Rule 3032.8. This provision addresses affirmative defenses the Postal Service may raise that are based in law.

IV. Ordering Paragraphs

It is ordered:

1. Part 3032 of chapter III, title 39, Code of Federal Regulations, is adopted as set forth below the signature of this Order, effective 30 days after publication in the **Federal Register**.

2. The Secretary shall arrange for publication of this order in the **Federal Register**.

List of Subjects in 39 CFR Part 3032

Administrative practice and procedure, Postal Service, Trademarks.

For the reasons discussed in the preamble, the Commission amends chapter III of title 39 of the Code of Federal Regulations as follows:

■ 1. Add part 3032 to read as follows:

PART 3032—SPECIAL RULES FOR COMPLAINTS ALLEGING VIOLATIONS OF 39 U.S.C. 404a

Subpart A—General

Sec.
3032.1 Applicability.
3032.2–3032.4 [Reserved]

Subpart B—Requirements and Defenses

3032.5 Postal Service rules that create an unfair competitive advantage.
3032.6 Disclosure, transfer, and licensing of intellectual property.
3032.7 Unlawfully obtaining information.
3032.8 Statutorily authorized affirmative defense.

Authority: 39 U.S.C. 404a; 3662.

Subpart A—General

§ 3032.1 Applicability.

The rules in this part govern proceedings filed under 39 U.S.C. 3662 alleging violations of 39 U.S.C. 404a that meet the requirements of §§ 3030.2 and 3030.10 of this chapter.

§§ 3032.2–3032.4 [Reserved]

Subpart B—Requirements and Defenses

§ 3032.5 Postal Service rules that create an unfair competitive advantage.

(a) A complaint alleging a violation of 30 U.S.C. 404(a)(a)(1) must show that a Postal Service rule, regulation, or standard has the effect of:

(1) Precluding competition; or

(2) Establishing the terms of competition.

(b) As an affirmative defense to a complaint under 39 U.S.C. 404a(a)(1), the Postal Service may demonstrate that the rule, regulation, or standard at issue does not create an unfair competitive advantage for itself or any entity funded, in whole or in part, by the Postal Service.

(c) As used in this section, the term *rule, regulation, or standard* includes, among other things, documents or policies issued by the Postal Service to exercise its regulatory authority or otherwise act as a governmental entity.

§ 3032.6 Disclosure, transfer, and licensing of intellectual property.

(a) A complaint alleging a violation of 39 U.S.C. 404a(a)(2) must show that the Postal Service has compelled or attempted to compel the disclosure, transfer, or licensing of the intellectual property of the person filing the complaint to a third party.

(b) As used in this section, the term *intellectual property* includes, among other things, patents, copyrights, trademarks, trade secrets, and proprietary information.

(c) As used in this section, the term *disclosure, transfer, or licensing of intellectual property* includes, among other things, an action that has an adverse effect on the value of intellectual property.

§ 3032.7 Unlawfully obtaining information.

(a) A complaint alleging a violation of 39 U.S.C. 404a(a)(3) must show that:

(1) The person filing the complaint has provided or sought to provide a product;

(2) The Postal Service obtained information about such product from the person filing the complaint; and

(3) The Postal Service offers or offered a postal service that uses or is based, in whole or in part, on the information obtained from the person filing the complaint.

(b) As an affirmative defense to a complaint under 39 U.S.C. 404a(a)(3), the Postal Service may demonstrate that substantially the same information was obtained (or was obtainable) from an independent source or is otherwise obtained (or obtainable) through lawful means.

(c) As an affirmative defense to a complaint under 39 U.S.C. 404a(a)(3), the Postal Service may show that the information obtained was provided by written consent.

§ 3032.8 Statutorily authorized affirmative defense.

(a) As an affirmative defense to an allegation of a violation of 39 U.S.C. 404a(a), the Postal Service may demonstrate that it is specifically authorized by law to take the action or inaction alleged to be a violation of that section.

(b) Authority under 39 U.S.C. 401 or 39 U.S.C. 404 may not form the basis of an affirmative defense under paragraph (a) of this section.

(c) Paragraph (b) of this section does not preclude the Postal Service from arguing that a particular Postal Service regulation or other action (or inaction) does not have the requisite effect to violate 39 U.S.C. 404a(a).

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2014–24376 Filed 10–15–14; 8:45 am]

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